

APPLICATION: MA/09/2260 Date: 11 December 2009 Received: 14 December 2009

APPLICANT: Mr A Munton, Bellway Homes Ltd

LOCATION: FORMER LEONARD GOULD WORKS, PICKERING STREET,
MAIDSTONE, KENT, ME15 9RS

PARISH: Loose

PROPOSAL: An application to Vary Condition 8 of MA/09/1535 (Application for approval of reserved matters of layout, scale, appearance and landscaping for erection of 65 dwellings pursuant to outline planning permission MA/04/1363 as amended by MA/08/1455) read 'The 17 affordable housing units shall achieve Level 3 of the Code for Sustainable Homes. No affordable dwelling shall be occupied until a Design Stage certificate has been issued for it certifying that the appropriate Code Level 3 has been achieved. The remaining 'open-market' dwellings shall achieve Level 2 of the Code for Sustainable Homes and no 'open-market' dwelling shall be occupied until a Design Stage certificate has been issued for it certifying that the appropriate Code Level 2 has been achieved. ' as shown in design and access statement and supporting letter received 14/12/2009 as amended by letter and confidential financial information received 15/03/2010 and by further confidential financial information received 27/05/2010.

AGENDA DATE: 10th June 2010

CASE OFFICER: Steve Clarke

The recommendation for this application is being reported to Committee for decision because:

- It is contrary to views expressed by Loose Parish Council

1. POLICIES

Maidstone Borough-Wide Local Plan 2000: N/A

South East Plan 2009: CC1, CC4

Village Design Statement: N/A

Government Policy: PPS1, PPS3

2. HISTORY

- MA/09/1535: Application for approval of reserved matters of layout, scale, appearance and landscaping for erection of 65 dwellings pursuant to outline planning permission MA/04/1363 as amended by MA/08/1455: APPROVED 05/11/2009
- MA/08/1455: Application to vary condition 2 of planning permission MA/04/1363 (Outline application for the provision of residential development at a minimum density of 30 dwellings per hectare with all matters to be reserved for future consideration) to read 'this proposed development shall comprise 65 dwellings' as opposed to 'this proposed development shall have a maximum density of 30 dwellings per hectare': APPROVED 30/10/2008
- MA/04/1363: Outline application for the provision of residential development at a minimum density of 30 dwellings per hectare with all matters except access to be reserved for future consideration: APPROVED 04/09/2006

3. CONSULTATIONS

3.1 Loose Parish Council commented on 6 January 2010 as follows

"The Loose Parish Council wish to see the application refused and request that the application is reported to the Planning Committee for the reasons set out as follows:

- We do not wish to see all the remaining houses on the site to be a lower Sustainable Code Level. It was previously agreed by MBC (see minutes planning committee 5th Nov 09) that 'every effort should be made by the developer to ensure that the entire development achieves a minimum of Level 3 within the Code for Sustainable Homes', although this was then subsequently changed (re condition 8 MA/09/1535) to no less than 33 units.
- It is felt that any risks for the development should be taken on board by the developers. Any losses that arise, such as in this case in respect of locating additional asbestos, should be borne by the developer and should not serve any detrimental affect on the sustainability of the dwellings.

We wish to uphold the original condition 8 that 'no less than 33 units within the development (including the 17 affordable housing units) shall achieve a minimum of Level 3 of the Code for Sustainable Homes. The remaining 32 units shall achieve a minimum of Level 2 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that the appropriate Code Level 2 or Code Level 3 (in respect of a minimum of 33 units) has been achieved. Reason - To ensure a sustainable and energy efficient form of development pursuant to policy CC4 of the South East Plan'.

We cannot comment on the Core Strategy Policy and the planning case law relating to the viability of the site as referred to in the accompanying letter from Bellway Homes. This is an issue that needs to be appraised by MBC."

- 3.2 The Parish Council have been consulted on the change where the 'open market' housing would achieve level 2 rather than no level as originally applied for by the applicants. Any further comments received will be reported to Members at the meeting.

4. REPRESENTATIONS

- 4.1 Three individual letters of objection (two are identical) have been received. Objections are raised on the following (summarised) grounds.
- The developers should not be allowed to downgrade the Code level to maintain their profit margin.
 - Why was this level of contamination not shown in a pre-purchase survey?
 - Concerns that the site has not been properly de-contaminated and thus risking danger to the health of nearby residents.

