

## REPORT SUMMARY

<b>REFERENCE NUMBER:</b> 21/504779/REM		
<b>APPLICATION PROPOSAL:</b> Approval of Reserved Matters with Appearance and Scale (including Nutrient Neutrality Information) 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		
<b>RECOMMENDATION:</b> Approve subject to S106 legal agreement		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b>		
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Planning Committee considered this application at its meetings of 24 August 2023, 19 September 2024 and 17 October 2024. The decision has not been issued because, inter alia, the applicant wishes to change the Head of Term to the s106 legal agreement resolved at Planning Committee on 19 September and 17 October which required a bond to ensure management of the landscape buffer on the northern boundary was fully funded for a 30 year period.		
<b>WARD:</b> Harrietsham and Lenham	<b>PARISH/TOWN COUNCIL:</b> Lenham	<b>APPLICANT:</b> Abbey Developments <b>AGENT:</b> CMYK (Planning & Design)
<b>CASE OFFICER:</b> Marion Geary	<b>VALIDATION DATE:</b> 02/09/21	<b>DECISION DUE DATE:</b> 10/01/2025
<b>ADVERTISED AS A DEPARTURE:</b> No		

### 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

Submission of Details for phase 1 dwellings part pursuant to condition 20 (Surface Water Drainage Verification Report) of Planning Permission 17/500357/HYBRID.

Approved 16.06.2023

### MAIN REPORT

#### 1. BACKGROUND

- 1.01 The application was reported to the Planning Committees of 24 August 2023 and 19 September 2024, specifically to receive Planning Committee endorsement of "Pleasant Forest" as a nutrient mitigation credit scheme. It was resolved to approve the application subject to s106 legal agreement. The decision has not been issued. However, further comments received by Statutory consultees Natural England and Lenham PC were submitted on the day of the September Planning Committee but were not appraised of these comments and so they were considered by the Committee on 17 October 2024.

- 1.02 The 17 October 2024, 19 September 2024 and 24 August 2023 Committee reports and Urgent Updates are in Appendices A – F.
- 1.03 A briefing note on Nutrient Neutrality (NN) and the Forestry Commission scheme at Pleasant Forest, Lenham is at Appendix G and the draft legal agreement for Pleasant Forest previously reported is at Appendix H.

## **2. DESCRIPTION OF SITE**

- 2.01 As per the Reports in Appendices A-F

## **3. PROPOSAL**

- 3.01 As per the Reports in Appendices A-F

## **4. POLICY AND OTHER CONSIDERATIONS**

- 4.01 As per the Reports in Appendices A-F

## **5. LOCAL REPRESENTATIONS**

- 5.01 As per the Reports in Appendices A-F

## **6. CONSULTATIONS**

- 6.01 As per the Reports in Appendices A-F.

### Natural England

- 6.02 No objection to MBC's draft Habitats Regulations Assessment subject to appropriate mitigation being secured by condition/planning obligation.

## **7. APPRAISAL**

### **Amendment to a Resolved Head of Term**

- 7.01 One of the Heads of Term in the committee resolution is as follows:

**A 30 year management plan to cover the A20 landscape buffer's establishment and management with a bond to ensure it is fully funded for a 30 year period.**

- 7.02 This was sought so there would be a long term establishment of an important tree screen to the northern edge of the site where it is at the base of the Kent Downs National Landscape.
- 7.03 The applicant has not agreed to this 30 year bond element of the clause and has stated the following (summarised):
- Abbey has not been able to find any insurance company that will issue a surety bond for the required period of 30 years.
  - In terms of an alternative cash deposit/step in funds, Abbey is not prepared to deposit a substantial sum of money for 30 years as this is an unprecedented request and unfair on a commercial enterprise reliant on cash flow.
  - Abbey consider that there are better means of securing the desired maintenance of the 'landscape buffer' via the estate management company which actually engages the 'stakeholders' directly impacted by the on-site landscaping.

- 30 years is a long time for any business to carry a liability for 'planting' and maintenance'. There are many variables 'outside' of Abbeys' control that could impact the 'buffer' that potentially risks the deposited sum such as storm, a bush fire takes, A20 gets widened under a compulsory purchase, a 'disease' wipes out the tree belt, if the trees become a 'danger' to the homes on the estate or road users and have to be removed.

