

# **POLICY AND RESOURCES COMMITTEE (ACTING AS THE PLANNING REFERRAL BODY) MEETING**

Date: Monday 13 July 2020

Time: 6.30 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 Mrs Blackmore, M Burton, Chappell-Tay, Clark, Cox (Chairman), English, Mrs Gooch, Harvey, McKay, Mortimer, Newton, Perry (Vice-Chairman), Purle, Round and Springett

*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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## **AGENDA**

Page No.

1. Apologies for Absence
2. Notification of Substitute Members
3. Urgent Items
4. Notification of Visiting Members
5. Disclosures by Members and Officers
6. Disclosures of Lobbying
7. To consider whether any items should be taken in private because of the possible disclosure of exempt information.
8. Planning Applications 19/501600/OUT & 19/506182/FULL - Land West of Church Road, Otham, Kent, ME15 8SB 1 - 115

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**Issued on Friday 3 July 2020**

**Continued Over/:**

*Alison Broom*

**Alison Broom, Chief Executive**

## PART II

To move that the public be excluded for the item set out in Part II of the Agenda because of the likely disclosure of exempt information for the reason specified having applied the Public Interest Test.

### Head of Schedule 12 A and Brief Description

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| 9. Exempt Appendices - 19/501600/OUT and 19/506182/FULL - Land West of Church Road, Otham, Kent (circulated separately) | 5 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings |
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### PUBLIC REPRESENTATIONS AND ALTERNATIVE FORMATS

In order to submit written or video comments to be read out/played at the meeting on your behalf by an Officer or the Chairman, 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 (i.e. by 4 p.m. on Friday 10 July 2020). Please note that slots will be allocated for each application on a first come, first served basis.

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

To find out more about the work of the Committee, please visit [www.maidstone.gov.uk](http://www.maidstone.gov.uk).

**The Planning Referral Body -  
Policy and Resources  
Committee**

**13<sup>th</sup> July 2020**

**Planning Applications 19/501600/OUT & 19/506182/FULL**

**19/501600/OUT:** Outline application for up to 440 residential dwellings, with associated access, infrastructure, drainage, landscaping and open space (Access being sought with all other matters reserved for future consideration)

**19/506182/FULL:** Residential development for 421 dwellings with associated access, infrastructure, drainage, open space and landscaping.

**Address:** Land West of Church Road, Otham, Kent, ME15 8SB

<b>Final Decision-Maker</b>	The Planning Referral Body - Policy and Resources Committee
<b>Lead Head of Service</b>	Rob Jarman (Head of Planning & Development)
<b>Lead Officer and Report Author(s)</b>	Richard Timms (Principal Planning Officer) Patricia Narebor (Head of Legal Partnership)
<b>Classification</b>	<p>Public with Exempt Appendices 6 and 7</p> <p>The information contained within Appendices 6 and 7 are considered exempt under the following paragraph of part 1 of schedule 12A to the Local Government Act 1972:</p> <p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p> <p>Public Interest Test</p> <p>The Council's interest in defending a legal challenge would be compromised if this information was considered in the public domain. Therefore, the public interest in withholding the information outweighs the public interest in considering the legal guidance in public.</p>
<b>Wards affected</b>	Downswood And Otham

**Executive Summary**

This report provides advice on the Committee's role in determining the planning applications with background information and a chronology of events. The Planning Committee reports with the considerations and recommendations on the applications and officer advice on the most recent decision of the Planning Committee are attached as **Appendices**.

**Purpose of Report**

Decision

**This report makes the following recommendations to this Committee:**

1. For application 19/501600/OUT to determine what decision the Local Planning Authority would have made had the application not been appealed.
2. For application 19/506182/FULL to determine the application.

**Timetable**

<b><i>Meeting</i></b>	<b><i>Date</i></b>
Policy and Resources Committee	13 <sup>th</sup> July 2020

# Planning Applications 19/501600/OUT & 19/506182/FULL

## 1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Impact on Corporate Priorities</b>	<p>The Four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> <li>• Embracing Growth and Enabling</li> <li>• Infrastructure</li> <li>• Safe, Clean and Green</li> <li>• Homes and Communities</li> <li>• A Thriving Place</li> </ul> <p>Accepting the recommendations to proceed with decisions would enable the Council to meet its Corporate Priorities.</p>	<p>Director of Regeneration and Place</p>
<b>Cross Cutting Objectives</b>	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> <li>• Heritage is Respected</li> <li>• Health Inequalities are Addressed and Reduced</li> <li>• Deprivation and Social Mobility is Improved</li> <li>• Biodiversity and Environmental Sustainability is respected</li> </ul> <p>Accepting the recommendations to proceed with decisions would enable the Council to meet its Cross Cutting Objectives.</p>	<p>Director of Regeneration and Place</p>
<b>Risk Management</b>	<p>The Council's Constitution outlines arrangements where planning applications can be referred to the Planning Referral body consisting of the Policy and Resources Committee where the Planning Committee, on the second occasion decides to refuse the application or impose unreasonable condition(s). The referral will be made where these cannot be sustained at appeal and which could have significant cost implications for the Council's budget.</p> <p>The referral has been made to this Committee in light of the significant cost implications.</p>	<p>Head of Mid Kent Legal Partnership</p>
<b>Financial</b>	<p>There is a significant risk of the Council being awarded costs against it at appeal which could amount to £95k for the appellant's costs and £70k for the Council's costs which will have implications for the resources of the Council.</p>	<p>Section 151 Officer</p>

	Other legal challenges such as judicial review may be lodged against the Council with additional costs being incurred.	
<b>Staffing</b>	The Council's functions were exercised appropriately by officers through use of the Scheme of Delegations and other procedures outlined in the Council's Constitution.	Head of Mid Kent Legal Partnership
<b>Legal</b>	<p>The role of the Policy and Resources Committee as the Planning Referral body is outlined under paragraph 2 of this report. Consideration of the planning applications by the Committee is in accordance with the requirements of the Constitution. The referral to the Committee has been made on account of the legal and financial implications, the risk of success at appeal against the Council and the risk of an award of significant legal cost at appeal and/or other legal challenges.</p> <p>The Policy and Referral body has the obligation to consider the application and can resolve to approve or refuse the applications in line with the statutory requirements.</p> <p>The Town and Country Planning Act 1990, section 70(2) requires that in dealing with the applications for planning permission the authority shall inter alia have regard to:</p> <p>(a) the provisions of the development plan, so far as material to the application,</p> <p>(b) a post-examination draft neighbourhood development plan, so far as material to the application,</p> <p>(c) any other material considerations</p>	Head of Mid Kent Legal Partnership
<b>Privacy and Data Protection</b>	Not applicable.	Policy and Information Team
<b>Equalities</b>	Not applicable.	Policy & Information Manager
<b>Public Health</b>	Not applicable	Public Health Officer
<b>Crime and Disorder</b>	Not applicable.	Head of Service or Manager
<b>Procurement</b>	Not applicable.	Head of Service &

		Section 151 Officer
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 The Council's Constitution outlines the responsibility for functions in line with statutory obligations, to include the requirements of the Local Authorities (Committee System) (England) Regulations 2012. The legislation enables some functions to be delegated to committees and/or officers. The Council's Constitution enables planning applications to be dealt with by the Planning Committee, by officers and by the Planning Referral body formed from the Policy and Resources Committee.
- 2.2 Subject to a number of prescribed conditions, the planning committee functions provide that the Head of Planning and Development has delegated authority to undertake all the functions relating to planning and conservation.
- 2.3 The applications outlined in the recommendations met the prescribed conditions as such were referred to the Planning Committee.

### **The Role of Policy and Resources Committee as the Planning Referral body**

- 2.4 The Constitution provides in various sections that the Head of Planning and Development (with the guidance of the legal officer) where they believe that the Planning Committee's reasons to justify refusal/the imposition of conditions are not sustainable, the decision of the Planning Committee will be deferred to its next meeting. If, at that meeting, the Planning Committee votes to continue with a decision which it has been advised cannot be sustained at appeal and which could have significant cost implications for the Council's budget the Head of Planning and Development will refer the matter to the planning referrals body for consideration.
- 2.5 The Councillor/Officer Code of Conduct specifically provides that there may be occasions when the planning officers may seek deferral/withdrawal of an application or to implement the agreed procedures for dealing with cases where they believe that the proposed reasons for refusal are unsustainable.
- 2.6 The referral arrangement also forms part of the Policy and Resources Committee functions which provide that the Committee should determine planning applications referred to it by the Head of Planning and Development if the officer's opinion is that the decision of the Planning Committee is likely to have significant cost implications.
- 2.7 Although the Policy and Resources Committee also has overall responsibility for the budget and policy matters when discharging the planning referral function planning applications should be considered on planning merits.
- 2.8 The planning referral arrangement has not been utilised since the function was included within the remit of the Policy and Resources Committee.

- 2.9 At the Planning Committee meeting on 25<sup>th</sup> June, Committee Members resolved to refuse (or in the case of the outline would have refused) both applications for the two reasons outlined in paragraph 2.19 of this report.

**Reason for referring the application to the Policy and Resources Committee as the Planning Referral body**

- 2.10 The applications have been referred to the Planning Referral body because there is a significant cost implication should the Court grant permission on appeal and/or through other legal challenge.

**Planning Applications Background**

- 2.11 The applicant (Bellway Homes) has submitted two planning applications at the site. An outline application was submitted in March 2019 and a full application was submitted in January 2020.

- 2.12 This report provides information on both planning applications in order to avoid repetition but separate consideration and decisions will need to take place on each application.

- 2.13 The previous committee reports outline the proposed developments, representations received on the applications, the relevant planning considerations, and the assessment and recommendations. All reports are attached at the **Appendices 1-4** and it is recommended they are read in numerical order.

**Chronology of Events**

- 2.14 The outline application was originally reported to Planning Committee on 24<sup>th</sup> October 2019 where officers recommended approval as set out in the report at **Appendix 1**. Planning Committee deferred consideration of the application for a number of reasons which are set out in the report at **Appendix 2**.

- 2.15 The outline application was reported back to Planning Committee on 28<sup>th</sup> May 2020 along with the full application with the recommendations set out in the reports at **Appendices 2 and 3**. Contrary to the recommendation of the Head of Planning and Development, the Committee voted to refuse both applications for 3 reasons.

- 2.16 Pursuant to paragraph 30.3 (a) of Part 3.1 of the Council's Constitution and paragraph 17 (a) of the Local Code of Conduct for Councillors and Officers Dealing with Planning Matters (Part 4.4 of the Constitution), planning and legal officers advised the Committee that they did not consider each reason for refusal was sustainable and they could have significant cost implications before a vote was taken. Therefore, the decisions of the Planning Committee were deferred to its next meeting on 25<sup>th</sup> June.

- 2.17 The applicant lodged an appeal with the Planning Inspectorate (PINS) on 11<sup>th</sup> June for the outline application which means that the decision on this application now lies with PINS and not the Council. Any decision now made by Members on this application will be in order to inform PINS what decision the Council would have made. This remains important as it informs the

position MBC will take at the appeal. The appellant has requested a Public Inquiry procedure which officers have advised PINS they consider is appropriate. No start date has been given for the appeal yet but preliminary work is underway.

2.18 Officers sought Counsel's advice on both the relative strengths of the putative grounds of refusal and the associated risk of costs at appeal and advised Members in a report to Planning Committee on 25<sup>th</sup> June which is attached at **Appendix 4**. Members also received a copy of Counsel's full advice a copy of which is attached at **Exempt Appendix 6**.

2.19 At the Committee meeting on 25<sup>th</sup> June Members resolved to refuse (or in the case of the outline would have refused) both applications for the following two reasons:

***1. Whilst mitigating increased traffic congestion on Deringwood Drive, the proposed improvements to the Deringwood Drive and Willington Street junction will result in severe traffic congestion on Willington Street contrary to policy DM21 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.***

***2. The proposal will result in worsening safety issues on Church Road to the south of the site which have not been addressed and due to the constraints of the road are likely to not be addressed by the application proposals and the mitigation proposed is not sufficient to overcome the safety concerns contrary to policy DM1 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.***

2.20 As the Planning Committee voted to continue with a decision it was advised could not be sustained at appeal and which could have significant cost implications for the Council's budget, the Head of Planning and Development on the advice of the Legal Officer present and in consultation with the Chairman, referred both applications to the Policy and Resources Committee for determination.

2.21 Further advice has been sought from Counsel on both the relative strengths of the two grounds of refusal and the associated risk of costs at appeal and officers have provided advice on these grounds in the report at **Appendix 5**. Counsel's full advice is attached at **Exempt Appendix 7**.

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### **3. AVAILABLE OPTIONS**

#### **3.1 OPTION 1**

**That the Policy and Resources Committee makes decisions on both applications.** For the outline application this is important as it informs the position MBC will take at the Public Inquiry appeal. For the full application it is the statutory duty of the Council to reach a decision on the application.

### 3.2 **OPTION 2**

**The Policy and Resources Committee does not make decisions on both applications.** For the outline application this is not recommended as officers would not be clear on what position MBC should take at the Public Inquiry appeal. For the full application this is not recommended as it is the statutory duty of the Council to reach a decision on the application. Without a decision it is highly likely the applicant would appeal and so officers would not be clear on what position MBC should take at any appeal.

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## 4. **PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

4.1 That the Policy and Resources Committee makes decisions on both applications in line with Option 1.

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## 5. **RISK**

5.1 The Council's Constitution outlines arrangements where planning applications can be referred to the Planning Referral body consisting of the Policy and Resources Committee where the Planning Committee, on the second occasion decides to refuse the application or impose unreasonable condition(s). The referral will be made where these cannot be sustained at appeal and which could have significant cost implications for the Council's budget.

5.2 The referral has been made to this Committee in light of the significant cost implications.

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## 6. **CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK**

6.1 Matters relating to consultation are detailed in the reports relating to each application.

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## 7. **NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

7.1 Communication regarding the decision of the Committee will be in accordance with the Town and Country Planning Act 1990 and related regulations. Decision notices will be issued to the applicant, published on the Council's website and statutory consultees will be notified.

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## 8. **REPORT APPENDICES**

**Appendix 1** 19/501600/OUT Committee Report 24<sup>th</sup> October 2019

**Appendix 2** 19/501600/OUT Committee Report 28<sup>th</sup> May 2020

**Appendix 3** 19/506182/FULL Committee Report 28<sup>th</sup> May 2020

**Appendix 4** 19/501600 & 19/506182 Committee Report 25<sup>th</sup> June 2020

**Appendix 5** Officer advice on two most recent grounds of refusal

**Exempt Appendix 6** Counsel's Advice on the Planning Committee's grounds of refusal and the risk of costs at appeal – 11 June 2020

**Exempt Appendix 7** Counsel's Advice on the Planning Committee's further reasons for refusal and the risk of costs at appeal – 1 July 2020.

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## **9. BACKGROUND PAPERS**

See Appendices

## **APPENDIX 1**

<b>REFERENCE NO - 19/501600/OUT</b>
<p><b>APPLICATION PROPOSAL</b></p> <p>Outline application for up to 440 residential dwellings, with associated access, infrastructure, drainage, landscaping and open space (Access being sought with all other matters reserved for future consideration)</p>
<b>ADDRESS</b> Land West Of Church Road, Otham, Kent, ME15 8SB
<b>RECOMMENDATION – APPROVE WITH CONDITIONS</b>
<p><b>SUMMARY OF REASONS FOR RECOMMENDATION</b></p> <ul style="list-style-type: none"> <li>• The site is allocated for 440 houses within the Local Plan under policy H1(8) subject to a number of criterion.</li> <li>• The outline application proposes up to 440 houses and for the reasons outlined in the report complies with the criterion under policy H1(8) subject to the legal agreement and conditions.</li> <li>• The allocation of the site for housing inevitably has an impact upon the setting of listed buildings to the north but this would be minimised and would be less than substantial. The public benefits of providing housing, including affordable housing on an allocated housing site, and the associated the social and economic benefits, and a church car park, outweigh this less than substantial harm.</li> <li>• KCC Highways is raising objections on the basis of an unacceptably severe traffic impact on the highway network and worsening safety hazards on Church Road. For the reasons outlined in the report the Local Planning Authority does not agree, and the objections are not considered to be reasonable grounds to refuse planning permission.</li> <li>• KCC Highways is raising issues of capacity and safety relating to the applicant’s proposed signalisation of the Willington Street/Deringwood Drive junction and so delegated powers are sought by officers to resolve this matter through an amended improvement scheme that is agreed with KCC Highways, or withdrawal of their objection on this matter.</li> <li>• Highways England is raising no objections subject to a condition that limits 230 house occupations until works to the M20 Junction 7 have been carried out in full. The applicant has signed a legal agreement to pay a proportionate amount to the upgrade works to Junction 7, which is considered appropriate and such a condition does not pass the required tests for planning conditions and is unreasonable for the reasons outlined in the report.</li> <li>• The outline application complies with site policy H1(8) and all other relevant Development Plan policies. There are no overriding material considerations to warrant a decision other than in accordance with the Development Plan, and so permission is recommended subject to the legal agreement and conditions set out below.</li> </ul>
<b>REASON FOR REFERRAL TO COMMITTEE</b>

<ul style="list-style-type: none"> <li>• Councillor Newton has requested the application is considered by the Planning Committee for the reasons set out below.</li> <li>• The recommendation is contrary to the view of Kent Highways and Highways England (statutory consultees).</li> </ul>			
<b>WARD</b> Downswood And Otham	<b>PARISH/TOWN COUNCIL</b> Otham	<b>APPLICANT</b> Bellway Homes Limited <b>AGENT</b> DHA Planning	
<b>DECISION DUE DATE:</b> 08/11/19	<b>PUBLICITY EXPIRY DATE:</b> 17/10/19	<b>SITE VISIT DATE:</b> 17/04/19 & 10/10/19	
<b>RELEVANT PLANNING HISTORY</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
19/501029	EIA Screening Opinion for the proposed residential development of up to 440 dwellings and associated access, landscaping and other works on land west of Church Road, Otham.	EIA NOT REQUIRED	17/04/19

## 1.0 DESCRIPTION OF SITE

- 1.01 The application site has an area of approximately 16.1ha and is to the west of Church Road. The site is to the southeast of Maidstone and is between substantial residential areas to the north, west and southwest, namely cul-de-sacs within the Downswood area to the north, Chapman Avenue to the west and Woolley Road to the south. To the east are open agricultural fields and immediately to the south/southeast are a number of detached residential properties at The Rectory (Grade II listed) and Squerryes Oast. St Nicholas's Church (Grade I listed) and Church House (Grade II listed) are to the north of the site.
- 1.02 The site is in the main, an open arable field but includes an area of land at its north end that wraps around the north side of the church which has numerous trees, scrub vegetation and grass, and over which public footpath KM86 runs. The boundaries of the site are formed by established hedging on the Church Road frontage, hedging to the boundary with 'Squerryes Oast', and trees on the south, west and north boundaries. There is an area of Ancient Woodland (AW) to the southeast of the site.
- 1.03 The site is highest at its south end with a gradual fall to the north. To the west where the site backs onto gardens of properties within Chapman Avenue, there is a considerable level difference between the site and Chapman Avenue.
- 1.04 Importantly, the site is allocated for housing development in the Local Plan and policy H1(8) allows for up to 440 houses and sets out a number of criterion to be met.

## **2.0 PROPOSAL**

2.01 This application seeks outline permission for up to 440 houses and approval of two proposed vehicular access points onto Church Road and other pedestrian and/or cycle links to residential areas to the north, west and south. All other matters such as the location and layout of the roads, houses and open space areas, the design and heights of the houses, and landscaping would be determined under a future reserved matters application(s).

2.02 As such, the local planning authority is being asked to consider whether the principle of 440 houses with two access points is acceptable at this stage.

2.03 The applicant has provided numerous assessments to support the proposals and in order to demonstrate how the site can suitably accommodate 440 houses in line with policy H1(8).

## **3.0 POLICY AND OTHER CONSIDERATIONS**

- Maidstone Borough Local Plan (2011-2031): SS1, SP1, SP3, SP18, SP19, SP20, SP23, H1, OS1(16), ID1, H1(8), DM1, DM2, DM3, DM4, DM6, DM8, DM12, DM19, DM20, DM21, DM23
- Kent Waste and Minerals Plan 2016
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

## **4.0 LOCAL REPRESENTATIONS**

*(The latest notification on additional/amended details expires on 17<sup>th</sup> October. Any responses received will be reported under an Urgent Update Report)*

4.01 **Otham Parish Council:** Raises objections for the following (summarised) reasons:

- Increased traffic and congestion.
- Highway safety for vehicles and pedestrians.
- Lack of transport modelling of local junctions in Downswood.
- Considerable loss of hedging to the front of the site contrary to policy.
- Harm and profound change to the landscape.
- Loss of views across the countryside.
- Harm to ecology.
- Harm to the setting of listed buildings.
- Archaeological survey should be carried out.

4.02 **Downswood Parish Council:** Raises objections for the following (summarised) reasons:

- Traffic generation, traffic flows and congestion.
- Lack of transport modelling of local junctions in Downswood.

- Question some of the assumptions and modelling within the Transport Assessment.
- Traffic assessment not sufficient and carried out when road closed.
- Site policy doesn't provide highways mitigation to the north of the site.
- Strategic highways measures in site policy have not been delivered.
- Lack of sufficient details of development to properly assess.
- Not enough room to widen Church Road without losing hedges.
- Lack of pedestrian/cycle links.
- Snow and ice will leave the site stranded.
- Lack of access for emergency vehicles.
- Inadequate access for large vehicles.
- Buses are unlikely to be able to access the site.
- Lack of decent access to bus services which are poor.
- The site does not benefit from good public transport access.
- Highway safety for vehicles and pedestrians.
- Groundwater plans inconsistent, assessment inadequate, and likelihood of sink holes not properly assessed.
- Land stability and underground conditions have not been suitably assessed.
- Loss of privacy and overlooking.
- Noise, disturbance, and light pollution.
- Inconsistent with character and appearance of local area.
- Harm to listed buildings.
- Loss of community views.
- Harm to ecology.
- Archaeology work not sufficient.
- An Environmental Impact Assessment is required.

4.03 **Bearsted Parish Council (neighbouring)**: Raises objections for the following (summarised) reasons:

- Traffic assessment not sufficient.
- No assessment of junctions to the north of the site.
- Question some of the assumptions and modelling within the Transport Assessment.
- Some of the traffic counts were carried out when road was closed or half term.
- Traffic impact will be severe.
- Public transport will not mitigate traffic.
- There is no Sunday no. 4 bus service.
- No local doctors or primary school.

4.04 **Local Residents**: 399 representations received raising the following (summarised) points:

- Increased traffic and congestion.
- Highway safety.
- Rat running occurs on local roads.
- Church Road is not safe or suitable for additional traffic.
- Traffic calming measures will make traffic worse.
- Junction mitigation has not been carried out.

## APPENDIX A

- Question accuracy of Transport Assessment.
- Flood risk.
- Site isolated in floods and snow.
- Inadequate foul drainage.
- Question surface water report.
- Poor connections.
- Poor public transport.
- Car-reliant.
- Parking.
- Land stability issues on the site and in Chapman Avenue.
- Potential damage to neighbouring properties.
- Geology brings into question surface water proposals.
- Visual impact.
- Density.
- Harm to wildlife/ecology.
- Ancient woodland.
- Loss of majority of hedge.
- Loss of trees.
- Harm to the setting of the Grade I listed Church.
- Archaeology assessment is flawed.
- Ancient burial site.
- Lack of infrastructure and amenities including schools and surgeries.
- Traffic noise.
- Noise from new residents.
- Overlooking/loss of privacy.
- Overshadowing/loss of light.
- Overbearing.
- Air quality.
- Crime.
- Loss of agricultural land.
- Other more suitable sites.
- Noise and dust during construction.
- Lack of EIA.
- Fields provide peaceful lifestyle.
- Will affect house prices.
- Questioned land ownership.
- Lack of public consultation by applicant.
- Additional documents should have been uploaded to the website earlier/when they were received.
- Support the development.
- Other people should be able to enjoy the area.

4.05 **Borough Councillor Newton** requests the application is considered by the Planning Committee and raises the following (summarised) points:

- The site should never have been included in the Local Plan.
- An EIA is required for the application.
- Harm to listed buildings.
- Concern over the impact on the setting of listed buildings particularly the Grade 1 Church which was constructed prior to the Domesday Book.

- As a result of the heavy traffic on Church Road, part of the Ancient Churchyard wall has now collapsed revealing the type of construction used for the wall.
- It is my concern for the ancient buildings which is why I require this application called in to Planning Committee for determination.
- Piling may cause harm to listed buildings.
- Traffic impact unacceptable and infrastructure must be in place before development which it is not.
- Loss of hedgerows and non-compliance with policy DM3.
- Should only be one access.
- Wider junction improvements are not in place.
- Archaeology.

4.06 **Borough Councillor McKay:** Raises the following (summarised) points:

- Highway safety on Church Road.
- Does not meet access requirements.
- Lack of direct access to public transport.
- Those without a car would be isolated.
- Could lead to a judicial review if permission was granted as the strategic highway improvements within the policy and have not been agreed or provided.

