

## REPORT SUMMARY

<b>REFERENCE NO - 12/2255</b>		
<b>APPLICATION PROPOSAL</b> Outline planning permission for the erection of 53 residential units with all matters reserved for future consideration as shown on drawings A/1, 100, 101, 102, 103, 108, 109, 110, 112 and 11150/P1 received 18th December 2014.		
<b>ADDRESS</b> Nurses Home, Hermitage Lane, Maidstone, Kent, ME16 9NN		
<b>RECOMMENDATION</b> subject to the prior completion of a suitable legal mechanism planning permission be granted subject to conditions.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> The omission of financial contributions from a previous Planning Committee resolution to grant planning permission was required to be scrutinised in full.		
<b>WARD</b> Heath Ward	<b>PARISH/TOWN</b> Maidstone	<b>COUNCIL</b>
		<b>APPLICANT</b> Mr Roy Maidstone & Tunbridge Wells Hosp Trust <b>AGENT</b> Frankham Consultancy Group Ltd.
<b>DECISION DUE DATE</b> 18/03/13	<b>PUBLICITY EXPIRY DATE</b> 18/03/13	<b>OFFICER SITE VISIT DATE</b> Various

### 1. **BACKGROUND**

- 1.1 This application, which seeks outline planning permission for the redevelopment of the site through the erection of 53 dwellings with all matters reserved, has previously been considered by Members at the Planning Committee meetings held on 21<sup>st</sup> November 2013, 12<sup>th</sup> December 2013 and 3<sup>rd</sup> July 2014. I attach a copy of the officer report to the meeting held on 3<sup>rd</sup> July 2014 as partially confidential Appendix 1 of this report, which contains copies of the reports to Planning Committee of 21<sup>st</sup> November 2013 and 12<sup>th</sup> December 2013 as appendices.
- 1.2 At the initial hearing of the application at the Planning Committee meeting on the 21<sup>st</sup> November 2013, Members resolved to defer the planning application to enable the viability of retaining and converting the existing building to be examined, and for more robust conditions to be suggested to seek to safeguard the delivery of a high quality development within the site. At the later Planning Committee meeting on the 12<sup>th</sup> December 2013, following receipt of a viability assessment, it was considered that it had been satisfactorily demonstrated that it would not be financially viable to convert the existing building for residential purposes. Further conditions and informatives were also attached to the original recommendation which sought to safeguard that any ultimate development be a high quality scheme that would respond positively to the character and appearance of the locality, whether at reserved matters or as an application for full planning permission.
- 1.3 Subsequent to the resolution of a grant of planning permission taken by the Planning Committee at the meeting on the 12<sup>th</sup> December 2013 it was recognised that the recommendation did not include all contributions sought by statutory consultees. In particular, the report to the Planning Committee of 21<sup>st</sup> November 2013 did not discuss the Kent County Council (KCC) contributions towards new build primary school costs, the extension of existing secondary schools local to the development, and adult social services in Section 5.10 (Section 106 Requirements) in detail, nor

were they carried forward within the recommendation (Section 7 of the report). Consequently, the sums were not carried forward to the Recommendation (section 5) of the report to the Planning Committee meeting held on 12<sup>th</sup> December 2013. The requested contributions towards primary school acquisition costs, library book stocks, community learning and skills, and open space were discussed in detail in the report, and have been secured by way of the resolution to confer delegated powers to the Head of Planning and Development to grant planning permission, as was the provision of 40% affordable housing within the development.