5. CONSIDERATIONS

5.1 Site Description

- 5.1.1 The application site comprises some 1.89ha of land located on the eastern side of Pickering Street, Loose. It is wholly located within the urban area of Maidstone as defined by the Maidstone Borough-wide Local Plan 2000.
- 5.1.2 Until recently the site was occupied by industrial premises with the area outside the buildings mainly hardstanding. These buildings were predominantly large sheds, interconnected, with a number of circular 'silo' towers attached to these units. Much of the site was built upon, with only a small area of hardstanding to the rear of the site, and within an internal service yard. The former buildings have now been demolished and the hardstanding areas taken up.
- 5.1.3 As can be seen from the site history section earlier in the report, outline planning permission with all matters reserved for subsequent approval was granted on 04/09/2006 under reference MA/04/1363 for the redevelopment of the site for residential purposes. The application for approval of reserved matters for 65 units was submitted under reference MA/09/1535 and was approved on 5 November 2009.

5.2 Proposal

- 5.2.1 The approval of reserved matters for the residential development granted under reference MA/09/1535 on 5 November 2009 was subject, amongst others, to the following condition.

8: Not less than 33 units within the development (including the 17no. affordable housing units) shall achieve a minimum of Level 3 of the

Code for Sustainable Homes. The remaining 32 units shall achieve a minimum of Level 2 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that the appropriate Code Level 2 or Code Level 3 (in respect of a minimum of 33 of the units) has been achieved.

Reason: To ensure a sustainable and energy efficient form of development pursuant to policy CC4 of the South East Plan 2009.

5.2.2 The applicants originally sought to vary the condition to read as follows;

"The 17 affordable housing units shall achieve Level 3 of the Code for Sustainable Homes. No affordable dwelling shall be occupied until a final Code Certificate has been issued for it certifying that the appropriate Code Level 3 has been achieved."

5.2.3 This would have resulted in the 48 open market houses not being required to achieve any Code Level if permission had been granted.

5.2.4 The proposal has now been amended following negotiation with the applicant so that the resultant condition would read as follows;

"The 17 affordable housing units shall achieve Level 3 of the Code for Sustainable Homes. No affordable dwelling shall be occupied until a Design Stage certificate has been issued for it certifying that the appropriate Code Level 3 has been achieved. The remaining 'open-market' dwellings shall achieve Level 2 of the Code for Sustainable Homes and no 'open-market' dwelling shall be occupied until a Design Stage certificate has been issued for it certifying that the appropriate Code Level 2 has been achieved. "

5.2.5 This variation has the effect of still ensuring the affordable housing units would meet the requirements of Code Level 3 as required by the Homes and Communities Agency (HCA), but that the 'open-market' housing would all now achieve level 2. I appreciate that this would be 16 less units within the development that would achieve Level 3 than originally approved.

5.2.6 The applicants have submitted the current application following an intrusive site survey that was not possible until they had fuller access to the site at the time the reserved matters application was submitted and approved. This survey did indicate a larger presence of asbestos on the site than originally planned for and lead to the applicants facing additional remediation costs of around £250,000 as I reported to Members at the meeting on 5 November 2009, when the original condition limiting the numbers of Code 3 dwellings in the site was agreed.

5.2.7 However, the true extent of the contamination across the site only became apparent as the buildings on the site were completely demolished and the

concrete bases removed under which it was found that significant quantities of asbestos had been buried and spread the across the site and concrete poured over it to form the bases of the buildings and hardstanding areas, all of which requires remediation. As a consequence, the costs of the clean-up have significantly risen.

5.2.8 When the current application was submitted, the costs had risen to £500,000. Latest figures supplied by the applicant (a full breakdown is attached as an Exempt Appendix to this report) show that clean up costs now exceed £1.25 million. Pockets of asbestos remain on the site waiting to be remediated, so costs will rise further. It is contended therefore that these substantial additional and unforeseen costs continue to affect the overall viability of the scheme.

5.2.9 Also in support of their application the applicants make reference to the advice in the Supplement to PPS1: Planning and Climate Change. This states at paragraph 33 that;

'Any policy relating to local requirements for decentralised energy supply to new buildings or for sustainable buildings should be set out in a DPD not a supplementary planning document so as to ensure examination by an independent inspector.'

The applicants contend that as the Council does not have an adopted Core Strategy policy relating to the requirement for Code 3 that the original condition should not have been sought.

5.2.10 Reference is also made to two appeal decisions elsewhere in the Country in South Gloucestershire (November 2009) and Berkshire (September 2009), the latter being in the South East Plan Area, where in both cases the Planning Inspectorate upheld the argument that sustainability measures could not be sought where there was not an adopted Core Strategy policy.

