

APPLICATION: MA/10/1478 Date: 23 August 2010 Received: 25 August 2010

APPLICANT: Middlefields Pension Fund

LOCATION: LAND WEST OF ECCLESTON ROAD, MAIDSTONE, KENT, ME15 6QP

PARISH: Maidstone, Tovil

PROPOSAL: Application for the erection of two six storey apartment blocks with associated parking and landscaping as shown on drawing numbers 531:P01, 531:P02, 531:P03, 531:P04, 531:P05, 531:P06, 531:P07, received on 25/8/10 as amended by drawing numbers 531:P01 A, 531:P02 A, 531:P11 and 531:P25 received on the 8/12/10 and 9/2/11.

AGENDA DATE: 15th December 2011

CASE OFFICER: Peter Hockney

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

- Members previously considered this application.

## **1. POLICIES**

- Maidstone Borough-Wide Local Plan 2000: ENV6, ENV7, H9, T13, CF1
- South East Plan 2009: CC1, CC2, CC4, CC6, H3, H4, H5, T4, NRM1, NRM4, BE1, M1
- Government Policy: PPS1, PPS3, PPG13, PPS23, PPS25
- MBC Affordable Housing DPD (2006)
- MBC Open Space DPD (2006)
- Kent Design Guide 05/06
- Lockmeadow and Eccleston Road Development Brief Consultation Draft (2001)

## **2. HISTORY**

- MA/05/2256 – Retrospective application for the change of use of the site from class B8 use to Class D1 use as a small independent school – APPROVED WITH CONDITIONS.
- MA/05/0934 – Change of use of former warehouse to class D2 use (indoor children's play centre) – WITHDRAWN.
- MA/81/1306 – Change of use from class X warehouse to class (iii) Light Industry – WITHDRAWN.

### **3. BACKGROUND**

- 3.1 This application was reported to Planning Committee on 24 February 2011. Members resolved to grant delegated powers to permit subject to the completion of a S106 legal agreement for the heads of terms set out below:-
- A minimum of 40% affordable housing on site;
  - £2,017.11 for additional capacity at the new Library and History Centre required by the demand created by the proposed development;
  - £2,789.06 for the additional youth and community workers (part thereof) required as a result of this development;
  - £180 per unit for adult education to provide additional capacity at the new Library and History Centre required by the demand created by the proposed development;
  - A contribution of £25,200 for improving the existing health care facilities within the Holland Road Surgery;
  - A contribution of £1,575 per dwelling for the improvement of the open space within Bridge Mill Way and the riverside walk between the application site and the town centre.
- 3.2 A copy of the previous committee report is attached at Appendix 1.
- 3.3 Despite prior agreement on the Heads of Terms of the S106 legal agreement before the application was reported to planning committee; following the resolution to grant permission the applicant has raised concerns with regard to the viability of the scheme if the above requirement for affordable housing and contributions is secured.
- 3.4 The applicant submitted a viability report in order to demonstrate that it would not be viable to provide any affordable housing as part of the scheme and this has been independently examined by the District Valuer. The findings of the report are discussed in the 'considerations' below (Section 6).
- 3.5 The decision that needs to be taken is whether the scheme remains acceptable with the proposed changes to the contributions especially given that the Council's affordable housing DPD asks for a minimum of 40% affordable housing.
- 3.6 In addition, there is some local support for contributions to be secured for a community facility at the former Archbishop Courtney School at the junction of Church Road and Wharf Road in Tovil (although no formal response has been received from the Parish). The Parish Council have secured planning permission under reference MA/10/0695 and there have been some initial expressions of interest from prospective partners for the use of the building (including the Girl guides, PCT and KCC for a mobile library) although there are no firm proposals for a partnership at this stage. This request needs to be given some

consideration, although so does the Council's decision not to fund this scheme (outlined below in section 4.2).

#### **4. ADDITIONAL CONSULTATIONS (after previous report)**

- 4.1 **The District Valuer** has been consulted and concludes that to provide affordable housing on the site would not make the scheme viable. The recommendation is that an amount approaching £200,000 by the developer for the provision of an off-site payment for affordable housing would be reasonable in the circumstances.
- 4.2 **MBC Community Services** have stated that the Council has agreed not to fund the project for a community facility at St Stephens School. In addition, they confirm that when the Council transferred its housing stock in 2004, one of the undertakings Golding Homes gave was that they would replace the YMCA Children's Hut in Courtney Road for a community facility. This proposal is continuing to be progressed. Consider there to be an urgent and pressing need for a 'community centre' in this area.
- 4.3 **MBC Housing** have considered the District Valuer's Report and the options available and states:-

"With your recommendation of £150,000 towards the affordable provision, this means a total developer contribution of £241,431.

