

<b>REFERENCE NO - 21/504779/REM</b>		
<b>APPLICATION PROPOSAL</b> Approval of Reserved Matters with Appearance and Scale being sought for 102no. residential dwellings pursuant to 17/500357/HYBRID for Hybrid planning application comprising: Full Application - Erection of 48 dwellings and associated infrastructure, landscaping and open space. Outline Application - Erection of 102 dwellings (access, layout and landscaping to be sought).		
<b>ADDRESS</b> Land North Of Old Ashford Road Lenham Kent ME17 2QT		
<b>RECOMMENDATION</b> Permit subject to s106		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>  The Reserved Matters of appearance and scale of the dwellings in phase 2 is considered to be acceptable and in accordance with policies H1 (41) and DM1 of the MBLP and D1 of the LNP. Further details are required by condition on construction details and materials to ensure high quality vernacular, including Kentish ragstone in some of the buildings.  In terms of the issue of Nutrient Neutrality for the Stour catchment, it is concluded that the credits that developer intends to purchase from Forestry England's Pleasant Forest scheme means that the development of 102 dwellings in this RM application would be "nutrient neutral" due to full mitigation of potential significant impacts on the integrity of the SAC/Ramsar site at Stodmarsh.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> This is a major application affecting Nutrient Neutrality for the Stour catchment should be considered by Planning Committee		
<b>WARD</b> Harrietsham And Lenham	<b>PARISH/TOWN COUNCIL</b> Lenham	<b>APPLICANT</b> Abbey Developments <b>AGENT</b> CMYK (Planning & Design)
<b>TARGET DECISION DATE</b> 31/08/23		<b>PUBLICITY EXPIRY DATE</b> 01/03/23

**Relevant Planning History**

17/500357/HYBRID  
Hybrid Planning Application comprising: -  
Full Application - Erection of 48 dwellings and associated infrastructure, landscaping and open space  
Outline Application - Erection of 102 dwellings (access, layout and landscaping to be sought)  
Approved 28.09.2018

21/504854/SUB  
Submission of details pursuant to condition 7 (details of materials) of application 17/500357/HYBRID.  
Approved 16.03.2022

21/505698/SUB  
Submission of details to part discharge (plots 1 -5 and 17 - 48) of condition 12 (Landscaping) in relation to planning permission 17/500357/HYBRID.  
Pending Consideration

22/501032/SUB

Submission of details to partially discharge condition 5 (surface water drainage) for plots 1-48 granted detailed planning permission under 17/500357/HYBRID.  
Approved 20.05.2022

22/505953/SUB

Submission of Details pursuant to condition 3 (Proposed Slab Level Details) of Application 17/500357/HYBRID (phase 2)  
Approved 07.03.2023

23/501068/SUB

Submission of Details for Street and Private Lighting of Phase 1 (plots 17-48) pursuant to condition 14 (Lighting Details) of Application 17/500357/HYBRID.  
Pending Decision

23/501284/SUB

Submission of details to discharge condition 19 (SuDS Maintenance) of planning application 17/500357/HYBRID.  
Approved 26.04.2023

## **MAIN REPORT**

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

- 1.01 The site for phase 2 of the development is on the north east side of Lenham and is a parcel of arable land between the A20 to the north, and Old Ashford Road to the south, with an area of some 3.18ha (which is part of an overall site of 5.2ha).
- 1.02 The AONB is immediately north of the A20 and rises steeply northwards towards the Memorial Cross which is a Grade II listed. Views of this are expressly preserved in the approved layout from the Public Right of Way (PROW) KH433 that runs through the centre of the overall site from south to north.
- 1.03 The wider site also includes land on the south side of Old Ashford Road where an attenuation pond for surface water drainage to serve the whole development has been constructed.
- 1.04 Some 48 houses within the wider scheme that were granted full planning permission in the 2018 Hybrid application are under construction in the SW corner and along the southern frontage to Old Ashford Road itself.
- 1.05 The site lies in the catchment of the River Stour both in terms of surface water draining to ground and because the foul sewer connects is to Lenham Waste Water Treatment Works which also discharges in the River Stour.

