

REFERENCE NUMBER: 23/503788/FULL		
APPLICATION PROPOSAL: Erection of a drive through coffee shop and a flexible general employment building (class E(g)), including landscaping, parking and associated works.		
ADDRESS: Plots 6 & 7, Eclipse Park, Sittingbourne Road, Maidstone, Kent, ME14 3EN		
RECOMMENDATION: APPROVE PERMISSION		
SUMMARY OF REASONS FOR RECOMMENDATION:		
<ul style="list-style-type: none"> • The proposed uses (employment and retail) are acceptable within the designated Eclipse Park economic development area under Local Plan Review policy LPRSP11(A). • The layout and design of the development is considered to respond positively to the character and appearance of the streetscene and local area including the suitable provision of landscaping and tree planting alongside the street in accordance with design policies within the Local Plan Review. • There would be no harmful impacts upon residential amenity subject to conditions and there are no highways objections. • The proposals are considered to comply with all relevant Development Plan policies and permission is recommended subject to conditions. 		
REASON FOR REFERRAL TO COMMITTEE:		
<p>The recommendation is contrary to the views of Boxley Parish Council and they have requested Planning Committee consideration.</p> <p>Borough Councillor Harwood has requested the application be heard at Planning Committee should officers be minded to approve for the reasons set out in the report.</p>		
WARD: Grove Green and Vinters Park	PARISH COUNCIL: Boxley	APPLICANT: Gallagher Properties Ltd AGENT: DHA Planning
CASE OFFICER: Richard Timms	VALIDATION DATE: 31/08/23	DECISION DUE DATE: 31/05/24
ADVERTISED AS A DEPARTURE: No		

BACKGROUND

1.01 This application was reported to Planning Committee on 18th April and was recommended for approval subject to conditions. The Committee deferred a decision on the application resolving the following:

RESOLVED: That consideration of this application be deferred to enable the Officers to investigate and draw up potential conditions and informatives to address the following issues raised by Members in relation to the drive through coffee shop:

1. *Idling engines*
2. *Air quality mitigation measures with input from Environmental Health*
3. *Landscaping – Ten-year management plan*
4. *EV charging points on site*

5. *Littering, including use of automatic number plate recognition technology*
6. *Lighting – Sensitive or dimmed when not in use*
7. *Informative(s) regarding other relevant legislation*

1.02 The original committee report is attached at the **Appendix** which sets out the relevant planning policies, representations, officer's appraisal and recommendation.

2. APPRAISAL

2.01 Members are advised that planning conditions must satisfy the follows tests and be:

1. *necessary;*
2. *relevant to planning;*
3. *relevant to the development to be permitted;*
4. *enforceable;*
5. *precise; and*
6. *reasonable in all other respects*

2.02 Responses to each matter are set out below:

(1) Idling Engines, (2) Air Quality Mitigation Measures and (4) EV Charging

2.03 Requiring a condition to erect signage that asks those using the drive through facility to switch their engines off whilst stationary is the only way 'idling engines' can be addressed bearing in mind the tests for conditions as follows:

No development above slab level for the coffee shop shall take place until details of signage to be erected within the site and locations, to request that vehicle engines are switched off whilst vehicles are stationary, have been submitted to and approved in writing by the local planning authority. The approved signage shall be erected prior to the use of the coffee shop and thereafter retained.

Reason: To reduce impacts upon air quality.

2.04 For information, the applicant has also outlined that at other similar drive through facilities the maximum queue length recorded throughout a week is 10 vehicles which demonstrates that long queues with idling vehicles are unlikely to occur.

2.05 In terms of air quality, as outlined in the original report at paragraph 6.35, an Air Quality Assessment has been submitted which concludes there would be an insignificant effect on local area quality, with which Environmental Health agree. The development would not affect Maidstone's Air Quality Management Area in Upper Stone Street.

2.06 The applicant has been asked for their response to the deferral reasons and on this matter has stated,

"The submitted Air Quality Assessment proposes a variety of mitigation measures but these are mostly relevant to the construction rather than operational phase of the development. The Assessment also confirmed that the operational impacts of the development are not significant. It discusses mitigation measures which include EV charging points, and tree planting, both of which are included in the scheme.