(Officer comment: I am aware of a similar case in Sevenoaks that was determined on 16 April 2010 where the Inspector reached similar conclusions).

5.3 **Assessment**

5.3.1 The Council seeks to ensure that new residential development in particular, is constructed using sustainable construction standards and techniques. This is encouraged through the advice in PPS1 and its 'Supplement: Planning Policy and Climate Change,' and the requirements of Policy CC4 of the South East Plan 2009, which states that 'new development will be expected to adopt and incorporate sustainable construction standards and techniques. The channel for this is the Code for Sustainable Homes which sets out, inter-alia, standards for energy efficiency and water use.

- 5.3.2 Where possible, the Council seeks to negotiate new development so that it achieves Code Level 3 as ensuring sustainable construction takes place, is in my view an integral part of the process of securing good design. Such measures also take into account the potential impacts of climate change and the minimisation of use of resources as encouraged in PPS1 and its supplements and other government advice.
- 5.3.3 In this particular site, it is disappointing that the applicant has chosen to cut costs by seeking to lower the code level especially given that there are likely to be actual fuel cost savings to prospective occupiers and this could have been used in marketing. Secondly there is a dichotomy in that the affordable dwellings are required to meet level 3 and that the open market dwellings will only now meet level 2. Members may be aware that this gulf will widen in April 2011 when the requirements of the HCA will increase to level 4 and affordable housing will be required to comply to receive funding.
- 5.3.4 However, in this case I am mindful of the costs evidence submitted by the applicants. Circumstances on the site have, as can be seen from the details set out earlier in the report, changed as the remediation costs for cleaning up the site have again escalated significantly as the full extent of the asbestos contamination on the site became apparent.
- 5.3.5 I am also mindful of the government advice at paragraph 33 of the Supplement to PPS1 that local sustainable buildings requirements must be developed in the form of Development Plan Documents in order that they can be subject to scrutiny by an independent inspector. This advice has been upheld as recently as April 2010, in the case of a development in Sevenoaks in respect of a condition imposed on a planning permission for a single replacement dwelling. The two appeal decisions referred too by the applicants in their submissions are also recent (September and November 2009). In the absence of any national requirement that sets a specific level that should be met by new development, locally based criteria can only be applied through and independently assessed DPD policy. This Council does not have locally set criteria in an adopted DPD policy.
- 5.3.6 Notwithstanding this, the applicants have agreed to the 'open-market' housing achieving Code Level 2 rather than no specific requirement. I consider this to be acceptable in this instance given the particular circumstances that have come to light on the site.

5.4 Other issues

- 5.4.1 The change to the level of Code proposed, will not affect the external appearance or visual impact of the development on its surroundings including

the landscaping within and around the site. The changes will not result in any change to or a different impact on the residential amenities of the occupiers of existing neighbouring dwellings. There are also no highway implications arising from the development.

6. CONCLUSION

- 6.1 Support for the Council's general approach in seeking to negotiate Code Level 3 for new development in accordance with the requirements of the Code for Sustainable Homes is clearly given through policy CC4 of the South East Plan 2009 and the advice in PPS1 and PPS3 as it is part of the process of ensuring good design.
- 6.2 The applicants have demonstrated that they have encountered significant additional unforeseen costs in the remediation of the site. The Environmental Health section has confirmed that the figures shown are not excessive and particularly on this site have been raised due to it being necessary to remove asbestos from under and around existing trees within and adjoining the site as well as carry out extensive excavation across the site to ensure all contaminants are removed.
- 6.3 Whilst it is regrettable that there will be a dichotomy on this site between the affordable and open market dwellings, given the particular circumstances that have come to light and the lack of a tested local DPD policy I consider the variation of the condition as now proposed is acceptable.

7. RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

1. The 17 affordable housing units shall achieve Level 3 of the Code for Sustainable Homes. No affordable dwelling shall be occupied until a Design Stage certificate has been issued for it certifying that the appropriate Code Level 3 has been achieved. The remaining 'open-market' dwellings shall achieve Level 2 of the Code for Sustainable Homes and no 'open-market' dwelling shall be occupied until a design stage certificate has been issued for it certifying that the appropriate Code Level 2 has been achieved.

Reason: To ensure a sustainable and energy efficient form of development pursuant to policy CC4 of the South East Plan 2009.

Informatives set out below

You are advised that all other conditions relating to planning permissions MA/04/1363 and MA09/1535 remain valid and should be complied with as required.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.