## **5.0 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)*

5.01 **Highways England: No objections** subject to a condition limiting occupation to 230 dwellings until improvements to the M20 Junction 7 have been completed.

5.02 **Historic England: No objections** provided that the heritage benefit of a dedicated church car park is secured.

5.03 **Natural England: No objections.**

5.04 **KCC Highways: Raise objections** on the basis of an unacceptably severe traffic impact on the highway network and the worsening safety hazards to road users on Church Road.

5.05 **KCC Economic Development:** Seek £3324.00 per applicable house and £831.00 per applicable flat towards the extension of 'Greenfields Community Primary School' to mitigate the impact of the development.

5.06 **KCC SUDs: No objections** subject to conditions.

5.07 **KCC Archaeology: No objections** subject to condition.

- 5.08 **KCC PROW**: Concerns regarding delivery of a cycle route across PROW so suggest a holding objection. Conditions recommended relating to surfacing and agreement on the extent of widening of KM86 due to increased use.
- 5.09 **KCC Ecology: No objections** subject to conditions.
- 5.10 **MBC Conservation Officer**: Satisfied that the outline application scheme seeks to limit the harm on the setting of the listed buildings, in particular the Church, the Church House and the Rectory, and the setting of the Otham Conservation Area would be minimally impacted.
- 5.11 **MBC Environmental Health: No objections** subject to conditions relating to charging points; lighting; and contaminated land.
- 5.12 **MBC Landscape Officer: No objections** subject to conditions.
- 5.13 **Southern Water**: Confirm there is sufficient capacity.
- 5.14 **Forestry Commission**: Refers to standing advice on Ancient Woodland.
- 5.15 **Kent Police**: Recommended conditions

## **6.0 APPRAISAL**

- 6.01 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that,
- "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."***
- 6.02 The Local Plan allocates the site for 440 houses under policy H1(8) subject to a number of criterion covering matters relating to design and layout, access, air quality, open space, infrastructure, highways and transportation.
- 6.03 This is an outline application for up to 440 houses with all matters reserved apart from access so under consideration are the principle of up to 440 houses and the points of access only. Clearly, the principle of housing is accepted under Local Plan policy H1(8) so it needs to be assessed as to whether the outline proposals comply/can comply with the policy criterion and any other relevant Development Plan policies.
- 6.04 Whilst the specific details of the development are not being considered at this stage, the applicant has provided a 'Parameter Plan' and 'Illustrative Masterplan' in order to demonstrate how the development could be suitably accommodated on the site and comply with policy H1(8). Whilst the detailed design of the development is not being considered, the applicant does wish to set some parameters through the 'Parameter Plan' which will be discussed in the relevant sections below.

6.05 The key issues for the application are centred round site allocation policy H1(8) as follows:

- Access and connectivity.
- Compliance with the design, layout, and open space criterion.
- Heritage impacts.
- Highways impacts.
- Infrastructure.
- Other matters including air quality, drainage, ecology, and amenity.

Access and Connectivity

6.06 Policy H1(8) states:

- 8. Access will be taken from Church Road only**
- 5. The hedge line along the eastern boundary of the site with Church Road shall be retained and strengthened where not required for access to the site.**

6.07 The application only proposed access from Church Road via two vehicular access points which is in accordance with policy H1(8). These would be close to the north and south ends of the site on the Church Road frontage. The access points have been assessed by Kent Highways and Kent Fire and Rescue and judged to be suitable and safe.

6.08 The proposed accesses and required visibility splays inevitably mean that some of the existing hedging fronting Church Road will need to be removed (approximately 125m). However, it would be possible to provide new double staggered native hedging behind the visibility splays and strengthen the existing hedging in general, this being a positive landscape feature of the site. Whilst landscaping is not being considered at this stage a condition can be attached to guide the landscaping details to ensure sufficient replacement hedging/hedge strengthening. This will ensure compliance with criterion 5 of the site policy.

6.09 In terms of connectivity, it is proposed to provide a new pavement from the northern access along the front of the Church within highways land to link with the existing pavement further north. As this pavement would be narrower than the 2m normally sought due to the width of Church Road (being between 1.2m to 2m and on average around 1.6m), a pedestrian/cycle route is proposed around the north side of the Church and into the site to provide an alternative attractive route which can be conditioned.

6.10 To the south, it is proposed to provide a pedestrian/cycle link via the Council owned public open space to link up with Woolley Road. This would provide an appropriate link to shops, 'Senacre Primary School', and bus stops to the south. The applicant would provide a pathway on the application site and has confirmed they would continue and construct this

on the Council owned land. The property team have confirmed that they have no objections to this. Again the detail would be provided at the reserved matters stage but a condition will be imposed to secure the link and a pathway on Council owned land. Whilst outside the applicant's control this condition is reasonable as this is land in public ownership, and the Council has indicated it has no objections to this being provided.

6.11 Public right of way KM86 runs across the north of the site and it is indicated on the Parameter Plan that open space would be provided along the route. This is welcomed by KCC PROW and they advise that the path should be surfaced due to the additional use which can be secured by condition. The Parameter Plan indicates that a connection with the pedestrian link to 'The Beams', which provides access towards Willington Street and 'Greenfields Primary School' would be provided in the northwest corner. KCC PROW and Highways refer to the existing paths here being steps and so this raises issues over access for all users. This is not the only connection to the west as the connection to the south provides access in this direction so it is not necessary for changes to these steps to be made. They also refer to the applicant's intention to widen the path to allow cycle use and that this would require a legal change to a 'cycle track' to bridleway. In response to this, the applicant has stated that any specific widening would be proposed at the reserved matters stage but details of this can be secured by condition.

6.12 So overall, the vehicular access points comply with policy H1(8), are safe, and the scheme provides good pedestrian and cycle connectivity to the local area and its services/amenities, in accordance with policy DM1 of the Local Plan.

Design, Layout, and Open Space Criterion

6.13 Policy H1(8) requires:

- 1. The tree line along the western boundary of the site will be enhanced, to protect the amenity and privacy of residents living in Chapman Avenue.**
- 2. An undeveloped section of land will be retained along the western boundary of the site, to protect the amenity and privacy of residents living in Chapman Avenue.**
- 3. An undeveloped section of land will be retained along the eastern edge of the site in order to protect the setting of St Nicholas Church and maintain clear views of the Church from Church Road.**
- 4. The Church Road frontage will be built at a lower density from the remainder of the site, to maintain and reflect the existing open character of the arable fields on the eastern side of Church Road and to provide an open setting to St Nicholas Church.**
- 6. Retain non-arable land to the north and east of St Nicholas Church, to protect its setting.**
- 7. Retain discrete section of land at the south east corner of the site to provide a 15 metres wide landscape buffer to ancient woodland**

***(bordering site at this location), to be planted as per the recommendations of a landscape survey.***

***10. Provision of approximately 2.88ha of natural/semi-natural open space consisting of 1.4ha in accordance with policy OS1(16), and 1.48ha within the site, together with additional on/off-site provision and/or contributions towards off-site provision/improvements as required in accordance with policy DM19.***

6.14 As stated above, this is an outline application but an illustrative masterplan has been provided which shows development parcels, roads, and areas of open space in order to show that 440 houses can be accommodated. This shows that development can be set away from the tree line along the western boundary to provide an undeveloped area in accordance with criterion 1 and 2. It also shows an undeveloped area of land along the east edge of the site to maintain clear views of St Nicholas Church from Church Road in line with criterion 3. Further open space is also shown to the south and southwest of the Church to limit the impact upon the setting of the Church. Land to the north of the Church is shown as open space in line with criterion 6. In the southeast corner in excess of a 15m buffer to the ancient woodland is shown in line with criterion 7. These undeveloped areas/buffers are identified on the Parameter Plan and so can be secured by condition.

6.15 In terms of open space, criterion 10 requires a total of 2.88ha to be provided for the development. In line with policy OS1(16), and as shown on the Local Plan map, part of the 2.88ha is land to the northwest of the Church and land in the southeast corner of the site (providing 1.4ha). The Parameter Plan indicates open space by the Church, in the southeast corner, and also within the development areas. The site is of a sufficient size to provide the total amount both on the edges and within the development areas, and the 2.88ha can be secured by condition. This amount of open space is considered appropriate for this size of development and can provide a mix of types including natural/semi-natural, more formal space, and play areas. Any need for off-site mitigation of existing open space would need to be sought via the Community Infrastructure Level (CIL).

6.16 For the above reasons it is considered that the application complies with design, layout, and open space requirements of policy H1(8) and these can be secured through the Parameter Plan being conditioned.

#### Heritage Impacts

6.17 Policy H1(8) requires:

- 3. An undeveloped section of land will be retained along the eastern edge of the site in order to protect the setting of St Nicholas Church and maintain clear views of the Church from Church Road.***
- 4. The Church Road frontage will be built at a lower density from the remainder of the site, to maintain and reflect the existing open character of the arable fields on the eastern side of Church Road and to provide an open setting to St Nicholas Church.***

**6. Retain non-arable land to the north and east of St Nicholas Church, to protect its setting.**

- 6.18 As outlined above, the Parameter Plan ensure compliance with the above criterion which relate to St Nicholas Church so the proposals comply with policy H1(8).
- 6.19 There are a number of heritage assets near to the site. Notably, St Nicholas's Church (Grade I listed) and two Grade II listed monuments within the grave yard, and 'Church House' (Grade II listed) immediately to the north of the site. There is also 'The Rectory' (Grade II listed) to the south. Further afield, the Otham Conservation Area is 770m to the southeast.
- 6.20 The NPPF outlines at paragraphs 193 and 194, that great weight must be given to the conservation of listed buildings irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 6.21 The site in particular has an impact upon the setting of the Grade I listed Church, as it forms part of its historic rural open setting to the south. This setting and the visibility it affords of the Church in its historical context, forms part of its significance and development of the site would affect this. Churches were obviously built of a certain scale so they were visible from some distance. In addition, the access points would result in a change to the character of Church Road near to the Church. There would be an impact upon the setting of Church House (GII) but this would to a lesser extent as this building is less prominent from the application site and wider area, so the openness of the application site does not contribute greatly to its significance.
- 6.22 The allocation of 440 houses at the site inevitably results in some harm to the setting of the two listed buildings to the north. Such impacts upon the setting of these listed buildings were clearly accepted when the Local Plan Inspector agreed that the allocation was acceptable for 440 houses, subject to criterion 3, 4, and 6, which all seek to protect the setting of St Nicholas Church, and in turn Church House.
- 6.23 It is therefore a case of minimising the impact upon the heritage assets and securing sensitive design in line with Paragraph 190 of the NPPF and policy SP18 of the Local Plan. To this end, discussions have been held with Historic England and amendments have been made to the Parameter Plan which indicates a larger non-development buffer to the south of 'Church House' and to the south and southwest of the Church. As stated above,

views of the Church from Church Road would be maintained, which is one of the key public views of the Church. In addition, a car park for the Church is proposed as a heritage benefit as the Church does not currently benefit from a dedicated car park. Instead cars park along Church Rd. Historic England have advised that these changes reduce the overall level of harm to significance and that a dedicated church car park is a more defined heritage benefit and on this basis, they concluded the harm has been minimised in line with Paragraph 190 of the NPPF and it is for the Council to decide whether the harm has clear and convincing justification and balance any harm against the public benefits. Historic England has no objection to the application on heritage grounds provided that the heritage benefit of a dedicated church car park is secured via a legal agreement or by condition.

- 6.24 I agree that the changes to the Parameter Plan serve to minimise the impact upon the listed buildings to the north and ensure compliance with policy H1(8). I agree with the applicant's conclusion that the harm to the listed buildings is 'less than substantial' because the amended Parameter Plan provides undeveloped areas to the north, west, and south of the listed buildings and maintains clear views of the Church from Church Road. The provision of a church car park will in itself have some harmful impacts upon the setting of listed buildings but it would be below level development and could be screened/softened. It would provide benefits to the Church in that it would assist in its ongoing use, and something which Historic England attaches weight.
- 6.25 The site allocation and therefore outline proposals, I would say inevitably, do not conserve the setting of the listed buildings and so there is some conflict with criterion 1 of policy DM4 of the Local Plan. However, the explanatory text to policy DM4 refers to carrying out a weighting exercise in line with the NPPF.
- 6.26 Whilst having special regard to the preservation of the setting of the Church and Church House, overall, it is considered that the public benefits of providing up to 440 houses including affordable housing to meet housing needs on an allocated housing site, and the associated social and economic benefits, in addition to the provision of a church car park, provide for clear and convincing justification for some harm to the heritage assets, and these benefits outweigh this less than substantial harm to St Nicholas Church and Church House in line with Paragraph 196 of the NPPF. The Parameter Plan would also ensure that the impact upon heritage assets would be minimised to an acceptable degree bearing in mind the site is allocated for housing.
- 6.27 'The Rectory' (GII listed) to the south is some 50m from the edge of the site with a two storey building and vegetation between. There would also be a buffer to the front of the site that would limit development near to this building. For these reasons the development of the site would not cause harm to the setting of this listed building. There would be no harm to the listed monuments within the church yard as the site is generally screened from these and it is considered that their setting is confined to the church yard. I concur with the Council's Conservation Officer that due to the distance from the edge of the Otham Conservation Area (770m), the

development would have a minimal impact upon its setting, and I consider no harm would be caused.

- 6.28 In relation to archaeology, KCC Heritage advises that on the back of geophysical surveys carried out by applicant, there are no indications of significant archaeology surviving on the site. However, they suggest the area around the church may contain important archaeology (which may be revealed following intrusive field evaluation works) and recommend a condition to this end, which is considered appropriate.

### Highways Impacts

#### *Wider Network/Strategic Junctions*

- 6.29 The Local Plan examination process which led to the adoption of the Local Plan in October 2017 involved the Local Plan Inspector considering, in great detail, the highways impacts and mitigation for the southeast Local Plan sites (which includes the application site), including objections/representations from statutory consultees and third parties. This involved carefully considering proposed junction improvements and bus service improvements (monies towards some of which had already been secured under planning permissions). The Local Plan Inspector in his Final Report concluded,

*"169. The development proposals in the submitted plan already incorporate measures to mitigate the travel impacts. These include highway capacity improvements and improved bus services (including direct links to railway stations). If these measures are further supported by the bus access and bus priority measures, the impacts on congestion need not be severe. Air quality issues are capable of being addressed by these and other measures, including by action at national level.*

*170. In conclusion the Policy SP3 South East Maidstone Strategic Development Location will generate additional traffic and could contribute to an increase in congestion, particularly at peak hours, even after mitigation in the form of road improvements and other measures to make sustainable travel more attractive and effective. However the concentration of development close to the town does allow alternative and more sustainable means of travel to be made available. That is less likely to be the case were the housing to be located away from the town in another part of the Borough where residents would still need access to employment and services in the town."*

- 6.30 The adopted Local Plan therefore includes strategic highways improvements for the southeast Maidstone sites, and relevant to this application, they are outlined under the site allocation policy (criterion 13-17).
- 6.31 The application site and its potential development of 440 houses was included within the cumulative transport assessments carried out under the planning applications for the strategic southeast housing sites H1(7) - Land North of Bicknor Wood, and H1(10) - Land South of Sutton Road, within the Local Plan. These sites were granted planning permission in early 2018. The

transport assessment cumulatively assessed all the southeast housing allocations and also included other commitment development (planning permissions at the time).

- 6.32 Under those applications, the Council accepted that the cumulative impact of development from all the southeast housing allocations could be suitably mitigated with improvements to the capacity of various junctions and improvements to bus services. Being prior to the introduction of CIL, financial contributions were secured under section 106 agreements towards various off-site highways works/improvements which are outlined in the Council's Infrastructure Delivery Plan (IDP), where the total infrastructure costs and funding streams are stated.
- 6.33 Decisions to approve permission at Planning Committee on sites H1(7) and H1(10) with financial contributions towards infrastructure were made prior to the adoption of the Local Plan in September 2017. The Local Plan Inspectors Final Report and adoption of the Local Plan confirmed that the Council's approach to mitigating the transport impact of the southeast development sites is sound.
- 6.34 For the current application, the applicant has provided a Transport Assessment and carried out up to date traffic surveys on local roads and assessments of appropriate local junctions. Whilst the Parish and residents have questioned the accuracy of the traffic surveys, Kent Highways have raised no issues with them. For wider/strategic junctions the applicant's evidence provides the likely additional impact of the development but relies upon the recent cumulative assessment of transport impacts carried for sites H1(7) and H1(10) and the mitigation (which included the application site). These assessments concluded that the cumulative traffic impact upon the local network (including the application site) would not be severe subject improvements to relevant junctions and public transport. The Council has accepted this conclusion and so this is considered to be an appropriate approach and there are no reasonable grounds to now disagree or depart from this approach that has been accepted recently by the Council.
- 6.35 The site allocation policy as criterion (13-17) relating to strategic highways and transportation improvements as follows:
- 13. Bus prioritisation measures on the A274 Sutton Road from the Willington Street junction to the Wheatsheaf junction, together with bus infrastructure improvements.**
  - 14. Improvements to capacity at the junctions of Willington Street/Wallis Avenue and Sutton Road.**
  - 15. Package of measures to significantly relieve traffic congestion on Sutton Road and Willington Street.**
  - 16. Improvements to capacity at the A229/A274 Wheatsheaf junction.**
  - 17. Improvements to frequency and/or quality of bus services along A274 Sutton Road corridor.**

6.36 The above improvements are based on the cumulative impact of development in southeast Maidstone and so compliance with the above criterion would be via monies towards the improvements. A change in circumstances since the previous decisions is the introduction of the Council's Community Infrastructure Levy (CIL), such that any monies towards strategic highways works required from cumulative transport impacts would be via CIL rather than financial contributions under a section 106 agreement. The applicant will have to pay CIL should planning permission be granted and implemented, and the Council can decide to use monies for the relevant highways improvements. This ensures compliance with the strategic highways requirements under the site policy.

6.37 Although none of the above improvements have commenced and clearly a number of the southeast sites are completed and occupied/part-occupied or under construction, the delivery of highway improvements is not the responsibility of the Local Planning Authority (LPA) or the applicant. The LPA can secure improvements via monies, CIL, or planning conditions but it is the responsibility of the Highways Authority to implement highways works. Therefore the LPA cannot withhold planning permission because highways works have not been delivered.

6.38 KCC Highways has been consulted on the application and has raised strong objections as it considers the proposals do not conclusively demonstrate that the impact of the development can be fully mitigated and that the strategic junction improvements are not expected to provide sufficient capacity. They consider the residual traffic impact on the network is considered to be severe. They state,

*"KCC Highways has previously raised concerns over the suitability and effectiveness of the piecemeal mitigation measures proposed in the cumulative transport impact assessment (CTIA) in relation to other planning applications for large-scale housing growth in south east Maidstone. These equally apply to this planning application.*

*By relying on the principle that financial contributions can be made towards the package of junction modifications on the A274, A229 and A20 corridors identified in the CTIA, the TA has not demonstrated that mitigation of impact can be achieved. KCC Highways expectation is that queuing and delay will be worsened by the additional development in the continued absence of effective mitigation. This, in turn, will result in more road users seeking to use alternative routes through the nearby communities of Otham, Downswood, Leeds and Langley. The level of impact is therefore unacceptably severe and KCC Highways strongly object to the development proposals on this basis."*

6.39 Essentially, the Highways Authority does not consider that the junction and public transport improvements outlined in the Local Plan, and to which monies have been secured, are sufficient to mitigate the impact of the development. This is the same position that was taken under the previous planning applications and at the Local Plan Inquiry by the Highways Authority. So this argument has been tested through planning applications and importantly through an Examination in Public. As outlined above, the

mitigation measures are considered sound and are within the adopted Local Plan. On this basis, it is considered that the Highway Authorities objection is not reasonable grounds to refuse planning permission and could not be defended at appeal.

*Public Transport*

- 6.40 The applicant has confirmed that the scheme will be designed to accommodate buses through appropriate road widths and swept paths should the local bus provider wish to divert into the site. 'Arriva' have confirmed that they do not require any monies to subsidise a diversion once the development is nearing full occupation, and I note existing bus stops are within walking distance on Deringwood Drive and Woolley Road so diversion of the service is not essential. Therefore, it is not necessary to secure any funding for this service, and I consider the development could be designed to accommodate buses, with the decision to divert a commercial decision for the bus operator. As outlined above, the site has/provides good connectivity to local bus stops.
- 6.41 The applicant has provided a Framework Travel Plan for the development which would encourage sustainable travel and its aims are proportionate for this site and its location. This can be secured by condition and a monitoring fee of £5,000 will be secured under a section 106 agreement.

*Church Road to the South of Site*

- 6.42 KCC Highways have raised an objection based on worsening safety hazards to road users on Church Road to the south of the site. This is based on the road width and also lack of forward visibility in places. They state that a width of 4.8m is sufficient for two cars to pass but not two larger vehicles. The width is below 4.8m for much of its length (between 4.1m and 4.5m) and at 3.9m for a very short section. KCC consider a 5.5m width to be essential referring to the Kent Design Guide. The request for a 5.5m width is based on guidance for major access roads within new developments so in circumstances where you are proposing a new road. This is not to say it is not relevant at all to existing roads but clearly existing roads have potential constraints and it is the local context and conditions that must be taken into account.
- 6.43 The applicant states that Church Road is already a two way road with a low incidence of accidents which is shown in the collected data. KCC acknowledge the road is already well-used and has a relatively good crash record but outline that there will be additional traffic movements from the development. Having driven this road both ways a number of times including in the AM peak, I noted that in a limited number of places cars had to stop to let other cars pass but it was generally a case of slowing down to pass. When larger vehicles are involved, stopping would probably need to be carried out as some representations on the application suggest. The applicant's traffic flows suggest that between 81 and 84 movements would exit and enter the site from Church Road to the south in the AM and PM peaks. This would be on average just over one additional movement a minute over the peak hour. This is not considered to represent a significant

increase in movements on Church Road and on this basis it is not considered that the development would have an unacceptable or severe impact on highway safety beyond the current situation, or that warrants objection on the basis of road width or visibility in accordance with policy DM21. I also note that policy H1(8) under criterion 12 only requires road widening outside site H1(6) further south on Church Road (which will be carried out in connection with permission on that site).

- 6.44 It is also important to note that the applicant has investigated widening along Church Road where they do own some land on either side. To carry out widening would result in the removal of trees and hedging on both sides of the road of which a large section (325m) is Ancient Woodland. There is also a large section of third party land (460m) on the east side. So notwithstanding the conclusion above, the environmental impact this would have through loss of Ancient Woodland and visual harm to the character of Church Road is considered to outweigh any benefits of road widening.
- 6.45 The applicant is proposing some measures to improve Church Road including extending the 30mph speed limit by approximately 500m south of its current location by the Church, and also by introducing build-outs with a give way feature on a bend just to the south of the site where there is limited visibility. A safety audit submitted by the applicant, and KCC Highways has confirmed that this is acceptable and KCC state that this measure supports the extension of the 30mph speed limit. These works, which aid in highway safety where visibility is more limited, can be secured by condition. KCC Highways have sought clarification on swept paths which the applicant is responding to, and an update will be reported to Planning Committee via an urgent update report.

#### *Local Junctions*

- 6.46 The applicant has assessed the impact upon the junction of Church Road/Deringwood Drive, Deringwood Drive/Willington Street, and Spot Lane/A20.
- 6.47 Improvements to Church Rd/Deringwood Drive are proposed essentially widening both roads near the junction and replacing some of the parking bays, which has been deemed sufficient to accommodate the development traffic by KCC. This would result in the loss of some grassed verge and most likely 2/3 trees but this would not be unduly harmful to the local area and is necessary to accommodate the allocated site.
- 6.48 For the Deringwood Drive/Willington Street junction, the applicant's evidence suggests this junction will be beyond its design capacity imminently when taking into account general traffic growth and traffic from developments within the Local Plan/with planning permission. The issue is the difficulty in traffic leaving Deringwood Drive and so the queuing on this arm, rather than along Willington Street. It is of note that no issues for this junction have been identified, or any mitigation required by KCC Highways for any other developments to date, despite them impacting on this junction.

- 6.49 The applicant is proposing signalisation of the junction that would better manage traffic, provide safer opportunities for Deringwood Drive and development traffic to exit, and improve pedestrian crossing facilities. Whilst this would not bring the Deringwood Drive arm within design capacity but it must be noted that the junction in its current form will reach its capacity soon with the level of development already approved (without this development). On this basis it is considered to be a proportionate response to mitigate the traffic impact of this application and one that brings other benefits. However, KCC Highways have assessed the proposals and consider that this would introduce a new delay on Willington Street so any mitigation for Deringwood Drive would effectively be counteracted by the introduction of queuing and delays on Willington Street. They also consider there are outstanding safety issues to resolve with the design. On this basis they consider that there are both capacity and safety issues outstanding.
- 6.50 It is therefore recommended that delegated powers are given to officers to resolve this matter through an amended improvement scheme that is agreed with KCC Highways. If this cannot be agreed or KCC do not remove their objection specifically to the impacts at this junction, the application will be reported back to Planning Committee with a recommendation on this matter.
- 6.51 For the Spot Lane/A20 junction, the Spot Lane arm would be just over design capacity with general traffic growth, traffic from developments within the Local Plan/with planning permission, and the application traffic. This would mean an increase in queuing on Spot Lane but it is considered that the impact is not severe or dangerous, and does not warrant mitigation or objection in line with policy DM21.

