

# APPENDIX ONE

**Item no. 15**

**Page no. 74**

**Address: Land off Tovil Green Tovil  
Maidstone**

**Reference no. MA/12/1541**

**Officer comment**

Whilst it has been demonstrated that scheme itself is not sufficiently viable to fund the physical construction of a footpath as set out in the report, I can advise Members that there has been further discussion with the applicants regarding the provision of a footpath along Tovil Green on the applicants' land recommended by Kent Highway Services.

The applicants have agreed to transfer the ownership of a strip of land a minimum of 1.5m in width to the County Council as Highway Authority to enable the construction of a footpath at a future date. This is considered to meet the tests for s106 obligations in the NPPF in that it would commence to address an identified concern by the highway authority arising from the development.

I would also advise Members that subject to the inclusion of the above, the framework of a draft s106 agreement has been agreed, which secures the maintenance of 40% affordable housing (5 x two-bedroom and 5 x three-bedroom units).

**Amendment to recommendation**

Amend s106 Heads of Terms to include

(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 MAIDSTONE BOROUGH COUNCIL

PLANNING APPLICATION NUMBER: MA/12/1541

GRID REF: TQ7554

LAND OFF TOVIL GREEN,  
TOVIL.



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**Rob Jarman**  
Head of Planning

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: 6th June 2013

CASE OFFICER: Steve Clarke

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

- It is a departure from the Development Plan
- Its is contrary to the views of Tovil Parish Council
- Councillor Derek Mortimer has requested it be reported for the reason set out in the report

## 1. **POLICIES**

- Maidstone Borough-Wide Local Plan 2000: ENV6, ENV22, ENV49, ED1, T13, CF1
- Government Policy: NPPF2012

## 2. **Background**

2.1 This application was recommended to be withdrawn from consideration at the meeting of the Planning Committee on 16 May 2013 by officers, as concern had

been raised with regards to the level of affordable housing provision (40%) in relation to the fact that no contributions were being provided. Further time was sought to fully consider the viability of the development, should 40% of affordable housing be provided.

### **3. HISTORY**

- 3.1 Other than the current application, the present application site has no directly relevant planning history.
- 3.2 Land to the east comprises a development of extra care apartments approved under the following application (on which MBC was a consultee) by Kent County Council on 22/02/2007.

MA/06/1933: A consultation with Maidstone Borough Council by Kent County Council for clearance of land to allow the erection of a detached three storey block of 40 extra care apartments for people with learning difficulties, with associated communal facilities together with access, car parking and landscaping: MBC decision RAISE NO OBJECTIONS 21/11/2006

- 3.3 MBC raised objections to the following application:

MA/05/2199: A consultation with Maidstone Borough Council by Kent County Council for the clearing of land for erection of new buildings to accommodate 40 No. extra care apartments and communal areas for the elderly and 6 No. supported apartments with communal areas for those with learning difficulties, with associated parking to be provided: MBC decision RAISE OBJECTIONS 26/01/2006

The application was subsequently permitted by Kent County Council on 09/06/2006

### **4. CONSULTATIONS**

#### **4.1 Tovil Parish Council:**

- 4.1.1 Wish to see application refused.

'Cllrs **agreed** to recommend refusal on the grounds of highway safety. If MBC's Planning Committee is minded to approve, then the following Conditions should be applied:

A footpath on land in the developer's ownership should be installed towards Farleigh Hill and landscaping treatments should be introduced to the rear of site.'

## 4.2 **Natural England:**

### 4.2.1 Have commented as follows:-

'The protected species survey has identified that bats, a European protected species may be affected by this application.

Our Standing Advice Species Sheet: Bats provides advice to planners on deciding if there is a "reasonable likelihood" of bats being present. It also provides advice on survey and mitigation requirements.

The standing advice has been designed to enable planning officers to assess protected species surveys and mitigation strategies without needing to consult us on each individual application. The standing advice was issued in February 2011 and we recognise that it will take a little while for planners to become more comfortable with using it and so in the short-term will consider species surveys that affect European protected species against the standing advice ourselves, when asked for support by planners.

We have not assessed the survey for badgers, barn owls and breeding birds<sup>1</sup>, water voles, widespread reptiles or white-clawed crayfish. These are all species protected by domestic legislation and you should use our standing advice to assess the impact on these species.

