

# PLANNING COMMITTEE MEETING

Date: Thursday 20 July 2023  
Time: 6.00 pm  
Venue: Town Hall, High Street, Maidstone

## Membership:

Councillors Cox, English, Harwood, Holmes, Jeffery, Kimmance, McKenna, Munford (Vice-Chairman), Perry, Riordan, Russell, Spooner (Chairman) and D Wilkinson

*The Chairman will assume that all Members will read the reports before attending the meeting. Officers are asked to assume the same when introducing reports.*

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<b><u>AGENDA</u></b>	<b><u>Page No.</u></b>
1. Apologies for Absence	
2. Notification of Substitute Members	
3. Notification of Visiting Members	
4. Items withdrawn from the Agenda	
5. Date of Adjourned Meeting - 27 July 2023	
6. Any business the Chairman regards as urgent including the urgent update report as it relates to matters to be considered at the meeting	
7. Disclosures by Members and Officers	
8. Disclosures of lobbying	
9. To consider whether any items should be taken in private because of the possible disclosure of exempt information.	
10. Minutes of the meeting held on 22 June 2023	1 - 5
11. Presentation of Petitions (if any)	
12. Deferred Items	6 - 7
13. Planning Committee Training	8 - 14
14. 23/500505/FULL Brattle Farm, Five Oak Lane, Staplehurst, Kent	15 - 31

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**Issued on Wednesday 12 July 2023**

**Continued Over/:**

*Alison Broom*

**Alison Broom, Chief Executive**

15.	23/501579/FULL Former Telephone Exchange, Ashford Road, Hollingbourne, Kent	32 - 46
16.	22/505670/FULL Land At Paddock, Maidstone Road, Paddock Wood, Kent	47 - 61
17.	23/500617/FULL Pinelodge Cottage, Somerfield Road, Maidstone, Kent	62 - 73
18.	23/501498/FULL High Lees Farmhouse, Wagon Lane, Paddock Wood, Kent	74 - 85
19.	23/501688/FULL Brenchley Gardens, Station Road, Maidstone, Kent	86 - 91
20.	23/502179/FULL 588 Tonbridge Road, Maidstone, Kent	92 - 102
21.	18/506662/FULL Courtyard Studios, Hollingbourne House, Hollingbourne Hill, Hollingbourne, Maidstone, Kent	103 - 199
22.	19/506031/LBC Courtyard Studios, Hollingbourne House, Hollingbourne Hill, Hollingbourne, Maidstone, Kent	200 - 218
23.	23/501361/FULL Ledian Farm, Upper Street, Leeds, Kent	219 - 227
24.	22/505066/FULL Sunny Hill View Equestrian Stables, Sandway Road, Sandway, ME17 2LU	228 - 239
25.	23/501009/FULL Chord Electronics Ltd, The Old Pump House, Farleigh Bridge, East Farleigh, Maidstone, Kent, ME16 9NB	240 - 259
26.	23/501008/LBC Chord Electronics Ltd, The Old Pump House, Farleigh Bridge, East Farleigh, Maidstone, Kent, ME16 9NB	260 - 274
27.	23/500383/FULL Land West Of The Hawthorns, Pye Corner, Ulcombe, Maidstone, Kent, ME17 1EF	275 - 287
28.	Appeals List	288 - 290

**PLEASE NOTE**

**The order in which items are taken at the meeting may be subject to change.**

**The public proceedings of the meeting will be broadcast live and recorded for playback on the Maidstone Borough Council website.**

**For full details of all papers relevant to the reports on the agenda, please refer to the public access pages on the Maidstone Borough Council website. Background documents are available for inspection; please follow this link:**

**<https://pa.midkent.gov.uk/online-applications/>**

## **PUBLIC SPEAKING AND ALTERNATIVE FORMATS**

**In order to speak at the meeting, please call 01622 602899 or email [committee@maidstone.gov.uk](mailto:committee@maidstone.gov.uk) by 4 p.m. on Wednesday 19 July 2023. You will need to tell us which agenda item you wish to speak on. Please note that slots will be allocated for each application on a first come, first served basis.**

**If you require this information in an alternative format please contact us, call 01622 602899 or email [committee@maidstone.gov.uk](mailto:committee@maidstone.gov.uk)**

**To find out more about the work of the Committee, please visit [www.maidstone.gov.uk](http://www.maidstone.gov.uk)**

## **MAIDSTONE BOROUGH COUNCIL**

### **PLANNING COMMITTEE**

#### **MINUTES OF THE MEETING HELD ON 22 JUNE 2023**

##### **Present:**

<b>Committee Members:</b>	<b>Councillor Spooner (Chairman) and Councillors Cox, English, Harwood, Holmes, Jeffery, Kimmance, McKenna, Munford, Perry, Riordan, Russell and D Wilkinson</b>
<b>Visiting Members:</b>	<b>Councillors Mrs Gooch and Springett</b>

##### 30. APOLOGIES FOR ABSENCE

There were no apologies for absence.

##### 31. NOTIFICATION OF SUBSTITUTE MEMBERS

There were no Substitute Members.

##### 32. NOTIFICATION OF VISITING MEMBERS

Councillor Mrs Gooch was present as a Visiting Member for items 15 and 16 (23/501009/FULL and 23/501008/LBC – Chord Electronics Ltd, The Old Pump House, Farleigh Bridge, East Farleigh, Maidstone, Kent).

Councillor Springett was present as a Visiting Member for item 17 (22/504433/FULL – 8 Nethermount, Bearsted, Maidstone, Kent).

##### 33. ITEMS WITHDRAWN FROM THE AGENDA

There were none.

##### 34. URGENT ITEMS

The Chairman said that he intended to take the update reports of the Head of Development Management and the verbal updates in the Officer presentations as urgent items as they contained further information relating to the applications to be considered at the meeting.

##### 35. DISCLOSURES BY MEMBERS AND OFFICERS

Councillors English and Spooner stated that they were Members of Bearsted Parish Council. However, they had not participated in the Parish Council's discussions on application 22/504433/FULL (8 Nethermount, Bearsted, Maidstone, Kent) and intended to speak and vote when it was considered.

36. DISCLOSURES OF LOBBYING

All Members stated that they had been lobbied on item 17 (22/504433/FULL - 8 Nethermount, Bearsted, Maidstone, Kent).

Councillor Jeffery stated that he had been lobbied on agenda items 12 (23/501841/FULL – 3 Chilston Road, Lenham, Maidstone, Kent) and 13 (23/501390/FULL – Hillside Cottage, Sutton Valence Hill, Sutton Valence, Kent).

Councillor Kimmance stated that he had been lobbied on items 15 and 16 (23/501009/FULL and 23/501008/LBC – Chord Electronics Ltd, The Old Pump House, Farleigh Bridge, East Farleigh, Maidstone, Kent).

Councillor Munford stated that he had been lobbied on item 13 (23/501390/FULL – Hillside Cottage, Sutton Valence Hill, Sutton Valence, Kent).

37. EXEMPT ITEMS

**RESOLVED:** That the items on the agenda be taken in public as proposed.

38. MINUTES OF THE MEETING HELD ON 25 MAY 2023

**RESOLVED:** That the Minutes of the meeting held on 25 May 2023 be approved as a correct record and signed.

39. PRESENTATION OF PETITIONS

There were no petitions.

40. 22/504433/FULL - RETROSPECTIVE APPLICATION FOR THE REPLACEMENT AND RECONFIGURATION OF PATIO TO THE REAR OF THE HOUSE WITH PROPOSED PRIVACY SCREEN; THE ERECTION OF A GAZEBO WITH SURROUNDING DECKING; THE ERECTION OF AN ORANGERY; AND THE PART CONVERSION OF THE INTEGRAL GARAGE TO A UTILITY ROOM AND WC (RE-SUBMISSION OF 22/500345/FULL) - 8 NETHERMOUNT, BEARSTED, MAIDSTONE, KENT

The Committee considered the report and the urgent update report of the Head of Development Management.

In introducing the application, the Development Management Team Leader advised the Committee that she wished to add a condition specifying that the proposed planter shown on the plans shall be provided and retained to mitigate overlooking and reduce the useable space for the decking. The details of which to be submitted to and approved by the Local Planning Authority.

Mrs Eaton, an objector, Mr Bax, agent for the applicant, and Councillor Springett, Visiting Member, addressed the meeting.

**RESOLVED:** That consideration of this application be deferred for one meeting cycle to enable the Officers, in consultation with Councillor Springett (a Ward Member), to seek to negotiate a compromise solution to concerns raised about the new raised decking constructed adjacent to the conservatory, the side conservatory window and the proposed privacy screen.

Voting: 13 – For 0 – Against 0 - Abstentions

41. 23/501390/FULL - CHANGE OF USE OF EXISTING RESIDENTIAL ANNEX TO OFFICE SPACE FOR APPLICANT'S FINANCIAL SERVICES BUSINESS (USE CLASS E (C) (I)) INCLUDING REMOVAL OF GLAZED LOBBY ON WEST ELEVATION AND INSTALLATION OF AN INTERNAL RAISED FLOOR - HILLSIDE COTTAGE, SUTTON VALENCE HILL, SUTTON VALENCE, KENT

The Committee considered the report of the Head of Development Management.

In introducing the application, the Senior Planning Officer advised the Committee that he wished to amend the recommended conditions as follows:

Remove condition 8 relating to the submission of an acoustic report;  
Add a condition restricting the use to the specific section of Class E relating to financial services;  
Amend condition 6 (Parking/Turning Provision) to refer to specific plans submitted by the applicant; and  
Add a condition requiring the bin storage and cycle parking provision depicted by the applicant on the plans to be provided.

Mr Letts, the applicant, addressed the meeting.

**RESOLVED:**

1. That permission be granted subject to the conditions set out in the report as amended by the Senior Planning Officer during his introduction of the application.
2. That delegated powers be given to the Head of Development Management to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

Voting: 13 – For 0 – Against 0 – Abstentions

During the discussion on the application, concern was expressed that although the application had been reported to the Committee at the request of Sutton Valence Parish Council, a representative of the Parish Council was not present to address the planning issues they had raised. It noted that this situation was not unusual, and it was suggested and:

**RESOLVED:** That a letter be sent to all Parish Councils (a) reminding them that if they request that an application be determined by the Committee, they should attend the Committee to address the planning issues they have raised and (b) advising them that written statements to be read out on their behalf as an alternative to attendance will only be accepted in an emergency situation.

Voting: 13 – For 0 – Against 0 - Abstentions

42. 23/501841/FULL - REMOVAL OF EXISTING GARAGE AND CONSERVATORY. ERECTION OF A TWO-STOREY SIDE EXTENSION, PART TWO-STOREY/PART SINGLE-STOREY REAR EXTENSION INCLUDING ROOFLIGHT AND FRONT PORCH

EXTENSION. EXTENSION OF EXISTING DRIVEWAY - 3 CHILSTON ROAD, LENHAM, MAIDSTONE, KENT

The Committee considered the report of the Head of Development Management.

Councillor Britt of Lenham Parish Council addressed the meeting.

**RESOLVED:**

1. That permission be granted subject to the conditions and informatives set out in the report with:

The strengthening of condition 5 (Renewables); and  
The addition of a landscaping condition and a landscaping implementation condition; the landscaping condition to require the submission and approval of a landscaping scheme comprising native or near native shrub planting such as a wild privet hedge on the site frontage primarily around the perimeter of the hardstanding area to soften the impact of the development and bring benefits in terms of surface water drainage and biodiversity.

2. That the Head of Development Management be given delegated powers to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

Voting: 12 – For 1 – Against 0 – Abstentions

43. 23/501008/LBC - LISTED BUILDING CONSENT FOR ERECTION OF A THIRD FLOOR TO CREATE ADDITIONAL BUSINESS SPACE - CHORD ELECTRONICS LTD, THE OLD PUMP HOUSE, FARLEIGH BRIDGE, EAST FARLEIGH, MAIDSTONE, KENT

The Committee considered the report of the Head of Development Management.

Mr Harley, agent for the applicant, and Councillor Mrs Gooch, Visiting Member, addressed the meeting on this application and related application 23/501009/FULL.

**RESOLVED:** That consideration of this application be deferred to enable Members to see the Conservation Officer's assessment of the impact of the proposed development on the significance and setting of designated heritage assets, including the Farleigh Lane road bridge over the River Medway, and weigh any potential harm against the public benefits of the proposal.

Voting: 13 – For 0 – Against 0 – Abstentions

44. 23/501009/FULL - ERECTION OF A THIRD FLOOR TO CREATE ADDITIONAL BUSINESS SPACE - CHORD ELECTRONICS LTD, THE OLD PUMP HOUSE, FARLEIGH BRIDGE, EAST FARLEIGH, MAIDSTONE, KENT

The Committee considered the report and the urgent update report of the Head of Development Management.

Mr Harley, agent for the applicant, and Councillor Mrs Gooch, Visiting Member, had already addressed the meeting on this application and related application 23/501008/LBC.

**RESOLVED:** That consideration of this application be deferred in line with deferral of application 23/501008/LBC and to:

Seek further details in relation to proposed condition 6 (External Lighting) given the sensitive location of the application site from a historic landscape and riverside perspective and the evidence that red spectrum is softer and causes less harm to biodiversity than blue and green light; and

Strengthen proposed condition 7 relating to renewables.

Voting: 13 – For 0 – Against 0 - Abstentions

45. 23/500362/FULL - PROPOSED ERECTION OF AN INFILL EXTENSION TO GROUND FLOOR OF UNIT 1 (NORTHERN OFFICE BLOCK) ALONGSIDE ALTERATIONS TO CAR PARKING LAYOUT TO ALLOW FOR ADDITIONAL FLOORSPACE - UNIT 1, GENCO BUSINESS PARK, ASHFORD ROAD, HOLLINGBOURNE, KENT

The Committee considered the report of the Head of Development Management.

**RESOLVED:** That permission be granted subject to the conditions and informative set out in the report with delegated powers given to the Head of Development Management to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

Voting: 13 – For 0 – Against 0 – Abstentions

46. APPEAL DECISIONS

The Committee considered the report of the Head of Development Management setting out details of appeal decisions received since the last meeting.

**RESOLVED:** That the report be noted.

47. DURATION OF MEETING

6.00 p.m. to 7.30 p.m.

# Agenda Item 12

## MAIDSTONE BOROUGH COUNCIL

### PLANNING COMMITTEE

20 JULY 2023

#### REPORT OF THE HEAD OF DEVELOPMENT MANAGEMENT

##### DEFERRED ITEMS

The following applications stand deferred from a previous meeting of the Planning Committee. The Head of Development Management will report orally at the meeting on the latest situation.

<b>APPLICATION</b>	<b>DATE DEFERRED</b>
<p><u>22/504433/FULL - RETROSPECTIVE APPLICATION FOR THE REPLACEMENT AND RECONFIGURATION OF PATIO TO THE REAR OF THE HOUSE WITH PROPOSED PRIVACY SCREEN; THE ERECTION OF A GAZEBO WITH SURROUNDING DECKING; THE ERECTION OF AN ORANGERY; AND THE PART CONVERSION OF THE INTEGRAL GARAGE TO A UTILITY ROOM AND WC (RE-SUBMISSION OF 22/500345/FULL) - 8 NETHERMOUNT, BEARSTED, MAIDSTONE, KENT</u></p> <p>Deferred for one meeting cycle to enable the Officers, in consultation with Councillor Springett (a Ward Member), to seek to negotiate a compromise solution to concerns raised about the new raised decking constructed adjacent to the conservatory, the side conservatory window and the proposed privacy screen.</p>	22 June 2023
<p><u>23/501008/LBC - LISTED BUILDING CONSENT FOR ERECTION OF A THIRD FLOOR TO CREATE ADDITIONAL BUSINESS SPACE - CHORD ELECTRONICS LTD, THE OLD PUMP HOUSE, FARLEIGH BRIDGE, EAST FARLEIGH, MAIDSTONE, KENT</u></p> <p>Deferred to enable Members to see the Conservation Officer's assessment of the impact of the proposed development on the significance and setting of designated heritage assets, including the Farleigh Lane road bridge over the River Medway, and weigh any potential harm against the public benefits of the proposal.</p>	22 June 2023

23/501009/FULL - ERECTION OF A THIRD FLOOR TO  
CREATE ADDITIONAL BUSINESS SPACE - CHORD  
ELECTRONICS LTD, THE OLD PUMP HOUSE,  
FARLEIGH BRIDGE, EAST FARLEIGH, MAIDSTONE,  
KENT

22 June 2023

Deferred in line with deferral of application  
23/501008/LBC and to:

Seek further details in relation to proposed condition  
6 (External Lighting) given the sensitive location of  
the application site from a historic landscape and  
riverside perspective and the evidence that red  
spectrum is softer and causes less harm to  
biodiversity than blue and green light; and

Strengthen proposed condition 7 relating to  
renewables.

# Agenda Item 13

**Planning Committee**

**20 July 2023**

## **Planning Committee Training**

<b>Final Decision-Maker</b>	Planning Committee
<b>Lead Head of Service</b>	Rob Jarman, Head of Development Management
<b>Lead Officer and Report Author</b>	Rob Jarman, Head of Development Management
<b>Classification</b>	Public
<b>Wards affected</b>	All
<b>Recommendation</b>	Approval of proposed training programme for Planning Committee Members and Substitute Members

### **Executive Summary**

This report outlines a proposed training programme for Planning Committee Members and Substitute Members to ensure compliance with the Council's Constitution through knowledge and understanding of relevant local and national planning policies and legislation.

The report also strongly recommends attendance at a programme of optional training for Planning Committee Members and Substitute Members to facilitate their planning knowledge while serving on or supporting the Committee.

### **Purpose of Report**

To agree the training requirements for Planning Committee Members and Substitute Members for this municipal year.

### **This report makes the following recommendations to this Committee:**

1. That the Training Programme set out in **Appendix 1** be approved.
2. That all Members of Planning Committee, including those likely to be Substitute Members complete the Mandatory Training as outlined in **Appendix 1** by the end of September 2023, failing which such Members shall be disqualified from participation at Planning Committee until this training has been completed.
3. All Members (particularly those on Planning Committee and those likely to be Substitute Members) are recommended to attend discretionary training to enhance their knowledge of key areas of the decision-making process.

4. That Parish Councils continue to be invited to all training events.
5. That training sessions be delivered virtually.

<b>Timetable</b>	
<b><i>Meeting</i></b>	<b><i>Date</i></b>
Planning Committee	20 July 2023

# Planning Committee Training

## 1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Impact on Corporate Priorities</b>	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> <li>• Embracing Growth and Enabling Infrastructure</li> <li>• Safe, Clean and Green</li> <li>• Homes and Communities</li> <li>• A Thriving Place</li> </ul> <p>Accepting the recommendations will materially improve the Council's ability to achieve corporate priorities. The reasons other choices would be less effective are set out in section 2.</p>	Head of Development Management
<b>Cross Cutting Objectives</b>	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> <li>• Heritage is Respected</li> <li>• Health Inequalities are Addressed and Reduced</li> <li>• Deprivation is reduced and Social Mobility is Improved</li> <li>• Biodiversity and Environmental Sustainability is respected</li> </ul> <p>The report recommendations support the achievement of the cross-cutting objectives by ensuring Members are kept up to date on existing and proposed legislative changes and best practice.</p>	Head of Development Management
<b>Risk Management</b>	Covered in the risk section (5.1).	Head of Development Management
<b>Financial</b>	The proposals set out in the recommendations are all within budget.	Head of Development Management

<b>Staffing</b>	We will deliver the recommendations with our current staffing.	Head of Development Management
<b>Legal</b>	Accepting the recommendations will fulfil the Council's duties under the Constitution.	Head of Development Management
<b>Privacy and Data Protection</b>	Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with our retention schedules.	Head of Development Management
<b>Equalities</b>	The recommendations do not propose a change in service therefore will not require an equalities impact assessment.	Equalities & Communities Officer
<b>Public Health</b>	No specific implications	Head of Development Management
<b>Crime and Disorder</b>	No specific implications	Head of Development Management
<b>Biodiversity and Climate Change</b>	No specific implications	Head of Development Management

## 2. INTRODUCTION AND BACKGROUND

- 2.1 The Council's Constitution sets out the responsibilities of Planning Committee Members and Substitute Members.
- 2.2 Paragraphs 2.2.6 and 2.2.7 of the Local Code on Planning Matters (Part D3 of the Council's Constitution) state:

*"2.2.6. The Council has agreed that no Members will be able to serve on this Committee without having agreed to undertake a minimum period of training on the policies, procedures, legislation and guidance relevant to this Committee as specified by the Committee. This training must be completed to an agreed programme set by the Committee annually with a due date for completion. New Members must receive training, but the programme may include no training provision for experienced Members **unless there have been relevant changes to legislation, policies, or guidance.***

*2.2.7. If a Member has not completed the specified training by the due date, the Member will cease to be a Member/Substitute Member of this Committee until the training has been completed. The Director of Strategy, Insight and*

*Governance will keep a record of the training requirements of this Committee and of Members' compliance with the requirements." (my emphasis in bold).*

- 2.3 Clearly, legislation is changing on a frequent basis but more so policies and guidance. Guidance at a national level changes very frequently and at a local level the public examination into the Regulation 22 draft of the Local Plan Review is ongoing with the Inspector's letter on suggested modifications anticipated to be received before the end of July and then there is the need to go out to public consultation on these modifications to the Local Plan Review. Therefore, it is recommended that all Members who sit or are likely to sit on Planning Committee attend one mandatory planning training session, which session will depend on their planning experience. This then accords with the Constitution.
- 2.4 All Members are recommended to attend discretionary training because all Councillors are likely to engage with the decision-making process in some capacity.
- 2.5 Previous reports to Planning Committee confirmed that investigations had been carried out into an electronic version of refresher training which would allow Members to self-serve from a selection of topic-based subjects. Unfortunately, there were no market options available at the time and this would have required a bespoke suite of training packages to be developed and implemented. This option was not pursued any further due to resource and cost implications. However, training sessions are recorded utilising Microsoft Teams.

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### 3. **AVAILABLE OPTIONS**

#### 3.1 **Option 1: as per recommendation**

#### 3.2 **Option 2 :**

- That the following Members:
  - new Planning Committee Members
  - new Substitute Members and
  - those Planning Committee Members returning to the Committee after a break and Members who are likely to substitute at Planning Committee after a break

must complete the Induction Training and Enforcement Training as outlined in Appendix 1 by the end of September 2023, failing which such Members shall be disqualified from participation at Planning Committee until this training has been completed.

- That it is strongly recommended that all Planning Committee Members and Members who are likely to substitute at Planning Committee complete at least 2 specialised/best practice discretionary subject area training sessions covering those other topics set out in Appendix 1.
- That Parish Councils continue to be invited to all training events.
- That training sessions be delivered virtually.

### 3.3 **Option 3**

That Members of the Planning Committee and Substitute Members are not required to attend training events.

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## 4. **PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 4.1 **Option 1** is the preferred option as it aligns with the Constitution and ensures that all Members, including those who already have planning experience are trained on significant and cumulative changes to planning matters.
- 4.2 Other options are not favoured because of their lack of alignment with the Constitution, the risk that training covering planning changes cannot be evidenced, and, secondary, pragmatic reasons such as defining a 'significant break' from attending Planning Committee.
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## 5. **RISK**

- 5.1 The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. We are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy. The risk of lack of training is failing future audits and, ultimately, successful appeals and judicial reviews of decisions made by Planning Committee.
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## 6. **NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

- 6.1 A draft schedule of training topics forms Appendix 1, and, if agreed, Councillors will be invited to attend these virtual training sessions via Microsoft Teams.
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## 7. **REPORT APPENDICES**

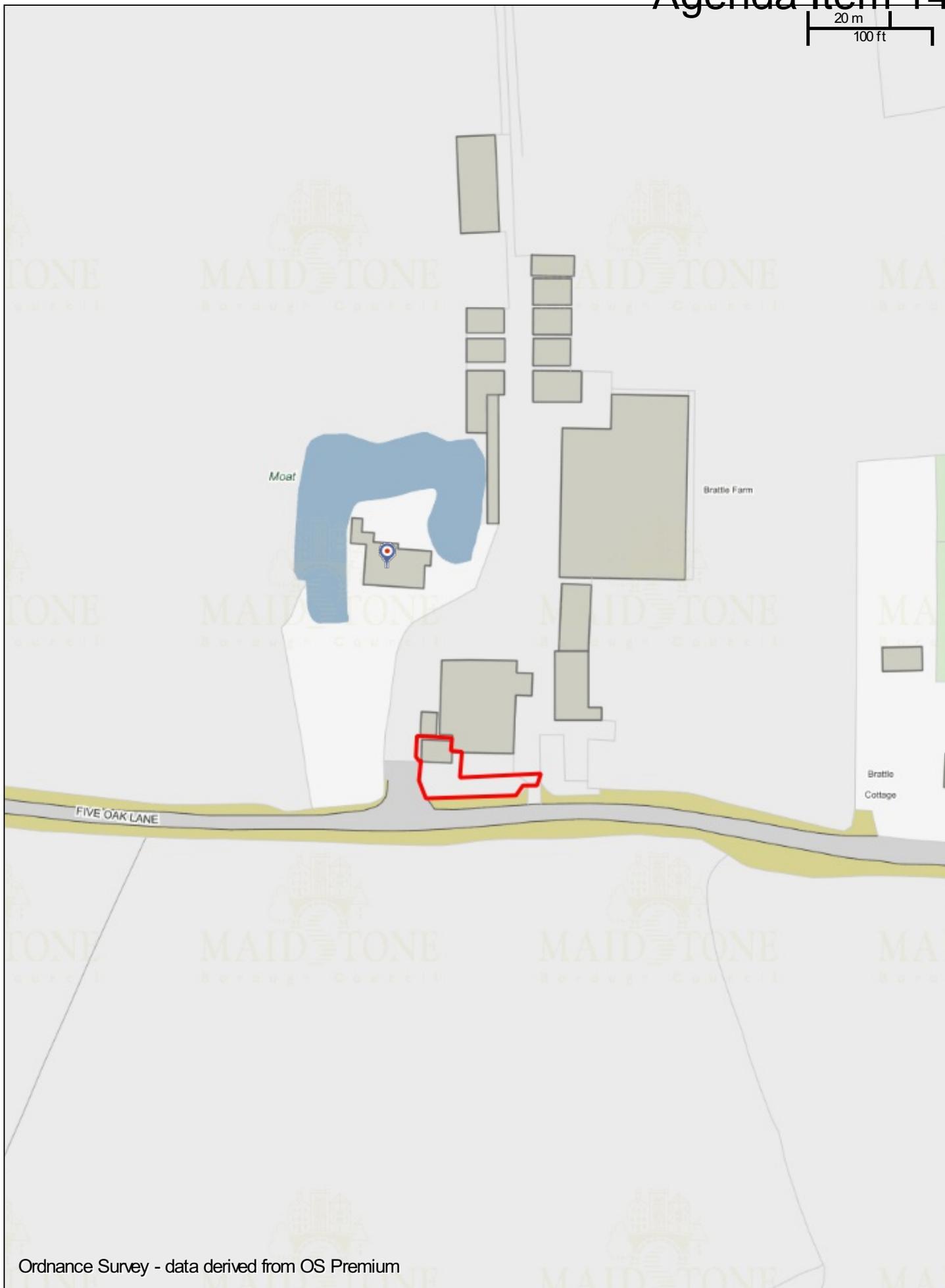
- 7.1 The following document is to be published with this report and forms part of the report - **Appendix 1: Draft Training Programme**

## APPENDIX 1

### Draft Planning Training Programme 2023/24

DATE/TIME	TRAINING TYPE	TITLE	DESCRIPTION	LOCATION
Tues 12 <sup>th</sup> September 2023 18:00	Mandatory	Induction Training  For new Planning Members and Substitute Members	This will cover the Development Plan, Planning Policies & Guidance, Legislation, Planning Conditions, Grounds of Refusal, Enforcement, S106 Agreements/CIL and Legal Training including Pre-determination and Judicial Reviews	Virtual
Weds 26 <sup>th</sup> September 2023 18:00		Planning Training  For Planning Members and Substitute Members with previous planning experience	Advanced planning training	Virtual
October	Discretionary	Meaning of development, permitted development, enforcement, CIL and S106 Agreements		Virtual
November x2		Planning Policy and guidance and the relevance to decision making	In two parts	Virtual
December		Landscape Assessments and Biodiversity Net Gain		Virtual
January		Design guidance	Including amenity standards and car parking	Virtual

In addition, there will be decision review tours and appeal discussions



Ordnance Survey - data derived from OS Premium



23/500505/FULL Brattle Farm, Five Oak Lane, Staplehurst, Kent, TN12 0HE

Scale: 1:1250

Printed on: 10/7/2023 at 11:52 AM by JoannaW



<b>REFERENCE NO:</b> 23/500505/FULL		
<b>APPLICATION PROPOSAL:</b> Retrospective application for change of use from an agricultural barn to a florist, including alterations to fenestration.		
<b>ADDRESS:</b> Brattle Farm Five Oak Lane Staplehurst Kent TN12 0HE		
<b>RECOMMENDATION:</b> GRANT PLANNING PERMISSION subject to planning conditions in Section 8 of this report.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b>		
<ul style="list-style-type: none"> <li>The proposal will result in harm to the character and appearance of the countryside contrary to policy SP17 and there are no Local Plan policies that directly support retail uses outside of a designated settlement (other than farm shops).</li> <li>In this context as the application is not in accordance with the adopted Local Plan, it needs to be determined as to whether there are other material considerations that justify granting planning permission.</li> <li>The application building is modest in floorspace size (with a condition restricting future expansion of the external display area) and the existing use would not have required full planning permission if a proposed use. It has been found that a minimal level of harm has been caused to the character and appearance of this rural area. A planning condition will require a further application for the display of any advertisements or signs.</li> <li>The proposal is acceptable in relation to heritage impacts as confirmed in the comments from the conservation officer. The application is found to be acceptable in relation to neighbour amenity, with adequate access and parking arrangements. The application brings a vacant building back into beneficial use and supports the aims of NPPF and the Local Plan in achieving a prosperous rural economy.</li> <li>It is concluded that whilst the application is not in accordance with the development plan (a departure) these material considerations that have been outlined and the minimal level of resulting harm indicate that planning permission should be approved.</li> </ul>		
<b>REASON FOR REFERRAL TO COMMITTEE:</b>		
<ul style="list-style-type: none"> <li>The application is a departure from the development plan.</li> </ul>		
<b>WARD:</b> Staplehurst	<b>PARISH</b> Staplehurst	<b>COUNCIL:</b>  <b>APPLICANT:</b> Mr William Thompson <b>AGENT:</b> Kent Planning Consultancy Ltd
<b>CASE OFFICER:</b> Tony Ryan	<b>VALIDATION DATE:</b> 13/02/23	<b>DECISION DUE DATE:</b> 28/07/23
<b>ADVERTISED AS A DEPARTURE:</b> Yes		

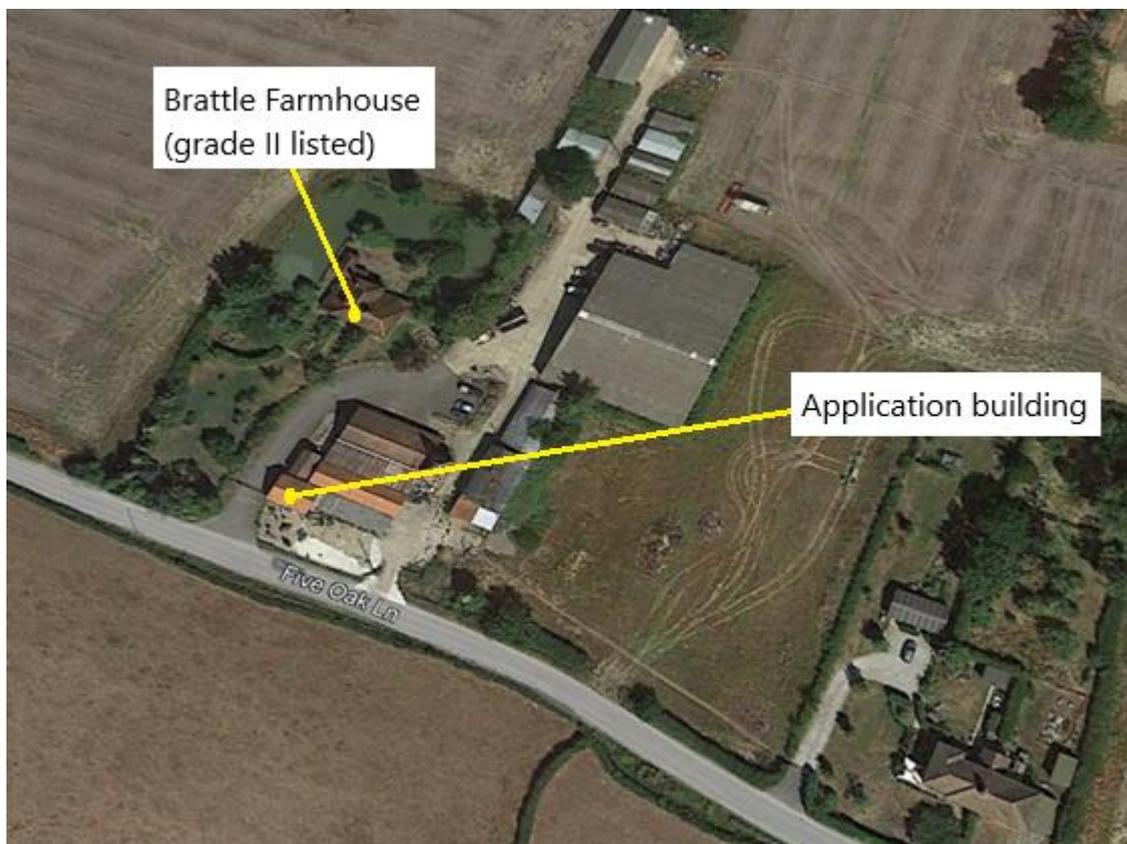
**Relevant planning history**

- 22/503766/PNR Prior notification for the change of use of agricultural building to a flexible use within Class B8 (storage) and B1 (light industrial). For its prior approval

to: Transport and Highways impacts of the development - Noise impacts of the development - Contamination risks on the site - Flooding risks on the site. Approved 26.09.2022

- 22/505937/PNR Prior notification for the change of use of agricultural building to a flexible use for its prior approval to: Transport and Highways impacts of the development - Noise impacts of the development - Contamination risks on the site - Flooding risks on the site. Approved 28.02.2023 subject to various conditions including requirement for a Traffic and Parking Management Plan and a restriction on the hours of use for uses within planning use class B8 (storage or distribution) and Class E (commercial, business or service)
- 23/501386/FULL Operational development in association prior approval reference 22/505937/PNR consisting of demolition of existing store and changes to fenestration. Approved 13.06.2023
- 23/501387/SUB Submission of Details pursuant to condition 2 (Traffic and Parking Management Plan) of Application 22/505937/PNR Approved 18.05.2023

### Site location



## MAIN REPORT

### **1. DESCRIPTION OF SITE**

- 1.01 The site (248 square metres) is in the countryside as designated by the Maidstone Borough Local Plan 2017. The site has no special landscape designation. Staplehurst settlement boundary is circa 0.5 miles to the east of the site.

- 1.02 The site is on the north side of Five Oak Lane circa 325 metres to the west of the junction with Pinnock Lane. The application building forming part of Brattle Farm is occupied by a rectangular small single storey brick building with a pitched tiled roof, the building has a gross internal area of 40 square metres.
- 1.03 Agricultural land is to the west, east and north of the application site. Brattle Farmhouse (Grade II listed building) is located circa 40 metres to the south of the application building and to the rear of a neighbouring building. At a point circa 73 metres to the south west of the application building, footpath KM316 meets Five Oak Lane from the south.

## **2. PROPOSAL**

The application is for the change of use from an agricultural barn to a florist, including alterations to fenestration. The application is retrospective.

## **3. POLICY AND OTHER CONSIDERATIONS**

Maidstone Borough Local Plan Adopted October 2017,

SS1: Maidstone Borough spatial strategy

SP17: Countryside

SP18: Historic Environment

SP21: Economic development

DM1: Principles of good design

DM3: Natural environment

DM4: Development affecting designated and non-designated heritage assets

DM18: signage and shopfronts

DM23: Parking standards

DM30: Design principles in the countryside

DM31 Conversion of rural buildings

Staplehurst Neighbourhood Plan - VH1 Retention and support of existing retail

Maidstone Borough Council – Local Plan Review, draft plan for submission (Regulation 22) dated October 2021.

The Regulation 22 draft is a material consideration however weight is currently limited, as it is the subject of an examination in public that commenced on the 6 September 2022 (Stage 2 concluded on the 9 June 2023).

