

APPLICATION: MA/11/0679 Date: 26 April 2011 Received: 27 April 2011

APPLICANT: Mr G Norton, Wealden Homes

LOCATION: LAND R/O 125, TONBRIDGE ROAD, MAIDSTONE, KENT, ME16 8JS

PARISH: Maidstone

PROPOSAL: Erection of three dwellings comprising one detached dwelling with integral garage and two semi detached dwellings with access to Tonbridge Road via access permitted under (MA/08/2323) as shown on plan numbers PL-079-01, PL-079-02, PL-079-03, PL-079-04, PL-079-05, PL-079-06, PL-079-07, PL-079-08, PL-079-09, PL-079-10, PL-079-11, PL-079-12, PL-079-13, PL-079-14, PL-079-15, PL-079-16, design and access statement and application form received 27th April 2011 and plan number P030-035 received 15th March 2011.

AGENDA DATE: 12th January 2012

CASE OFFICER: Kevin Hope

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

Councillor Paine has requested it be reported for the following reasons:-

- The impact of the development upon neighbouring amenity
- The quality and quantity of landscaping within the proposed development

1. BACKGROUND

This application was reported to Planning Committee on 13th October 2011 with a recommendation of approval with conditions. I attach a copy of my Committee Report and Urgent Update Report as an appendix hereto. Members deferred making a decision to enable:

- That this application be deferred for the submission of a fully detailed landscaping scheme to enable full consideration of the scheme and layout.

Discussions subsequently took place with the agent to discuss the reasons for this deferral and the details that would be required. Following these discussions a fully detailed landscaping scheme has been submitted.

2. THE AMENDMENTS

The submitted amended landscaping scheme now gives specific details of the shrub planting mix which includes 15 Periwinkle of 30cm in height, 10 Viburnum Davidii of 50cm in height, 15 Dogwood of 40cm in height, 10 Shrub Roses of 60cm in height and Hedera ssp of 20cm in height.

There are also specific details of the tree planting within this site which includes Flowering Cherry of 8-10 standard in size and Field Maple in 8-10 standard in size. The hedge planting proposed is privet hedging of 60cm in height.

This landscaping scheme shows the layout of the planting within the site and comprises native species including some climbing plants increasing coverage and greening within the streetscene.

A line of fencing has also been removed which previously extended along the front north eastern boundary of the plot A.

3. CONSULTATIONS (i.e. on the amendments)

Landscape Officer - Recommends approval with the following comments:-

"The issues concerning the lack of detail and species type have been addressed in the latest scheme submitted by Wealden Homes, 'Soft Landscaping & Planting', drawing no. PL-079-05 revision C, dated 04/04/11. The species and stature of shrubs and trees are more appropriate to the restricted nature of this small residential site and the inclusion of climbers will give an additional element of vertical greening".

4. REPRESENTATIONS (i.e. on the amendments)

Two representations have been received following a consultation on this amended landscaping scheme. The points raised refer principally to the suitability of the proposed planting mix. Comments have been raised with regard to the scale of the proposed planting not sufficiently compensating for the planting lost within this garden area, their suitability for providing habitat and food for birds, the maturity of the proposed planting, who will be responsible for the maintenance of the planting and the level of planting and species selected.

5. CONSIDERATIONS

5.1 Landscaping

5.1.1 The submitted landscaping scheme offers a number of positive amendments to the proposal. The removal of the fencing along the north eastern boundary of plot A boundary allows for more planting and will increase the visibility within

this area minimising the enclosed spaces within the streetscene. This is important as there is a pathway adjacent to this boundary which provides rear access to the neighbouring properties within All Angels Close. The removal of this fencing can only improve the appearance and character of this section of streetscene.