### **How we used our standing advice to assess this bat survey and mitigation strategy**

We used the flowchart on page 10 of our Standing Advice Species Sheet: Bats beginning at box (i) and came to the following conclusion:

- Box (i)-Using Nature on the Map we determined that **No**, the application is not within/close to a SSSI or SAC notified for bats. This took us to Box (v).
- Box (v)-We looked at the survey report and determined that **Yes**, it did highlight that there are suitable features for roosting within the application site (eg buildings, trees or other structures) that are to be impacted by the proposal. This took us to Box (iv).
- Box (iv)-We determined that **No**, whilst detailed visual inspections (internal and external where appropriate) had been undertaken no evidence of a roost was found although foraging corridors were. This took us to Box (vii).



- Box (vii)–We determined that **No**, the application does not involve a medium or high risk building as defined in our standing advice. This took us to Box (iii).
- Box (iii) advises the authority that "Permission could be granted (subject to other constraints)" and that the authority should "Consider requesting enhancements".

Natural England supports the recommendations and habitat enhancement measures as outlined in the bat survey report.'

#### 4.3 **KCC Ecology:**

##### 4.3.1 Originally expressed concerns regarding the potential impact of the development on reptiles and commented as follows:-

'The phase 1 survey details that the site contains suitable habitat for reptiles but no survey was required as the site is isolated from the surrounding habitats. While we do agree that currently the site has limited connectivity in the past connectivity to the site was much better. As a result please provide additional information on the potential of reptiles being present.'

##### 4.3.2 Following receipt of further ecological information final comments raising no objections to the development subject to enhancement measures being secured were received.

'We have reviewed the information submitted with the planning application and we are satisfied with the information which has been submitted. We require no additional information to be provided prior to determination of the planning application.

#### **Reptiles**

We had some concerns that the site was suitable for reptiles and a reptile survey was not carried out. However the additional information which has been provided by the applicant has satisfied us that the site has limited potential to be suitable for reptiles. As a result we require no additional information to be provided for comment.

#### **Bats**

The bat activity survey highlighted that bats are foraging and commuting within the site. Lighting can be detrimental to roosting, foraging and commuting bats. The recommendations detailed within the bat survey must be considered when designing the lighting plan. We also advise that the Bat Conservation Trust's *Bats and Lighting in the UK* guidance is adhered to in the lighting design (see end of this note for a summary of key requirements). The landscape plan

indicates that there is a woodland area within the south west corner of the site. We recommend that any lighting within the woodland area is kept to a minimum.

### **Birds**

The site contains suitable habitat for breeding birds. If planning permission is granted, the vegetation must be removed outside of the breeding bird season (March – August). If that is not possible an ecologist must examine the site prior to works starting on the site – if any nesting birds are identified all work must cease in that area until all the young have fledged.

### **Enhancements**

One of the principles of the National Planning Policy Framework is that “opportunities to incorporate biodiversity in and around developments should be encouraged”. The survey has provided recommendations of enhancements which can be incorporated in to the site. A detailed ecological enhancement plan should be submitted for comment, incorporating enhancements which are suitable for the site, as a condition of planning permission, if granted.’

4.4 **Kent Highway Services:** Have no objections to the development and have commented as follows:

4.4.1 ‘This proposal is likely to generate in the region of 10 traffic movements in the morning peak hour and 15 during the evening peak hour and whilst there is concern regarding traffic capacity at the nearby junction of Burial Ground Lane/Farleigh Hill a scheme to provide a ghosted right turn lane is to be provided by KCC in the near future.

30 car parking spaces are provided which is considered to be adequate for this development.

The development is likely to increase the number of pedestrian movements along Tovil Green/Burial Ground Lane to Farleigh Hill and therefore a footway is required along the site frontage with best endeavours made to provide a continuous footway between the site and Farleigh Hill. Additionally, bus stops are located on Tovil Green within close proximity to this site and the provision of bus boarders would ease accessibility for the mobility impaired.

Please could the provision of the footway be investigated by the applicant and relevant drawings be provided.’

4.4.2 Following investigation by the applicants of the feasibility/cost of providing a footway along Burial Ground Lane to Farleigh Hill, the applicants advised that the



costs of providing the footpath and the bus boarders would be in excess of £218,000, which would not be affordable given the already outlined position with regard to s106 contributions submitted as part of the application documents. The applicants were happy to dedicate a proportion of the site to enable the provision of a footpath on the site frontage to Tovil Green if the opportunity to extend it further southwards towards Farleigh Hill arose in the future.

- 4.4.3 Kent Highway Services made the following further comments in the light of this information.

'I am of the view that there is justification for the bus stop improvements in order that they are DDA compliant and accessible to all residents from the new development site. With regards to the footway, I realise that the costs are extremely high, but I would expect to see a footway provided along the site frontage at the very least, with dropped kerb crossing provided where appropriate.'

