

APPLICATION: MA/12/1541 Date: 22 August 2012 Received: 28 August 2012

APPLICANT: United House

LOCATION: LAND OFF, TOVIL GREEN, TOVIL, MAIDSTONE

PARISH: Tovil

PROPOSAL: Erection of four blocks of two and three-storey terraced houses comprising 12 two-bedroom and 12 three-bedroom houses for affordable rent with associated private amenity space and car parking as shown on drawing nos., K11/0367/001, 100revA, 101revB, 102revB, 200revA, 201revB, 202revB, 300revA, 301revB, 302revA, 400revA, 401revA, 402revD, 403revD JKK6700/1revA, SJA/TCP/11136-01 (tree constraints plan), arboricultural implications report, Design and Access Statement and Planning Statement, Bat survey report, Ecological Assessment, Viability Statement, Code for Sustainable Homes Pre-Assessment and Desk-based contamination assessment received 22/08/2012, drawing no. K120413/ES001revA received 28/08/2012, letter received 22/10/2012, drawing no K11-0367010revA, Tovil Green Site Crossing Map, and drawing no.TD578/02revD received 19/12/2012.

AGENDA DATE: 27th June 2013

CASE OFFICER: Steve Clarke

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

- It is contrary to views expressed by Tovil Parish Council and Committee consideration has been requested
- It is a departure from the Development Plan
- Councillor Derek Mortimer has requested it be reported for the reason set out in the report

1.0 POLICIES

Maidstone Borough-Wide Local Plan 2000: ENV6, ENV22, ENV49, ED1, T13, T23 CF1
Government Policy: National Planning Policy Framework 2012

2.0 BACKGROUND

- 2.1 This application was reported to the Planning Committee on 6 June 2013. A copy of the previous report and urgent update report are attached at Appendix One.
- 2.2 At the meeting, Members resolved to defer the application for officers to negotiate with the applicants to seek to achieve Level 4 of the Code for Sustainable Homes.

3.0 CONSIDERATIONS

- 3.1 The developer has advised that they are not able to achieve Level 4 of the Code for Sustainable Homes on this development due to the impact of the additional costs moving from Level 3 to 4 on the overall viability of the scheme.
- 3.2 I would also advise Members that we do not currently have an adopted Development Plan policy that seeks to ensure new residential development achieves Code Level 4. There is therefore no mechanism to insist that the developer builds to Code Level 4. Where Code level 4 has been achieved it has been with the agreement of the developer.
- 3.3 Draft Policy CS6 relating to sustainable design and construction which does seek to achieve Code Level 4 was approved by Cabinet on 13 March 2013 for the purposes of Regulation 18 consultation ahead of the publications stage of the local plan process (Regulation 19). However, given the fact that there has not yet been any public consultation on this draft policy, it currently has very little weight in the determination process and would as a result not be sustainable as a ground of refusal at an appeal.
- 3.4 I still consider that at Code Level 3, achievement of which is a requirement for Homes and Communities Agency funding for affordable housing development as members will be aware, the scheme will still achieve a good level of sustainability and energy efficiency in construction and future energy costs.

4.0 CONCLUSION

- 4.1 Other elements of the development and the issues and material circumstances relating to it have not changed since the application was deferred and these issues are considered in the appended report.
- 4.2 The scheme is considered to be acceptable and subject to the prior completion of the previously recommended s106 legal agreement permission should be granted subject to appropriate conditions.

5.0 RECOMMENDATION

SUBJECT TO:

A: The prior completion of a s106 legal agreement, in such terms as the Head of Legal Services may advise to secure;

(i) The maintenance of the development as 40% affordable housing

(ii) The transfer of a strip of land of a minimum of 1.5m in width along the site's boundary with Tovil Green to the Highway Authority (Kent County Council) to enable the construction of a footpath

THE HEAD OF PLANNING BE GIVEN DELEGATED POWER TO 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 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 pursuant to the advice in the NPPF 2012.

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 pursuant to policy T13 of the Maidstone Borough-wide Local Plan 2000.

4. The development shall not commence until, details of the proposed slab levels of the buildings and the existing site levels have been submitted to and approved in writing by the Local Planning Authority and the development shall be completed strictly in accordance with the approved levels;

Reason: In order to secure a satisfactory form of development having regard to the topography of the site pursuant to the advice in the NPPF 2012.

5. All planting, seeding or turfing comprised in the approved details of landscaping as shown on drawing no. TD578/02revD received 19/12/2012 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 pursuant to policy ENV6 of the Maidstone Borough-wide Local Plan 2000.

6. The dwellings shall achieve at least 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 Kent Design and the advice in the NPPF 2012

7. Notwithstanding the provisions of 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) no development within Schedule 2, Part 1, Classes A, B, C, D, E and F and Part 2 Class A to that Order shall be carried out without the permission of the Local Planning Authority;

Reason: To safeguard the character, appearance and functioning of the surrounding area pursuant to the advice in the NPPF 2012.

8. The development shall not commence until details of an ecological enhancement plan to include as appropriate;
- (i) the use of bat bricks/boxes and swift bricks,
 - (ii) the retention of a proportion of the cordwood within the site and;
 - (iii) the provision of refugia
- has been submitted to and approved by the local planning authority. The development shall thereafter be undertaken in accordance with the subsequently approved details.

Reason: To secure appropriate enhancement within the site in the interests of ecology and biodiversity pursuant to the advice in the NPPF 2012.

9. The development shall not 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 have been 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 pursuant to the advice in the NPPF 2012.

10. The development shall not commence until details of surface water drainage have been submitted to and approved by the local planning authority. The submitted details shall incorporate inter-alia wildlife friendly drainage gullies and design features. The development shall thereafter be carried out in accordance with the approved details.