*M20 Junction 7*

- 6.52 As background, under the recent applications at sites H1(7) and H1(10), financial contributions to cover the total costs of upgrade works to Junction 7 of the M20 (including scheme design and contract costs) were decided to be apportioned between those two sites and the application site H1(8) (3 sites in total). This totalled £4.66m and the applicant (Bellway Homes), along with completing a legal agreement for financial contributions for site H1(7), also completed a legal agreement for monies in connection with H1(8). Therefore a proportionate financial contribution towards Junction 7 has already been secured for this site by the applicant. These legal agreements and the triggers for payment were agreed with KCC (who would provide the works) and on this basis Highways England previously raised no objections.
- 6.53 Highways England now does not raise any objections to the application but this is subject to a condition that there is no occupation beyond 230 dwellings until improvements to the M20 Junction 7 have been completed. This is primarily based on mitigation for development within the wider Local Plan, rather than this specific development.

- 6.54 Such a condition is not considered to be reasonable and therefore does not pass the NPPF tests for conditions, on the basis that the applicant has no control as to when the funding for these works will be provided and/or the works are carried out (which is the responsibility of the Highways Authority), particularly bearing in mind they are being funded by three separate developments, one of which hasn't commenced (site H1(10)). In addition, 230 occupations of this specific development do not necessitate the entire upgrade works being carried out to Junction 7, and this precise trigger has not been justified. Highways England instead states that it needs to retain an element of control over the development pipeline (of the Local Plan) in the interests of highway safety and operational effectiveness, which is not specific to this planning application. Indeed, predicated traffic for 220 occupations (50% of the development) are 20 additional movements in the AM and PM peaks, a level which does not justify upgrading of the whole junction. Such restrictions on occupation were also not required and placed upon the other planning permissions so this would not be a consistent approach by the LPA. The other permissions simply required payment at set trigger points.
- 6.55 For these reasons it is considered that the requested condition does not pass the NPPF tests for conditions and should not be attached. The applicant has signed a legal agreement to pay a proportionate amount to the upgrade works to Junction 7, which is considered appropriate. In the absence of this condition, Highways England object to the application and so any decision to approve the application will need to be referred to the Secretary of State in line with the Town and Country Planning (Development Affecting Trunk Roads) Direction 2018.

Off-Site Infrastructure

- 6.56 Policy H1(8) states:

***11. Contributions will be provided towards the expansion of an existing primary school within south east Maidstone to mitigate the impact of the development on primary school infrastructure.***

- 6.57 The adopted CIL is charged on new floor space to help deliver infrastructure to support development. The scale of development proposed here is not such that it generates the need for a new standalone school or doctor's surgery, or specific on-site infrastructure but will obviously place an additional demand on such services. On this basis, CIL monies could be used towards such services to mitigate the impact of the development which is in accordance with policy DM20.
- 6.58 An exception is made under the Council's Regulation 123 CIL list (list of infrastructure types and/or projects which the Council intends will be, or may be, wholly or partly funded through the CIL), for education. The Reg. 123 List specifically allows for section 106 monies to be collected towards "expansion of an existing school within southeast Maidstone to accommodate site H1(8)" as identified in the Infrastructure Delivery Plan. This is identified as the 'Greenfields Community Primary School' and KCC have requested £3,324.00 per applicable house and £831.00 per applicable

flat towards the expansion of school to mitigate the impact of the development. This contribution would go towards planned expansion of the school to provide 4 additional classrooms and has been justified by KCC, and as it is specifically identified under the Reg.123 list, it is considered necessary, directly related to the development, and reasonable and in this specific case appropriate to be collected via a section 106 agreement which is being progressed and nearing completion. This is in accordance with criterion 12 of policy H1(8).

#### Other Matters

##### *Affordable Housing*

6.59 Affordable Housing is proposed at 30% with the tenure split 70% affordable rent and 30% shared ownership. This overall amount (30%) is in accordance with policy SP21 as is the tenure split and this will be secured under the legal agreement. A monitoring fee for the s106 will also be secured.

##### *Air Quality*

6.60 Policy H1(8) requires:

**9. *Appropriate air quality mitigation measures to be agreed with the council will be implemented as part of the development.***

6.61 An air quality assessment has been submitted which concludes that small increases in NO<sub>2</sub> concentrations are expected as a result of the proposed development and overall, these increases are expected to have a negligible impact on air quality and not cause any exceedances of the relevant Air Quality Standards. The site is located outside any Air Quality Management Areas and it concludes that new residents would not be subjected to poor air quality. The Environmental Health section has reviewed the assessment and raises no objections. In line with the Council's Air Quality Planning Guidance, an emissions mitigation calculation has been used to quantify potential emissions from the development and provides a suggested mitigation value for proportionate mitigations to be integrated into the development. A number of potential mitigation measures are outlined and the specific measures can be secured by condition which can include measures such as EV charging points for houses with off-street parking as this is a requirement under policy DM23 of the Local Plan.

##### *Drainage*

6.62 The Environment Agency's flood risk from surface water map shows a narrow overland flow path running from north to south through the centre of the site. The applicant has assessed this and confirms that some surface water flooding could occur along this natural flow path in extreme rainfall events. The report goes on to state that this flow path could be realigned to fit in with the layout of housing so it runs through areas of open space and is not affected by the development or displaced off-site. This is a detailed

matter that would be dealt with at reserved matters stage but it shows that this is not a constraint to development of the site in principle.

6.63 For surface water from the development, it is proposed at this stage that there would be a series of swales that would drain to deep bore soakaways at a level to avoid any potential issues with flooding of fissures/gullies. Again this would be dealt with at the detailed stage but KCC LLFA have confirmed that this could be feasible but it will be necessary to develop a detailed drainage scheme to confirm the scheme can be satisfactorily accommodated within the final development layout and recommend conditions to secure this.

6.64 Southern Water has confirmed there is sufficient capacity on the local network for foul drainage ensures compliance with criterion 15 of policy H1(8).

#### *Ecology*

6.65 The site is mainly an arable field with grassland and scrub around its margins and hedging along the Church Road frontage and edges. Features of ecological importance within the site include hedgerows and an area of semi-improved grassland in the north-east corner, which are all on the outside edges of the site. In terms of protected species, a low population of breeding slow worms has been recorded and there is suitable habitat for foraging and roosting bats, badgers, hedgehogs and breeding birds which is around the edges of the site. Apart from where required for access, the hedges can remain and the Parameter Plan shows that the habitats on the outskirts of the site would largely not be developed and this plan will be conditioned. Various mitigation measures are proposed to protect habitat and species and create/enhance habitat, which can be secured by condition. KCC Ecology are satisfied that that appropriate mitigation has been recommended to minimise or avoid impacts on these habitats and species and recommend conditions to secure the mitigation measures, a site wide management plan, and bat sensitive lighting. The development would therefore be in accordance with policy DM3 of the Local Plan.

6.66 There is an area of ancient woodland that adjoins the site at its south end. It is proposed that a 15m buffer to this woodland would be provided which can also be secured by condition.

6.67 Enhancements are proposed in the form of new native planting, wildflower grassland, permeability for hedgehogs, bat and bird boxes, and habitat piles. This is considered a proportionate response based on the low ecological value of the site and will provide an appropriate biodiversity net gain for this development in line with the NPPG.

#### *Residential Amenity*

6.68 The layout of housing is not being determined at this stage but clearly there is room to ensure that houses are sited a suitable distance from neighbouring properties to ensure there is no unacceptable impact upon privacy, light, or outlook. The Parameter Plan shows building free/buffers

around the edges of the site to comply with the site policy, which are shown in the region of 10m which would also ensure amenity is protected. Any noise and disturbance from the normal occupation of a housing development is not objectionable.

*Environmental Impact Assessment*

6.69 The applicant submitted a separate Screening Opinion for the development just before the application was submitted to ask whether the LPA considered an EIA was required. It was concluded that the development would not be likely to have significant effects upon the environment sufficient to warrant an EIA. A request to the Secretary of State (SoS) was also made by a third party to seek his opinion, and the SoS also concluded the development was not 'EIA development'.

*Representations*

6.70 Matters raised but not considered above relate to land stability, construction matters, house prices, land ownership, and uploading of documents to the website.

6.71 Representations refer to the underlying geology of the area/land stability and potential damage to neighbouring properties with regard to the built development, and flooding from the surface water drainage scheme. The precise location of any built development would be decided at the reserved matters stage and could be sited to ensure there are no land stability issues to neighbouring land/or this could be demonstrated, if necessary. In terms of the surface water drainage scheme, the fine details of this are required by condition.

6.72 Matters relating to construction refer to noise, disturbance, and dust which are all matters that would be dealt with under environmental protection legislation and are not planning matters. The impact upon house prices is not a planning consideration. The red outline application site has been amended so it excludes any land not in control of the applicant. Additional/amended information provided by the applicant was uploaded to the website at the same time, with a formal 21 day re-consultation carried out on all the information. This is standard practice and carried out to avoid numerous re-consultations on single documents each time to 300+ residents in this case.

**7.0 CONCLUSION**

7.01 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning applications must be determined in accordance with the Development Plan unless materials considerations indicate otherwise.

7.02 The site is allocated for 440 houses within the Local Plan under policy H1(8) subject to a number of criterion. The outline application proposes up to 440 houses and for the reasons outlined in the report above, the proposals comply with all policy criterion subject to the legal agreement and

## APPENDIX A

conditions. The application also complies with all other relevant Development Plan policies.

- 7.03 The allocation of the site for housing would inevitably have an impact upon the setting of listed buildings to the north but this would be minimised in line with the Parameter Plan and the impact would be 'less than substantial'. The public benefits of providing housing, including affordable housing on an allocated housing site, and the associated the social and economic benefits, and a church car park, outweigh this less than substantial harm.
- 7.04 Kent Highways are raising objections on the basis of an unacceptably severe traffic impact on the highway network and worsening safety hazards on Church Road. For the reasons outlined in the report the Local Planning Authority does not agree the impact is severe, and the objections are not considered to be reasonable grounds to refuse planning permission.
- 7.05 KCC have raised capacity and safety concerns regarding the proposed signalisation of the Willington Street/Deringwood Drive junction so it is recommended that delegated powers are given to officers to resolve this matter through an amended improvement scheme that is agreed with KCC Highways. If this cannot be agreed or KCC do not remove their objection specifically to the impacts at this junction, the application will be reported back to Planning Committee for a decision on this matter.
- 7.06 Highways England is raising no objections subject to a condition that limits 230 house occupations until works to the M20 Junction 7 have been carried out in full. The applicant has signed a legal agreement to pay a proportionate amount to the upgrade works to Junction 7, which is considered appropriate and such a condition does not pass the required tests for planning conditions and is unreasonable for the reasons outlined above.
- 7.07 All representations received on the application have been fully considered in reaching this recommendation.
- 7.08 It is concluded that the development is acceptable and complies with policy H1(8) and all other relevant policies of the Development Plan. There are no overriding material considerations to warrant a decision other than in accordance with the Development Plan, and so permission is recommended subject to the legal agreement and conditions, and resolution of the matters as set out below.

## **8.0 RECOMMENDATION**

Subject to:

- The conditions set out below, and the prior completion of a legal agreement to secure the heads of terms set out below;
- The agreement of any improvements to the Willington Street/Deringwood Drive junction with KCC Highways or removal of their objection specifically

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to impacts at this junction (with any relevant amendment of condition 15);  
and

- Referral of the decision to the Secretary of State

the Head of Planning and Development **BE DELEGATED POWERS TO GRANT PLANNING PERMISSION** (and to be able to settle or amend any necessary Heads of Terms and planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee).

### Heads of Terms

1. £3324.00 per applicable house and £831.00 per applicable flat towards the expansion of Greenfields Community Primary School.
2. 30% affordable housing provision (made up of 70% affordable rent and 30% shared ownership).
3. £5,000 Travel Plan monitoring fee.
4. £1,500 Section 106 monitoring fee.

### Conditions:

#### *Time Limit*

1. No phase of the development hereby approved shall commence until approval of the following reserved matters has been obtained in writing from the local planning authority for that phase:  
  
a) Scale b) Layout c) Appearance d) 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.

#### *Access*

2. The access points hereby permitted shall be carried out in accordance with drawing no. 06 RevF (Proposed Access Arrangement) and the visibility splays kept free of obstruction above a height of 1 metre.

Reason: In the interests of highway safety.

*Parameters*

3. The layout details submitted pursuant to condition 1 shall follow the principles of the development areas and buffers/landscape areas as shown on the approved Parameter Plan (Drawing No. 16206/C03HG).

Reason: To ensure the development accords with the site allocation policy, limits impacts upon heritage assets, protects and enhances biodiversity, and provides a high quality design.

4. The layout details submitted pursuant to condition 1 shall provide at least a 15m development free buffer to the Ancient Woodland in the southern part of the site.

Reason: To protect the Ancient Woodland in the interests of biodiversity.

5. The layout details submitted pursuant to condition 1 shall provide at least 2.88 hectares of on-site public open space.

Reason: To comply with the site policy and provide a high quality development.

6. The layout and access details submitted pursuant to condition 1 shall provide the following:

- A pedestrian and cycle link from Church Road to the development area via the open space to the north of St Nicholas Church and Church House.
- A pedestrian and cycle link to and across the area of Council owned land to the south of the site providing a link to Woolley Road.

Reason: To ensure appropriate connectivity in the interests of sustainability and highway safety.

7. The landscape details submitted pursuant to condition 1 shall provide the following:

- Native planting within the buffers areas as shown on the Parameter Plan.
- Strengthening and replacement native hedge planting along the site frontage with Church Road.

Reason: To ensure the development accords with the site allocation policy and to provide an appropriate setting.

*Pre-Commencement*

8. No development shall take place until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall be based upon the principles within the Flood Risk and Sustainable Drainage Assessment (Herrington, March 2019) and shall demonstrate that

the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site.

The drainage scheme shall also demonstrate (with reference to published guidance):

- That silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- Appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding. These details and accompanying calculations are required prior to the commencement of the development as they form an intrinsic part of the proposal, the approval of which cannot be disaggregated from the carrying out of the rest of the development.

9. No development shall take place until the mitigation measures detailed within chapter 6 of the Ecological Appraisal (Aspect Ecology; March 2019) have been implemented as detailed. If works have not commenced by March 2020 an updated ecological mitigation strategy shall be submitted to the local planning authority for written approval. It must include the following information:
- a) Updated ecological appraisal
  - b) Results of recommended specific species surveys
  - c) Over view of the ecological mitigation required
  - d) Detailed methodology to implement the mitigation
  - e) Timing of the proposed works
  - f) Details of who will be carrying out the works.
  - g) Maps clearly showing the mitigation areas.

The mitigation must be implemented as detailed within the approved document.

Reason: In the interest of biodiversity protection and enhancement.

10. No development shall take place until the following components of a scheme to deal with the risks associated with contamination of the site shall have been submitted to and approved, in writing, by the local planning authority:

## APPENDIX A

- 1) A preliminary risk assessment which has identified:
  - all previous uses
  - potential contaminants associated with those uses
  - a conceptual model of the site indicating sources, pathways and receptors
  - potentially unacceptable risks arising from contamination at the site.
- 2) A site investigation, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- 3) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (2). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- 4) A Closure Report is submitted upon completion of the works. The closure report shall include full verification details as set out in 3. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean;

Any changes to these components require the express consent of the local planning authority. The scheme shall thereafter be implemented as approved

Reason: In the interests of human health.

11. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of
  - a) archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved by the Local Planning Authority; and
  - b) following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority

Reason: To ensure that features of archaeological interest are properly examined and recorded and that due regard is had to the preservation in situ of important archaeological remains.

*Pre-Slab Level*

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12. No development above slab level shall take place until, details of the mechanism to ensure the proposed car park for St Nicholas Church can be used by the Church in perpetuity and the timing of its implementation, have been submitted to an approved in writing by the Local Planning Authority. Once implemented the car park shall only be used in connection with use of the Church.

Reason: To ensure the heritage benefit of the Church car park is secured.

13. No development above slab level shall take place until the specific air quality mitigation measures, which shall include the type and location of electric vehicle charging points, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: In the interests of limiting impacts upon air quality.

14. No development above slab level shall take place until a "bat sensitive lighting plan" for the site boundaries has been submitted to and approved in writing by the local planning authority. The lighting plan shall:

- a) Identify those areas/features on site that are particularly sensitive for bats 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 strategy and these shall be maintained thereafter in accordance with the approved plan.

Reason: In the interest of biodiversity protection and enhancement.

### *Pre-Occupation*

15. The development shall not be occupied until the following off-site highways works have been provided in full:
  - a) Improvements to the Church Road/Deringwood Drive junction as shown on drawing no. 34.1 within the 'Iceni Transport Note – July 2019' or any alternative scheme agreed in writing with the Local Planning Authority (in consultation with the Highways Authority);
  - b) Improvements to the Deringwood Drive/Willington Street junction as shown on drawing no. 35.1 RevA within the 'Iceni Transport Note – September 2019' or any alternative scheme agreed in writing with the Local Planning Authority (in consultation with the Highways Authority);

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- c) Road widening and new pavement provision on Church Road as shown on drawing nos. 34.1 and 34.2 within the 'Iceni Transport Note – July 2019';
- d) The give way/build out feature on Church Road as shown on drawing no. 34.3 within the 'Iceni Transport Note – July 2019';
- e) Extension of the 30mph speed limit to the south of the application site to a position agreed in writing with the Local Plan Authority (in consultation with the Highways Authority); and

Reason: In the interest of highway safety.

16. The development shall not be occupied until a Final Travel Plan for the development which follows the principles of the Framework Travel Plan has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved Travel Plan.

Reason: In order to promote sustainable transport use.

17. The development shall not be occupied until a site-wide landscape and ecological management plan (LEMP), including timetable for implementation, long term design objectives, management responsibilities and maintenance schedules for all landscaped, open space, and drainage areas, but excluding privately owned domestic gardens, has been submitted to and approved in writing by the local planning authority. Landscape and ecological management shall be carried out in accordance with the approved plan and its timetable 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 and to ensure a satisfactory appearance to the development.

18. The development shall not be occupied until details of upgrade works to PROW KM86 have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the approved works have been carried out in full.

Reason: In order to provide appropriate connectivity.

19. No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report pertaining to the surface water drainage system, carried out by a suitably qualified professional, has been submitted to the Local Planning Authority which demonstrates the suitable modelled operation of the drainage system such that flood risk is appropriately managed, as approved by the Lead Local Flood Authority. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; topographical survey of 'as constructed'

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features; and an operation and maintenance manual for the sustainable drainage scheme as constructed.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of paragraph 165 of the National Planning Policy Framework.

## **APPENDIX 2**

**REFERENCE NO - 19/501600/OUT**

**APPLICATION PROPOSAL**

Outline application for up to 440 residential dwellings, with associated access, infrastructure, drainage, landscaping and open space (Access being sought with all other matters reserved for future consideration)

**ADDRESS** Land West Of Church Road, Otham, Kent, ME15 8SB

**RECOMMENDATION – APPROVE WITH CONDITIONS**

**SUMMARY OF REASONS FOR RECOMMENDATION**

- The site is allocated for 440 houses within the Local Plan under policy H1(8) subject to criterion.
- The outline application proposes up to 440 houses and for the reasons outlined in the report complies with the criterion under policy H1(8) subject to the legal agreement and conditions.
- The allocation of the site for housing inevitably has an impact upon the setting of listed buildings to the north but this would be minimised and would be less than substantial. The public benefits of providing housing, including affordable housing on an allocated housing site, and the associated the social and economic benefits, outweigh this less than substantial harm.
- KCC Highways is raising objections based on an unacceptably severe traffic impact on the A229/A274 and Willington Street corridors and worsening safety hazards on Church Road. For the reasons outlined in the report the Local Planning Authority does not agree, and the objections are not considered to be reasonable grounds to refuse planning permission.
- Historic England are now raising objections as the dedicated church car park has been removed on the basis that there is less heritage benefit which might outweigh the harm to the setting of the Church, and an increase in vehicular movements on Church Road might have the effect of discouraging people from using the Church, which they consider could damage its economic viability. For the reasons outlined in the report the Local Planning Authority does not agree the development would threaten the Church's economic viability. Officers do however consider that the car park should still be secured as it would represent a clear heritage benefit.
- The outline application complies with site policy H1(8) and all other relevant Development Plan policies. There are no overriding material considerations to warrant a decision other than in accordance with the Development Plan, and so permission is recommended subject to the legal agreement and conditions set out below.

**REASON FOR REFERRAL TO COMMITTEE**

- Councillor Newton has requested the application is considered by the Planning Committee for the reasons set out below.

<ul style="list-style-type: none"> <li>The recommendation is contrary to the view of Kent Highways (statutory consultee).</li> </ul>			
<b>WARD</b> Downswood And Otham	<b>PARISH/TOWN COUNCIL</b> Otham	<b>APPLICANT</b> Bellway Homes Limited <b>AGENT</b> DHA Planning	
<b>DECISION DUE DATE:</b> 08/11/19	<b>PUBLICITY EXPIRY DATE:</b> 17/10/19	<b>SITE VISIT DATE:</b> 17/04/19 & 10/10/19	
<b>RELEVANT PLANNING HISTORY</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
19/501029	EIA Screening Opinion for the proposed residential development of up to 440 dwellings and associated access, landscaping and other works on land west of Church Road, Otham.	EIA NOT REQUIRED	17/04/19
19/506182	Residential development for 421 dwellings with associated access, infrastructure, drainage, open space and landscaping.	PENDING	

## 1.0 **BACKGROUND**

1.01 This application was reported to Planning Committee on 24<sup>th</sup> October 2019 where officers recommended approval. The previous committee report and urgent update are attached at the **Appendix**. Planning Committee deferred consideration of the application for the following reasons:

*1. That consideration of this application be deferred for further discussions to:*

- Seek to remove the proposed car park for the Church from the scheme;*
- Seek to (a) amend the Parameter Plan to provide a greater amount of wooded open space at the southern end of the site to protect the Ancient Woodland and create a sustainable open space and (b) to amend conditions 4 and 7 to require woodland planting to restore and protect the Ancient Woodland and enhance the landscaping around the Church;*
- Seek to resolve the outstanding issues relating to improvements to the Willington Street/Deringwood Drive junction;*
- Give further consideration to the impact of the development on the Spot Lane junction and possible mitigation;*
- Investigate the potential widening of Church Road to the south of the site where this would not involve the loss of Ancient Woodland;*

- *Seek to optimise the amount of renewable energy generated on site (to avoid use of fossil fuel heating); and*
  - *Seek further clarification of the surface water drainage scheme and how it can be satisfactorily accommodated within the development layout.*
2. *That the Ward Member, Downswood and Otham Parish Councils and the Chairman, Vice-Chairman and Political Group Spokespersons of the Planning Committee are to be involved in these discussions.*

1.02 A meeting was held in December 2019 with relevant Members and the Parish Councils where the applicant presented their response to the deferral reasons and provided clarification on some matters. The meeting was not held to make any decisions on the application as this must be done by the Planning Committee but to discuss and seek clarification on the applicant's responses to the deferral reasons.

1.03 After the meeting the applicant submitted the following additional information:

- Transport Technical Notes (commenting on the highway deferral points and with amended/new junction improvements for Deringwood Drive/Willington Street and Spot Lane and safety audits)
- Amended Parameter Plan
- Plan showing potential widening on Church Rd to the south of the site
- Clarification on renewables and surface water drainage

1.04 The additional details were sent to KCC Highways and the parties involved in the above meeting group and their comments on these specific matters are summarised below. Further comments on the application have been received from local residents/groups and Councillors Newton and Cooke which are also set out below.

## **2.0 LOCAL REPRESENTATIONS (FOLLOWING DEFERRAL)**

2.01 **Otham Parish Council:** *"The parish council does not agree with the findings and our original objections remain."*

2.02 **Downswood Parish Council:** Raises objections for the following (summarised) reasons:

- Removal of the dedicated church car park would result in an objection from Historic England.
- Residents bounding the site should be afforded the same buffers to the ancient woodland.
- The Highways Authority have historically advised that signalisation of Deringwood Drive/Willington Street is dangerous.
- Signalisation of Deringwood Drive/Willington Street is dangerous for the reasons outlined in the safety audit and do not agree that the safety audit has been overcome.