- 4.5 **KCC Mouchel:** Have requested contributions **totalling £8169.82** comprising **£4973.81** for **Libraries** (bookstock, additional staff and extended hours for Maidstone libraries and mobile service) **£ 373.18** for **Youth facilities** (Additional staff and equipment for Maidstone Borough Youth Outreach Services) **£1026.47** for **Community Learning** (Maidstone Adult Education Centre and outreach community learning facilities) **£1796.36** for **Adult Social Services** (Co-location with health, Changing Place facility, Assistive Technology (Telecare)
- 4.6 **NHS Property Services (formerly West Kent PCT):** Are not seeking s106 contributions as the dwellings are 100% affordable.
- 4.7 **Southern Water:** Have advised that there is capacity to provide foul sewage disposal to service the development. The applicant is advised to contact them to make a formal application to connect to the sewer. However, they advise that there is currently inadequate capacity in respect of surface water disposal thus requiring an alternative means of disposal to be found or to ensure sufficient capacity requisitioned in the form of a new sewer. The applicant is advised to contact Southern Water to discuss available solutions.
- 4.8 **Southern Gas Networks:** Have provided a plan showing a low-pressure main running along the eastern side of Tovil Green opposite the site and also running along the verge on the north side of Tovil Green Lane which serves Tovil Green Court and Pine Court to the east of the site along the area.
- 4.9 **UK Power Networks:** No objections

**4.10 MBC Landscape Officer:** No objections

4.10.1 Have commented as follows:-

'There are no protected trees on this site and it is not designated as Ancient Woodland. The arboricultural implications report produced by Simon Jones Associates is considered acceptable and it is agreed that the retention of the Ash tree in the southwest corner of the site and a strip of trees along the boundary of Burial Ground Lane is achievable. I therefore raise no objections on arboricultural/landscape grounds. If you are minded to grant consent I would like to see the following condition attached:-

Approved landscape scheme- Implementation

Landscaping shall be implemented in accordance with the approved landscape scheme and associated landscape and arboricultural details unless the local planning authority gives written consent to any variation.'

**4.11 MBC Environmental Health:** No objections

4.11.1 Have commented as follows:

'According to the December 2011, Desk based assessment report, ref E07787-23 DTS 16Dec11 V2 rmewcc; supplied with this application; WYG carried out intrusive investigation works during four phases of work between December 2005 and September 2007, on an area including both the area of site plus adjacent land to the north and west. Based on the evidence submitted we accept this reports conclusions that "mitigation measures are likely to be required in the private garden areas comprising a substantial thickness of imported clean soils over an impermeable cap and marker layer" and that "consultation be undertaken with the Regulators and a remediation strategy applied to address contaminated ground prior to development". The MBC Pollution team would welcome a consultation with WYG in order to develop their remediation method statement. We recommend that as part of that method statement a watching brief be maintained on site during works by a suitably qualified member of the consultant's team to monitor for unforeseen contamination hotspots.

The site is in a mixed residential area and traffic noise is unlikely to be a significant problem, but there is the possibility that local industry could noise impact the site and so an assessment should be carried out with regard to this.

The site is within the Maidstone Town Air Quality Management Area and is 1.5km from a known air quality hotspot at the Loose Rd – Sutton Rd junction. I consider the scale of this development warrants air quality conditions. Any

demolition or construction activities may have an impact on local residents and so the usual informatives should apply in this respect. Any buildings to be demolished should be checked for the presence of asbestos and any found must only be removed by a licensed contractor.

There is no indication from the latest British Geological Survey maps that there is a significant chance of high radon concentrations.

A section of the clean neighbourhoods Act has come into force which requires the developer to produce a site waste management plan for any development which is over £300,000. The plan must be held on site and be freely available for view by the local Authority at any time.'

4.11.2 They recommend a contamination condition, noise condition and air quality conditions and informatives governing conduct and hours of operation on site during construction.

#### 4.12 **MBC Parks and Leisure:**

'There is no provision of any form of meaningful open or green space within the development and as such we would request a contribution to be made.

We understand that planning officers may need to negotiate on this due to it being 100% affordable housing, but 24 houses will bring in a number of new residents and families to the area which will put an added increase on usage of surrounding parks and open spaces, and as such it would be a requirement from the Parks department that a contribution is sought in order to improve, maintain and repair existing areas that will no doubt see extra usage over a number of years.

Woodbridge Drive and Bridgemill Way play areas are both within 400m of the development in opposing directions and are the closest play areas to the development and we would expect new families moving into the area to use these facilities.

We would seek £1575 per dwelling, which would therefore amount to £37800.'