- 1.4 The omission was discussed with KCC who confirmed that the comments provided in support of the application remained valid, and that a legal mechanism omitting these elements would not be considered acceptable to mitigate the impact of the development on local services and social infrastructure.
- 1.5 The omission was addressed by way of an amendment to the recommendation on the papers for the Planning Committee meeting held on 20<sup>th</sup> March 2014, however it was withdrawn from consideration following the submission of a Viability Report and an Asset Valuation (VR/AV) by the applicant, which sought to demonstrate that the development would not be viable if the omitted sums referred to in paragraphs 1.3 and 1.4 above were provided. This VR/AV (together with subsequently submitted supporting information requested by the DVS (Valuation Office Agency)) was referred to the DVS who considered it and provided an Assessment of Viability Appraisal (AVA), which concluded that the scheme would be marginally viable if the missing contributions were to be sought. The VR/AV, additional information and AVA are attached as confidential appendices to the report to Planning Committee on 3<sup>rd</sup> July 2014, which is attached as partially confidential Appendix 1 to this report.
- 1.6 The application was referred back to Planning Committee on 3<sup>rd</sup> July 2014 with a recommendation that the omitted sums be included in the resolution to approve, as set out in the report attached as Appendix 1.
- 1.7 At the meeting held on 3<sup>rd</sup> July 2014, Members voted to defer further consideration of the application in order to allow the applicant additional time to rebut the requested sums.
- 1.8 Following the meeting, a response, comprising a Viability Assessment (VA) undertaken by Bespoke Property Consultants and supporting documentation from the agent, was provided by the applicant on 25<sup>th</sup> July 2014. These documents are attached to this report as confidential Appendix 2.
- 1.9 In addition to the above, an application for full planning permission has been received from a developer for the redevelopment of the site and adjoining land for a residential development of 69 units under reference 14/500412/FULL. This application is currently under consideration.

## **2. CONSIDERATION OF PROPOSED CHANGES TO S106 CONTRIBUTION REQUIREMENTS**

- 2.1 The rebuttal by the applicant was put to the DVS, who, following consideration of the material provided by the applicant attached as confidential Appendix 2, information provided by the Council in respect of the purchase of Magnolia House, and a meeting attended by representatives of the Council, applicant and DVS held on 22<sup>nd</sup> September 2014, concluded that the development, as proposed under the scope of MA/12/2255, would in fact be unviable in the event of the contributions previously

omitted being sought. The report of the DVS is attached as confidential Appendix 3 to this report.

- 2.2 As set out in paragraphs 2.3 to 2.6 inclusive of the report to Planning Committee on 3<sup>rd</sup> July 2014 (attached as partially confidential Appendix 1 to this report), the requests for contributions set out in paragraph 1.3 above (and in full in paragraph 2.1 of the report attached as partially confidential Appendix 1 to this report) satisfy the tests set out in S122 of the Community Infrastructure Regulations in being reasonable and necessary. However, it is considered that it has been adequately demonstrated, in the specific circumstances of this case, that the development for which planning permission is sought would be unviable in the event that the omitted contributions were sought. The evidence provided has been scrutinised in detail by the DVS, and as such this position is considered to be defensible.
- 2.3 In failing to provide financial contributions towards some elements of the social infrastructure required to mitigate the impact of the development, the application fails to satisfy the requirements of Maidstone Borough-Wide Local Plan 2000 policy CF1 and emerging Local Plan policy ID1, both of which require the impact of development on the local community to be addressed by way of the provision of infrastructure or commensurate financial contributions. However, set against this is the matter that approval of the application would provide a consent for 53 dwellings in a highly sustainable location on previously developed land, in accordance with the central government objectives set out in the National Planning Policy Framework 2012 (NPPF), which include the presumption in favour of sustainable development (paragraph 14), the provision of housing (paragraph 47) and the requirement to consider applications for housing development in the context of the presumption of sustainable development (paragraph 49).
- 2.4 Members will be aware that at the current time the Council has an objectively assessed housing need of 18,600, and can only demonstrate a 2.2 year housing land supply. This lack of a five year supply is a significant matter in the determination of planning applications for residential development, as it results in the adopted Local Plan being considered out of date, in accordance with central government planning policy as set out in the NPPF. In such circumstances, the NPPF advises that when planning for development through the Local Plan process and the determination of planning applications, the focus should be on land within or adjoining existing settlements. The development of this site is therefore in accord with the objectives of the NPPF and the presumption in favour of sustainable development identified in paragraph 14 of the NPPF. It follows (and is made explicit in the NPPF) that planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits of the application, when assessed against the policies of the NPPF as a whole. In the specific circumstances of this context, it is considered that the benefit of a major residential development providing 40% affordable housing in a highly sustainable location on previously developed land, together with some financial contributions towards social infrastructure and the previous resolution to grant, are material considerations in favour of a grant of planning permission such that the omitted contributions should be forgone by reason of the viability, and therefore deliverability, of the scheme.
- 2.5 It remains to be considered whether the sums requested towards education (primary school build out costs and secondary school extension) and adult education should be omitted from the recommendation (as was inadvertently the case in respect of the previous resolution by the Planning Committee), or the monies/infrastructure secured by way of the previously resolutions be redistributed between the competing interests. Members will be aware that the proposed development includes the