The relevant policies in the draft plan are as follows:

LPRSS1 Maidstone Borough Spatial Strategy

LPRSP9 Development in the Countryside

LPRSP11 - Economic development

LPRSP11(B) - Creating new employment opportunities

LPRSP12 - Sustainable transport

LPRSP14 - Environment

LPRSP14(A) - Natural environment

LPRSP14(B) - Historic environment

LPRSP14(C) - Climate change

LPRSP15 – Principles of good design

LPRSS1 - Spatial strategy

LPRTRA2 - Assessing transport impacts

LPRTRA4 - Parking

LPRENV1 - Historic environment

LPRQ&D1 - Sustainable design

LPRQ&D2 - External lighting

LPRQ&D 4 Design principles in the countryside

Supplementary Planning Documents: Maidstone Landscape Character Assessment  
The National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)

#### **4. LOCAL REPRESENTATIONS**

##### **Local residents**

- 4.01 Objections received from one address for the following summarised reasons:
- Contrary to the National Planning Policy Framework (paras 84c, 85, 130c, 174, 199 and 202).
  - Contrary to Staplehurst Neighbourhood Plan (para Paragraph 2.10 (5) "Protecting and enhancing the natural and historic environment, the quality and character of the whole built environment and the wider countryside").
  - Contrary to the Local Plan (policies DM18, DM31, DM40).
  - Fails to respect and is damaging to the rural and historical character of the area
  - Substantially a new building for retail use in the countryside, or an existing rural building which required major or complete reconstruction
  - Adverse effect of external display area on the environment.
  - The site is in an unsustainable location and the space available for parking and turning is inadequate

##### **Staplehurst Parish Council**

- 4.02 No objection, recommend that the application is approved and do not wish the application to be referred to MBC Planning Committee.

#### **5. CONSULTATIONS**

##### **MBC Conservation Officer**

- 5.1 No objection.
- 5.2 The works have changed the building appearance from "*a simple 'working' rendered building dating from the early 1900's to a building with the appearance of an earlier farm building*".
- 5.3 Whilst the building changes have altered the development of the farmstead, it is highlighted that buildings did evolve and develop, with repairs of various quality being undertaken, so recladding of the building would not be uncommon. The works undertaken to the building are unlikely to have caused harm to the structure (due to the age of the barn).
- 5.4 The proposed change of appearance and change of use within the setting of the listed building are not deemed to cause harm to the significance of the farmhouse.

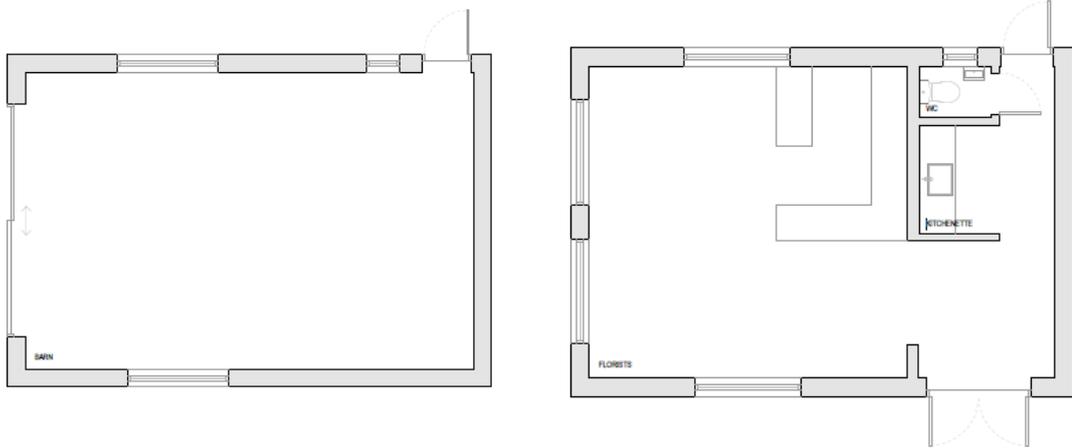
#### **6. APPRAISAL**

- 6.01 The starting point for assessment of all applications in the countryside is Local Plan Policy SP17. Policy SP17 states that development proposals in the countryside will only be permitted where:
- a) there is no harm to local character and appearance, and
  - b) they accord with other Local Plan policies

- 6.02 Policy SP17 does not specify an acceptable level of harm and all proposals in the countryside are likely to result in some harm to local character and appearance. In this context all countryside development does not accord with the first part of policy SP17 above.
- 6.03 Other Local Plan policies permit development in the countryside in certain circumstances (and subject to listed criteria). If development accords with one of these other policies, in these circumstances this compliance generally outweighs the harm caused to character and appearance with a proposal in accordance with LP policy SP17 overall.
- 6.04 LP Policy SP21 (vii) states that improving the economy and providing for the needs of business will be achieved through "*Prioritising the commercial re-use of existing rural buildings in the countryside over conversion to residential use, in accordance with policy DM31*".
- 6.05 With reference to buildings with the quality of Oast Houses, policy DM31 permits the retention and conversion of rural buildings that 'reinforce landscape character' subject to several listed criteria. The conservation officer concludes that the application building is not curtilage listed. The application has been considered on the basis that the retained building does not 'reinforce landscape character'
- 6.06 The application does not involve the conversion of agricultural land to domestic garden so DM33 is not relevant. The application does not involve the expansion of an existing business on the application site so policy DM37 is not relevant. LP policy DM40 does permit retail uses in the countryside but only where the uses are restricted to selling a significant proportion of produce in turns of turnover that originates from the farm holding where the retail use is located.
- 6.07 The current application does not involve produce or goods which originate from the Brattle Farm site and as a result policy DM40 offers no support to the current application.
- 6.08 The proposal will result in harm to the character and appearance of the countryside and there are no Local Plan policies that support the application. The application is a departure from the adopted Local Plan.
- 6.09 The National Planning Policy Framework (NPPF) highlights that the planning system is plan-led. The NPPF reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which require by law that planning applications "*must be determined in accordance with the development plan, unless material considerations indicate otherwise*".
- 6.10 The relevant material considerations in this case include assessing the impact of the proposal in the following areas:
- Permitted development rights
  - Character and appearance
  - Location
  - Heritage
  - Rural economy
  - Neighbour amenity
  - Access, parking, transport, and Public Right of Way (PROW)
  - Biodiversity

**Original and existing images for comparison.**

- Original and application floorplans



- Original and existing front (south) elevation



- Original and existing side (west) elevation



- Original and existing street scene



### **Permitted development rights**

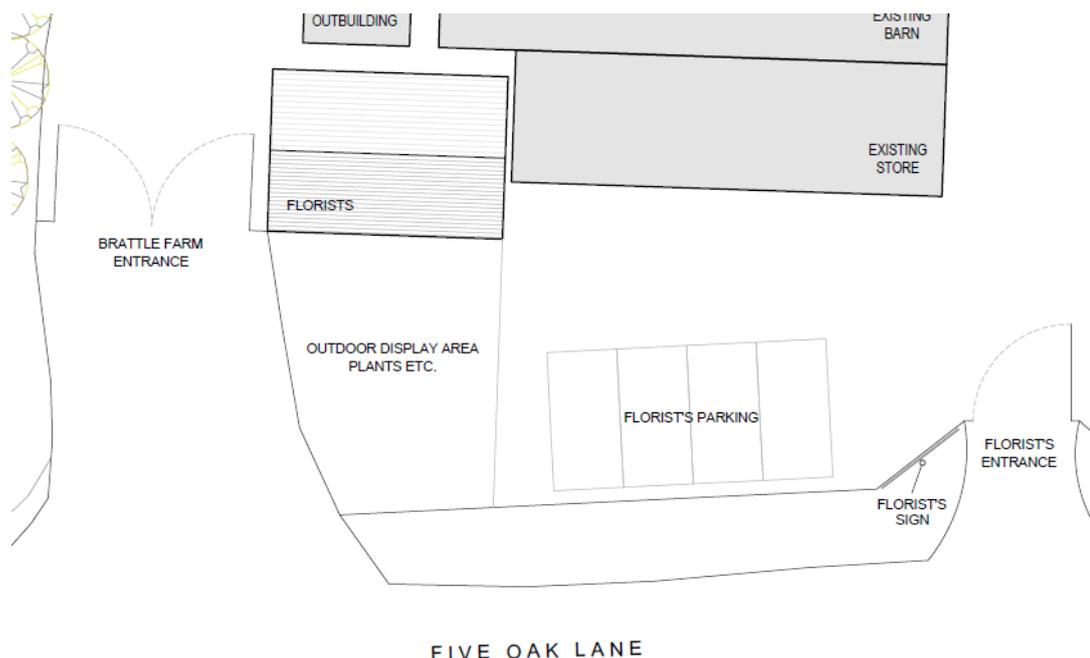
- 6.11 National legislation allows the conversion of agricultural buildings to retail use (and a variety of other uses) without the need for full planning permission (permitted development). This legislation is Schedule 2, Part 3, Class R of the General Permitted Development Order 2015 (as amended) (GPDO).
- 6.12 To benefit from this flexibility to change to retail use, an application for 'prior' approval is required from the Council before the use commences. The extent of what can be considered as part of this prior approval application and information requirements are restricted by the above legislation.
- 6.13 The application building is 40 square metres and information on transport and highways, noise, contamination, and flooding are only required as part of the prior approval application when floorspace is over 150 square metres. The Council's conservation officer has assessed the age and location of the building and has determined that the building is not curtilage listed.
- 6.14 In summary if the retail use had not already commenced, the application building would benefit from permitted development rights allowing retail use under the prior approval system. A planning application was required in this instance as the development is retrospective (the need for full planning permission is only due to a failure on the 'prior' part of the prior approval system).
- 6.15 In addition to the flexibility of changing between agricultural and retail use, there is also flexibility to change between retail and residential use (Class M, GPDO). To remove future flexibility for the application building to change from retail to residential use a planning condition is recommended removing this permitted development right. This condition will result in a need for full planning permission for this change.

### **Character and appearance**

- 6.16 Supporting text to policy SP17 advises "*The countryside has an intrinsic character and beauty that should be conserved and protected for its own sake*". In terms of assessing this intrinsic character, the Council's published Landscape Character Assessment shows the application site in the Low Weald Fruit Belt which is part of the wider Low Weald landscape. The summary of actions in this area include:
- Conserve the abundance of oak as a dominant species, and plant new isolated oaks within pasture and hedgerows to replace ageing population
  - Conserve the pastoral land use and resist conversion to arable land
  - Conserve and enhance the small scale field pattern and sense of enclosure
  - Conserve the largely undeveloped rural landscape and the remote quality of isolated farmsteads
  - Resist infill linear development along Maidstone Road
  - Soften the visual prominence of large agricultural barns through native planting
  - Enhance habitat opportunities around water bodies and ditches by promoting a framework of vegetation in these areas
- 6.17 The application site has a lawful agricultural use. The modest detached application building has a gross internal area of 40 square metres. The application building is at the south west corner of a group of other farm buildings and is seen in the context of these buildings.
- 6.18 Immediately to the west of the application building is the main vehicular access to the farm and Brattle Farmhouse (grade II listed) which is circa 40 metres to the south.

- 6.19 The changes to the building include the insertion of a new door to the front elevation, the sliding doors to the side elevation have been changed to two windows. The window to the front elevation of the original building was broadly domestic in style and the proposed changes to the fenestration reflect the same style. The changes to arrangement of doors and windows is in keeping with the appearance of the building and these changes are acceptable.
- 6.20 The original white rendered building is now finished in black timber cladding. There is some variety in facing materials locally including the two existing breeze block buildings immediately to the north east of the application building and the red brick Oast to the rear of the site. Saynden Cottages further to the west on Five Oak Lane is painted brick and the Acorns on the opposite side of Five Oak Lane has black timber cladding at first floor like the cladding on the application site.
- 6.21 Other buildings on the farm site behind the application building are also finished in black timber cladding and this facing material is found on many buildings in the wider Kent countryside. The use of timber cladding on the application building is keeping with the character of the area.
- 6.22 Allowing unrestricted outdoor display of goods in this location could have an adverse impact on the character of the area. As a result, a planning condition is recommended that prevents the storage or display of goods associated with the use outside the display area indicated on the plan below.
- 6.23 Allowing unrestricted outdoor signage in this location could have an adverse impact on the character of the area. As a result, a planning condition is recommended that would require separate consent for the the display of any sign or advertisement on land controlled by the applicant or in the vicinity of the application site in connection with the approved use (without this condition certain advertisements and signage could be displayed without advertisement consent). The condition also highlights that the current application does not give any consent to the signage indicated on the plan below at the site entrance.

Layout drawing provided with the current application.



## **Heritage**

- 6.24 Policy SP18 of the Local Plan relates to the historic environment and requires that, inter-alia, the characteristics of heritage assets are protected, and design is sensitive to heritage assets and their settings. Policy DM4 of the Local Plan also relates to development affecting designated heritage assets and requires applicants to ensure that new development affecting heritage assets conserve, and where possible enhance, the significance of the heritage asset.
- 6.25 The NPPF (paragraphs 201 and 202) requires the impact on the significance of a designated heritage asset to be assessed as either “substantial harm” or “less than substantial harm” with NPPG guidance setting out that “substantial harm” has a high threshold “Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use”.
- 6.26 NPPF guidance (paragraphs 199 and 200) states that when assessing the impact of development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm to significance amounts to substantial harm, total loss or less than substantial harm.
- 6.27 Brattle Farmhouse (Grade II listed building) is located circa 40 metres to the south (rear) of the application building and to the rear of a neighbouring building. The listing gives the following detail:

*Farmhouse. Mid-to-late C16, with late C16 or early C17 addition and later alterations. C19 facade. Timber framed. Ground floor painted brick. First floor tile-hung with thick band of pointed fishscale tiles towards base and five diamonds of fishscale tiles above. Right gable end weatherboarded on both floors. Plain tile roof.*

*Main range with principal room of 2 timber- framed bays incorporating cross-passage to left, and formerly with further timberframed bay to left end. Stack bay to right of principal room. Bay to right of stack bay possibly of same date or, probably, built or rebuilt slightly later, and framed as a cross-wing.*

*Main range formerly integrally roofed with the cross-wing. Rear addition of one timber-framed bay, spanning whole of principal room and either newly-built in the early C17 or removed at about that time from left end of main range. 2 storeys. Underbuilt continuous jetty beneath and to left of stack. Hipped roof. Multiple brick ridge stack slightly to right of centre. Irregular fenestration of 4 casements; 3 two-light, and one single-light under stack. Ribbed and boarded door to left end and another under stack. Lean-to to left in same materials. Short timber-framed rear wing to left, weatherboarded on both floors to right side, tilehung to first floor to rear, with hipped roof. Rear lean-to to rest of main range.*

### *Interior:*

*exposed framing. Plank-and- muntin partition, with beaded planks, to right side of rear wing, and probably removed from grooved cross-beam to right side of cross-passage when rear wing was built. Chamfered stone ground-floor fireplace to left with cambered bressumer, and chamfered brick fireplace to first floor. Ovolo-moulded beams to both floors of right end bay, and evidence for frieze windows. Clasped purlin roof with windbraces. Cross-wing re-roofed, possibly in C18. C17 newel to top of attic stairs in rear wing. Moated site.*

- 6.28 The Council's conservation officer makes the following points:
- *"The proposed design converts the simple structure into a more 'traditional' farm building".*
  - *"The works undertaken to the building are unlikely to have caused harm to the structure (due to the age of the barn)".*
  - *"The proposed change of appearance and change of use within the setting of the listed building are not deemed to cause harm to the significance of the farmhouse".*
- 6.29 The impact of the application on the significance of the nearby designated heritage assets will be less than substantial. This conclusion is reached for the following reasons:
- The application building is separated from the listed building by circa 40 metres and other timber nearby clad buildings.
  - The general appearance of the original building was domestic in terms of form and building shape and window proportions, and the new fenestration is in keeping with this original style.
  - The retail use of the building (even when accounting for outdoor space) is modest and visual impact is minimal .
- 6.30 The 'less than substantial harm' has been weighed against the public benefits of the proposal including, and the harm is outweighed by the benefits from the reuse of this site.

Inside of the florists shop



**Neighbour amenity**

- 6.31 Local Plan policy DM1 states that development must "Respect the amenities of occupiers of neighbouring properties and uses by ensuring that development does not result in, or is exposed to, excessive noise, odour, air pollution, activity or vehicular movements, overlooking or visual intrusion, and that the built form would not result in an unacceptable loss of privacy or light enjoyed by the occupiers of nearby properties".

- 6.32 The nearest residential dwelling is Brattle Farmhouse that is separated from the new building by circa 40 metres. In this context there are no issues with daylight, sunlight, privacy and overlooking.
- 6.33 Another potential source of nuisance is noise. The application involves a modest retail unit, the operation of the unit and the vehicle trips that it generates are acceptable in relation to residential amenity. A planning condition is recommended that restricts operation of the use to Monday to Friday 08.00-18.00

#### **Trip generation and access**

- 6.34 The NPPF states planning decisions "*...should recognise that sites to meet local business...needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development ... does not have an unacceptable impact on local roads...*".
- 6.35 Local Plan policy DM 1 states that proposals will be permitted, where they can safely accommodate the associated vehicular and pedestrian movement on the local highway network and through the site access.
- 6.36 Whilst outside of a settlement, the application site is one minute drive to the Staplehurst settlement boundary. The vehicle trips associated with the retail use can be safely accommodated on the local network. The site access is found to be suitable for the proposed use and the trips associated with the use.

#### **Car and cycle parking**

- 6.37 Local Plan policy DM 23 states that the car parking provided for non-residential uses will consider the following:
- The accessibility of the development and availability of public transport.
  - The type, mix and use of the development proposed, and
  - Whether development proposals exacerbate on street car parking to an unacceptable degree.
- 6.38 The car parking standards for non-residential uses set out in Supplementary Planning Guidance SPG 4 Kent Vehicle Parking Standards July 2006. These standards are set as maximum (not minimum) and for non-food retail the standards are a maximum of one space for every 25 square metres.
- 6.39 The application site is provided with an area for informal car parking and the applicant has advised that this area provides 4 car parking spaces. With a floor area of 40 square metres the 4 spaces are more than the maximum permitted, however given the nature of the use and the location this parking provision is acceptable. There is no indication that the existing use causes any highway safety issues in relation to on street parking.
- 6.40 The cycle parking standards for non-residential uses are set out in Supplementary Planning Guidance SPG 4 Kent Vehicle Parking Standards July 2006. These standards state that the site should provide a minimum of one cycle parking space. A planning condition is recommended asking for this onsite cycle parking.
- 6.41 The NPPF states "*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe (Paragraph 111)*". It is concluded that the impact of the application on highway safety will be acceptable and the impact on the road network will not be 'severe'. The impact of the proposal is found to be acceptable

### **Biodiversity**

- 6.42 Local Plan policy DM3 states: "To enable Maidstone borough to retain a high quality of living and to be able to respond to the effects of climate change, developers will ensure that new development protects and enhances the natural environment ...where appropriate development proposals will be expected to appraise the value of the borough's natural environment through the provision of...an ecological evaluation of development sites...to take full account of the biodiversity present, including the potential for the retention and provision of native plant species".
- 6.43 The proposal does not result in the need for ecological surveys, and there are no protected species which would be at risk. Policy DM1, DM3 and the NPPF do however all promote ecological enhancement. With the nature and extent of the proposals a condition is recommended seeking biodiversity on site enhancements.

### **Rural economy**

- 6.44 Guidance in the National Planning Policy Framework is a material planning consideration. Under the heading "*Supporting a prosperous rural economy*" the NPPF states planning decisions "*...should enable the sustainable growth and expansion of all types of business in rural areas...through conversion of existing buildings*". Although not directly relevant, Local Plan policies SP21 and DM37 are generally supportive of proposals for economic development in the countryside.
- 6.45 With the nature of the use, the current application is in line with this policy advice.

### **External view looking east**



### **Third party comments**

- 6.46 Most of the comments from the third party are addressed in the above report. The following comments are made on the policy references.
- NPPF para 84c relates to tourism and leisure uses so this advice is not relevant to the current application that is for retail use.
  - NPPF para 85 recognises "*...sites to meet local business...needs in rural areas may have to be found ...beyond existing settlements, and in locations that are not well served by public transport...*".

- The current application is in line with the other requirements of the NPPF in that it is sensitive to its surroundings.
- With the modest level of floorspace, trip generation can easily and safely be accommodated on local roads.
- The application is in accordance with NPPF 130c in that the application is sympathetic to local character, the surrounding built environment and landscape.
- The application involves a change of use and elevational changes and is in line with NPPF 174 that seeks to protect the intrinsic character of the countryside.
- In line with NPPF 199 the potential impact on Brattle Farmhouse has been considered and the relevant weight attached to the asset's conservation. The less than substantial harm to the listed building has been weighed up against the public benefits of the current application and there are no grounds to refuse planning permission.
- The application is in accordance with the Staplehurst Neighbourhood including the Neighbourhood Plan Vision at Paragraph 2.10.
- It is agreed that the application is not in accordance with local plan policies DM31 (does not reinforce landscape character) and DM40 (farm shops); however, material considerations indicate that permission should be approved.
- Policy DM18 relates to new shop fronts. The application is in accordance with this policy as the changes to the building reflect the style and form of the building and the cladding is in keeping with this location.

#### **PUBLIC SECTOR EQUALITY DUTY**

- 6.47 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

#### **7. CONCLUSION**

- 7.01 The National Planning Policy Framework (NPPF) reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which requires by law that planning applications "*must be determined in accordance with the development plan, unless material considerations indicate otherwise*".
- 7.02 The proposal will result in harm to the character and appearance of the countryside contrary to policy SP17 and there are no Local Plan policies that directly support retail uses outside of a designated settlement (other than farm shops).
- 7.03 In this context as the application is not in accordance with the adopted Local Plan, it needs to be determined as to whether there are other material considerations that justify granting planning permission.
- 7.04 The application building is modest in floorspace size (with a condition restricting future expansion of the external display area) and the existing use would not have required full planning permission if a proposed use. It has been found that a minimal level of harm has been caused to the character and appearance of this rural area. A planning condition will require a further application for the display of any advertisements or signs
- 7.05 The proposal is acceptable in relation to heritage impacts as confirmed in the comments from the conservation officer. The application is found to be acceptable in relation to neighbour amenity, with adequate access and parking arrangements. The application brings a vacant building back into beneficial use

and supports the aims of NPPF and the Local Plan in achieving a prosperous rural economy.

- 7.06 It is concluded that whilst the application is not in accordance with the development plan (a departure) these material considerations that have been outlined and the minimal level of resulting harm indicate that planning permission should be approved.

## **8 RECOMMENDATION**

### **GRANT PLANNING PERMISSION subject to the following conditions:**

- 1) The development shall be carried out in accordance with the following approved plans and documents:  
Application for planning permission  
2163 01 Existing Site Location and Block Plan  
2163 02 Existing Floor Plan  
2163 03 Existing Elevations  
2163 04 Proposed Block Plan  
2163 05 Proposed Floor Plan  
2163 06 Proposed Elevations  
Heritage Statement  
Reason: To clarify the approved plans and to ensure the development is carried out to an acceptable visual standard.
  
- 2) The conversion work shall be reversed, and the use restored to that which existing before the development took place within 6 weeks of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
  - i) Within 6 weeks of the date of this decision a Site Development Scheme, hereafter referred to as the 'Scheme', shall have been submitted for the written approval of the Local Planning Authority. The Scheme shall include details of:
    - a) details of refuse bin storage enclosures,
    - b) details of cycle storage
    - c) details of existing landscaping and details of soft landscape enhancements
    - d) details of the measures to enhance biodiversity at the site,
    - e) a timetable for implementation of the scheme including a) to d) with all details implemented in accordance with the agreed timetable and all details retained for the lifetime of the development.
  - ii) Within 11 months of the date of this decision the Scheme shall have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve the Scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted Scheme shall have been approved by the Secretary of State.
  - iv) The approved Scheme shall have been carried out and completed in accordance with the approved timetable and thereafter maintained and retained as approved.  
Reason: In the interests of landscape, visual impact, and amenity of the area and to ensure a satisfactory appearance to the development.
  
- 3) The landscaping required by condition 2 shall be designed in accordance with the principles of the Council's Landscape Guidelines (Maidstone Landscape Character Assessment Supplement 2012). The scheme shall
  - (a) show all existing landscaping on, and immediately adjacent to, the site and indicate whether it is to be retained or removed,

- (b) provide details of new on-site planting in a planting specification (location, spacing, quantity, maturity) to the front of the site.
  - (c) provide landscape implementation details and timetable
  - (d) provide a [5] year landscape management plan
- Reason: In the interests of landscape, visual impact, and amenity of the area and to ensure a satisfactory appearance to the development

- 4) All landscaping approved under condition 2 shall be carried out during the planting season (October to February). Any seeding or turfing which fails to establish or any trees or plants which, within five years of planting die or become so seriously damaged or diseased that their long term 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.  
Reason: In the interests of landscape, visual impact, and amenity of the area and to ensure a satisfactory appearance to the development.
- 5) The biodiversity enhancement required by condition 2 shall include integrated methods into the design and appearance of the building structure (where possible) by means such as swift bricks, bat tube or bricks and additionally through provision within the site curtilage of measures such as bird boxes, bat boxes, bug hotels, log piles, wildflower planting and hedgerow corridors.  
Reason: To protect and enhance the ecology and biodiversity on the site in the future.
- 6) Any external lighting installed on the site (whether permanent or temporary) shall be in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. The submitted details shall be in accordance with the Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2011 (and any subsequent revisions) and follow the recommendations within Bat Conservation Trust's 'Guidance Note 8 Bats and Artificial Lighting', and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The development shall thereafter be carried out in accordance with the subsequently approved details and maintained as such thereafter.  
Reason: To safeguard the character and appearance of the countryside and in the interests of residential amenity and wildlife.
- 7) The building or land shall be used as a florist only and for no other purpose (including any other purpose in Classes of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or permitted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any statutory instrument revoking and re-enacting those Orders with or without modification). Reason: Unrestricted use of the building or land could cause demonstrable harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers.
- 8) No external storage of plant, materials, products, goods for sale or hire or waste in connection with the use hereby approved shall take place outside of the external display area shown on the submitted proposed block plan drawing 2163 – 04 Reason: To safeguard the character and appearance of the surrounding area.
- 9) Notwithstanding the submitted plans the current permission does not give any consent for the display of any advertisement or signage on the application site in

connection with the approved use. Reason: To safeguard the character and appearance of the surrounding area.

- 10) Notwithstanding the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 separate consent is required for the display of any sign or advertisement on land controlled by the applicant or in the vicinity of the application site in connection with the approved use. Reason: To safeguard the character and appearance of the surrounding area.

# Agenda Item 15



Ordnance Survey - data derived from OS Premium

<b>REFERENCE NO:</b> 23/501579/FULL		
<b>APPLICATION PROPOSAL:</b> Change of use of former telephone exchange (Sui Generis) to an office (Class E(g)), including erection of a single storey side extension (resubmission of 22/505768/FULL).		
<b>ADDRESS:</b> Former telephone exchange, Ashford Road, Hollingbourne, Kent		
<b>RECOMMENDATION:</b> GRANT PLANNING PERMISSION subject to the planning conditions set out in Section 8 of this report.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b>		
<ul style="list-style-type: none"> <li>• The proposal is acceptable in relation to the minimal level of harm that will be caused to the character and appearance of this rural area.</li> <li>• The proposal is acceptable in relation to heritage impacts, neighbour amenity, and biodiversity.</li> <li>• The access and parking arrangements revised from previous applications following comments from KCC Highways are acceptable.</li> </ul>		
<b>REASON FOR REFERRAL TO COMMITTEE:</b>		
<ul style="list-style-type: none"> <li>• The officer recommendation is contrary to the views of Hollingbourne Parish Council.</li> </ul>		
<b>WARD</b> North Downs	<b>PARISH</b> Hollingbourne	<b>COUNCIL</b> <b>APPLICANT:</b> Mrs Anna Al-Shawi <b>AGENT</b> Lusher Architects
<b>CASE OFFICER:</b> Tony Ryan	<b>VALIDATION DATE:</b> 19/04/23	<b>DECISION DUE DATE:</b> 29/07/2023
<b>ADVERTISED AS A DEPARTURE:</b> No		

**Relevant planning history**

- 18/501322/FULL- Conversion of former telephone exchange and erection of a single storey side extension to form a one bedroom dwelling with parking – Refused 23 May 2018 for the following reasons:
  - (1) *In the absence of relevant information, the application has failed to demonstrate that there is no prospect of securing an alternative suitable business use for the former telephone exchange building and that residential conversion is the only means of providing a suitable re-use of this building, the proposal fails to meet the requirements of policy DM31 and government guidance in the National Planning Policy Framework 2012.*
  - (2) *With the site location between the A20 and the M20 and the nearby channel tunnel rail link the application has failed to demonstrate that the proposal will provide an adequate standard of living accommodation in relation to noise and disturbance and the amenities of future occupiers. It is therefore contrary to the provisions of policy DM1 (iv) of the adopted local plan and government guidance in the NPPF.*

*(3) The proposal has failed to demonstrate that vehicle movements associated with the development including servicing and deliveries would not have an adverse impact on highway safety and free flow of traffic onto the A20, Ashford Road.*

- 18/504363/FULL- Conversion and single storey side extension to former telephone exchange to create a one bedroom dwelling with associated parking, vehicle turntable, timber gates and new bike shed – Refused 9 November 2018 for the same reasons as 18/501322/FULL that are listed above (As it found that it would not be used, the addition of a vehicle turntable did not remove the earlier grounds for refusal).
- Appeal submitted against the refusal of application 18/504363/FULL dismissed with the Inspector noting:
  - (i) "...do not find that reasonable attempts have been made to secure a business re-use for the building as required by the policy (DM31), and therefore it has not been shown that residential conversion is a suitable re-use for it (Para 7).
  - (ii) "...it has not been demonstrated that the proposal would result in suitable living conditions for future occupiers with respect to noise. It would therefore conflict with Policy DM1(iv) of the Local Plan..."(Para 12).
  - (iii) The Council is concerned that it would not be able to compel drivers to use the turntable, which could result in vehicles reversing onto the A20, and that any associated condition would be difficult to enforce (Para 14). "... development would ...would conflict with Policy DM1 of the Local Plan, insofar as it requires that new development creates a safe environment that safely accommodates vehicular and pedestrian movement through the site access" (Para 15).
- 22/505768/FULL Proposed change of use from telephone exchange (Use Class Sui Generis) to Class E(g) and single storey extension Refused 08.02.2023 for the following reasons (*NB Inspector's point (i) above relating to marketing for a business use and point (ii) residential amenity were no longer relevant as this application did not include a residential conversion*).

*"The proposal has failed to demonstrate that vehicle movements associated with the development including servicing and deliveries would not have an adverse impact on highway safety and free flow of traffic onto the A20, Ashford Road contrary to Policies DM1 and DM23 of the Local Plan".*

## **MAIN REPORT**

### **1. DESCRIPTION OF SITE**

- 1.01 The site (291 square metres) is in the open countryside as designated by the Maidstone Borough Local Plan 2017. The site has no special landscape designation but is in the KCC Minerals Safeguarding Area. Hollingbourne Railway Station is 3 minutes by car to the north and Harrietsham Village Hall 5 minutes by car to the south east.
- 1.02 The site is on the north side of Ashford Road (A20), with first the M20 (circa 105 metres) and then the Channel Tunnel railway link (circa 167 metres) located to the north. Agricultural land is to the west, east and north of the application site.
- 1.03 The land on the south side of Ashford Road including the Leeds Castle visitor car park (Leeds Castle building is 0.5 miles to the south) is in Len Valley Landscape of Local Value and is a registered park. Oakfield House (Grade II listed building) is located circa 128 metres to the north west.
- 1.04 The application site is rectangular in shape and occupied by a small single storey brick building with a pitched tiled roof. The existing building previously served as

a telephone exchange (circa 1950's) and has a gross internal area (GIA) of 9.3 square metres. Site boundaries have trees / planting and a low-level wire fence between concrete posts. The application site has existing vehicular access to Ashford Road

## **2. PROPOSAL**

- 2.01 The application is for the change of use from telephone exchange (Use Class Sui Generis) to an office use (planning use class E(g)). With a single storey side extension, the building GIA will be increased to 15 square metres.
- 2.02 With reference to the planning history planning applications 18/501322/FULL and 18/504363/FULL (dismissed appeal) involved conversion of the application building to residential use. Planning permission was refused for residential use on two grounds, firstly that the applicant had not demonstrated that the building could not accommodate a business use and secondly highway safety issues. No parish council or third party objections to these applications.
- 2.03 Application 22/505768/FULL involved conversion of the building to an alternative business use. Planning permission was refused for a single highway safety ground (objection from KCC Highways) as the applicant had failed to demonstrate that safe vehicle access could be provided. Parish council objection on highway safety grounds.
- 2.04 The current application includes a supporting transport note. This transport note provides all the information that KCC Highways required to assess the highways impact of the development. KCC Highways have no objection to the current application.

## **3. POLICY AND OTHER CONSIDERATIONS**

Maidstone Borough Local Plan Adopted October 2017,  
SS1: Maidstone Borough spatial strategy  
SP17: Countryside  
SP18: Historic Environment  
SP21: Economic development  
DM1: Principles of good design  
DM3: Natural environment  
DM4: Development affecting designated and non-designated heritage assets  
DM23: Parking standards  
DM30: Design principles in the countryside  
DM31 Conversion of rural buildings

Maidstone Borough Council – Local Plan Review, draft plan for submission (Regulation 22) dated October 2021.

The Regulation 22 draft is a material consideration however weight is currently limited, as it is the subject of an examination in public that commenced on the 6 September 2022 (Stage 2 concluded on the 9 June 2023).

The relevant policies in the draft plan are as follows:  
LPRSS1 Maidstone Borough Spatial Strategy  
LPRSP9 Development in the Countryside  
LPRSP11 - Economic development  
LPRSP11(B) - Creating new employment opportunities  
LPRSP12 - Sustainable transport  
LPRSP14 - Environment  
LPRSP14(A) - Natural environment

LPRSP14(B) - Historic environment  
LPRSP14(C) - Climate change  
LPRSP15 - Principles of good design  
LPRSS1 - Spatial strategy  
LPRTRA2 - Assessing transport impacts  
LPRTRA4 - Parking  
LPRENV1 - Historic environment  
LPRQ&D1 - Sustainable design  
LPRQ&D2 - External lighting  
LPRQ&D 4 Design principles in the countryside

Supplementary Planning Documents:  
Maidstone Landscape Character Assessment  
The National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)

#### **4. LOCAL REPRESENTATIONS**

##### **Local residents**

4.01 No representations received.

##### **Hollingbourne Parish Council**

4.02 Objection and request refusal for the following reasons:

- The plot is only 7m wide and there is not the space to turn a car, plus the applicant is proposing two car parking spaces.
- KCC Highways have recommended rejection of the two previous planning applications for this building due to the danger in reversing onto the A20.

##### **Councillor Garten**

4.03 Objection for the following reasons:

- The application site is only 7 metres wide
- The site is not designated for commercial development and the applicant does not show an exceptional need for an office
- The parking, the access and the extension will overwhelm and are disproportionate to the existing building.
- The existing building is not an exceptional building and the applicant does not show how they will make the building sustainable in terms of energy conservation.
- There is concern about the highway impact during the construction phase.
- There is concern about arrangements for on site sewage treatment.
- The predicted service trip levels are unrealistic.

#### **5. CONSULTATIONS**

##### **KCC Highways**

5.01 No objection.

##### **MBC Environmental Health**

5.02 No objection.

##### **MBC Conservation officer**

5.03 No objection subject to the following comments:

- The building with local interest due to the materials and simple design and its former use is a non-designated heritage asset.
- The design is considered suitable.
- The use of UPVC doors is not appropriate on a non-designated heritage asset.
- The building is well screened by trees and vegetation and due to its location would not harm the setting of Leeds Castle or the Grade II listed Oakfield.

## **6. APPRAISAL**

6.01 The starting point for assessment of all applications in the countryside is Local Plan Policy SP17. Policy SP17 states that development proposals in the countryside will only be permitted where:  
a) there is no harm to local character and appearance, and  
b) they accord with other Local Plan policies

6.02 Policy SP17 does not specify an acceptable level of harm and all proposals in the countryside are likely to result in some harm to local character and appearance. In this context all countryside development does not accord with this part of SP17.

### Character and appearance

6.03 Supporting text to policy SP17 advises "*The countryside has an intrinsic character and beauty that should be conserved and protected for its own sake*". Policy DM30 states that materials, design, mass, and scale of development should maintain, or where possible, enhance local distinctiveness including landscape features. Impacts on the appearance and character of the landscape would be appropriately mitigated.

6.04 In terms of assessing this intrinsic character in the Council's published Landscape Character Assessment, the application site is in the Leeds Castle Parklands character area. The summary of actions in this area include:

- Conserve the traditional parkland character of the landscape
- Conserve the remote qualities of the Len Valley and its setting,
- Conserve and restore tree cover, which helps to screen views of major infrastructure routes
- Ensure continuity of mature isolated trees through planting new stock
- Restore hedgerow boundaries where they have been removed
- Resist field segregation, avoiding fence line boundaries.

6.05 The site is on the north side of Ashford Road (A20), with first the M20 (circa 105 metres) and then the Channel Tunnel railway link (circa 167 metres) located to the north. The land on the south side of Ashford Road including the Leeds Castle visitor car park is in Len Valley Landscape of Local Value and is a registered park. Agricultural land is to the west, east and north of the application site.