## 5. **REPRESENTATIONS**

5.1 **Cllr Derek Mortimer** has requested the application be reported to Committee if recommended for approval for the following reasons:-

'I have received many objections and concerns from residents, their families and the management who reside at the care centre 'Tovil Green Court' and 'Pine

Court', adjacent to the proposed development. Some of the residents are not able to comment or object in the usual written way so I am arranging with the staff a statement which I will forward when complete.

My own concerns are that this development will impact and harm the pleasant environment currently enjoyed by residents in this 'specialist care' setting. I am also very surprised that United House are actually proposing this type of development next to their own care centre, who's clients are Housing 21 and KCC. From the plans (although noted for housing benefit purposes ) there could be up to 106 new residents living on the development. This would obviously cause a significant impact upon the whole area.

One of my main concerns is for the safety of pedestrians in Burial Ground lane. I note that KCC highways are being consulting on a small strip of land to provide some safety at the junction of the access road, but in my view this will be totally inadequate and shows that there is obviously a safety concern here. Many residents from the Tovil Green area currently walk to Tesco / Lidl on Farleigh Hill and have to dodge traffic on a daily basis, due to the lack of footpaths in Burial Ground Lane. They also have to negotiate the recycling site traffic queues by walking in the middle of the road. I cannot emphasis enough the serious road safety concerns I have for this patch, which I observe on a daily basis. I have made a number of enquiries to try to get an access footpath from this site into Tesco / Farleigh Hill but due to security concerns this has never materialised. Some of my concerns would be reduced if a solution could be found to this problem.

Another concern is the additional traffic which will be created on the access road. The care centre has regular ambulance visits, along with staff and family vehicles visiting the site. It should also be noted that some residents are wheelchair users with attendants. Some residents of the care centre also use mobility scooters and power chairs which again are safety concerns. Vehicles regularly park on the access road at night and weekends which causes a single file traffic situation and will obstruct the proposed new development access point. With the possibility of 100 new residents, the car ownership level will be at least 50 and the proposed parking only allows for 30 spaces with no visitor parking bays. There will be always be an overspill onto local roads or into the care centre parking area with the obvious related problems. Car use will probably be quite high due to the poor bus service, especially into town. The bus service is also has many interruptions from traffic queuing at the recycling site which discourages existing residents from using the buses.

Although I agree there is a demand for social housing within the Borough as stated in the S106 statement by the applicant, but Tovil already has a high level of affordable housing and I feel this development will again add to the pressures

in the community. Also I am disappointed that the applicant does not wish to contribute to the community through S 106 contributions. Should we get another possible 100 residents we will still not have any additional facilities, or help, locally. Tovil does not have any of its own GP's, clinics or health care in general, we lack all other facilities across the board. Hence travelling into and out of town is a necessity for all services.

The proposed lighting on the new development does not compliment the area or match the current lighting on the existing care home area. This I believe should be addressed by using a less urban low level style.

The Bat survey report shows a high level of activity; however I feel that the proposed protection measures do not go far enough. The proposed planted buffer and protection measures should be increased in width and density, on the south of the site. The bank on this south side of the site also provides a degree of noise and dust protection for residents down in Tovil Green from the recycling centre. Increasing the density and width by better natural screening would also protect the new development from the heavy loading and regular vehicle movements at the recycle centre.'

5.2 **Twenty-three** representations including a petition signed by 22 people from the adjacent development at Tovil Green Court have been received. All object to the application on the following (summarised) grounds:-

- Unacceptable impact on the occupiers of the immediately adjacent elderly persons and vulnerable adults accommodation by the occupiers of the new housing and associated vehicular traffic and noise;
- Too many houses;
- Insufficient parking;
- Poor pedestrian access;
- Unacceptable impact on existing traffic flows in Tovil Green and Burial Ground Lane that are already very busy;
- No play area and any children will therefore play in the car park by Pine Court/Tovil Green Court causing noise and disturbance;
- Loss of existing greening and impact on wildlife.

## 6. **CONSIDERATIONS**

### 6.1 **Site Description**

6.1.1 The application site is located on the east side of Tovil Green/Burial Ground Lane some 175m north of its junction with Farleigh Hill. It is designated as employment land on the proposals map of the Maidstone Borough-wide Local Plan 2000 under saved policy ED1(iii). As such, any proposal for residential use



has to be advertised as a departure, and has been done so. However it is currently not in employment use; part of the larger designated area is occupied by Tovil Green Court a residential development, granted planning permission by Kent County Council, and the remainder is currently an unmanaged area of tree cover with some hardstanding areas within it.