- Swept path analysis is not adequate.
- Icy conditions will make junction dangerous.
- Highway Technical Notes has many misleading and disingenuous statements.
- Spot Lane junction changes are not sufficient and will make it harder for pedestrians to cross.
- Spot Lane changes are dangerous and don't pass the safety audit.
- Intermittent widening of Church Road would be likely to encourage vehicles to speed up as they approach the most dangerous narrow section, so increasing the likelihood of accidents on a much busier Church Road.
- SUDs will lead to the potential creation of solution features / sink holes in this notorious geological formation.
- KCC LLFA has questioned the SUDs proposals.
- Irresponsible, in the light of the Site Investigation Report repeated concerns relating to the dangers of allowing ingress of surface water at ground level, to assume the proposed SuDS would not only work but in a safe manner with minimal risk.
- Cannot understand the nature or purposed of the extra "wet pond" proposed to be added to the detailed site layout for the full planning application?
- Nothing in this additional information which has overcome the many concerns that DPC have with the principle of the development of this site, let alone the engineering and other specialist details.

2.03 **Local Residents:** 34 further representations received raising the following (summarised) points:

- Increased traffic and congestion on local and strategic roads.
- Highway safety.
- Traffic lights and junction changes at Willington Street will be dangerous.
- Local roads affecting by flooding.
- Flooding results in the closure of Mallards Way.
- Access should be via Woolley Road.
- Travel plan is worthless.
- The amount of information is confusing.
- Removal of church car park results in Historic England objection.
- Historic England comments on the detailed application are relevant as the church car park has been removed.
- Where will church goers park.
- Church car park should be provided.
- Highway safety issues from church goers parking.
- Heritage Statement is not fit for purpose.
- Rat running occurs on local roads.
- Church Road is not safe or suitable for additional traffic.
- Widening would harm Church Road.
- Damage to church from construction.
- Development is premature.
- Junction improvements on A274 will not be sufficient.
- Land stability issues on the site and in Chapman Avenue.
- Potential damage to neighbouring properties.
- Geology brings into question surface water proposals.

- Flood risk.
- Harm to wildlife/ecology.
- Harm to the setting of the Grade I listed Church.
- Lack of infrastructure and amenities including schools and surgeries.
- Overlooking/loss of privacy.
- Air quality.
- Noise and dust during construction.
- The applicant's response to the deferral reasons is not clear.
- What is being proposed under the outline application is not clear.
- Problems with sewers.

**2.04 Chapman Avenue Area Residents Association:** Raises the following (summarised) points:

- No minutes of the meeting held post deferral.
- KCC Highways objections cannot be resolved.
- Served by narrow country lanes.
- Overwhelmed congested traffic system.
- Highway safety.
- Flood risk.
- Potential for anti-social behaviour.
- Damage to the environment.
- Harm to setting of listed buildings.
- Pollution.
- High density.

**2.05 Bearsted & Thurnham Society:** Raises the following (summarised) points:

- Severe traffic issues.
- Traffic signals at the junction of Deringwood Drive and Willington Street have been constantly rejected by KCC on traffic safety grounds in view of the steep downhill approaches.
- Stopping more traffic at the signals will increase pollution
- At peak times, traffic on Spot Lane is already congested.
- The alternative route, south towards Sutton Road via Church Road and Gore Court Road is a narrow country lane.
- The developer demonstrates that Willington Street, without the traffic arising from the proposed houses will be grossly over-congested.
- Lack of local amenities and infrastructure.
- Harm to church.
- The current practice of parking along Church Road will be impossible.
- As a Grade 1 listed building, the church should be afforded the highest levels of protection, both as a structure and to ensure its continuing viability.

**2.06 Borough Councillor Newton:**

- Spot Lane / Mallards Way was recently flooded and impassable by traffic three times this year due to The River Len overflowing. Willington Street was also flooded at the same time.

2.07 **County Councillor Cooke:** Raises the following (summarised) points:

- What work has been undertaken to evaluate alternative means of access to the application site, as alternatives do exist.
- What scrutiny has been applied to the applicant's highway responses.
- The proposals for Church Road with Deringwood Drive undo and reverse earlier improvements that were introduced to improve pedestrian safety, returning the junction to as it was before the safety work was undertaken.
- Object strongly to traffic lights at the junction of Deringwood Drive and Willington Street which cannot be accommodated safely.
- Additional traffic cannot be accommodated via any access to Church Road.
- The additional traffic would render Church Road as unsafe as due to the narrowness of Church Road.
- Extremely adverse impact on Grade I listed Church especially as the applicant has no intention of delivering the dedicated car parking for the church that persuaded Historic England to withdraw its objection.
- In the absence of such dedicated parking facility, the planning authority must consider the objection of Historic England to be valid.

### **3.0 CONSULTATIONS (FOLLOWING DEFERRAL)**

3.01 **KCC Highways: Maintain objections** on the basis of:

- Worsening safety hazards to road users on Church Road.
- An unacceptably severe traffic impact upon the local highway network specifically the A229/A274 and Willington Street corridors.

3.02 **Historic England: Now raise objections** as the dedicated church car park has been removed on the basis that there is less heritage benefit which might outweigh the harm to the setting of the Church, and an increase in vehicular movements on Church Road might have the effect of discouraging people from using the Church, which they consider could damage its economic viability.

### **4.0 APPRAISAL**

4.01 The appraisal will focus on the reasons for deferral of the application as set out below:

**Seek to remove the proposed car park for the Church from the scheme**

4.02 The applicant has removed the dedicated church car park from their proposals and this is no longer shown on the Parameter Plan but instead would be an undeveloped landscaped area. The consequence of this is that Historic England (HE) are now raising an objection to the proposals.

4.03 HE considers that without a dedicated church car park in the application there is less heritage benefit which might outweigh the harm arising from

this application. They also have serious concerns that an increase in vehicular movements on Church Road might have the effect of discouraging people from using the Church, which they consider could damage its economic viability.

- 4.04 As before officers recognise the clear benefit of providing a dedicated church car park and consider its impact upon the setting of the building to be acceptable. The church provides other community services beyond worship including 'messy church' for children, concerts, coffee mornings and other events. The car park would help support the listed building by providing off-street parking in a convenient location to support church services and help sustain the alternative facilities/events at the church and provide disabled parking bays. Whilst there is not requirement for the applicant to provide the car park, officers would still recommend that this is secured to provide a clear benefit to the Grade I listed building.
- 4.05 However, I do not agree with HE that the development would threaten the Church's economic viability without the car park. I consider the development would actually provide safer on-street parking on the roads within the new housing estate to the current situation on Church Road and so would not discourage people from using the church.
- 4.06 In conclusion, the car park has been removed as requested by Committee and this results in an objection from HE. Officers consider the car park should still be secured as it would represent a clear heritage benefit for the Grade I listed building and is ongoing use. However, should Members proceed without the car park officers still consider that the public benefits of providing up to 440 houses including affordable housing to meet housing needs on an allocated housing site, and the associated social and economic benefits provide for clear and convincing justification for some harm to the heritage assets, and these benefits outweigh this less than substantial harm to St Nicholas Church and Church House in line with Paragraph 196 of the NPPF. This is also the view whilst having special regard to the preservation of the setting of the Church and Church House in line with Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Parameter Plan ensures that the impact upon heritage assets would be minimised to an acceptable degree bearing in mind the site is allocated for housing. Condition 12 which would have secured the car park has been removed.
- 4.07 It is not considered that parking associated with the Church will result in any unacceptable highway safety conditions on the basis that the road is being widened outside the site, the development will provide potential places to park within it, and no objections are raised by KCC Highways on this issue.

**Seek to**

**(a) amend the Parameter Plan to provide a greater amount of wooded open space at the southern end of the site to protect the Ancient Woodland and create a sustainable open space and**

**(b) to amend conditions 4 and 7 to require woodland planting to restore and protect the Ancient Woodland and enhance the landscaping around the Church**

4.08 The Parameter Plan has been amended to indicate a larger amount of open space near to the Ancient Woodland which is labelled as 'additional woodland as part of an ecological area to protect the ancient woodland'. This area is now a minimum of 30m in depth (previously 15m) and the increased area can be secured under condition 4 and the woodland planting secured under condition 7. Around the Church, orchard planting is proposed in place of the car park and it is considered that this would enhance the landscaped setting around the Church and can be secured under condition 7. Both conditions 4 and 7 are amended in the recommendation below.

**Seek to resolve the outstanding issues relating to improvements to the Willington Street/Deringwood Drive junction**

4.09 When the application was originally reported to Planning Committee the proposed signalisation of this junction was not resolved with safety issues still outstanding. The applicant has now amended the junction improvements twice to overcome the issues raised by the independent safety auditor with the principal change being that the number of approach lanes on Deringwood Drive (DD) has been reduced from two to one. The latest scheme for signalisation has overcome the remaining safety audit issues and KCC Highways have confirmed they are satisfied the recommendations of the Road Safety Audit have been addressed.

4.10 I remind Members the applicant's evidence suggests this junction will be beyond its design capacity imminently when taking into account general traffic growth and traffic from developments within the Local Plan/with planning permission. The main issue is considered to be the difficulty in traffic leaving DD and so the queuing on this arm, rather than along Willington Street (WS). The proposed signalisation would better manage traffic, provide safer opportunities for DD and development traffic to exit onto WS, and improve pedestrian crossing facilities. Whilst this would not bring the DD arm within design capacity it would reduce the potential maximum queuing length on DD from 288 vehicles in the AM peak hour (which has the most traffic) to a maximum of 39 vehicles. On this basis it is considered to be a proportionate response to mitigate the traffic impact of this application and one that provides mitigation for other committed development.

4.11 However, KCC Highways still consider that this change to the junction would introduce a new delay on WS so any mitigation for DD would effectively be counteracted by the introduction of queuing and delays on WS. They consider this would be result in a severe traffic impact but importantly have not identified any highway safety issues. Willington Street South and Deringwood Drive arms of the proposed junction would be up to 14% over theoretical capacity if all pedestrian crossings were operated. However, the applicant has carried out further modelling work to demonstrate that an additional set of traffic lights on WS would not result in any worsening of traffic conditions during the peak hours because

queuing of this nature could already be expected to occur along the WS corridor due to interactions with the existing signalised junctions further to the north. KCC Highways have reviewed this evidence and consider that because such modelling is highly sensitive to changes in prevailing conditions, they regard such sensitivities to limit the confidence that can be attached to the applicants' conclusion. They also consider the extent to which the junctions are predicted to operate over capacity is also likely to have distorted the modelling outputs, such that there is less certainty that mitigation of impact can be achieved at this location. So basically, they do not agree with the applicant's conclusions.

4.12 Whilst there may be some sensitivity in the modelling, as there is for any modelling, KCC Highways have not provided any modelling or analysis to counter that put forward by the applicant. Nor do I consider that up to 14% over theoretical capacity on two arms of the junction results in a severe impact and most importantly KCC Highways have not raised any highway safety issues if any increased delays did occur on Wellington Street. Having driven along WS in the AM peak, I noted that extensive queuing occurs, and I consider that in line with the applicant's analysis, new traffic signals are unlikely to result in any significant change in traffic conditions on Wellington Street or to a degree that would result in a severe impact above the current conditions or result in dangerous driving conditions.

4.13 On this basis, it is considered that the signalisation of the DD/WS junction which has passed a Stage 1 Safety Audit, provides for appropriate management of traffic from DD, improves pedestrian crossing facilities, and would not have a severe impact upon traffic flows on WS. It therefore remains a requirement that it is delivered prior to occupation under the off-site highways works listed in condition 15.

**Give further consideration to the impact of the development on the Spot Lane junction and possible mitigation**

4.14 The original committee report outlined that for the Spot Lane/A20 junction, the Spot Lane arm would be just over design capacity with general traffic growth, traffic from developments within the Local Plan/with planning permission, and the application traffic. This would mean an increase in queuing on Spot Lane but officers considered that the impact is not severe or dangerous and does not warrant mitigation or objection in line with policy DM21.

4.15 The applicant has reviewed the junction in line with the deferral request and is proposing some mitigation in the form of kerb realignment on the Spot Lane arm. This will allow for two vehicles to be positioned side-by-side at the junction, thereby allowing left turning vehicles to pass a single right turning vehicle. This would reduce the potential maximum queuing length on Spot Lane from 58 vehicles in the AM peak hour to a maximum of 30 vehicles. Officers maintain that the impact on this junction is not severe but as Members considered that mitigation needed to be investigated this has been added to condition 15. KCC Highways also advise that the improvement passes the safety audit and achieves the required mitigation of impact.

**Investigate the potential widening of Church Road to the south of the site where this would not involve the loss of Ancient Woodland**

- 4.16 This has been investigated and Church Road could be widened on the west side to 5.5m (the width sought by KCC Highways) for approximately a 210m section to the south of 'Little Squerryes'. This would not involve any loss of ancient woodland but the widening would result in the cutting back and potential loss of hedging/trees.
- 4.17 As set out in the original report, officers maintain that the based on just over one additional movement a minute over the peak hour from the development, it would not have an unacceptable or severe impact on highway safety beyond the current situation. Also, based on this, that any benefits of road widening are not considered to outweigh the visual harm to Church Road that would result from the loss of hedging and the change in character. However, if Members considered the benefits of this section of widening outweighs any visual impact then it could be justified and secured by condition. KCC Highways welcome the additional widening proposed but as it does not cover the whole length of Church Road they maintain an objection.

**Seek to optimise the amount of renewable energy generated on site (to avoid use of fossil fuel heating)**

- 4.18 The applicant is agreeable to providing PV panels on 10% of the houses and this would be on the affordable units. Officers maintain that Local Plan policy does not require this but a condition is added to secure this as this was sought by Members.

**Seek further clarification of the surface water drainage scheme and how it can be satisfactorily accommodated within the development layout**

- 4.19 The application is supported by a Flood Risk and Drainage Report which considers that the most viable solution for managing surface water run-off is via deep infiltration into the ground. Various SUDS would also be proposed including permeable surfacing, swales, deep bore soakaways and a number of drainage basins. The existing surface water flow path which crosses the site is to be partially re-aligned, directing through the centre of the site as a green corridor, which allows water to naturally flow across the site without posing a risk to the proposed dwellings. The water will only be re-directed on site to ensure water is not displaced off site. As stated in the main report this is an outline application and so the precise details would be dealt with at reserved matter stage/via conditions and KCC LLFA have confirmed that this could be feasible but it will be necessary to develop a detailed drainage scheme to confirm the scheme can be satisfactorily accommodated within the final development layout and recommend conditions to secure this.

**Representations**

4.20 The further representations received since the committee meeting either relate to the considerations above, or do not raise any new material issues beyond those previously considered.

## **5.0 CONCLUSION**

5.01 The applicant has responded to the deferral reasons as follows:

1. The church car park has been removed.
2. A greater amount of wooded open space to protect the Ancient Woodland has been provided.
3. An enhanced area of landscaping has been provided around the Church.
4. The improvements to the Willington Street/Deringwood Drive junction have now passed a Stage 1 Safety Audit and are considered acceptable.
5. An improvement to the Spot Lane/A20 junction has been proposed and has passed a Stage 1 Safety Audit and is considered acceptable.
6. Widening on Church Road has been investigated and could be secured if Members consider it is necessary.
7. Renewable energy measures are proposed.
8. Clarification of the potential SUDs proposals have been provided.

5.02 It is considered that the applicant has comprehensively responded to the deferral reasons and officers once more recommended permission. For completeness I set out the full conclusion on the application once more below:

5.03 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning applications must be determined in accordance with the Development Plan unless materials considerations indicate otherwise.

5.04 The site is allocated for 440 houses within the Local Plan under policy H1(8) subject to criterion. The outline application proposes up to 440 houses and for the reasons outlined in the original committee report within the **Appendix** and above, the proposals comply with all policy criterion subject to the legal agreement and conditions. The application also complies with all other relevant Development Plan policies.

5.05 The allocation of the site for housing would inevitably have an impact upon the setting of listed buildings to the north but this would be minimised in line with the Parameter Plan and the impact would be 'less than substantial'. The public benefits of providing housing, including affordable housing on an allocated housing site, and the associated social and economic benefits, outweigh this less than substantial harm.

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- 5.06 Kent Highways are raising objections on the basis of an unacceptably severe traffic impact on the local highway specifically the A229/A274 and Willington Street corridors and worsening safety hazards on Church Road. For the reasons outlined in the reports the Local Planning Authority does not agree the impact is severe, and the objections are not considered to be reasonable grounds to refuse planning permission.
- 5.07 Historic England are now raising objections as the dedicated church car park has been removed on the basis that there is less heritage benefit which might outweigh the harm, and an increase in vehicular movements on Church Road might have the effect of discouraging people from using the Church, which they consider could damage its economic viability. For the reasons outlined in the report above the Local Planning Authority does not agree the development would threaten the Church's economic viability.
- 5.08 All representations received on the application have been fully considered in reaching this recommendation.
- 5.09 It is concluded that the development is acceptable and complies with policy H1(8) and all other relevant policies of the Development Plan. There are no overriding material considerations to warrant a decision other than in accordance with the Development Plan, and so permission is recommended subject to the legal agreement and conditions.

## 6.0 RECOMMENDATION

Subject to:

The conditions set out below, and the prior completion of a legal agreement to secure the heads of terms set out below;

the Head of Planning and Development **BE DELEGATED POWERS TO GRANT PLANNING PERMISSION** (and to be able to settle or amend any necessary Heads of Terms and planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee).

### Heads of Terms

1. £3324.00 per applicable house and £831.00 per applicable flat towards the expansion of Greenfields Community Primary School.
2. 30% affordable housing provision (made up of 70% affordable rent and 30% shared ownership).
3. £1,422 Travel Plan monitoring fee.
4. £1,500 Section 106 monitoring fee.

### Conditions:

Time Limit

1. No phase of the development hereby approved shall commence until approval of the following reserved matters has been obtained in writing from the local planning authority for that phase:

a) Scale b) Layout c) Appearance d) 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.

*Access*

2. The access points hereby permitted shall be carried out in accordance with drawing no. 06 RevF (Proposed Access Arrangement) and the visibility splays kept free of obstruction above a height of 1 metre.

Reason: In the interests of highway safety.

*Parameters*

3. The layout details submitted pursuant to condition 1 shall follow the principles of the development areas and buffers/landscape areas as shown on the approved Parameter Plan (Drawing No. 16206/C03L).

Reason: To ensure the development accords with the site allocation policy, limits impacts upon heritage assets, protects and enhances biodiversity, and provides a high quality design.

4. The layout details submitted pursuant to condition 1 shall provide at least a 30m woodland planted development free buffer to the Ancient Woodland in the southern part of the site as shown on the approved Parameter Plan (Drawing No. 16206/C03L).

Reason: To protect the Ancient Woodland in the interests of biodiversity.

5. The layout details submitted pursuant to condition 1 shall provide at least 2.88 hectares of on-site public open space.

Reason: To comply with the site policy and provide a high quality development.

6. The layout and access details submitted pursuant to condition 1 shall provide the following:

- A pedestrian and cycle link from Church Road to the development area via the open space to the north of St Nicholas Church and Church House.
- A pedestrian and cycle link to and across the area of Council owned land to the south of the site providing a link to Woolley Road.

Reason: To ensure appropriate connectivity in the interests of sustainability and highway safety.

7. The landscape details submitted pursuant to condition 1 shall provide the following:

- Native planting within the buffers areas as shown on the Parameter Plan.
- Strengthening and replacement native hedge planting along the site frontage with Church Road.
- Woodland planting within the Ancient Woodland buffer
- Orchard planting to the south of St Nicholas Church.

Reason: To ensure the development accords with the site allocation policy and to provide an appropriate setting.

#### *Pre-Commencement*

8. No development shall take place until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall be based upon the principles within the Flood Risk and Sustainable Drainage Assessment (Herrington, March 2019) and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site.

The drainage scheme shall also demonstrate (with reference to published guidance):

- That silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- Appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding. These details and

accompanying calculations are required prior to the commencement of the development as they form an intrinsic part of the proposal, the approval of which cannot be disaggregated from the carrying out of the rest of the development.

9. No development shall take place until the mitigation measures detailed within chapter 6 of the Ecological Appraisal (Aspect Ecology; March 2019) have been implemented as detailed. If works have not commenced by March 2020 an updated ecological mitigation strategy shall be submitted to the local planning authority for written approval. It must include the following information:

- a) Updated ecological appraisal
- b) Results of recommended specific species surveys
- c) Over view of the ecological mitigation required
- d) Detailed methodology to implement the mitigation
- e) Timing of the proposed works
- f) Details of who will be carrying out the works.
- g) Maps clearly showing the mitigation areas.

The mitigation must be implemented as detailed within the approved document.

Reason: In the interest of biodiversity protection and enhancement.

10. No development shall take place until the following components of a scheme to deal with the risks associated with contamination of the site shall have been submitted to and approved, in writing, by the local planning authority:

- 1) A preliminary risk assessment which has identified:
  - all previous uses
  - potential contaminants associated with those uses
  - a conceptual model of the site indicating sources, pathways and receptors
  - potentially unacceptable risks arising from contamination at the site.

2) A site investigation, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

3) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (2). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

4) A Closure Report is submitted upon completion of the works. The closure report shall include full verification details as set out in 3. This should

include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean;

Any changes to these components require the express consent of the local planning authority. The scheme shall thereafter be implemented as approved

Reason: In the interests of human health.

11. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of
  - a) archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved by the Local Planning Authority; and
  - b) following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority

Reason: To ensure that features of archaeological interest are properly examined and recorded and that due regard is had to the preservation in situ of important archaeological remains.

#### *Pre-Slab Level*

12. No development above slab level shall take place until the specific air quality mitigation measures, which shall include the type and location of electric vehicle charging points, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: In the interests of limiting impacts upon air quality.

13. No development above slab level shall take place until a "bat sensitive lighting plan" for the site boundaries has been submitted to and approved in writing by the local planning authority. The lighting plan shall:
  - a) Identify those areas/features on site that are particularly sensitive for bats 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 strategy and these shall be maintained thereafter in accordance with the approved plan.

Reason: In the interest of biodiversity protection and enhancement.

*Pre-Occupation*

14. The development shall not be occupied until the following off-site highways works have been provided in full:

- a) Improvements to the Church Road/Deringwood Drive junction as shown on drawing no. 34.1 within the 'Iceni Transport Note – July 2019' or any alternative scheme agreed in writing with the Local Planning Authority (in consultation with the Highways Authority);
- b) Improvements to the Deringwood Drive/Willington Street junction as shown on drawing no. 14915-H-01 RevP4 at Appendix C of the 'DHA Transport Technical Note – February 2020' or any alternative scheme agreed in writing with the Local Planning Authority (in consultation with the Highways Authority);
- c) Road widening and new pavement provision on Church Road as shown on drawing nos. 34.1 and 34.2 within the 'Iceni Transport Note – July 2019';
- d) The give way/build out feature on Church Road as shown on drawing no. 34.3 within the 'Iceni Transport Note – July 2019';
- e) Extension of the 30mph speed limit to the south of the application site to a position agreed in writing with the Local Plan Authority (in consultation with the Highways Authority); and
- f) Improvements to the A20 Ashford Road/Spot Lane/Roseacre Lane junction as shown on drawing no. 14915-H-02 RevP1 at Appendix J of the 'DHA Transport Technical Note – December 2019' or any alternative scheme agreed in writing with the Local Planning Authority (in consultation with the Highways Authority);

Reason: In the interest of highway safety.

15. The development shall not be occupied until a Final Travel Plan for the development which follows the principles of the Framework Travel Plan has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved Travel Plan.

Reason: In order to promote sustainable transport use.

16. The development shall not be occupied until a site-wide landscape and ecological management plan (LEMP), including timetable for implementation, long term design objectives, management responsibilities and maintenance schedules for all landscaped, open space, and drainage areas, but excluding privately owned domestic gardens, has been

submitted to and approved in writing by the local planning authority. Landscape and ecological management shall be carried out in accordance with the approved plan and its timetable 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 and to ensure a satisfactory appearance to the development.

17. The development shall not be occupied until details of upgrade works to PROW KM86 have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the approved works have been carried out in full.

Reason: In order to provide appropriate connectivity.

18. No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report pertaining to the surface water drainage system, carried out by a suitably qualified professional, has been submitted to the Local Planning Authority which demonstrates the suitable modelled operation of the drainage system such that flood risk is appropriately managed, as approved by the Lead Local Flood Authority. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; topographical survey of 'as constructed' features; and an operation and maintenance manual for the sustainable drainage scheme as constructed.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of paragraph 165 of the National Planning Policy Framework.

19. The reserved matters details submitted pursuant to condition 1 shall provide for PV panels on 10% of the residential units and these shall be affordable units.

Reason: In the interests of sustainable development.

## **APPENDIX 3**

**REFERENCE NO - 19/506182/FULL**

**APPLICATION PROPOSAL**

Residential development for 421 dwellings with associated access, infrastructure, drainage, open space and landscaping.

