

REPORT SUMMARY

REFERENCE NUMBER: (A) 21/504779/REM **(B)** 24/502496/SUB

APPLICATION PROPOSAL

(A) 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) Submission of details for plots 17-48 (including nutrient neutrality information) to discharge condition 12 (landscaping scheme) and condition 14 (street and private lighting) subject to 17/500357/HYBRID

ADDRESS: Land North of Old Ashford Road, Lenham, ME17 2QT

RECOMMENDATION: (A) and **(B)** Approve subject to S106 legal agreements

SUMMARY OF REASONS FOR RECOMMENDATION:

- (A)** The acceptability in principle of the detail of the reserved matters for phase 2 were agreed at the Planning Committee of August 2023.

There is now draft legal agreement for Pleasant Forest that meet the requirements of the Planning Committee resolution of August 2023.

There are also acceptable amended nutrient neutrality reports for phase 2. A draft appropriate assessment for the development that concludes the Phase 2a (70 dwellings of the 102) will not have an adverse effect on the integrity of the European site of Stodmarsh. This is awaiting the comments of Natural England. If agreement is received, the appropriate assessment would be adopted by MBC.

In accordance with new relevant policies in the Maidstone Borough Local Plan Review 2024, the Reserved Matters scheme will be required to secure biodiversity net gain, accessible and adaptable dwellings and renewable energy.

The scheme with suggested conditions complies with policy D1 of the Lenham Neighbourhood Plan and policies LPRSP6(D), LPRSP10(A), LPRSP14(A), LPRSP14(C); LPRSP15, LPRHOU5, LPRINF3, LPRQD1, LPRQD6, LPRQD7.

- (B)** The resubmission of the details pursuant to conditions 12 and 14 of landscaping and lighting are acceptable in principle and the advance landscaping details are improved in terms of size of initial planting in regard of the northern boundary of the site.

The reason for refusal of the previous details applications was solely due to nutrient neutrality and that has been overcome by securing adequate credits from Pleasant Forest, subject to the occupation dates given by the applicant and an obligation on water saving in perpetuity in a s106 legal agreement.

There is an adopted appropriate assessment for phase 1 of the development that concludes the project will not have an adverse effect on the integrity of the European site of Stodmarsh.

There are acceptable details of the landscaping and lighting for plots 17-48 of phase 1, including compliance with policy D1 of the Lenham Neighbourhood Plan and policies LPRSP14(A); LPRSP15, LPRENV1, LPRQD2 of the Maidstone Borough Local Plan Review 2024.

REASON FOR REFERRAL TO COMMITTEE:		
<p>(A) Planning Committee on 24 August 2023 resolved to request the draft s106 for Pleasant Forest be reported back to Planning Committee.</p> <p>(B) These details pursuant to conditions are affected by nutrient neutrality for the Stour catchment and should be considered by Planning Committee</p>		
WARD: Harrietsham And Lenham	PARISH/TOWN COUNCIL: Lenham	APPLICANT: Abbey Developments AGENT: CMYK (Planning & Design)
CASE OFFICER: Marion Geary	VALIDATION DATE: (A) 02/09/21 (B) 20/06/24	DECISION DUE DATE: (A) and (B) 30/09/24
ADVERTISED AS A DEPARTURE: No		

Relevant Planning History (A) and (B)

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

Officer note: The development is 150 dwellings in total.

48 plots with full planning permission: this is referred to phase 1 and is being carried out in subphases.

102 plots with outline planning permission: this is phase 2 and is to be carried out in 2 subphases, phase 2a being 70 units and phase 2b being 32 units.

21/505698/SUB

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

Refused 12.12.2023

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.

Refused 12.12.2023

Enforcement History:

24/500203/BOC

Enforcement Enquiry in regard of breaches of conditions 12 and 14 for plots 17-48 due to not having the landscaping and lighting details approved before the dwellings were at slab level.

In abeyance pending determination of Application (B).

MAIN REPORT

1. BACKGROUND

- 1.01 These applications mainly relate to the issue of Nutrient Neutrality (NN) because the application site is located in the catchment of the River Stour which runs into the Stodmarsh National Nature Reserve in NE Kent. The issue being phosphorous and nitrogen from development within the catchment causing eutrophication of the Stodmarsh NNR. These applications are therefore subject to the Conservation of Habitats and Species Regulations 2017 meaning that Habitats Regulations Assessments have to be carried out which must demonstrate no potential significant impacts of the development on the integrity of the Stodmarsh.
- 1.02 A briefing note on Nutrient Neutrality and the Forestry Commission scheme at Pleasant Forest, Lenham is at Annex B.