- 5.1.2 Full details have been provided with regards to the shrub planting mix within the site. The species selected including shrub roses, Dogwood, Periwinkle and Viburnum are considered to be appropriate given the limited size of the site and this would achieve an appropriate softness to the surrounding streetscene due to the variety of growth and coverage of these selected species. Representations have been received which question the species selected along with the size of the planting. However, the Landscape Officer has been consulted on this landscaping scheme and considers that the species selected are appropriate and would ensure a variety of ground cover as well as an additional height dimension with the inclusion of climbers. The stated size of the planting being 8-10 standard of planted size means that the trees would have a circumference of between 8 and 10cms measured 1 metre up from the level of the soil when planted. This would ensure a good standard of initial ground cover whilst ensuring that the planting is able to establish.
- 5.1.3 The details of tree planting include provision of Flowering Cherry and Field Maple. These species are considered again to be appropriate for the limited scale of this site and would achieve a suitable landscaped appearance both within the prominent location at the focal point of the streetscene and to the rear of plot A.
- 5.1.4 The provision of privet hedging to the rear boundary of plots B and C at a regular spacing of 33cm and 60cm in height would also ensure that suitable landscaped screening would be secured along this boundary in addition to the 1m high walling. There has been some concern that there may not be sufficient spacing for planting along this boundary, however, I consider that as the hedging would be in a single row and of a suitable Juvenile size, there is sufficient spacing to accommodate this boundary hedging. As such, I consider that this level of planting at this size would enable the hedging to establish and adequately mitigate the loss of the existing planting along this boundary.
- 5.1.5 A representation has raised the issue of the maintenance of the planting proposed. This will be the responsibility of the occupiers of the respective dwellings within the site which cannot be controlled against, although condition 6 secures the replacement of any planting which dies within the five years following the completion of the development.

5.2 Ecology

5.2.1 The KCC Ecology Officer has been consulted on the submitted landscaping scheme and does not raise objections. However, comments have been raised with regard to the provision of bat and birds boxes within the landscaping scheme which would mitigate against the loss of the previous established vegetation at this site. As such, an additional condition will therefore be imposed to this effect to ensure that the development would enhance ecology at this site.

5.3 Provision for legal agreement

5.3.1 Comments were raised by Members at the previous planning committee on 13th October 2011 with regard to whether contributions could be sought on this application. I have researched this issue and Legal advice has been sought.

5.3.2 During this research, one particular case has been highlighted which is relevant to the consideration of this application. The case of R (on the application of City of Westminster) v First Secretary of State and Brandlord Ltd [2003] JPL 1066 relates to a terraced building in Lancaster Gate, London which was separated in to two buildings. The two properties were purchased by different companies and were both developed with the construction of 7 flats and 12 flats of the two neighbouring sites. However, a condition was imposed upon the second approval securing the provision of two affordable housing units as the LPA had considered the two sites as one. The developer appealed against this condition and won. Subsequently, the LPA challenged this decision in the High Court which was dismissed. Therefore, it is important to consider the tests used by the original planning Inspector to decide whether to consider the two sites as one being 1) The ownership of the sites, 2) the physical relationship of the sites and 3) The development proposed.

5.3.3 With regard to the ownership, in the Brandlord Ltd case the Inspector considered that even though the two sites were purchased by two different companies, they had the same directors, shareholders and secretary. In this case, the Tonbridge Road site is not itself owned by Wealdon Homes, although Wealdon Homes are the applicants for this application as they were All Angels Close. Following discussions on this matter with the applicant, it is apparent that an option to develop this current site did not exist during the planning application process and subsequent approval of the neighbouring site (MA08/2323) of All Angels Close. The Inspector also stated in the decision that *"Common ownership will often be necessary to promote development involving more than one building or plot but cannot on its own be a determining factor in deciding what constitutes a single site or a single development"*.