### **2. PROPOSAL**

- 2.01 Application 17/500357/HYBRID was approved by Planning Committee in 2018 and in addition to granting full planning permission for 48 units in phase 1, granted outline planning permission for phase 2 of the development of 102 houses with details approved of access, layout and landscaping. This leaves 2 reserved matters of the housing units to be determined, that of appearance and scale.
- 2.02 The siting of the 102 units that was approved in 2018 showed development mostly of terraced and semi-detached properties with 14 detached dwellings and 22 maisonettes including a block of 10 maisonettes approved in the NE corner.

- 2.03 The appearance will be of traditional style, mostly brick faced with tiled pitched roofs with some units having timber effect weatherboarding and with flat or pitched roof door canopies. Windows are generally cottage style with flat arched brick window heads with some units including features such as bay windows or first floor oriel windows. Corner plots are dual aspect with fenestration on flank walls to add visual interest and surveillance. Some of the terrace units fronting the Open Space are angled around the corners to follow to shape of the open space.
- 2.04 In terms of the reserved matter of scale, all units are 2 storeys with ridge heights of approx. 8.7 to 9.35m. Most of the maisonettes are 1 and 2 bedroomed and most of the houses are 3 and 4 bedroomed with 2no. 5-bedroomed units.
- 2.05 Due to the site being within the River Stour catchment, the application is accompanied by a "shadow" Habitats Regulations Assessment HRA (Appropriate Assessment) drafted on behalf of the applicant under regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended).

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

Maidstone Borough Local Plan 2017: SP8, SP18, SP19, H1 (41), DM1, DM3, DM4, DM12

Neighbourhood Plan Lenham (LNP)- Quality Design: Policy D1

Kent Minerals and Waste Local Plan 2013-30 as amended by Early Partial Review (2020)

National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

Maidstone Landscape Character Assessment 2012 (Updated 2013)

Kent Downs AONB Management Plan 2021-2026 (Third Revision)

Supplementary Planning Documents: Maidstone Building for Life 12 (2018);

Affordable and Local Needs Housing (2020); Air Quality Guidance (2017);

The Regulation 22 Local Plan Review submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is therefore a material consideration and attracts some weight. However, this weight is limited as although Stage 1 and 2 Hearings have recently concluded, the Plan is still in Examination.

The relevant policy in the LPR is LPRSP14A – NATURAL ENVIRONMENT which states:

*Development in Lenham and Lenham Heath that would result in a net increase in population served by a wastewater system will need to ensure that it will not have an adverse effect on the integrity of Stodmarsh SAC/SPA/Ramsar site. Where a proposed development falls within the Stour Catchment (e.g. Lenham, east of Faversham Road), or where sewage from a development will be treated at a Waste Water Treatment Works that discharges into the river Stour or its tributaries, then applicants will be required to demonstrate that the requirements set out in the advice letter and accompanying methodology on Nutrient Neutrality issued by Natural England have been met. This will enable the Council to ensure that the requirements of the Habitats Regulations are being met.*

### **4. LOCAL REPRESENTATIONS**

#### **Local Residents:**

2 letters received with the following summarised comments:

- Too many extra people into the village

- Inadequate GP surgery, schools
- New houses should be in places with a better train service to London.
- Development will remove a public footpath to areas north of Lenham such as Lenham Heath and Egerton
- Lenham has a limited bus and train service
- Will be commuters due to inadequate employment in the village

## 5. CONSULTATIONS

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

### Lenham PC

#### 5.01 Support provided:

- the overflow system connects all the SUDS to the proposed attenuation pond
- no property should be over 2 storeys
- Roof tiles to be muted shades
- the archaeological study will continue on the Eastern side