I am of the view that affordable housing and open space should be the council's top priorities in terms of developer contributions. This is in accordance with our policy. As such, if we are intent on using the above figure as the total contribution sum, this should be towards open space (£55,125) with the remaining £186,306 towards affordable housing. This brings it closer to the District Valuer's recommendation that 'an amount approaching £200,000' should be paid for off site affordable housing provision. I do not think we should be prioritising other s106 contributions at the expense of an appropriate affordable housing contribution."

#### **5. REPRESENTATIONS**

- 5.1 As previous report.

## **6. CONSIDERATIONS**

### **6.1 Policy Background**

- 6.1.1 The Council has an adopted Development Plan Document relating to affordable housing. This document includes Policy AH1 that seeks to secure a minimum provision of 40% affordable housing on sites of 15 units or more.
- 6.1.2 The policy states that a lesser proportion of affordable housing can be provided in exceptional circumstances. The viability of the scheme can be considered an exceptional circumstance. It is for the applicant to demonstrate that a scheme would not be viable through a full viability appraisal and report.
- 6.1.3 There is some local support from Tovil Parish Council and some Local Councillors for a community facility. However, there are no specific details in terms of the contributions required and no formal representations regarding this aspect from the Parish Council. There is broad policy support for community facilities through saved policy CF1 of the Maidstone Borough-Wide Local Plan (2000). The Parish Council favour this facility former St Stephens School at the junction of Church Road and Wharf Road in Tovil. They have secured planning permission under reference MA/10/0695 and some initial expressions of interest from prospective partners for the use of the building (including the Girl guides, PCT and KCC for a mobile library) although there are no firm proposals for a partnership at this stage. However, the Borough Council have not committed to financially support this proposal and there is likely to be an alternative location for the provision of a facility through Golding Homes at Barfreston Close.

### **6.2 Viability**

- 6.2.1 Despite prior agreement on the Heads of Terms of the S106 legal agreement before the application was reported to planning committee; following the resolution by Planning Committee on the 24 February 2011 to grant planning consent subject to the completion of a legal agreement for the heads of terms set out in section 3 above the applicant raised concerns regarding the viability of the scheme if the above requirement for affordable housing and contributions is secured contrary to the policies in place.
- 6.2.2 The applicant's view was that the provision of any on-site affordable housing would lead to the scheme not being viable. In order to demonstrate this, a viability appraisal was submitted.
- 6.2.3 The appraisal demonstrated that the scheme would not be viable with the provision of any affordable housing. The appraisal was sent to the District Valuer for consultation in order their independent consideration and recommendations.

- 6.2.4 The final report of the District Valuer concluded that a policy compliant scheme of 40% affordable housing is unviable. However, her view is that the site in its current use can be assumed to be increasingly unattractive to either an investor or owner occupier. The resultant recommendation is that an amount approaching £200,000 by the developer for the provision of an off-site payment for affordable housing would be reasonable in the circumstances. This would be more appropriate than providing e.g. one unit on site as a Registered Social Landlord would then have responsibility for one unit within a block of 16 or 17 other privately owned units where the RSL would have no control over the communal areas. Therefore, I concur with the District Valuer's recommendation that the affordable housing contribution should be off site.
- 6.2.5 The applicant does not agree with the recommendation of the District Valuer and the methodology used. In particular there are disagreements in relation to the value of the flats. The District Valuer included sort to include a ground rent of £161,500 as part of the calculation, the applicant agreed that this would be appropriate if the value of the flats were subsequently reduced from £164,500 to £155,000 as shown in a comparable sales assessment undertaken by RPC Land and New Homes. There is also a disagreement between the applicant and the District Valuer with regard to the existing site value. The District Valuer values the site lower than the valuation in the applicant's appraisal.
- 6.2.6 These discrepancies are the difference between the applicant's findings that only £91,431 for S106 contributions is viable and the District Valuer's findings that the £91,431 for S106 contributions an amount approaching £200,000 by the developer for the provision of an off-site payment for affordable housing would be reasonable in the circumstances.
- 6.2.7 It is my view that the recommendations of the District Valuer need to be given significant weight in the determination of this planning application.