Application (A)

- 1.03 This reserved matters application (appearance and scale only) relates to phase 2 which is 102 units of the overall 150 dwellings approved by 17/500357/HYBRID. The Hybrid permission approved the access, layout and strategic landscaping for phase 2 in 2018.
- 1.04 For the purposes of aligning with the timeline of securing Nutrient Neutrality, Phase 2 has now been divided into phase 2a (70 units) and phase 2b (32 units)
- 1.05 The application was first reported to the Planning Committee of 24 August 2023. It was resolved to approve the application subject to s106 legal agreement securing nutrient neutrality by the purchase of sufficient "credits" from Pleasant Forest. This is a site operated by Forestry England near Lenham, where tree planting was begun in 2021/22 and completed in 2023/24. Forestry England is the land management arm of the Forestry Commission which itself is part of Defra (Dept of Environment, Food and Rural Affairs).
- 1.06 Specifically, the August 2023 Planning Committee requested:
- that the draft legal agreement be reported back to the Planning Committee for approval
 - the nutrient mitigation is appropriately secured, managed and maintained
 - to ensure any requirements for "**additionality**" are satisfied. In other words, whether there is an argument that trees were being planted regardless of the planning applications.
- 1.07 The previous Committee report and Urgent Update are in Annex A.
- 1.08 The draft legal agreement with Forestry Commission and Defra is in Annex C.

Application (B)

- 1.09 This application relates to phase 1 and is also affected by Nutrient Neutrality so is linked to the Reserved Matters application (A).
- 1.10 This submission of details application relates to 32 dwellings in phase 1 (plots 17-48). The conditions state that no development above slab level shall take place until details of a landscaping scheme and external lighting have been submitted to and approved by the Council. The landscaping scheme and external lighting for

plots 1-16 have previously been approved so they are not included in this application.

- 1.11 For the purposes of aligning with the timeline of securing Nutrient Neutrality, the 32 plots are divided into phase 1a (22 plots) and phase1b (10 plots).
- 1.12 The dwellings in these plots have all been constructed so part of the phase is in breach of planning control and an enforcement investigation was commenced as detailed in the planning history above. Rather than enforce, the decision has been to seek acceptable detail from the applicant in a resubmitted application..
- 1.13 Details of both conditions for the 32 plots were refused in December 2023, solely for the absence of mitigation to secure Nutrient Neutrality.
- 1.14 Those decisions were based on a High Court case from June 2023 known as the "Fry" judgement which confirmed that NN applies to all stages of a multi-stage consent regime, including details required by condition. The Appeal Court recently confirmed that position.
- 1.15 Therefore, the applicant has re-submitted the details including information to demonstrate nutrient neutrality for all 32 plots, albeit in subphases.

2. DESCRIPTION OF SITE (A) and (B)

- 2.01 The description of the site is as per the Report in Annex A.
- 2.02 The AONB is now known as a National Landscape. The legal duty from the Levelling Up and Regeneration Act 2023 is now to conserve and enhance the natural beauty of National Landscapes.
- 2.03 Plots 1-5 and 17-48 are now complete. Plots 6-16 are under construction.

3. PROPOSAL

Application (A)

- 3.01 This is as detailed in the previous Committee Report in Annex A.
- 3.02 The whole development is 150 units, of which 48 units (phase 1) received full planning permission and 102 units (phase 2) received outline planning permission in 17/500357/HYBRID.
- 3.03 This Reserved Matters application is for appearance and scale only and relates to 102 units.
- 3.04 Revised nutrient reports from the applicant have been submitted which propose mitigation from Pleasant Forest for 70 of the 102 units in this phase 2 (called phase 2a).
- 3.05 This application does not detail NN for the remaining 32 units of phase 2b. The applicant foresees other forms of NN mitigation coming forward shortly which they will secure for the remaining 32 units. Specifically they refer to a strategic scheme in East Kent for septic tank upgrade as detailed in the briefing note in Annex B.

Application (B)

- 3.06 The detail of the lighting for units 17-48 on phase 1 comprises:
 - galvanised streetlighting columns of height 6m, either 17W or 13W and 4000K colour temperature.