6.06 The proposal involves the retention and reuse of the existing brick built former telephone exchange building; the building is set back circa 34 metres from the Ashford Road carriageway. The extension (as discussed below) is in keeping with and to scale with the existing building.

6.07 The existing tree at the site entrance will be retained as part of the current application. The existing landscaping along the south east site boundary and the existing landscaping in the middle of the site and in front of the building will be retained and enhanced. This is in line with the character assessment relating to conserving landscape boundaries. The building is screened in existing views from the north west along Ashford Road by roadside planting in adjacent fields.

- 6.08 The site has an existing vehicular access and the proposed parking and turning area will be surfaced with a permeable stone resin surface. It is accepted that this change will have a visual impact on the site frontage, however this impact will be reduced by screening provided by existing and proposed new planting.
- 6.09 The vehicular access will be more discrete than other existing access points along this stretch of Ashford Road. The visual impact of the site access (or visual impact of the building extension) was not raised as an issue as part of three earlier decisions to refuse planning permission or by the appeal Inspector.
- 6.10 Although not directly relevant, Local Plan policies SP21 and DM37 are generally supportive of proposals for economic development in the countryside subject to listed criteria. The assessment above shows that the new building is *"...an appropriate scale for the location and can be satisfactorily integrated into the local landscape"*.
- 6.11 Other Local Plan policies permit development in the countryside in certain circumstances (and subject to listed criteria). If development accords with one of these other policies, this compliance generally outweighs the harm caused to character and appearance with a proposal in accordance with policy SP17 overall.

**Images of the existing brick application building.**



- 6.12 Policy SP21 (vii) states that improving the economy and providing for the needs of business will be achieved through *"Prioritising the commercial re-use of existing rural buildings in the countryside over conversion to residential use, in accordance with policy DM31"*. LP policy DM31 relates to the conversion of certain rural buildings and the criteria is assessed below:

The building is of permanent, substantial, and sound construction and is capable of conversion without major or complete reconstruction. DM31-1(i)

- 6.13 In terms of the general condition and state of repair of the application building, a submitted building survey report has been submitted. In summary, the survey report found
- Main roof good state of repair, no sign of missing or broken tiles and pointing to the ridge tiles intact. Water staining to soffits likely due to gutters not been cleared.
  - Brickwork and pointing good condition with no sign of cracks.

- Original door frame still in place, Lintel above in good condition.
- Original metal frame window to the front in good condition with no broken glass or sign of decay. Lintel above in good condition.
- All gutters and downpipes in good condition although likely require clearing of leaves due to the number of surrounding trees.
- *"...structure is in a good state of repair and does not require substantial works to get it back into use".*

- 6.14 To bring the application building back into beneficial use and provide viable and practical floorspace a building extension is proposed. The extension will not involve major or complete reconstruction and the proposal complies with this criterion in policy DM31.

The building should be of a form, bulk, scale and design which takes account of and reinforces landscape character DM31-1(ii)

- 6.15 With reference to buildings with the quality of Oast Houses, policy DM31 permits the retention and conversion of rural buildings that 'reinforce landscape character'. The attractive existing brick built former telephone exchange has the building quality and character to be covered by policy DM31 which reinforces landscape character.

Alterations proposed as part of the conversion should be in keeping with the landscape and building character in terms of materials used design and form. DM31-1(iii)

- 6.16 The existing former pumping station building has a modest character with small high level windows in the two end walls. The building is of a scale and appearance that does not overly dominant the street scene and the existing rural character. The proposed extension *"...is detailed to match the existing with a roofline stepped down by 450mm from the existing ridge line"* (applicant's Design and Access Statement). The front elevation of the extension is also set back one metre from the front elevation of the building.

- 6.17 The existing or proposed uses are not residential and there is no specific guidance available on the volume of extensions to commercial buildings. The Council does have SPG guidance on extensions to residential buildings and this guidance says

*"In considering an extension to a residential dwelling in the countryside, the Local Planning Authority would normally judge an application as modest or limited in size if, in itself and cumulatively with previous extensions, it would result in an increase of no more than 50% in the volume of the dwelling...The gross volume will be ascertained by external measurement taken above ground level and include the volume of the roof".*

- 6.18 The volume of the proposed extension (circa 22 cubic metres) with the set back from the main roof and the set back from both the front and rear elevations will be less than 50% of the existing building (circa 49 cubic metres). The form, scale and detailing of the extension has been designed to match the existing building.

- 6.19 The applicant has stated *"The rest of the site will remain as overgrown native planting except for a new permeable resin bonded drive area and a permeable block pathway leading to the new entrance to the building"* (applicant's Design and Access Statement).

- 6.20 The applicant has sought materials in the extension that match the existing building as closely as possible. These materials include Michelmersh Multi Stock Facing Brick and Wienerberger Plain Brown roof tiles.

There is sufficient room in the curtilage of the building to park the vehicles of those will live there without detriment to the visual amenity of the countryside DM31-1(iv)

- 6.21 The current application is for office use and the submitted plans show provision of two off street car parking spaces.
- 6.22 A consistent reason in the decisions to refuse four earlier planning application for this site has been highway safety in relation to vehicles leaving the application site (highway safety discussed later in this report and the car parking space width). The site layout now proposed with onsite turning space offers the correct balance between making beneficial use of site, ensuring the long term survival of the building and highway safety.

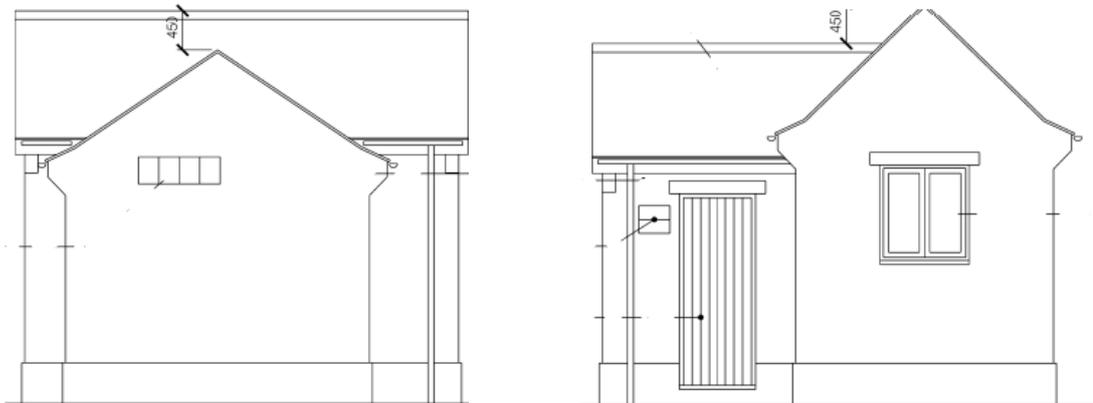
No fences, walls or other structures associated with the use of the building or the definition of its curtilage or any sub-division of it are erected which would harm landscape character and visual amenity. DM31-1(v)

- 6.23 The applicant has stated that boundary treatments will be wire mesh and concrete post fence. This type of fence is largely transparent and is appropriate for the application site and will maintain landscape character.

The traffic generated by the new use would not result in the erosion of roadside verges, and is not detrimental to the character of the landscape; DM31-2(i)

- 6.24 The extended building provides a modest area of floorspace, and the traffic generated by the use would not be detrimental to the character of the countryside.

Front and side proposed elevations



## **Heritage**

- 6.25 Policy SP18 of the Local Plan relates to the historic environment and requires that, inter-alia, the characteristics of heritage assets are protected, and design is sensitive to heritage assets and their settings. Policy DM4 of the Local Plan also relates to development affecting designated heritage assets and requires applicants to ensure that new development affecting heritage assets conserve, and where possible enhance, the significance of the heritage asset.
- 6.26 The NPPF (paragraphs 201 and 202) requires the impact on the significance of a designated heritage asset to be assessed as either "substantial harm" or "less than substantial harm" with NPPG guidance setting out that "substantial harm" has a high threshold "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm

should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use”.

- 6.27 NPPF guidance (paragraphs 199 and 200) states that when assessing the impact of development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm to significance amounts to substantial harm, total loss or less than substantial harm.
- 6.28 Oakfield House (Grade II listed building) is located circa 128 metres to the north west. With the distance between the two buildings, and the design, scale and appearance of the building and the proposed extension the impact of the application on the significance of the nearby designated heritage assets will be less than substantial. This conclusion is reached for the following reasons:
- existing building and extension single storey in height,
  - separation distance,
  - existing and retained screening landscaping.
- 6.29 The ‘less than substantial harm’ has been weighed against the public benefits of the proposal including, and the harm is outweighed by the benefits from the reuse of this site.

#### **Neighbour amenity**

- 6.30 Local Plan policy DM1 states that development must “*Respect the amenities of occupiers of neighbouring properties and uses by ensuring that development does not result in, or is exposed to, excessive noise, odour, air pollution, activity or vehicular movements, overlooking or visual intrusion, and that the built form would not result in an unacceptable loss of privacy or light enjoyed by the occupiers of nearby properties*”.
- 6.31 The nearest residential dwelling is Oakfield House located circa 128 metres to the north west. Office uses are generally appropriate near residential dwellings and in this case with the separation distances there are no issues present in relation to residential amenity.

#### **Traffic, transport, and highways.**

- 6.32 The NPPF states Planning decisions “*...should recognise that sites to meet local business...needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development ... does not have an unacceptable impact on local roads...*”.
- 6.33 The site is outside of a settlement, but Hollingbourne Railway Station is 3 minutes by car to the north and Harrietsham Village Hall 5 minutes by car to the south east.

#### **Car parking**

- 6.34 Local Plan policy DM 23 states that the car parking provided for non-residential uses will consider the following:
- The accessibility of the development and availability of public transport.
  - The type, mix and use of the development proposed, and
  - Whether development proposals exacerbate on street car parking to an unacceptable degree.

- 6.35 The car parking standards for non-residential uses set out in Supplementary Planning Guidance SPG 4 Kent Vehicle Parking Standards July 2006. These standards are generally set as maximum (not minimum) and require one space per 20 square metres.
- 6.36 The site is proposed to be provided with two car parking spaces and will utilise the existing crossover from Ashford Road. whilst above the maximum levels in the SPG guidance, the parking provision is acceptable in this location and is sufficient for the potential level of use.

#### **Cycle parking**

- 6.37 The parking standards for non-residential uses set out in Supplementary Planning Guidance SPG 4 Kent Vehicle Parking Standards July 2006. The applicant has indicated that a cycle hoop will also be installed adjacent to the new entrance into the building, and this is in line with standards that require 2 spaces

#### **Site access**

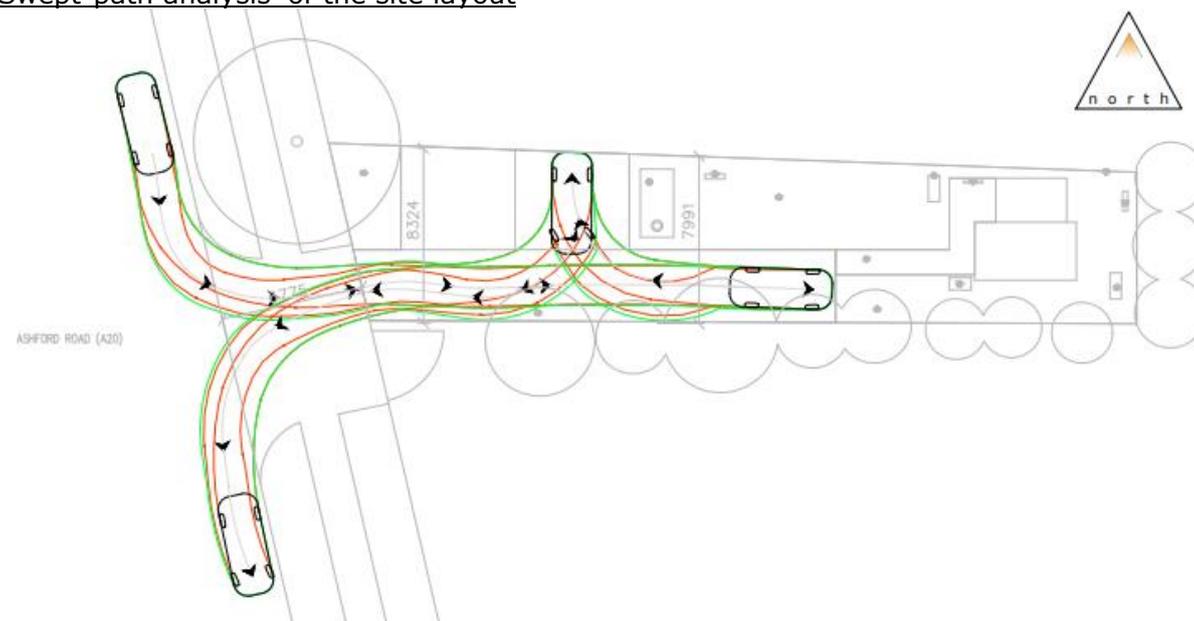
- 6.38 Local Plan policy DM 1 states that proposals will be permitted, where they can safely accommodate the associated vehicular and pedestrian movement on the local highway network and through the site access. An existing double crossover shared with the adjoining site provides vehicular access on to Ashford Road.
- 6.39 In response to KCC Highways comments on earlier applications, the applicant has submitted a transport note with the current application. This note considers in turn the points made by KCC Highways in relation to missing information and these responses are summarised below:
- Personal Injury Collision Data for the most recent five year period.
- 6.40 The applicant has used the website Crashmap.com to identify accidents that have occurred on Ashford Road in the vicinity of the site over the last 5 years. It was found that one accident occurred within 100m of the site access. It has been concluded that this incident was due to driver error and not fault with the highway network. The applicant concludes that the increase in traffic associated with the development is unlikely to cause any road safety issues.
- Revised drawings to demonstrate sufficient widths, distances and visibility as required from Manual for Streets and the Kent Design Guide.
- 6.41 The single refusal ground for earlier applications for business use related to on site vehicle parking and turning, with vehicles required to either reverse from, or out on to Ashford Road (A20).
- 6.42 The industry standards in Manual for Streets guidance state that where the normal turning space behind car parking is not available, an acceptable alternative is to increase the width of the individual car parking bays themselves. This increased width providing additional manoeuvring space within the bays themselves.
- 6.43 In accordance with Manual for Streets guidance the applicant has provided 'swept-path analysis' of the site layout. This analysis demonstrates that a 4.84 metre long vehicle can safely access both the car parking bays and manoeuvre to allow site entry and egress in a forward gear.

6.44 The revised site layout is in accordance with manual for streets guidance and the Kent Design Guide. KCC have assessed the revised layout and raise no objection to the current application. Driver visibility is assessed below.

- Evidence that proposal and the required visibility splays can be achieved within land in control of the applicant and/or the highway authority."

6.45 With Ashford Road covered by the national speed limit, visibility splays relating to speeds of 60mph have been calculated. The applicant has provided a plan that shows that visibility splays of 2.4m x 215m are provided on land controlled by the applicant and/or the highway authority.

'Swept-path analysis' of the site layout



**Servicing**

6.46 In line with standard practice the applicant has provided the likely number of service vehicle trips to the application site using information from a national database (TRICS database). It is found that a site of this nature is likely to generate less than one servicing trip each day and this level of activity will not have a negative impact on the function of the local highway network.

6.47 The minimal number of servicing trips to the site indicates that despite the lack of space for servicing vehicles within the site, servicing of the site will not have a negative impact on the function of the local highway network. Due to the minimal number of servicing trips, and the short period of time for which servicing vehicles would remain at the site, service vehicles visiting the site can pull over within the site's crossover without impacting on the function or safety of the local highway network.

6.48 The NPPF states "*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe (Paragraph 111)*".

6.49 The access and is suitable for the proposed use and the trips associated with the use can be safely accommodated on the road network. There has been no objection raised by KCC Highways. It is concluded that the impact of the

application on highway safety will be acceptable and the impact on the road network will not be 'severe'. The impact of the proposal is found to be acceptable

### **Biodiversity**

- 6.50 Local Plan policy DM3 states: *"To enable Maidstone borough to retain a high quality of living and to be able to respond to the effects of climate change, developers will ensure that new development protects and enhances the natural environment ...where appropriate development proposals will be expected to appraise the value of the borough's natural environment through the provision of...an ecological evaluation of development sites...to take full account of the biodiversity present, including the potential for the retention and provision of native plant species"*.
- 6.51 The proposal does not result in the need for ecological surveys, and there are no protected species which would be at risk. Policy DM1, DM3 and the NPPF do however all promote ecological enhancement. With the nature and extent of the proposals a condition is recommended seeking biodiversity enhancements.

### **Rural economy**

- 6.52 Guidance in the National Planning Policy Framework is a material planning consideration. Under the heading *"Supporting a prosperous rural economy"* the NPPF states planning decisions *"...should enable the sustainable growth and expansion of all types of business in rural areas...through conversion of existing buildings"*.
- 6.53 Although not directly relevant, Local Plan policies SP21 and DM37 are generally supportive of proposals for economic development in the countryside. With the nature of the use and the space required for dogs to be exercised, it would be difficult to find a suitable site for this use in a settlement.

### **PUBLIC SECTOR EQUALITY DUTY**

- 6.54 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

## **7. CONCLUSION**

- 7.01 The proposal is acceptable in relation to the minimal level of harm that will be caused to the character and appearance of this rural area. The proposal is acceptable in relation to heritage impacts, neighbour amenity, and biodiversity. The access and parking arrangements are acceptable
- 7.02 The application brings a vacant building back into beneficial use and supports the aims of NPPF and the Local Plan in achieving a prosperous rural economy.

## **8 RECOMMENDATION**

### **GRANT PLANNING PERMISSION subject to the following conditions:**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby approved shall be carried out in accordance with the following approved plans and documents:
- 001. P01 Site Location Plan
  - 002. P01 Existing Block Plan
  - 010. P01 Existing Ground Floor and Roof Plans
  - 020. P01 Existing Front and Side Elevations
  - 021. P01 Existing Rear and Side Elevations
  - 102. P01 Proposed Block Plan
  - 110. P01 Proposed Ground Floor and Roof Plans
  - 120. P01 Proposed Front and Side Elevations
  - 121. P01 Proposed Rear and Side Elevations
  - Supporting documents – Building Condition Survey and Summary Report
  - Supporting documents - Design and Access Statement
- Reason: in the interests of proper planning.
- 3) The external facing materials to be used in the development hereby approved shall be as indicated in the submitted Design and Access Statement. Reason: To ensure a satisfactory appearance to the development.
- 4) Prior to first occupation of the approved use the measures taken for the on site enhancement of biodiversity as shown in the submitted design and access statement shall be in place. All features shall be maintained permanently thereafter. Reason: To enhance ecology and biodiversity on the site in line with the requirement to achieve a net biodiversity gain from all development.
- 5) The extension hereby approved shall not commence above slab level until a hard and soft landscape scheme designed in accordance with the principles of the Council's landscape character guidance (Maidstone Landscape Character Assessment Supplement 2012) has been submitted to and approved in writing by the local planning authority. The scheme shall
- (a) show all existing trees, hedges and blocks of landscaping on, and immediately adjacent to, the site and indicate whether they are to be retained or removed,
  - (b) provide details of on-site planting in a planting specification including plant species, plant spacing, quantities, and maturity (non-plastic guards shall be used for the new trees and hedgerows, and no Sycamore trees shall be planted).
  - (c) provide landscape implementation details and timetable
  - (d) provide a [5] year landscape management plan
- Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development.
- 6) All planting, seeding, and turfing specified in the approved landscape details shall be completed by the end of the first planting season (October to February) following first occupation of the extension hereby approved. Any seeding or turfing which fails to establish or any trees or plants which, within five years from the first occupation of a property, die or become so seriously damaged or diseased that their long term 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. Reason: In the interests of landscape, visual impact, and amenity of the area and to ensure a satisfactory appearance to the development.
- 7) The building or land shall be used for office purposes only and for no other purpose (including any other purpose in Classes of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or permitted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any statutory instrument revoking and re-enacting those Orders

- with or without modification). Reason: Unrestricted use of the building or land could cause demonstrable harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers.
- 8) Driver visibility splays of 2.4m x 215m with no obstruction over 1.0m above ground level shall be provided in accordance with Location Plan and shall be subsequently maintained for the lifetime of the development. Reason: In the interests of highway safety.
  - 9) The approved parking areas shall be retained and shall be kept available for such use. 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.
  - 10) Any external lighting installed on the site (whether permanent or temporary) shall be in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. The submitted details shall be in accordance with the Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2011 (and any subsequent revisions) and follow the recommendations within Bat Conservation Trust's 'Guidance Note 8 Bats and Artificial Lighting', and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The development shall thereafter be carried out in accordance with the subsequently approved details and maintained as such thereafter. Reason: To safeguard the character and appearance of the countryside and in the interests of residential amenity and wildlife.
  - 11) Prior to the commencement of the approved use secure bicycle storage shall be in place that is in accordance with details that have previously been submitted to and approved by the Local Planning Authority. These details will be maintained as such thereafter. Reason: To promote sustainable travel choices and the reduction of CO2 emissions.
  - 12) No development shall take place until a Construction Management Plan for the site has been submitted to and approved in writing by the local planning authority. The Construction Management Plan shall include the following details-
    - (a) Routing of construction and delivery vehicles to / from site
    - (b) Parking and turning areas for construction and delivery vehicles and site personnel
    - (c) Timing of deliveries
    - (d) Provision of wheel washing facilities
    - (e) Temporary traffic management / signage
    - (f) Measures to control dust and potential use of asbestos in the existing building.The construction works shall proceed only in accordance with the approved Construction Management Plan.  
Reason: In the interests of residential amenity and highway safety

20 m  
100 ft



Ordnance Survey - data derived from OS Premium

**22/505670/FULL Land At Paddock, Maidstone Road, Paddock Wood, Kent, TN12 6PY**

Scale: 1:1250

Printed on: 10/7/2023 at 12:53 PM by JoannaW

<b>REFERENCE NO:</b> 22/505670/FULL		
<b>APPLICATION PROPOSAL:</b> Change of use of stable yard and paddock to (commercial) operate a dog day care facility including the erection of fencing/gate, siting of additional shed and associated parking.		
<b>ADDRESS:</b> Land with stables and caravan (aka 'Land at Paddock') Maidstone Road, Paddock Wood, Kent, TN12 6PY.		
<b>RECOMMENDATION:</b> GRANT PLANNING PERMISSION subject to planning conditions in Section 8 of this report and subject to no new material considerations being raised because of the departure press notice expiring on the 27 July 2023.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b>		
<ul style="list-style-type: none"> <li>• The proposal is acceptable in relation to the minimal level of harm that will be caused to the character and appearance of this rural area. The proposal is acceptable in relation to heritage impacts, neighbour amenity, and biodiversity. The access and parking arrangements, together with the impact on the Public Right of Way are all acceptable.</li> <li>• The application brings a vacant equestrian site back into beneficial use and supports the aims of NPPF and the Local Plan in achieving a prosperous rural economy.</li> <li>• It is concluded that these material considerations indicate that planning permission should be approved.</li> </ul>		
<b>REASON FOR REFERRAL TO COMMITTEE:</b>		
<ul style="list-style-type: none"> <li>• The officer recommendation is contrary to the views of Yalding Parish Council.</li> <li>• The application is a departure from the development plan.</li> </ul>		
<b>WARD:</b> Marden And Yalding	<b>PARISH COUNCIL:</b> Yalding	<b>APPLICANT:</b> Paws and Claws Kent
<b>CASE OFFICER:</b> Tony Ryan	<b>VALIDATION DATE:</b> 03/01/23	<b>DECISION DUE DATE:</b> 29/07/2023
<b>ADVERTISED AS A DEPARTURE:</b> Yes		

**Relevant planning history**

- 11/0279 Erection of an agricultural steel barn approved 20.07.2011
- 12/0168 Change of use of land for the keeping of horses and erection of private stables and hay store. (Site included the current application site and additional land to the southern field boundary) Permission refused 05.04.2012 on the grounds that:
  - *"Inadequate provision has been made for the security of the animals to be kept on the site"... and the granting of permission for this use in the absence of such security is likely to lead in the future to pressure for accommodation to be provided on the site, which is located in the open countryside".*
- Appeal against refusal of 12/0168 allowed and permission granted. The appeal inspector noted that the main issue was whether the proposal would result in adequate provision for the security and safety of the horses on the site. The appeal inspector noted:

- The support in the NPPF for "...the sustainable growth and expansion of all types of business and enterprise in rural areas lending support to a thriving rural economy".
  - The Inspector considered "...that the appellant would be able to satisfactorily supervise the security and safety of the horses and the site".
- 22/504926/PAMEET Pre application advice in respect of "To ensure the correct permissions are in place in order to continue with our business plan to relocate our established dog day care business to this location".

Application site context



**MAIN REPORT**

**1. DESCRIPTION OF SITE**

- 1.01 The site is in the open countryside as designated by the Maidstone Borough Local Plan 2017. The site has no special landscape designation. The lawful use of the land is equestrian as approved by the allowed appeal on application 12/0168.
- 1.02 The site is located to the north of the Paddock Wood settlement, 160 metres north of the the borough boundary with Tunbridge Wells and on the west side of Maidstone Road (B2160). The site is circa 300 metres south of the roundabout junction with the A228 (Whetsted Road) which also provides access to the 'Hop Farm'. In the west beyond an adjacent piece of land is Old Whetsted Road with the A228 (Whetsted Road) beyond to the west.
- 1.03 The east side of Maidstone Road in this location has noticeably more development than the west side where the current site is located. This development includes the business park, Forstal Park located to the north east. Several residential dwellings are located to the south of Forstal Park, set back from Maidstone Road

behind a stream and two ponds. These buildings include Beltring House and Oast House which are grade II listed.

- 1.04 The application site (0.8 hectares) has existing vehicular access to Maidstone Road in the north east corner with an area of hardstanding and a single storey stable block ('L' shaped footprint circa 10.8 metres by 6.2 metres, roof eaves 2.2 metres, roof eaves 3 metres). The remainder of the application site is open land. The applicant reports that *"...the wider land has been split into a number of smaller paddocks, divided by timber fencing"*.

Site access and boundary looking south along Maidstone Road.

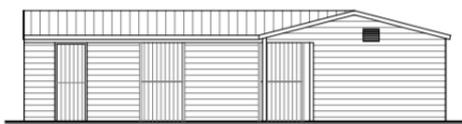


- 1.05 A track runs along the northern edge of the site joining Maidstone Road with Old Whetsted Road in the west. This track is also a public footpath (KM41). Mature trees and shrubs are next to the public footpath with a mature hedgerow along the eastern site boundary with Maidstone Road.

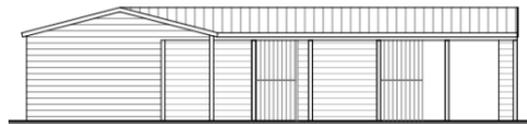
## **2. PROPOSAL**

- 2.01 Change of use from equestrian to a dog day care facility. The existing stable block will be used as an indoor rest area and staff kitchen. An additional storage building is proposed.
- 2.02 A new 1.8m high wire mesh boundary fence will front the main public highway and part of the side boundary which runs along the public footpath (KM41) with a 1.8-metre-high entry gate to ensure safety of the site. Parking provision is included within the site.
- 2.03 The applicant states:
- *"Paws and Claws has provided professional, licensed, safe and reliable dog day care since 2018. We are currently licensed to care for 16 dogs per day and are now at full capacity. Due to the increase in demand for day care services, we often have a waiting list or are unable to offer our service to clients who do not live within our current small catchment area"*.
  - *"We expect to increase our current staffing from 4 to 6-8 members of staff and will be able to safely provide care to up to 40 dogs per day for Paddock Wood and the surrounding areas"*.

- *"We hope that this permission is granted. All additional installations at the site are 100% temporary and there is a clear benefit to the local community through modest job creation and improved animal welfare for dogs in and around the local area. How our Business Works Our proposed business hours are Monday to Friday 08.00-18.00. No overnight or weekend service will be offered".*
- *"There are currently 3 existing stables that we plan to use as our indoor space for the dogs all with mains electric and lighting. They will be heated, and all have windows and stable doors for adequate ventilation..... Each group of dogs will have access to a secure fenced exercise area as well as a heated indoor space".*



Existing North West Elevation



Existing North East Elevation

### **3. POLICY AND OTHER CONSIDERATIONS**

Maidstone Borough Local Plan Adopted October 2017,

SS1: Maidstone Borough spatial strategy

SP17: Countryside

SP18: Historic Environment

SP21: Economic development

DM1: Principles of good design

DM3: Natural environment

DM4: Development affecting designated and non-designated heritage assets

DM23: Parking standards

DM30: Design principles in the countryside

DM31: Conversion of rural buildings

Maidstone Borough Council – Local Plan Review, draft plan for submission (Regulation 22) dated October 2021.

The Regulation 22 draft is a material consideration however weight is currently limited, as it is the subject of an examination in public that commenced on the 6 September 2022 (Stage 2 concluded on the 9 June 2023). The relevant policies in the draft plan are as follows:

LPRSS1 Maidstone Borough Spatial Strategy

LPRSP9 Development in the Countryside

LPRSP11 - Economic development

LPRSP11(B) - Creating new employment opportunities

LPRSP12 - Sustainable transport

LPRSP14 - Environment

LPRSP14(A) - Natural environment

LPRSP14(B) - Historic environment

LPRSP14(C) - Climate change

LPRSP15 – Principles of good design

LPRSS1 - Spatial strategy

LPRTRA2 - Assessing transport impacts

LPRTRA4 - Parking

LPRENV1 - Historic environment

LPRQ&D1 - Sustainable design

LPRQ&D2 - External lighting

LPRQ&D 4 Design principles in the countryside

The National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

#### **4. LOCAL REPRESENTATIONS**

##### **Local residents**

4.01 No representations received.

##### **Yalding Parish Council**

4.02 Objection for the following reasons:

- Contrary to MBC adopted Local Plan 2017 and the current proposals contained within the emerging Local Plan (*Officer comment: The current application is a departure from the development but as set out below material considerations indicate that planning permission should be approved*)
- Loss of agricultural land to commercial purposes. (*Officer comment: the current lawful use of the site is equestrian not agriculture*)

#### **5. CONSULTATIONS**

##### **KCC Drainage**

5.01 No objection as the development is low risk with regards to surface water.

##### **Southern Water**

5.02 No objection. There are no public foul sewers in the area to serve this development and the applicant is advised to examine alternative means of foul disposal.

##### **Environment Agency**

5.03 No objection. Covered by the EA Flood Risk Standing Advice.

##### **KCC Highways**

5.04 No objection. Does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements.

##### **Kent Police**

5.05 No objection. The applicant is advised to contact the Police to discuss secure by design measures.

##### **KCC Public Right of Way Officer (PROW)**

5.06 No objection subject to a walkable 1.5m strip is to be clearly marked adjacent to the parking area and the perimeter fence moved to allow a minimum width of 3.8m from the northern boundary for the Right of Way to pass through.

##### **MBC Environmental Health**

5.07 No objection subject to arrangements for the removal of dog waste which would need to be cleared at least as frequently as waste matter from the stables.

## 6. **APPRAISAL**

- 6.01 The starting point for assessment of all applications in the countryside is Local Plan Policy SP17. Policy SP17 states that development proposals in the countryside will only be permitted where:
- a) there is no harm to local character and appearance, and
  - b) they accord with other Local Plan policies
- 6.02 Policy SP17 does not specify an acceptable level of harm and all proposals in the countryside are likely to result in some harm to local character and appearance. In this context all development outside the designated settlements does not accord with this part of SP17.
- 6.03 Other Local Plan policies permit development in the countryside in certain circumstances and subject to listed criteria. The earlier application (12/0168) for the existing stables on the application site if submitted now would be considered against criteria in policy DM41 equestrian development. If development accords with one of these other Local Plan policies, this compliance generally outweighs the harm caused to character and appearance with a proposal in accordance with policy SP17 overall.
- 6.04 Policy SP21 (vii) states that improving the economy and providing for the needs of business will be achieved through "*Prioritising the commercial re-use of existing rural buildings in the countryside over conversion to residential use, in accordance with policy DM31*".
- 6.05 The criteria in DM31 for conversion of rural buildings to commercial uses include a requirement that the existing building "...takes account of and reinforces landscape character" (there is a higher DM31 threshold for conversion to residential - listed building, listed building setting, contribute to landscape character, exemplify Kentish landscape). It is concluded that the existing stables building (image provided below) does not take account of and reinforce landscape character. The conversion to other uses is not permitted by policy DM31 and is not in turn supported by SP21.

### Existing building



- 6.06 The application does not involve the conversion of agricultural land to domestic garden so DM33 is not relevant. The application does not involve the expansion of an existing business on the application site so policy DM37 is not relevant.
- 6.07 The proposal will result in harm to the character and appearance of the countryside and there are no Local Plan policies that support the application. The recommendation to grant planning permission would be a departure from the adopted Local Plan.
- 6.08 The National Planning Policy Framework (NPPF) highlights that the planning system is plan-led. The NPPF reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which require by law that planning applications "*must be determined in accordance with the development plan, unless material considerations indicate otherwise*".
- 6.09 The relevant material considerations in this case include assessing the impact of the proposal in the following areas:
- Character and appearance
  - Heritage
  - Rural economy
  - Neighbour amenity
  - Access, parking, transport, and Public Right of Way (PROW)
  - Biodiversity

#### **Character and appearance**

- 6.10 Supporting text to policy SP17 advises "*The countryside has an intrinsic character and beauty that should be conserved and protected for its own sake*".
- 6.11 In terms of assessing this intrinsic character in the Council's published Landscape Character Assessment, the application site is in the Beltring Grasslands area which is part of the wider Low Weald landscape. The summary of actions in this area include:
- Conserve and enhance grassland and pasture and avoid further conversion of agricultural land to arable production often resulting in the loss or decline of hedgerows and trees to create large open fields (arabalisation).
  - Conserve, extend and enhance the tree belts and hedgerows which provide a sense of enclosure and define the field pattern
  - Soften the prominence of large agricultural buildings with native planting
  - Conserve the rural setting of traditional farmhouses
- 6.12 The application site has a lawful equestrian use with an existing stable block, parking area and vehicular access in the north east corner. As can be seen in the photograph on the preceding page the site is screened from Maidstone Road by mature landscaping. A public footpath (KM41) is immediately to the north of the application site with views of the site from the footpath restricted by mature planting.
- 6.13 The proposal involves the retention and reuse of the existing stable block on the application site.
- 6.14 The proposal includes an additional single storey pitched roof timber building. This building is 6 metres by 3 metres, roof eaves 2 metres, roof ridge 2.5 metres. This building will be used as an indoor rest area for dogs. The building will be located to the south of the existing stables building and adjacent to the existing parking area.

Indicative image of proposed fencing



- 6.15 New 1.8 metre high fencing will be installed around the perimeter of the application site with a matching entrance gate in the north east corner. The fencing and gates will be of timber and metal wire mesh construction (*"12/14 gauge wire mesh fencing rolls with apertures of no more than 50mm x 50mm . Entry gates will also be 1.8m high to ensure security of the site. A double gate system will be installed to prevent the escape of a dog from the facility"*) The open mesh design of the fencing will ensure that visual impact is minimal. The open areas of the site will be used as dog exercising areas
- 6.16 In summary, the change of use involves minimal physical changes to the existing site. The new building will be seen in the context of the larger existing stables building. Existing vegetation to boundaries, strengthened by landscaping required by a planning condition will screen the use from most public views of the buildings.
- 6.17 Although not directly relevant, Local Plan policies SP21 and DM37 are generally supportive of proposals for economic development in the countryside subject to listed criteria. The assessment above shows that the new building is *"...an appropriate scale for the location and can be satisfactorily integrated into the local landscape"*.

**Heritage**

- 6.18 Policy SP18 of the Local Plan relates to the historic environment and requires that, inter-alia, the characteristics of heritage assets are protected, and design is sensitive to heritage assets and their settings. Policy DM4 of the Local Plan also relates to development affecting designated heritage assets and requires applicants to ensure that new development affecting heritage assets conserve, and where possible enhance, the significance of the heritage asset.
- 6.19 The NPPF (paragraphs 201 and 202) requires the impact on the significance of a designated heritage asset to be assessed as either "substantial harm" or "less than substantial harm" with NPPG guidance setting out that "substantial harm" has a high threshold "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use".
- 6.20 NPPF guidance (paragraphs 199 and 200) states that when assessing the impact of development on the significance of a designated heritage asset, great weight

should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm to significance amounts to substantial harm, total loss or less than substantial harm.