### 6.3 Heads of Terms (Proposals)

- 6.3.1 It is clear from the District Valuer's findings that the scheme would not be viable if the requirement for 40% affordable housing forms a requirement of a Section 106 agreement. The applicant does not agree with the District Valuer's findings as outlined in sections 6.2.5 and 6.2.6 above and negotiations have taken place between the case officer and the applicants and the results of these are two options detailed below:-

#### *Option 1*

- 6.3.2 Payment of £150,000 on the grant of planning permission (this would be for the £91,431 previously identified contributions and £59,000 towards an additional

community facility) with an overage/clawback clause in the S106 to provide for offsite affordable housing contributions if sales values were to rise in the future.

*Option 2*

6.3.3 Payment of £91,431 identified S106 contributions with an additional contribution of £150,000 as an offsite affordable housing contribution at the usual trigger points.

6.3.4 In addition to the above two options put forward there are two other options for Members to consider in terms of determining the application. These are outlined below for Members consideration:-

*Option 3*

6.3.5 That all or the vast majority the available Section 106 contributions are put towards an off site S106 contribution as it is the Council's (joint with open space) and the Government's number one priority. Therefore totalling £241,431 as an offsite affordable housing/open space contribution at the usual trigger points.

*Option 4*

6.3.6 That Planning Committee consider the application to be unacceptable without the provision of 40% affordable housing and refuse the application as being contrary to the Council's Affordable Housing DPD (2006).

6.3.7 The community facility contribution was not previously identified. However, to secure it would have policy support through policy CF1 of the Maidstone Borough-Wide Local Plan (2000). I also consider that the request for contributions when scrutinised, in accordance with Regulation 122 of the Act, against the strict criteria (set out in the previous report) it would meet the tests. However, without specific amounts requested it is not possible to clearly allocate a specific contribution for such a facility. This lack of clarity is a cause for concern; however, there is a lack of a community facility within this area of Maidstone, and this deficit will be increased with the additional demand from this development.

6.3.8 The Council's joint number one priority is affordable housing (and the Governments top priority) along with public open space. Therefore, it is my view that both an affordable housing and public open space contribution should be sort. Given that these are the Council's joint number one priorities I consider that they should be given greatest priority in the request for contributions through the S106 legal agreement. As such I consider that option 3 is the most appropriate for Members to accept.

6.3.9 This option would provide an offsite affordable housing contribution as well as the provision of the public open space contribution. This would result in the requested open space contribution of £55,125 and an offsite affordable housing contribution of £186,306. I also consider that this option complies with the recommendation of the District Valuer. It also complies with the comments received from the Council's Housing Section.

6.3.10 In considering the request for a community facility contribution, in the absence of a clear project or identified amount of money and the fact that the Council's current position is that it will not financially support such a scheme I give this request little weight in the determination of the application.

6.3.11 However, I propose to allow flexibility in the public open space contribution of £55,125 to allow its expenditure for either public open space or a community facility depending on the Borough Council's priorities at the time of the receipt of monies given that there is a need and a couple of projects appear to be progressing. I propose a radius of 2km from the application site in order to allow flexibility for use by the Borough Council for the open space either the identified former Archbishop Courtney School, Church Road, Tovil or a proposed facility at a different location (within the 2km radius).

6.3.12 I consider that an overage/clawback clause be included in the S106 agreement to secure additional affordable housing contributions if the sales levels of the flats increase significantly and this should be built into any S106 agreement.

#### 6.4 Other Considerations

6.4.1 The application site is an important development site close to the riverside within the urban area. It is a site that is allocated (policy H9) for housing in the Maidstone Borough-Wide Local Plan (2000). The proposal represents a high quality development that would comply with the aspirations of the Lockmeadow and Eccleston Road Development Brief Consultation Draft (2001), as indicated in the previous report and through the discussion at Planning Committee in February 2011. It is a brownfield site, which is unlikely to receive any significant investment for its current use (a view shared by the District Valuer). For these reasons I consider it important to secure the redevelopment of this site for residential through the approval of this proposal.

6.4.2. If Members consider that the provision of the scheme without the policy compliant level of affordable 40% is unacceptable then there is the option to refuse the application as it stands on the grounds of the lack of affordable housing provision and therefore contrary to the Council's Affordable Housing DPD (2006).