- private parking solar powered lighting columns 5m high- 10W and 2700K colour temperature.
- domestic lights: lantern effect PIR lighting 8W and 3000K colour temperature

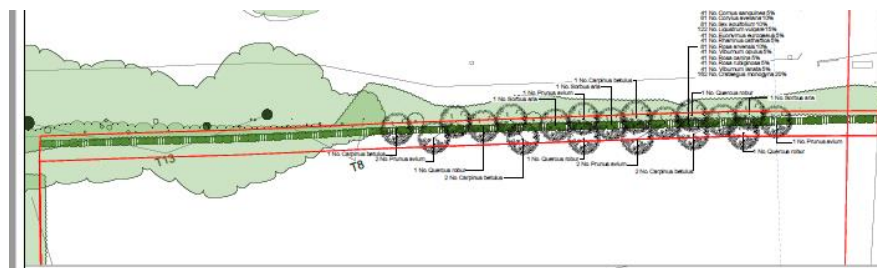
3.07 The detail of the landscaping for units 17-48 on phase 1 comprises advance planting on the northern boundary which fronts the A20 for both phases 1 and 2.

3.08 The scheme in terms of a 5m wide buffer to the A20 outside private gardens is identical to what was approved as the approved layout and landscape strategy in the original Hybrid planning permission.

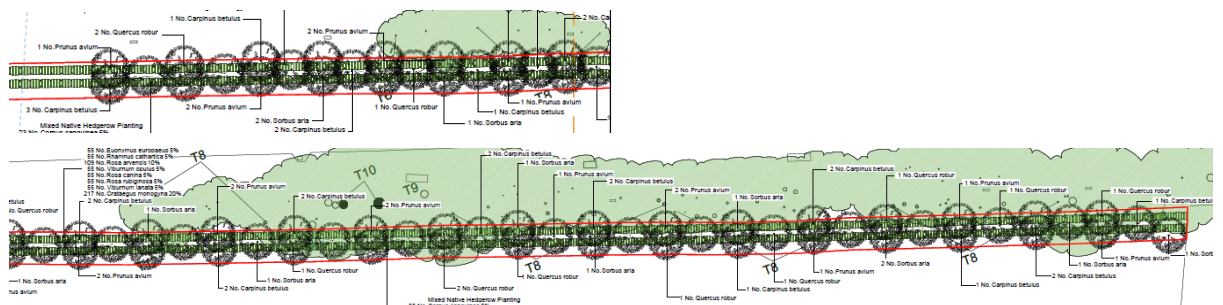
3.09 The details now being considered only refer to plots 17-48. In terms of the advance planting to the A20 boundary, it increases the initial planting sizes of most of the hedgerow planting and alters the species mix to include hawthorn.

3.10 Some sections of the northern boundary already have mature tree planting so those sections only have new hedgerow planting (existing trees in shaded below).

- Infilling a gap in the NW corner with double staggered row of mixed native hedging and new native trees.



- Planting of the 5m wide buffer on the NE side with 2 x double staggered rows of native hedgerow and new native trees



- A gap in new tree planting is being left deliberately to coincide with keeping the viewpoint towards Lenham Cross on the Kent Downs which was a requirement of the original Hybrid planning permission.
- 92 native trees to be planted overall along the northern boundary
- The hedgerow planting has been revised in terms of including hawthorn as the dominant species
- To increase the short term immediate screening effect of the new hedgerow, it is now proposed to have larger initial plant sizes for the *Corylus avellana*, *Crataegus monogyna*, *Euonymus europaeus*, *Ilex aquifolium*, *Ligustrum vulgare* and *Viburnum opulus*.

3.11 A natural/semi-natural open space along the main entrance is intended to ensure the visibility via the central vista to the listed Lenham Cross by the use of low growing amenity grass and wildflower meadow with any taller planting set outside of the nominal line of the vista. This area to have cleft timber knee rail to prevent parking on the kerb.

- 3.12 The submission includes a satisfactory soft landscape specification and soft landscape management and maintenance plan.