**ADDRESS** Land West Of Church Road, Otham, Kent, ME15 8SB

**RECOMMENDATION – APPROVE WITH CONDITIONS**

**SUMMARY OF REASONS FOR RECOMMENDATION**

- The site is allocated for 440 houses within the Local Plan under policy H1(8) subject to criterion.
- The application proposes 421 houses and for the reasons outlined in the report complies with the criterion under policy H1(8) subject to the legal agreement and conditions.
- The allocation of the site for housing inevitably has an impact upon the setting of listed buildings to the north but this would be minimised and would be less than substantial. The public benefits of providing housing, including affordable housing on an allocated housing site, and the associated the social and economic benefits, outweigh this less than substantial harm.
- KCC Highways are raising objections on the basis of an unacceptably severe traffic impact on the A229/A274 and Willington Street corridors, and worsening safety hazards on Church Road. For the reasons outlined in the report the Local Planning Authority does not agree, and the objections are not considered to be reasonable grounds to refuse planning permission.
- Historic England are raising objections as no dedicated church car park is proposed so there is less heritage benefit which might outweigh the harm to the setting of the Church, and an increase in vehicular movements on Church Road might have the effect of discouraging people from using the Church, which they consider could damage its economic viability. For the reasons outlined in the report the Local Planning Authority does not agree the development would threaten the Church's economic viability.
- The application complies with site policy H1(8) and all other relevant Development Plan policies. There are no overriding material considerations to warrant a decision other than in accordance with the Development Plan, and so permission is recommended subject to the legal agreement and conditions set out below.

**REASON FOR REFERRAL TO COMMITTEE**

- Councillor Newton has requested the application is considered by the Planning Committee for the reasons set out below.
- Otham Parish Council objects and requests the application is considered by the Planning Committee for the reasons set out below.

<ul style="list-style-type: none"> <li>The recommendation is contrary to the view of Kent Highways and Historic England (statutory consultees).</li> </ul>			
<b>WARD</b> Downswood And Otham	<b>PARISH/TOWN COUNCIL</b> Otham & Downswood	<b>APPLICANT</b> Bellway Homes Limited <b>AGENT</b> DHA Planning	
<b>DECISION DUE DATE:</b> 13/04/20	<b>PUBLICITY EXPIRY DATE:</b> 10/02/20	<b>SITE VISIT DATE:</b> 17/04/19 & 10/10/19	
<b>RELEVANT PLANNING HISTORY</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
19/501029	EIA Screening Opinion for the proposed residential development of up to 440 dwellings and associated access, landscaping and other works on land west of Church Road, Otham.	EIA NOT REQUIRED	17/04/19
19/501600	Outline application for up to 440 residential dwellings, with associated access, infrastructure, drainage, landscaping and open space (Access being sought with all other matters reserved for future consideration).	PENDING	

## **1.0 DESCRIPTION OF SITE**

1.01 The application site has an area of approximately 16.1ha and is to the west of Church Road. The site is to the southeast of Maidstone and is between substantial residential areas to the north, west and southwest, namely cul-de-sacs within the Downswood area to the north, Chapman Avenue to the west and Woolley Road to the south. To the east are open agricultural fields and immediately to the south/southeast are a number of detached residential properties at The Rectory (Grade II listed) and Squerryes Oast. St Nicholas's Church (Grade I listed) and Church House (Grade II listed) are to the north of the site.

1.02 The site is in the main, an open arable field but includes an area of land at its north end that wraps around the north side of the church which has numerous trees, scrub vegetation and grass, and over which public footpath KM86 runs. The boundaries of the site are formed by established hedging on the Church Road frontage, hedging to the boundary with 'Squerryes Oast', and trees on the south, west and north boundaries. There is an area of Ancient Woodland (AW) to the southeast of the site.

1.03 The site is highest at its south end with a gradual fall to the north. To the west where the site backs onto gardens of properties within Chapman Avenue, there is a considerable level difference between the site and Chapman Avenue.

1.04 Importantly, the site is allocated for housing development in the Local Plan and policy H1(8) allows for up to 440 houses and sets out a number of criteria to be met.

1.05 A separate outline application for up to 440 houses was reported to Planning Committee in October 2019 with a decision deferred for a number of reasons. That application is being reported back to Committee on this agenda.

## **2.0 PROPOSAL**

2.01 This application seeks full permission for 421 houses with two access points off Church Road, and pedestrian/cycle links northwest, northeast and south. A range of detached, semi-detached, and terraced houses are proposed and a number of apartment blocks to provide a mix of house types and sizes. Affordable housing would be provided at 30% (126 units). Houses would be largely 2 storeys in height with the apartment blocks at 3 storeys. Building designs are 'traditional' in style in terms of their height, form and appearance. Significant areas of open space are provided around the edges and within the housing areas. The design and layout will be discussed in more detail in the assessment below.

## **3.0 POLICY AND OTHER CONSIDERATIONS**

- Maidstone Borough Local Plan (2011-2031): SS1, SP1, SP3, SP18, SP19, SP20, SP23, H1, OS1(16), ID1, H1(8), DM1, DM2, DM3, DM4, DM6, DM8, DM12, DM19, DM20, DM21, DM23
- Kent Waste and Minerals Plan 2016
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Maidstone Building for Life 12
- MBC Air Quality Guidance
- MBC Public Art Guidance

## **4.0 LOCAL REPRESENTATIONS**

4.01 **Otham Parish Council:** Strongly object to the application for the following (summarised) reasons:

- Increased traffic and congestion.
- Highway safety for vehicles and pedestrians.
- Will be traffic problems at all local junctions.
- Church Road is narrow and not suitable for additional traffic which will raise safety issues.
- Proposed traffic calming on Church Road will cause queuing.
- Lighting for proposed traffic calming on Church Road is not suitable by listed building or local area.
- The setting of St Nicholas Church will be irrevocably harmed.
- Area of green space should be preserved as it provides a lung to the urban areas.
- Lack of local infrastructure.

**4.02 Downswood Parish Council:** Raises objections for the following (summarised) reasons:

- Will result in severe traffic congestion.
- Proposed traffic mitigation measures will make the situation worse.
- Inconsistency in the detail, standard and quality of the investigative work carried out and the reports submitted.
- Misleading and incorrect statements are made and deficiencies in various reports
- Missing documents.
- Lack of assessment of noise and vibration, Community impact and severance, visual intrusion from existing residents' perception, and cumulative environmental impact.
- Loss of green open space for existing residents.
- Not in accordance with sections 9, 15 and 16 of the NPPF.
- Unacceptable impacts upon highway safety.
- Land stability and underground conditions have not been suitably assessed.
- No substantial benefits to outweigh harm to the listed Church.
- Contrary to policies SP18, SP23, and DM1, DM3, DM4, DM12, DM21, DM23.
- 3 storey apartments are not in keeping and on the edges of the site.
- Doesn't respect neighbouring amenity.
- Residents will be exposed to excessive noise, vibration, odour, and air pollution.
- Overlooking, visual intrusion, loss of privacy and light.
- Loss of views of the countryside.
- Lack of primary and secondary school places.
- Poor design.
- No emergency access.
- Object to PROW being a shared footway/cycleway.
- No mention of disabled parking.
- Doesn't comply with site policy H1(8).
- Loss of hedging on Church Road.
- Lack of assessment of air quality impacts off site.
- Foul and surface water drainage is questionable.
- Traffic signals as Willington Street/Deringwood Drive would not work and would be dangerous.
- Church Road/Deringwood Drive changes are dangerous.
- Spot Lane/Ashford Road changes are not sufficient.
- Will have a wide-ranging visual impact.
- The SUDs proposals may not be feasible.
- Lack of pedestrian/cycle links.
- Harm to ecology.
- Archaeology work not sufficient.
- Lack of local infrastructure

**4.03 Bearsted Parish Council (neighbouring):** Raises objections for the following (summarised) reasons:

- Traffic impact will be severe.

- Congestion on local roads.
- Not a good location for modal shift.
- Highway safety and congestion on Roseacre Lane and the Spot Lane junction with the A20.
- Flooding can make roads impassable adding to congestion.

**4.04 Joint Parishes Group:** Support the objections raised by Parish Councils.

**4.05 Bearsted & Thurnham Society:** Raises objections for the following (summarised) reasons:

- Traffic lights at Deringwood Drive/Willington Street have been rejected on safety grounds and will increase pollution.
- Congestion on local roads.
- Church Road is a narrow country lane.
- Lack of local services/infrastructure.
- Design not in keeping.
- Harm to the listed church and lack of parking for users of church.

**4.06 Chapman Avenue Area Residents Association:** Raises the following (summarised) points:

- Process adopted by Planning Department and Planning Committee is underhand.
- Increased traffic, congestion, and highway safety issues.
- Traffic impact is severe.
- Will block views of the Church from existing houses.
- Site allocation was ill thought out.
- Strong objections from KCC Highways.
- Traffic lights are not suitable and will be dangerous.
- Increased pollution from traffic lights.
- Traffic data is unrealistic.
- Increased flood risk.
- Land stability needs to be addressed.
- Density too high.
- Poor public transport options.
- Views will be damaged and there will be light and noise pollution.
- Harm to wildlife.
- Oppressive to outlook and loss of privacy.
- Served by narrow country lanes.
- Overwhelmed congested traffic system.
- Highway safety.
- Sewage capacity problems.
- Flood risk.
- Potential for anti-social behaviour.
- How will landscaped areas be managed.
- Damage to the environment.
- Design not in-keeping.
- Harm to setting of listed buildings.
- Air pollution.
- Poor open spaces.
- Pressure on existing infrastructure and no new facilities proposed.

- Archaeology.
- Density is too high.

**4.07 The Parochial Church Council:** Raises objections for the following (summarised) reasons:

- Lack of car park will create parking difficulties for church.
- Can't extend churchyard.
- Loss of parking on Church Road from new accesses.
- Church car park would not cause any harm above the housing.
- Pedestrian conflicts.
- Parking provision is needed.

**4.08 Local Residents:** 363 representations received raising the following (summarised) points:

- Increased traffic and congestion.
- Highway safety.
- Pedestrian safety including school children.
- Rat running occurs on local roads.
- Will encourage dangerous driving.
- Church Road is not safe or suitable for additional traffic.
- Traffic lights on Willington Street will be dangerous and cause further congestion.
- Increased noise and pollution to properties near proposed traffic lights.
- Spot Lane/A20 junction is dangerous.
- Changes to Spot Lane/A20 junction will make no difference.
- Spot Lane floods.
- Traffic calming measures will make traffic worse.
- Traffic calming lighting is not suitable next to listed building.
- Cars won't be able to get out of the site.
- Travel Plan is totally unrealistic.
- Do not listen to Kent Highways advice.
- Need speed bumps.
- Congestion harms local businesses.
- Congestion delays emergency vehicles.
- Junction mitigation has not been carried out.
- Traffic calming on Church Rd won't allow larger vehicles to pass.
- Damage to roads.
- Question accuracy of Transport Assessment.
- Relief road is needed.
- Flood risk.
- Inadequate foul drainage.
- Question surface water report.
- Poor connections for pedestrian and cyclists.
- Poor public transport.
- Should have park and ride.
- Car-reliant and unsustainable.
- Lack of parking proposed.
- Land stability issues on the site and in Chapman Avenue.
- More testing should be carried out for drainage and stability.
- Potential damage to neighbouring properties from subsidence.

- Geology brings into question surface water proposals.
- Visual impact.
- Density too high.
- Harm to wildlife/ecology.
- Water pollution.
- Lack of ecology surveys.
- Lack of local green space.
- Loss of countryside.
- Loss of rural character.
- Loss of ancient woodland.
- Loss of Grade 2 agricultural land.
- Loss of hedge.
- Loss of trees.
- Substantial harm to the setting of the Grade I listed Church.
- Will block view of Church.
- Car park should be provided for the Church.
- Pile driving could harm listed buildings.
- Loss of land to extend church yard.
- Buff brick colours not appropriate near church.
- Ancient burial site.
- Lack of infrastructure and amenities including schools and surgeries.
- No local medical centre.
- Lack of water supply.
- Traffic noise.
- Noise from new residents.
- Overlooking/loss of privacy particularly from apartments.
- Overshadowing/loss of light.
- Overbearing.
- Air quality/pollution.
- 3 storey buildings are out of place.
- Gardens are too small.
- No use of ragstone.
- Crime.
- Loss of agricultural land.
- Other more suitable sites.
- Brownfield land should be used.
- Noise and dust during construction.
- Construction could damage properties.
- Lack of public consultation by applicant.
- Other people should be able to enjoy the area.
- Excessive amounts of information provided.
- Assessments are flawed and desktop based.
- Loss of property value.
- Loss of views.
- Affordable housing will put additional pressure on police force.
- Increased risk of crime.
- Documents have been uploaded at different times without sufficient time to comment.
- Additional documents should have been uploaded to the website earlier/when they were received.
- Contrary to the NPPF.
- Contrary to numerous Local Plan policies.

- Development outside the site allocation in the southeast corner.
- Site should not have been allocated.
- Site allocation process was mishandled by offices and members.
- Development is premature.
- Question land ownership.

4.09 **Borough Councillor Newton** requests the application is considered by the Planning Committee and raises the following (summarised) points:

- Harm to the setting of the Grade I Church which was constructed prior to the Domesday Book.
- Harm to the setting of the Grade II listed buildings.
- Full archaeological survey should be carried out if permission is granted.
- Poor local facilities which require a car to drive to.
- Access and roads to the site are unsuitable.
- Traffic lights will be dangerous in icy conditions and increase congestion on Willington Street.
- Spot Lane junction changes will increase the chance of collisions.
- Congestion caused by flooding and traffic calming on Mallards Way.

4.10 **Borough Councillor McKay**: Raises the following (summarised) points:

- Highway safety on Church Road.
- Church Road is not wide enough and cannot be widened.
- Access plan is not accurate.
- Traffic lights at Deringwood Drive/Willington Street junction will increase congestion and raise safety issues and a decline in air quality.

4.11 **County Councillor Cooke**: Raises the following (summarised) points:

- Traffic congestion.
- Church Road is narrow and unsuitable
- Junction changes at Deringwood Drive/Willington Street would render junction more unsafe.
- Should be refused on highway grounds.
- Adverse impact on Grade I listed Church.
- No planning gain from the dedicated car park for the church.
- Flooding from surface water.
- Lack of local service and infrastructure.

4.09 **Helen Whately MP**: Outlines the concerns of local resident's as follows:

- The increased traffic generated by the proposal will create chaos and severe congestion in Deringwood Drive and Willington Street.
- There have already been accidents at the junction with Church Road and Deringwood Drive and increased traffic can only make it more dangerous.
- The church is a Grade 1 listed building and will be seriously affected by this development.
- There is inadequate provision for disposal for surface water.
- There are no plans for additional local amenities such as schools, dentists or doctors which are already over stretched.

## **5.0 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)*

- 5.01 **Highways England: No objections** subject to a financial contribution of a proportionate amount being made to address the mitigation works needed at M20 J7.
- 5.02 **Historic England: Raise objections** regarding the setting of the Church and consider that without a dedicated church car park there is less heritage benefit which might outweigh the harm arising from this application, and an increase in vehicular movements on Church Road might have the effect of discouraging people from using the Church, which they consider could damage its economic viability.
- 5.03 **Natural England: No objections.**
- 5.04 **Environment Agency: No objections** subject to conditions.
- 5.05 **KCC Highways: Raise objections** on the basis of an unacceptably severe traffic impact on the A229/A274 and Willington Street corridors and worsening safety hazards on Church Road due to a greater likelihood of hazardous conflicts between road users.
- 5.06 **KCC Economic Development:** Seek £1,096,089 towards the extension of 'Greenfields Community Primary School' to mitigate the impact of the development.
- 5.07 **KCC SUDs: No objections** subject to conditions.
- 5.08 **KCC Archaeology: No objections** subject to condition.
- 5.09 **KCC Minerals:** No comments to make.
- 5.10 **KCC PROW:** Question how PROW KM86 will be accommodated within the development and concerns raised with the proposal to establish a cycle route along this path as the legal status of the right of way will need to be changed to enable cycling, in addition to physical path improvements on the ground.
- 5.11 **KCC Ecology: No objections** subject to conditions.
- 5.12 **MBC Conservation Officer:** Advises that the harm to the Church and Church House would be less than substantial.
- 5.13 **MBC Environmental Health: No objections** subject to conditions relating to charging points; lighting; travel plan; and contaminated land.

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5.14 MBC Landscape Officer: Raise some concerns regarding future pressure on trees along part of the east boundary.

5.15 **Southern Water**: Confirm there is sufficient capacity.

5.16 **Forestry Commission**: Refers to standing advice on Ancient Woodland.

## **6.0 APPRAISAL**

6.01 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that,

***"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."***

6.02 The Local Plan allocates the site for 440 houses under policy H1(8) subject to a number of criterion covering matters relating to design and layout, access, air quality, open space, infrastructure, highways and transportation.

6.03 This is a detailed application for 421 houses. Clearly, the principle of housing is accepted under Local Plan policy H1(8) so it needs to be assessed as to whether the proposals comply/can comply with the policy criterion and any other relevant Development Plan policies.

6.04 The key issues for the application are centred round site allocation policy H1(8) as follows:

- Access and connectivity.
- Layout and open space.
- Design, appearance and landscaping.
- Heritage impacts.
- Highways impacts.
- Infrastructure.
- Other matters including Affordable Housing, Air Quality, Drainage, Ecology, and Amenity.

6.05 The revised NPPF has a chapter dedicated to design (12- Achieving Well-designed Places) and there is specific reference to the design framework 'Building for Life 12'. This application has been developed and assessed against Maidstone's own version of this.

### Access and Connectivity

6.06 Policy H1(8) states:

**8. Access will be taken from Church Road only**

**5. The hedge line along the eastern boundary of the site with Church Road shall be retained and strengthened where not required for access to the site.**

- 6.07 The application only proposes vehicular access from Church Road via two access points which is in accordance with policy H1(8). These would be close to the north and south ends of the site on the Church Road frontage. The access points have been assessed by Kent Highways and Kent Fire and Rescue and judged to be suitable and safe.
- 6.08 The proposed accesses and required visibility splays inevitably mean that some of the existing hedging fronting Church Road will need to be removed (approximately 125m). However, new native hedge planting is proposed behind the visibility splays and other native tree and shrub planting to strengthen the existing hedging in general, this being a positive landscape feature of the site. These measures are shown on the Landscape Strategy Plan but the fine details of species and number of plants etc. will be secured under a condition. The condition will specify the measures required and will ensure compliance with criterion 5 of the site policy.
- 6.09 In terms of connectivity, it is proposed to provide a new pavement from the northern access along the front of the Church within highways land to link with the existing pavement further north. As this pavement would be narrower than the 2m normally sought due to the width of Church Road (being between 1.2m to 2m and on average around 1.6m), a hard surfaced path is proposed around the north side of the Church and into the site to provide an alternative attractive route.
- 6.10 This hard-surfaced path would run across the north part of the site and connect with the pedestrian link to 'The Beams' in the northwest corner which provides access towards Willington Street and 'Greenfields Primary School'. KCC PROW and Highways refer to the existing paths here being steps and so this raises issues over access for all users. This is not the only connection to the west as there is a connection to the south (discussed below) that provides access in this direction so it is not necessary for changes to these steps to be made.
- 6.11 Public right of way (PROW) KM86 also runs across this area to the north of the Church. The definitive line of this PROW is not actually walked on the ground and an alternative more direct route is used. The applicant is proposing to upgrade and hard surface the route walked on the ground and provide a separate cycle route alongside part of the path. KCC PROW recommends that the PROW is diverted to follow the applicant's proposed route so there are not two routes and to also allow room for the cycle route alongside. The applicant is agreeable to this approach and would need to apply for a diversion under separate Highways legislation. Should the diversion not be successful this would simply mean that the current situation remains but with a new hard surface. This would be acceptable and causes no harmful impact upon the definitive PROW. As the diversion is not necessary to make the development acceptable a condition is not required but the applicant will be encouraged to apply for this diversion by way of an informative.

6.12 To the south, it is proposed to provide a pedestrian/cycle link via the Council owned public open space to link up with Woolley Road. This would provide an appropriate link to shops, 'Senacre Primary School', and bus stops to the south. The applicant would provide the pathway on the application site and has confirmed they would continue and construct this on the Council owned land. The Council's Property Section have confirmed that they have no objections to this. A condition will be imposed to secure the link and a pathway on Council owned land. Whilst outside the applicant's control this condition is reasonable as this is land in public ownership, and the Council has indicated it has no objections to this being provided.

6.13 So overall, the vehicular access points comply with policy H1(8), are safe, and the scheme provides good pedestrian/cycle connectivity to the local area and its services/amenities, in accordance with policy DM1 of the Local Plan.

#### Layout and Open Space

6.14 Policy H1(8) requires:

- 1. The tree line along the western boundary of the site will be enhanced, to protect the amenity and privacy of residents living in Chapman Avenue.**
- 2. An undeveloped section of land will be retained along the western boundary of the site, to protect the amenity and privacy of residents living in Chapman Avenue.**
- 3. An undeveloped section of land will be retained along the eastern edge of the site in order to protect the setting of St Nicholas Church and maintain clear views of the Church from Church Road.**
- 4. The Church Road frontage will be built at a lower density from the remainder of the site, to maintain and reflect the existing open character of the arable fields on the eastern side of Church Road and to provide an open setting to St Nicholas Church.**
- 6. Retain non-arable land to the north and east of St Nicholas Church, to protect its setting.**
- 7. Retain discrete section of land at the south east corner of the site to provide a 15 metres wide landscape buffer to ancient woodland (bordering site at this location), to be planted as per the recommendations of a landscape survey.**
- 10. Provision of approximately 2.88ha of natural/semi-natural open space consisting of 1.4ha in accordance with policy OS1(16), and 1.48ha within the site, together with additional on/off-site provision and/or contributions towards off-site provision/improvements as required in accordance with policy DM19.**

6.15 The roads and houses are set back around 8m-15m from the boundary/tree line along the western boundary and so this area is undeveloped apart from a path which provides a recreational route around the development. New landscaping can be secured to improve this buffer and provide an

appropriate setting in accordance with criterion 1 and 2. Building would be set back just over 35m from the east edge of the site to maintain clear views of St Nicholas Church from Church Road in line with criterion 3. Further open space is proposed to the south and southeast of the Church to provide space to limit the impact upon the setting of the Church. Land to the north and west of the Church would be maintained as undeveloped and provide a natural/semi-natural area of open space to benefit biodiversity in line with criterion 6. In the southeast corner a large undeveloped area providing in excess of a 30m buffer to the Ancient Woodland (AW) is proposed in line with criterion 7.

- 6.16 In terms of open space, criterion 10 requires a total of 2.88ha to be provided for the development. In line with policy OS1(16), and as shown on the Local Plan map, part of this is land to the north and west of the Church and this area would be natural/semi-natural space. The Local Plan also seeks land in the southeast corner of the site and this is provided. Two houses are proposed in a small part of this open space area but this would not cause any visual or landscape harm to the surrounding area as they would be surrounded by new landscaped areas within the site and existing woodland and vegetation outside the site. This would be a natural/semi-natural area providing a buffer to the AW. Together with the buffers around the site and Church and more formal areas within the developed area including children's play areas, a total of 3.6ha of open space would be provided which is in excess of the site policy requirement. This is reflected in the density of the development which at 26 dwellings per hectare is slightly lower than the typical density of recent urban edge housing developments which tend to be around 30dph but this is appropriate bearing in mind the open space requirements and proximity of the listed Church.
- 6.17 This amount of open space is considered appropriate for this size of development and provides a mix of types including natural/semi-natural, more formal space, and play areas. For these reasons it is considered that the application complies with design, layout, and open space requirements of policy H1(8).
- 6.18 More generally, the layout has been developed using the constraints and opportunities at the site. This includes the required buffers around the edges of the site and to the Church and listed buildings but also providing different open space areas through the developed area as well. A key element of the scheme is to utilise views of the listed Church from within the development to create a unique sense of place.
- 6.19 Different character areas are proposed across the scheme and these are created largely from the different areas of open space proposed and are described and assessed below.
- The 'Frontage' character area to Church Road has buildings set well back from the road and relatively low in density with detached houses and a significant landscape buffer which limits the impact upon the character of Church Road as far as possible and ensure views of the Church.

Structural native tree and shrub planting is proposed to provide a buffer at the front of the site and a new native hedgerow.

- The 'Entrance' character area around the northern access by the Church is largely open and spacious with detached houses fronting onto the spine road with wide planted verges and structural tree planting. Estate railings are proposed to create a semi-formal parkland character. This is appropriate to provide an arrival space which is sympathetic to the Church setting. A small orchard is proposed to the north of the entrance with wild meadow planting.
- The 'Avenue' character area around the southern access provides a tree lined street linking the access to the central green. There would be strong building lines and front gardens would be enclosed with hedgerows and picket fences. This provides a distinct entrance to the site here.
- The 'Central Green' character area provides a key focal point within the development. It provides useable open space and a children's play area and is bounded by 2, 2.5 and 3 storey buildings which provide enclosure and surveillance of the open space. The large central area of open space provides a sense of arrival and meeting place/focus within the middle of the site as advocated by 'Maidstone Building for Life 12'. In the southeast corner of the central green there would be a hard-surfaced area that would use high quality paving laid to direct views towards the Church along a green corridor. Tree planting would be provided on the boundaries of this space.
- The 'Greenway' character area is the link and view corridor from the central open space towards the Church. It features tree-lined verges and the buildings either side frame the vista and draw attention to the Church spire creating a sense of place.
- The 'Square' character area is an area of open space within the southern part of the site that is arranged around a formal landscaped square with a small children's play area. This provides an interesting and contrasting formal space against the natural/semi-natural spaces around the outsides of the development.
- The 'Green Edge' character area runs along the south, west and part of the north boundaries. These areas feature narrower roads with cul-de-sacs and private drives and a lower density with detached houses. Landscaping would be provided to supplement existing trees and hedges which would provide a quality setting to the development.