- 6.21 Beltring House and Oast House are located to the east of Maidstone Road (assessed from Maidstone Road via a single service road) and are both grade II listed residential buildings. Distances of circa 65 metres from Beltring House and circa 73 metres from the Oast House separate these listed buildings from the new building on the application site. As mentioned earlier, the application site boundary has mature landscaping along the Maidstone Road (west) boundary. On the eastern side of Maidstone Road is a grass verge, 2 metre high close boarded fence and landscaping.
- 6.22 The impact of the application on the significance of the nearby designated heritage assets will be less than substantial. This conclusion is reached for the following reasons:
- existing and proposed buildings single storey in height,
  - separation distance,
  - location on opposite sides of Maidstone Road and
  - existing screening on both sides of the road.
- 6.23 The 'less than substantial harm' has been weighed against the public benefits of the proposal including, and the harm is outweighed by the benefits from the reuse of this site.

#### **Neighbour amenity**

- 6.24 Local Plan policy DM1 states that development must "*Respect the amenities of occupiers of neighbouring properties and uses by ensuring that development does not result in, or is exposed to, excessive noise, odour, air pollution, activity or vehicular movements, overlooking or visual intrusion, and that the built form would not result in an unacceptable loss of privacy or light enjoyed by the occupiers of nearby properties*".
- 6.25 The nearest residential dwellings are Beltring House and Oast House that are separated from the new building by distances of circa 65 metres and circa 73 metres respectively. As set out above, the application site and these buildings are separated by Maidstone Road and mature landscaping on the application site, and close boarded fence on the opposite side of the road. In this context there are no issues with daylight, sunlight, privacy and overlooking.
- 6.26 Other potential sources of nuisance are noise and waste. In terms of waste the applicant has advised "*We will install a portable toilet on site for the use of staff which will be professional serviced on a weekly basis. Dog waste will be disposed of regularly in compliance with licensing regulations*".
- 6.27 The MBC website advises "*A dog day care licence is required for businesses which provide day care facilities for dogs which are not located on a domestic premises. Overnight stays of dogs are not permitted for this licence type*".
- 6.28 The licence requires that strict procedures are put in place in various areas including cleaning and disinfection and that "*...faeces must be removed from all areas as often as necessary and at least twice a day*". As the removal of waste is covered under separate legislation, a planning condition would be duplication and would not meet the statutory condition tests.

- 6.29 In terms of potential noise nuisance, the applicant has stated *"The site is located next to a noisy road. We will ensure that minimal noise comes from site, which we currently do by not taking on any dogs that bark excessively. Before taking a dog into our care, we conduct a full assessment and trial to ensure the dog is suitable. It is important to our staff's well-being that there is no excessive barking or noise and this also ensures that the site is not noisy". A further requirement of the separate licence is that "A facility must create a written programme that shows how they provide an enriching environment"*.
- 6.30 A planning condition is recommended that restricts operation of the use to Monday to Friday 08.00-18.00 with no overnight or weekend service.

**Trip generation, access, and Public Right of Way (PROW)**

- 6.31 The NPPF states that planning decisions *"...should recognise that sites to meet local business...needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development ... does not have an unacceptable impact on local roads..."*.
- 6.32 Local Plan policy DM1 states that proposals will be permitted, where they can safely accommodate the associated vehicular and pedestrian movement on the local highway network and through the site access.
- 6.33 The applicant advises *"In order to look after the dogs to a high and safe standard, and to comply with the licensing regulations, we have 1 staff member to 10 dogs. Currently, the dogs are transported to and from day care in our purposely modified vehicle. We would aim to continue this service at this new site but we would also like to offer the option for clients to drop off and collect their dog themselves from the facility"*.
- 6.34 The existing stables are provided with vehicular access to Maidstone Road and a gravelled area around the stables for turning. The access and turning area are suitable for the proposed use and the trips associated with the use can be safely accommodated on the road network. There has been no objection raised by KCC Highways.
- 6.35 A Public Right of Way (PROW) runs along the northern site boundary (KM41). To ensure that the proposed use does not block this footpath, the applicant has submitted a block plan with a 'no parking' area marked. A planning condition is recommended to ensure that this restriction is provided.

**Car and cycle parking**

- 6.36 Local Plan policy DM 23 states that the car parking provided for non-residential uses will consider the following:
- The accessibility of the development and availability of public transport.
  - The type, mix and use of the development proposed, and
  - Whether development proposals exacerbate on street car parking to an unacceptable degree.
- 6.37 Whilst outside of a settlement, Paddock Wood Railway Station is 10 minutes by car to the south and Beltring Railway Station is 3 minutes by car to the north east. In addition, due to the nature of the use it would be difficult to find a site in a settlement with the benefit of the large area of open space for dog exercising that this site offers.

- 6.38 The car parking standards for non-residential uses set out in Supplementary Planning Guidance SPG 4 Kent Vehicle Parking Standards July 2006. These standards are generally set as maximum (not minimum) and there are no standard provided for the proposed use (sui generis).
- 6.39 The existing stables are provided with parking space for 10 cars on a gravelled area around the stables. The applicant has set out that drop off and collection will be carried out by the applicant's own adapted van and through customers visiting the site. The parking area is sufficient for this level of use.
- 6.40 The parking standards for non-residential uses set out in Supplementary Planning Guidance SPG 4 Kent Vehicle Parking Standards July 2006 do not provide a standard for cycle parking. Whilst cycling is likely to be impractical for most trips, it could be an option for staff and a planning condition is recommended asking for onsite cycle parking.
- 6.41 The NPPF states "*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe (Paragraph 111)*". It is concluded that the impact of the application on highway safety will be acceptable and the impact on the road network will not be 'severe'. The impact of the proposal is found to be acceptable

### **Biodiversity**

- 6.42 Local Plan policy DM3 states: "*To enable Maidstone borough to retain a high quality of living and to be able to respond to the effects of climate change, developers will ensure that new development protects and enhances the natural environment ...where appropriate development proposals will be expected to appraise the value of the borough's natural environment through the provision of...an ecological evaluation of development sites...to take full account of the biodiversity present, including the potential for the retention and provision of native plant species*".
- 6.43 The proposal does not result in the need for ecological surveys, and there are no protected species which would be at risk. Policy DM1, DM3 and the NPPF do however all promote ecological enhancement. With the nature and extent of the proposals a condition is recommended seeking biodiversity enhancements.

### **Rural economy**

- 6.44 Guidance in the National Planning Policy Framework is a material planning consideration. Under the heading "*Supporting a prosperous rural economy*" the NPPF states planning decisions "*...should enable the sustainable growth and expansion of all types of business in rural areas...through conversion of existing buildings*".
- 6.45 Although not directly relevant, Local Plan policies SP21 and DM37 are generally supportive of proposals for economic development in the countryside. With the nature of the use and the space required for dogs to be exercised, it would be difficult to find a suitable site for this use in a settlement.

### **Permitted development rights**

- 6.46 National legislation allows the conversion of buildings to alternative uses including residential without the need for full planning permission (permitted development). This legislation is the General Permitted Development Order 2015 (as amended) (GPDO).

- 6.47 To remove future flexibility for the application building to change to alternative uses without the need for full planning permission a planning condition is recommended removing this permitted development right. This condition will result in a need for full planning permission for this change.
- 6.48 A further condition is recommended that requires submission of an application for advertisement consent for the display of advertisements or signage associated with the use.

### **PUBLIC SECTOR EQUALITY DUTY**

- 6.49 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

## **7. CONCLUSION**

- 7.01 The National Planning Policy Framework (NPPF) reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which requires by law that planning applications "*must be determined in accordance with the development plan, unless material considerations indicate otherwise*".
- 7.02 The proposal will result in harm to the character and appearance of the countryside contrary to policy SP17 and there are no Local Plan policies that directly support dog day care uses. In this context as the application is not in accordance with the adopted Local Plan, it needs to be determined as to whether there are other material considerations that justify granting planning permission.
- 7.03 The application involves a change of use of land and buildings that are currently in equestrian use. The proposal is found to be acceptable in relation to the minimal level of harm that will be caused to the character and appearance of this rural area. The proposal is acceptable in relation to heritage impacts, neighbour amenity, and biodiversity. The access and parking arrangements, together with the impact on the Public Right of Way are all acceptable. A planning condition will require a further application for the display of any advertisements or signs
- 7.04 The application brings a vacant equestrian site back into beneficial use and supports the aims of NPPF and the Local Plan in achieving a prosperous rural economy.
- 7.05 It is concluded that whilst the application is not in accordance with the development plan (a departure) these material considerations that have been outlined and the minimal level of harm indicate that planning permission should be approved.

## **8 RECOMMENDATION**

**GRANT PLANNING PERMISSION subject to planning conditions in Section 8 of this report and subject to no new material considerations being raised because of the departure press notice expiring on the 27 July 2023.**

- 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 hereby approved shall be carried out in accordance with the following approved plans and documents:
- Proposed floor plan and elevations
  - Site Location Plan
  - Planning information (Nov 2020)
  - Existing floor plan Elevations
  - Heritage Impact Statement
  - Fence and gate side elevation
  - Proposed floor plans and elevations (received 28.06.2023)
  - Proposed block plan
  - Flood Risk Assessment
  - Planning Statement (March 2023)
  - Applicant's information sheet (received 28.06.2023)
  - Planning note (received 28.06.2023)
- Reason: in the interests of proper planning.
- 3) Prior to the construction of the additional building hereby approved a scheme of soft landscaping, shall be submitted to and approved in writing by the local planning authority. The landscape scheme shall include
- a) indications of all existing trees and hedgerows on the land, and details of any to be retained,
  - b) Details of an indigenous species planting schedule (including location, spacing, planting species and size) to provide new and enhanced screening of existing and proposed buildings, designed using the principle's established in the Council's adopted Landscape Character Assessment (2012)
  - c) a program for the approved scheme's implementation and long term 5 year management.
- Reason: In the interests of landscape, visual impact, and amenity of the area and to ensure a satisfactory appearance to the development.
- 4) All planting, seeding and turfing specified in the approved landscape details shall be completed by the end of the first planting season (October to February) following first occupation of the new building hereby approved. Any seeding or turfing which fails to establish or any trees or plants which, within five years from the first occupation of a property, die or become so seriously damaged or diseased that their long term 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. Reason: In the interests of landscape, visual impact, and amenity of the area and to ensure a satisfactory appearance to the development.
- 5) The building or land shall be used for dog day care purposes only and for no other purpose (including any other purpose in Classes of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or permitted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any statutory instrument revoking and re-enacting those Orders with or without modification). Reason: Unrestricted use of the building or land would cause demonstrable harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers.
- 6) Any external lighting installed on the site (whether permanent or temporary) shall be in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. The submitted details shall be in accordance with the Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2011 (and any subsequent revisions) and follow the recommendations within Bat Conservation Trust's

'Guidance Note 8 Bats and Artificial Lighting', and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The development shall thereafter be carried out in accordance with the subsequently approved details and maintained as such thereafter. Reason: To safeguard the character and appearance of the countryside and in the interests of residential amenity and wildlife.

- 7) The buildings and land shall only accommodate a maximum of 40 dogs at any one time and the use shall only operate Monday to Friday between the hours of 08.00 and 18.00 with no overnight accommodation or weekend service provided. Reason: Unrestricted use of the building or land would be likely to cause harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers.
- 8) Prior to the commencement of the use first occupation of the approved use secure bicycle storage shall be in place that is in accordance with details that have previously been submitted to and approved by the Local Planning Authority. These details will be maintained as such thereafter. Reason: To promote sustainable travel choices and the reduction of CO2 emissions.
- 9) Prior to first occupation of the approved use the measures taken for the on site enhancement of biodiversity as shown in the submitted design and access statement shall be in place. All features shall be maintained permanently thereafter. Reason: To enhance ecology and biodiversity on the site in line with the requirement to achieve a net biodiversity gain from all development.
- 10) Prior to commencement of the approved use, the approved parking areas shall be provided and shall be retained, kept available for such use and permanently retained afterwards. Prior to commencement of the approved use, painted restrictions on the ground shall be in place to ensure that car parking does not block Public Right of Way (PROW) (KM41). With these restrictions permanently retained afterwards Reason: To safeguard the character and appearance of the surrounding area.
- 11) The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 separate consent is required for the display of any sign or advertisement on land controlled by the applicant or in the vicinity of the application site in connection with the approved use. Reason: To safeguard the character and appearance of the surrounding area.

# Agenda Item 17



Ordnance Survey - data derived from OS Premium

23/500617/FULL Pinelodge Cottage, Somerfield Road, Maidstone, Kent, ME16 8JJ

Scale: 1:1250  
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**REPORT SUMMARY**

<b>REFERENCE NO:</b> 23/500617/FULL		
<b>APPLICATION PROPOSAL:</b> Conversion of dwelling house to 2no. two bedroom flats and conversion of gymnasium to no. one bedroom flat including changes to fenestration (retrospective).		
<b>ADDRESS:</b> Pinelodge Cottage Somerfield Road Maidstone Kent ME16 8JJ		
<b>RECOMMENDATION:</b> GRANT PLANNING PERMISSION– subject to the planning conditions set out in Section 8 of this report.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b> For the reasons set out below the application is acceptable and would not cause significant visual harm, the application provides an adequate standard of accommodation and would not harm neighbouring amenity or highway safety. The proposal is acceptable in terms of any other material planning considerations and is in accordance with current policy and guidance.		
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Call in from Cllr Jeffrey		
<b>WARD:</b> Bridge	<b>PARISH/TOWN COUNCIL:</b> N/A (unparished)	<b>APPLICANT:</b> Mr S Yadave  <b>AGENT:</b> MCIAT
<b>CASE OFFICER:</b> Tony Ryan	<b>VALIDATION DATE:</b> 13/02/2023	<b>DECISION DUE DATE:</b> 28/07/23
<b>ADVERTISED AS A DEPARTURE:</b> No		

**Relevant planning history**

The following applications in the planning history are most relevant to the current application.

Pine Lodge Cottage (current application site with two inter connected buildings)

Building 1: (1½ storey chalet building)

- 09/1905 - Erection of a double garage with store and workshop in roof space. Approved 22.03.2010
- 16/502943/full - Change of use and conversion of existing two storey garage outbuilding into a single dwellinghouse. Approved 24.10.2016
- 19/500902/FULL - Erection of first floor extension to form third bedroom and extension to garage to provide additional garage space. Approved 24.04.2019
- 21/506183/FULL Retrospective application for the erection of a side link extension to garage, conversion of garage to gymnasium and erection of a summer house approved (committee) approved 27.01.2022

Building 2: (Single storey building).

- 21/506183/FULL Retrospective application for the erection of a side link extension to garage, conversion of garage to gymnasium and erection of a summer house approved (committee) approved 27.01.2022

- 19/500902/FULL. Erection of first floor extension to form third bedroom and extension to garage to provide additional garage space. approved 29.04.2019

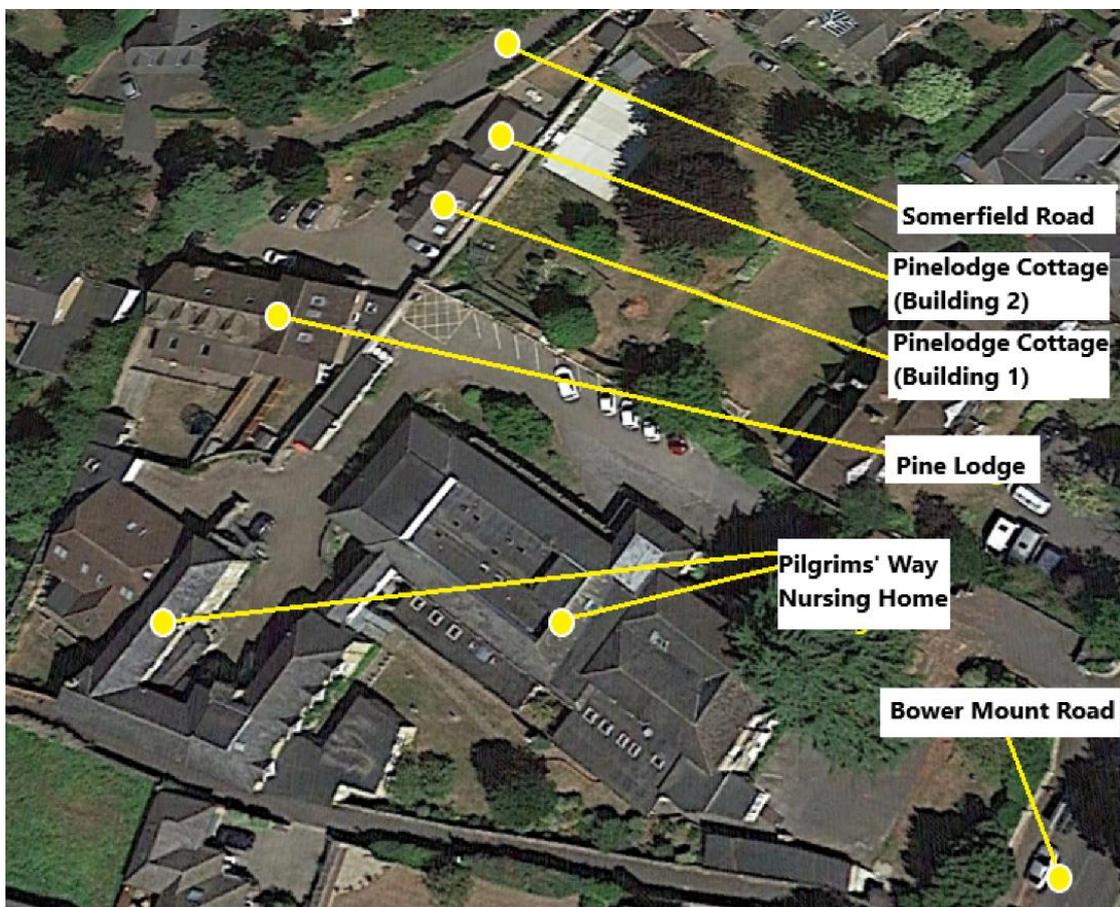
Pine Lodge (building to the south west of the current application site)

- 11/0513 - Conversion of the building to 6 self-contained flats (committee) approved 26.05.2011
- 13/1132 Amended scheme to that approved under reference MA/11/0513 (Conversion of the building to 6 self-contained flats) including extensions to Flats 1, 2 and 6.

Pilgrims Nursing Home (larger buildings to south entrance in Bower Mount Road)

- 94/0142 - Change of use of residential land to residential care home and erection of a two storey rear extension (Refused committee decision – appeal allowed).

Aerial image showing site context



## **MAIN REPORT**

### **1. DESCRIPTION OF SITE**

- 1.01 The application site is in the Maidstone Urban Area as designated by the Local Plan. The application site is part of a larger group of buildings owned by the applicant located between Somerfield Road (private road) to the north and Bower Mount Road.

- 1.02 The two main buildings on the larger site (blue line) accessed from Bower Mount Road are Pilgrims Way Nursing Home (main purpose built building provides 64 beds and the second detached building the Coach House 16 beds).
- 1.03 Pine Lodge located in the middle of the wider site and accessed from Somerfield Road provides 6 flats (converted under application 13/1132 and 11/0513).
- 1.04 The access to the application site is on the south side of Somerfield Road, Somerfield Road is residential in character with vehicle access from London Road (A20) in the east. A gate across the road to the west of the application site restricts vehicle access from Somerfield Road to Greenwich Close, with Greenwich Close providing pedestrian and cycle access to from Somerfield Road to Queen's Road further to the west.
- 1.05 The buildings on the application site (red line) consist of:
- Building 1: a 1½ storey (chalet) building providing a three bedroom dwelling (approved under 72/0489 and 09/1905 and converted to a dwelling from a garage with upper floor workshop under 16/502943/FULL).
  - Building 2: a single storey building adjacent to building 1 (converted from garage to a gym under application 21/506183/FULL)
  - An extension linking buildings 1 and 2 (Pinelodge Cottage) approved under application 21/506183/FULL
  - A detached summer house on garden land to the north east corner of the site was approved under application 21/506183/FULL.
- 1.06 Pinelodge Cottage on the application site and the existing converted building Pine Lodge share vehicle access from Somerfield Road. The existing dwelling Pinelodge Cottage has three off street parking spaces and a private garden area at the north east corner of the site.
- 1.07 Open land to the Somerfield Road frontage includes some significant trees protected by a Tree Preservation Order (TPO 15/1972).

Existing front north west facing elevation

(NB: no changes proposed - building 1: right hand site, building 2: left hand side)



- 1.08 The application site is covered by the published Character Area Assessment for London Road, Bower Mount Road, and Buckland Hill Area SPG. The assessment states the following (Page 7: Section 8.6 Somerfield Road Character Area).
- *"The entrance from London Road is narrow and Somerfield Road has a rural character with no pavements for lengths of the road. Trees line the southern side of the road and the buildings are well back from the road and are barely*

*visible behind the dense landscaping. The character is in stark contrast to the busy, heavily congested London Road”.*

- *“On the southern side a 3 storey yellow brick addition to Somerfield House extends along the road behind a high wall”.*

## **2. PROPOSAL**

- 2.01 Conversion of dwelling house (building 2) to 2, two bedroom flats and conversion of gymnasium (building 1) to a one bedroom flat including changes to fenestration (retrospective).
- 2.02 The area to the front of the application building (Pinelodge Cottage – current application for 3 flats) and the separate converted building Pine Lodge (6 self-contained flats) consists of a landscaped area, and 11 car parking spaces. These car parking are being retained. The current application includes a new landscaped area in front of ground floor windows

## **3. POLICY AND OTHER CONSIDERATIONS**

### Maidstone Borough Local Plan (2011-2031):

SS1 Maidstone borough spatial strategy

SP1 Maidstone urban area

DM1 Principles of good design

DM8 - External lighting

DM9 Residential extensions, conversions and redevelopment

DM21 - Assessing transport impacts

DM23 Parking standards

Character Area Assessment for London Road, Bower Mount Road, and Buckland Hill Area SPG

The National Planning Policy Framework (NPPF):

National Planning Practice Guidance (NPPG):

### Maidstone Borough Council – Local Plan Review

The Regulation 22 draft is a material consideration however weight is currently limited, as it is the subject of an examination in public that commenced on the 6 September 2022 (Stage 2 hearings concluded mid June 2023). The relevant policies in the draft plan are as follows:

LPRSP12 - Sustainable transport

LPRSP14 - Environment

LPRSP14(A) - Natural environment

LPRSP14(C) - Climate change

LPRSP15 – Principles of good design

LPRSS1 - Spatial strategy

LPRTRA2 - Assessing transport impacts

LPRTRA4 - Parking

LPRQ&D1 - Sustainable design

LPRQ&D2 - External lighting

The National Planning Policy Framework (NPPF):

National Planning Practice Guidance (NPPG):

#### **4. LOCAL REPRESENTATIONS**

##### **Local residents**

4.01 No neighbour comments received.

##### **Councillor Jeffrey**

4.02 Call in to Planning committee (no reasons provided).

#### **5. CONSULTATIONS**

*(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)*

##### **Mid Kent Environmental Health**

5.01 No objection subject to conditions.

##### **MBC Tree Officer**

5.02 No objection subject to conditions that safeguard the protected trees on the site frontage in terms of possible disturbance and compaction to roots within the root protection areas (RPAs) from excavation or storing materials.

#### **6. APPRAISAL**

The key issues are:

- Site location
- Design, character, and appearance
- Standard of accommodation
- Neighbouring amenity
- Highways and parking
- Ecology and biodiversity

##### **Site location**

6.01 The site is located within the designated Maidstone urban area. Adopted Local Plan policy SS1 states "*...Maidstone urban area will be the principal focus for development in the borough. Best use will be made of available sites within the urban area*".

6.02 The site is 560 metres from the Maidstone town centre boundary (eastern end of Buckland Hill) and Maidstone Barracks Railway Station with the facilities, employment, leisure uses available in this area.

##### **Design, character, and appearance**

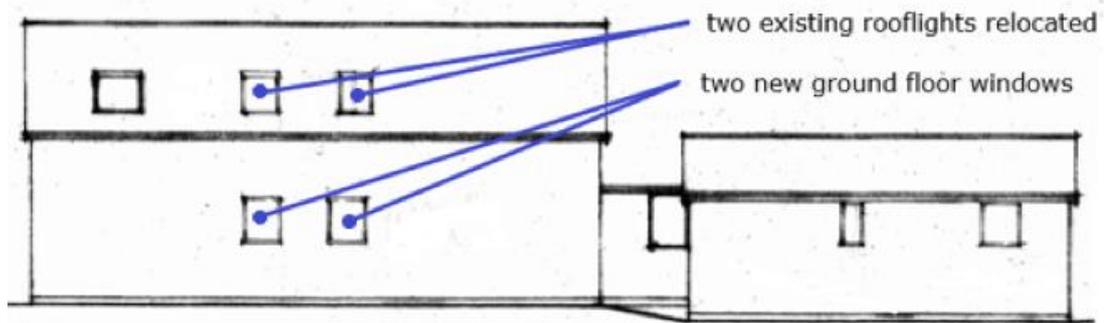
6.03 Local plan policy DM1 provides advice on general design. Policy DM1 states that development must respond positively to, and where possible enhance local character, highlighting matters of scale, height, materials, detailing, mass, bulk, articulation, and site coverage.

6.04 The published character area assessment talks about buildings screened from the road by boundary walls and dense landscaping.

6.05 The only external changes to the application building are to fenestration on the rear south east building elevation to the one and a half storey building (building 1).

6.06 These changes involve the relocation of two of the existing three roof lights and the insertion of two new windows at ground floor level. The proposed fenestration is in keeping with the general building character and acceptable in design terms.

Proposed south east elevation with changes highlighted.



Standard of accommodation

- 6.07 Local plan policy DM1 sets out the need to provide an appropriate level of amenity for future occupants including in terms of privacy, sunlight, daylight, and visual intrusion.
- 6.08 The proposal relates to the conversion of a residential building with an attached incidental building providing a gym. The converted ground floor of the main building provides a two bedroom flat with access from the link building. The first floor two bedroom flat is accessed from the door in the main front elevation of the building. The former gym provides a second one bedroom flat accessed from the end building elevation.
- 6.09 The ground floor two bedroom flat has a gross internal area (GIA) of 61m<sup>2</sup> and the first floor two bedroom flat a GIA of 68m<sup>2</sup>. This floor area complies with the minimum floorspace standard of 61m<sup>2</sup> in the national standards. The one bedroom flat has a GIA of 41 m<sup>2</sup> that meets the national standard of 39m<sup>2</sup>.
- 6.10 Policy Q&D 6 of the Local Plan Review states that new development "...will be expected to meet where possible..." the national floor space standards. The accommodation included with this application meets these published standards.
- 6.11 The flats have spacious internal living areas, with habitable rooms that are generally be well lit and have adequate access and circulation arrangements. The flats also benefit from an adjacent communal outdoor amenity area in the north east corner of the site that also contains a summerhouse.

**Neighbouring amenity**

- 6.12 Policies DM1 and DM11 detail the need for development to respect the amenity of neighbouring properties and to provide suitable private amenity for future occupants.
- 6.13 The application involves the relocation of existing roof lights to the rear elevation of the single storey building and insertion of windows at ground floor level. A brick boundary wall obscures views from the ground floor windows towards the rear of The Cedars (in Bower Mount Road). The application involves the relocation of existing rooflights.
- 6.14 The rooflights are separated from the rear of The Cedars by circa 48 metres and by their nature the rooflights restrict views into adjacent garden land. Based on this situation, it is concluded that the proposal is acceptable in terms of privacy and overlooking.
- 6.15 The submitted information shows the existing building has bedspaces for 5 people (3 bedroom 5 person dwelling). The conversion to three flats will accommodate

two additional bedspaces (1 x 2 bedroom 3 person flats, 1 x 2 bedroom 3 person flats, 1 x 1 bedroom 1 person flat).

- 6.16 This intensification of residential occupation on the application site is insufficient to justify the refusal of planning permission in terms of additional activity, noise, and disturbance. Based on this situation, it is concluded that the proposal is acceptable in terms of privacy and overlooking.

### **Car parking**

- 6.17 Off street parking standards for new dwellings are provided in the adopted Maidstone Local Plan (Appendix B). The standards are based on the number of proposed bedrooms and the nature of the location (town centre, edge of centre, suburban or village/rural).

- 6.18 Local Plan policy DM23 states the parking standards in the urban area (town centre, and edge of centre locations) are set as maximum levels (i.e not 'minimum' standards as in other areas). In these circumstances new development does not necessarily need to provide any off-street parking.

- 6.19 Paragraph 6.99 of the supporting text to policy DM23 states "The council adopts a flexible approach to minimum and maximum parking standards to reflect local circumstances and the availability of alternative modes of transport to the private car".

- 6.20 Maximum off street parking standards:

- optimise the density of development in existing sustainable locations well served by public transport (as advised at NPPF paragraph 108 and Chapter 11).
- reduce the negative visual impact of off street parking on the street scene and building setting caused by large areas of hardstanding.
- reduce the negative impact on residential amenity with front gardens separating car parking from ground floor living rooms and bedrooms.
- Retain the on street car parking space lost in providing access to off street car parking space.

- 6.21 The maximum car standards for the converted building are 3 off street parking spaces (one space per dwelling) with 0.6 spaces for visitors. The submitted block plan shows that the accommodation meets these maximum standards. The area to the front of the building in addition to a soft landscaped area provides 11 off street car parking spaces that are shared with the six flats in the adjacent building.

- 6.22 The area to the front of the application building (Pinelodge Cottage – current application for 3 flats) and the separate converted building Pine Lodge (6 self-contained flats) consists of a landscaped area, and 11 car parking spaces. These car parking are being retained. The current application includes a new landscaped area in front of ground floor windows

- 6.23 The application site is in a sustainable location with a 10 minute walk to Maidstone Barracks Railway Station and the amenities such as employment opportunities, amenity and shopping facilities and public transport provision within Maidstone town centre. The site is located on Somerfield Road which is a private road.

### **Trip generation**

- 6.24 Policy DM1 states that applications must ensure that development does not result in, amongst other things excessive activity or vehicle movements. NPPF advice on assessing highway impact states "*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway*

*safety, or the residual cumulative impacts on the road network would be severe” (NPPF paragraph 111).*

- 6.25 The application involves conversion of a large residential building to three smaller units and the provision of two additional bedspaces. Any additional trip generation will not meet the NPPF threshold of causing ‘severe’ harm and this level of ‘severe’ harm is required to refuse planning permission.

#### **Cycle parking**

- 6.26 Cycle parking standards are set out in the KCC Supplementary Planning Guidance SPG 4 Kent Vehicle Parking Standards. These standards require one cycle parking space for each proposed flat.
- 6.27 There is ample space on the application site for the provision of cycle storage. A planning condition is recommended seeking details of the precise location of this storage on the site and again provision of this store and its retention.

#### **Refuse storage**

- 6.28 MBC Waste Services standards set out that in flatted developments of four or less units, each flat will be provided with their own set of bins (not provided as communal Eurobin). The requirements for flats are one 180 litre bin, one 240 litre bin for recycling and one 23 litre caddy for food waste.
- 6.29 The refuse storage for the flats is shown on the submitted planning application plans. The storage is of a sufficient size and located in a discrete and accessible location. A planning condition is recommended requiring the provision of this refuse store and retention thereafter.

#### **Ecology and biodiversity**

- 6.30 Given the application site is developed and managed land and located within a densely populated urban area it is found that the application site does not provide suitable habitats for any protected species. A planning condition is recommended to achieve biodiversity enhancement on the site. With the only building changes to the fenestration, these enhancements are not sought as integral enhancements.

#### **PUBLIC SECTOR EQUALITY DUTY**

- 6.31 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

#### **CIL**

- 6.32 The proposed development is CIL liable. The Council adopted a Community Infrastructure Levy on 25 October 2017 and began charging on all CIL liable applications approved on and from 1 October 2018. The actual amount of CIL can only be confirmed once all the relevant forms have been submitted and relevant details have been assessed and approved. Any relief claimed will be assessed at the time planning permission is granted or shortly after.

#### **7. CONCLUSION**

- 7.01 Local Plan policy DM 9 states that within the urban area, proposals for the conversion of a residential property will be permitted where several listed criteria are met. These criteria are set out below:

1.i. The scale, height, form, appearance and siting of the proposal would fit unobtrusively with the existing building where retained and the character of the street scene and/or its context.

- 7.02 The only physical changes to the buildings on the application site are minimal changes to fenestration on the rear of the building. The application complies with the above criteria.

1.ii. The traditional boundary treatment of an area would be retained and, where feasible, reinforced.

- 7.03 The boundary treatment consists of brick walls and hedging, and this boundary treatment is found to be acceptable in this location.

1.iii. The privacy, daylight, sunlight and maintenance of a pleasant outlook of adjoining residents would be safeguarded.

- 7.04 The larger one and a half storey building was previously in residential use and the current application seeks the subdivision of this building and conversion of the gym in the single storey building to a residential unit.

- 7.05 There are no issues found in relation to privacy, daylight, sunlight and outlook and the above criteria.

1.iv. Sufficient parking would be provided within the curtilage of the dwelling without diminishing the character of the street scene.

- 7.06 There are three off street car parking spaces and this provision complies with the adopted standards and the above criteria.

2. i. The intensified use of the building and its curtilage would not significantly harm the appearance of the building or the character and amenity of the surrounding area.

- 7.07 The intensified use of the land which will provide 3 flats and an additional 2 bedspaces would not the appearance of the building or local character or amenity. The site is located on a private road in a sustainable urban location. The site includes 9 flats with access to 11 off street car parking spaces. The accommodation has access to a communal external amenity area.

**8. RECOMMENDATION  
GRANT PLANNING PERMISSION subject to the following conditions**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2) The development shall be carried out in accordance with the following approved plans and documents:  
Application for planning permission  
01 Site Location Plan  
02 Existing Block Plan  
03 Existing Plans  
04 REV A Existing Elevations  
05 REV A Proposed Block Plan

06 Proposed First Floor and Roof Plans

07 Rev A Proposed Elevations

Design and Access Statement

Reason: To clarify the approved plans and to ensure the development is carried out to an acceptable visual standard.

- 3) The conversion work shall be reversed, and the use restored to that which existing before the development took place within 6 weeks of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
- i) Within 6 weeks of the date of this decision a Site Development Scheme, hereafter referred to as the 'Scheme', shall have been submitted for the written approval of the Local Planning Authority. The Scheme shall include details of:
    - a) details of refuse bin storage enclosures,
    - b) details of cycle storage for the three flats
    - c) details of existing landscaping and details of soft landscape enhancements including planting strip in front of ground floor windows
    - d) details of the measures to enhance biodiversity at the site,
    - e) details of decentralised and renewable or low-carbon sources of energy, and
    - f) a timetable for implementation of the scheme including a) to e) with all details implemented in accordance with the agreed timetable and all details retained for the lifetime of the development.
  - ii) Within 11 months of the date of this decision the Scheme shall have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve the Scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted Scheme shall have been approved by the Secretary of State.
  - iv) The approved Scheme shall have been carried out and completed in accordance with the approved timetable and thereafter maintained and retained as approved.

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

- 4) The landscaping required by condition 3 shall be designed in accordance with the principles of the Council's Landscape Guidelines (Maidstone Landscape Character Assessment Supplement 2012). The scheme shall use
- (a) show all existing trees, hedges, and blocks of landscaping on, and immediately adjacent to, the site and indicate whether they are to be retained or removed,
  - (b) provide details of on-site replacement planting in a planting specification including plant species, plant spacing, quantities, and maturity (non-plastic guards shall be used for the new trees and hedgerows, and no Sycamore trees shall be planted).
  - (c) provide landscape implementation details and timetable
  - (d) provide a [5] year landscape management plan

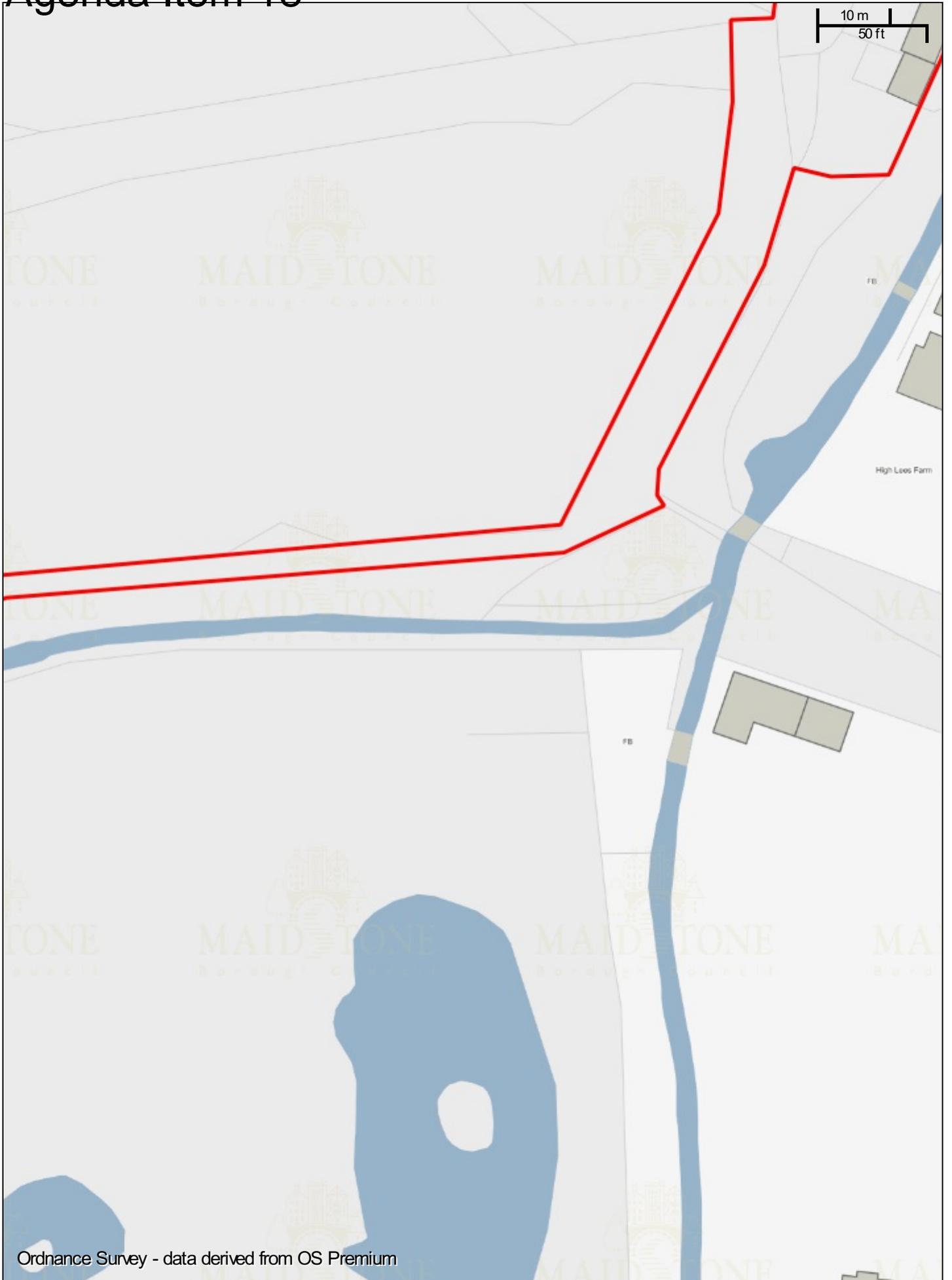
Reason: In the interests of landscape, visual impact, and amenity of the area and to ensure a satisfactory appearance to the development.