4. POLICY AND OTHER CONSIDERATIONS

Maidstone Local Plan Review 2024 LPRSP6(D); LPRSP10(A); LPRSP15; LPRSP14(A); LPRENV1; LPRHOU5; LPRINF3; LPRSP14(C); LPRQD2; LPRQD6; LPRQD7

Neighbourhood Plan: Lenham Policy D1

Kent Waste and Minerals Plan (amended 2020):

The 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); Public

Art Guidance (2017)

The Maidstone Borough Local Plan Review (LPR) was adopted by the Council on the 20 March 2024. Strategic level legal challenges were made to adoption that relate to specific strategic development sites within the LPR and do not affect the full weight that should be applied to the LPR2024 itself. Maidstone Borough Local Plan 2017 policies are therefore now superseded.

5. LOCAL REPRESENTATIONS

Application (A)

Local Residents:

- 5.01 As detailed in the Report in Annex A.

Lenham Parish Council

- 5.02 This is as detailed in the Report in Annex A.

Application (B)

Local Residents:

- 5.03 1 resident has commented as follows:

- numerous properties on this development are occupied when planning conditions have not been discharged.
- Resolving this matter is taking too long
- unable to purchase a property that have an interest in.

Lenham Parish Council

- 5.04 No comments

6. CONSULTATIONS

(Please note that summaries of consultation responses are set out below. Comments are discussed in more detail in the appraisal section where considered necessary)

Application (A)

Natural England

6.01 Originally NE had no objection as are detailed in the Annexed report.

6.02 NE has been consulted on the revised proposal to mitigate for the NN impact of phase 2a (70 dwellings) and its response will be included in an Urgent Update.

KCC Waste/Minerals

6.03 No objection

Kent Police

6.04 No objection

Southern Water

6.05 No objection

River Stour IDB

6.06 No objection

KCC Flood and Water Management

6.07 No objection

CPRE

6.08 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

6.09 Objection:

- setting of the AONB (National Landscape)
- impacts on the AONB need to be mitigated as far as possible.
- There should be no pale coloured materials on north facing elevations.

Application (B)

MBC Environmental Protection

6.10 No objection to the lighting scheme

Natural England

6.11 No objection subject to:

- off-site land use change mitigation secured in perpetuity
- long term management and maintenance (including funding) of the SuDS
- no double counting of the off-site mitigation.
- delivery of the mitigation prior to occupation
- no occupancy before upgrades at Lenham Wastewater Treatment Works.

7. APPRAISAL

Application (A)

7.01 The key issues are:

- Nutrient Neutrality
- Policy update

Nutrient Neutrality

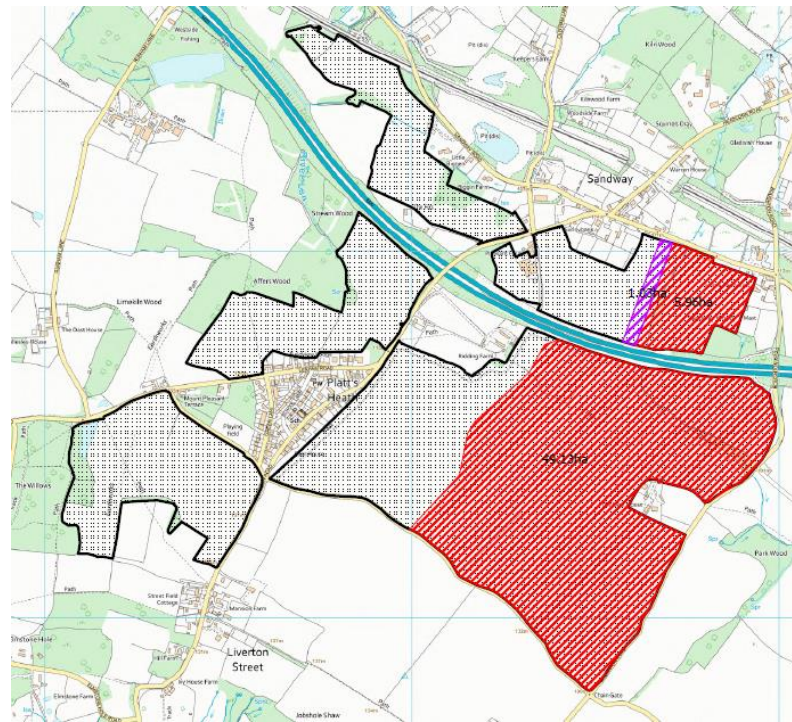
7.02 The Committee resolution from August 2023 required:

- the legal agreement for Pleasant Forest to be reported to the Planning Committee
- the nutrient mitigation be appropriately secured, managed and maintained
- any requirements for "additionality" being satisfied.