6.20 These areas create a distinct character using the different areas of open space as their focus across the site as advocated by 'Maidstone Building for Life 12'.

6.21 The built areas are made up of perimeter blocks with buildings facing outwards to ensure active streetscenes. Where flank elevations are exposed

windows and/or different materials at first floor level are provided to ensure interest. On corners, buildings are dual fronted to address both streets.

- 6.22 The proposed affordable housing is spread throughout the development in three areas so is well integrated and would be tenure blind so it would not appear any different to the market housing in accordance with policy SP20.
- 6.23 Overall, the layout is considered to be of high-quality providing connections to the local area, creating a unique sense of place with distinct open space and character areas in accordance with policy DM1 of the Local Plan and 'Maidstone Building for Life 12'.

#### Design, Appearance & Landscaping

- 6.24 The house designs are 'traditional' in form and appearance with detached, semi-detached, and terrace houses with mainly gabled roofs. Interest would be provided from two storey projecting gables, bay windows, porches and detailing in the form of soldier courses, bricked arches above windows, and bullnose hanging tile detailing. The apartment blocks would be three storeys in height and their mass would be broken up with varying ridge heights, projecting gables set down from the main ridge lines, juliette balconies, different materials, and fenestration on all elevations to provide relief. Whilst comments have been received stating that three storey buildings are not in keeping with the local area, the massing of these buildings is appropriately broken up and variations in heights will provide interest across the scheme.
- 6.25 Materials would include red and buff coloured multi-stock bricks, clay roof and hanging tiles, slate roof tiles, and white composite boarding on some properties. A number of houses would be predominantly finished in ragstone and these are at prominent locations across the development including at the site entrances and on corners. Not only would this provide a quality vernacular material but the buildings would provide focal points and wayfinding points across the development.
- 6.26 Hard surfaces are predominantly block paving for roads, parking spaces and parking courts and resin bound/block paved paths for the open space areas. Boundary treatments include ragstone walls at the entrances, brick walls on exposed boundaries, picket fencing and metal railings.
- 6.27 Parking provision would accord with adopted standards with around a quarter of properties with tandem spaces, where the standards seek independently accessible spaces. The reason being that occupants may be less reluctant to use their tandem spaces and instead park on roads. To counter this an over-provision of on-street visitor parking bays are proposed. I consider this strikes the right balance between on-plot parking provision and an attractive development that is not dominated by parking.
- 6.28 In addition to the planting schemes within the different character areas outlined above, landscaping across the scheme involves significant numbers of street trees to create the main formal crescent avenue through the development but also within the smaller streets. Smaller streets would also

feature significant hedgerows enclosing front gardens. For the edges of the site, native structural planting is proposed and for the edge to the Ancient Woodland in the southeast corner a large area of native tree and shrub planting is proposed. The species indicatively put forward at this stage are mainly native but do include more ornamental species in some of the housing streets. The full details are not provided at this stage but some species are not appropriate such as cherry laurel which can be invasive. Therefore a condition will be attached requiring specific details and specify a requirement for predominantly native planting. However, overall the amount of proposed landscaping would provide a high quality environment and setting to the development.

6.29 With regard to trees, no trees would be removed for the development as they are on the edges of the site. There are a few areas where there is a small RPA conflict with proposed roads and parking spaces, but these all fall in previously ploughed land, so the landscape officer would expect any potential root presence to be below plough depth and, in any event, arboricultural supervision is proposed to ensure that any excavation is carried out to minimise potential damage. The landscape officer has raised some concerns regarding the proximity of houses to trees along part of the west boundary by 'Squerryes Oast' and potential future pressure on these trees due to shade. The majority of these trees are within the site, are category B trees and would provide good screening/softening of the development. I consider these trees should be retained and therefore the applicant has moved the houses forward by two metres to provide more space and on balance this is considered to be acceptable. These trees can be retained under the landscaping scheme and an Arboricultural Method Statement secured by condition can provide details of any pruning required.

#### Heritage Impacts

6.30 Policy H1(8) requires:

- 3. An undeveloped section of land will be retained along the eastern edge of the site in order to protect the setting of St Nicholas Church and maintain clear views of the Church from Church Road.**
- 4. The Church Road frontage will be built at a lower density from the remainder of the site, to maintain and reflect the existing open character of the arable fields on the eastern side of Church Road and to provide an open setting to St Nicholas Church.**
- 6. Retain non-arable land to the north and east of St Nicholas Church, to protect its setting.**

6.31 As outlined above, the proposed plans ensure compliance with the above criterion which relate to St Nicholas Church so the proposals comply with policy H1(8).

6.32 There are a number of heritage assets near to the site. Notably, St Nicholas's Church (Grade I listed) and two Grade II listed monuments within the grave yard, and 'Church House' (Grade II listed) immediately to the north of the site. There is also 'The Rectory' (Grade II listed) to the

south. Further afield, the Otham Conservation Area is 770m to the southeast.

- 6.33 The NPPF outlines at paragraphs 193 and 194, that great weight must be given to the conservation of listed buildings irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. The NPPF also requires the local planning authority, when assessing an application to 'identify and assess the particular significance of any heritage asset that may be affected by the proposal. Under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 6.34 The development in particular has an impact upon the setting of the Grade I listed Church as it forms part of its historic rural open setting to the south. This setting and the visibility it affords of the Church in its historical context forms part of its significance and development of the site would affect this. Churches were obviously built of a certain scale so they were visible from some distance. There would be an impact upon the setting of Church House (GII) but this would to a lesser extent as this building is less prominent from the application site and wider area, so the openness of the application site does not contribute greatly to its significance.
- 6.35 The allocation of 440 houses at the site would inevitably result in some harm to the setting of the two listed buildings to the north. Such impacts upon the setting of these listed buildings were clearly accepted when the Local Plan Inspector agreed that the allocation was acceptable for 440 houses, subject to criterion 3, 4, and 6, which all seek to protect the setting of St Nicholas Church, and in turn Church House.
- 6.36 It is therefore a case of minimising the impact upon the heritage assets and securing sensitive design in line with Paragraph 190 of the NPPF and policy SP18 of the Local Plan. To this end, discussions have previously been held with Historic England and a large non-development area to the south of 'Church House' and to the south and southwest of the Church was agreed and has been provided. As stated above, views of the Church from Church Road would be maintained, which is one of the key public views of the Church.
- 6.37 It is considered that the layout of the development with significant space around the Church House and the Church serves to minimise the impact upon the listed buildings to the north and ensure compliance with policy H1(8). I agree with the applicant's conclusion that the harm to the listed buildings is 'less than substantial' because the layout provides undeveloped areas to the north, west, and south of the listed buildings and maintains clear views of the Church from Church Road.

- 6.38 Historic England (HE) are objecting to this detailed application because a dedicated church car park is not proposed within the site (as it was originally for the outline application). Under the outline application a car park was proposed but the resolution of the Planning Committee on 24<sup>th</sup> October 2019 was to remove this car park so whilst officers recognise the clear benefits of providing a car park, understandably the applicant has not proposed it. HE accept the principle of development at the site and accept that it is unlikely the overall harm can be reduced given other constraints on the site and thus that the proposal in its current form is capable of meeting NPPF requirements to minimise and thus also justify harm. However, HE considers that without a dedicated church car park in the application there is less heritage benefit which might outweigh the harm arising from this application. They also have serious concerns that an increase in vehicular movements on Church Road might have the effect of discouraging people from using the Church, which could damage its economic viability.
- 6.39 There is no requirement for the applicant to provide a dedicated Church car park, however, the scheme provides a crescent of 28 additional parking spaces at the north end of the site that could be used by visitors of the Church. These spaces would not be secured exclusively for church goers and could be used by new residents of the development but are provided on the basis that church goers are likely to park within the new development in the future. Although not necessary, this is a sensible proposal.
- 6.40 I do not agree with HE that the development would threaten the Church's economic viability. I consider the development would actually provide safer on-street parking on the roads within the new housing estate to the current situation on Church Road and so would not discourage people from using the church.
- 6.41 The site allocation I would say inevitably does not conserve the setting of the listed buildings and so there is some conflict with criterion 1 of policy DM4 of the Local Plan. However, the explanatory text to policy DM4 refers to carrying out a weighting exercise in line with the NPPF.
- 6.42 Whilst having special regard to the preservation of the setting of the Church and Church House, overall, it is considered that the public benefits of providing 421 houses including affordable housing to meet housing needs on an allocated housing site, and the associated social and economic benefits provide for clear and convincing justification for some harm to the heritage assets, and these benefits outweigh this less than substantial harm to St Nicholas Church and Church House in line with Paragraph 196 of the NPPF. The layout has been carefully designed to ensure that the impact upon heritage assets would be minimised to an acceptable degree bearing in mind the site is allocated for housing.
- 6.43 'The Rectory' (GII listed) to the south is some 50m from the edge of the site with a two storey building and vegetation between. There would also be a buffer to the front of the site that would limit development near to this

building. For these reasons the development of the site would not cause harm to the setting of this listed building. There would be no harm to the listed monuments within the church yard as the site is generally screened from these and it is considered that their setting is confined to the church yard. I concur with the Council's Conservation Officer that due to the distance from the edge of the Otham Conservation Area (770m), the development would have a minimal impact upon its setting, and I consider no harm would be caused.

- 6.44 In relation to archaeology, KCC Heritage advises that on the back of geophysical surveys carried out by applicant, there are no indications of significant archaeology surviving on the site. However, they suggest the area around the church may contain important archaeology (which may be revealed following intrusive field evaluation works) and recommend a condition to this end, which is considered appropriate.

### Highways Impacts

#### *Wider Network/Strategic Junctions*

- 6.45 The Local Plan examination process which led to the adoption of the Local Plan in October 2017 involved the Local Plan Inspector considering, in great detail, the highways impacts and mitigation for the southeast Local Plan sites (which includes the application site), including objections/representations from statutory consultees and third parties. This involved carefully considering evidence provided by the Council, including the A274 Corridor Study, and the specific mitigation being a number of junction improvements on the A274, bus priority measures and bus service improvements (monies towards some of which had already been secured under planning permissions). The Local Plan Inspector was satisfied that the Council's evidence demonstrated the traffic impact of the Local Plan sites could be suitably mitigated, and in his Final Report concluded,

*"169. The development proposals in the submitted plan already incorporate measures to mitigate the travel impacts. These include highway capacity improvements and improved bus services (including direct links to railway stations). If these measures are further supported by the bus access and bus priority measures, the impacts on congestion need not be severe. Air quality issues are capable of being addressed by these and other measures, including by action at national level.*

*170. In conclusion the Policy SP3 South East Maidstone Strategic Development Location will generate additional traffic and could contribute to an increase in congestion, particularly at peak hours, even after mitigation in the form of road improvements and other measures to make sustainable travel more attractive and effective. However the concentration of development close to the town does allow alternative and more sustainable means of travel to be made available. That is less likely to be the case were the housing to be located away from the town in another part of the Borough where residents would still need access to employment and services in the town."*

## APPENDIX E

### Planning Committee Report 28th May 2020

- 6.46 The adopted Local Plan therefore includes strategic highways improvements for the southeast Maidstone sites, and relevant to this application, they are outlined under the site allocation policy (criterion 13-17).
- 6.47 The application site and its potential development of 440 houses was included within the cumulative transport assessments carried out under the planning applications for the strategic southeast housing sites H1(7) - Land North of Bicknor Wood, and H1(10) - Land South of Sutton Road, within the Local Plan. These sites were granted planning permission in early 2018. The transport assessment cumulatively assessed all the southeast housing allocations and also included other commitment development (planning permissions at the time).
- 6.48 Under those applications, the Council accepted that the cumulative impact of development from all the southeast housing allocations could be suitably mitigated with improvements to the capacity of various junctions and improvements to bus services. Being prior to the introduction of CIL, financial contributions were secured under section 106 agreements towards various off-site highways works/improvements which are outlined in the Council's Infrastructure Delivery Plan (IDP), where the total infrastructure costs and funding streams are stated.
- 6.49 Decisions to approve permission at Planning Committee on sites H1(7) and H1(10) with financial contributions towards infrastructure were made prior to the adoption of the Local Plan in September 2017. The Local Plan Inspectors Final Report and adoption of the Local Plan confirmed that the Council's approach to mitigating the transport impact of the southeast development sites is sound.
- 6.50 For the current application, the applicant has provided a Transport Assessment and carried out up to date traffic surveys on local roads and assessments of appropriate local junctions. Whilst the Parish and residents have questioned the accuracy of the traffic surveys, Kent Highways have raised no issues with them. For wider/strategic junctions the applicant's evidence provides the likely additional impact of the development but relies upon the recent cumulative assessment of transport impacts carried for sites H1(7) and H1(10) and the mitigation (which included the application site). These assessments concluded that the cumulative traffic impact upon the local network (including the application site) would not be severe subject improvements to relevant junctions and public transport. The Council has accepted this conclusion and so this is considered to be an appropriate approach and there are no reasonable grounds to now disagree or depart from this approach that has been accepted recently by the Council.
- 6.51 The site allocation policy as criterion (13-17) relating to strategic highways and transportation improvements as follows:
- 13. Bus prioritisation measures on the A274 Sutton Road from the Wellington Street junction to the Wheatsheaf junction, together with bus infrastructure improvements.***

**14. Improvements to capacity at the junctions of Willington Street/Wallis Avenue and Sutton Road.**

**15. Package of measures to significantly relieve traffic congestion on Sutton Road and Willington Street.**

**16. Improvements to capacity at the A229/A274 Wheatsheaf junction.**

**17. Improvements to frequency and/or quality of bus services along A274 Sutton Road corridor.**

6.52 The above improvements are based on the cumulative impact of development in southeast Maidstone and so compliance with the above criterion would be via monies towards the improvements. A change in circumstances since the previous decisions is the introduction of the Council's Community Infrastructure Levy (CIL), such that any monies towards strategic highways works required from cumulative transport impacts would be via CIL rather than financial contributions under a section 106 agreement. The applicant will have to pay CIL should planning permission be granted and implemented, and the Council can decide to use monies for the relevant highways improvements. This ensures compliance with the strategic highways requirements under the site policy.

6.53 Although none of the above improvements have commenced and clearly a number of the southeast sites are completed and occupied/part-occupied or under construction, the delivery of highway improvements is not the responsibility of the Local Planning Authority (LPA) or the applicant. The LPA can secure improvements via monies, CIL, or planning conditions but it is the responsibility of the Highways Authority to implement highways works. Therefore the LPA cannot withhold planning permission because highways works have not been delivered. However it is noted that Kent County Council have recently consulted on proposed improvement schemes at the junctions either end of Willington Street with Sutton Road and the A20 and along the A229 corridor with the improvements designed to relieve congestion.

6.54 KCC Highways have been consulted on the application and have raised strong objections as they consider the Transport Assessment does not demonstrate that the impact of the development can be fully mitigated and that the strategic junction improvements on the A274 and at either end of Willington Street are not expected to provide sufficient capacity. They consider the residual traffic impact on the network is considered to be severe. They state,

*"The applicant has been unable to conclusively demonstrate that suitable mitigation of impact can be achieved on the A229/A274 and Willington Street corridors. KCC Highways maintain the view that the residual traffic impact on the local highway network will be unacceptably severe and an objection is raised on this basis."*

6.55 Essentially, the Highways Authority does not consider that the junction and public transport improvements outlined in the Local Plan, and to which monies have been secured, are sufficient to mitigate the impact of the development. This is the same position that was taken under the previous

planning applications and at the Local Plan Inquiry by the Highways Authority. So this argument has been tested through planning applications and importantly through an Examination in Public. As outlined above, the mitigation measures are considered sound and are within the adopted Local Plan. On this basis, it is considered that the Highway Authorities objection is not reasonable grounds to refuse planning permission and could not be defended at appeal.

#### *Public Transport*

- 6.56 The scheme is designed to accommodate buses through the necessary road width of the main road which provides a loop in and out of the site between the access points. 'Arriva' have confirmed that they do not require any monies to subsidise a diversion once the development is nearing full occupation, and I note existing bus stops are within walking distance on Deringwood Drive and Woolley Road so diversion of the service is not essential. Therefore, it is not necessary to secure any funding for this service and the development has been designed to accommodate buses, with the decision to divert a commercial decision for the bus operator. As outlined above, the site has/provides good connectivity to local bus stops.
- 6.57 The applicant has provided a Framework Travel Plan for the development which would encourage sustainable travel with potential measures and initiatives including the provision of resident travel information packs, cycle parking, bicycle purchase discounts, walking/cycling 'buddy' schemes and the promotion of car sharing. Implementation will be overseen by a Travel Plan Co-ordinator. The indicative Travel Plan targets seek to achieve, as a minimum, a 10% reduction in single occupancy car travel, a 10% increase in the use of non-car modes of travel and a 10% reduction in peak period vehicle trips. Its aims are proportionate for this development and its location. This can be secured by condition and a monitoring fee of £1,422 will be secured under a section 106 agreement.

#### *Church Road to the South of Site*

- 6.58 KCC Highways have raised an objection based on worsening safety hazards to road users on Church Road to the south of the site but not outside the site where widening to 5.5m is proposed. This is based on the road width and also lack of forward visibility in places. They state that a width of 4.8m is sufficient for two cars to pass but not two larger vehicles. The width is below 4.8m for much of its length (between 4.1m and 4.5m) and at 3.9m for a very short section. KCC consider a 5.5m width to be essential referring to the Kent Design Guide. The request for a 5.5m width is based on guidance for major access roads within new developments so in circumstances where you are proposing a new road. This is not to say it is not relevant at all to existing roads but clearly existing roads have potential constraints and it is the local context and conditions that must be taken into account.
- 6.59 The applicant states that Church Road is already a two-way road with a low incidence of accidents which is shown in the collected data. KCC acknowledge the road is already well-used and has a relatively good crash

record but outline that there will be additional traffic movements from the development. Having driven this road both ways a number of times including in the AM peak, I noted that in a limited number of places cars had to stop to let other cars pass but it was generally a case of slowing down to pass. When larger vehicles are involved, stopping would probably need to be carried out as some representations on the application suggest. The applicant's traffic flows suggest that between 81 and 84 movements would exit and enter the site from Church Road to the south in the AM and PM peaks. This would be on average just over one additional movement a minute over the peak hour. This is not considered to represent a significant increase in movements on Church Road and on this basis it is not considered that the development would have an unacceptable or severe impact on highway safety beyond the current situation, or that warrants objection on the basis of road width or visibility in accordance with policy DM21. I also note that policy H1(8) under criterion 12 only requires road widening outside site H1(6) further south on Church Road (which will be carried out in connection with permission on that site).

6.60 In connection with the Planning Committee deferral of the outline application the applicant has investigated further widening along Church Road where it could be widened on the west side to 5.5m for approximately a 210m section to the south of 'Little Squerryes'. This would not involve any loss of ancient woodland but the widening would result in the cutting back and potential loss of hedging/trees. Based on just over one additional movement a minute over the peak hour from the development, it is considered that any benefits of road widening do not outweigh the visual harm to Church Road that would result.

6.61 The applicant is proposing some measures to improve Church Road including extending the 30mph speed limit by approximately 500m south of its current location by the Church, and also by introducing build-outs with a give way feature on a bend just to the south of the site where there is limited visibility. A safety audit submitted by the applicant, and KCC Highways has confirmed that this is acceptable and KCC state that this measure supports the extension of the 30mph speed limit. These works, which aid in highway safety where visibility is more limited, can be secured by condition. It is not considered that parking associated with the Church will result in any unacceptable highway safety conditions on the basis that the road is being widened outside the site, the development will provide potential places to park within it, and no objections are raised by KCC Highways.

#### *Local Junctions*

6.62 The applicant has assessed the impact upon the junction of Church Road/Deringwood Drive, Deringwood Drive/Willington Street, and Spot Lane/A20.

6.63 Improvements to Church Rd/Deringwood Drive are proposed essentially widening both roads near the junction and replacing some of the parking bays, which has been deemed sufficient to accommodate the development traffic by KCC. This would result in the loss of some grassed verge and

most likely 2/3 trees but this would not be unduly harmful to the local area and is necessary to accommodate the allocated site.

- 6.64 For the Deringwood Drive/Willington Street junction, the applicant's evidence suggests this junction will be beyond its design capacity imminently when taking into account general traffic growth and traffic from developments within the Local Plan/with planning permission. The main issue is considered to be the difficulty for traffic leaving Deringwood Drive and so the queuing on this arm as a result of traffic on Willington Street rather than along Willington Street. It is of note that no issues for this junction have been identified, or any mitigation required by KCC Highways for any other developments to date, despite them impacting on this junction.
- 6.65 The applicant is proposing signalisation of the junction that would better manage traffic, provide safer opportunities for Deringwood Drive and development traffic to exit, and improve pedestrian crossing facilities. Whilst this would not bring the Deringwood Drive arm within design capacity it would reduce the potential maximum queuing length on Deringwood Drive from 288 vehicles in the AM peak hour (which has the most traffic) to a maximum of 39 vehicles. On this basis it is considered to be a proportionate response to mitigate the traffic impact of this application and one that provides mitigation for other committed development.
- 6.66 The junction improvement has passed an independent Safety Audit and KCC Highways have confirmed they are satisfied the recommendations of the Audit have been addressed.
- 6.67 However, KCC Highways consider that this junction improvement would introduce a new delay on Willington Street. They consider this would be result in a severe traffic impact but importantly have not identified any highway safety issues. Willington Street South and Deringwood Drive arms of the proposed junction would be up to 14% over theoretical capacity if all pedestrian crossings were operated but the applicant considers that queuing of this nature could already be expected to occur along the Willington Street corridor due to interactions with the existing signalised junctions further to the north. This assertion is supported by capacity modelling of the Ashford Road and Madginford Road junctions that shows how each would individually exhibit extensive queues along Willington Street during the peak periods. The applicant has also forecasted how the sequence of traffic signalised junctions (i.e. two existing and one proposed) would operate in unison. The findings indicate that the proposed new traffic signals would not worsen delays across this part of the network. The contention being made is essentially that an additional set of traffic signals on a busy route will not result in a worsening of traffic conditions.
- 6.68 KCC Highways have reviewed this evidence and consider that because such modelling is highly sensitive to changes in prevailing conditions, they regard such sensitivities to limit the confidence that can be attached to the applicants' conclusion. They also consider the extent to which the junctions are predicted to operate over capacity is also likely to have distorted the modelling outputs, such that there is less certainty that mitigation of impact

can be achieved at this location. So basically they do not agree with the applicant's conclusions.

- 6.69 Whilst there may be some sensitivity in the modelling, as there is for any modelling, KCC Highways have not provided any modelling or analysis to counter that put forward by the applicant. Nor do I consider that up to 14% over theoretical capacity on two arms of the junction results in a severe impact and most importantly KCC Highways have not raised any highway safety issues if any increased delays did occur on Willington Street.
- 6.70 Having driven along Willington Street in the AM peak, I noted that extensive queuing does occur, and I consider that in line with the applicant's analysis, new traffic signals are unlikely to result in any significant change in traffic conditions on Willington Street or to a degree that would result in a severe impact above the current conditions or result in dangerous driving conditions. The proposed signals would serve to significantly lower predicted queuing on Deringwood Drive and would better manage traffic, provide safer opportunities for Deringwood Drive traffic to exit, and improve pedestrian crossing facilities. On this basis it is considered to be a suitable intervention to provide a proportionate mitigation of the impact of the development and can be secured by condition.
- 6.71 For the Spot Lane/A20 junction, the Spot Lane arm would be just over design capacity with general traffic growth, traffic from developments within the Local Plan/with planning permission, and the application traffic. Improvements to this junction are proposed to widen the Spot Lane arm of the junction utilising an area of the verge that is part of the public highway which increases carriageway capacity to enable two cars to queue side-by-side whilst also retaining the existing footway. The modelling shows that the improvement would mitigate the impact of the development and not make conditions any worse than they would be otherwise, and it has passed the Safety Audit. KCC Highways consider that the proposed mitigation is acceptable and this can be secured by condition.

#### *M20 Junction 7*

- 6.72 As background, under the recent applications at sites H1(7) and H1(10), financial contributions to cover the total costs of upgrade works to Junction 7 of the M20 (including scheme design and contract costs) were decided to be apportioned between those two sites and the application site H1(8) (3 sites in total). This totalled £4.66m and the applicant (Bellway Homes), along with completing a legal agreement for financial contributions for site H1(7), also completed a legal agreement for monies in connection with H1(8). Therefore a proportionate financial contribution towards Junction 7 has already been secured for this site by the applicant. These legal agreements and the triggers for payment were agreed with KCC (who would provide the works) and on this basis Highways England are raising no objections.