provision of 40% affordable housing, and contributions towards parks and open spaces, which are identified as the Council's key objectives, which is reflected in the fact that each of these elements of community infrastructure are the subject of adopted Development Plan Documents, and are carried forward as the first and third ranked infrastructure priorities in the draft Local Plan, as set out in policy ID1. Education and social services are ranked sixth and seventh respectively. As such, it is recommended that the contributions secured in respect of affordable housing and parks and open spaces remain unchanged.

- 2.6 However, social care and libraries are ranked lower than education in the draft Local Plan policy ID1, at seventh and ninth respectively, and as such it would accord with emerging Local Plan policy for the monies secured towards these aspects of community infrastructure to be put toward education rather than the actual purposes for which they were allocated in the previous recommendation and resolution. The sums secured are £7,665.92 and £1,521.63 respectively, a total of £9,187.55. The sums requested and previously omitted in respect of primary school build costs and secondary school extension are considerable, and have been calculated by the applicant and the DVS as amounting to £196,428. They could in fact be potentially significantly higher depending on the relative numbers of houses and flats within any detailed scheme. Given the significant disparity between the sums omitted and those secured in relation to community infrastructure ranked as a lower priority in the draft Local Plan, it is my view that it is more cost effective to allocate the full monies secured towards libraries and community learning and skills, than to divert them towards providing approximately 4.5% of the sums omitted in respect of education contributions.
- 2.7 Whilst it is regrettable that the sums listed were omitted from the original recommendation, it is considered that the appropriate course of action in light of the policy context and the history of this application (including scrutiny of its viability by an appropriately qualified third party), is that they should be omitted from the recommendation, and the resolution previously agreed by Planning Committee be ratified. This recommendation has been arrived at after careful consideration of the balancing exercise required in respect of the benefits of the development of the site for housing in a sustainable location against the failure of the scheme to accord with Maidstone Borough-Wide Local Plan 2000 policy CF1 and emerging Local Plan policy ID1, and in light of the conclusions of the DVS, the identified infrastructure priorities of Maidstone Borough Council, and the complexities of redistributing secured mitigation, which include not only financial contributions but also the provision of affordable housing within the fabric of the scheme.
- 2.8 As such, approval is sought from the Planning Committee for the ratification of the following contributions as set out in the recommendation of the previous reports to Planning Committee on 21<sup>st</sup> November 2013 and 12<sup>th</sup> December 2013, and the resolution to give the Head of Planning and Development delegated powers to grant planning permission subject to conditions, subject to the prior completion of an appropriate legal agreement, of the Planning Committee at the meeting held on 12<sup>th</sup> December 2013.
- (1) A minimum of 40% affordable housing;
  - (2) Contributions to KCC for primary school provision local to the site (being £2,701.63 per applicable house and £675.41 per applicable flat for land acquisition;
  - (3) Contributions to KCC for library book stock – to be spent within Maidstone (being £144.64 per dwelling or flat);

- (4) Contributions to KCC for community learning and skills – to be spent within Maidstone (being £28.71 per dwelling or flat); and
- (5) Contributions to MBC for the enhancement of open space within a 1 mile radius of the application site (being of £1,575 per residential unit).