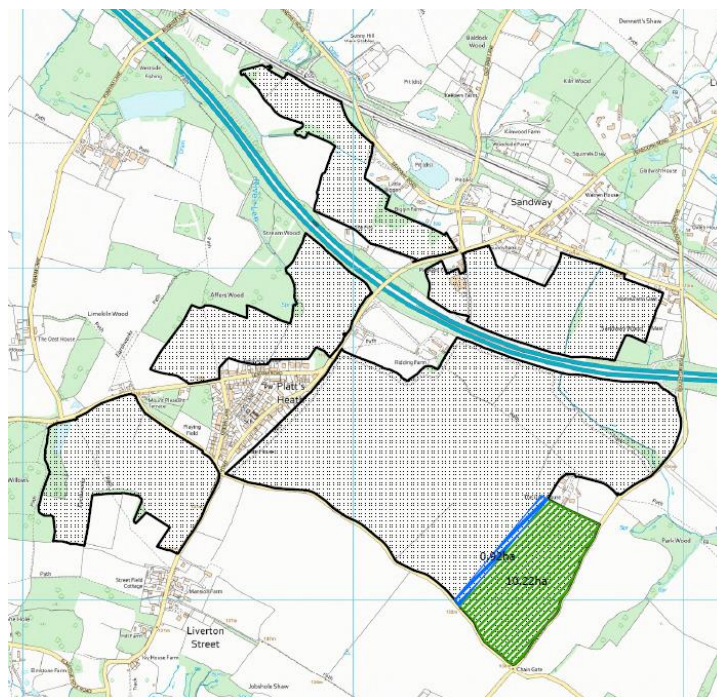
7.03 The draft legal agreement between MBC and the Forestry Commission is included in Annex C. Defra must also be a signatory to the legal agreement due to the Forestry Commission being part of that Government department.

7.04 It has been drafted as follows:

- Credit Linked Land to be woodland and managed as such for no less than 80 years (the definition of "in perpetuity" for Nutrient Neutrality)
- 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 land in accordance with an approved Woodland Planting Scheme and Management Plan
- Occupation to align with the dates in the relevant budget calculations
- 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. This is referred to a "Credit Linked Land" (examples below)



Phosphorus Credit Linked Land



Nitrogen Credit Linked Land

- 7.05 It is therefore concluded that the legal agreement as drafted and annexed to this report complies with the request of the Planning Committee.
- 7.06 In terms of the concept of additionality, that is not applicable to compliance with the Conservation of Habitats and Species Regulations 2017 as explained in Annex B "briefing note on Nutrient Neutrality".
- 7.07 The Regulation 63(1) says:

"A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

*(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or **in combination with other plans or projects**), and*

(b) is not directly connected with or necessary to the management of that site,

must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives."

- 7.08 Therefore provided the harmful project is counterbalanced by a positive project, no overall significant effect results and the legal test in Regulation 63 is met.
- 7.09 This stance is supported by Natural England. Natural England is supportive of Pleasant Forest as a NN credit scheme and it is likely to be a key part of the Kent wide mitigation strategy for the recovery of Stodmarsh.
- 7.10 Defra is ultimately responsible for Pleasant Forest and will be a signatory of the legal agreement, hence there is Government support for the Pleasant Forest serving as nutrient mitigation.
- 7.11 It is therefore concluded that the draft legal agreement on Pleasant Forest should proceed to being completed.
- 7.12 In addition to the overarching legal agreement with the Forestry Commission and Defra, another development specific legal agreement will be needed between MBC and the developer itself. This has been drafted and includes a requirement for nutrient neutrality calculations to be submitted to the Council for its written approval prior to the occupation of the 10 unoccupied dwellings within phase 1b [Application (B)] or commencement of development of phase 2 [Application (A)].
- 7.13 It is the case that the applicant's initial proposal as reported to the August 2023 Planning Committee was that all 102 dwellings of the phase 2 of their scheme would be mitigated by the credits reserved from Pleasant Forest.
- 7.14 This has been revised down to 70 units on phase 2 because 32 units in phase 1 also need mitigation, as described in relation to Application (B). Effectively there has been a "swap" of credits between the phases.
- 7.15 The legal agreement as drafted will require MBC to carry out assessments and confirm the precise number of dwellings have been satisfactorily mitigated in each phase or sub phase.
- 7.16 For phase 2b, the developer will need to demonstrate by a future submission to the Council that alternative mitigation has been secured. As mentioned above, this is likely to be from a credit scheme elsewhere in the catchment