7.04 Alternative Heads have been suggested by the applicant: (summarised)

- (i) Abbey will commit to the establishment and maintenance of the 'landscape buffer' to the northern and eastern boundaries of the RM application area for Phase 2 Lenham.
- (ii) Abbey will pay a £10,000.00 deposit on completion of the 'landscape buffer' planting to be held in escrow for a minimum of 5 years.
- (iii) The 'buffer' will be inspected by an independent Landscape Architect after 5 years to confirm compliance with the approved planting scheme before the 'deposit' sum of £10,000.00 is returned.
- (iv) An Estate Management Company will manage the 'landscape buffer' in perpetuity. The Management Company will be administered by Encore Limited as managing agents. Encore are a well-established estate managing agent and are already engaged on the Lenham project looking after the phase 1 estate.
- (v) Draft Transfers (TP1's) for Freehold and Leasehold properties on the Lenham phase 2 estate will incorporate clauses relating to the management company annual contributions and specific mention of the on-going maintenance requirement to the 'landscape buffer'.

7.05 In some regard, I conclude that the measures suggested by the applicant in (i), (iv) and (v) would already be standard requirements for a modern housing development of this size.

7.06 The additional safeguards being offered by the applicant are (ii) and (iii). In lieu of the 30 year bond, is the offer of a cash deposit of £10,000 that will be returned by the LPA if the buffer has established in line with the approved landscaping details

7.07 It is agreed that the first 5 years after the planting of woodland type buffers is the period when a failure rate of new planting is higher. The offer by the applicant therefore covers the riskier period in terms of ensuring establishment of the buffer for its natural longevity. It will include both the northern and the eastern buffers and should achieve the same objective of long term establishment of an important tree screen to the northern edge of the site where it is at the base of the Kent Downs National Landscape.

7.08 On balance, this is concluded to be acceptable amendment to the resolved Head of Term bearing in mind the need to deliver the housing on this site.

### **Other Matters**

7.09 Since the 17 October Planning Committee, Natural England has confirmed that it is satisfied with MBC's draft Habitats Regulations Assessment for this phase, so that can now proceed to being formally adopted Appropriate Assessment by the Council.

7.10 At the 17 October 2024 Planning Committee, Members requested an additional Head of Term that the ecological benefits of the northern and eastern landscape buffers be maximised and so this is included in the recommendation below.

### **PUBLIC SECTOR EQUALITY DUTY**

- 7.11 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.

### **Community Infrastructure Levy**

- 7.12 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.

## **8. CONCLUSION**

- 8.01 On the specific issue of the Head of Term seeking a bond, the alternative offered by the applicant is acceptable and it is recommended that the application be approved with that amendment and otherwise in line with the resolution from 17 October 2024.

## **9. RECOMMENDATION**

### **APPROVE RESERVED MATTERS subject to**

**-adoption of an Appropriate Assessment for phase 2 under the Conservation of Species and Habitats Regulations 2017 (as amended)**

**-the following conditions**

**-the prior completion of legal agreement(s) to secure the heads of terms set out below**

with delegated authority to the Head of Development Management to be able to settle or amend any necessary Heads of Terms, planning conditions and/or informatives in line with the matters set out in the recommendation and as resolved by the Planning Committee:

s106 agreement(s) to require prior payment of s106 monitoring fees of £5,278.50

### **HEADS OF TERMS**

- Credit Linked Land as shown on Maps to be woodland and managed as such for no less than 80 years
- the Credit Linked Land shall not be agricultural nor have manufactured or naturally produced fertiliser applied
- the sale of Nutrient Credits will fund the ongoing monitoring, management and maintenance of the Credit Linked land in accordance with an approved Woodland Planting Scheme and Management Plan.
- Prohibits double counting, including a requirement for maps to be deposited with the Council which indicate how much of the land is cumulatively allocated to a specific developer for each nutrient.
- Nutrient neutrality Calculations to be submitted to the Council for its written approval prior to the occupation of the unoccupied dwellings within phase 1 or commencement of phase 2 or a sub phase thereof.
- water saving measures of 110 litres per person per day.

- covenant in the transfer(s) of the relevant dwelling(s) which requires the owner(s) or occupier(s) to retain the water saving measures in perpetuity.
- A 30 year management plan to cover the landscape buffer establishment and management
- a £10,000.00 deposit to be paid on completion of the 'landscape buffer' planting, to be held in escrow for a minimum of 5 years.
- The "landscape buffer" to be inspected by an independent Landscape Architect after 5 years to confirm satisfactory and full compliance with the approved planting scheme and management plan, only after which the 'deposit' sum of £10,000.00 would be returned
- advance planting of the landscape buffer on the eastern side of the site in the first available planting season following reserved matters approval for phase 2 and discharge of the relevant landscaping condition, details of which shall be submitted to the LPA for approval within 3 months of approval of the reserved matters.
- The ecological benefits of the northern and eastern landscape buffers to be maximised.