2.9 The contributions set out above in paragraph 2.8 were included in the recommendation and discussed in the text of the report included in the agenda of the Planning Committee meeting held on 21<sup>st</sup> November 2013, and are not discussed in full here as they have previously been interrogated in the previous report and agreed by the Planning Committee. Similarly, there is no need for this report to reassess any other planning matters previously considered in respect of this application.

### **3. RECOMMENDATION**

Subject to the prior completion of a S106 legal agreement, in such terms as the Head of Legal Services may advise, to secure the following:

- (1) A minimum of 40% affordable housing;
- (2) Contributions to KCC for primary school provision local to the site (being £2,701.63 per applicable house and £675.41 per applicable flat for land acquisition;
- (3) Contributions to KCC for library book stock – to be spent within Maidstone (being £144.64 per dwelling or flat);
- (4) Contributions to KCC for community learning and skills – to be spent within Maidstone (being £28.71 per dwelling or flat); and
- (5) Contributions to MBC for the enhancement of open space within a 1 mile radius of the application site (being of £1,575 per residential unit).

The Head of Planning and Development BE DELEGATED POWERS TO GRANT PLANNING PERMISSION subject to the following conditions:

1. 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.

2. Pursuant to condition 1 a full arboricultural report, to the necessary standard shall be completed, and shall be submitted as part of any submission in order to address both the layout and the landscaping provision of any subsequent reserved matters application which shall include the retention of the protected trees;

Reason: To seek to protect the existing trees and to ensure a high quality layout.

3. The dwellings shall achieve at least Level 4 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 4 has been achieved.

Reason: To ensure a sustainable and energy efficient form of development in accordance with the NPPF 2012.

4. The height of the development shall be restricted to that shown on drawing no: /A/112.

Reason: To ensure that any development remains in scale and character with the area.

5. No part of the development hereby approved shall come closer than 10 metres to the back edge of the public highway fronting the site.

Reason: To ensure good landscaping provision and to secure an acceptable living environment for future occupiers in the interests of amenity.

6. The approved details of the accesses submitted pursuant to condition 1 shall be completed before the commencement of the use of the land or buildings hereby permitted and the sight lines maintained free of all obstruction to visibility above 1.0 metres thereafter;

Reason: In the interests of road safety.

7. The approved details of the parking/turning areas submitted pursuant to condition 1 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.

8. As part of the reserved matters submitted pursuant to condition 1, details shall be provided of the siting of a ragstone wall no less than 900mm high running along the whole site frontage. The approved wall shall in place before first occupation of the development hereby permitted and retained as such at all times thereafter.

Reason: In the interests of amenity

9. The development shall not commence until, details of all fencing, walling (which shall include ragstone walling at the point of access, and railings) and other boundary treatments have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details before the first occupation of the buildings or land and maintained thereafter;

Reason: To ensure a satisfactory appearance to the development and to safeguard the enjoyment of their properties by existing and prospective occupiers.

10. The development shall not commence until, details of satisfactory facilities for the storage of refuse on the site have been submitted to and approved in writing by the Local Planning Authority and the approved facilities shall be provided before the first occupation of the buildings or land and maintained thereafter;

Reason: No such details have been submitted and in the interest of amenity.

11. 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.

12. All trees to be retained must be protected by barriers and/or ground protection in accordance with BS 5837 (2012) 'Trees in Relation to Construction-Recommendations'. No work shall take place on site until full details of protection have been submitted to and approved in writing by the Local Planning Authority. The approved barriers and/or ground protection shall be erected before any equipment, machinery or materials are brought onto the site and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the areas protected in accordance with this condition. The siting of barriers/ground protection shall not be altered, nor ground levels changed, nor excavations made within these areas without the written consent of the Local Planning Authority;

Reason: To safeguard existing trees to be retained and to ensure a satisfactory setting and external appearance to the development.