Policy Update

- 7.17 This section details a policy update in terms of the latest NPPF and the adopted Local Plan Review 2024.
- 7.18 There are not considered to be any changes in the NPPF relevant. However, there is now a statutory duty that "relevant authorities" must further conserve and enhance the natural beauty of National Landscapes.
- 7.19 This application site is within the setting of the Kent Downs National Landscape. The landscape details in Application (B) have been improved in regard of the northern boundary by the change in species mix and the use of larger initial planting sizes for the new double hedgerows This is in addition to 92 new native trees.

- 7.20 The landscaping details for phase 2 must include maximisation of East-West landscaping through the site to break up the roofscape in order to comply with the parent planning permission which required compliance with the landscape strategies which referred to the need for "horizontal buffer planting locations to mitigate views from the North Downs". This will be the subject of an informative.
- 7.21 Condition 3 will require the colour/tones of materials details to be darker/subdued when facing the setting of the Kent Downs National Landscape.
- 7.22 Section 38(6) requires decisions to be made in accordance with the Development Plan unless material circumstances indicate otherwise. The application was submitted before statutory biodiversity net gain (BNG) but policy LPRSP14(A) now applies.
- 7.23 Therefore it appropriate to now secure a minimum of 20% BNG on site. There is a suggested condition and a s106 requirement to cover the costs to the LPA of long term monitoring (30 years).
- 7.24 The applicant has indicated that it does not wish to implement BNG on the site and as such there is a risk of the condition being appealed if it is imposed and potentially seeking costs against the Council.
- 7.25 It is my view that the reserved matters is necessary in conjunction with the outline consent to constitute a scheme for "new residential development" which is what is referred to in policy LPRSP14(A) as needing to have 20% BNG.
- 7.26 It is well established that a Local Authority should not seek to revisit/secure matters at that stage which ought to have been considered/addressed at the time the outline permission was granted. However, BNG very clearly not a "live" issue when the Hybrid consent was granted back in 2018 and it is concluded that imposing a BNG condition at this stage is reasonable, necessary and complies with the new Development Plan.
- 7.27 It is accepted that the application would be exempt from statutory BNG both by its date of submission and it being Reserved Matters. However, the policy BNG is not necessarily constrained by what is in national legislation. The recently adopted LPR policy does not differentiate between different types of permission and the Inspector, who concluded that the LPR as a whole was "sound", chose not to go into any detail or require alignment with criteria in statutory BNG legislation.
- 7.28 A planning condition will ensure on site renewable energy generation to cover at least 10% of predicted energy requirements for the proposed houses in accordance with policy LPRQD1 Electric vehicle charging points are secured under Building Regulations.
- 7.29 Water saving will be imposed both for NN and to accord with policy LPRQD1. This requires the higher standard of 110 lpppd. Due to this water saving being essential long term for NN, it will need to be in the legal agreement so that water saving measures be retained in perpetuity. This is a standard requirement of Natural England's endorsement of NN.
- 7.30 Accessible and adaptable dwellings are required by condition under policy LPRQD6
- 7.31 The proposed dwellings would ensure a satisfactory living accommodation for future occupiers and the floorplans submitted accord with the nationally described space standards and LPRQD6. The garden sizes comply with policy LPRQD7.

Application (B)

- 7.32 The key issues are:

- Nutrient Neutrality(NN)
- Lighting Impact
- Landscaping Scheme

Nutrient Neutrality

- 7.33 The NN to mitigate the 32 dwellings in this application is included in the drafting of the main s106 for Pleasant Forest and the site specific s106 with the applicant described above.
- 7.34 The applicant's states that all 32 units would be mitigated by the credits reserved from Pleasant Forest (PF).
- 7.35 This has been achieved by a reallocation of some PF credits originally intended for phase 2 towards the completed dwellings in phase 1.
- 7.36 The nutrient reports from the applicant for this resubmission make a distinction between 22 of the 32 units (phase 1a) which are currently occupied by new homeowners and 10 units (phase 1b) which are complete but which the potential purchasers have not been allowed to occupy yet.
- 7.37 The legal agreement as drafted will require MBC to carry out assessments and confirm the precise number of dwellings have been satisfactorily mitigated in each phase or sub phase.
- 7.38 A Habitats Regulations Assessment has already been adopted for phase 1, supported by Natural England. This concludes adequate mitigation for 22 dwellings on phase 1a already occupied and for 10 dwellings on phase 1b not due to be occupied until 01.01.2025. The reason for this distinction is that dwellings occupied before the programmed upgrade to Lenham WWTW in December 2024 will require more phosphorus credits than dwellings occupied after the upgrade.
- 7.39 Natural England refer to the need for the SuDS system to have long term management and maintenance. The details of SuDS have already been subject to necessary conditions on the parent hybrid planning permission as a long term surface water strategy is clearly key in this location. It is not considered that further conditions on SuDS are necessary.