- 5.3.4 With regard to the relationship of the site, in the Brandlord Ltd case the Inspector considered that the two sites were not interdependent on each other and were technically separate sites. In this case, the Tonbridge Road site includes part of the neighbouring site at All Angels Close as shown with the red outline on the site location plan, therefore it could be said that there is significant interdependence of parts of the site, albeit not the actual units.
- 5.3.5 With regard to the development proposed, in the Brandlord Ltd case the Inspector stated, *"One could also expect the part of the site being developed to be interdependent with the remainder for access or other infrastructure. These proposals constitute a windfall and number 15 is not dependent on what happens in numbers 16/17 or vice versa. They are separate sites and can be developed wholly independently of each other"*. In this case, the Tonbridge Road site is wholly reliant on the construction of All Angels Close and cannot be developed without it.
- 5.3.6 In the concluding paragraph, the inspector stated *"Had all three buildings been acquired by the same company, and a single application submitted for the conversion of all three to flats, then the Council might reasonably have anticipated provision of an element of affordable housing... A single development could still be proposed within the two sites, but the schemes for number 15 and numbers 16/17 are in no way interdependent, nor do they share any essential facilities or services. I therefore find nothing to suggest that they should be considered as two phases of the same development. Accordingly, there are no grounds for providing the two affordable housing units sought by the Council (under interim policy or first deposit policy H4 in the emerging UDP) as being consistent with the development of 19 flats"*.
- 5.3.7 The City of Westminster's affordable housing policy contains wording which states that *"in other cases which would have been equivalent to either of the above criteria but fall below these thresholds because of the exceptional size of the units of the phasing of the development"*. This is significant to the LPA's decision to impose the affordable housing condition which is backed up by planning policy. With regard to current policy, Policy OS1 of the Council's open space DPD states that contributions should be sought on developments of 10 dwellings or more, this proposal for 3 dwellings is clearly below this threshold and therefore the requirement for contributions on this proposal would be contrary to this policy. Furthermore, policy AH1 of the Council's affordable housing DPD states that affordable housing should be sought on developments of 15 dwellings or more or 0.5 hectares or greater, the application site falls below both of these thresholds and therefore, it would also be contrary to this policy to require affordable housing provision on this application. However, the draft Core Strategy does include wording within policy CS10 which does relate to this point. It states that, *"Sites will be expected to provide affordable housing at the appropriate rate on a whole site basis. Sub-division of a site that would bring*

any particular application under the affordable housing threshold will be aggregated to ensure delivery of affordable housing is maximised across the whole site". Whilst I acknowledge that this does not specifically cater for the development of subsequent neighbouring sites, the intention of this policy is clearly to prevent a succession of piecemeal developments as a tool to circumvent the affordable housing thresholds.

- 5.3.8 Therefore, as outlined in the considerations outlined above, the case for requesting contributions is balanced. There are points which are in favour of requesting contributions being the interdependent relationship of the proposed development upon All Angels Close, both this application and All Angels Close are to be developed by the same developer, emerging draft policy within the Core Strategy does cater for the deliberate avoidance of affordable housing contributions within policy CS10. Although at the same time, there are a number of points which are against seeking contributions including, the fact that Wealdon Homes are not the current owner of the application site, the Council does not have a current policy on phased developments and the issue of affordable housing has not been formally raised at any other point and was not a reason for deferral of this application. As previously stated, this is a finely balanced issue and I consider that given the considerations as outlined above it would not be reasonable to seek contributions in this case.
- 5.3.9 As such, I consider overall that to request formal contributions on this proposal could not be supported by current planning policies and would be unreasonable based upon the considerations as outlined above. Therefore, this application should be considered on a standalone basis for the erection of 3 dwellings.
- 5.3.10 There has been some concern that this proposal is piecemeal development. I do not consider this to be the case with this application, as previously stated, the developer did not have an option to develop this site during the planning process of All Angels Close and therefore there was no clear intention to development on a piecemeal basis. Due to the layout and design of this proposal, this development responds positively and is in keeping with the layout, design and character of All Angels Close which would have the appearance of a comprehensive development.
- 5.3.11 The applicant has advised that there are currently no other options to develop further garden sites to the rear of Tonbridge Road. The Council has advised that any further developments should be comprehensive and larger in scale to ensure that the rear gardens of Tonbridge Road to the south west of the site are not developed on a piecemeal basis in the future.

6. CONCLUSION

- 6.1 In conclusion, the reasons for deferral raised by Members have been addressed with the submission of a landscaping scheme. These details are considered acceptable as outlined above together with the additional considerations as outlined above.
- 6.2 I therefore recommend a conditional approval with an additional condition as stated above and as previously recommended at the committee of 13th October 2011. A copy of this report is appended under appendix A of this report.

7. RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

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 materials to be used in the construction of the external surfaces of the dwellings hereby permitted shall be Weinerburger Bloomsbury Stock bricks and Redland duoplan tiles as previously permitted elsewhere within All Angles Close. Written consent shall be sought for the Local Planning Authority prior to the use of any other materials for the construction of the development hereby permitted.