As noted in the Transport Statement, it is anticipated that the future occupiers of the proposal site would produce their own Travel Plans, which would include the following measures:-

- *Walking and cycling initiatives: information boards, WalkBUDi/BikeBUDi schemes, promotion of local and national initiatives, quality and secure cycle parking and facilities; Cycle2work scheme, etc.;*
- *Public transport initiatives: good public transport information; flexible working; travel card promotion; ticketing incentives, etc.;*
- *Car sharing initiatives: lift fail provisions, use of web-based trip matching, information/promotion on web and site boards, etc.; and*
- *Car parking management.*

In this case, Building Regulations require one parking space to have access to an EV charging point and cable routes installed for a 5th of the total remaining parking spaces.

The Building Regulations requirement is therefore:

- *1 x EV charging point for Costa, plus cable routes for up to 5 other spaces;*
- *1 x EV charging point for the main industrial units, plus cable routes for 7 other spaces.*

The applicant is prepared to offer to exceed the Building Regulations requirement by providing 4 spaces with access to charging points (minimum 7kW, one for each unit) within the general industrial area, which represents 10% of the spaces for Unit 7."

2.07 Electric vehicle charging is dealt with under Part S of the Building Regulations and so conditions relating to this are not necessary or relevant to planning in terms of the tests. However, as (a) the applicant is proposing measures in excess of the Building Regulations and (b) planning committee consider air quality to be a specific issue that needs to be addressed, on balance, it is considered that the measures can be secured by condition in this case.

2.08 Environmental Health have also been asked for any measures they consider could help reduce air quality impacts notwithstanding the low impact. They have advised as follows:

"As the application is for the coffee shop and for the employment building EH has, I think appropriately considered the application as a whole development rather than as two distinct elements. I would also consider it appropriate for any air quality mitigation measures to be implemented for the development as a whole rather than just for the coffee shop. The mitigation measures for the development as a whole include the offer to provide charging points for EV vehicle in excess of that required by building regulations, which I would consider acceptable.

The letter from DHA Planning also details the production of specific travels plans for each occupier of the development including walking and cycling initiatives, public transport initiatives, car sharing initiatives and car parking management. I note that a tree planting scheme is also proposed, where the applicant will need to ensure that the most advantageous trees are planted as some species may have a negative effect. This type of mitigation would be satisfactory.

There is no other coffee shop specific mitigation that I can recommend as by its very nature a drive through facility will be used by car drivers."

2.09 In summary, air quality mitigation measures being EV charging above Building Regulations because they have been proposed by the applicant, and a Travel Plan can be secured as set out in the conditions below.

- ***The development shall not be occupied until the following EV charging facilities relating to it have been provided and made operational:***

(a) For the Coffee Shop:

1no. EV charging point and cable routes for EV charging points for 5 additional spaces (minimum 7kW speed)

(b) For the Employment Buildings:

4no. EV charging points and cable routes for EV charging points for 7 additional spaces (minimum 7kW speed)

The EV charging points shall thereafter be retained.

Reason: To reduce impacts upon air quality.

- ***The development shall not be occupied until a Travel Plan relating to it has been submitted to an approved in writing by the local planning authority, which shall include the following measures:***

(a) Walking and cycling initiatives for staff.

(b) Public transport initiatives for staff including ticketing incentives.

(c) Car sharing initiatives.

The approved Travel Plan shall thereafter be operated for the development it relates to.

Reason: To reduce impacts upon air quality

(5) Littering

2.10 Members questioned whether ANPR technology could be used in relation to litter i.e. ANPR scanners print vehicle number plates on items such as drinks cups.

2.11 In considering the tests for conditions, officers do not consider that such measures are necessary, relevant to planning or reasonable. Littering is obviously against the law and so covered by separate legislation. Whilst a minority of customers may break the law this is down to the specific behaviour of individuals and is beyond the control of the planning system or the applicant.

2.12 Whether one considers the law is a sufficient deterrent or there is adequate policing of littering is also not relevant and planning conditions should not be used to address such wider issues.

2.13 Nor has such technology been required by the Council on any other developments and to require it for this proposal would be unreasonable.

2.14 The applicant has also stated that,

"Costa Coffee do not currently use ANPR technology to print number plates on cups at any of their sites. I understand that this a potential solution which remains largely untested.

...As well as having potential GDPR implications, it could be difficult to demonstrate whether any litter linked to a vehicle has been deliberately dropped, or has fallen off a bin lorry or been removed from a bin by seagulls or foxes, for example. I am not aware of any cases where a local authority has made this a planning requirement, as it would not meet the relevant tests for a reasonable planning condition.

2.15 The applicant is therefore not agreeable to such a condition and officers do not consider it passes the relevant test. Officers advise that such a condition should not be imposed and the provision of refuse bins and a local litter management plan, as recommended under conditions 17 and 20 of the original report, are reasonable and proportionate to the proposed development.