- 6.1.2 The site amounts to some 0.54 ha in area and roughly rectangular in shape. It is bounded to the west by Tovil Green, to the north by Tovil Green Lane serving the adjacent development to the east (Pine Court and Tovil Green Court), to the east by Pine Court and Tovil Green Court and their associated car parking area and to the south by a private dwelling (no.20 Tovil Green), Tovil Green Business Park and part of the car parking area for the Tesco store on Farleigh Hill.
- 6.1.3 The site falls eastwards by approximately 2.76m from Tovil Green to the car park for Tovil Green Court the site's eastern boundary. It also falls some 8.5m from south to north, although the south west corner of the site is a steeply sloping bank. Away from the banking, the fall south to north is a more modest 3m or so.
- 6.1.4 The site is currently partly tarmac, partly grass and is also covered by a significant number of close growing often multi-stemmed trees with the exception of a significant Ash Tree in the southwest corner of the site which does contribute to the amenity of the area. There is some evidence that the site has been tipped in the past. The site is not classified as Ancient Woodland in the 2012 Inventory of the Borough, but does contribute to the character and appearance of the locality.

## **6.2 Proposal**

- 6.2.1 Full planning permission is sought for the erection of four terraces 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.
- 6.2.2 The development is proposed to be managed and let in accordance with a local lettings plan and the properties will be let on an Affordable Rent basis. The plan will be monitored by the RSL (Orbit South) and by the Borough Council who will be able to exercise nomination rights through choice based lettings.
- 6.2.3 The proposed development is arranged with two rows of six terraced dwellings with front gardens fronting Tovil Green Lane. A centrally located access road cuts between these blocks and serves two further blocks of 7 terraced (north facing towards the rear of the houses fronting the existing access road to Tovil Green Court) and 5 terraced units (facing southwards with rear garden areas facing the



apartments to the north) and also provides access to the 30 parking spaces provided for the development. Two covered cycle stores are also to be provided.

- 6.2.4 Each unit would have a private rear amenity area of 10m or more in depth and a shed.
- 6.2.5 The blocks fronting Tovil Green Lane would be faced externally with stock brickwork (brown) under a plain through-coloured brown roof tile. Plot 1 adjacent to Tovil Green would have a projecting first floor oriel window in its south flank elevation. Plot 6 adjacent to the access road serving the rear part of the site is shown to project further forward than the rest of the terrace and additionally would have a weather-boarded first floor elevation to the front, rear and side. East of the access road the elevational treatment and design is mirrored in Block 2 (plots 7-12). The boundaries of plots 6 and 7 with the access road would be formed by a 1.8m high brick wall.
- 6.2.6 Block 3 which is located in the eastern site boundary and has rear gardens facing towards the existing parking area of Tovil Green Court/Pine Court would comprise 5 units. The external materials proposed are the same, but with the central unit having projecting front and rear gables and a weather-boarded first floor to the front elevation. The north facing flank of Plot 20 would have a projecting oriel window.
- 6.2.7 Block 4 comprises 7 terraced units. The units are staggered with two units being stepped forward from the remainder of the terrace to break the terrace into three sections. The north elevation also has projecting gable feature to break up the roof line of the front elevation. The north facing elevation is indicated as having three floors and the rear two floors as the terrace is set into the bank to the rear. The block of 7 terraced units thus provides split level accommodation to take account of the land levels in the south east corner of the site. The proposed materials have been revised to provide the stepped-out section of the terrace with a contrasting brown multi-stock brick to the front and rear elevations in contrast to the remainder of the block which would be finished with a red medium multi-stock brick. A plain-tiled roof is proposed.
- 6.2.8 A detailed landscaping plan has been submitted as part of the application which seeks to provide a landscaped framework to the site boundaries and the car park to the existing development at Tovil Green Court/Pine Court. The raised land in the south west corner would be planted with replacement native trees and shrubs and a log retaining wall provided. Part of this area would be fenced-off with access for maintenance only. The fence would be placed on the top of the timber retaining wall and would be partially for security and partially due to the drop in levels at this point. However, currently a palisade fence is shown but I

consider that a weld-mesh fence would be more appropriate. An existing mature Ash tree in this part of the site is shown to be retained.

6.2.9 The parking bays and the internal access road would be surfaced in brick paviors. There would be a total of 31 car parking spaces to be provided within the site. These would all be serviced from within the application site – within the proposed 'courtyard,' with no parking spaces served directly from the existing road into the site.

6.2.10 The applicant has submitted a viability appraisal with the application, which demonstrates that there is no ability to provide any contributions as part of this proposal, due to the costs associated with redeveloping the site, and the provision of a high level of social rented accommodation. This matter is considered fully later within the report.