## **7. CONCLUSION**

- 7.1 Despite prior agreement on the Heads of Terms of the S106 legal agreement before the application was reported to planning committee; following the grant of planning permission and the submission of a financial appraisal of the proposal it was clear that a policy compliant development including 40% affordable housing would not be viable. This was confirmed by a financial appraisal and the District Valuer.
- 7.2 The District Valuer's considered the appraisal and their subsequent recommendation is that the £91,431 for S106 contributions an amount approaching £200,000 by the developer for the provision of an off-site payment for affordable housing would be reasonable in the circumstances.
- 7.3 The applicant does not agree with the values used by the District Valuer but following negotiations has agreed on one of two options. Although there are others for consideration.
- 7.4 Following consultations with the Council's Housing Section and also the Communities Section, the preferred option is option 3 (not put forward by the applicant) and this would provide an offsite affordable housing contribution as well as the provision of the public open space contribution. The requested open space contribution of £55,125 and an offsite affordable housing contribution of £186,306 would form the basis of a S106 agreement.
- 7.5 I consider that an overage/clawback clause be included in the S106 agreement to secure additional affordable housing contributions if the sales levels of the flats increase significantly.
- 7.6 It is recommended that members accept option three (from section 6.3 above) as set out below.

## **8. RECOMMENDATION**

Subject to the submission of a S106 legal agreement addressing the following matters:

- A contribution of £186,306 towards offsite affordable housing plus an overage/clawback clause to secure additional contributions should the sales values of the units significantly increase;
- A contribution of £1,575 per dwelling (total of £55,125) for the improvement of the open space within Bridge Mill Way and the riverside walk between the application site and the town centre or a community facility within 2km of the application site if a robust need case (including a programme of works and



business case) is put forward and agreed by this Local Authority within 12 months of the date of this permission.

The Head of Development Management BE GIVEN DELEGATED POWERS TO APPROVE subject to the conditions set out below:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission;

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development shall not commence until, written details and samples 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 and the development shall be constructed using the approved materials;

Reason: To ensure a satisfactory appearance to the development in accordance with policies ENV7 and H9 of the Maidstone Borough-Wide Local Plan (2000), BE1 of the South East Plan (2009), the Kent Design Guide and guidance contained in PPS1 and PPS3.

3. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping including large planting troughs on the balconies, using indigenous species which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development and a programme for the approved scheme's implementation and long term management. The scheme shall be designed using the principles established in the Council's adopted Landscape Character Assessment and Landscape Guidelines;

Reason: No such details have been submitted in accordance with policies ENV6, ENV7 and H9 of the Maidstone Borough-Wide Local Plan (2000), BE1 of the South East Plan (2009) and guidance contained in PPS1 and PPS3.

4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to

any variation;

Reason: To ensure a satisfactory setting and external appearance to the development in accordance with policies ENV6, ENV7 and H9 of the Maidstone Borough-Wide Local Plan (2000), BE1 of the South East Plan (2009) and guidance contained in PPS1 and PPS3.

5. The dwellings shall achieve a minimum of Level 3 of the Code for Sustainable Homes. The dwelling shall not be occupied until a final Code Certificate has been issued for it certifying that at least Code Level 3 has been achieved;

Reason: To ensure a sustainable and energy efficient form of development in accordance with Policy CC4, H5 and M1 of the South East Plan (2009), Kent Design Guide 2000 and PPS1.

6. No development shall commence until:

1. The application site has been subjected to a detailed scheme for the investigation and recording of site contamination and a report has been submitted to and approved by the Local planning authority. The investigation strategy shall be based upon relevant information discovered by a desk study. The report shall include a risk assessment and detail how site monitoring during decontamination shall be carried out. The site investigation shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology and these details recorded.

2. Detailed proposals in line with current best practice for removal, containment or otherwise rendering harmless such contamination (the 'Contamination Proposals') have been submitted to and approved by the Local Planning Authority. The Contamination Proposals shall detail sources of best practice employed.

3. Approved remediation works shall be carried out in full on site under a Quality Assurance scheme to demonstrate compliance with the proposed methodology. If, during any works, contamination is identified which has not previously been identified additional Contamination Proposals shall be submitted to and approved by, the local planning authority.

4. Upon completion of the works, this condition shall not be discharged until a closure report has been submitted to and approved by the local planning authority. The closure report shall include full details of the works and certification that the works have been carried out in accordance with the approved methodology. The closure report shall include details of any post remediation sampling and analysis together with documentation certifying quantities and source/destination of any material brought onto or taken from the

site. Any material brought onto the site shall be certified clean;

Reason: To prevent harm to human health and pollution of the environment in accordance with guidance contained in PPS23.