(3) Landscaping and (6) Lighting

2.16 Requiring the landscaping condition 4 to include 10 year management and protection and lighting condition 14 to require dimmed lighting is acceptable and they are amended as follows:

4. *The development of any phase shall be carried out in accordance with the approved landscaping scheme relating to that phase as shown on drawing no. 0665/24/B/1A.*

*No development above slab level for any phase shall take place until a long-term management plan **for at least 10 years** and timetable for implementation of the approved landscaping for that phase has been submitted to and approved in writing by the local planning authority. The landscaping shall be carried out in accordance with the approved details.*

*The approved landscaping shall be retained for at least **10** years following its implementation and shall be managed and retained strictly in accordance with the approved details.*

*Any approved seeding or turfing which fails to establish or any trees or plants which, before a period of **10** years from the completion of the development has expired, die or become so seriously damaged or diseased that their amenity value has been adversely affected, shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme unless the local planning authority gives written consent to any variation. No replacement planting or removal of any planting shall take place without the prior written consent of the local planning authority.*

Reason: To ensure an appropriate appearance and setting to the development.

14. *No development above floor slab level for any phase shall take place until details of all external lighting for that phase, which shall be the minimum necessary, **be operated by motion sensors or timers so it is switched off and/or dimmed when not required**, and designed to minimise light pollution, has been submitted to and approved in writing by the local planning authority for that phase. The lighting shall be carried out in accordance with the approved scheme.*

Reason: To ensure a high-quality development.

(7) Informatives

- 2.17 The following informative relating to other legislation relevant to the above issues is recommended:

The applicant/operator of the developments are reminded of their duties under The Environmental Protection Act 1990/Clean Neighbourhoods and Environmental Act 2005 in respect of litter.

3 CONCLUSION

- 3.01 The reasons for deferral are discussed above with amended and additional conditions recommended in response to them, where they pass the relevant test for conditions.
- 3.02 For the reasons set out in the original report the proposals are considered to comply with all relevant Development Plan policies and permission is recommended subject to conditions.

4 RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions

with delegated powers to the Head of Planning and Development to be able to settle or amend any necessary planning conditions and/or informatives in line with the matters set out in the recommendation and as resolved by the Planning Committee:

CONDITIONS

Time Limit (Full Permission)

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.

Approved Plans & Compliance

2. The development hereby permitted shall be carried out in accordance with the following drawings:

4104 P001 RevE	(Site Location Plan)
4104 P003 RevE	(Proposed Site Plan)
4104 P101 RevC	(Plot 6 Elevations)
4104 P101 RevD	(Plot 6 Floor Plans)
4104 P103 RevD	(Plot 7 Floor Plans)
4104 P104 RevD	(Plot 7 Elevations)
0665/24/B/1A	(Landscape Planting Plan)

Reason: To clarify which plans have been approved and to ensure a high-quality development.

3. The approved vehicle parking and turning areas shall be completed before the commencement of the use of the land or buildings to which they relate and shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (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.

4. The development of any phase shall be carried out in accordance with the approved landscaping scheme relating to that phase as shown on drawing no. 0665/24/B/1A.

No development above slab level for any phase shall take place until a long-term management plan for at least 10 years and timetable for implementation of the approved landscaping for that phase has been submitted to and approved in writing by the local planning authority. The landscaping shall be carried out in accordance with the approved details.

The approved landscaping shall be retained for at least 10 years following its implementation and shall be managed and retained strictly in accordance with the approved details.

Any approved seeding or turfing which fails to establish or any trees or plants which, before a period of 10 years from the completion of the development has expired, die or become so seriously damaged or diseased that their amenity value has been adversely affected, shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme unless the local planning authority gives written consent to any variation. No replacement planting or removal of any planting shall take place without the prior written consent of the local planning authority.

Reason: To ensure an appropriate appearance and setting to the development.

5. The development shall be carried out in accordance with the approved Arboricultural Method Statement (dated 05/10/22) including the tree protection plan and measures.

Reason: In the interests of landscape and visual amenity and to ensure a satisfactory appearance to the development.

Pre-commencement

6. No development shall take place in any phase until a detailed sustainable surface water drainage scheme for that phase has been submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall be based upon the Flood Risk Assessment and Drainage Strategy dated 21st August 2023 and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of within the curtilage of the site without increase to flood risk on or off-site.