13. The development shall not commence until details of the proposed materials to be used in the surfacing of all access roads, parking and turning areas and pathways within the site, and the design of kerb-stones/crossing points which shall be of a wildlife friendly design, have 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 ensure a high quality external appearance to the development.

14. The development shall not commence 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.

The development shall not commence until details of foul and 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.

15. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for, a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved.

Reasons: To protect vulnerable groundwater resources.

16. No development shall take place until a sample panel of the ragstone wall, and brickwork has been constructed on site, and agreed in writing by the Local Planning Authority. Such details as are approved shall be fully implemented on site.

Reason: To ensure a high quality design.

17. No development shall take place until the applicants or their successors in title have submitted a full Transport Assessment which shall include the full mitigation required to address the harm of the proposal upon the highway network. Any mitigation that is required shall be provided prior to the first occupation of the dwellings hereby permitted, unless otherwise agreed in writing.

Reason: In the interests of highway safety.

18. The development shall not commence until approval of the following reserved matters has been obtained in writing from the Local Planning Authority:-

- a. Layout
- b. Scale
- c. Appearance
- d. Access
- e. Landscaping

Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

19. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved;

Reason: No such details have been submitted and in accordance with the provisions of Section 92 of the Town and Country Planning Act 1990.

20. No demolition of the existing building (Nurses Home) on site shall take place until a photographic record of its exterior and interior has been completed, and made available to a local public archive centre.

Reason: In order to retain an historical record of this important non-designated heritage asset.

21. Details submitted pursuant to condition 1 (reserved matters submission relating to landscaping) shall include details of tree planting (small leaf lime) at regular intervals along the site frontage onto Hermitage Lane together with a landscaped area between the highway and the built development. .

Reason: In the interests of visual amenity and air quality.

## INFORMATIVES

(1) You are advised that Southern Water seeks to emphasise the development must be served by adequate infrastructure.

(2) Given that the nurse's home is an imposing and prominent building only a building of exceptional design quality and detailing will be considered acceptable as a replacement. You are therefore advised that the proposed indicative design for the building to replace the nurse's home is wholly unacceptable on design grounds, and that any proposal that comes forward on this site would need to be of a high standard of design to reflect its historic setting. Should a contemporary approach be taken, the development would be required to



have a high level of articulation, and high quality detailing, responding positively to the character and appearance of the locality, and to mitigate the loss of the existing building.

(3) It is considered that the indicative layout concept generally represents an appropriate response in unlocking the development potential of this site in an acceptable manner. Nevertheless, any reserved matters application should incorporate a significant increase in soft landscaping to the front of the site (fronting Hermitage Lane), with the proposed car parking at a reduced level and well screened from the public vantage point.

(4) You are advised that the indicative layout shows potential privacy conflicts between 1st/2nd floor windows in the flats looking down into the rear garden of the houses attached to the flats. This will need to be addressed at the reserved matters stage

(5) Any reserved matters application should incorporate features to enhance biodiversity within the application site. The use of bat boxes, swift bricks, log piles (where appropriate) and a suitable landscaping scheme is requested to form part of any future submission.

(6) Any layout as submitted at reserved matters stage should respond positively to the siting and form of existing trees within the application site. Where possible, trees of value should be retained and utilised as positive features of any development.

(7) The design of the any proposed buildings within the site, and particularly those along the Hermitage Lane frontage shall be designed in such a way as to provide a good level of articulation, and 'layering' along the key elevations. These buildings should respond positively to the quality development within the locality, and to take reference from the existing building.

(8) Any building upon the Hermitage Lane frontage shall be provided with high quality fenestration, which shall respond to the form and quality of the existing building upon the site.

(9) The importance of providing a varied roofscape within the application site shall be fully considered when any reserved matters applications are formalised, and thereafter submitted.

(10) If any commemorative plaque referring to the opening of the building is located, then the applicants, or successors in title, are encouraged to seek to retain this feature within any new development upon the applicant site.

Case Officer: Catherine Slade

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

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.