#### Off-Site Infrastructure

6.73 Policy H1(8) states:

**11. Contributions will be provided towards the expansion of an existing primary school within south east Maidstone to mitigate the impact of the development on primary school infrastructure.**

6.74 The adopted CIL is charged on new floor space to help deliver infrastructure to support development. The scale of development proposed here is not such that it generates the need for a new standalone school or doctor's surgery or specific on-site infrastructure but will obviously place an additional demand on such services. On this basis, CIL monies could be used towards such services to mitigate the impact of the development which is in accordance with policy DM20.

6.75 An exception is made under the Council's Regulation 123 CIL list (list of infrastructure types and/or projects which the Council intends will be, or may be, wholly or partly funded through the CIL), for education. The Reg. 123 List specifically allows for section 106 monies to be collected towards "expansion of an existing school within southeast Maidstone to accommodate site H1(8)" as identified in the Infrastructure Delivery Plan. This is identified as the 'Greenfields Community Primary School' and KCC have requested £1,096,089 towards the expansion of school to mitigate the impact of the development. This contribution would go towards planned expansion of the school to provide 4 additional classrooms and has been justified by KCC, and as it is specifically identified under the Reg. 123 list, it is considered necessary, directly related to the development, and reasonable and in this specific case appropriate to be collected via a section 106 agreement which is being progressed. This is in accordance with criterion 12 of policy H1(8).

#### Other Matters

##### *Affordable Housing*

6.76 Affordable Housing is proposed at 30% (126 units) with the tenure split 70% affordable rent and 30% shared ownership. This overall amount (30%) is in accordance with policy SP21 as is the tenure split and this will be secured under the legal agreement. The accommodation provides a mix of house sizes including 1 and 2 bed flats, 2, 3, and 4 bed houses and the amounts proposed are broadly in line with the current need. A monitoring fee for the s106 of £3,750 will also be secured.

##### *Air Quality*

6.77 Policy H1(8) requires:

**9. Appropriate air quality mitigation measures to be agreed with the council will be implemented as part of the development.**

6.78 An air quality assessment has been submitted which concludes that small increases in NO<sub>2</sub> concentrations are expected as a result of the proposed development and overall, these increases are expected to have a negligible

impact on air quality and not cause any exceedances of the relevant Air Quality Standards. The site is located outside any Air Quality Management Areas and it concludes that new residents would not be subjected to poor air quality. The Environmental Health section has reviewed the assessment and raises no objections. In line with the Council's Air Quality Planning Guidance, an emissions mitigation calculation has been used to quantify potential emissions from the development and provides a suggested mitigation value for proportionate mitigations to be integrated into the development. A number of potential mitigation measures are outlined and the specific measures can be secured by condition which can include measures such as EV charging points for houses with on-plot parking as this is a requirement under policy DM23 of the Local Plan.

### *Drainage*

- 6.79 The Environment Agency's flood risk from surface water map shows a narrow overland flow path running from north to south through the centre of the site. Some surface water flooding could occur along this natural flow path in extreme rainfall events and the applicant is proposing to realign this so it runs through the central open space and open space further north. This will ensure it does not affect proposed houses and water is not displaced off-site so it would continue to flow across the site unhindered.
- 6.80 For surface water from the development, permeable paving would be used for private driveways so water would drain into the ground as it currently does. For the rest of the site, water would be collected in storage tanks beneath a series of swales/attenuation basins with which would then drain to deep bore soakaways at a level to avoid any potential issues with flooding of fissures/gulls. KCC LLFA has raised no objections to the principles of the SUDs scheme to the fine details being provided by condition. They also consider that more swales could be used which can be dealt with by condition.
- 6.81 Southern Water has confirmed there is sufficient capacity on the local network for foul drainage which ensures compliance with criterion 15 of policy H1(8).

### *Ecology*

- 6.82 The site is mainly an arable field with grassland and scrub around its margins and hedging along the Church Road frontage and edges. Features of ecological importance within the site include hedgerows and an area of semi-improved grassland in the north-east corner, which are all on the outside edges of the site. In terms of protected species, a low population of breeding slow worms has been recorded and there is suitable habitat for foraging and roosting bats, badgers, hedgehogs and breeding birds which is around the edges of the site. Apart from where required for access, the hedges would remain and the habitats on the outskirts of the site would largely not be developed. Various mitigation measures and enhancements are proposed to protect habitat and species and create/enhance habitat, which can be secured by condition. Notably open space in the northeast corner of the site would be managed to benefit ecology and in particular

reptiles and a permanently wet pond is proposed at the north end of the central green. KCC Ecology are satisfied that appropriate mitigation has been recommended to minimise or avoid impacts on these habitats and species and recommend conditions to secure the mitigation measures, a site wide management plan, and bat sensitive lighting. The development would therefore be in accordance with policy DM3 of the Local Plan.

6.83 There would be well over a 15m buffer with native tree and shrub planting to the Ancient Woodland in the southeast corner which can be secured by condition.

6.84 Other enhancements include new native planting, wildflower grassland, permeability for hedgehogs, bat and bird boxes, and habitat piles. This is considered a proportionate response based on the low ecological value of the site and will provide an appropriate biodiversity net gain for this development in line with the NPPG.

#### *Residential Amenity*

6.85 Houses and gardens to the west at 'The Beams' and Chapman Avenue are at a lower level than the site so the impact upon privacy and outlook can be more pronounced. However buildings would be at their closest 16m from the end of gardens and at least 30m from any houses and in most cases further. At these distances and even taking into account that some of the 3 storey buildings would be along the west edge of the site, there would not be a harmful impact upon privacy, light or outlook. Properties to the south off Woolley Road would be at least 24m away and properties to the north off Longham Copse would be at least 38m away and at these distances there would be no harmful impacts upon privacy, light or outlook. 'Squerryes Oast' to the east would be at least 70m away; 'Rectory Cottage' to the southeast at least 34m away; and 'Church House' and 'The Coach House' at least 42m away to the northeast. At these distances there would be no harmful impacts upon privacy, light or outlook. Any noise and disturbance from the normal occupation of a housing development is not objectionable.

#### *Public Art*

6.86 In line with the Council's guidance a scheme of this size should provide an element of public art and this would help to create a sense of place. This will be secured by way of condition.

#### *Environmental Impact Assessment*

6.87 The applicant submitted a separate Screening Opinion for housing development last year to ask whether the LPA considered an EIA was required. It was concluded that the development would not be likely to have significant effects upon the environment sufficient to warrant an EIA. A request to the Secretary of State (SoS) was also made by a third party to seek his opinion, and the SoS also concluded the development was not 'EIA development'.

*Representations*

- 6.88 Matters raised but not considered in the assessment above relate to land stability, construction disturbance and may cause damage to properties, noise and pollution from traffic lights, flooding of local roads, damage to roads, house prices, loss of a view, land ownership, and uploading of documents to the website.
- 6.89 Representations refer to the underlying geology of the area/land stability and potential damage to neighbouring properties with regard to the built development, and flooding from the surface water drainage scheme. The applicant has carried out ground investigations and is aware of the underlying geology including the potential for fissures or gulls to open up. Due to the presence of these ground conditions they outline that a piled solution is assumed for the entirety of the site but they intend to carry out testing to determine if a piled solution is required throughout, or whether traditional foundation system could be utilised in certain areas. The applicant has also investigated land stability through borehole and penetration tests along the perimeters where the slope/cliff faces are present. They conclude that development is set sufficiently back from the edges of the site and any deep bore soakaways near to the slope should discharge at a depth lower than the base of the slopes. I consider this level of investigation is a sufficient to explain how the local ground conditions would be dealt with in the build process in line with paragraph 178(a) of the NPPF and at the Building Regulations stage the developer would need to provide a structural engineer's report to demonstrate any foundations designs are sound. In terms of the surface water drainage scheme, KCC LLFA are satisfied the fine details can be detail with by condition.
- 6.90 Matters relating to construction refer to noise, disturbance, and dust which are all matters that would be dealt with under environmental protection legislation and are not planning matters. Any impacts upon neighbouring properties or buildings from construction is not a planning consideration but a private matter between the developer and third parties. I do not consider the installation of traffic lights on Willington Street would have any significant impacts upon noise or air quality to nearby properties above the current situation where vehicles have to wait at present. Local roads flood occasionally so vehicles may have to find other routes but this is not frequent event that renders the development unacceptable on highway grounds. Damage to roads, any impact upon house prices, and the loss of a view are not material planning considerations. Re-consultation and notification has been carried out on all significant amended or additional information. Some additional documents have been uploaded to the website such as clarifications from the applicant and some design changes but it is not considered that the information necessitated formal re-consultation or that any parties have been prejudiced through not receiving a notification. The same land ownership issue was raised as under the outline application because the applicant submitted the incorrect red outline plan but this has been amended in line with the outline application.

**7.0 CONCLUSION**

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- 7.01 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning applications must be determined in accordance with the Development Plan unless materials considerations indicate otherwise.
- 7.02 The site is allocated for 440 houses within the Local Plan under policy H1(8) subject to criterion. The application proposes 421 houses and for the reasons outlined in the report above, the proposals comply with all policy criterion subject to the legal agreement and conditions. The application also complies with all other relevant Development Plan policies.
- 7.03 The allocation of the site for housing would inevitably have an impact upon the setting of listed buildings to the north but this would be minimised and the impact would be 'less than substantial'. The public benefits of providing housing, including affordable housing on an allocated housing site, and the associated the social and economic benefits, outweigh this less than substantial harm.
- 7.04 Kent Highways are raising objections based on unacceptably severe traffic impact on the A229/A274 and Willington Street corridors and worsening safety hazards on Church Road. For the reasons outlined in the report the Local Planning Authority does not agree, and the objections are not considered to be reasonable grounds to refuse planning permission.
- 7.05 Historic England are raising objections as no dedicated church car park is proposed so there is less heritage benefit which might outweigh the harm to the setting of the Church, and an increase in vehicular movements on Church Road might have the effect of discouraging people from using the Church, which they consider could damage its economic viability. For the reasons outlined in the report the Local Planning Authority does not agree the development would threaten the Church's economic viability.
- 7.06 All representations received on the application have been fully considered in reaching this recommendation.
- 7.07 It is concluded that the development is acceptable and complies with policy H1(8) and all other relevant policies of the Development Plan. There are no overriding material considerations to warrant a decision other than in accordance with the Development Plan, and so permission is recommended subject to the legal agreement and conditions.

## 8.0 RECOMMENDATION

Subject to:

The conditions set out below, and the prior completion of a legal agreement to secure the heads of terms set out below;

the Head of Planning and Development **BE DELEGATED POWERS TO GRANT PLANNING PERMISSION** (and to be able to settle or amend any necessary Heads of Terms and planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee).

### Heads of Terms

1. £1,096,089 towards the expansion of Greenfields Community Primary School.
2. 30% affordable housing provision (made up of 70% affordable rent and 30% shared ownership).
3. £1,422 Travel Plan monitoring fee.
4. £3,750 Section 106 monitoring fee.

### Conditions:

#### *Approved Plans*

1. The development hereby permitted shall be carried out in accordance with the latest revisions of the plans listed on the Drawing Issue Sheet dated 16/04/20.

Reason: To clarify which plans have been approved, to ensure a high-quality development, and to protect residential amenity.

#### *Time Limit*

2. 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.

#### *Compliance*

3. The development shall be carried out in accordance with the boundary treatments as shown on drawing nos. 16206 P101 RevT and 16206/SK55D and maintained thereafter.

Reason: To ensure a high-quality development and to protect residential amenity.

4. The development shall be carried out in accordance with the hard surfaces as shown on drawing nos. 16206 P105 and maintained thereafter.

Reason: To ensure a high-quality development.

5. All planting, seeding and turfing specified in the approved landscape details shall be carried out either before or in the first planting season (October to February) following the occupation of the building(s) or the completion of the development to which phase they relate, whichever is the sooner; and

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 setting to the development.

6. Excluding the area in the southeast corner of the site adjacent to ancient woodland, the areas of open space as shown on pages 58 and 59 of the Design & Access Statement shall be maintained as publicly accessible open space in perpetuity.

Reason: To ensure adequate open space areas for the development.

7. The approved details of the parking/turning areas shall be completed before the commencement of the use of the land or buildings hereby permitted and shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them;

Reason: Development without adequate parking/turning provision is likely to lead to parking inconvenient to other road users and in the interests of road safety.

#### *Pre-Commencement*

8. No development shall take place until a Phasing Plan for the development including open space areas has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved phasing plan unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that affordable housing, open space areas, and connections are provided in time to cater for the needs and impacts arising out of the development and to assist with the determination of conditions.

9. No development shall take place until, a review and (if required) update of the mitigation measures detailed within chapter 6 of the Ecological Appraisal (Aspect Ecology; March 2019) which shall be informed by updated ecological survey(s), have been submitted to and approved in writing by the local planning authority. It must include the following information:

- a) Updated ecological appraisal
- b) Results of recommended specific species surveys (where required)
- c) Letter detailing why the mitigation detailed within the Ecological Appraisal is still valid

OR

- d) Updated mitigation strategy – including the following:
- Over view of the ecological mitigation required
  - Detailed methodology to implement the mitigation
  - Timing of the proposed works
  - Details of who will be carrying out the works.
  - Maps clearly showing the mitigation areas.

The mitigation must be implemented as approved.

Reason: In the interest of biodiversity protection and enhancement.

10. No development shall take place until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall be based upon the Flood Risk and Sustainable Drainage Assessment (dated January 2020 by Herrington) and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site. It shall also explore the use of more swales within the development.

The drainage scheme shall also demonstrate (with reference to published guidance):

- That silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- Appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding. These details and accompanying calculations are required prior to the commencement of the development as they form an intrinsic part of the proposal, the approval of which cannot be disaggregated from the carrying out of the rest of the development.

11. Where infiltration is to be used to manage the surface water from the development hereby permitted, it will only be allowed within those parts of the site where information is submitted to demonstrate to the Local Planning Authority's satisfaction that there is no resultant unacceptable risk to controlled waters and/or ground stability. The development shall only then be carried out in accordance with the approved details.

Reason: To protect vulnerable groundwater resources and ensure compliance with the National Planning Policy Framework.

12. No development shall take place until the following components of a scheme to deal with the risks associated with contamination of the site shall have been submitted to and approved, in writing, by the local planning authority:

- 1) A preliminary risk assessment which has identified:
  - all previous uses
  - potential contaminants associated with those uses
  - a conceptual model of the site indicating sources, pathways and receptors
  - potentially unacceptable risks arising from contamination at the site.
- 2) A site investigation, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- 3) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (2). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- 4) A Closure Report is submitted upon completion of the works. The closure report shall include full verification details as set out in 3. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean;

Any changes to these components require the express consent of the local planning authority. The scheme shall thereafter be implemented as approved

Reason: In the interests of human health.

13. No development in any phase shall take place until the applicant has secured the implementation of the following details for that phase:

- a) archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved by the Local Planning Authority; and
- b) following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority

The development shall be carried out in accordance with the approved details.

Reason: To ensure that features of archaeological interest are properly examined and recorded and that due regard is had to the preservation in situ of important archaeological remains.

14. No development in any phase shall take place until an Arboricultural Method Statement (AMS) in accordance with the current edition of BS 5837 has been submitted to and approved in writing by the local planning authority for that phase. The AMS should detail implementation of any aspect of the development that has the potential to result in the loss of, or damage to trees, including their roots and, for example, take account of site access, demolition and construction activities, foundations, service runs and level changes. It should also detail any tree works necessary to implement the approved scheme and include a tree protection plan.

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

*Pre-Slab Level*

15. No development above slab level shall take place until specific details of the landscaping proposals, which shall follow the principles shown on the Landscape Strategy Plan (drawing no. 6703 LSP ASP5 RevK), have been submitted to and approved in writing by the local planning authority. The scheme shall be designed in accordance with the principles of the Council's landscape character guidance and include a planting specification, a programme of implementation and a 5 year management plan. The landscape scheme shall specifically address the need to provide the following:

- a) Strengthening and replacement native hedge planting along the site frontage with Church Road.
- b) Structural native tree and shrub planting along the site frontage with Church Road.
- c) Retention of trees along the western boundary and new native tree and shrub planting.
- d) Retention of trees along the southern boundary and new native tree and shrub planting.
- e) Retention of trees along the boundaries with the property 'Squerrys Oast'
- f) Native woodland and shrub planting to create at least a 30m buffer from the Ancient Woodland in the south east corner
- g) Orchard planting to the south of St Nicholas Church.
- h) Native hedge planting within the development.

Reason: To ensure the development accords with the site allocation policy and to provide an appropriate setting.

16. No development above slab level shall take place in any phase until full details of the ecological enhancements outlined in the Ecological Appraisal and their delivery have been submitted to and approved in writing by the local planning authority for that phase. The development shall be carried out

in accordance with the approved details and measures shall include the following:

- a) Wildflower grassland
- b) Measures to allow hedgehogs to move through the development and domes.
- c) Bat and bird boxes.
- d) Habitat piles.

Reason: In the interest of biodiversity protection and enhancement.

17. No development above slab level shall take place in any phase until written details and samples of the materials to be used in the construction of the external surfaces of the building(s) for that phase have been submitted to and approved in writing by the local planning authority and the development shall be constructed using the approved materials. The materials shall follow the 'Materials Distribution Diagram' (16206/SK55D) and include the following:

- a) Multi stock facing bricks
- b) Clay hanging tiles
- c) Clay roof tiles
- d) Slate roof tiles
- e) Ragstone on buildings
- f) Ragstone walling

Reason: To ensure a high-quality appearance.

18. No development above slab level shall take place in any phase until written details and large-scale plans showing the following architectural detailing have been submitted to and approved in writing by the local planning authority for that phase, and the development shall be carried out in accordance with the approved details:

- a) Soldier courses
- b) Bricked arches above windows
- c) Bullnose hanging tile detailing.
- d) Roof overhangs

Reason: To ensure a high-quality appearance.

19. No development above slab level shall take place until a sample panel of the ragstone for the walling and buildings, including mortar mix details, has been submitted to and approved in writing by the Local Planning Authority. Such details as approved shall be fully implemented on site.

Reason: To ensure a high-quality appearance.

20. No development above slab level shall take place until the specific air quality mitigation measures, which shall include the type and location of electric vehicle charging points, have been submitted to and approved in

writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: In the interests of limiting impacts upon air quality.

21. No development above slab level shall take place until a "bat sensitive lighting plan" for the site boundaries has been submitted to and approved in writing by the local planning authority. The lighting plan shall:

- a) Identify those areas/features on site that are particularly sensitive for bats 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 strategy and these shall be maintained thereafter in accordance with the approved plan.

Reason: In the interest of biodiversity protection and enhancement.

22. No development above slab level for any phase shall take place until details of lighting for streets and houses have been submitted to and approved in writing by the local planning authority for that phase.

Reason: In the interest of visual amenity.

23. No development above slab level shall take place until details of the play equipment, bins, seating, surfacing and boundary treatments for the LAP, LEAP and open space areas have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure a high-quality development.

24. No development above slab level shall take place until a written statement of public art to be provided on site in the form of a Public Art Delivery Plan has been submitted to and approved in writing by the local planning authority. This should include the selection and commissioning process, the artist's brief, the budget, possible form, materials and locations of public art, the timetable for provision, maintenance agreement and community engagement, and the development shall be carried out in accordance with the approved details.

Reason: In the interests of the good place making in accordance with the provisions of the Maidstone Borough Council Public Art Guidance.

*Pre-Occupation*

25. The development shall not be occupied until the following off-site highways works have been provided in full:
- a) Improvements to the Church Road/Deringwood Drive junction as shown on drawing no. 34.1 or any alternative scheme agreed in writing with the Local Planning Authority (in consultation with the Highways Authority);
  - b) Improvements to the Deringwood Drive/Willington Street junction as shown on drawing no. 14915-H-01 RevP4 at Appendix C of the 'DHA Transport Technical Note – March 2020' or any alternative scheme agreed in writing with the Local Planning Authority (in consultation with the Highways Authority);
  - c) Road widening and new pavement provision on Church Road as shown on drawing nos. 34.1 and 34.2;
  - d) The give way/build out feature on Church Road as shown on drawing no. 41.1 (Proposed Traffic Calming Arrangement);
  - e) Extension of the 30mph speed limit to the south of the application site to a position agreed in writing with the Local Plan Authority (in consultation with the Highways Authority); and
  - f) Improvements to the A20 Ashford Road/Spot Lane/Roseacre Lane junction as shown on drawing no. 14915-H-02 RevP1 at Appendix J of the 'DHA Transport Technical Note – March 2020' or any alternative scheme agreed in writing with the Local Planning Authority (in consultation with the Highways Authority);

Reason: In the interest of highway safety.

26. The development shall not be occupied until a Final Travel Plan for the development which follows the principles of the Framework Travel Plan has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved Travel Plan.

Reason: In order to promote sustainable transport use.

27. The development shall not be occupied until a site-wide landscape and ecological management plan (LEMP), including timetable for implementation, long term design objectives, management responsibilities and maintenance schedules for all landscaped, open space, and drainage areas, but excluding privately owned domestic gardens, has been submitted to and approved in writing by the local planning authority. Landscape and ecological management shall be carried out in accordance with the approved plan and its timetable 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 and to ensure a satisfactory appearance to the development.

28. The development shall not be occupied until details of the pedestrian and cycle link to and across the area of Council owned land to the south of the site providing a link to Woolley Road and the timing of its delivery have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure appropriate connectivity in the interests of sustainability and highway safety.

29. No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report pertaining to the surface water drainage system, carried out by a suitably qualified professional, has been submitted to the Local Planning Authority which demonstrates the suitable modelled operation of the drainage system such that flood risk is appropriately managed, as approved by the Lead Local Flood Authority. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; topographical survey of 'as constructed' features; and an operation and maintenance manual for the sustainable drainage scheme as constructed.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of paragraph 165 of the National Planning Policy Framework.

30. The development shall not be occupied until details of the metal railings, picket fencing, and any boundary treatments for open space areas have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details

Reason: To ensure a high-quality development'

31. The visibility splays shown on drawing no. 06 RevF (Proposed Access Arrangement) shall be kept free of obstruction above a height of 1 metre.

Reason: In the interests of highway safety.

32. If during construction/demolition works evidence of potential contamination is encountered, works shall cease and the site fully assessed to enable an appropriate remediation plan to be developed. Works shall not recommence until an appropriate remediation scheme has been submitted to, and approved in writing by, the Local Planning Authority and the remediation has been completed. Upon completion of the building works, this condition shall not be discharged until a closure report has been

submitted to and approved in writing by the Local Planning Authority. The closure report shall include details of;

- a) Details of any 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.
- b) Details of any 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.
- c) If no contamination has been discovered during the build then evidence (e.g. photos or letters from site manager) to show that no contamination was discovered should be included.

Reason: In the interests of human health.

Informative:

*The applicant is encouraged to pursue the formal diversion of public right of way KM86 to follow the route currently walked on the ground, which will be formalised as part of this development, and to allow for cycle use along any diverted route as part of the process.*

## **APPENDIX 4**

<b>REFERENCE NOS - 19/501600/OUT &amp; 19/506182/FULL</b>		
<b>APPLICATION PROPOSAL</b>		
19/501600/OUT: Outline application for up to 440 residential dwellings, with associated access, infrastructure, drainage, landscaping and open space (Access being sought with all other matters reserved for future consideration)		
19/506182/FULL: Residential development for 421 dwellings with associated access, infrastructure, drainage, open space and landscaping.		
<b>ADDRESS</b> Land West Of Church Road, Otham, Kent, ME15 8SB		
<b>WARD</b> Downswood And Otham	<b>PARISH/TOWN COUNCIL</b> Otham & Downswood	<b>APPLICANT</b> Bellway Homes Limited <b>AGENT</b> DHA Planning

## **1.0 UPDATE ON OUTLINE APPLICATION**

- 1.01 The applicant lodged an appeal on the basis of non-determination of the outline application with the Planning Inspectorate (PINS) on 11<sup>th</sup> June. This means that the decision on this application now lies with PINS and not the Council. Any decision now made by Committee on this application will be in order to inform PINS what decision the Council would have made and therefore what position MBC will take at the appeal. The appellant has requested a Public Inquiry procedure which officers have advised PINS they consider is appropriate. The Council has instructed Counsel and preliminary work is underway for the appeal.
- 1.02 The applicant has confirmed that the dedicated church car park will form part of their proposals at appeal and also the additional widening of Church Road to the south of the site.