The drainage scheme shall also demonstrate (with reference to published guidance):

- a) That silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- b) Appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding.

7. No development for any phase shall take place until details of the proposed finished floor levels of the buildings, all ground levels of the development, and existing site levels for that phase shown at 0.5m contour intervals have been submitted to and approved in writing by the Local Planning Authority. The development shall be completed strictly in accordance with the approved details.

Reason: In order to secure a satisfactory form of development.

8. No development for any phase shall take place until the following details for that phase have been submitted to and approved in writing by the Local Planning Authority. The development shall be completed strictly in accordance with the approved details.
 - (a) An on-going management regime for works to any overhanging trees to the south of the site.
 - (b) Details of any ground retaining measures as part of constructing parking bays and services within any tree root protection areas.

Reason: In order to protect adjacent existing trees.

Pre-Slab Level

9. No development above slab level for any phase shall take place until details and evidence of the measures necessary to incorporate at least 10% on-site renewable or low carbon energy production measured as a percentage of overall consumption for that phase have been submitted to and approved in writing by the Local Planning Authority. Follow installation of the approved measures they shall thereafter be retained.

Reason: To ensure a sustainable form of development in accordance with policy LPRQ&D1 of the draft Local Plan Review.

10. No development above floor slab level for any phase shall take place until written details and sample of the materials, to be used in the construction of the external surfaces of the buildings for that phase have been submitted to and approved in writing by the local planning authority. The materials shall include the following:

a) Kentish ragstone for buildings and walls approved with ragstone.

The development shall be constructed using the approved materials.

Reason: To ensure a high-quality development.

11. No development above floor slab level shall take place until photographs of at least a 1.5m x 1.5m sample panel of the Kentish ragstone for the buildings and walls (which has been constructed on site) for that phase have been submitted to and approved in writing by the Local Planning Authority including written details of the mortar mix. Such details as approved shall be fully implemented on site and thereafter retained.

Reason: To ensure a high-quality design and finish.

12. No development above floor slab level for any phase shall take place until details of hard surfaces for that phase have been submitted to and approved in writing by the local planning authority. The details shall include block paving for all parking spaces and the development shall be carried out in accordance with the approved details and thereafter retained.

Reason: To ensure a high-quality development.

13. No development above floor slab level for any phase shall take place until details of all fencing, walling and other boundary treatments for that phase, which shall include low ragstone walling as shown on the plans, 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 to which they relate and retained thereafter.

Reason: To ensure a satisfactory appearance to the development.

14. No development above floor slab level for any phase shall take place until details of all external lighting for that phase, which shall be the minimum necessary, be operated by motion sensors or timers so it is switched off and/or dimmed when not required, and designed to minimise light pollution, has been submitted to and approved in writing by the local planning authority for that phase. The lighting shall be carried out in accordance with the approved scheme.

Reason: To ensure a high-quality development.

15. No development above slab level for any phase shall take place until full details of ecological enhancements and a timetable for their delivery for that phase, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained and the measures shall include the following:

- a) Inbuilt bird, bat and bee bricks to buildings.
- b) Reptile and amphibian hibernacula/log piles.

Reason: To enhance biodiversity.

16. No development above slab level for any phase shall take place until details of secure cycle parking for that phase have been submitted to and approved in writing by the local planning authority. The approved parking shall be provided before the occupation of the land or buildings to which they relate and shall thereafter be kept available for such use.

Reason: To promote sustainable transport use.

17. No development above floor slab level for the coffee shop shall take place until details of public refuse bins have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to the occupation of the building and thereafter retained.

Reason: In the interests of visual amenity in the local area.

Pre-Occupation

18. No building hereby permitted shall be occupied until the approved access point serving the building has been implemented and the visibility splays shown on drawing nos. H-01 RevP1 and H-02 RevP1 shall be maintained with no obstructions over 0.6 metres above carriageway level within the splays.

Reason: In the interest of highway safety.

19. No occupation/use of the coffee shop shall take place until details of any plant (including ventilation, refrigeration and air conditioning) or ducting system to be used have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details. The scheme

shall include an acoustic assessment which demonstrates that the noise generated at the boundary of any noise sensitive property shall not exceed Noise Rating Curve NR35 as defined by BS8233: 2014 Guidance on sound insulation and noise reduction for buildings. The equipment shall be maintained in a condition so that it does not exceed NR35 as described above, whenever it's operating. After installation of the approved plant, no new plant or ducting system shall be used without the prior written consent of the Local Planning Authority

Reason: In the interests of residential amenity.