#### CONDITIONS:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans/documents:

Amendment 120.62A Type 3b.E Elevations Received on 29 June 2022

Amendment 120.23A Type 3b.A Elevations 2 Received on 29 June 2022

Amendment 120.24A Type 3b.A Elevations 3 Received on 29 June 2022

Amendment 120.21A Type 3b.A Floor Plans Received on 29 June 2022

Amendment 120.61A Type 3b.E Floor Plans Received on 29 June 2022

Amendment 110.02A Site Layout Plan Reserved Matters Plots Received on 29 June 2022

Plan / Drawing 1977 / P / 150.07 Carport - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 150.06 Carport - Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 150.04 Double Carport 1 Received on 31 August 2021

Plan / Drawing 1977 / P / 150.05 Double Carport 2 Received on 31 August 2021

Plan / Drawing 1977 / P / 150.02 Double Garage Received on 31 August 2021

Plan / Drawing 1977 / P / 130.03 Maisonettes 1-4 -Elevations Sheet 1 Received on 31 August 2021

Plan / Drawing 1977 / P / 130.04 Maisonettes 1-4 - Elevations Sheet 2 Received on 31 August 2021

Plan / Drawing 1977 / P / 130.02 Maisonettes 1-4 -First Floor Plan Received on 31 August 2021

Plan / Drawing 1977 / P / 130.01 Maisonettes 1-4 - Ground Floor Plan Received on 31 August 2021

Plan / Drawing 1977 / P / 130.13 Maisonettes 32-35 - Elevations Sheet 1 Received on 31 August 2021

Plan / Drawing 1977 / P / 130.14 Maisonettes 32-35 - Elevations Sheet 2 Received on 31 August 2021

Plan / Drawing 1977 / P / 130.12 Maisonettes 32-35 - First Floor Plan Received on 31 August 2021

Plan / Drawing 1977 / P / 130.11 Maisonettes 32-35 - Ground Floor Plan Received on 31 August 2021

Plan / Drawing 1977 / P / 130.23 Maisonettes 36-41 - Elevations Sheet 1 Received on 31 August 2021

Plan / Drawing 1977 / P / 130.24 Maisonettes 36-41 - Elevations Sheet 2 Received on 31 August 2021

Plan / Drawing 1977 / P / 130.22 Maisonettes 36-41 - First Floor Plan Received on 31 August 2021

Plan / Drawing 1977 / P / 130.21 Maisonettes 36-41 - Ground Floor Plan Received on 31 August 2021

Plan / Drawing 1977 / P / 130.32 Maisonettes 74-75 Wheelchair - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 130.31 Maisonettes 74-75 Wheelchair - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 130.42 Maisonettes 81-82 Wheelchair - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 130.41 Maisonettes 81-82 Wheelchair - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 130.53 Maisonettes 96-99 - Elevations Sheet 1 Received on 31 August 2021

Plan / Drawing 1977 / P / 130.54 Maisonettes 96-99 - Elevations Sheet 2 Received on 31 August 2021

Plan / Drawing 1977 / P / 130.52 Maisonettes 96-99 - First Floor Plan Received on 31 August 2021

Plan / Drawing 1977 / P / 130.51 Maisonettes 96-99 - Ground Floor Plan Received on 31 August 2021

Plan / Drawing 1977 / P / 150.03 Single Carport Received on 31 August 2021

Plan / Drawing 1977 / P / 150.01 Single Garage Received on 31 August 2021

Plan / Drawing 1977 / P / 150.08 Store - Plans and Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 120.22 Type 3b.A - Elevations 1 Received on 31 August 2021

Plan / Drawing 1977 / P / 120.21 Type 3b.A - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 120.32 Type 3b.B - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 120.31 Type 3b.B - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 120.42 Type 3b.C - Elevations 1 Received on 31 August 2021

Plan / Drawing 1977 / P / 120.43 Type 3b.C - Elevations 2 Received on 31 August 2021

Plan / Drawing 1977 / P / 120.41 Type 3b.C - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 120.52 Type 3b.D - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 120.51 Type 3b.D - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 120.72 Type 3b.F - Elevations 1 Received on 31 August 2021

Plan / Drawing 1977 / P / 120.73 Type 3b.F - Elevations 2 Received on 31 August 2021

Plan / Drawing 1977 / P / 120.71 Type 3b.F - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 120.02 Type 3b.H - Elevations 1 Received on 31 August 2021

Plan / Drawing 1977 / P / 120.03 Type 3b.H - Elevations 2 Received on 31 August 2021