### Natural England

- 5.02 *Original Comments:* Additional nutrient mitigation will be required to achieve nutrient neutrality. The amount of nutrient mitigation provided from land use change at Pleasant Farm is insufficient so an additional parcel of land at Pleasant Farm or an alternative mitigation measure will be required to achieve nutrient neutrality.
- 5.03 Natural England acknowledge that the development proposes to install sustainable drainage systems (SuDS), which are likely to improve the surface-water water quality leaving the site. However, the nutrient removal rates of the SuDS have not been quantified, and thus have not been used toward nutrient mitigation.
- 5.04 If planning permission is granted, advise a suitable condition is applied to ensure occupancy does not occur before the upgrades have been completed at Lenham WWTW.
- 5.05 In regard of Kent Downs AONB, refer to national and local policies, together with local landscape expertise and information to determine the proposal in accordance with the National Planning Policy Framework.
- 5.06 *Officer note:* Formal comments of NE in regard of the revised HRA that includes the additional parcel of land at Pleasant Farm as requested in their representation will be reported in an Urgent Update.

### KCC Waste/Minerals

- 5.07 No comment

### Kent Police

- 5.08 The development should incorporate Secured by Design and Crime Prevention through Environmental Design and should aim to attain an SBD award.

### Southern Water

- 5.09 Southern Water is currently in process of designing and planning delivery of offsite sewerage network reinforcements. to provide sufficient capacity within foul network.

River Stour IDB

- 5.10 The applicant will need Land Drainage Consent from Kent County Council for any works that has the potential to affect flow in any ditch or watercourse on or bordering the site.

KCC Flood and Water Management

- 5.11 No comments because the surface water drainage scheme for the wider site has already been approved and the attenuation pond constructed.

CPRE

- 5.12 Objection:

- Needs solar panels integrated in roofs and air source heat pumps
- Trees should form part of communal spaces and planted alongside roads
- Further pollution of the Stour.
- Needs proper archaeological investigation.

Kent Downs AONB Unit

- 5.13 Concerns about the setting of the AONB: the site is highly visible from the North Downs Way, and other Public Rights of Way to the north of the site. The development would be seen as an extensive urbanisation of the village to the east. Policy H1 (41) allocating the site for development includes criteria to help ensure impacts on the AONB are mitigated as far as possible. The AONB Unit would question whether the proposed design is high standard of design but key to this will be the proposed materials and there should be no pale coloured materials on north facing elevations.

MBC Parks and Open Spaces

- 5.14 No comments

## **6. APPRAISAL**

### **Main Issues**

- 6.01 The key issues for consideration relate to:

- Design and Scale
- Nutrient Neutrality

### **Design and Scale**

- 6.02 The site was allocated in the adopted Local Plan under policy H1(41) for approximately 145 houses subject to a number of criteria, most of which were fully considered in granting the Hybrid planning permission. That planning permission approved the layout and landscaping of the whole site such as the amount and type of Open Space, the northern and eastern wooded buffer, substantial areas of landscaping within the site and preservation of the northwards vista to Lenham Cross based on PROW KH433.

- 6.03 The policy requires a high standard of design and sustainability reflecting the location of the site as part of the setting the Kent Downs AONB incorporating the use of vernacular materials.
- 6.04 The proposed dwellings will include mixed roof styles including half-hips and full hips, feature gables, chimneys, oriel and bay windows and door canopies. Materials are to include red or brown coloured facing brick, weatherboarding and tile hanging (including club tiles). Condition 7 of the outline planning permission requires to the inclusion of ragstone in walling, clay hanging and roof tiles, slate roof tiles and multistock bricks. Thus it will be possible to ensure a continuation of the appropriate quality of facing and roof materials that was established by phase 1 with tones appropriate for a site in the foreground of the AONB (Phase 1 approved as handmade clay plain tiles for the roofs with all brickwork to be Camtech Berwick Multi). NB Artificial Weatherboarding in Black or Grey was approved for phase 1 rather than the timber weatherboarding referred to in the condition. It is considered that provided the tones are suitably subdued to be sensitive to the prominence of the site in views from the AONB, that this would comply with the objective of Policy H1(41).
- 6.05 There is scope for some of the dwellings in phase 2 to have feature Kentish ragstone such as bays or plinths especially for some of the plots which face onto the Open Space and have a public visibility. This can be secured by condition.
- 6.06 The detail of the construction will be important to ensure that the policy requirement of good design for this location is met and a condition is suggested.
- 6.07 Details of boundary materials have not been submitted at this stage. Phase 1 secured a ragstone panelled side boundary wall at the entrance and there are some key locations in the street scene on phase 2 where Kentish ragstone panelled walls should be provided. Condition 10 of the outline planning permission already requires this and so this can be secured when it is discharged and an informative will remind the developers of this expectation.
- 6.08 In terms of scale, the dwellings are all limited to 2 storeys including the maisonettes. The overall ridge heights of some of the units are due to the use of vernacular roof pitches suited to small format clay tiles. The heights are comparable with the heights of dwellings in phase 1.
- 6.09 Due to the approved location of housing units on the northern boundary backing onto the A20 and then to the AONB, future rear dormer windows or roof extensions need to be controlled in the interests of the landscape and views from the AONB. Condition 24 of the outline planning permission already removes permitted development rights for the extension of dwellings or the enlargement of roofs.
- 6.10 Condition 28 of the outline planning permission already requires details to be submitted of solar panels to garages and outbuildings.