Reason: In the interest of pollution and flood prevention pursuant to the advice in the NPPF 2012

11. Notwithstanding the details on drawing no. K120413/ES001revA received 28/08/2012 the development shall not commence until details of the proposed lighting scheme have been submitted to and approved by the local planning authority. The details submitted for approval shall include;

- i) the submission of lighting contour plots showing the site and adjoining development;
- ii) sufficient detail to demonstrate that the proposed scheme complies with the recommendations of the Institute of Lighting Engineers 'Guidance Notes for reduction of Obtrusive Light' for sites located in Environmental Zone E3 and;
- iii) measures to demonstrate that light spillage into the proposed landscaped area has been minimised.

The development shall be carried out in accordance with the subsequently approved details and maintained thereafter.

Reason: In the interests of the character of the area, ecology and the amenity of nearby residents pursuant to policy ENV49 of the Maidstone Borough-wide Local Plan 2000 and the advice in the NPPF 2012.

12. No development approved by this permission shall commence until the applicant has submitted a report containing details of assessment of noise from nearby industrial activities and of any scheme necessary for the attenuation of audible sound affecting the residential amenity of occupiers of the dwellings.

The assessment of noise from the industrial activities should be judged against the guidance in BS 4142:1997 'Method for Rating Industrial Noise in mixed Residential and Industrial Areas.' This would provide a prediction of the expected noise rating levels, in order that the likelihood of complaints arising from the adjacent industrial units may be assessed.

Any necessary attenuation scheme shall ensure that the rating level of noise, at the relevant time, does not exceed the pre-existing background noise level at the proposed dwellings.

The subsequently approved scheme shall be fully implemented prior to the first occupation of the affected dwellings and maintained thereafter.

Reason: In the interests of the amenity of the occupiers of residential properties pursuant to the advice in the NPPF 2012.

13. Notwithstanding the details shown on drawing no.s K11/0367/010revA and TD578/02revD the indicated 1.8m high pallsade fence shall be substituted with a green coloured weldmesh fence of 1.8m in height.

Reason: To ensure a satisfactory setting and external appearance to the development pursuant to policy ENV6 of the Maidstone Borough-wide Local Plan 2000.

14. The development hereby permitted shall be carried out in accordance with the following approved plans:

K11/0367/100revA, 101revB, 102revB, 200revA, 201revB, 202revB, 300revA, 301revB, 302revA, 400revA, 401revA, 402revD, 403revD and SJA/TCP/11136-01 received 22/08/2012 and drawing nos. K11-0367010revA and TD578/02revD received 19/12/2012.

Reason: To ensure the quality of the development is maintained and to prevent harm to the residential amenity of neighbouring occupiers in accordance with the advice in the NPPF 2012.

Informatives set out below

When designing the lighting scheme for the proposed development the recommendations by the Bat Conservation Trust must be considered (where applicable)

- a) Low-pressure sodium lamps or high-pressure sodium must be used instead of

mercury or metal halide lamps where glass glazing is preferred due to its UV filtration characteristics.

b) Lighting must be directed to where it is needed and light spillage avoided. Hoods must be used on each light to direct the light and reduce spillage.

c) The times during which the lighting is on must be limited to provide some dark periods. If the light is fitted with a timer this must be adjusted to the minimum to reduce the amount of 'lit time'.

d) Lamps of greater than 2000 lumens (150 W) must not be used.

e) Movement sensors must be used. They must be well installed and well aimed to reduce the amount of time a light is on each night.

f) The light must be aimed to illuminate only the immediate area required by using as sharp a downward angle as possible. This lit area must avoid being directed at, or close to, any bats' roost access points or flight paths from the roost. A shield or hood can be used to control or restrict the area to be lit. Avoid illuminating at a wider angle as this will be more disturbing to foraging and commuting bats as well as people and other wildlife.

g) The lights on any upper levels must be directed downwards to avoid light spill and ecological impact.

h) The lighting must not illuminate any bat bricks and boxes placed on the buildings or the trees in the grounds

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.

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 in connection with the construction of the development hereby permitted 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.

The developer may be required to produce a Site Waste Management Plan in accordance with Clean Neighbourhoods and Environment Act 2005 Section 54. As per the relevant act and the Site Waste Management Regulations 2008, this should be available for inspection by the Local Authority at any time prior to and during the development.

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, cannot be stressed enough. 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.

Attention is drawn to the COPA 1974 sections 60 & 61. The Council will normally expect contractors to adhere to the Guidance Note for Contractors contained in the Associated British Standard COP BS 5228:2009 for noise control on construction sites which includes such matters as hours of noisy working, working practices and public relation with local residents. Statutory requirements are laid down for control of noise during works of construction and demolition and you are advised to contact the EHM regarding noise control requirements.

No burning shall take place on site.

Note to Applicant

In accordance with paragraphs 186 and 187 of the NPPF, Maidstone Borough Council (MBC) takes a positive and proactive approach to development proposals focused on solutions. MBC works with applicants/agents in a positive and proactive manner by:

Offering a pre-application advice and duty desk service.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The applicant/agent was advised of minor changes required to the application and these were agreed.

The applicant/agent was provided with formal pre-application advice.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the committee and promote the application.

The proposed development does not conform with policy ED1 of the Maidstone Borough-wide Local plan 2000, however given the lack of interest in employment redevelopment and the immediately adjacent residential development a departure from

that policy would be likely to result in only minor harm. The provision of affordable housing within this site at this point in time is considered to be of overriding benefit to justify a departure from this policy of the Development Plan, subject to appropriate conditions.