- 5) All landscaping approved under condition 3 shall be carried out during the planting season (October to February). Any seeding or turfing which fails to establish or any trees or plants which, within five years of planting die or become so seriously damaged or diseased that their long term 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.

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

- 6) The biodiversity enhancement required by condition 3 shall include integrated methods into the design and appearance of the building structure (where possible) by means such as swift bricks, bat tube or bricks and additionally through provision within the site curtilage of measures such as bird boxes, bat boxes, bug hotels, log piles, wildflower planting and hedgerow corridors.  
Reason: To protect and enhance the ecology and biodiversity on the site in the future.
  
- 7) The details of decentralised and renewable or low-carbon sources of energy required by condition 3 shall provide at least 10% of total annual energy requirements of the development.  
Reason: To ensure an energy efficient form of development.

# Agenda Item 18



Ordnance Survey - data derived from OS Premium

**REPORT SUMMARY**

<b>REFERENCE NO:</b> 23/501498/FULL		
<b>APPLICATION PROPOSAL:</b> Change of use from agricultural barn to an equestrian mental health and wellbeing therapeutic programme centre with construction of first floor and creation of associated ancillary bedroom accommodation and services. Construction of a new road with access to Wagon Lane and car parking for 13 no. cars (resubmission of 22/504082/FULL).		
<b>ADDRESS:</b> High Lees Farmhouse, Wagon Lane, Paddock Wood, Kent TN12 6PT		
<b>RECOMMENDATION:</b> GRANT PLANNING PERMISSION- subject to the planning conditions set out in Section 8 of this report.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b> The development is acceptable with regard to the relevant provisions of the Development Plan, the NPPF and all other material considerations such as are relevant.		
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Parish Council have requested that the application is considered by Planning Committee if officers are minded to recommend approval		
<b>WARD:</b> Marden and Yalding	<b>PARISH/TOWN COUNCIL:</b> Yalding	<b>APPLICANT:</b> Mr And Mrs B Geach  <b>AGENT:</b> Knightg Gatrix Architects
<b>CASE OFFICER:</b> Joanna Russell	<b>VALIDATION DATE:</b> 23.03.2023	<b>DECISION DUE DATE:</b> 21.07.2023
<b>ADVERTISED AS A DEPARTURE:</b> No		

**Relevant planning history**

The following applications in the planning history are most relevant to the current application.

22/504082/FULL - Change of use from agricultural barn to C2 training centre with construction of first floor and creation of associated bedroom accommodation and ancillary services. Construction of a new road with access to Wagon Lane and car parking for 13 no. cars. This was refused on the following grounds:

(1) *Insufficient information has been submitted to provide certainty about the appropriateness of the rural and unsustainable location for an undefined residential use with no known scale or impact. Therefore, as it currently stands insufficient information has been submitted to demonstrate that the proposal would be acceptable in principle, contrary to policies SS1, SP17 and DM37 of the local plan and the NPPF.*

(2) *In the absence of information about the profile of the use or the number of visitors to the site, it cannot be established that its amenity impact would be acceptable - or what conditions might be needed to make it acceptable. On this basis therefore, the proposal would fail to accord with policy DM1 of the Local plan, and the NPPF.*

(3) *The application site is located within flood zone 3, and as submitted, it fails both the exception and sequential test. It has not been demonstrated that the development will be*

*safe without increasing flood risk elsewhere, and, where possible will reduce flood risk overall. It has also not been demonstrated that during a flood event safe access/egress will be possible. The proposal is therefore contrary to local plan policy DM1 and the NPPF due to risk of flooding.*

## **MAIN REPORT**

### **1. DESCRIPTION OF SITE**

1.01 The application site is located in the countryside but not within any special designation. The application site consists of agricultural land adjacent to the farm house. It currently houses a large agricultural barn, land used for the grazing of horses, and a large open area of hardstanding used for parking with an ancillary agricultural building. The land is accessed via an entrance off the vehicular track which served the farmhouse along with other residential properties to the east of the site.

### **2. PROPOSAL**

2.01 Planning permission is sought for the change of use of the existing building and land from an agricultural barn to an equestrian mental health and wellbeing therapeutic programme centre with the construction of first floor and creation of associated ancillary bedroom accommodation and services. The submission includes the construction of a new road with access to Wagon Lane and car parking for 13 no. cars (resubmission of 22/504082/FULL).

2.02 On the basis of the previous refusal, additional information has been provided which gives clarity about the profile of the use and the type of activities which would take place on site. Additionally, further work has been submitted relating to flooding risks at the site.

2.03 The proposed use is to for a mental health and wellbeing therapeutic programme centre. The activities consist of the users physically and mentally engaging with the horses, within carefully structured equine facilitated interactions, to help create therapeutic and beneficial results.

2.04 The submission advises that the activities are specifically dependent upon the nature and character of the local rural environment i.e. a quiet, peaceful environment where visitors need to be present to immerse themselves with the site and its surroundings in nature with animals. The proposal requires both internal and external facilities.

2.05 The indoor facility provides a safe and comfortable space for discussion and reflection as well as more structured learning. The conversion provides all requisite ancillary facilities i.e. learning areas, toilets, drink making facilities, indoor and outdoor space as well as accommodation if required, to enhance the experience.

2.06 In addition to the primary use, the proposal seeks flexible accommodation on site to reduce the need for the community uses to travel to and from the site on a daily basis and help to maintain and improve on the range of essential local services and facilities supporting local positive mental health and wellbeing.

2.07 The submission advises that the applicant currently provides therapy to veterans and local cared for communities and that they have been approached directly by Kent County Council (KCC) Social Services to provide therapeutic interventions for those in their care. These people will be visiting as day visitors to the site.

2.08 In addition, the use will include ad hoc short stay requirements for on-site and/or volunteering purposes as required to support those attending specific training or agreed therapeutic opportunities.

2.09 In terms of visitor numbers to the site, the application advises the following:

2.10 **Day visits**

Therapeutic benefit group: current programmes are based on one group session per week with six individuals per group. The development will support growth in the capacity to accommodate these groups with both indoor and outdoor facilities. Generally, small groups from local communities or organisations that support vulnerable adults can attend a four to six-week programme.

The groups visit the site for approximately two hours per session and are generally brought to the site within vehicles provided by the care community.

The proposed development would enable the Applicant to extend weekly capacity to host programmes. Subject to finding appropriate funding to support the work the applicant would seek to run two to four groups per week, with a maximum total range of twelve to eighteen six-person group programmes per year.

Therapeutic benefit 1-2-1: the proposal would create a safe space for private 1-2-1 sessions, consisting of two to three sessions per week depending on capacity to support or deliver. This would be a combination of private individuals or those from social prescribing programmes. A nominal number of ten individuals per year has been included for indicative purposes (NB KCC social care referrals as per above).

Training programmes: a limited number of small ad-hoc one-day events, equine facilitated interaction taster events, and equine related wellbeing being events aligning to the Athena Herd Foundation ethos (mindfulness approaches, quiet safe spaces for learning and personal development as above). Four per year are being considered. These are all small events with attendance numbers between six and twelve.

2.11 **Residential**

Therapeutic benefit: 1 or 2 individuals at any given time, tied to the potential development of vocational training to support individual re-integration with local economy, based on four, three-month cycles through the year

Training programmes: up to 4 days 6-8 times per year, between 6 and 8 individuals per session.

Volunteer and/or staff: 1 or 2 individuals on occasion as needed.

**3. POLICY AND OTHER CONSIDERATIONS**

Maidstone Borough Local Plan (2011-2031):

- SS1 Spatial strategy
- SP17 Countryside
- SP21 Economic Development
- DM1 Principles of good design
- DM2 Sustainable design
- DM3 Natural environment
- DM8 – External lighting
- DM23 – Parking standards
- DM21 – Highway impact

DM30 Design principles in the countryside  
DM41 Equestrian development

Maidstone Borough Council – Local Plan Review

The Regulation 22 draft is a material consideration however weight is currently limited, as it is the subject of an examination in public that commenced on the 6 September 2022 (Stage 2 hearings concluded mid June 2023).

The National Planning Policy Framework (NPPF):

National Planning Practice Guidance (NPPG):

**4. LOCAL REPRESENTATIONS**

**Local residents**

4.01 No neighbour comments received.

**Yalding Parish Council**

4.02 Yalding Parish Council have objected on the following basis:

*This is a resubmission of 22/504082/FULL which was refused by MBC. Councillors feel that there is still insufficient information submitted to provide certainty about the appropriateness of the rural and unsustainable location for a residential use with no known scale or impact. The words ad hoc is used substantially throughout the application. Therefore, insufficient information has been submitted to demonstrate that the proposal would be acceptable in principle, contrary to policies SS1, SP17 and DM37 of the local plan and the NPPF. In the absence of more detail on number of visitors to the site, it cannot be established that its amenity impact would be acceptable or what conditions might be needed to make it acceptable. On this basis therefore, the proposal would fail to accord with policy DM1 of the Local plan, and the NPPF.*

*Councillors concerns with regard to flooding are still relevant. The application site is located within flood zone 3, and as submitted, it still fails both the exception and sequential test. Councillors do not feel it meets the exceptions or sequential tests as there does not appear to be any benefit for local residents. There are likely to be sequentially preferable sites available with a lower risk of flooding in the surrounding areas. It has not been demonstrated that the development will be safe without increasing flood risk elsewhere, and, where possible will reduce flood risk overall. It has also not been demonstrated that during a flood event safe access/egress will be possible. The proposal is therefore contrary to local plan policy DM1 and the NPPF due to risk of flooding.*

*Councillors do not consider this an area suitable for the introduction of any form of residential accommodation, however temporary, especially for children. The proposal is therefore unacceptable on public safety grounds as it has not been demonstrated the development has safe access and escape route and the proposal would expose anyone occupying the site and members of the emergency services to serious risk in times of flood. It is vital that the Environment Agency be consulted.*

*If the planning Officer is of a mind to approve Councils request that it be put before MBC Planning Committee.'*

**5. CONSULTATIONS**

*(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)*

**Kent Highways**

5.01 No comment on the proposal

**Environment Agency**

5.02 The submitted FRA addresses their previous concerns and they raise no objection subject to the imposition of conditions.

**Maidstone Environmental Protection**

5.03 raise no objection subject to the imposition of conditions.

**6. APPRAISAL**

- 6.01 The key issues are:
- Principle of development
  - Amenity Impact
  - Visual Impact
  - Flooding
  - Highways / parking

**Principle of development**

- 6.02 Permission was previously refused under application ref 22/504082/FULL with one of the reasons for refusal being that '*insufficient information has been submitted to provide certainty about the appropriateness of the rural and unsustainable location for an undefined residential use with no known scale or impact. Therefore, as it currently stands insufficient information has been submitted to demonstrate that the proposal would be acceptable in principle, contrary to policies SS1, SP17 and DM37 of the local plan and the NPPF.*'
- 6.3 The current submission provides significantly more detail about the profile of the use – what activities would take place, along with numbers and the reasons for the ancillary residential accommodation. These are all detailed above.
- 6.4 The NPPF states that 'Planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development.'
- 6.5 Policy SS1 Spatial strategy seeks to focus the majority of development within the more sustainable parts of the borough, the most sustainable being Maidstone's urban area, followed by the Rural Service Centres and the larger villages. However, some development is more suited to be located in the countryside.
- 6.6 Policy SP17 of the adopted Maidstone Borough Local Plan states that development proposals in the countryside will not be permitted unless they accord with other policies in the plan, and they will not result in harm to the character and appearance of the area.
- 6.7 Policy DM 41 permits equestrian development subject to several criteria. The policy states that the conversion of existing buildings would be used in preference to new built development and the current proposal involves a change of use from agricultural barn. The cumulative impact of the proposed development has been considered and is acceptable. The development is of a design which is sympathetic to its surroundings in terms of scale, materials, colour and details. The adjacent land owned by the applicant provides space for horse exercising. The proposal is in line with policy DM41.
- 6.8 While a residential use would not be considered acceptable within a rural setting outside of the defined settlement hierarchy, in this instance, the residential element

of the use is connected and ancillary to its principle purpose and would reduce the need for the users to travel to and from the site on a daily basis and help to support the purpose of the facility to provide a mental health and wellbeing service.

- 6.9 It is accepted that the activities provided by the use are specifically dependent upon the nature and character of the local rural environment i.e. a quiet, peaceful environment where visitors need to be present to immerse themselves with the site and its surroundings in nature with animals. On this basis, the rural location is key to its purpose.
- 6.10 Given the requirement of the use for a rural location – both to provide the tranquility required for the mindfulness provision, and for the horses which are an integral element of the provision, the principle of the proposal is acceptable.
- 6.11 Owing to the specific profile and requirements of the proposal and that they necessitate the countryside location, it would be appropriate to condition the use so that it is restricted to that of an equestrian mental health and wellbeing therapeutic programme centre.

### **Visual Impact**

- 6.12 Policy DM1 of the Local Plan states that proposals which would create high quality design and meet a set of criteria will be permitted. The criteria includes that proposals should respond positively to, and where possible enhance, the local, natural or historic character of the area. Particular regard should be paid to scale, height, materials, detailing, mass, bulk, articulation and site coverage - incorporating a high quality, modern design approach and making use of vernacular materials where appropriate. Proposals should respect the topography and respond to the location of the site and sensitively incorporate natural features such as trees, hedges and ponds worthy of retention within the site. Particular attention should be paid in rural and semi-rural areas where the retention and addition of native vegetation appropriate to local landscape character around the site boundaries should be used as positive tool to help assimilate development in a manner which reflects and respects the local and natural character of the area.
- 6.13 Policy DM30 encourages development proposals which accord with the surrounding countryside in terms of bulk, scale, massing, visual amenity and landscape character.
- 6.14 The proposal as submitted involves the conversion of the existing barn with minimal external alterations, along with the upgrading of the existing hard standing adjacent to the barn along with its continued use for parking. None of these elements of the proposal would have a detrimental impact on the character or appearance of the site or the existing barn.
- 6.15 An access track is proposed from the use, across the open land to an alternative but existing access. In the context of the site, given its boundaries and subject to the use of appropriate materials which would remain soft in the landscape and can be required by condition, the impact would not be so detrimental as to justify refusal of the scheme.
- 6.16 To restrict excessive lighting, which would be harmful to the rural character of the site, a condition can be imposed which restricts it without written agreement.
- 6.17 The visual impact of proposal would be acceptable and accord with local and national policy.

### **Amenity Impact**

- 6.18 Policy DM1 of the local plan states that proposals should respect the amenities of occupiers of neighbouring properties and uses and provide adequate residential amenities for future occupiers of the development by ensuring that development does not result in, or is exposed to, excessive noise, vibration, odour, air pollution, activity or vehicular movements, overlooking or visual intrusion, and that the built form would not result in an unacceptable loss of privacy or light enjoyed by the occupiers of nearby properties.
- 6.19 In consideration of the previous application, little information was available about the profile of the use or the actual activities to be undertaken on site. It was in this context that it could not be established amenity impact would be acceptable – or what conditions might be needed to make it acceptable. However, the current submission provides clear information about the nature and extent of the use of the proposal as detailed in section 2 of this report.
- 6.20 The activities to be undertaken through the use are, by their very nature of a low impact and low scale. The proposed use would be less impacting than that of its authorised agricultural use.
- 6.21 It would be appropriate to condition the use so that it could not be used as a wider C2 training use, but is restricted to that of an equestrian mental health and wellbeing therapeutic programme centre.
- 6.23 Subject to the imposition of conditions, the amenity impact of the proposal would be acceptable.

### **Flooding**

- 6.24 Policy DM1 of the local plan states that proposals should avoid inappropriate new development within areas at risk from flooding, or mitigate any potential impacts of new development within such areas whereby mitigation measures are integral to the design of buildings.
- 6.25 Paragraph 102 of the NPPF makes clear that the sequential and exception tests must be passed for development to be permitted.
- 6.26 The application site is within Flood Zone 3 and the proposed development would fall within the 'more vulnerable' category as a hybrid of a residential institution and a non-residential use for health services.
- 6.27 The Environment Agency (EA) objected to the previous application on the basis that the Flood Risk Assessment (FRA) did not comply with the requirements set out in paragraph 9 the Technical Guide to the National Planning Policy Framework as it did not show existing and proposed floor levels. In consideration of the current submission, they have removed their objection as the amended Flood Risk Assessment from Brighton Consulting Engineers Limited dated March 2023 addresses the concerns previously raised.
- 6.28 The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. It is now apparent from the information submitted that the current site has specific benefits in terms of its location, tranquillity, existing agricultural building and hardstanding of an appropriate size, and the existing equestrian stock that alternative sites that are at a lower risk of flooding would not necessarily be able to provide.

- 6.29 To pass the exception test it should be demonstrated that:
- a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
  - b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
- 6.30 Both elements of the exception test should be satisfied for development to be permitted.
- 6.31 Given that the exact nature of the use of the facility is now clear, it can be concluded that it would provide a wider sustainability benefit. On the basis of the information submitted, the Environment Agency have raised no objection to the proposal with regard to flood risk subject to the imposition of conditions to control floor levels. As such it can be concluded that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere.
- 6.32 The proposal meets both the exception and sequential test and therefore on the basis of this, and the support from the Environment Agency, would accord with local plan policy DM1 and the NPPF.

### **Highways and parking**

- 6.33 Policy DM1 of the local plan states that proposals should safely accommodate the vehicular and pedestrian movement generated by the proposal on the local highway network and through the site access, and provide adequate vehicular and cycle parking to meet adopted council standards.
- 6.34 It was previously concluded that although it was not possible to ascertain the level of parking required by the use because of the lack of clarity about the use, the site does have a large amount of open space to accommodate parking and therefore any future submission could be conditioned to ensure that a parking layout scheme, including electric spaces and landscaping is submitted for approval and implemented. On this basis therefore, there was considered insufficient grounds to warrant refusal of the proposal.
- 6.35 The current proposal now includes extensive detail about the profile of the use which, as described above is of a satisfactorily low scale that highways impacts would be acceptable given the extent of hardstanding and acceptable access arrangements. These will be conditioned so that these are provided in an acceptable manner.
- 6.36 On this basis therefore, the proposal accords with local plan Policy DM1

### **PUBLIC SECTOR EQUALITY DUTY**

- 6.37 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

## **7.0 CONCLUSION**

- 7.01 Sufficient information has now been submitted to understand the exact profile and nature of the proposed use which is of a low scale and entails only ancillary residential use in connection with the wider use of the site as an equestrian health and wellbeing therapeutic programme centre.

- 7.02 The activities provided by the use are specifically dependent upon the nature and character of the local rural environment i.e. a quiet, peaceful environment where visitors need to be present to immerse themselves with the site and its surroundings in nature with animals.
- 7.03 Given the requirement of the use for a rural location – both to provide the tranquility required for the mindfulness provision, and for the horses which are an integral element of the provision, the principle of the proposal is acceptable.
- 7.04 The visual impact of the proposal would be acceptable with only minimal external alterations proposed to the building, and the provision of an alternative access route to the building which could be acceptably integrated within the wider landscape through the use of appropriate surfacing material.
- 7.05 Amenity and highways impacts would be acceptable with users diverting away from nearby residential occupiers and using the alternative access route.
- 7.06 As concluded by the Environment Agency, the flooding impact of the proposal would be acceptable.
- 7.07 On the basis of the above, the proposal would accord with local plan policies SS1, DM1 and DM30 and would not cause harm to the character and appearance of the area, and as such would comply with the requirements of policy SP17 as appropriate development in the countryside.

## **8.0 RECOMMENDATION**

GRANT PLANNING PERMISSION subject to the following conditions:

(1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

(2) The development hereby permitted shall be carried out in accordance with the following approved plans:

11E  
012D  
014  
015A  
17

Flood Risk Assessment

Reason: To clarify which plans have been approved.

(3) Any external lighting installed on the site (whether permanent or temporary) shall be in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. The submitted details shall take note of and refer to the Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2005 (and any subsequent revisions) and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The scheme of lighting shall be installed, maintained and operated thereafter in accordance with the approved scheme Reason: To ensure lighting does not result in adverse harm upon neighbour amenity and the character of the countryside.

(4) The residential element of the application site shall only be used as ancillary to its primary use as an equestrian health and wellbeing therapeutic programme centre. Reason: The site is an area where new residential development is not normally permitted unless a specific need can be demonstrated sufficient to override the general presumption against such proposals.

(5) The building and land shall only be used as an equestrian based health and wellbeing therapeutic programme centre and for no other purpose (including any other purpose in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or permitted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any statutory instrument revoking and re-enacting those Orders with or without modification) Reason: Unrestricted use of the building or land would cause demonstrable harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers.

(6) The development hereby approved shall not commence above slab level until details for a scheme for the enhancement of biodiversity on the site shall have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details and all features shall be maintained thereafter.  
Reason: To protect and enhance the ecology and biodiversity on the site in the future.

(7) Notwithstanding the details shown on the approved plans, the development hereby approved shall not commence above slab level until, written details of alternative permeable materials to be used in the construction of the access track hereby permitted have been submitted to and approved in writing by the local planning authority and it shall be constructed using the approved materials;  
Reason: To ensure a satisfactory appearance to the development.

(8) 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) (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.

(9) The development permitted by this planning permission shall be carried out in accordance with the approved FRA dated March 2023  
o Finished floor levels shall be set no lower than 13.52m above Ordnance Datum (AOD).  
Reason: To reduce the risk of flooding to the proposed development and future occupant.

(10) The use hereby permitted shall not commence until a minimum of one electric vehicle charging point has been installed on the site and shall thereafter be retained for that purpose.  
Reason: To promote the reduction of CO2 emissions through the use of low emissions vehicles in accordance with paragraph 35 of the NPPF.

(11) Details on the proposed method of foul sewage treatment, along with details regarding the provision of potable water and waste disposal must be submitted to and approved by the LPA prior to occupation of the site. These details should include the size of individual cess pits and/or septic tanks and/or other treatment systems.

Information provided should also specify exact locations on site plus any pertinent information as to where each system will discharge to, (since for example further treatment of the discharge will be required if a septic tank discharges to a ditch or watercourse as opposed to sub-soil irrigation). If a method other than a cesspit is to be used the applicant should also contact the Environment Agency to establish whether a discharge consent is required and provide evidence of obtaining the relevant discharge consent to the local planning authority.

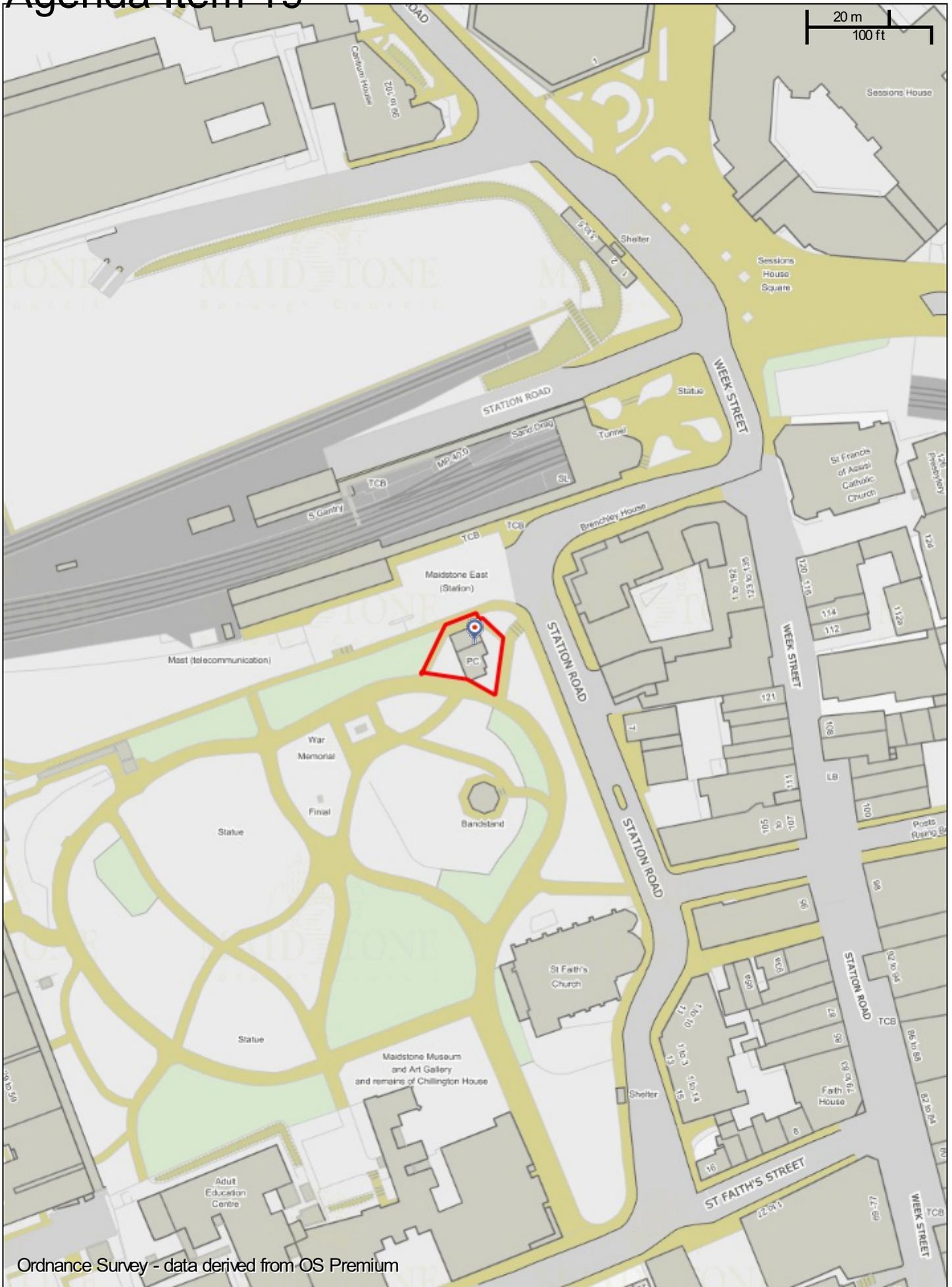
Reason: To ensure sufficient foul sewerage provision.

(12) If during construction 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. 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. 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.
- c) If no contamination has been discovered during the build then evidence (e.g. photos or letters from site manager) to show that no contamination was discovered should be included.

Reason: In the interest of amenity

# Agenda Item 19



Ordnance Survey - data derived from OS Premium

<b>REFERENCE NO - 23/501688/FULL</b>			
<b>APPLICATION PROPOSAL</b> Conversion of redundant public conveniences into a police office with shared mess room and toilets with storage room.			
<b>ADDRESS</b> Brenchley Gardens, Station Road, Maidstone			
<b>RECOMMENDATION – APPROVE PERMISSION</b>			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>			
<ul style="list-style-type: none"> <li>The proposed uses are acceptable and would not cause harm to the amenity of the surrounding area in terms of noise or disturbance.</li> <li>The proposed changes to the building are acceptable and the low level of harm to the Conservation Area from the four window roller shutters would be outweighed by the public benefits of bringing the vacant toilets back into use, and a use that may help reduce anti-social behaviour issues at Brenchley Gardens.</li> </ul>			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
<ul style="list-style-type: none"> <li>The Council is the applicant.</li> </ul>			
<b>WARD</b> High Street	<b>PARISH COUNCIL</b> N/A	<b>APPLICANT</b> Maidstone Borough Council <b>AGENT</b> MBC	
<b>CASE OFFICER:</b> Richard Timms	<b>VALIDATION DATE:</b> 28/04/23	<b>DECISION DUE DATE:</b> 21/07/23	
<b>ADVERTISED AS A DEPARTURE: NO</b>			
<b>RELEVANT PLANNING HISTORY</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
08/2292	Reinstatement of railings and brick piers, provision of new curved steps with handrails, laying of new paths around bandstand and upgrade public conveniences to include improved access	APPROVED	20/03/09
70/0669	Erection of public conveniences	APPROVED	15/01/71
65/0337	Erection of public conveniences	APPROVED	16/06/65

## 1.0 **DESCRIPTION OF SITE**

1.01 The application relates to former public toilets which have been closed for a number of years in the northeast corner of Brenchley Gardens in the town centre. The building is single storey with a mono-pitched roof and faced in grey brickwork.

1.02 The building falls within the Chillington House Conservation Area (CA) which covers the Gardens and there are a number of listed buildings nearby within the CA area including the Cenotaph (GII\*), a finial from the House of Commons Debating Chamber (GII), Statue on Stone Plinth (Daphne and Apollo) (GII), The Old Water Conduit Head (GII), and Chillington House (GII\*).

## **2.0 PROPOSAL**

2.01 Permission is sought for a change of use of the building to two separate uses: offices for Kent Police and a storage and mess room for 'Maidstone Borough Services' for the storage of street sweeping equipment. Each will include a private WC.

2.02 Changes to the building include bricking up some windows and doors on all elevations; inserting four new larger windows across the east, south and west elevations; and moving a door and inserting a new roller shutter door on the east elevation with internal shutter housing. The four new windows would have roller shutters with external shutter housing. Existing hard surfacing would be extended to provide access to the new doors on the east side, and an area would be replaced with landscaping.

## **3.0 POLICY AND OTHER CONSIDERATIONS**

- Maidstone Borough Local Plan (2011-2031): SS1, SP1, SP4, SP18, DM1, DM4, DM20, DM21
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Maidstone Local Plan Review (Regulation 22)
- Chillington House Conservation Area Appraisal & Management Plan (2021)

## **4.0 LOCAL REPRESENTATIONS**

4.03 **Local Residents:** One representation received raising the following (summarised) points:

- Excellent idea and will benefit the town as a whole and not just the gardens.

## **5.0 CONSULTATIONS**

*(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)*

5.01 **MBC Conservation Officer: No objections.** Will not harm the setting of listed buildings or the Conservation Area.

5.02 **KCC Rights of Way: No objections.**

5.03 **KCC Archaeology:** If there are groundworks recommend a condition.

## 6.0 **APPRAISAL**

6.01 The key issues are considered to be the following:

- Impact on the Conservation Area and Setting of Listed Buildings
- Acceptability and Impact of Uses

### Impact on the Conservation Area and Setting of Listed Buildings

6.02 The building is in the CA and within the setting of listed buildings. It detracts from the character of the CA as recognised by the CA Appraisal and Management Plan but is low in height, in the northeast corner, and partly screened by vegetation so is not overly prominent.

6.03 Originally the proposals were to re-clad the building in a green coloured render. Officers did not consider this was appropriate as render can poorly weather and very soon have an unsightly appearance through marking, water run-off, staining etc. and this would harm the heritage assets. Therefore it is considered appropriate to retain the brickwork and brick up the openings with matching bricks. This was advised to the applicant who has amended the plans.

6.04 The external changes to the building through bricking up openings would not result in harm to the appearance of the building subject to matching brickwork and mortar being used (as proposed). The new windows would be dark blue steel framed to match existing and the new door would be dark blue steel to match. They would also not harm the character or appearance of the CA or setting of listed buildings as they would have a neutral impact. As such they would conserve these heritage assets as required by policy DM4 of the Local Plan.

6.05 The roller shutters on four windows would be grey coloured and have a projecting box to the top. These are not attractive features when closed or through the external housing, and would cause a low level of harm to the appearance of the building and CA. The applicant has stated the roller shutters are an additional security measure and the nature of converting the building into a police office is likely lead to people feeling that there are things of value within the building. They state that, *"at the moment the building is identified by visitors as an eyesore and something that makes them feel less safe in the park. Our use of the building is to change that and improve guardianship."*

6.06 On balance, the low level of harm from the roller shutters and external boxes is considered to be outweighed by the public benefits of bringing the building back into use, and a use that may help reduce anti-social behaviour issues at Brenchley Gardens. The new roller shutter door on the east elevation has internal housing and is not as prominent so is acceptable.

6.07 Limited groundworks are proposed with a small extension of hard surfacing on the east side to provide access but another area would be removed/replaced with landscaping so there would be a neutral impact. Conditions can ensure native planting to benefit biodiversity and integrated niches for wildlife can be secured for proportionate biodiversity net gains based on the limited physical development proposed. The applicant has confirmed the surfacing will go only to depth of 20cm and on this basis archaeology conditions are not concerned necessary.

#### Acceptability and Impact of Uses

6.08 The proposed uses as offices and the storage of street sweeping equipment would not cause harm to the local area through noise or disturbance and are acceptable. The limited number of people using the building would be able to use public transport to access the site or use local car parks. Policy DM20 seeks to prevent the loss of community facilities but the public toilets have been closed for a number of years so there would be no loss of this facility.

### **7.0 CONCLUSION**

7.01 The proposed change in use of the building would not result in any harm to the local area through noise or disturbance. The proposed changes to the building are acceptable and the low level of harm to the Conservation Area from the window roller shutters/shutter housing would be outweighed by the public benefits of bringing the vacant toilets back into use, and a use that may help reduce anti-social behaviour issues at Brenchley Gardens in accordance with policies SP18, DM1, and DM4 of the Local Plan.

### **8.0 RECOMMENDATION**

**APPROVE 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 hereby permitted shall be carried out in accordance with the following approved plans:

1905/P1a; 1905/P1b; 1905/P1c; 1628/9, and PP1.

Reason: To clarify which plans have been approved and to ensure a satisfactory appearance to the development.

3. The bricks and mortar used to infill the openings (windows and doors) on the building as shown on the approved plans shall match that used in the existing building in colour, tone, and texture.

Reason: To ensure a satisfactory appearance to the development.

4. The approved windows shall have frames that match those in used in the existing building in terms of materials, colour, and size/thickness.

Reason: To ensure a satisfactory appearance to the development.

5. The works to the building hereby approved shall not commence until a landscape scheme, (for the area where the existing hard surfacing is to be removed as shown on drawing no. 1628/9), designed in accordance with the principles of the Council's landscape character guidance, has been submitted to and approved in writing by the local planning authority. The scheme shall show native species with a planting specification, programme of implementation, and a 5 year management plan.