### **Nutrient Neutrality**

- 6.11 The site lies in the catchment of the River Stour and so there is a potential pathway for contamination in relation to the Stodmarsh SAC/Ramsar in North East Kent which is a "European Site" subject to the Conservation of Species and Habitats Regulations 2017. The environmental impact needed to be "screened" by MBC as "competent authority" and it is concluded that the dwellings would harm water quality at Stodmarsh by both surface water drainage and foul drainage via the Stour increasing pollution by nitrogen and phosphorus. Hence the harm of any impacts needed to be further analysed via a Habitats Regulation Assessment HRA (ie Appropriate Assessment) stage and nutrient neutrality needs to be demonstrated.

- 6.12 The need for nutrient neutrality (NN) follows Natural England (NE) Guidance first issued in March 2020 (and revised thereafter) which requires new overnight accommodation in the Stour Catchment to demonstrate no potential significant impacts on the integrity of the SAC/Ramsar site at Stodmarsh.
- 6.13 The legal requirement for these reserved matters to demonstrate nutrient neutrality arises even though outline planning permission for the 102 dwellings was granted in 2018, ie, almost 2 years before the NE guidance was first issued. This is because the overall planning consent is a multi-staged process and each stage is subject to the Regulations. The outline stage pre-dated the NE Guidance but the Reserved Matters application was submitted in September 2021 so this stage post-dates the NE Guidance.
- 6.14 The Reserved Matters has been accompanied by a "shadow" HRA drafted on behalf of the applicant under regulation 63 of the 2017 Regulations. This concludes that there will be pollution in regard of phosphorus and nitrogen both from surface water drainage and from foul water connection to Lenham WWTW. However, it is submitted that it can be mitigated by the purchase of "credits" from Forestry England which is in the process of carrying out a land use change from arable cereal to woodland on land at the new "Pleasant Forest" in Lenham Heath, also in the Stour Catchment. That land use change away from arable land (which would ordinarily be heavily artificially fertilised) balances out (ie neutralises) the additional phosphorus and nitrogen generated by the 102 dwellings at this site. The applicant has now secured the purchase of sufficient credits to fully mitigate the scheme based on standard methodology provided by Natural England.
- 6.15 Initially, the applicant proposed that they would purchase a lesser number of credits from Forestry England but their calculations were challenged by a draft HRA carried out by MBC and endorsed by NE. The applicants have now clarified some elements of the development scheme's land use types/areas and their revised assessment is now accepted by officers. This required them to secure more credits from Forestry England, which they have now done.
- 6.16 The project at Pleasant Forest was developed by Forestry England from 2021 when a request for pre-application advice was made to MBC although the creation of a forest as such is not a land use requiring planning permission Pleasant Forest is 127 ha overall of which 57.65ha is within the Stour Catchment.
- 6.17 A Member Briefing took place in 2021 and the following was noted by the then Head of Development Management referring to the role that the land use change to woodland could play in regard of nutrient neutrality:
- "Members were supportive of the proposals ... the possibility of dealing with phosphorous and nitrate issues as a by-product of the project which are currently affecting development in the Lenham area.*
- The matter of the Stour catchment and issues surrounding phosphorous and nitrate in the Stodmarsh lakes was not discussed in any detail, however the project manager did signal further discussions were due to take place with the Council's policy team regarding this matter and how this project could help deliver even further benefits to the surrounding area. I am led to believe that discussions are on-going on this matter. From a planning perspective, I believe this scheme could offer some real benefits in terms of off-setting and mitigation for the Stour catchment and implications for reducing phosphorous and nitrogen reaching the Stodmarsh lakes"*
- 6.18 It is understood that 17 ha of the land at Pleasant Forest that lies in the Stour Catchment is still to be planted with trees and that planting to date has been on