Plan / Drawing 1977 / P / 120.01 Type 3b.H - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 120.12 Type 3b.J - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 120.11 Type 3b.J - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 120.92 Type 4b.A - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 120.91 Type 4b.A - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 120.102 Type 4b.B - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 120.101 Type 4b.B - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 120.112 Type 4b.C - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 120.111 Type 4b.C - Floor Plans Received on 31 August 2021

Plan / Drawing 977 / P / 120.122 Type 4b.D - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 120.121 Type 4b.D - Floor Plans Received on 31 August 2021

Plan / Drawing 977 / P / 120.124 A Type 4b.D(V) - Elevations Received on 08 September 2021

Plan / Drawing 1977 / P / 120.123 A Type 4b.D(V) - Floor Plans Received on 08 September 2021

Plan / Drawing 1977 / P / 120.132 Type 4b.E - Elevations Received on 31 August 2021

Plan / Drawing 977 / P / 120.131 Type 4b.E - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 120.134 Type 4b.E(V) - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 120.133 Type 4b.E(V) - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 120.142 Type 4b.F - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 120.141 Type 4b.F - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 120.152 Type 4b.G - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 120.151 Type 4b.G - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 120.162 Type 4b.H - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 120.161 Type 4b.H - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 120.82 Type 4b.J - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 120.81 Type 4b.J - Floor Plans Received on 31 August 2021

Plan / Drawing 977 / P / 120.172 Type 5b.A - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 120.171 Type 5b.A - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 120.202 Type AFF 2b.A - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 120.201 Type AFF 2b.A - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 120.212 Type AFF 2b.B - Elevations 1 Received on 31 August 2021

Plan / Drawing 1977 / P / 120.213 Type AFF 2b.B - Elevations 2 Received on 31 August 2021

Plan / Drawing 1977 / P / 120.211 Type AFF 2b.B - Floor Plans Received on 31 August 2021

Plan / Drawing 1977 / P / 120.222 Type AFF 3b.A - Elevations Received on 31 August 2021

Plan / Drawing 1977 / P / 120.232 Type AFF 3b.B - Elevations 1 Received on 31 August 2021

Plan / Drawing 1977 / P / 120.233 Type AFF 3b.B - Elevations 2 Received on 31 August 2021

Plan / Drawing 1977 / P / 120.231 Type AFF 3b.B - Floor Plans Received on 31 August 2021

Reason: To clarify which plans/documents have been approved.

- 2) 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.



- 3) No dwelling shall be occupied unless Nutrient Neutrality Calculations have been submitted to and approved by the Council demonstrating the occupation of the plot will not cause potential significant impacts on the integrity of the SAC/Ramsar site at Stodmarsh.  
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.
- 4) The Sustainable Drainage Scheme for the site shall be carried out in accordance with the approved SuDS Maintenance Plan ref E20-030 (4th issue September 2024) including management, maintenance and monitoring in perpetuity.  
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.
- 5) 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 Kentish flint. There shall be no pale coloured materials on north facing elevations.  
Reason: To ensure a satisfactory appearance to the development with vernacular materials.
- 6) 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 windowsThe development shall be carried out in accordance with the approved details.  
Reason: To ensure a satisfactory appearance to the development.
- 7) The dwelling(s) hereby approved shall meet the accessible and adaptable dwellings building regulations Part M4(2) standard or any superseding standard. No dwelling(s) shall be occupied unless this standard has been met and the dwelling(s) shall be thereafter retained as such.  
Reason: To ensure the development meets acceptable standards of accessible and adaptable dwellings.
- 8) No development above slab level shall take place until details and evidence of the measures necessary to incorporate at least 10% on-site renewable or low carbon energy production measured as a percentage of overall consumption have been

submitted to and approved in writing by the Local Planning Authority. Such details shall include measures for battery energy storage unless this is demonstrated with evidence to be unfeasible. The approved details shall be implemented prior to the first use/occupation of any unit to which the details relate and thereafter retained.  
Reason: To ensure a sustainable form of development

- 9) The development hereby approved shall be carried out in accordance with a Construction Management Plan and a Landscape Management Plan that have been submitted to and approved by the Local Planning Authority which shall include measures to avoid Nitrogen and Phosphorus pollution to the River Stour.  
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.

#### INFORMATIVES

- 1) In regard of the future discharge of 10 of 17/500357/HYBRID, key boundary walls to the public domain should feature Kentish flint panels.
- 2) Landscaping details for phase 2 must include maximisation of East-West tree planting through the site to accord with the terms of 17/500357/HYBRID which requires horizontal buffer planting locations to mitigate views from the North Downs National Landscape.
- NB: For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.