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

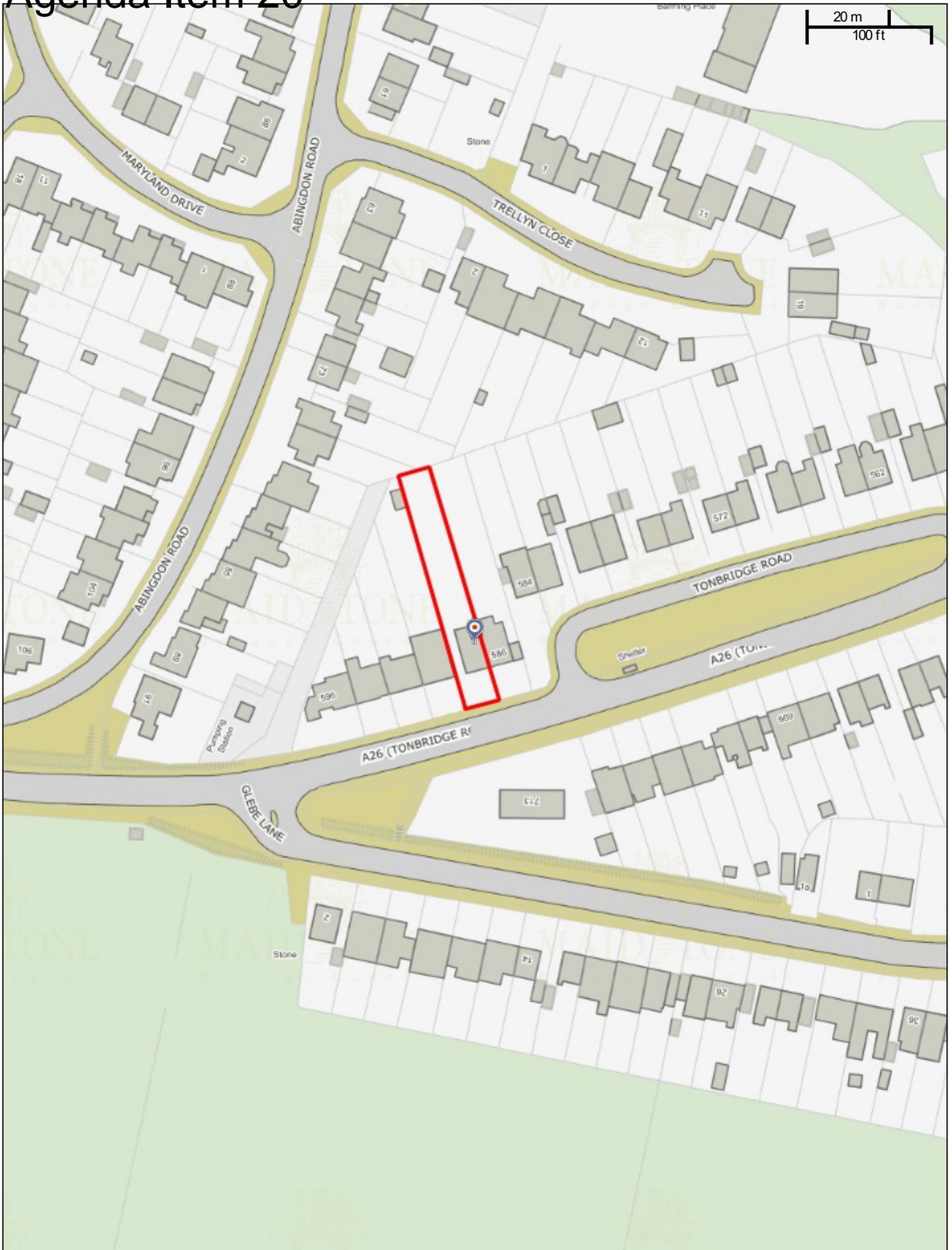
6. The works to the building hereby approved shall not commence until details for a scheme for the enhancement of biodiversity have been submitted to and approved in writing by the Local Planning Authority. The scheme shall consist of the enhancement of biodiversity through integrated methods into the building such as swift bricks, bat tubes/bricks, or bee bricks. The development shall be implemented in accordance with the approved details and all features shall be maintained thereafter.

Reason: To protect and enhance the ecology and biodiversity on the site in the future.

7. All planting, seeding and turfing specified in the approved landscape details shall be carried out either before or in the first planting season (October to February) following the occupation of the building or the completion of the development, whichever is the sooner; and seeding or turfing which fails to establish or any trees or plants which, within five years from the first occupation of the building die or become so seriously damaged or diseased that their long term 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.

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

# Agenda Item 20



Ordnance Survey - data derived from OS Premium

## REPORT SUMMARY

<b>REFERENCE NO:</b> - 23/502179/FULL		
<b>APPLICATION PROPOSAL:</b> Erection of annexe ancillary to main dwelling.		
<b>ADDRESS:</b> 588 Tonbridge Road Maidstone Kent ME16 9DH		
<b>RECOMMENDATION:</b> GRANT – subject to planning conditions set out in Section 8.0 of the report.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b> For the reasons set out below it is considered that the proposed detached annexe would be acceptable and would not cause significant visual harm, harm to neighbouring amenity nor would it be unacceptable in terms of any other material planning considerations. The proposed development are considered to be in accordance with current policy and guidance.		
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Call in by Cllr Kimmance, needs to be a committee decision, appears large and possible overlooking.		
<b>WARD:</b> Heath	<b>PARISH/TOWN COUNCIL:</b> Unparished	<b>APPLICANT:</b> Mr Karl Brown <b>AGENT:</b> John Childs Architectural Design
<b>CASE OFFICER:</b> Ping Tye	<b>VALIDATION DATE:</b> 11/05/23	<b>DECISION DUE DATE:</b> 03/08/23
<b>ADVERTISED AS A DEPARTURE:</b> NO		

### Relevant Planning History

22/505235/LAWPRO

Lawful Development Certificate for proposed single storey summer house to the rear of the garden.

Invalid No Further Action 18.04.2023

21/501374/FULL

Extension of existing cross over

Approved 03.06.2021

79/1828

Extension of kitchen and bathroom

Approved 21.11.1979

### MAIN REPORT

#### 1. DESCRIPTION OF SITE

1.01 588 Tonbridge Road is a semi-detached two-storey dwellinghouse located to the north of A26 (Tonbridge Road) in the urban boundary of Maidstone, to the east of the town centre. The surrounding properties in the vicinity are predominantly semi-detached two-storey dwellings. The application site level would slope downwards in a southeastern direction towards the main dwelling.

1.02 The property is a residential dwelling, and the site is not situated within a conservation area, or an area of outstanding natural beauty. Additionally, there are no restrictions on the permitted development rights to extend or alter the dwelling house.

## **2. PROPOSAL**

- 2.01 The proposal is for the erection of an annexe ancillary to the main dwelling. The annexe would be sited at the very end of the garden on a slightly elevated level. There would be a gap of approximately 1.1m from the rear boundary, and 0.7m from the eastern and western side shared boundaries.
- 2.02 The applicant subsequently submitted amendment plans with the following alterations to the scheme:
- a. The proposed annexe has been moved further from the rear boundary from 0.7m to approximately 1.1m away to allow for planting of laurel hedges along the site boundaries.
  - b. The original ridge height has been reduced from 2.696m to 2.6m.
  - c. Omission of rearward facing window.
- 2.03 The proposed annexe is approximately 7.1m wide and 6.3m deep. It would have a gentle dual pitched roof with a ridge height of 2.6m and an eaves height of 2.45m.
- 2.04 The proposed annexe would consist of a combined lounge/kitchen, one bedroom and shower room. The proposed annexe is considered ancillary to the host dwelling. It is located within the curtilage, would not have its own access and would share garden and utilities.

## **3. POLICY AND OTHER CONSIDERATIONS**

Maidstone Borough Local Plan (2011-2031):

- DM1 – Principles of good design
- DM9 – Residential extensions, conversions and redevelopment within the built-up area
- DM23 – Parking standards

Maidstone Borough Council – Local Plan Review, draft plan for submission (Regulation 22):

- LPRSP15 – Principles of good design
- LPRHOU2 – Residential extensions, conversions, annexes, and redevelopment in the built-up area

The National Planning Policy Framework (NPPF):

National Planning Practice Guidance (NPPG):

Supplementary Planning Documents: Maidstone Local Development Framework: Residential Extensions SPD

## **4. LOCAL REPRESENTATIONS**

**Local Residents:** 12 representations for original plans (and 10 representations for amended plans) were received from local residents and Ward Councillors raising the following (summarised) issues:

- The application states that no work has commenced but some preparatory work appears to be completed, (e.g. ground preparation, laying of cables and pipes).

- Groundwork excavations have already commenced up to boundary fence, undermining integrity of boundary fence and beginning to show initial signs of ground subsiding into neighbouring property.
- Trees and shrubs were all felled and cleared.
- Adjacent facing bathroom window impact on neighbouring privacy.
- Annexe is too big and tall in such close proximity to common rear boundaries resulting in loss of privacy.
- Potential issues with noise, smell, light pollution, rodents.
- Visual appearance i.e. black external material is overbearing, not in keeping with surrounding dwelling and area
- Unclear whether the cladding material is non-combustible.
- Potential harm from installation of air conditioning, gas appliances or wood burning stove, and other paraphernalias.
- Alternative location should be considered within long large garden of application site and away from common boundaries.
- Set precedence for self-contained properties, potential for sub letting, and may affect the demographics of this area and may have a detrimental effect on the value of dwellings in the surrounding area.
- Intended "residential use", email correspondence with the planning office details use for elderly resident with "ill health and mobility issues", given the significant slope of the garden profile, the isolated plan position and the garden slope will make it very difficult for the resident with mobility issues, there is a significant lack of planning detail for providing an appropriate residence for an elderly resident with mobility issues.
- No adequate parking and access for carer of elderly resident with ill health.
- The type of structure is not in keeping with the surroundings gardens. Additionally, these have an impact on population density and impact of provision of utility support services such as water, gas, electricity, sewerage and telecommunications.
- The raised elevation of the proposed structure would impact on neighbours' privacy into the rear living area of property and restrictions on the use this area of garden in the future.
- Lack of notification to neighbours in Abington Road and Trellyn Close.
- Maintenance of laurel hedge will be an issue due to lack of space.
- Noise from construction activities.

**Cllr Kimmance:** *"Would like to call this application into planning committee for decision as it seems to be large and there is possible overlooking into adjacent properties." "Needs to be a committee decision".*

**Barming and Teston:** *"Half of the Beverley Estate (in which Abingdon Road is located) falls within ward of Barming and Teston. The application has a far greater impact on the back gardens of Abingdon Road because their back gardens are much shorter. Garden outbuildings are usually timber built and used as a garden shed or summer house, etc., not for residential use which would be significantly visually obtrusive and would compromise the open garden settings. Noise and disturbance from the residential unit would significantly upset the enjoyment and quality of life of neighbouring properties, especially as their houses are nearer to the unit than that of the applicant's house. Annexes are by their nature ancillary to the main house and are usually built as an extension to that house. They would be expected to be built with matching materials, and to include measures to encourage biodiversity, ecology, landscaping etc. This proposal is significantly distanced from*

*the main dwelling with no such information submitted. I ask that this application be refused on the policy grounds of DM11 and DM12."*

Officer notes: Issues regarding property value, fire rating of material used, potential noise, smell, rodents, and other environmental issues are not material planning considerations and will be dealt with under different legislations.

By their very nature, construction periods for annexes are normally only for a short duration and are not something that can be controlled via condition. Issues relating to construction and also noise and disturbance from construction would be dealt with by Building Control or Environmental Health. Informatives are attached to draw the applicant's attention to construction and recommended development practices.

## **5. CONSULTATIONS**

### KCC Archaeologist

5.01 KCC Archaeologist consulted and no comments received.

## **6. APPRAISAL**

The key issues are:

- Site background/Principles of Development/Policy Context
- Visual Impact
- Residential Amenity
- Parking/Highway Safety
- Other Matters

### **Site Background/Principle of Development/Policy Context**

6.01 The application site is located within the Maidstone Urban Area.

6.02 Policy DM1 (ii) in terms of design refers to developments responding positively to the local character of the area, with regard being paid to scale, height, materials, detailing, mass, bulk, articulation and site coverage. DM1 (iv) re-iterates consideration to be paid to adjoining neighbouring amenity. DM1 (xiv) refers to being flexible towards future adaptation in response to changing life needs.

6.03 Policy DM9 refers to residential extensions, conversions and redevelopment within the built-up area. DM9 states that within the defined boundaries of the urban area, rural services centres and larger villages, proposals for the extension, conversion and redevelopment of a residential property, design principles set out in this policy must be met. DM9 states:

*(i) The scale, height, form, appearance and siting of the proposal would fit unobtrusively with the existing building where retained and the character of the street and/or its context;*

*(iii) The privacy, daylight, sunlight and maintenance of a pleasant outlook of adjoining residents would be safeguarded; and*

*(iv) Sufficient parking would be provided within the curtilage of the dwelling without diminishing the character of the street scene.*

6.04 The Residential Extensions SPD in relation to this proposal sets out the following:

*Garages and other outbuildings should be subservient in scale and position to the original dwelling and not impact detrimentally on the space surrounding buildings or the street scene by virtue of their scale, form or location.*

- 6.05 As detailed in the applicant's email correspondence, the requirement for the proposed annexe is to accommodate elderly relative: *"My 80 year old step mother who resides in Broadstairs, needs to live with me due to the onset of old age and health issues which means that living away from her London based family is now not a good idea as we cannot get to Broadstairs quickly if there is a problem. Also needs to be on one level as she finds stairs difficult to navigate but naturally wants to maintain her independence."*
- 6.06 An annexe is actually considered as a householder residential extension and so is assessed under policy DM9. It is not new residential development or a subdivision of a plot and so does not need to be considered under DM11 or DM12. What needs to be ensured is that the proposal remains ancillary to the main dwelling and a condition will be imposed to address concerns. Such conditions are regularly used on annexe permissions to ensure that the annexe remains ancillary and read as follows:
- "The additional accommodation to the principal dwelling hereby permitted shall not be sub-divided, separated or altered in any way so as to create a separate self-contained unit; and shall only be used as ancillary accommodation to the main dwelling currently known as 588 Tonbridge Road, Maidstone."*
- 6.07 The principle of residential extensions within settlements is therefore considered acceptable, provided that the material planning considerations discussed below would be acceptable.

### **Visual Impact**

- 6.08 As mentioned, the proposed annexe will be sited at the rear garden. It is not visible from the streetscene and therefore it is not considered to have a detrimental impact on the streetscene or character of the area.
- 6.09 Concerns were raised with regards to the size of the annexe. The scale of the proposed single storey annexe is considered acceptable relative to the two storey semi-detached host dwelling and its large garden. Only a small section of the building would be visible over the fence line. Similar outbuildings to the proposal can be built within 2m of residential boundaries under permitted development rights up to a height of 2.5m. Therefore, the need for planning permission in relation to height is the additional 0.1m on this proposal. On balance, it is considered that this height and overall size is not unreasonable for an annexe.
- 6.10 The proposed materials consist of black wall cladding, black roofing felt and black aluminium doors and windows. The proposed materials do not match the materials used in the existing property, however, considering the proposal is located at the rear of the property, is a detached outbuilding and not visible from any public views, it is considered that this would not harm the overall character of the host dwelling. Very often outbuildings are not constructed from materials to match the main dwelling, nor, in most cases, would they be expected to. It is considered on balance, therefore, that the annexe would not detrimentally impact the character and appearance of the host dwelling. It would appear as a subservient outbuilding in line with local plan policies and guidance.
- 6.11 It is noted that the site has been cleared of all trees, shrubs and vegetation during case officer's visit in June. Soft landscaping scheme and its implementation shall be conditioned within the garden along the north, west and east common boundaries to further shield the proposed annexe and also to soften the large expanse of the closed boarded timber fence. Overall, the proposed annexe is not considered to have a detrimental impact on the streetscene or character of the area. Such outbuildings at the rear end of the garden are not unexpected and would not look out of place.

### **Residential Amenity**

- 6.12 The nearest neighbouring properties are to the east (No.586 Tonbridge Road) and to the west (No.590 Tonbridge Road), and also to the north west (No.75 and No.77 Abington Road). All other neighbouring properties are considered to be a significant distance away to be unaffected by the proposal.
- 6.13 The outbuilding is in close proximity (approx. 0.7m and 1.1m) from the common boundary with neighbouring properties and concerns have been raised regarding the loss of privacy and overlooking due to the higher land elevation on which the annexe is sited. However, considering the modest height of the proposal at approx. 2.6m and the close boarded fencing, and its location at more than 30m away from No.586 and No.590 and 20m away from No.75 and No.77. The proposal is sited on the same land level as the properties to the north on Abington Road and so with its low height and the gaps between buildings, it is not considered that it would be overbearing. Although the rear of the garden is higher than the land levels for the dwellinghouses on Tonbridge Road, the slope is not significant and when combined with the significant spacing and low height of the building, this would also ensure that the proposal would not be overbearing on the dwellings to the east and west. Overall, it is considered that there would be no detrimental impact on neighbouring amenity in terms of loss of privacy or overlooking, loss of light or overshadow or loss of outlook would result.
- 6.14 There is no adjacent facing fenestration proposed on the north or east elevations. The west facing window for the shower room is proposed to be obscure glazed and a condition can be imposed to remain as such. Therefore, it is considered that no additional overlooking and loss of privacy to neighbouring occupiers would result.
- 6.15 Taking the above into consideration, it is considered that the proposal will not cause unacceptable harm to the residential amenity of the adjoining properties that would warrant a refusal.

### **Parking/Highways**

- 6.16 The proposal would facilitate an additional bedroom. However, there is considered to be sufficient parking at the front of the host dwelling for a minimum of 2 cars. No harm highway safety/parking provision would result. A condition will also be added relating to renewables and sustainability.

### **Other Matters**

- 6.17 Concerns have been raised regarding potential light pollution. No external lighting has been proposed. A condition can be imposed in relation to lighting to ensure that any additional lighting on the annexe would require consent.
- 6.18 Concerns were raised regarding Biodiversity/Ecological Enhancements. Due to the nature and relative scale of the development and the existing residential use of the site, it is not considered that any ecological surveys were required.

Policy DM1 of the Local Plan sets out, at point viii, that proposals should 'protect and enhance any on-site biodiversity and geodiversity features where appropriate, or provide mitigation.' This is in line with the NPPF and advice in the Residential Extensions SPD. Consequently, it is considered that a condition should be attached requiring biodiversity enhancement measures are provided integral to the proposed annexe and within the curtilage of the dwellinghouse.

- 6.19 Concern has been raised regarding consultation. All the required consultation was carried out via notification letter to all adjoining neighbours (those to both sides, the two properties adjacent to the rear boundary and the property opposite. In addition, a site notice was also posted. This is over and above the notification which is required to be undertaken, which is either notification letter **or** site notice. The Council has undertaken both.

## **PUBLIC SECTOR EQUALITY DUTY**

- 6.20 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

## **CIL**

- 6.21 The proposed development is CIL liable. The Council adopted a Community Infrastructure Levy on 25 October 2017 and began charging on all CIL liable applications approved on and from 1 October 2018. The actual amount of CIL can only be confirmed once all the relevant forms have been submitted and relevant details have been assessed and approved. Any relief claimed will be assessed at the time planning permission is granted or shortly after.

## **7. CONCLUSION**

- 7.01 For the reasons set out above it is considered that the proposed erection of erection of annexe ancillary to main dwelling would be acceptable and would not cause significant visual harm, harm to neighbouring amenity nor would it be unacceptable in terms of any other material planning considerations. The proposed developments are considered to be in accordance with current policy and guidance.

## **8. 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 in line with the matters set out in the recommendation and as resolved by the Planning Committee.

## 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 hereby permitted shall be carried out in accordance with the following approved plans:  
  
Proposed Annexe Floor Plan and Elevations – Drawing no. P.01 Rev A. Received 01.06.2023  
  
Site Location and Block Plans – Drawing no. P.02 Rev A. Received 01.06.2023  
  
Reason: To clarify which plans have been approved.
- 3) The materials to be used in the development hereby approved shall be as indicated on the approved plans and application form  
  
Reason: To ensure a satisfactory appearance to the development
- 4) The additional accommodation to the principal dwelling hereby permitted shall not be sub-divided, separated or altered in any way so as to create a separate self-contained unit; and shall only be used as ancillary accommodation to the main dwelling currently known as 588 Tonbridge Road, Maidstone.  
  
Reason: Its use as a separate unit would be contrary to the provisions of the development plan for the area within which the site is located.

- 5) The development hereby approved shall not commence above slab level until details of a scheme for the enhancement of biodiversity on the site have been submitted to and approved in writing by the Local Planning Authority. The scheme shall consist of the enhancement of biodiversity through at least one integrated method into the design and appearance of the extension by means such as swift bricks, bat tubes or bee bricks, and through the provision within the site curtilage such as bird boxes, bat boxes, bug hotels, log piles, wildflower planting and hedgehog corridors. The development shall be implemented in accordance with the approved details prior to first use of the extension/s and all features shall be maintained thereafter.

Reason: To enhance the ecology and biodiversity on the site in the future.

- 6) The development hereby approved shall not commence above slab level until a landscape scheme designed in accordance with the principles of the Council's Landscape Guidelines (Maidstone Landscape Character Assessment Supplement 2012) has been submitted to and approved in writing by the local planning authority. The scheme shall use predominantly native or near-native species as appropriate. The landscape scheme shall specifically address the need to provide native or near-native species planting to screen the proposed annexe along the northern, western and eastern boundaries.

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

- 7) The use or occupation of the development hereby permitted shall not commence until all planting, seeding and turfing specified in the approved landscape details has been completed. All such landscaping shall be carried out during the planting season (October to February). Any seeding or turfing which fails to establish or any trees or plants which, within five years from the first occupation of a property, commencement of use or adoption of land, die or become so seriously damaged or diseased that their long term 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.

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

- 8) No additional external lighting shall be installed on the annexe hereby permitted without the prior written consent of the Local Planning Authority.

Reason: In the interests of visual amenity.

- 9) Before the annexe hereby permitted is first used, the proposed shower room window on the west elevation of the annexe shall be obscure glazed to not less than the equivalent of Pilkington Glass Privacy Level 3, and these windows shall be incapable of being opened except for a high level fanlight opening of at least 1.7m above inside floor level and shall subsequently be maintained as such.

Reason: To prevent overlooking of adjoining properties and to safeguard the privacy of neighbouring occupiers.

- 10) The development shall not commence above slab level until details of how decentralised and renewable or low-carbon sources of energy will be incorporated into the development hereby approved to provide at least 10% of total annual energy requirements of the development, have been submitted to and approved in writing by the local planning authority. The approved details shall be installed prior to first occupation and maintained thereafter;

Reason: To ensure an energy efficient form of development. Details are required prior to commencements as these methods may impact or influence the overall appearance of development.

### INFORMATIVES

- 1) It is the responsibility of the developer to ensure, before the development hereby approved is commenced, that approval under the Building Regulations (where required) and any other necessary approvals have been obtained, and that the details shown on the plans hereby approved agree in every aspect with those approved under such legislation.
- 2) The grant of this permission does not convey any rights of encroachment over the boundary with the adjacent property in terms of foundations, eaves, guttering or external cladding, and any persons wishing to implement this permission should satisfy themselves fully in this respect. Regard should also be had to the provisions of the Neighbour Encroachment and Party Wall Act 1995 which may apply to the project.
- 3) Your attention is drawn to the following working practices which should be met in carrying out the development:
  - Your attention is drawn to Sections 60 & 61 of the COPA 1974 and to the Associated British Standard COP BS 5228: 2009 for noise control on construction sites. Statutory requirements are laid down for control of noise during works of construction and demolition: if necessary you should contact the Council's environmental health department regarding noise control requirements.
  - Clearance and burning of existing woodland or rubbish must be carried without nuisance from smoke etc. to nearby residential properties. Advice on minimising any potential nuisance is available from the Council's environmental health department.
  - Plant and machinery used for demolition and construction should 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.
  - Vehicles in connection with the construction of the development should only arrive, depart, be loaded or unloaded within the general site between the hours of 0800 hours and 1900 Mondays to Fridays and 0800 to 1300 hours on Saturdays and at no time on Sundays and Bank Holidays.
  - The importance of notifying local residents in advance of any unavoidably noisy operations, particularly when these are to take place outside the normal working hours is advisable. Where possible, the developer shall provide residents with a name of a person and maintain dedicated telephone number to deal with any noise complaints or queries about the work.
  - Adequate and suitable provision in the form of water sprays should be used to reduce dust from the site.
  - It is recommended that the developer produces a Site Waste Management Plan in order to reduce the volumes of waste produced, increase recycling potential and divert materials from landfill. This best practice has been

demonstrated to both increase the sustainability of a project and maximise profits by reducing the cost of waste disposal.

- Adequate and suitable measures should be carried out for the minimisation of asbestos fibres during demolition, so as to prevent airborne fibres from affecting workers carrying out the work, and nearby properties. Only contractors licensed by the Health and Safety Executive should be employed.

If relevant, the applicant must consult the Environmental Health Manager regarding an Environmental Permit under the Environmental Protection Act 1990.

- 4) Details pursuant to Condition 5 should show, on a scaled drawing, the type and number of the proposed ecological enhancements as well as their intended positions, including, where appropriate, the height above ground level to demonstrate that this would be appropriate for the species for which it is intended. Any bird boxes should face north or east and bat boxes and bee bricks should face south. Where planting is proposed, please also supply details of the number of plants of each species as well as the intended size on planting (eg: pot size in litres). Some helpful advice may be found at:

<https://www.rhs.org.uk/science/conservation-biodiversity/wildlife/plants-for-pollinators>

<https://www.rspb.org.uk/birds-and-wildlife/advice/how-you-can-help-birds/>

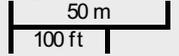
<https://www.bats.org.uk/our-work/buildings-planning-and-development/bat-boxes>

<https://www.wildlifetrusts.org/actions/how-build-hedgehog-home>

<https://www.woodlandtrust.org.uk/blog/2019/09/how-to-build-a-bug-hotel/>

Case Officer: Ping Tye

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



Ordnance Survey - data derived from OS Premium

18/506662/FULL Courtyard Studios, Hollingbourne House, Hollingbourne Hill, Hollingbourne, Maidstone, Kent, ME17 1QJ

Scale: 1:2500



Printed on: 9/5/2023 at 14:43 PM by JoannaW

## REPORT SUMMARY

**REFERENCE NO:** - 18/506662/FULL

**APPLICATION PROPOSAL:**

Demolition of the rear section of the building and erection of replacement structure, and conversion of front section of building including external alterations, to facilitate the creation of 2 dwellings with associated parking and garden areas. Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse.

**ADDRESS:** Courtyard Studios Hollingbourne House Hollingbourne Hill Hollingbourne Maidstone Kent ME17 1QJ

**RECOMMENDATION:** Grant planning permission subject to conditions set out in Section 11.0

**SUMMARY OF REASONS FOR RECOMMENDATION:**

The Court of Appeal found, in summary, that the earlier decision was flawed because the Council in applying DM 5 had failed to take into consideration the entire site and had focused only on the existing building. The judgement therefore concluded that the following matters needed re-consideration:

- The respondent will need to determine whether or not the application site as a whole is of high environmental value

- The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit

The proposal has been re-considered with reference to Local Plan guidance on policy DM5 (in particular paragraphs 6.35 and 6.37) and the policy itself, the proposal site as a whole (including everything in the red line) is not considered to be of high environmental value. With the proposed works significant improvement will arise in a number of ways as set out in the report below and including :

- The proposal will remove the existing business use that is operating substantially below capacity and provide two family homes offering a good standard of space and improvements to neighbour amenity.
- The proposal involves the reinstatement of original building openings that will reduce the current blank ground floor appearance and restore the building symmetry.
- The removal of this overly restricted commercial use will remove a non-conforming use in this location with a positive impact on amenity.
- Further improvements will arise from the restoration works to the historic walls with slight modification that will allow the buildings to provide two family units with access to the rear amenity space. These works restoring the residential link to these gardens and ensuring the long term maintenance of the walls and bring the gardens back into use.
- With the substantial historical alterations to the curtilage brick walls (including LBC99/1078) the proposal will retain their significance that comes from their alignment materials, and bond.

The density reflects the character and appearance of the area and the site can reasonably be made accessible by sustainable modes to a larger village and has the benefit of removing a use that would have higher trip generation . The site will be made accessible by sustainable modes by the provision of cycle parking, electric vehicle charging points (for existing and future residents) and by other agreed measures through a condition to encourage sustainable travel options. In light of these considerations the proposal is found to be in accordance with policy DM5 of the adopted Local Plan.

Other matters which weigh in favour of the proposal and a positive recommendation for approval are :

- Large photographic studio spaces, like the one on the application site are in general decline and the current use operates below capacity and inefficiently.
- The proximity of other residential uses means the commercial use was approved as an exception subject to a number of restrictions to prevent harm to amenity. These restrictions and the proximity to residential reduce the potential for long term viable business use without harm to neighbouring residents.
- The council has previously accepted the loss of the business use granting permission for ancillary residential use as a swimming pool with a tennis court in the rear garden.
- The proposal is not a conversion and any more intense business use, due to the adjacent residential uses, would be directed to the economic development areas urban area or the rural service centres.
- The proposal includes car parking in accordance with minimum standards and is acceptable in relation to trip generation, biodiversity and landscape.
- Special regard has been had to the desirability of preserving Hollingbourne House its significance, its setting, and features of special architectural or historic interest including the curtilage listed walls.
- The harm that will result from the proposal to the significance of Hollingbourne House, the curtilage listed walls, the glasshouse, donkey wheel and gazebo will be less than substantial. The less than substantial harm to the significance of these heritage assets will be outweighed by the public benefits of the development. These public benefits include improvements to the front building elevation, heritage benefits arising from repairs to all the garden wall that will ensure their long term survival, the accessibility improvements to the garden space for future occupiers and the restoration works to the sunken glasshouses and securing the optimum viable uses consistent with their conservation.
- The proposed roof extensions facilitate the provision of staircases that allow the efficient use of the building as part of the provision of 2 good quality family homes with the existing roof space assessed by roof hatches.

Overall

- The proposal is in accordance with the Maidstone Borough Local Plan (2017) policies SS1, SP17, SP18, SP19, SP21 DM1, DM3, DM4, DM5, DM6, DM8, DM23 DM30, DM31 and Appendix B.

**REASON FOR REFERRAL TO COMMITTEE:**

Cllr Patrik Garten has referred this application to committee on the basis of the comments set out in the report below.

<b>WARD:</b> North Downs	<b>PARISH/TOWN COUNCIL:</b> Hollingbourne	<b>APPLICANT:</b> Mr Paul Dixon <b>AGENT:</b> John Collins
<b>CASE OFFICER:</b> Rachael Elliott	<b>VALIDATION DATE:</b> 22/05/20	<b>DECISION DUE DATE:</b> 22/01/21
<b>ADVERTISED AS A DEPARTURE: NO</b>		

**Relevant Planning History**

19/506031/LBC Listed Building Consent for the demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse. Pending Consideration (separate report on this agenda).

18/500228/FULL Conversion and adaptation of existing photography studio into 2 dwellings with associated parking and garden area. Refused 17.04.2018 for the following reasons:

- 1) *The proposed external works and extension due to the, design, scale and bulk of the*

*proposals fail to respect the character and appearance of the existing buildings and would result in an overly domestic, urban and disjointed appearance that fails to respect the existing buildings contrary to Policies SP17, DM1, DM30, DM31 and the National Planning Policy Framework 2012.*

*2) The application fails to demonstrate that the buildings are of sound construction and their re-use and the reconstruction in the form proposed can be achieved without major or complete reconstruction contrary to Policy DM31 of the Maidstone Borough Local Plan 2017.*

*3) The proposed development would be located in an isolated position within the defined countryside, as established by adopted Local Plan Policy SS1 and SP17 which places emphasis on housing development within sustainable locations. The application for the creation of additional dwellings here has failed to demonstrate a significant environmental improvement and that the site can be reasonably made, accessible by sustainable modes to Maidstone urban area, a rural service centre or larger village as is therefore contrary to Policies SS1, SP17 and DM5 of the Maidstone Borough Local Plan 2017 and the National Planning Policy Framework 2012.*

14/0201 Change of use of studio outbuilding and associated service areas to a purpose incidental to the enjoyment of Mulberry and Well Cottages, and erection of fencing around a tennis court. Granted 07.04.2014

99/1078 Listed building consent for partial reduction in height of garden wall and formation of new gateway Granted 16.08.1999

99/0120 Retrospective listed building consent application for partial demolition of garden wall to provide fire escapes to building regulations requirements and amenity to office and workroom facilities. Refused 19.03.1999 for the following reasons *"The section of wall, the subject of this proposal is listed having been erected prior to 1948 and is within the historic curtilage of Hollingbourne House which is a grade II listed building. It is considered that this section of wall forms an important and integral part of the historic setting of Hollingbourne House and its demolition adversely affects the special historic and architectural interest of this listed building and its curtilage contrary to policy ENV19 of the Kent Structure Plan 1996, policies ENV3 and ENV4 of the Maidstone Local Plan 1993 and policies ENV11 and ENV12 of the Maidstone Wide Local Plan (Deposit) draft".*

99/0119 (Part retrospective) Insertion of windows and doors to north east elevation of the office and workroom facilities Granted 19.03.1999

97/1765 Change of use to a mixed use for photographic business (B1) and continuation of existing carpentry business ancillary to existing electronic workshop, and external alterations. Granted 01.05.1998 with conditions including a restriction to only B1(b) and B1(c) for the reason that "Unrestricted use of the building or land would cause demonstrable harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers" and stating that no activity in connection with the uses hereby permitted shall be carried out outside the hours of 18:00 and 08:00 and not at any time on Sundays, Bank or Public Holidays in order to safeguard the enjoyment of their properties by adjoining residential occupiers

89/1936 Erection of detached garage block. Granted 20.02.1990

83/1419 Retrospective application for change of use from residential to electronic workshop and office. Granted 28.12.1983

## **MAIN REPORT**

### **1. DESCRIPTION OF SITE**

- 1.01 The application site (covering 0.02ha) is approximately 1km from the Hollingbourne settlement (Hollingbourne Hill and Pilgrims Way crossroads). The main part of the application site is approximately 85 metres to the south east of Hollingbourne Hill (B2163) with an internal service road providing vehicle access from the main road.
- 1.02 Whilst in the countryside, the application site is not in an 'isolated' location. The application site is located within a larger group of buildings that include a collection of functional agricultural buildings (Hollingbourne Farm) to the south east. The residential building called the Garden Cottage wraps around the northern corner of the application site.

Figure 1: Aerial photograph of the application site (Credit Google Earth)



- 1.03 To the south west of the red line application site boundary is Hollingbourne House (grade II listed). In addition to the main house (which faces south west), the building footprint also includes two cottages to the rear, with Wells Cottage attached to the rear of Hollingbourne House and Mulberry Cottage attached to Wells Cottage. These two cottages are in the applicant's ownership with the main Hollingbourne House in separate ownership. A further group of residential properties are located to the north west (125 metres from the site boundary) located on the opposite side of Hollingbourne Hill.
- 1.04 There are three entries on the national list of historically important buildings in the area surrounding the application site. To the north of the site entrance to Hollingbourne Hill (86 metres from the main part of the application site) is the Gazebo which is grade II listed. The Donkey Wheel is located 9 metres to the north west of the application site boundary which is grade II listed and Hollingbourne House (Mulberry Cottage and Wells Cottage) which is also grade II listed adjoins a section of the south west application site boundary.
- 1.05 Whilst the building on the application site is not listed or a non-designated heritage asset, a stretch of wall to the north east (rear) of this building has been identified as being curtilage listed by the local planning authority by virtue of its age and location in the curtilage of the original main house. The other walls of this residential garden area and one of two derelict glasshouses within the garden are also curtilage listed.

- 1.06 An area of Ancient Woodland (Marshall's Shaw) is located 185 metres to the north east, a local wildlife site is located 170 metres to the south west of the site. The roadside verges between the access to the application site to a point just to the north east of the Hollingbourne Hill and Pilgrims Way junction are protected. The application site is located in the Kent Downs Area of Outstanding Natural Beauty. There are group tree preservation orders on the opposite side of the site access in Hollingbourne Hill and the isolated tree in the open field to the north east (30 metres from the application site) is also covered by a tree preservation order.
- 1.07 The red line application site boundary includes the vehicle access drive from Hollingbourne Hill, with the main part of the application site broadly rectangular in shape.

Figure 2: Site outlined in red and adjacent heritage assets



- 1.08 The internal access drive from Hollingbourne Hill arrives at a courtyard that is located at the rear of the main Hollingbourne House building. Immediately to the left as you enter the courtyard is a small single storey building called the Smokery. The courtyard is located between a building attached to the rear of Hollingbourne House and the front of the building on the application site.
- 1.09 After the building to the rear of Hollingbourne House was purchased, it was renovated by the applicant and converted to provide the two cottages that are now present. The applicant lives in Mulberry Cottage and Wells Cottage provides a holiday let. Whilst these two cottages are located just outside the application site, an area of raised beds in front of the cottages is part of the application site.
- 1.10 The buildings occupied by the cottages would originally have provided ancillary accommodation to the main Hollingbourne House such as kitchens and servants quarters. Whilst these buildings are not mentioned in the official listing description, with this association and attachment they form part of the Hollingbourne House listed building.
- 1.11 The application site is occupied by a large commercial building. Submitted evidence suggests that a former building in this location was also previously used as ancillary space to the main house, including as stabling and as a milking shed prior to the sale of the adjacent farm in 1975. The existing building on the application site is currently used by a photographic business (known as 'Apache' Studios or Courtyard Studios) following the planning permission under reference

97/1765.

- 1.12 Externally there is a clear visual distinction between the front and rear parts of the building. The rear building constructed in the 1950's is a redundant cattle shed with a steel frame construction, breezeblock wall infills, cement sheet roof. The existing black timber cladding dates from around 1992. The building has a roof eaves height of circa 3.3 metres and a ridge height of 5.4 metres and is 27 metres wide with the side elevation of 10 metres. A section of the roof space of this rear part of the building has a concrete floor and is accessed by way of two roof hatches. The rear part of the building is internally domestic in scale consisting of smaller rooms and ancillary space to the main front studio space.