### **6.3 Principle of Development**

6.3.1 The site is part of a larger area designated as an employment site under saved policy ED1 of the MBWLP 2000. No interest has been shown in developing the site for employment purpose. In fact, the majority of the designated site has previously been developed for residential purposes, as extra care apartments for the elderly following a permission granted by Kent County Council in 2006. No marketing information has been submitted as part of this application which demonstrates that the land is unsuitable for employment use. However, I am of the view that due to both the proximity, and relationship of this parcel of land to the existing residential units (previously permitted on allocated employment land), it would be likely to be an un-neighbourly use to provide employment uses on this land. As such, in this instance, I do not consider that it is inappropriate to depart from policy in this instance.

6.3.3 With the existence of the immediately adjacent residential development and the fact that there are existing dwellings to the north and south of the site and the permissions granted in the wider area, I consider that residential development on this site would be acceptable in principle. In addition the development will provide 24 units of affordable housing accommodation which is a factor weighing heavily in its favour.

6.3.4 The application has therefore been advertised as a departure from the development plan and no representations have been received as a result of this advertisement procedure.

6.3.5 The site is also a currently undeveloped space, largely occupied, as stated earlier, by an unmanaged group of trees. Whilst the trees are not worthy of a Tree Preservation Order, the loss of this area and the visual impact of the

proposals also needs to be carefully considered. Policy ENV22 of the Borough-wide Local Plan does refer to proposals to develop existing open areas and requires an assessment of the visual contribution such areas make to their surroundings.

#### **6.4 Visual Impact and Design**

- 6.4.1 The site in its current state does provide a screen for the existing development at Tovil Green Court/Pine Court from Tovil Green. Views of this development are available from Tovil Green along Tovil Green Lane however. The arboricultural assessment has carefully considered the quality of the trees and the majority are classified as 'C' or 'U' with a short life expectancy and of poor, hazardous or indifferent form. The area has also been classified as having limited ecological potential in the surveys that have been undertaken.
- 6.4.2 The proposals would result in the clearance of the existing trees with the exception of the mature Ash in the SW corner of the site. In the short term this would clearly have a significant visual impact. However, a detailed landscaping scheme has been submitted, which provides for replacement native species and for the proper management of the land, to a significant part of the site and which would re-instate this sylvan character over time. Tree planting is proposed both within the site, and to the rear, although much of this would be screened by the front terrace. Nonetheless, a significant level of planting is proposed along the boundary with the existing residential units, which would provide a softer edge, and gap between the two developments. The loss of the trees would have an immediate impact but this impact would be, in part, mitigated over time as the proposed landscaping matures. The existing landscaping on the north side of Tovil Green Lane opposite the site will not be affected by the development and will be retained. Whilst it is regrettable that the character would change by virtue of this proposal, this needs to be balanced against the provision of affordable housing within a sustainable location.
- 6.4.3 I do not consider that the partial permanent loss of this space would be so harmful to the character or the appearance of the area, as to warrant and sustain an objection on this ground.
- 6.4.4 The development has been designed to address Tovil Green Lane that leads to Pine Court/Tovil Green Court and does so effectively with the two terraces proposed fronting the road. The westernmost dwelling closest to Tovil Green (plot 1) does not present a blank flank elevation to that road through the use of a projecting oriel window at first floor level. The indicated materials, stock brick and plain tiles are appropriate for the area. The variation of the elevations on plots 6 and 7 (either side of the access to the rear of the site), these being

stepped forward and utilising horizontal boarding at first floor level also adds interest and vitality to the design.

6.4.5 The units to the rear are also of an appropriate design and appearance. The same pallet of materials is used, but the eastern terrace (block 3) has a projecting central unit to provide visual interest which is also boarded on its front elevation. Block 4 provides for split-level houses due to the topography of the site. The units in Block 4 are staggered and the north elevation has a projecting gable feature to break up the roof and the line of the front elevation. The north facing elevation is indicated as having three floors and the rear two floors as the terrace is set into the bank to the rear. The block of 7 terraced units thus provides split level accommodation to take account of the land levels in the south west corner of the site.

6.4.6 I consider that the proposed development will contribute to the character and appearance of the surrounding area and is sufficiently varied and detailed in terms of its design to provide vitality and interest.

6.4.7 Residential development on this site would not appear out of character with the surrounding development in the area, which has undergone a significant transition in recent years from an industrial character towards residential.

6.4.8 On balance I raise no objections to the visual impact of the development whilst noting the short to medium term impact of the loss of the trees.