7. The approved details of the parking/turning areas shall be completed before the commencement of the use of the land or buildings hereby permitted and shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008 and the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them;

Reason: Development without adequate parking/turning provision is likely to lead to parking inconvenient to other road users and in the interests of road safety in accordance with policies T13 of the Maidstone Borough-Wide Local Plan (2000) and T4 of the South East Plan (2009) and PPG13.

8. No occupation of the units hereby permitted shall take place until the bicycle storage facilities hereby permitted have been provided. This facility shall thereafter be maintained.

Reason: To ensure a sustainable form of development in accordance with PPS1.

9. Prior to the commencement of development details of the proposed means of foul sewerage disposal and surface water disposal shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details;

Reason: To ensure adequate sewage disposal and drainage in accordance with policy CC4 of the South East Plan (2009).

10. The development hereby permitted shall be carried out in accordance with the following approved plans:  
531:P01 A, 531:P02 A, 531:P03, 531:P04, 531:P05, 531:P06, 531:P07,  
531:P11, 531:P25;

Reason: To ensure the quality of the development is maintained and to prevent harm to the residential amenity of neighbouring occupiers in accordance with in accordance with policies ENV7 and H9 of the Maidstone Borough-Wide Local Plan (2000), BE1 of the South East Plan (2009), the Kent Design Guide and guidance contained in PPS1 and PPS3.

## **Informatives set out below**

Reasonable and practicable steps should be used during any demolition or removal of existing structure and fixtures, to dampen down, using suitable water or liquid spray system, the general site area, to prevent dust and dirt being blown about so as to cause a nuisance to occupiers of nearby premises. Where practicable, cover all loose material on the site during the demolition process so as to prevent dust and dirt being blown about so as to cause a nuisance to occupiers of nearby premises.

Attention is drawn to Sections 60 and 61 of the Control of Pollution Act 1974 and to the Associated British Standard Code of practice BS5228:1997 for noise control on construction sites. Statutory requirements are laid down for control of noise during works of construction and demolition and you are advised to contact the Environmental Health Manager regarding noise control requirements.

Clearance and subsequent burning of existing woodland or rubbish must be carried out without nuisance from smoke, etc. to nearby residential properties. Advice on minimising any potential nuisance is available from the Environmental Health Manager.

Plant and machinery used for demolition and construction shall only be operated within the application site between 0800 hours and 1900 hours on Mondays to Fridays and between 0800 hours and 1300 hours on Saturdays and at no time on Sunday and Bank Holidays.

No vehicles may arrive, depart, be loaded or unloaded within the general site except between the hours of 0800 and 1900 Mondays to Fridays and 0800 and 1300 hours on Saturdays and at no time on Sundays or Bank Holidays.

Adequate and suitable provision in the form of water sprays should be used to reduce dust from demolition work.

Adequate and suitable measures should be carried out for the minimisation of asbestos fibres during demolition, so as to prevent airborne fibres from affecting workers carrying out the work, and nearby properties. Only contractors licensed by the Health and Safety Executive should be employed.

Any redundant materials removed from the site should be transported by a registered waste carrier and disposed of at an appropriate legal tipping site.

Southern Water requires a formal application for a connection to the public sewer. The applicant is advised to contact Atkins Ltd, Anglo St James House, 39A Southgate Street, Winchester, SO23 9EH (telephone number 01962 858688) or [www.southernwater.co.uk](http://www.southernwater.co.uk)

The importance of notifying local residents in advance of any unavoidably noisy operations, particularly when these are to take place outside the normal working hours, can not be highly stressed.

Where possible, the developer shall provide the Council and residents with a name of a person and maintain dedicated telephone number to deal with any noise complaints or queries about the work, for example scaffolding alarm misfiring late in the night/early hours of the morning, any over-run of any kind.

Provision should be made for the separate storage of recyclables from household waste. Advice on recycling can be obtained from the Environmental Services.

The developer may be required to produce a Site Waste Management Plan in accordance with Clean Neighbourhoods and Environment Act 2005 Section 54. This should be available for inspection by the Local Authority at any time prior to and during the development.

Care should be taken during and after construction to ensure that all fuels, oils and any other potentially contaminating materials are stored (for example in bunded areas secured from public access) so as to prevent accidental/unauthorised discharge to ground. The area's for storage should not drain to any surface water system.

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