Figure 3: Existing front building elevation



Figure 4 Garden view to the south east towards neighbouring agricultural buildings

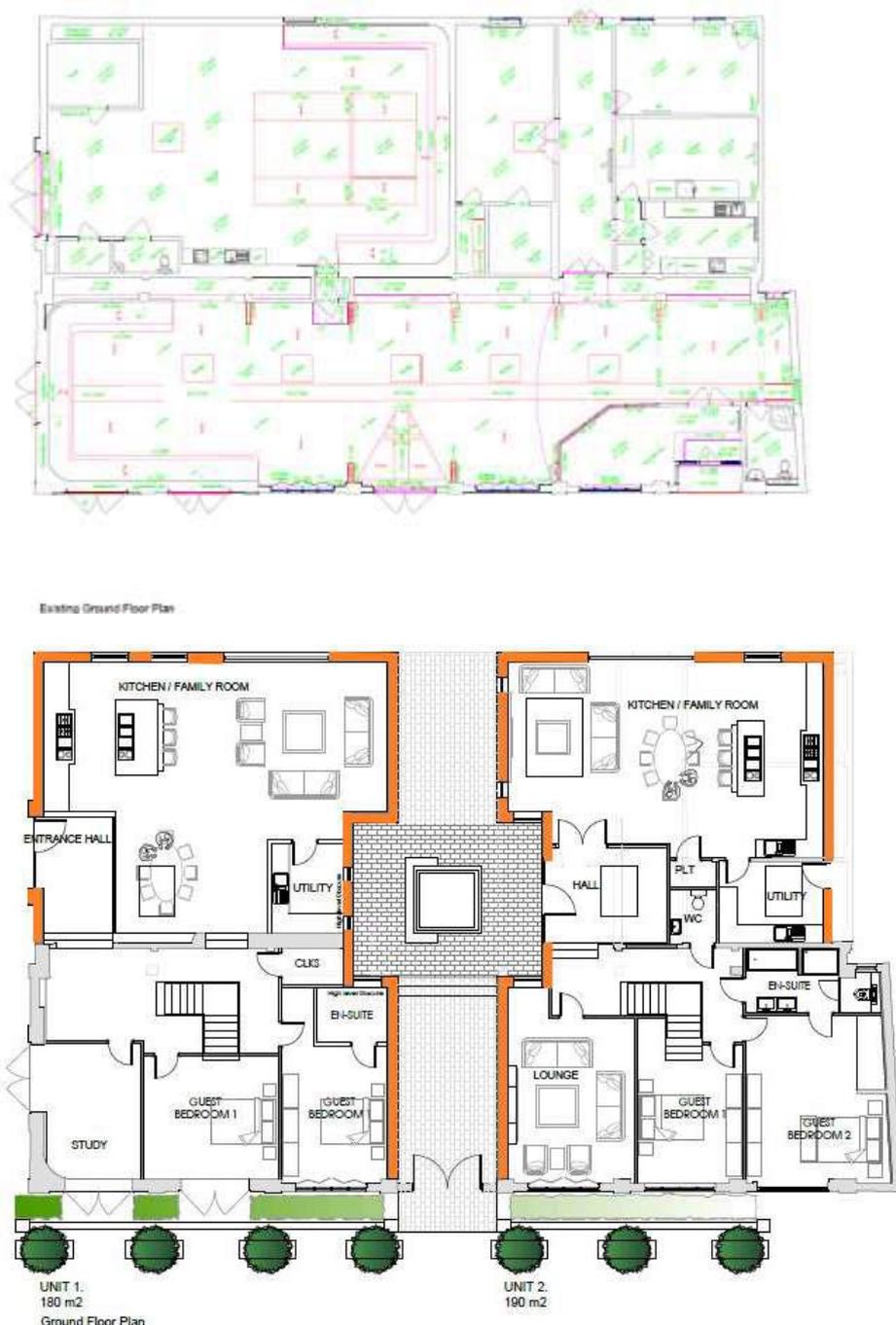


- 1.13 The front building in red facing brick and a cement sheet roof was constructed in

the 1980s as part of works to replace and extend the front part of the building. This building has a roof eaves height of circa 3.7 metres and a ridge height of 5.8 metres and is 28 metres wide with a side elevation of 8 metres. The front part of the building has a double height space that provides the main large single studio space for the current use with natural light provided by existing roof lights.

- 1.14 Although of different heights and widths, the two buildings both have dual pitched roofs and side gables with a triangular dormer in the middle of the front elevation. This building is not listed, it is not a heritage asset and due to its relatively young age the building is not curtilage listed.

Figure 5 existing ground floor plan (top) and proposed ground floor plan (bottom) showing a reduced footprint in the rear section and new walls in orange.

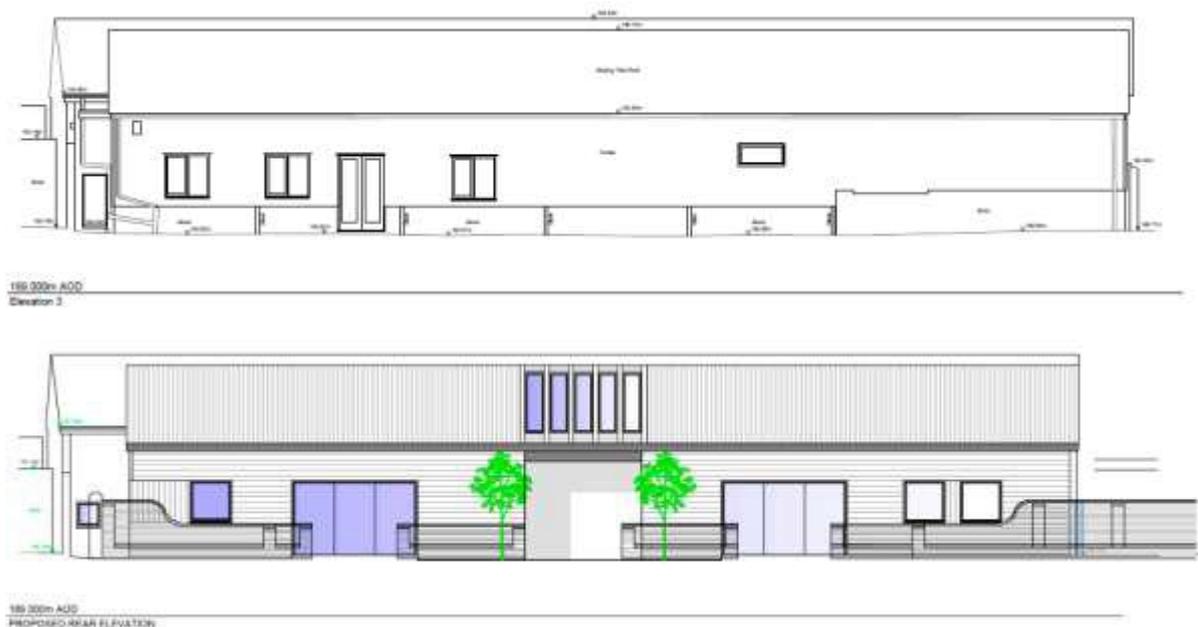


- 1.15 At the rear of the studio building is a walled garden that is thought to formally have been a functional space linked to the main Hollingbourne House. The wall to

the south west of this space that runs parallel to the studio building is thought to have enclosed an animal yard linked to the use of a building used for stabling. The brickwork in the walled garden shows that the walls have been significantly altered and reconstructed in the past and are currently in poor condition and in at some points in danger of collapse. Whilst now separated from the main listed building by the studio building, these walls are listed as a result of their age and the location in the curtilage of the grade II Hollingbourne House.

- 1.16 At the northern (rear) end of the walled garden are two derelict sunken glasshouses. The submitted information states that one of the structures that is built with imperial red brick dates from the late 1800's and is curtilage listed and the other from the 1950's.

Figure 6: Comparison between the existing rear elevation and the rear elevation currently proposed.



## 2. PROPOSAL

- 2.01 The submitted proposal involves the demolition and reconstruction of the timber clad rear part of the existing studio building. The applicant has said that the reasons for demolishing and replacing the rear building include the significant improvements to the levels of thermal efficiency that will be achievable in the completed building.
- 2.02 The applicant seeks to re-development of the entire site as shown on Figures 1 and 2 above, such that the proposed redevelopment would utilise the existing driveway as access and the existing walled garden would be sub-divided (principally by a native hedge), to provide residential amenity areas for each new dwelling.
- 2.03 The new rear section of building will have a slightly smaller footprint when compared to the existing structure. The new rear section of the building has the same roof height and same roof form and will have black timber cladding to match the existing building (see figure 6 above).
- 2.04 The existing bulls eye window to the north west (side) elevation will be replaced with a window similar to the existing window to the south east (side) building elevation. New glazing to the side elevation will provide natural light to a double

height entrance lobby that also provides legibility to this front entrance to one of the two proposed dwellings.

- 2.05 The external alterations to the retained front section of the building include the replacement of the triangular dormer to the front elevation with more functional roof lights. Glazing will be installed in the existing blocked up openings at ground floor level to the front and side of the building to match the existing adjacent openings on the front elevation.
- 2.06 The proposal includes 2 roof additions. The roof additions are set back by over 5 metres from north west elevation and 4 metres from the south east elevation and behind the front and rear roof slopes. These extensions provide head room for internal staircases located in the two proposed residential units. The proposal also involves the creation of an internal covered courtyard in the centre of the building; the courtyard provides the entrance to the second of the two dwellings and direct access from the courtyard through to the rear walled garden.
- 2.07 The 2 dwellings will be formed from the replacement floor space to the rear of the building, the retained converted business floorspace in the front part of the building and relocation of existing floor space in the roof.
- 2.08 In terms of materials, the rear section will be timber weatherboarding to match the existing building and the front section the existing retained facing brick. The roof will be of slate; and the fenestration of dark aluminium frames.
- 2.09 The proposal includes formalised parking for the occupiers of the existing accommodation to the south west (Wells Cottage and Mulberry Cottage) and the new dwellings in the courtyard area, including in front of the cottages.
- 2.10 The proposal includes the demolition of the existing garden wall to the rear of the existing studio building and its reconstruction in its existing position. The wall will be at a reduced height of 1.2 metres over part of its length with 2 additional openings.
- 2.11 Repairs and restoration works are proposed to other walls within the rear garden. The proposal includes the restoration of a period sunken glasshouses close to the rear boundary of the site with Garden Cottage and the removal of the more recent second glasshouse. The rear garden areas will be separated by a hedge.
- 2.12 Following the earlier advice from the Council's conservation officer and the reasons for the refusal of the earlier planning permission (application 18/500228/FULL) the proposal has been significantly altered and improved.
- 2.13 These changes include a much simplified design for the rear section of the building that more closely reflects the form and scale of the existing building. The alterations to the front part of the building now reflecting the functional building appearance. The submitted revised proposal is supported by the Council's conservation officer.

### **3. BACKGROUND**

- 3.01 The Council issued a planning decision notice on the 29 March 2019 for the application under reference 18/506662/FULL, with the decision notice granting conditional planning permission.
- 3.02 On behalf of the occupier of Hollingbourne House, the Council were informed on the 7 May 2019 (Pre-Action Protocol letter) of the intention to submit a judicial review against the decision to grant planning permission on four separate grounds.

- 3.03 The Council indicated in a response letter dated 16 May 2019 that it accepted that *"there has been a failure to clearly identify what the setting to the listed building is in order to then set out how any impact, if any, to the setting of the Listed Building is mitigated by the proposed development"*. The Council accepted that for this reason it would not contest the claim which should succeed under Claimant's grounds 2 and 3.
- 3.04 A High Court Consent Order dated 8 July 2019 quashed the decision made by the Council to grant planning permission on the 29 March 2019.
- 3.05 This application, together with a Listed Building Consent application for the *Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse..* were subsequently reported to Planning Committee on 17<sup>th</sup> December 2020 to reconsider the decision on this application and determine the Listed Building Consent submission. Members resolved to grant planning permission for the development specified in Section 1.0 above and Listed Building Consent under application 19/506031/LBC.
- 3.06 The decisions were issued on 21<sup>st</sup> January 2021.
- 3.07 A case to Judicially Review the decision was subsequently brought forward by the immediate neighbour in relation to both the grant of full planning permission (18/506662/FULL) and Listed Building Consent (19/506031/LBC). This was initially refused permission to proceed by Mr Tim Mould QC, decision dated 5 May 2021. A renewed oral hearing by Lang J granted permission to bring forward substantive judicial review proceedings on four grounds. These being as follows :
- (i) MBC erred in its interpretation of the Local Plan policy DM5 "Development on brownfield land";
  - (ii) MBC was inconsistent in the approach it took to the assessment of the contribution to the setting of the listed building made by the existing studio buildings;
  - (iii) MBC was flawed in the approach taken to the assessment of heritage impact and in doing so acted in breach of its statutory duties pursuant to the provisions of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
  - (iv) MBC failed to take into account a material consideration, namely the potential for a sensitive conversion of the front studio building for the purpose of providing a dwelling.
- 3.08 The High Court in a ruling dated 14 July 2022 rejected all 4 grounds stating, in summary, the following :
- Ground 1 fails as there was no misinterpretation of policy DM5 of the Local Plan, there was no proposal to develop existing residential garden; Ground 2 fails as there was no material misdirection contained within the OR; Ground 3 fails as it amounts to an attack upon the planning officer's assessment and evaluation of the impacts of the proposed development as set out in the OR; Ground 4 also fails as it is an attack upon a planning judgment, the alternative proposal having been considered but only briefly.***

- 3.09 Permission was granted by the Court of Appeal to appeal against the High Court's decision on 2 grounds these in summary being :
1. The proper interpretation of, Policy DM5, in the Maidstone Borough Local Plan and the meaning of 'site'; in particular whether this means the whole of the site the subject of the application, including the garden to the rear of the main application building, or whether 'site' in the context of DM5 excluded the garden to the rear.
  2. Whether the respondent failed to have regard to earlier views of the conservation officer which were said to be a material consideration

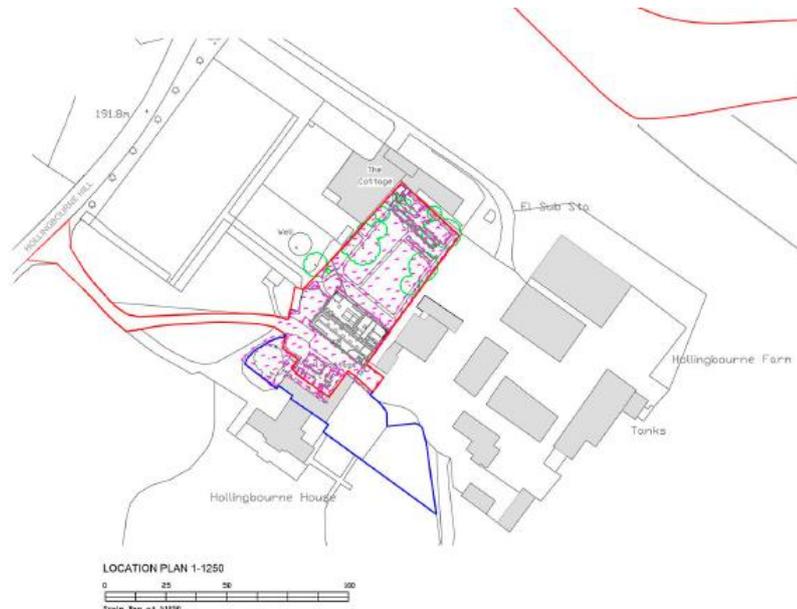
In its decision dated 22 February 2023 the Court of Appeal found that the Council had misinterpreted policy DM5, stating that :

*The respondent failed properly to interpret Policy DM5 in that it failed to consider whether the application site as a whole had environmental value. Rather it only considered whether part of the application site, that is, the existing studio building, had a high environmental value. For that reason, I would quash the planning permission and the listed building consent and remit the matter to the respondent. It will have to decide whether or not the application site, comprising the studio building, the walled garden and the land connecting with the road, has high environmental value and whether the other criteria in DM5 are satisfied.*

- 3.10 The second ground of appeal was rejected by the Court of Appeal.
- 3.11 All four decisions referred to above are attached for information as appendices to this report as described below :
- Appendix A : Copy of Timothy Mould QC decision on the papers dated 5 May 2021
- Appendix B : Copy of High Court Judgement dated 14 July 2022
- Appendix C : Copy of Court of Appeal Judgement dated 22 February 2023
- Appendix D : Copy of Order to Consent dated 8 July 2019
- 3.12 As set out in the High Court ruling, it was considered common ground that both decisions referred to (19/506031/LBC and 18/506662/FULL) *stand or fall together*. As such both the decisions made by members on the Listed Building Consent and Planning Permission have been quashed and both applications are now put back before members for due consideration and decision in light of the Court of Appeal's judgment about the proper interpretation of policy DM5.

#### **4. KEY JUDGEMENT SUMMARY**

- 4.01 The Court of Appeal found that the Council's earlier determination of what constitutes 'the site' in this case for the purposes of applying Policy DM5 was erroneous. , The December 2020 committee report solely considered the building itself in relation to its environmental value, rather than the entire site outlined in red (see map area identified as being within the red line (extract below)



4.02 The point which was made by the Appellant and which was accepted by the Court of Appeal is that in order to make a proper planning judgment in the application of DM5 about whether or not the site is of high environmental value and whether the proposed development will result in significant environmental improvement, it is necessary to consider the site in its entirety, including the main application building but also the walled garden to its rear and the access route to the highway. The judgement highlights what should be considered as 'the site', which is *the existing building, the walled gardens and the land connecting with the road* (paragraph 25 of Appendix C.)

4.03 Paragraphs 25 and 26 continue by setting out the key considerations the Council will need reconsider, now that the court of Appeal has quashed the Council's decision. In summary being :

- The respondent will need to determine whether or not the application site as a whole is of high environmental value
- The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit

## 5. MATERIAL CHANGES SINCE EARLIER DECISION

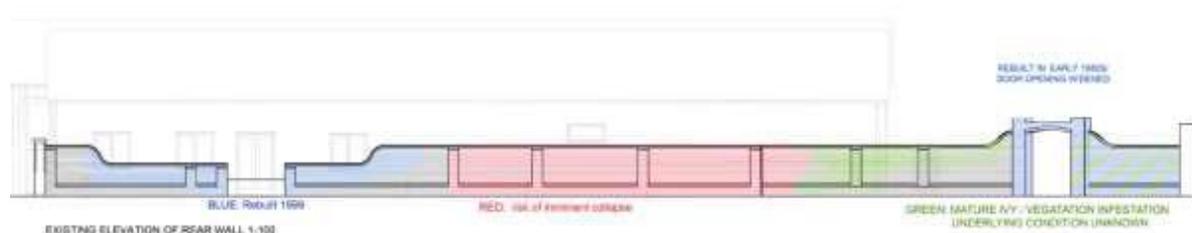
5.01 The Maidstone Borough Council – Local Plan Review Regulation 22 Submission has been made and Local Plan Hearings are ongoing. The regulation 22 submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is a material consideration, and some weight must be attached to the document because of the stage it has reached. The weight is however limited, as it has yet to be the subject of a full examination in public.

5.02 The National Planning Policy Framework (NPPF) was revised on 20 July 2021.

5.03 Due to health and safety concerns, a section of the north-east facing garden wall has been removed/lowered and the bricks stored securely behind the remaining wall.



- 5.04 The existing elevations of the wall submitted with the application (see plan below), therefore now differ from the 'on the ground' situation. Areas highlighted in green have now been removed and those in red lowered.



- 5.05 The applicant is aware that the works carried out are without the benefit of a current consent. Amended plans are not required as the existing plan indicates the lawful height and position of the wall.

## 6. POLICY AND OTHER CONSIDERATIONS

- 6.01 The status of the development plan is confirmed by Section 38 (6) of the Planning and Compulsory Purchase Act, 2004 which states: "... *determination must be made in accordance with the plan unless material considerations indicate otherwise*

The supplementary planning guidance and national policy and guidance are material consideration in the determination of planning applications.

### Development Plan

- Maidstone Borough Local Plan 2017 SS1, SP17, SP18, SP19, SP21 DM1, DM3, DM4, DM5, DM6, DM8, DM23 DM30, DM31 and Appendix B.

- Emerging Policies – Maidstone Borough Council – Local Plan Review Regulation 22 Submission

The regulation 22 submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is a material consideration, and some weight must be attached to the document because of the stage it has reached. The weight is limited, as it has yet to be the subject of a full examination in public

### Supplementary Planning Guidance

- Kent Downs AONB Management Plan 2014-2019 (2nd Revision) SD2, SD9, HCH1 and HCH4
- Maidstone Borough Landscape Character Guidelines SPD
- Supplementary Planning Guidance SPG4 'Kent Vehicle Parking Standards' of the

Kent and Medway Structure Plan (July 2006)

National policy and guidance

- National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (NPPG)
- Historic England Managing Significance in Decision Taking in the Historic Environment (2015).
- Historic England The Setting of Heritage Assets (2017).

**7. LOCAL REPRESENTATIONS (these are original representations, no re-consultation has taken place following the Court of Appeal decision.)**

**Local Residents:**

- 7.01 Two representations (including one representation from a planning consultant acting on behalf of a neighbour) have been received from local residents objecting to the proposal for the following summarised reasons
- The development is contrary to policy DM5 as it will not result in a significant environmental improvement.
  - Policy DM31 is not applicable to this development as the works do not constitute a conversion but amount to major reconstruction. It is overdevelopment and domestication very close to a working farm.
  - With the site location in the countryside and the AONB the proposal is contrary to policies SS1, SP17(1) and the NPPF. The site does not represent a sustainable location where new build dwellings would normally be acceptable
  - The proposal is 'inconsistent' with policy SP21 vii) which prioritises the commercial re-use of existing rural buildings in the countryside over conversion to residential use.
  - A comparison between the introduction of the Heritage Report (the domestication the building and the reconstruction of the wall will cause harm on the significance of the heritage assets) and paragraph 4.3 of the same report (alterations would not result in any impact to the significance of Hollingbourne House) 'is confusing'.
  - The suburban design (flat box roof and extensive glazing) is out of keeping with the prevailing character of the site, will detract from the agricultural character of the building and from the overall aesthetic of the estate and competing with the architectural features of Hollingbourne House.
  - The side elevation windows will be visible when entering the site and from the listed walled gardens and will 'draw the eye' and 'significantly alter the experience of the historical surroundings of Hollingbourne House'.
  - The proposal is dominating and overbearing, it is not subservient to adjacent Grade II listed building, and fails to conserve or enhance its significance.
  - The demolition and rebuilding of a curtilage listed wall will lead to harm and the loss of historic fabric with significant alterations to the 'dimension of the wall' along with the creation of new openings. This is considered contrary to paragraphs 193 and 194 of the NPPF.
  - If a financial argument is being made in relation to paragraph 79 of the NPPF, this decision needs to be informed by 'the appropriate calculations and conservation deficit figures'.
  - Following a 'design exercise' carried out by the neighbour's consultant, it is considered that an alternative scheme to convert the existing barn into one large 4-bed house is entirely achievable and is possible with less harmful impact.
  - The submitted application is lacking supporting information in relation to marketing, construction and structural information, independent valuation, and biodiversity protected species.
  - It is considered that the changes made to the application description are "...incredibly confusing for everyone!".
  - The advertisement of the planning application in the local press is questioned.

- It is questioned as to why the local highways authority have not been consulted.
- The comments received from the conservation officer dated December 2019 are misleading.
- I was not sent notice informing me of the application. (*NB: Consultation letter was sent on the 3 January 2019 to Hollingbourne Farm Hollingbourne Hill Hollingbourne*)
- I object to a listed wall being demolished. It is an important feature of the setting of Hollingbourne House that the four walled gardens remain intact. The Dixon's have not maintained the listed walls and allowed them to fall into disrepair. The walls form part of the historic fabric of the original farm and estate and are listed to protect them from such development.
- No Listed Building Consent has been applied for (*NB: A linked listed building consent application has been submitted and is considered as part of a separate report*)
- The design of the houses is not in keeping with the rural setting. It has too much glazing and is a poor overly modern and urban design (*NB: The building design has been subsequently amended with a reduction in the quantity of glazing*).
- It is not an appropriate design for an attractive historic location in an Area of Outstanding Natural Beauty.
- It looks to be predominantly a new build and therefore this surely must need to be a new build application and be scrutinised as such.

**Assessment by Heritage Collective on behalf of a neighbour**

(Comments on earlier proposal with relocation of the curtilage listed wall)

- 7.02 A neighbour has commissioned an independent heritage assessment carried out by Heritage Collective in summary the submission makes the following points that relate to the current application
- 7.03 Hollingbourne House is an asset of high quality and any application affecting its setting needs to take into consideration the effect on its heritage significance.
- 7.04 It has clear architectural and historical interest as a late 18th century mansion with associated grounds and individually listed features (Donkey Wheel and Gazebo, both separately listed grade II).
- 7.05 The heritage value of Hollingbourne House is experienced within a rural setting, with views toward and from the house defined by a country estate character with ancillary, agricultural and ornamental buildings evident in most views.
- 7.06 The substantial walls encircling the four walled gardens contribute to the historical interest of the house by indicating its former grounds, the use of walled gardens for various crops and the varying function of different spaces within an estate of this size.
- 7.07 Any scheme should recognize that the grounds of Hollingbourne House are relatively intact and thus sensitive to change which does not take account of significance.
- 7.08 The proposed development would cause less than substantial harm to the grade II listed building through alteration and relocation of a curtilage listed wall and harm to the historical significance of the building through inappropriate change within the setting of the building. As identified above the survival of no less than four separate walled gardens within the grounds of Hollingbourne House is unusual and worthy of preservation.
- 7.09 In relation to local policy this development would not preserve or enhance the distinctiveness and quality of the area's heritage assets as required by Policy SP18, nor does it conform to the requirements of Policy DM1 in relation to good design. By introducing alien roof extensions and excessive glazing to the two buildings the proposal would not respond positively to its local area or the historic character of the surrounding buildings, nor would it 'provide a high-quality design which responds to areas of heritage and townscape' .
- 7.10 Policy DM4 requires heritage assets to be conserved and where possible enhanced.

This will not be the case if this proposal is permitted.

- 7.11 Regarding Policy DM31.1 the proposal would fall foul of point (c) as the alterations proposed would not be in keeping with the landscape and building character in terms of materials used, design and form. It would also contravene point (e) relating to walls and fences through the introduction of new boundaries that would harm the landscape character of the walled garden. The application should be refused.

**Councillor Patrik Garten**

- 7.12 The policy determining conversion of rural buildings, Policy DM31 permits residential use only where every reasonable attempt has been made to secure a business re-use of the building. Evidence setting out why the business re use is not appropriate for the buildings needs to be provided and ought to be scrutinised by committee
- 7.13 Neighbours allege that the proposed works are unsympathetic, overly domesticated and fail to respect the character and appearance of the setting of the Grade II listed Hollingbourne House. As this is partially a subjective assessment, it should be considered by a committee.
- 7.14 As my previous reasons explains, the reason for call-in is mainly to secure public confidence in the planning process, which was previously thwarted and required a judicial review. While I welcome the amended details, they do not overcome the unfortunate history of this case.

**Hollingbourne Parish Council**

- 7.15 Do not wish to comment or object.

**8.0 CONSULTATIONS (these are original consultation responses, no re-consultation has taken place following the Court of Appeal decision.)**

(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)

**Historic England**

- 8.01 No comment. On the basis of the information provided, we do not consider that it is necessary for this application to be notified to Historic England under the relevant statutory provisions.

**Conservation Officer (MBC)**

- 8.02 I support the application and raise no objections from a conservation point of view. The works are wholly in line with our discussions on site and the submission is clear and of good quality
- 8.03 The initial proposal relating to the historic wall adjacent to the development site was that it would be demolished and relocated. I took the view that this would cause harm to a heritage asset and for no clear benefit.
- 8.04 The solution agreed with the applicant was to keep the wall in its historic location but it would be taken down and rebuilt using the viable bricks from the surviving wall supplemented by some bricks salvaged from earlier work. This will deal with the serious problems affecting the wall particularly its dangerous lean and the general decay of the masonry caused by invasive vegetation.
- 8.05 It is unlikely that enough bricks will be salvaged to rebuild the wall to its present height and accordingly it was agreed that the wall could be rebuilt at a lower height. It was also considered as acceptable that the applicant could make some new openings in the wall to suit the needs of the redeveloped adjacent building. The result will be a wall which retains the historic boundary line of the

walled area and one which is stable and generally clear of other agents of decay. This seems to me to be a significant gain for the historic asset where there is currently a high risk of collapse and loss.

- 8.06 The works to the remainder of the boundary wall are measured and proportionate. Repairs and alterations have been carried out over the years and this is a continuation of that process which will enhance the appearance and condition of the boundary wall. The line of the boundary will be maintained
- 8.07 There is a historic glass house within the walled area. The structure is partly below ground and this part survives. All the above ground construction has been lost and there are no records of the form of the glass house. The applicant has proposed to build a lightweight structure on the historic base which will bring the building back into use as a glass house. The new construction will sit on top of the historic fabric but none of that original material will be removed or damaged by the new work. This work will protect the historic fabric from further decay.
- 8.08 The conversion of the existing studio building will bring about some alterations to the external appearance but this is minor and it is not considered that it will cause damage to the setting of the listed building. There is some upward extension of the building which will affect the roof line but this work is contained within the valley of the existing roof and will not be visible from Mulberry and Well Cottages. There is also a proposal to replace some of the infill panels on the southwest elevation with glazing instead of solid panels. This, in heritage terms, is simply a change in material and will not impact on the setting of the listed building.

**Local Highways Authority (KCC)**

- 8.09 No comment, the development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements. If there are any material highway safety concerns. Recommend standard informative on any highway approvals that may be necessary.  
(NB: in light of the nature of these comments and no new potential related issues the highways authority was not consulted on revisions to the proposal)

**APPRAISAL**

- 9.01 The key issue for consideration relates to

**Consideration of the proposal in relation to Policy DM5 (Development of Brownfield land)**

The Court of Appeal found, in summary, that the earlier decision was flawed because the Council in applying DM 5 had failed to take into consideration the entire site and had focused only on the existing building. The judgement therefore concluded that the following matters needed re-consideration:

- The respondent will need to determine whether or not the application site as a whole is of high environmental value
- The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit

Other issues for consideration are as follows, the consideration of those matters mirrors the earlier Committee Report, with the appraisal updated as necessary in relation to those points raised in 5.0 above.

- Loss of the existing commercial floor space and the provision of a residential use
- Design, appearance, the countryside and the Kent Downs AONB
- Heritage
- Residential amenity.
- Standard of proposed residential accommodation.
- Transport and traffic, access and servicing, car and cycle parking
- Ecology and biodiversity, trees and landscape

### **Development of Brownfield land (Policy DM5)**

9.02 As summarised above, the previous decision was quashed because the Council had wrongly interpreted Policy DM5 of the Local Plan. The Court of Appeal found, in summary, that the decision was flawed because the Council in applying DM 5 had failed to take into consideration the entire site and had focused only on the existing building. The judgement therefore concluded that the following matters needed re-consideration:

- The respondent will need to determine whether or not the application site as a whole is of high environmental value
- The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit

9.03 Policy DM5 is in these terms:

Development on brownfield land

1. Proposals for development on previously developed land (brownfield land) in Maidstone urban area, rural service centres and larger villages that make effective and efficient use of land and which meet the following criteria will be permitted:

- i. The site is not of high environmental value; and
- ii. If the proposal is for residential development, the density of new housing proposals reflects the character and appearance of individual localities, and is consistent with policy DM12 unless there are justifiable planning reasons for a change in density.

2. Exceptionally, the residential redevelopment of brownfield sites in the countryside which are not residential gardens and which meet the above criteria will be permitted provided the redevelopment will also result in a significant environmental improvement and the site is, or can reasonably be made, accessible by sustainable modes to Maidstone urban area, a rural service centre or larger village.

9.04 The policy therefore allows for residential development of brownfield sites in the countryside which are not of high environmental value; the proposed housing is of a density which reflects the character and appearance of the individual locality and is consistent with DM12 unless there are justifiable planning reasons for a change in density; that the proposed redevelopment results in a significant environmental improvement and the site is or can reasonably be made accessible to Maidstone, a rural service centre or larger village.

9.05 Above all, however, the Court of Appeal decision means that when determining whether the site is of high environmental value and whether the redevelopment results in a significant environmental improvement, the site as a whole, within

the red line, including the walled garden to the rear of the existing studio building and the access road must be taken into consideration.

- 9.06 The Court of Appeal was explicit (paragraph 27) that assessing the environmental improvement must be made in this way:

That latter consideration is not tied to any particular geographic area. The local authority will have to consider the proposed redevelopment as a whole (and here the proposed redevelopment includes the changes to the existing studio building and the changes to the wall forming part of the walled garden). The significant environmental improvement may be to the whole of the application site, part of the application site (e.g. the repair of the historic wall) or to areas outside the application site, or a combination.

- 9.07 To assist in the interpretation of policy DM5 the supporting text in the Local Plan (paragraph 6.37) sets out six 'key considerations' to be used in assessing the redevelopment of brownfield sites in the countryside. These considerations are as follows:

- The level of harm to the character and appearance of an area.
- The impact of proposals on the landscape and environment.
- Any positive impacts on residential amenity.
- What sustainable travel modes are available or could reasonably be provided.
- What traffic the present or past use has generated; and
- The number of car movements that would be generated by the new use, and what distances, if there are no more sustainable alternatives.

- 9.08 Policy DM5 requires that for permission to be granted the site is not of high environmental value (1 (i)). The Local Plan does not define what is considered as high environmental value. The environmental value is a planning judgement. The pre-ambule to the policy at paragraph 6.35 states (authors emphasis in bold) :

*'in order to reduce the need for greenfield land, which is a finite resource and **often of higher quality in terms of landscape and biodiversity**'*

The Government's Guidance on Natural Environment does set out the following, but this is guidance and does not form part of the policy itself.

*'Some previously developed or 'brownfield' land is of high environmental value, providing habitats for protected or priority species and other environmental and amenity benefits'*

- 9.09 Considering the above the site is situated within the AONB, the site is within the setting of Well Cottage, Mulberry Cottage and Hollingbourne House all of which are Listed in their own right and other building/structures within the site or setting of the site are either listed in their own right or considered curtilage listed and part of the site is undeveloped. Ecological reports have not identified impact on protected species and the site is not within a Local Wildlife site, SSSI or Ancient Woodland, nor any other site designated for biodiversity importance. (The nearest designated sites lie to the south-west, south and north-east of the site over 150m away). The existing building on the site has low environmental value in itself with its existing use as a commercial building being a detractor from the site. In the absence of a clear definition of environmental value it is for the decision maker to draw a conclusion based on planning judgment..

- 9.10 There is no bar or scale to interpret what a site's environmental value should be and this could differ between sites, principally because no two sites are the same.

In this case factors such as the site's location within the AONB and the heritage assets, weigh in favour of a higher environmental value of the site. On the ground the site includes an access drive, whose environmental value derives from where it is leading to and contribution as part of the setting of the Listed Buildings rather than being of high value in itself. Parking areas and hardsurfacing, which have limited to no environmental value, the Listed Wall does have a higher environmental value, however it is currently in disrepair in places and as such this lowers the value. The walled garden is a positive feature rather than having a high environmental value, it is currently underutilised and does not have a 'purpose'. It is disjointed from the properties it serves, which also benefit from alternative amenity space immediately adjacent to them. Features within the walled garden such as planting are generally overgrown and the maintenance of the walled garden has been generally limited to mowing, and other elements such as the former sunken greenhouses need TLC. The existing studio building has some character, but has previously been considered not to have high environmental value, and there is no reason to depart from that earlier conclusion.. Ecological reports have not identified impact on protected species and the site is not within a Local Wildlife site, SSSI or Ancient Woodland, nor any other site designated for biodiversity importance. (the nearest designated sites lie to the south-west, south and north-east of the site over 150m away).

9.11 The site as a whole, is not considered to be of high environmental value. Notwithstanding this conclusion, the site does have some value and due consideration relating to any redevelopment would need to be considered carefully in line with other policy considerations discussed within this report.

9.12 Turning to (1(ii)) of DM5, this requires that the density of the development would reflect the character and appearance of the locality and be consistent with Policy DM12 of the Local Plan unless there are justifiable planning reasons for a change in density.

*Policy DM12 advises "All new housing will be developed at a density that is consistent with achieving good design and does not compromise the distinctive character of the area in which it is situated. Development proposals that fail to make efficient use of land for housing, having regard to the character and location of the area, will be refused permission".*

9.13 The submitted proposal, includes a reduction in the building footprint, and the use of the site for the provision of 2 family residential units of a good standard.

9.14 The provision of two residential units will make efficient use of this site whilst respecting the local area that includes both the substantially larger main Hollingbourne House and also the smaller cottages adjacent to the application site boundary. The density of the proposal is acceptable in this location, it reflects the character and appearance of the locality and is consistent with DM12.