## **6.5 Residential Amenity**

6.5.1 Much concern has been raised regarding the potential impact of the development on the adjacent development to the east. The proposed dwellings would be sited with the car park serving Tovil Green Court/Pine Court in between. This would result in a separation distance of approximately 25m from the blank east flank wall of plot 12 to Pine Court across the car park area to Pine Court and some 35m or more from the rear walls of properties in Block 3 (plots 20-24) and the front of Tovil Green Court again with the intervening car park area. I do not consider that the development would result in any unacceptable loss of privacy to the existing occupiers in Pine Court/Tovil Green Court. No access is shown from the site to the car park area and landscaping has been strengthened along this boundary to reinforce this.

6.5.2 Each property has a useable and suitable private amenity area as befits family housing and as such I consider that the fears of local residents that the car park to Pine Court/Tovil Green Court will be used as a playground are unlikely to be realised. I consider the separation is such that noise will not be so unacceptable as to warrant and sustain a ground of refusal.

6.5.3 Appropriate internal separation in the scheme has been maintained between the dwellings fronting Tovil Green Lane and the units to the rear. I also consider that the development will be acceptably sited in relation to the Tovil Green Business Park and 20 Tovil Green to the south with separation distances in excess of 25m. The properties will have an acceptable outlook towards the south which will also be further mitigated over time as the proposed landscaping matures. Any potential impact from noise from the Tovil Green Business Park can appropriately be dealt with through a noise condition as recommended by the Environment Health section.

6.5.4 I also consider that the development will not have an unacceptable impact on 19 Tovil Green, the flank wall of which faces Tovil Green Lane and which would be sited some 35m from the closest of the new dwellings with a roadway and landscaped verge in between.

6.5.5 No objections are raised on the grounds of residential amenity

## **6.6 Highways**

6.6.1 Kent Highway Services raise no objections to the development in terms of parking provision or the impact of the traffic likely to be generated on the local highway network.

6.6.2 Cllr Mortimer, Tovil Parish Council, Kent Highway Services and local residents have however, raised a number of concerns relating to pedestrian safety, and in particular the provision of a footpath along Tovil Green and towards the town centre. Internally, I do not consider that this proposal would impact upon the safety of existing residents of the care unit – the existing path is to be maintained, and the visibility splays etc within the proposed development are acceptable. The question is whether the additional dwellings proposed, tips the balance in so far as requiring a continuous footpath along Tovil Green and potentially Farleigh Hill. This matter has been fully considered.

6.6.3 As a result of the representations, investigation has taken place regarding the potential to provide improved footpath links from the site to Farleigh Hill. Any path due to land ownership constraints would not be continuous and would involve two crossings over Burial Ground Lane/Tovil Green, which is not ideal. The applicants also point to the significant cost (£218,000) of providing such a footpath and the recommended bus boarders in the light of the viability information submitted. They have indicated that they would be prepared to dedicate sufficient land within the site and transfer this to the highway authority at no cost to enable a footway to be constructed at a suitable date in the future if it became possible to provide a footpath on the remainder of the east side of



Burial Ground Lane towards Farleigh Hill. The provision of such a footpath would not adversely affect the proposed landscaping on the site. Kent Highway Services do not object to this approach.

- 6.6.4 As set out later in the report the applicants have demonstrated that the viability of this scheme is such that s106 contributions cannot be met without making the development unviable. Consideration therefore has to be made as to whether the development is unacceptable without this footpath. To my mind, it would be preferable to provide this facility, however, the lack of a footpath does not make this suite wholly unsustainable, nor would it result in severe highway safety concerns. I am mindful that there are a significant number of existing residential properties within the locality, and do not consider that the provision of 24 additional units would be the tipping point to see this provision made. It should also be noted that planning applications for land at Farleigh Hill, if brought forward on site, would see the provision of the footpath along Farleigh Hill – these are larger, more comprehensive developments than proposed in this instance. I therefore do not consider the proposal to be unsustainable or unsafe should the footpath not be provided, and this, together with the viability of the scheme, do not consider it appropriate to request such a provision.

## **6.7 Landscaping and ecology**

- 6.7.1 The proposals will result in the clearance of the majority of the existing trees on the site, comprising sycamore, hazel, hawthorn, goat willow and silver birch. All of the trees with the exception of one Ash Tree (Category B) in the south west corner close to Tovil Green are classified as C or U in the arboricultural assessment and stated as being largely poor, hazardous or indifferent in terms of their structure. The Landscape Officer has raised no objections to the removal of the existing trees.
- 6.7.2 A detailed landscaping scheme has been submitted as part of the application. This shows the provision of a native species landscaping framework to the site boundaries, with hedgerows and a newly proposed native shrub and tree planting area to the south west corner and southern site boundaries.
- 6.7.3 Proposed specimen trees (Heavy Standard size) include Whitebeam, Field Maple, Small Leaved Lime, Bird Cherry, Silver Birch and Oak. The shrub planting mix proposed to the southern and south west boundaries comprises Hawthorn, Hazel, Holly, Blackthorn, Buckthorn and Guelder Rose. Adjacent to the houses (in their front gardens) more ornamental species are proposed.
- 6.7.4 The landscaping scheme is considered acceptable.