Reason: To maintain the character and appearance of All Angles Close in accordance with the guidance stated within PPS3 and policies BE1 and CC4 of the South East Plan 2009.

3. 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 PPG13.

4. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a detailed scheme of landscaping, using indigenous species and showing the planting size of all soft landscaping within the site. This shall also include the provision of a native hedgerow to the rear south eastern boundaries of Plots B and C abutting the retained boundary wall. The scheme shall be designed using the principles established in the Council's adopted Landscape Character Assessment and Landscape Guidelines. The development shall be maintained as such unless the written consent of the Local Planning Authority is obtained;

Reason: No such details have been submitted and in the interests of the visual amenities of the locality in accordance with Policy ENV6 of the Maidstone Borough Wide Local Plan 2000 and PPS1 and policies CC1 and CC6 of the South East Plan 2009.

5. 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 buildings 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 Policy ENV6 of the Maidstone Borough Wide Local Plan 2000, and PPS1.

6. No development shall take place until details in the form of large scale drawings (at a scale of 1:20 or 1:50) of the following matters have been submitted to and approved by the Local Planning Authority;
 - i) Details of the roof overhangs.
 - ii) Details of windows and doors and recesses/reveals (which shall be a minimum of 70mm).
 - iii) Details of the soldier arches.

The development shall thereafter be undertaken in accordance with the subsequently approved details.

Reason: To ensure a satisfactory external appearance to the development in the

interests of the visual amenity and character of the surrounding area in accordance with PPS1.

7. The dwellings shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.

Reason: to ensure a sustainable and energy efficient form of development in accordance with policy CC4 of the South East Plan 2009, Kent Design 2000 and PPS1.

8. All hardstanding including the approved parking areas shall be constructed using a porous material and shall be carried out as shown in the submitted plan number P030-035 received 15th March 2011.

Reason: In the interests of visual amenity, and to reduce the level of surface water run off to surrounding land, in accordance with PPS1.

9. Removal of existing trees or hedgerows containing nesting birds shall take place outside of the bird-breeding season (generally March to August).

Reason: To ensure the protection of biodiversity on the site, in accordance with PPS9.

10. There shall be the provision of bat boxes, bird boxes and swift bricks included within the development.

Reason: To ensure the protection and enhancement of biodiversity on the site, in accordance with PPS9.

11. No development shall take place until details of any lighting to be placed or erected within the site have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include, inter-alia, details of measures to shield and direct light from the light sources so as to prevent light pollution. The development shall thereafter be carried out in accordance with the subsequently approved details.

Reason: To prevent light pollution in the interests of the character and amenity of the area in general pursuant to Policy ENV49 of the Maidstone-Wide Local Plan 2000.

12. Other than where stated in the conditions above, the development hereby permitted shall be carried out in accordance with the following approved plans:

Plan numbers PL-079-01, PL-079-02, PL-079-03, PL-079-04, PL-079-05, PL-079-06, PL-079-07, PL-079-08, PL-079-09, PL-079-10, PL-079-11, PL-079-12, PL-

079-13, PL-079-14, PL-079-15, PL-079-16, design and access statement and application form received 27th April 2011 and plan number P030-035 received 15th March 2011.

Reason: To ensure the quality of the development is maintained and to prevent harm to the residential amenity of neighbouring occupiers in accordance with policies ENV6 and T13 of the Maidstone Borough Wide Local Plan 2000 and policies BE1, CC1, CC4, H5 and of the South East Plan 2009.

13. Prior to commencement of this development, details showing the provision of bird and bat boxes within the site shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of the ecology of the site in accordance with policy NRM5 of the South East Plan 2009 and the guidance contained within PPS9.

Informatives set out below

Attention is drawn to Sections 60 & 61 of the COPA 1974 and to the Associated British Standard COP BS 5228:1997 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 burning of existing woodland or rubbish must be carried 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 outside the hours of 0800 hours and 1900 Mondays to Fridays and 0800 to 1300 hours on Saturdays and at no time on Sundays and Bank Holidays.

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.

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 is advisable.

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.

The applicant is informed of the possibility of breeding birds within this area. If breeding birds are discovered, it is advised that no work must be carried out in that area until all the young have fledged.

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.