the basis of deposits paid by the developer and the assumption that nitrogen and phosphorus credits will be purchased by developers within the Stour catchment as outlined in the pre-application advice summarised above.

- 6.19 Natural England has met with Forestry England on this project and is supportive of credits from Pleasant Forest offsetting nitrogen and phosphorus from new housing development such as on this application site.
- 6.20 It should be remembered that the problem of NN is catchment based and in principle, any credits from a land use change in one district can be taken advantage of in a different district in the affected part of East Kent which includes large parts of Ashford and Canterbury and smaller parts of Swale and Folkestone and Hythe.
- 6.21 In terms of phosphorus, Pleasant Forest will be able to deliver mitigation for approx. 110 dwellings. In regard of nitrogen, over 500 dwellings could be mitigated. Hence, this one development in Lenham of 102 dwellings (if approved), would use up the vast majority of phosphorus credits from Pleasant Forest but there will be an excess of nitrogen credits going forward. If the credits were not to be purchased by developers in Lenham, in theory, they would be available to be purchased by developers in other affected districts (subject to the LPAs of other districts being supportive). Pleasant Forest is likely to feature as part of the catchment wide strategy that is being drafted on behalf of Kent Authorities affected by Stodmarsh.
- 6.22 There have been NN constraints imposed on housing development in much of east Kent since 2020. Pleasant Forest would not deter or prevent other rural organisations (eg Kent Wildlife Trust) entering the nitrogen and phosphorus credit market.
- 6.23 It is concluded that the mitigation the developer has secured from Forestry England means that the development of 102 dwellings in this RM application would be nutrient neutral due to full mitigation of potential significant impacts on the integrity of the SAC/Ramsar site at Stodmarsh. Subject to NE formally reiterating their support for the amount of mitigation from Pleasant Forest, officers consider that an Appropriate Assessment can be adopted in this regard.
- 6.24 There would need to be a condition linking occupation of the dwellings to the proposed completion in 2025 of upgrades of the Lenham WWTW specifically due to NN. MBC and the developer would need to enter into a legal agreement to secure the NN mitigation and ensure it is linked only with this development.

### **Other Matters**

- 6.25 Many of the points made by objectors are not relevant as the outline planning permission established the number of dwellings in phase 2 plus it approved the access, layout and landscape strategy. The 2017 planning permission includes conditions relating to matters such as archaeology, materials and removal of certain permitted development rights.
- 6.26 Members are advised for information purposed that the developers of Abbey Development may be subject to the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023. The Responsible Actors Scheme was launched in July 2023 in response to the Grenfell tragedy. Eligible developers who do not join the Scheme and comply with its conditions will have planning and building control prohibitions imposed on them. Guidance is awaited from the Government. Abbey Development have confirmed its view that they are not subject to the prohibition as follows:

*Abbey Developments were initially invited to sign the 'Pledge' but elected not to do so given that in over 40 years of operation the Company has built two 11+*



*Buildings, neither requiring any 'life critical' fire safety work. On this basis Abbey Developments believes it remains outside the scope of the scheme.*