Lighting Impact

- 7.40 The lighting details are identical to those submitted previously which were judged to be acceptable in principle. This is still considered to be the case in terms of compliance with policy LPRQD2. The external lighting proposed is the minimum amount of lighting necessary to achieve its purpose; minimises glare and light spillage and would not harm highway safety nor would be visually detrimental to its immediate or wider setting such as the Kent Downs National Landscape, particularly intrinsically dark landscapes.
- 7.41 The s38 street lighting needs to accord with the requirements of KCC's adoption team and thus are standardised in terms of wattage and colour temperature they will accept. However, the illuminance contours demonstrate that light from this source will not fall outside of the site nor into the private rear gardens of any dwellings in the phase.
- 7.42 The private car park lighting is 4 columns only of 5m height, one to each private parking courtyard where s38 lighting does not reach. These are stated to be a low colour temperature of 2700K which is better for ecology and this is a bespoke fitting. They will be solar powered which does involve a PV panel attached to the

tops of the columns. Whilst this results in a relatively unsightly appearance, these columns are set away from the public domain and would be zero carbon in terms of the electricity needed in future to light them. On balance, this design is acceptable.

- 7.43 The domestic lights are of a coach lantern design which has already been approved for the first 16 plots. They are low luminance at 8W and low colour temperature of 3000K. Each house has 2 (1 for the front door and 1 for the rear door). They are low power and should not cause light pollution out of the site or into neighbouring gardens.
- 7.44 It is concluded that the lighting scheme is acceptable as it creates a safe environment for residents, pedestrians/cyclists but is not detrimental to the dark landscapes of surrounding countryside as required by policy LPRQD2 and Lenham Neighbourhood Plan policy D1.

Landscaping Scheme

- 7.45 The landscaping details for plots 17-48 are identical to those submitted previously which were judged to be acceptable in principle.
- 7.46 However, the resubmitted scheme improves the advance native tree and hedgerow planting on the northern boundary of the whole site in terms of more hawthorn and large initial planting sizes of many of the proposed species to speed up the screening function of the landscaping in relation to being in the foreground of the scarp of the Kent Downs National Landscape.
- 7.47 Structural planting on this boundary is a key means by which the development can be better integrated into the setting of the National Landscape and this has been referred to by an Appeal Inspector for a commercial allocated site along the same stretch of the A20. Such screening buffers reduce intervisibility and aid in meeting the new statutory duty on LPAs to further conserve and enhance the natural beauty of National Landscapes.
- 7.48 The applicant states that the density and number of mature trees proposed to be planted does not allow for further tree planting beyond that proposed, as this would impact upon root spreads and canopy spreads. As advised above, the layout of phase 2 was approved in 2018 in terms of the location and size of the buffer and the location and footprints of the houses. That cannot be revisited in this application for appearance and scale of the dwellings.
- 7.49 Therefore the buffer width is still proposed as 5m (outside gardens) as originally approved. The approved rear gardens which back onto the buffer are 10-13m in length. To increase the buffer width enough to add another line of trees (eg 3-4m) without undue overcrowding of canopies and roots would entail some of those gardens being reduced to only 6m in depth. This would also mean those small gardens becoming overhung by tree canopies in the future and the trees and their roots being relatively close to the houses themselves. The future problems likely to result to the gardens and houses are undesirable. Hence the change to increase the initial planting sizes of most of the hedgerow planting is concluded to be preferable as it adds quality to the buffer within the space available without undue impact on the dwellings and gardens adjacent to it.
- 7.50 The achievement and long term management of the landscape buffer is essential and it is recommended it be included in the s106 with a bond to ensure the management is fully funded for at least a 30 year period.
- 7.51 It is concluded the revised landscape scheme is acceptable in its design and species proposed appropriate to the landscape character and the sensitive setting of the Kent Downs National Landscape. The scheme therefore complies with policies

LPRSP14(A), LPRSP15, LPRENV1 of the Maidstone Borough Local Plan Review 2024 and Lenham Neighbourhood Plan policy D1.