6.7.5 Ecological assessment of the site has been undertaken and the implications of the development assessed. The KCC Biodiversity team have raised no objections subject to appropriate enhancement measures being secured. These can be secured by means of an appropriate condition. In my view this can include the provision of swift/bat bricks, refugia and retention of a proportion of the cordwood. The fact that a part of the planted area is to be closed off except for maintenance access will assist with these proposed enhancement measures once secured. However, I am concerned that the proposed palisade fence would be particularly unsightly and would suggest that a weld-mesh fence be substituted. This can be secured by means of an appropriate condition.

6.7.6 No objections are raised on the grounds of ecology.

## **6.8 S106 obligations**

6.8.1 The applicants have submitted a statement and some confidential financial information in relation to their proposals which seeks to demonstrate that the requested s106 contributions from MBC Parks and Leisure, Kent County Council or the footpath/bus boarder improvements cannot be afforded by the scheme. The statement shows abnormal costs to deliver the development due to the site's topography and required remediation amounting to some to £350,000 and that the scheme shows a negative Net Present Value (NPV) in excess of £12,000 without taking any potential s106 contributions into account which will clearly add to the negative value of the scheme. The statement shows that as submitted, the revenues from the development will not exceed costs until year 23 and will not be fully repaid until year 30. This report has been independently assessed by the Council's property section, and is considered to be correct.

6.8.2 The scheme as proposed is for rented accommodation let at Affordable Rent. I have requested and received further information from the applicant addressing the issue of whether a proportion of shared equity within the scheme would render it more viable and thus able to provide s106 contributions.

6.8.3 The applicants state that the inclusion of shared equity within the scheme would negatively affect viability. The applicants have indicated that the local housing market in the area does not generate a sufficient level of value to create an equity share of greater value than an affordable rented unit over the 30 year finance period for the scheme. As stated above there is a current negative NPV for the scheme in excess of £12,000. Any substitution of shared equity units will increase the negative NPV by £8-10,000. So even one shared equity unit would increase the negative NPV to around £20,000.

6.8.4 In addition, the applicants have demonstrated that the inclusion of even one shared equity unit will result in revenues not exceeding costs until beyond year

30. This would be outside the applicant's set and agreed financial parameters and would render the scheme unviable. Furthermore, funding from the Homes and Communities Agency is significantly lower for shared equity units so consideration would be required for reduction of grant rate pro-rata for any shared equity units that might be substituted for affordable rented units in the scheme. This matter has been discussed with the Council's Housing Manager who has confirmed that this is the case.

6.8.5 I am satisfied that the applicants have demonstrated that the requested contributions by MBC Parks and Leisure, Kent County Council and the construction of the bus boarders and footpath are not affordable and would render the scheme unviable. As a result, 24 units of affordable housing would not be delivered.

6.8.6 The applicants have agreed in the light of this viability information that no financial contributions are affordable, to ensure that the scheme should provide 40% affordable housing secured through a s106 obligation.

6.8.7 I consider that such an obligation would meet the three tests set out in Regulation 122 of the CIL Regulations 2010 and para 204 of the NPPF 2012, that any obligation must be:-

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development

6.8.8 It has been requested that a strip of land should also be provided along the boundary of the site, and retained through a S106 agreement to be available should funding for this footpath come forward – either through KCC or MBC. However, as there is no program of works in place and as this land is shown to be retained within the plans in any event, I do not consider it necessary to be included within a S106 legal agreement.

## **7. CONCLUSION**

7.1 Whilst the scheme is on a designated employment site it is considered that in this instance it is acceptable for residential development to take place as a departure from the Development Plan, primarily due to the existing development adjacent to the site.

7.2 The scheme is acceptable in terms of its layout and design and impact on adjacent residents and the local highway network. A detailed landscaping scheme has been submitted and the appropriate ecological enhancement measures can be secured by means of appropriate conditions.

7.3 In this instance it is considered that the benefits of developing the site for affordable housing outweigh the fact that no contributions or highway improvements have been/can be secured.

7.4 Subject to the prior completion of the s106 agreement permission should be granted subject to appropriate conditions.

## **8. RECOMMENDATION**

Subject to

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

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

The Head of Planning be given Delegated Powers 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 pallisade 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/11136-01received 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.