20. No occupation/use of the coffee shop shall take place until a Litter Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall include:

- (a) A plan showing litter monitoring and collection areas upon public highway land which shall include Sittingbourne Road from its junction with the Chiltern Hundreds roundabout to its junction with the A249; and the A249 from its junction with the Chiltern Hundreds roundabout to its junction with Bearsted Road/M20 slip road roundabout.
- (b) The frequency of litter inspections and collections both on the site and within the area approved under part (a).

The development shall be carried out in accordance with the approved Plan and it shall operate thereafter.

Reason: To safeguard the character and appearance of the surrounding area.

21. Where infiltration is to be used to manage the surface water from the development hereby permitted, it will only be allowed within those parts of the site where information is submitted to demonstrate to the Local Planning Authority's satisfaction that there is no resultant unacceptable risk to controlled waters and/or ground stability. The development shall only then be carried out in accordance with the approved details.

Reason: To protect vulnerable groundwater resources and ensure compliance with the National Planning Policy Framework.

22. No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The Report shall demonstrate that the drainage system constructed is consistent with that which was approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems.

23. If during construction/demolition works evidence of potential contamination is encountered, works shall cease and the site fully assessed to enable an appropriate remediation plan to be developed. Works shall not re-commence until an appropriate remediation scheme has been submitted to, and approved in writing by, the Local Planning Authority and the remediation has been completed.

If during construction/demolition works evidence of potential contamination is encountered, upon completion of the building works, this condition shall not be discharged until a closure report has been submitted to and approved in writing by the Local Planning Authority if necessary. The closure report shall include details of:

- a) Details of any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.
- b) Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.

Reason: In the interest of human health.

Compliance/Restrictions

24. The employment building hereby approved shall be used for Use Class E(g) only and for no other purpose including any other uses permitted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any statutory instrument revoking and re-enacting those Orders with or without modification);

Reason: Other Class E uses may not be suitable at the site.

25. No activity in connection with the use of the drive through coffee shop hereby permitted shall be carried out outside the hours of 5.30am to 11pm and no customer shall be permitted to be on the premises outside of the hours of 6am to 10pm.

Reason: To safeguard the enjoyment of their properties by nearby residential occupiers.

26. No activity in connection with the use of the employment building hereby permitted shall be carried out outside the hours of 5am to 11pm.

Reason: To safeguard the enjoyment of their properties by nearby residential occupiers.

27. No deliveries in connection with the drive through coffee shop or employment building shall be taken at or dispatched from the site outside of the hours of 6am to 10pm.

Reason: To safeguard the enjoyment of their properties by nearby residential occupiers.

28. No open storage of materials, products, goods for sale or waste shall take place on the land.

Reason: To safeguard the character and appearance of the surrounding area.

29. The building(s) hereby approved shall achieve a Very Good BREEAM UK New Construction Version 6.1 rating including maximising energy and water efficiencies under the mandatory energy and water credits. A final certificate shall be issued to the Local Planning Authority for approval in writing within 6 months of the first occupation of the building(s) to certify that at a Very Good BREEAM UK New Construction Version 6.1 rating has been achieved.

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

LPRQ&D1 of the draft Local Plan Review.

30. No development above slab level for the coffee shop shall take place until details of signage to be erected within the site and locations, to request that vehicle engines are switched off whilst vehicles are waiting, have been submitted to and approved in writing by the local planning authority. The approved signage shall be erected prior to the use of the coffee shop and thereafter retained.

Reason: To reduce impacts upon air quality.

31. The development shall not be occupied until the following EV charging facilities relating to it have been provided and made operational:

(a) For the Coffee Shop:

1no. EV charging point and cable routes for EV charging points for 5 additional spaces (minimum 7kW speed).

(b) For the Employment Buildings:

4no. EV charging points and cable routes for EV charging points for 7 additional spaces (minimum 7kW speed).

The EV charging points shall thereafter be retained.

Reason: To reduce impacts upon air quality.

32. The development shall not be occupied until a Travel Plan relating to it has been submitted to an approved in writing by the local planning authority, which shall include the following measures:

(a) Walking and cycling initiatives for staff.

(b) Public transport initiatives for staff including ticketing incentives.

(c) Car sharing initiatives.

The approved Travel Plan shall thereafter be operated for the development it relates to.

Reason: To reduce impacts upon air quality.

Informative:

The applicant/operator of the developments are reminded of their duties under The Environmental Protection Act 1990/Clean Neighbourhoods and Environmental Act 2005 in respect of litter.

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