PUBLIC SECTOR EQUALITY DUTY (A) and (B)

- 7.52 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 (A)

- 7.53 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 (A) and (B)

- 8.01 There are now acceptable drafts legal agreements that meet the requirements of the Planning Committee resolution of August 2023. Also acceptable amended nutrient neutrality reports for phase 2 have been received. These needed to be amended due to the need for part of phase 1 to also need credits to secure NN. There is a draft appropriate assessment for the development that concludes the Phase 2a will not have an adverse effect on the integrity of the European site of Stodmarsh. This is awaiting the agreement of Natural England. If agreement is received, the appropriate assessment would be adopted by MBC.
- 8.02 Otherwise, the acceptability of the detail of the reserved matters for phase 2 were agreed at the Planning Committee of August 2023. The scheme with suggested conditions complies with policy D1 of the Lenham Neighbourhood Plan and policies LPRSP6(D), LPRSP10(A), LPRSP14(A), LPRSP14(C); LPRSP15, LPRHOU5, LPRINF3, LPRQD1, LPRQD6, LPRQD7.
- 8.03 The resubmission of the details pursuant to conditions 12 and 14 of landscaping and lighting are acceptable in principle and the advance landscaping details are improved in regard of the northern boundary of the site. The reason for refusal of the previous details applications was solely due to nutrient neutrality and that has been overcome by securing adequate credits from Pleasant Forest, subject to the occupation dates given by the applicant for phases 1a and 1b and an obligation on water saving. There is an adopted appropriate assessment for the development that concludes the project will not have an adverse effect on the integrity of the European site of Stodmarsh.
- 8.04 The changes to the landscape buffer meets the statutory duty on LPAs to conserve and enhance the natural beauty of National Landscapes.
- 8.05 Otherwise, there are acceptable detail of the landscaping and lighting for plots 17-48 of phase 1, including compliance with policy D1 of the Lenham Neighbourhood Plan and policies LPRSP14(A); LPRSP15, LPRENV1, LPRQD2 of the Maidstone Borough Local Plan Review 2024.

9. RECOMMENDATION

Application (A)

GRANT planning permission subject to the following conditions and 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 £4398.75

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 dwelling 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 A20 landscape buffer's establishment and management with a bond to ensure it is fully funded for a 30 year period.
- Fee to cover long term monitoring for Biodiversity Net Gain

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) 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.

- 5) 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.

- 6) No development shall take place until a Biodiversity Gain Plan to ensure a minimum 20% net gain in habitat types on the site has been submitted to and approved in writing by the Local Planning Authority. The Biodiversity Gain Plan shall include:

a) Detailed proposals for biodiversity net gain which shall include information about the steps taken or to be taken to minimise the adverse effect of the development on the biodiversity of the onsite habitat and any other habitat; the pre-development biodiversity value of the onsite habitat; the post-development biodiversity value of the onsite habitat.

b) A Habitat Management and Monitoring Plan (HMMP) for maintaining the onsite biodiversity net gain for a period of 30 years from completion of the development which shall include:

(i) a non-technical summary;

(ii) the roles and responsibilities of the people or organisation(s) delivering the HMMP;

(iii) the planned habitat creation and enhancement works to create or improve habitat to achieve the biodiversity net gain in accordance with the approved Biodiversity Gain Plan;

(iv) the management measures to maintain habitat in accordance with the approved Biodiversity Gain Plan for a period of 30 years from the completion of development; and

(v) the monitoring methodology and frequency in respect of the created or enhanced habitat to be submitted to the local planning authority,

The development shall be implemented in full accordance with the requirements of the approved HMMP.

Notice in writing shall be given to the Council when the habitat creation and enhancement works as set out in the HMMP have been completed.

Monitoring reports shall be submitted to local planning authority in writing in accordance with the methodology and frequency specified in the approved HMMP.

Reason: To ensure measurable net gains to biodiversity.

- 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

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.

Application (B)

APPROVE details subject to the prior completion of legal agreement(s) as detailed in the recommendation for application (A).

Informative

- 1) List of Approved Plans

NB: For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.