*As I am sure you are aware the Regulations pursuant to the Building Safety Act were brought into Law on the 4th July 2023. The Secretary of State for the DLUHC can give 'Notice' to a developer that he believes meets the eligibility criteria to join the Responsible Actors Scheme (RAS). On receipt of a 'Notice' a developer must within 60 days enter the Self Remediation Contract and submit an application to join the RAS. Abbey Developments have not been issued with a 'Notice' from the SoS or any of his Officers at the DLUHC. Abbey Developments have met representatives of the DLUHC and remain in regular dialogue on this matter.*

- 6.27 Guidance is awaited from the Government and when received, the role of MBC in terms of its planning and building control functions should be clearer. However, the prohibition relates to the construction stage and should not impact on a decision being made on this Reserved Matters application.

### **Community Infrastructure Levy**

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

### **PUBLIC SECTOR EQUALITY DUTY**

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

## **7. CONCLUSION**

- 7.01 The appearance and scale of the dwellings in phase 2 is considered to be acceptable and in accordance with policies H1 (41) and DM1 of the MBLP and D1 of the LNP. Further details are required by condition on construction details and materials to ensure high quality vernacular, including Kentish ragstone in some of the buildings. Other matters to comply with these policies are already covered by the outline planning permission.
- 7.02 In terms of the issue of Nutrient Neutrality for the Stour catchment, it is concluded that the credits that developer intends to purchase from Forestry England's Pleasant Forest scheme means that the development of 102 dwellings in this RM application would be "nutrient neutral" due to full mitigation of potential significant impacts on the integrity of the SAC/Ramsar site at Stodmarsh.
- 7.03 There would need to be a condition linking occupation of the dwellings to the proposed completion in 2025 of upgrades of the Lenham WWTW as the Appropriate Assessment is made on that basis. MBC would need to enter into a legal agreement to secure the NN mitigation and ensure it is linked only with this development.

## **8. RECOMMENDATION**

The Head of Planning and Development BE DELEGATED POWERS TO GRANT planning permission subject to the prior completion of a legal agreement to

provide the following (including the Head of Planning and Development being able to settle or amend any necessary terms of the legal agreement in line with the matters set out in the recommendation resolved by Planning Committee):

- the prior payment of s106 monitoring fees of £1,530
- Nutrient neutrality of by purchase of sufficient credits for Total Phosphorus and Total Nitrogen from Forestry England in regard of the land use change at Pleasant Forest Lenham Heath.

and the imposition of conditions as set out below:

- 1) There shall be no occupation of any dwelling hereby approved until upgrades have been completed at Lenham WWTW that achieve compliance with a Total Phosphorus permit of 0.5mg TP/litre.

Reason: To ensure compliance with the Conservation of Species and Habitats Regulations 2017 (as amended) such that there are no potential significant impacts on the integrity of the SAC/Ramsar site at Stodmarsh.

- 2) No development above slab level shall take place until written details and photographs of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be constructed using the approved materials and they shall consist of handmade plain clay for both hanging and roof tiles, elements of club hanging tiles, bonnet hips and laced valley tile details, weatherboarding and multi stock brickwork with flat arched brick detailing to window heads and banding courses. At least 10% of the units should include elements of coursed Kentish ragstone.

Reason: To ensure a satisfactory appearance to the development with vernacular materials to accord with Policy H1(41) of the Maidstone Borough Local Plan and Policy D1 of the Lenham Neighbourhood Plan.

- 3) Above ground construction work on the approved buildings shall not commence until full details of the following matters in the form of large scale drawings (at least 1:20 scale) have been submitted to and approved in writing by the Local Planning Authority:

- a) External windows and doors
- b) Details of eaves and gables
- c) Details of door and window headers and cills.
- d) Details of roof hips and ridges.
- e) Details of dormer windows

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

Reason: To ensure a satisfactory appearance to the development to accord with Policies H1(41) and DM1 of the Maidstone Borough Local Plan and Policy D1 of the Lenham Neighbourhood Plan.

Informative

- 1) In regard of the future discharge of 10 of the outline planning permission, you are advised that key boundary walls to the public domain should feature Kentish ragstone panels.