## **2.0 BACKGROUND & PROCEDURE**

- 2.01 This report provides advice on both applications as the first two reasons for refusal are the same for each application and the third is very similar.
- 2.02 Both applications were heard at Planning Committee on 28<sup>th</sup> May 2020. The applications were both recommended for approval and the Committee Reports and Urgent Update Reports are attached at the **Appendix**. Contrary to the recommendation of the Head of Planning and Development, the Committee voted to refuse the applications for the following reasons:

### Outline Application

- The proposal will result in severe traffic congestion on local road networks (Deringwood Drive, Spot Lane, Mallards Way and Madginford Road) and the increase in traffic will adversely affect residents to the point that air pollution is beyond what is reasonable for the Council to accept contrary to Policies H1(8) criteria 9, DM1 and DM6 of the Maidstone Borough Local Plan 2017.*

2. *The proposal will result in worsening safety issues on Church Road to the south of the site which has not been addressed and due to the constraints of the road likely will never be able to be addressed contrary to policy DM1.*
3. *The proposal will adversely affect the settings of the Grade I listed Church and other listed buildings contrary to Policies SP18 and DM4 of the Maidstone Borough Local Plan 2017 where the development will not be protecting or enhancing the characteristics, distinctiveness, diversity and quality of the heritage assets.*

#### Full Application

1. *The proposal will result in severe traffic congestion on local road networks (Deringwood Drive, Spot Lane, Mallards Way and Madginford Road) and the increase in traffic will adversely affect residents to the point that air pollution is beyond what is reasonable for the Council to accept contrary to Policies H1(8) criteria 9, DM1 and DM6 of the Maidstone Borough Local Plan 2017.*
2. *The proposal will result in worsening safety issues on Church Road to the south of the site which has not been addressed and due to the constraints of the road likely will never be able to be addressed contrary to policy DM1.*
3. *The proposal will adversely affect the settings of the Grade I listed Church and Grade II listed Church House contrary to Policies SP18 and DM4 of the Maidstone Borough Local Plan 2017 due to the visual effect of the whole development in both long and short-term views and the development will not be protecting or enhancing the characteristics, distinctiveness, diversity and quality of the heritage assets.*

2.03 Pursuant to paragraph 30.3 (a) of Part 3.1 of the Council's Constitution and paragraph 17 (a) of the Local Code of Conduct for Councillors and Officers Dealing with Planning Matters (Part 4.4 of the Constitution), planning and legal officers advised the Committee that they did not consider each reason for refusal was sustainable and they could have significant cost implications before a vote was taken. Therefore, the decisions of the Planning Committee were deferred to its next meeting.

2.04 Paragraph 17(b) outlines that at the next meeting, should the Committee vote to continue with a decision which it has been advised cannot be sustained at appeal and which could have significant cost implications for the Council's budget, Councillors will be requested to refer the consideration of the application to Part II of the meeting (private session), to offer Members further advice on the legal and financial implications, and the likelihood of success at appeal. If the Committee still decides to refuse the application/impose an unreasonable condition, the Head of Planning and Development will on the advice of the Legal Officer present and in consultation with the Chairman of the meeting, immediately after the vote has been taken, refer the application to the Policy and Resources Committee for determination.

### **3.0 ADVICE**

3.01 Officers have sought Counsel's advice on both the relative strengths of the putative grounds of refusal and the associated risk of costs at appeal and have taken this into account in reaching the views set out below. Counsel's full advice is attached as an **Exempt Appendix** to this report.

3.02 In considering each ground of refusal it is important that Members are reminded of the following principles and matters:

- The need to give clear reasons in a case where Members disagree with an officer's recommendation to grant.
- Consistency in decision-making by a Council in order to maintain public confidence in the development control system. Whilst it is open to a decision maker to depart from the reasoning in a previous decision, reasons for the departure should be given. The principle applies to land use planning, as Lindblom LJ confirmed in *DLA Delivery Ltd v. Baronness Cumberlege of Newick and SSCLG [2018] EWCA CIV 1305*, at paragraph 28. It therefore follows that it appeals to both the decision made to allocate the application site for up to 440 houses in the Council's adopted Local Plan and any subsequent development management decisions relating to the same site.
- Reasons for refusal need to be full, clear and precise and refer to all relevant Development Plan policies.

3.03 In terms of the guidance on the risk of costs, Paragraph: 049 Reference ID: 16-049-20140306 of National Planning Practice Guidance states:

*What type of behaviour may give rise to a substantive award against a local planning authority?*

*Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:*

- *preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.*
- *failure to produce evidence to substantiate each reason for refusal on appeal*
- *vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.*
- *refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead*

*(This list is not exhaustive.)*

**Ground 1 On Both Applications (Severe Traffic Congestion & Air Quality)**

*1. The proposal will result in severe traffic congestion on local road networks (Deringwood Drive, Spot Lane, Mallards Way and Madginford Road) and the increase in traffic will adversely affect residents to the point that air pollution is beyond what is reasonable for the Council to accept contrary to Policies H1(8) criteria 9, DM1 and DM6 of the Maidstone Borough Local Plan 2017.*

**Traffic Congestion/Capacity**

- 3.04 This part of the reason for refusal refers to severe congestion on the named roads. It is advised that this ground is unreasonable, cannot be sustained at appeal, and costs are highly likely to be awarded against the Council if pursued for the following reasons.
- 3.05 The NPPF at paragraph 109 states that development should only be prevented or refused on highways grounds if the residual cumulative impacts on the road network would be severe. KCC Highways in their comments on the applications are not raising objections on the basis of a severe impact upon any of the named roads. The applicant's evidence demonstrates that, with the mitigation proposed, traffic impacts on these roads would not be made any worse by the development when forecasted ahead to 2029.
- 3.06 With regard to Deringwood Drive, and as outlined in the committee reports, the proposed signalisation of the junction with Willington Street will significantly reduce the potential maximum queuing length from 288 vehicles (which includes general traffic growth, other sites with planning permission and the proposed development) down to a maximum of 39 vehicles in the AM peak hour, which would be a clear improvement. It should be noted that even without this development the predicted number of vehicles that will occur in 2029 would be 173 so again this illustrates the proposed mitigation will result in a significant improvement. KCC Highways also did not raise an objection in terms of the traffic impact on Deringwood Drive subject to the mitigation.
- 3.07 With regard to Spot Lane/Mallards Way, the proposed junction improvement where Spot Lane meets the A20 would ensure that the capacity of the junction remains the same when development traffic is taken into account and KCC Highways are not raising objections in terms of the traffic impact on this junction or on Mallards Way.
- 3.08 With regard to Madginford Road, the applicant's evidence shows that there would be no change in the traffic volumes on Madginford Road where it meets Willington Street as a result of the development and KCC Highways are not raising objections in terms of the traffic impact on this road.
- 3.09 For the above reasons it is advised that a ground relating to severe traffic congestion on the roads referred to could not be reasonably defended at

appeal and costs are highly likely to be awarded against the Council for unreasonable behaviour.

- 3.10 KCC Highways have been consulted for their views on the grounds for refusal. They have advised they do not consider there is evidence to support the view that a severe impact will arise on Spot Lane, Mallards Way or Madginford Road. In relation to Deringwood Drive, they advise the proposed junction improvement would mitigate the impact on this road but reiterate their view that this would result in a severe impact on Willington Street. In their words, they consider, *"there is thus an evidenced inter-dependency and KCC Highways could therefore support MBC on this element of the refusal reason at an appeal."*
- 3.11 Whilst KCC Highways are advising they would support the Council relating to Deringwood Drive, to pursue the ground on this basis would be unreasonable and this not recommended. The ground specifically relates to the traffic impact on Deringwood Drive only (where officers and KCC Highways advise the traffic impact can be mitigated) and not Willington Street. If the Council attempted to stretch this ground to cover Willington Street, where Committee have not raised an objection, this would be regarded as unreasonable behaviour and costs are highly likely to be awarded against the Council. It would be for KCC Highways to defend their own position if they took this approach at any appeal.
- 3.12 In terms of consistency in decision-making, the site is allocated under policy H1(8) for up to 440 dwellings and Full Council previously voted for the policy to be adopted in the Local Plan. In doing so they have found it to be sound and the Local Plan Inspector has also found the policy to be sound through an Examination in Public. The traffic impacts and congestion for the South East Maidstone Strategic sites, which include this site, were comprehensively assessed (including using the Council's own commissioned modelling) and this was a major reason for Full Council agreeing on this site allocation with the Local Plan adopted in 2017. The grounds put forward by Planning Committee do not explain what is different in 2020 from when the Council decided the site was suitable for 440 dwellings in 2017, and it is advised that there is not a defensible reason for reaching a different decision on traffic congestion. For these reasons it is advised that a ground relating to severe traffic congestion on the roads referred to would also be unreasonable on the basis of inconsistent decision-making.
- 3.13 There were some discussions at the previous meeting suggesting that because the Plan was adopted nearly 3 years ago the traffic data and evidence behind it is potentially out of date. Officers advised that this was not the case because transport evidence makes assessments into the future and in the case of the Local Plan to 2031, and for this application to 2029. This includes assessing the cumulative impact of traffic from other planned developments and background traffic growth. As such, the traffic assessment work carried out for the Local Plan remains highly relevant.

#### Air Quality

- 3.14 This element of the ground considers that air pollution from the traffic on the named roads would be beyond what is reasonable contrary to policy H1(8) criterion 9, DM1 and DM6. It is advised that this ground is unreasonable, cannot be sustained at appeal, and costs are highly likely to be awarded against the Council if pursued for the following reasons.
- 3.15 As outlined in the committee reports, the applicant's Air Quality Assessment concludes that small increases in NO2 concentrations are expected as a result of the proposed development and overall these increases are expected to have a negligible impact on air quality and would not cause any exceedances of the relevant Air Quality Standards. The Council's Environmental Health section has reviewed the assessment and raises no objections to these conclusions. In line with the Council's Air Quality Planning Guidance, an emissions mitigation calculation has been used to quantify potential emissions from the development and provides a suggested mitigation value for proportionate mitigations to be integrated into the development. A number of potential mitigation measures are outlined and the specific measures are secured by recommended conditions.
- 3.16 For the reasons above and as there is no evidence to the contrary, it is advised that the grounds relating to air quality impacts could not be successfully defended at appeal and costs would be very likely awarded against the Council.
- 3.17 (In the event that Committee wishes to pursue this reason for refusal policy DM21 should be referred to which concerns the transport impacts of development.)

**Ground 2 On Both Applications (Highway Safety on Church Road to the South of the Site)**

*2. The proposal will result in worsening safety issues on Church Road to the south of the site which has not been addressed and due to the constraints of the road likely will never be able to be addressed contrary to policy DM1.*

- 3.18 It is advised that this ground is unreasonable, cannot be sustained at appeal, and that there is a risk of costs being awarded against the Council if this ground is pursued but that the risk is low for the following reasons.
- 3.19 This ground is based on KCC Highways objection to both applications on the basis of worsening safety hazards for road users on Church Road. For clarity, outside the application site Church Road will be widened to 5.5m. The objection relates to the section of Church Road from a point south of the application site to the point where Church Road meets White Horse Lane (approximately a 1km distance). It relates to the narrow width of this section of Church Road, forward visibility, and no pavements. The width is below 4.8m for much of its length (between 4.1m and 4.5m) and at 3.9m for a very short section and KCC Highways require a 5.5m width along the full length of Church Road.

- 3.20 As outlined in the committee reports, Church Road is already a two-way road with a low incidence of accidents which is shown in the collected data and KCC acknowledge the road is already well-used and has a relatively good crash record. Their concern is that there will be additional traffic movements from the development. However, the predicted increase from the development is on average just over one additional movement a minute over the peak hour and the peak hour traffic associated with the development is likely to be light vehicles. On this basis it is difficult to maintain a robust objection on highway safety grounds relating to Church Road south of the site and for this reason officers remain of the view that the ground is considered to be unreasonable.
- 3.21 In addition, the applicant has put forward some mitigation in the form of extending the 30mph limit around 500m south of the Church, introducing build-outs with a give way feature on a bend just to the south of the site where there is limited visibility, and widening Church Road to 5.5m for approximately a 210m section to the south of 'Little Squerryes'. KCC Highways have acknowledged that these measures will provide improvements but will not overcome their objection. If Members pursue this ground they need to make clear whether they have considered these measures and whether they overcome their concerns or not.
- 3.22 Importantly, Policy H1(8) does not require the widening of any part of Church Road. The Local Plan Inspector explored the highway safety issues of this Policy and did not require any widening of Church Road, or reject the site allocation on this basis. Again, Full Council decided that the site allocation was sound and the Committee has not given any reason why they now take a different view. For this reason, it is advised that a ground relating to highway safety on Church Road would also be unreasonable on the basis of inconsistent decision-making.
- 3.23 The risk of costs is considered to be lower for this ground because as a matter of fact Church Road is narrow in places to the south of the site so the substance of the ground is not unfounded. However, for the reasons outlined above it is still advised that to pursue this ground would be unreasonable and so there is a risk of costs. As a matter of planning judgement, it is considered that an Inspector is unlikely to support the reason for refusal and will find highway safety conditions to the south of the site, as proposed to be mitigated, acceptable. KCC Highways have advised they will support this ground and so would be expected to lead on this ground at appeal should it be pursued by Committee.

### **Ground 3 On Both Applications (Harm to the Setting of Listed Buildings)**

#### *Outline*

3. *The proposal will adversely affect the settings of the Grade I listed Church and other listed buildings contrary to Policies SP18 and DM4 of the Maidstone Borough Local Plan 2017 where the development will not be protecting or enhancing the characteristics, distinctiveness, diversity and quality of the heritage assets.*

*Full*

*3. The proposal will adversely affect the settings of the Grade I listed Church and Grade II listed Church House contrary to Policies SP18 and DM4 of the Maidstone Borough Local Plan 2017 due to the visual effect of the whole development in both long and short-term views and the development will not be protecting or enhancing the characteristics, distinctiveness, diversity and quality of the heritage assets.*

3.24 It is advised that this ground is unreasonable, cannot be sustained at appeal, and costs are highly likely to be awarded against the Council if pursued for the following reasons.

3.25 In agreeing to allocate the site for up to 440 houses the Council have accepted that there will inevitably be an impact upon the setting of the nearby listed buildings otherwise the site would not have been allocated at all, or a smaller area of the site and/or lower number of houses would have been allocated.

3.26 The Council's decision to adopt policy H1(8) implies an acceptance that if there was an undeveloped section of land retained along the eastern edge of the site, if the Church Road frontage was built at a lower density, and if open land to the north of the Church was retained, this would protect the setting of the Church as required under criterion 3, 4, and 6. For the outline application the detailed layout of the development is not being considered at this stage and so these requirements could be fulfilled at the reserved matters stage. For the full application the Policy requirements are being fulfilled. As such, there is no explanation as to why the Committee now considers there to be an adverse impact when the Council's adopted policy outlines how this could be avoided and has been complied with.

3.27 For the full application Members were asked to clarify if a specific element of the proposed development was causing harm to the setting of the listed buildings. Committee clarified it is the whole development that causes the adverse harm and so by implication that no development at the site is acceptable for heritage reasons. This is clearly unreasonable on the basis that the Council has allocated the site for up to 440 houses.

3.28 For the full application, the reason refers to long and short-term views (assumed to mean long 'distance' and short 'distance' views) but policy H1(8) has already specified what is necessary to ensure open views of the Church are maintained whether they be short or long distant.

3.29 Officers, including the Council's Conservation Officer have advised that the level of harm to the setting of the Church and Church House is 'less than substantial' and this is also the view of Historic England. The layout was developed in discussion with Historic England and in their comments on the full application they state, "*we also accept that it is unlikely the overall harm can be reduced given other constraints on the site and thus that the proposal in its current form is capable of meeting NPPF requirements to*

*minimise and thus also justify harm.*” Their objection centres on the lack of a church car park.

3.30 Where the harm is considered to be ‘less than substantial’ paragraph 196 of the NPPF requires this harm to be weighed against the public benefits of the development. In this case the public benefits are significant including providing over 400 houses in order for the Council to meet its housing requirement up to 2031 and which includes a significant quantum of affordable housing, the delivery of which is the top priority under policy ID1 (Infrastructure Delivery) of the Local Plan. This balancing exercise does not appear to have been undertaken by the Committee.

3.31 For these reasons it is advised that both reasons for refusal are unreasonable. The outline application could comply with the site policy and the full application does comply. There is no good reason for taking a different view from when the site was allocated because the number of dwellings being proposed is the same as, or less than, what is endorsed by Policy H1(8).

3.32 (In the event that these grounds are pursued on both applications they should state specifically which listed building settings are harmed. One would also expect the listed buildings affected would be the same for both applications. In relation to the full application it should clarify what is meant by a ‘long term and short term’ views.)

#### **4.0 CONCLUSION**

4.01 Reasons for refusal 1 and 3 on both applications are unreasonable, cannot be sustained at appeal, and are highly likely to result in significant costs awards against the Council. Reason for refusal 2 is unreasonable, cannot be sustained at appeal, and there is a risk of a significant costs award against the Council but this is considered to be low.

4.02 It is difficult to advise the precise level of costs, however, the appeal already lodged will be carried out under the Public Inquiry procedure where legal representation and expert witnesses (planning, highways, air quality, and heritage) will be required by all parties and this process is already underway. Counsel has advised that a costs award against the Council could be in the region of £95,000 which is considered to be a reasonable estimate. This excludes the Council's usual liability to bear its own costs associated with defending any appeal.

4.03 For the outline application, it is recommended that Committee decides to advise PINS that the Council ‘would have’ approved planning permission subject to the conditions and legal agreement as set out in the committee reports.

4.04 For the full application, it is recommended once more that planning permission is granted for the development subject to the conditions and legal agreement as set out in the committee report.

## **APPENDIX 5**

**REFERENCE NOS** - 19/501600/OUT & 19/506182/FULL

**APPLICATION PROPOSAL**

19/501600/OUT: Outline application for up to 440 residential dwellings, with associated access, infrastructure, drainage, landscaping and open space (Access being sought with all other matters reserved for future consideration)

19/506182/FULL: Residential development for 421 dwellings with associated access, infrastructure, drainage, open space and landscaping.

**ADDRESS** Land West of Church Road, Otham, Kent, ME15 8SB

**WARD** Downswood And  
Otham

**PARISH/TOWN**  
**COUNCIL** Otham &  
Downswood

**APPLICANT** Bellway  
Homes Limited

**AGENT** DHA Planning

**1.0 BACKGROUND**

1.01 At the Committee meeting on 25<sup>th</sup> June Members resolved to refuse (or in the case of the outline would have refused) both applications for the following reasons:

***1. Whilst mitigating increased traffic congestion on Deringwood Drive, the proposed improvements to the Deringwood Drive and Willington Street junction will result in severe traffic congestion on Willington Street contrary to policy DM21 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.***

***2. The proposal will result in worsening safety issues on Church Road to the south of the site which have not been addressed and due to the constraints of the road are likely to not be addressed by the application proposals and the mitigation proposed is not sufficient to overcome the safety concerns contrary to policy DM1 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.***

1.02 As the Planning Committee voted to continue with a decision it was advised could not be sustained at appeal and which could have significant cost implications for the Council's budget, the Head of Planning and Development on the advice of the Legal Officer present and in consultation with the Chairman, referred both applications to the Policy and Resources Committee for determination.

**2.0 ADVICE**

2.01 Officers have also sought further advice from Counsel on both the relative strengths of the grounds of refusal and the associated risk of costs at appeal and Counsel's full advice is attached at **Exempt Appendix 7**. Officer's advice on these grounds is set out below.

- 2.02 Members attention is drawn to the principles relating to decision-making and the guidance on costs risk as set out at the start of Section 3.0 of the report at **Appendix 4**.

**Ground 1 On Both Applications (Severe Traffic Congestion on Willington Street)**

***Whilst mitigating increased traffic congestion on Deringwood Drive, the proposed improvements to the Deringwood Drive and Willington Street junction will result in severe traffic congestion on Willington Street contrary to policy DM21 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.***

- 2.03 It is advised that this ground is unreasonable, cannot be sustained at appeal, and costs are highly likely to be awarded against the Council if pursued for the following reasons.
- 2.04 As background, the applicant is proposing improvements in the form of traffic lights at the Deringwood Drive (DD) and Willington Street (WS) junction in order to mitigate traffic flows from the development on DD. The signalisation of the junction significantly reduces the potential maximum queuing length from 288 vehicles down to a maximum of 39 vehicles in the AM peak hour, which is a clear and significant improvement. Indeed, even without this development the predicted number of vehicles that will occur in 2029 would be 173 so again this illustrates the proposed mitigation will result in a significant improvement. However, Planning Committee considered the improvements would result in severe traffic congestion on WS which is based upon the objection from KCC Highways.
- 2.05 This matter is discussed at the 'Local Junctions' section of the Committee Reports and it is advised that the evidence does not support the case for a severe impact as required by the NPPF. As outlined in these reports, two arms of the proposed junction would be up to 14% over theoretical capacity if all pedestrian crossings were operated (so a worst-case scenario). If all crossing were not operated the junction would be within capacity. It is also the case that new traffic signals are unlikely to result in any significant change in traffic conditions on WS or to a degree that would be severe because extensive queueing already occurs along the WS corridor and past this junction. The applicants evidence also shows that when the WS/A20 junction (as to be improved by KCC), WS/Madginford Road junction and proposed traffic lights are modelled together, the delay that would be experienced along this part of WS would actually be reduced.
- 2.06 In addition, the cumulative traffic impacts of all the South East Maidstone strategic sites including the application site have been comprehensively modelled and no severe impacts were predicted once the mitigation measures are in place and this was examined through the Local Plan process.
- 2.07 The NPPF at paragraph 38 requires that local planning authorities should approach decisions on proposed development in a positive and creative way. The proposed junction improvements would serve to significantly lower

predicted queuing on DD, would better manage traffic and provide safer opportunities for DD traffic to exit the junction, and improve pedestrian crossing facilities. As the impact on WS is not severe the ground of refusal is not considered to represent a positive or balanced approach to the consideration of traffic mitigation on the local road network for this development.

- 2.08 In terms of consistency in decision-making, the site is allocated under policy H1(8) for up to 440 dwellings and Full Council previously voted for the policy to be adopted in the Local Plan. In doing so they have found it to be sound and the Local Plan Inspector has also found the policy to be sound through an Examination in Public. There needs to be a strong reason why the proposal is now unacceptable when it was acceptable in 2017. The grounds put forward by Planning Committee do not explain what is different in 2020 from when the Council decided the site was suitable for 440 dwellings in 2017, and it is advised that there is not a defensible reason for reaching a different decision on traffic congestion. Therefore, a ground relating to severe traffic congestion on WS would also be unreasonable on the basis of inconsistent decision-making.
- 2.09 It is advised that this potential reason for refusal is weakened by the fact that Planning Committee did not raise the impact on WS as harmful or of concern when it first formulated reasons for refusal on 28<sup>th</sup> May 2020 and this adds to the argument that there has been inconsistency in the decision-making process.
- 2.10 For these reasons it is advised that a ground relating to severe traffic congestion on WS could not be reasonably defended at appeal and costs are highly likely to be awarded against the Council for unreasonable behaviour.

**Ground 2 On Both Applications (Highway Safety on Church Road to the South of the Site)**

***The proposal will result in worsening safety issues on Church Road to the south of the site which have not been addressed and due to the constraints of the road are likely to not be addressed by the application proposals and the mitigation proposed is not sufficient to overcome the safety concerns contrary to policy DM1 of the Maidstone Borough Local Plan 2017 and Paragraphs 108 and 109 of the National Planning Policy Framework.***

- 2.11 It is advised that this ground is unreasonable, cannot be sustained at appeal, and that there is a risk of costs being awarded against the Council if this ground is pursued but that the risk is lower for the following reasons.
- 2.12 The substance of this ground remains the same as that made on 28<sup>th</sup> May but with clarification that the applicant's proposed mitigation measures are not considered to overcome the objection. Although this provides clarification it does not make the reason for refusal any more robust.
- 2.13 This ground is considered to be unreasonable for the same reasons outlined previously in the report at **Appendix 4**, namely - it is difficult to maintain a

robust objection on highway safety grounds relating to Church Road south of the site; Policy H1(8) and the site allocation, which was examined by the Local Plan Inspector, does not require the widening of any part of Church Road; and there is no sound reason for Committee to reach a different view from when Full Council agreed to adopt the site policy in 2017.

2.14 As previously advised, the risk of costs is considered to be lower for this ground because as a matter of fact Church Road is narrow in places to the south of the site so the substance of the ground is not unfounded. However, it is still advised that to pursue this ground would be unreasonable and so there is a risk of costs. As a matter of planning judgement, it is considered that an Inspector is unlikely to support the reason for refusal and will find highway safety conditions to the south of the site, as proposed to be mitigated, acceptable.

### **3.0 CONCLUSION**

3.01 Reasons for refusal 1 on both applications is unreasonable, cannot be sustained at appeal, and is highly likely to result in significant costs awards against the Council. Reason for refusal 2 is unreasonable, cannot be sustained at appeal, and there is a risk of a significant costs award against the Council but this is considered to be lower.

3.02 It is difficult to advise the precise level of costs, however, the appeal already lodged will be carried out under the Public Inquiry procedure where legal representation and expert witnesses (planning and highways) will be required by all parties and this process is already underway. Counsel has advised that a costs award against the Council could be in the region of £95,000 which is considered to be a reasonable estimate. This excludes the Council's usual liability to bear its own costs associated with defending any appeal which is estimated at around £70,000.

3.03 For the outline application, it is recommended that Committee decides to advise PINS that the Council 'would have' approved planning permission subject to the conditions and legal agreement as set out in the committee reports.

3.04 For the full application, it is recommended that planning permission is granted for the development subject to the recommendation, conditions and legal agreement as set out in the committee report.