9.15 (2) of DM5 **exceptionally**, allows for the residential redevelopment of brownfield sites **which are not residential gardens and which meet the above criteria** (relating to environmental value and density).

9.16 The application site is wholly in the countryside,. As described above, the site includes the existing walled gardens and although the policy seeks to exclude residential gardens the Court of Appeal have made clear that the whole of the site (including the walled garden) must be assessed against the policy. In this case no change of use would result to facilitate the new gardens. The existing garden would just serve the two new dwellings rather than those existing. As such given the nature of the proposal, it is considered that the site as a whole complies with the policy.

- 9.17 The redevelopment then needs to result in significant environmental improvement and the site is, or can be reasonably be made, accessible by sustainable modes to Maidstone urban area, a rural service centre or larger village.
- 9.18 Firstly considering the significant environmental improvement, this again is not defined and it is for the decision maker to determine as a planning judgment what those environmental improvements would be and attribute weight to them so as to determine whether they can be considered significant.
- 9.19 Again taking into account the pre-amble of DM5 paragraph 6.35 refers to landscape and biodiversity and paragraph 6.37 continues by identifying, the level of harm to the character and appearance of an area and the impact of proposals on the landscape and environment as key considerations.
- 9.20 As discussed elsewhere in this report the submitted proposal will improve the environmental value attributed to the character and appearance of the area (a key consideration set out in Paragraph 6.37 of DM5) in a number of ways. These include the reduction in the footprint of the building, the introduction of glazing and landscaping to the front of the building that will restore the rhythm across the long building frontage and improve the building setting.
- 9.21 The removal of the existing commercial use and the resulting activity, traffic and disturbance will have a positive impact on residential amenity for nearby occupiers and the wider area (by removing traffic from the surrounding rural country road). The walled garden is currently rarely used, the proposal will re-purpose this area, including works to repair the existing curtilage listed wall and the reinstatement of a former sunken coldframe/greenhouse. Thus resulting in environmental improvement of the site.
- 9.22 Biodiversity enhancements and the use of renewable energy sources also improve the environmental value of this part of the site, both which can be secured by condition. Landscaping improvements could also be secured through condition.
- 9.23 As such it is considered that significant environmental improvement to the site would result from residential development of the site (as a whole).
- 9.24 With regard to the accessibility of the site, it is located 2km from Eyhorne Street (Hollingbourne) which is a designated 'larger village' and a sustainable location in the Local Plan after the Maidstone Urban Area and the designated Rural Service Centres. Paragraph 4.21 of the Local Plan advises that "*The five larger villages ...have fewer services than rural service centres but can still provide for the day-to-day needs of local communities and the wider hinterland*". With this policy wording acknowledging the wider benefits outside the defined larger village settlement boundaries.
- 9.25 Paragraph 4.21 goes on to say "*All villages provide a nursery and primary school; a shop (including a post office); at least one place of worship, public house and community hall as well as open space provision. All have a range of local employment opportunities. The villages are connected by at least four bus journeys/weekday and Hollingbourne and Yalding are served by a train station*".
- 9.26 In applying policy DM5, key considerations are set out at paragraph 6.37 of the Local Plan. These include, what sustainable travel modes are available or could reasonably be provided; what traffic the present or past use has generated; and the number of car movements that would be generated by the new use, and what distances, if there are no more sustainable alternatives.
- 9.27 With the lack of any pedestrian pavement along Hollingbourne Hill and the nature of the road it is likely that walking into Hollingbourne will not be a safe or viable

option for future occupiers. It is however possible to make provision for other sustainable travel modes in the terms of cycling and electric vehicles as part of the development. The submitted plans (3094 – 012F) show the provision of 4 electric charging points linked to the 10 car parking spaces that are provided for existing occupiers, users of the holiday let accommodation and future occupiers.

- 9.28 Each dwelling will have EV charging (a Building Regulations requirement) and cycle storage which can be secured by condition. It is considered that fast EV charging (above 7KWh) for each dwelling are necessary to be secured by condition in this situation due to the relatively poor sustainability of the site ( i.e. in excess of normal Building regulations requirements). Planning conditions are recommended to request measures to encourage sustainable travel choices by future occupiers (could be vouchers for cycle purchase, travel vouchers etc) are submitted to and approved in writing by the Local Planning Authority and in place prior to occupation.
- 9.29 The supporting text to policy DM5 (at para 6.37) includes a reference to a comparison between existing and proposed uses in terms of traffic movements and the distance of the actual trips if there are no sustainable alternatives. As set out earlier in this report, whilst the existing building has permission for a general business use (Use Class B1) with the high volume of traffic and activity associated with a B1 use, this permission prevents an office use or B1 a) use (only allowing B1 b) or c)). The vehicle trips associated with the two proposed residential units would be generally less than the trips generated by a B1 use permitted by this condition.
- 9.30 The distance of vehicle or cycle trips from the application site would be relatively short with a public house (The Dirty Habit, although understood to be temporarily closed following a fire, there is a strong likelihood this will reopen) located 1km from the site, Hollingbourne railway station 2.7km away. The nearest bus stop is 1.44km from the site (Church Green outside All Saints Church Hollingbourne no 13 with 9 buses a day into Maidstone Town Centre, Shepway, Otham, Leeds, Langley and around Hollingbourne).
- 9.31 In conclusion, whilst the site is not accessible to Eyhorne Street (Hollingbourne) on foot it is possible to improve the accessibility by sustainable modes with a number of measures. These include ensuring that electric charging points are provided, by ensuring that cycle storage facilities are provided and by putting measures in place through a condition to encourage sustainable travel choices by future occupiers.
- 9.32 The residential use would generate fewer vehicle trips than a general B1 use on the site and less than the studio of this size operating efficiently. The private vehicle trips to local facilities and public transport would be relatively short journeys.
- 9.33 This brownfield site in the countryside is a site that is not of overall high environmental value, and the proposal would result in significant environmental improvement, the density reflects the character and appearance of the area and the site can reasonably be made accessible by sustainable modes to a larger village and has the benefit of removing a use that would have higher trip generation . In light of these considerations the proposal is found to be in accordance with policy DM5 of the adopted Local Plan.

#### **Loss of the existing business use and provision of residential floor space**

- 9.34 Policy SP 21 of the adopted Local Plan states that the council is committed to supporting and improving the economy of the borough and providing for the needs of businesses. The policy sets out these aims will be achieved through a

number of measures, with points i), ii), iii) and iv) of SP21 referring to the intensification of uses within the existing designated economic areas, referring to support for existing premises in the urban area and rural service centres and improving these areas and Maidstone Town Centre for business purposes.

- 9.35 A change of use of the application building from the existing low intensity use is likely to amount to a business expansion. Policy SP21 (viii) supports proposals for the expansion of existing economic development premises in the countryside, provided the scale and impact of the development is appropriate for a countryside location in accordance with policy DM37. Policy DM37 states that 'expansion' will be permitted in rural areas where new buildings are small in scale and where floor space would not result in unacceptable traffic levels. Where 'significant adverse impacts on the rural environment and amenity' would occur DM37 again directs expanding business to premises in the urban area or the rural service centres or an economic development area.
- 9.36 The application site is not in an economic development area and is not located in the urban area or a rural service centre. The quantity of business (Use Class B1) floor space that is present (approx. 470 square metres) was only acceptable in this location on the basis that the use of the building was restricted on residential amenity grounds.
- 9.37 These restrictions covered the building use (use class B1 b & c, MA/97/1765) for the reason that "*Unrestricted use of the building or land would cause demonstrable harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers*".
- 9.38 The hours of use were also restricted with a condition specifying that no activity in connection with the uses hereby permitted shall be carried out outside the hours of 18:00 and 08:00 and not at any time on Sundays, Bank or Public Holidays. The reason for this restriction was to safeguard the enjoyment of their properties by adjoining residential occupiers. It is also understood that a separate covenant in the title deeds has a similar restriction.
- 9.39 The applicant has provided the background to the general decline of photographic studios with advances in technology (including CGI) and the switch to digital making photography more accessible to the general public. This move to digital has reduced the need for large studio spaces similar to that provided on the application site.
- 9.40 In these circumstances, it is unlikely. given these generally accepted market conditions that an alternative photography business would be found to occupy the application building. Other alternative businesses seeking employment floor space of this size would be directed towards the urban area or the rural service centres or an economic development area by DM37 for the same reasons that the restrictive conditions were imposed on the photography business .
- 9.41 The restrictions placed on the commercial use of the application building as a result of the location and the likelihood of future complaints from adjacent neighbours would make the application building unattractive for alternative for business use.
- 9.42 An alternative more intense business use using the same floor space would represent a business expansion and with the resulting noise, activity and traffic this would be unacceptable in this location. The proposal is in line with policies SP21 (minus vii) that is assessed below) and DM37.

Nature of the submitted proposal, conversion or a new building SP21 and DM31.

- 9.43 The distinction between the 'conversion' of a building and the formation of a 'new building' or rebuild has been considered by the courts under *Hibbitt v Secretary of State for Communities and Local Government*.
- 9.44 The judgement accepted that complete demolition of a building and it being rebuilt could not be a conversion. It was found that works to form a residential unit from a pole barn that involved infilling of three open sides was also not a conversion. In other circumstances the judgment advised that the assessment as to whether development was a conversion, or a new build had to be based on the scale and the nature of the proposed works.

Figure 7 The studio space with blocked up openings visible (right hand side)



- 9.45 With the existing building (front and rear parts) covering 470 square metres, the proposal will involve the demolition of 291 square metres or 62% of the original building. The existing external walls of the building are a total of 94 metres long (including window and doors). The current proposal will demolish a length of 51 metres or 54% of the existing external walls (see walls marked in orange in figure 5).
- 9.46 With this extent of building works and the whole of the rear section of the building being demolished and rebuilt the officer view is that the proposal does not represent a conversion.

Policy SP21 Economic development & DM31 Conversion of rural buildings.

- 9.47 For the reasons outlined above, it is the officer view that the submitted proposal taken as a whole does not involve the conversion of the building and due to the extent of the proposed works the proposal will result in a new building.
- 9.48 Following on from this conclusion, it is the officer view that Local Plan policy SP21 (vii) and policy DM31 do not apply in the consideration of this current planning application. An assessment of the proposal against relevant policies including DM30 is provided later in this report
- 9.49 If members take a different view to officers and consider that the submitted proposal does represent a conversion, an assessment against policy SP21 (vii) and DM31 is provided below.
- 9.50 Policy SP21 (vii) advises that the commercial re-use of existing rural buildings in the countryside will be prioritised over the 'conversion' to residential use, in accordance with policy DM31. Policy DM31 considers the 'conversion' of rural

buildings to other uses including residential stating that "Outside of the settlement boundaries as defined on the policies map, proposals for the re-use and adaptation of existing rural buildings which meet a number of listed criteria will be permitted. These criteria are considered below.

DM31 1 i) The building is of a form, bulk, scale and design which takes account of and reinforces landscape character

- 9.51 Whilst not a heritage asset, the front of the application building constructed of red brick and constructed in the 1980's has a functional broadly symmetrical business appearance. The character of the front part of the building comes from the regular building openings across the front elevation that are separated by brick piers and the double height space with roof lights.
- 9.52 The rear of the building with the black timber cladding from 1992 is more domestic in scale with a lower roof ridge and eaves, roof lights and windows of residential domestic proportions (see figure 8).
- 9.53 Whilst it is accepted that historically there has been an agricultural building in this location, the two parts of the existing building are relatively modern. The front red brick building bears little resemblance to either modern or historical agricultural buildings. The rear building with the recent timber cladding, roof form and the domestic openings has the appearance of a converted agricultural barn (see figure 8).
- 9.54 Overall and taken as a whole the building is not of a form, bulk, scale and design which takes account of and reinforces landscape character and therefore its conversion would be contrary to policy DM31, 1i).

Figure 8 Rear elevation of the building viewed from the rear walled garden



DM31 1 ii). The building is of permanent, substantial and sound construction and is capable of conversion without major or complete reconstruction;

- 9.55 As set out earlier in this report, as the current proposal involves major reconstruction with the demolition of rebuilding of the rear part of the building the submitted proposal would not meet the requirement of policy DM31 1 ii). DM31 1 iii). Any alterations proposed as part of the conversion are in keeping with the landscape and building character in terms of materials used, design and form.

- 9.56 The proposed changes represent an improvement to the building frontage with the removal of the studio use allowing the existing building openings to be unblocked. This work will restore the symmetry and rhythm to the building frontage. In this context the proposal meets the requirement of DM31. 1 iii).

DM 31 1 iv) There is sufficient room in the curtilage of the building to park the vehicles of those who will live there without detriment to the visual amenity of the countryside.

- 9.57 The submitted proposal includes car parking for existing and future residential accommodation in the courtyard to the front of the building. This parking will not cause harm to the visual amenity of the countryside. The proposal meets this requirement of DM31 1 iv).

DM31 1 v). No fences, walls or other structures associated with the use of the building or the definition of its curtilage or any sub-division of it are erected which would harm landscape character.

- 9.58 A new hedge separates the rear amenity areas within the enclosed rear walled garden however due to the location this will not harm landscape character. The proposal meets the requirement of DM31 1 v).

DM31 3 i). Every reasonable attempt has been made to secure a suitable business re-use for the building.

- 9.59 The applicant has set out the nature of the current business on the application site and the context of the general decline in photography studios, similar to the space provided on the application site.

- 9.60 The proximity of the existing residential accommodation to both the front and rear of the application building, the shared courtyard and the nature of vehicle access that is shared with the residential uses in Hollingbourne House, Mulberry Cottage and Wells Cottage makes the application building unattractive for potential commercial occupiers.

- 9.61 The sensitivity of the application building location in relation to residential amenity is shown by the existing restrictions placed on the floor space by planning conditions. These conditions would again restrict the interest in the floor space by alternative business occupiers.

- 9.62 The application submission also includes the following information that draws on the applicant's experience of running the existing holiday let (Wells Cottage adjacent to the application site) and the applicant's agent who has 30 years experience of the local property market.

- 9.63 The comments relate firstly to an alternative use of the building in line with the existing permission (B1 b) '*Research and development of products or processes*' and c) '*Industrial processes*') and secondly consider the conversion of the application building to provide holiday let accommodation.

Alternative B1 b) and c) use

- There is insufficient space on the site for the car parking that would be required for an alternative business use (applicant currently lives and works on site)
- The works to increase car parking to make the site more attractive to potential tenants would harm the setting of the listed building
- The use of the site by HGVs would harm residential amenity
- There is a severe lack of mobile and high speed broadband in the area that is important for B class uses.

Holiday let accommodation

- The profitability of holiday let accommodation is low with falling income and rising costs.
- Holiday accommodation available locally already includes a Days Inn, Mecure, Hilton and Leeds estate properties and greater choice with the expense of Airbnb.
- With the occupancy of holiday lets restricted by the nature of the business (and a requirement of DM31 2 iii), it would be difficult to get finance to cover the initial outlay for the conversion works.
- The realistic income that would be achievable from a completed conversion of the application building to holiday lets would not cover the cost of the finance required.

9.64 Following the above assessment, the submitted proposal meets the requirement of DM31 3 i).

DM31 3 ii). Residential conversion is the only means of providing a suitable re-use for a listed building, an unlisted building of quality and traditional construction which is grouped with one or more listed buildings in such a way as to contribute towards the setting of the listed building(s), or other buildings which contribute to landscape character or which exemplify the historical development of the Kentish landscape.

9.65 Whilst the front part of the application building is of quality construction it is not listed and its impact on the setting of the nearby listed building is a negative one.

9.66 The contribution of the building to landscape character and the historical development of the Kentish landscape is small. The proposal does not meet the requirement of DM31 3ii).

DM31 3 iii). There is sufficient land around the building to provide a reasonable level of outdoor space for the occupants, and the outdoor space provided is in harmony with the character of its setting.

9.67 With the large walled garden to the rear of the site, there is sufficient space for the proposed family accommodation. The proposal includes the repair and restoration of the garden walls and the introduction of the residential use into the building will assist in ensuring the future maintenance of the garden walls. The proposal is in line with policy DM31 3 iii).

9.68 In conclusion, with the proximity of nearby residential occupiers, the granting of planning permission for the use of the application building for commercial purposes was an exception.

9.69 The commercial use of the building was only acceptable on the basis that the building would be occupied by limited uses including a photography studio as an alternative commercial use *would "...cause demonstrable harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers"*.

9.70 In addition where there are potential '*...significant adverse impacts on the rural environment and amenity*', including where there is business expansion, adopted local plan policies direct commercial uses to the urban area, the rural service centres or an economic development area.

9.71 As set out in the planning history , the council has previously accepted the loss of a business use in the application building and the conversion of the space to ancillary residential use. Planning permission was granted in April 2004 for the change of use of the building from the photography studio with the approved plans showing a swimming pool and garage in the retained building with the rear garden providing tennis courts.

- 9.72 In this context and for the reasons that have been given, the loss of the existing commercial use and the provision of residential use in this location are acceptable.
- 9.73 Officers have concluded (in agreement with an objection from a neighbour) that due to the extent of works proposed overall, the application does not involve the conversion of the building as a whole.
- 9.74 The description of development correctly refers to one part of the proposal as the conversion of the two areas of the building that are retained from business to residential use. In this context policies DM31 and SP21 (vii) are not relevant to this application. If members consider otherwise, and that these policies do apply, the above assessment has found that the proposal is in line with DM31 1iii), 1iv), 1v), 3i), and 3iii) but contrary to DM31 1i, 1ii) and 3 ii).

### **Design, appearance, the countryside and the Kent Downs AONB**

- 9.75 Policy SP 17 of the Local Plan provides advice on the countryside which is defined as all those parts of the plan area outside the designated settlement boundaries on the policies map. Development proposals in the countryside will not be permitted unless they accord with other policies in this plan and they will not result in harm to the character and appearance of the area.
- 9.76 Policy SP 17 states that great weight should be given to the conservation and enhancement of the Kent Downs Area of Outstanding Natural Beauty including the management plan. Account should be taken of the Maidstone Borough Landscape Character Guidelines Supplementary Planning Document.
- 9.77 Policy DM 30 (Design principles in the countryside) states that proposals which would create high quality design, satisfy the requirements of other policies in this plan and meet a number of stated criteria will be permitted. These criteria are considered below.

i. The type, siting, materials and design, mass and scale of development and the level of activity would maintain, or where possible, enhance local distinctiveness including landscape features.

- 9.78 The design and appearance of the submitted proposal has sought to respect and enhance the positive aspects in the appearance of the existing commercial building. The reconstructed rear part of the building and the alterations to the front of the building retain and enhance the character of the building (removal of the blocked up openings) whilst seeking to reduce the negative aspect of its bulk and dominance in this location by increasing activity at ground floor level.
- 9.79 The application involves the demolition and rebuilding of the rear part of the building. This rebuilt section of the building will be in the same general location but with a smaller footprint. The rebuilt rear of the building will reflect the scale and character of the original and retained parts of the building with proposed window and door openings in a similar domestic style to the existing building.
- 9.80 The proposal involves the formation of a small 0.9 metre deep inset balcony with access doors to the south east (farm) elevation at first floor. The existing building has a high level window in this location. This balcony is in keeping with the character and appearance of the building. Amenity is discussed separately.
- 9.81 The design of the proposal and the other building changes are discussed in the heritage section of this report. The alterations and the design of the building have

been considered by the Council's conservation officer and they have confirmed their support for the application.

ii. Impacts on the appearance and character of the landscape would be appropriately mitigated. Suitability and required mitigation will be assessed through the submission of Landscape and Visual Impact Assessments to support development proposals in appropriate circumstances.

9.82 The application site is set some distance from the public highway, to the rear of the large main Hollingbourne House and will be seen in most views in the context of the adjacent larger agricultural buildings in Hollingbourne Farm.

9.83 The proposed building, including the roof extensions, is acceptable in this location, and will not have a negative impact on the landscape and as a result no mitigation is required. In addition, the building will not be highly visible on this enclosed site with screening provided by neighbouring buildings.

iii. Proposals would not result in unacceptable traffic levels on nearby roads; unsympathetic change to the character of a rural lane which is of landscape, amenity, nature conservation, or historic or archaeological importance or the erosion of roadside verges.

9.84 The proposal will not result in unacceptable traffic levels on nearby roads, and is likely to reduce the potential for damage to roadside verges as the removal of the commercial use will reduce the need for HGV's to visit the application site and reduce trip generation.

iv. Where built development is proposed, there would be no existing building or structure suitable for conversion or re-use to provide the required facilities. Any new buildings should, where practicable, be located adjacent to existing buildings or be unobtrusively located and well screened by existing or proposed vegetation which reflect the landscape character of the area.

9.85 The submitted proposal retains part of the existing front building and includes a reduction in the footprint of the rebuilt rear building. The proposal complies with this requirement.

v. Where an extension or alteration to an existing building is proposed, it would be of a scale which relates sympathetically to the existing building and the rural area; respect local building styles and materials; have no significant adverse impact on the form, appearance or setting of the building, and would respect the architectural and historic integrity of any adjoining building or group of buildings of which it forms part.

9.86 The submitted proposal that includes a reduction in the footprint of the rebuilt rear building with similar weatherboarding facing material complies with this requirement.

9.87 The proposed slate roof covering, and aluminium windows are acceptable. The proposed roof extensions set below the two roof ridges and set in by over 5 metres from north west elevation and 4 metres from the south east elevation and behind the front and rear roof slopes are in keeping with the appearance of the building. The proposal complies with this requirement with the proposed roof extensions discussed in the heritage section of this report.

Account should be taken of the Kent Downs AONB Management Plan and the Maidstone Borough Landscape Character Guidelines SPD

9.88 The application site is found within the Kent Downs ANOB. Policy SD2 of the Kent

Downs AONB Management Plan states that the local character, qualities and distinctiveness of the Kent Downs AONB will be conserved and enhanced in the design, scale, setting and materials of new development.

- 9.89 Policy SD9 of the management plan states that the particular historic and locally distinctive character of rural settlements and buildings of the Kent Downs AONB will be maintained and strengthened. The use of locally-derived materials for restoration and conversion work will be encouraged. New developments will be expected to apply appropriate design guidance and to be complementary to local character in form, setting, scale, and choice of materials.
- 9.90 Policy HCH1 states that the protection, conservation and enhancement of the historic character and features of the Kent Downs landscape will be pursued and heritage-led economic activity encouraged. Policy HCH4 advises that opportunities to develop contemporary artistic, historic, cultural and scientific interpretation and celebration of the landscape and people of the Kent Downs will be pursued.
- 9.91 The proposal includes alterations to the front part of the building that are keeping with the building appearance and the rebuilding of the rear part of the building on a slightly smaller footprint. The building alterations will represent an improvement to the AONB in the limited views of the building on this enclosed site
- 9.92 The local character, qualities and distinctiveness of the Kent Downs AONB will be conserved and enhanced by the design, scale, setting and materials of the proposal in accordance with policy SD2 of the Management Plan. The submitted proposal is in accordance with the Kent Downs AONB Management Plan.
- 9.93 The application site is in the Wormshill, Frinsted and Otterden Downs and Dry Valleys character area in the Maidstone Borough Landscape Character Guidelines SPD. The area is described as a series of dry dip slope valleys and ridges to the north east of Maidstone, on the upper plateau of the North Downs within the Kent Downs Area of Outstanding Natural Beauty.
- 9.94 The key characteristics include
- gently undulating landform of dry dip slope valleys and ridges,
  - many large woodland tracts with oak and ash,
  - chalk grassland pasture in dip slope valleys, a
  - arable fields on ridges,
  - a strong network of species rich native hedgerows
  - Estate fencing and flint and red brick walls
  - Scattered villages and farmsteads with buildings featuring flint, chalk, red brick and chequered red and grey brick,
  - Narrow winding lanes which most often are lined by hedgerows (AONB).
- 9.95 The character guidelines conclude that actions should be taken to conserve and reinforce these characteristics. The submitted application that relates to an enclosed site will conserve these characteristics. The application is in accordance with the Kent Downs AONB Management Plan and the Maidstone Borough Landscape Character Guidelines SPD

### **Heritage**

- 9.96 In making decisions on all listed building consent applications, or any planning application for development that affects a listed building, or its setting, a local planning authority must have special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest. This obligation, found in section 66 of the Planning (Listed Buildings and

Conservation Areas) Act 1990 (1), applies to all decisions concerning listed buildings.

- 9.97 Historic England advice is that preserving the building or its setting in this context means not harming the interest in the building, as opposed to keeping it utterly unchanged. The Court of Appeal decision in the case of *Barnwell vs East Northamptonshire DC 2014* made it clear that in enacting section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 Parliament's intention was that 'decision makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings' when carrying out the balancing exercise'.

Figure 7: View looking west to Wells Cottage before and after improvement works



- 9.98 Policy SP18 of the Local Plan relates to the historic environment advising that the

characteristics, distinctiveness, diversity and quality of heritage assets will be protected and, where possible, enhanced to ensure their continued contribution to the quality of life in the borough. This aim will be achieved by the council encouraging and supporting measures that secure the sensitive restoration, reuse, enjoyment, conservation and/or enhancement of heritage assets, in particular designated assets identified as being at risk, to include securing the sensitive management and design of development which impacts on heritage assets and their settings.

- 9.99 Policy DM4 of the Local Plan relates to development affecting designated and non-designated heritage assets. Applicants will be expected to ensure that new development incorporates measures to conserve, and where possible enhance, the significance of the heritage asset and, where appropriate, its setting. A Heritage Assessment should respond to the value of the historic environment by assessing and taking full account of heritage assets, and their settings, which could reasonably be impacted by the proposals. The assessment should consider the significance of the assets and the scale of the impact of development on the identified significance.
- 9.100 Policy DM4 states that the council will apply the relevant tests and assessment factors specified in the National Planning Policy Framework when determining applications for development which would result in the loss of, or harm to, the significance of a heritage asset and/or its setting.
- 9.101 The National Planning Policy Framework (paragraph 197) states: *"In determining applications, local planning authorities should take account of: a) desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; b) positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and c) desirability of new development making positive contribution to local character and distinctiveness"*.
- 9.102 NPPF paragraph 199 advises *"When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance"*.
- Paragraph 200 adds *"Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification...."*
- 9.103 In assessing the level of harm that may occur and the planning balance NPPF paragraph 202 advises *"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use"*.
- 9.104 Further guidance on considering the significance of heritage is provided by Historic England (Managing Significance in Decision Taking in the Historic Environment (2015) and The Setting of Heritage Assets (2017)).
- 9.105 Policy DM4 of the Local Plan states that where development is proposed for a site which includes or has the potential to include heritage assets with archaeological interest, applicants must submit an appropriate desk-based assessment and, where necessary, a field evaluation. The application site is not in an area known to have archaeological interest. The buildings on the site are also relatively modern and their construction is likely to have destroyed anything of interest that

was present in the ground. It is for these reasons that no further archaeological information is required to support the current application.

- 9.106 The relevant heritage considerations as part of the current development include the need to consider the potential impact on:
- The setting and significance of Hollingbourne House (Grade II),
  - The setting and significance of the gazebo building (Grade II),
  - The setting and significance of the donkey wheel (Grade II),
  - The setting and significance of the brick garden walls (curtilage listed Grade II) and the sunken glasshouses (partially curtilage listed).
- 9.107 The NPPF defines 'setting' of a heritage asset as "*The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or ' contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral*".
- 9.108 The NPPF defines setting of a 'significance' of a heritage asset as "*The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting*"
- 9.109 The submitted planning application is supported by a heritage assessment prepared on behalf of the applicant.

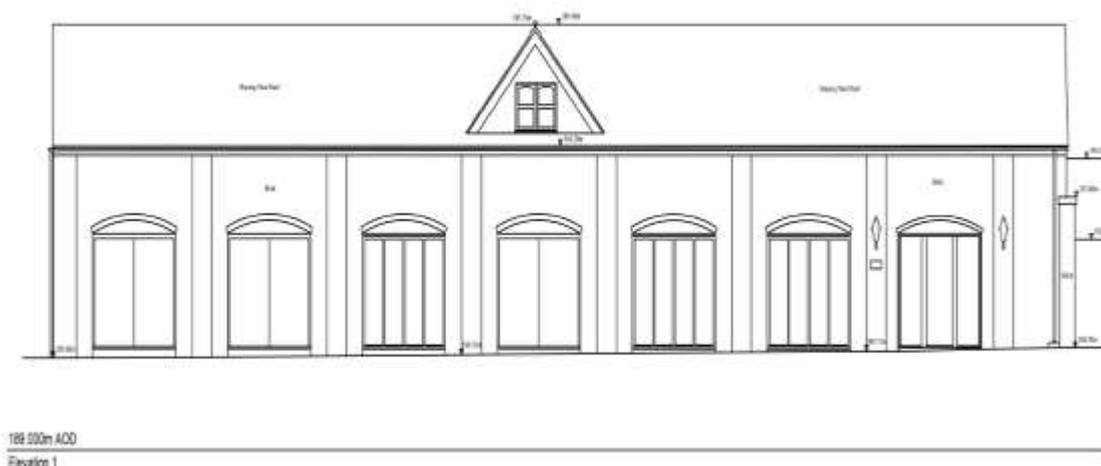
The setting and significance of Hollingbourne House (Grade II)

- 9.110 The description of Hollingbourne House provided on the national list of historically important buildings is as follows:
- "House. 1798 by Charles Beazley, with later C19 alterations. White-brick with slate roof. 2 storeys on brick plinth. Ashlar plat band. Projecting eaves with flat boxed soffits, continued across gables. Eaves and verges form pedimented gable ends; central section breaks forward in 2 stages, with slightly higher eaves. Hipped roof to inner break, pedimented gable to outer. Gable end stacks and 4 rear stacks. Small semi-circular window in central pediment gable. Regular 10-window front of recessed sashes: three 12-pane to each side range, two 8-pane to first break, flanking central break which has two 12-pane sashes. Eight 18-pane ground-floor sashes breaking plinth, and with gauged segmental heads. Ground floor of first break has 2 niches with recessed square panels above. All windows except those of first break formerly with Venetian shutters. Large round-arched window to ground floor of right gable end, with Gothic glazing and ogee-headed central panel. Panelled door with rectangular fanlight, in later C19 addition to rear, flanked by fluted Corinthian pilasters and with triangular pediment. Interior: only partly inspected. Geometrical staircase in central rear turret. Central ground-floor room with Soanian ceiling".*
- 9.111 The significance of Hollingbourne House comes mainly from its historic importance as a grand country house but it also has architectural and artistic significance in its neo-classical design. With reference to neighbour comments, other than the individual comments on the gazebo, donkey wheel and house the listing descriptions do not highlight any historical significance or interest in the wider Hollingbourne House grounds or the gardens.
- 9.112 The submitted heritage assessment carried out on behalf of the applicant notes that the original building "*...was complemented by a grand setting, which reflected the landscape ideals of the eighteenth century. Mature trees were used*

*to frame the approach to the building along the driveway from Hollingbourne Hill, while the coach house, stabling and ancillary buildings were located to the southeast, obscured from view by the principal house to guests". (RPS Heritage Assessment: paragraph 3.5).*

- 9.113 The buildings attached to the rear of Hollingbourne house would originally have been part of the main residence but providing secondary functional service areas to the principal house. With this secondary relationship, the buildings would have been purposefully hidden behind the main house.
- 9.114 In the 1920-1940's with links to the main house maintained, the submitted information sets out that, what is now the ground floor of Wells Cottage was in use as the kitchens and laundry with a housekeepers flat upstairs. What is now Mulberry House was the breakfast room and servants' quarters.
- 9.115 With the subsequent change in ownership and the renovation of the buildings to provide two separate cottages, the 'use' of the rear buildings is no longer associated with the main house. The two cottages are however still physically attached to the rear of Hollingbourne House, they remain part of the listed building and have a historical association.
- 9.116 The land to the rear of the main house (where the detached studio building is currently located) is shown on historic maps (mid 1800's) as previously providing a livestock or horse enclosure with open ground and wide access gates. In the late 1940's the house and estate were all sold together, and the site subsequently included a dairy farm with building on the studio site providing a milking parlour.
- 9.117 The courtyard at the rear of the main building was at that time operating as part of the farm with the courtyard buildings providing a farm office and domestic staff quarters.
- 9.118 In 1975 the garden cottage, the farm and Hollingbourne House were split up and sold separately. In the years between 1975 and 1998 the former front barn on the application site was demolished and replaced with a modern steel framed structure. The owners of an audio manufacturing /touring business lived in the main house and ran the business from offices in the location of Mulberry cottage with other parts of these buildings let out for residential use.

Figure 8: Comparison between the existing and the proposed front elevations





189 000m AOD  
PROPOSED FRONT ELEVATION

- 9.119 The studio buildings were in separate commercial use including uses such as wood working, car body spraying, and stage equipment hire. The courtyard area was concreted over to protect underground water tanks from HGV's using this space. The area directly adjacent to the rear of the listed building (in front of Mulberry and Wells Cottages) was a hardstanding parking area (see Figure 7).
- 9.120 In 1998 the buildings that now provide Mulberry and Wells Cottages, were purchased by the applicant together with the detached building at the rear and the garden beyond. Work was carried out to renovate the buildings into the two cottages with the reinstatement of Georgian features and to convert the rear building into a photography studio. The studio building is now in need of expensive work such as heating systems, roofing and windows and this work is not economical given the current low scale use of the building.
- 9.121 The significance of Hollingbourne House is as a large country house, with the buildings and land at the rear largely screened from view. The land occupied by the application site, the garden and the commercial building were originally in domestic residential use linked to, and an important part of the main Hollingbourne House building. Other than the physical attachment and some shared access arrangements there is little that remains of the original relationship between the front and rear buildings of Hollingbourne House.

Figure 9: Comparison between the existing and proposed side elevation



189 000m AOD  
Elevation 2



- 9.122 The buildings attached to the rear of Hollingbourne House have had a variety of uses, both residential and commercial. Following renovation by the applicant these buildings have reverted back to the original residential use providing two cottages, Mulberry Cottage and Wells Cottage (see Figure 7). These buildings are not referred to in the official listing description of the property which lists features of special architectural or historic interest in the building.
- 9.123 The large commercial application building to the rear of Hollingbourne House has a timber clad rear section constructed in the 1950's, with the red brick front building dating from the 1980's. This building is a modern addition to the site and is not a heritage asset. At the closest point, the blank narrow north east elevation of the listed building (Mulberry Cottage) is separated by a distance of 6 metres from the commercial building across a hardstanding area. The studio building and hardstanding area are in the setting of the listed building.
- 9.124 The commercial building is of a functional design and appearance. This building and the area of hardstanding in front currently provide shared access and car parking for the residential and commercial uses.
- 9.125 The change of use to residential would introduce a conforming use in this location that also reflects the historic use of this land as residential .
- 9.126 The council have previously accepted the loss of a business use in the application building (ref 14/0201). In the assessment of the application the case officer sets out that the proposed loss of the commercial floor space and introducing residential use  
*"...would benefit the setting of the listed buildings through the reunification of the site and its reversion to solely residential use, as well as through the removal of commercial vehicles/parking associated with the business use"*. The same conclusions are relevant and made in relation to the current planning application.
- 9.127 The physical changes to the front elevation of this commercial building involve the provision of glazing to two existing blocked openings. With the shape and location of the seven openings on the front elevation and the separating brick piers at even spacing, the glazing in the building frontage will restore the rhythm of the original design.
- 9.128 The glazing represents a positive change to the building by reducing the existing blank frontage on this prominent part of the building and providing interest and activity upon arrival at the courtyard. The other changes to the front elevation involve replacing the triangular front dormer with three roof lights and two additional roof lights. With roof lights on the existing application building and on nearby farm buildings the addition of roof lights is in keeping with the retained

building.

- 9.129 The appearance of this long building elevation will be further enhanced by the proposed trees and landscaping across the building frontage. This landscaping strip will provide some visual relief from the large area of hardstanding, improving the visual appearance of this area. The residential accommodation has been correctly designed with the living areas at ground floor level to the front of the building, which will provide activity and interest. The landscaping strip will provide some defensible space to these living areas.
- 9.130 On the side elevation of the commercial building there are three existing openings, two large openings at ground floor level (including double doors and a further blocked up original opening) and a high level bulls eye window.
- 9.131 The proposal involves replacing the bulls eye window with a larger window that will serve a bedroom. This first floor window respects the location and appearance of the retained ground floor opening but is of a smaller scale to respect the first floor location. This window is also the same scale and proportion as an existing high level window to the opposite south east (farm) building elevation. The proposal involves unblocking the original ground floor opening and fitting this with glazing.
- 9.132 The double doors will be replaced with a new narrower entrance door with the proposed glazing reflecting the new double height entrance lobby. Whilst it is accepted that glazing is only currently provided in the high bulls eye window, the total area of the proposed openings on the side elevation are similar to the area of the existing openings both covering an area of approximately 14 square metres.
- 9.133 The proposed works will use brickwork and weatherboarding to match the existing building facing materials. The existing cement sheet roof will be replaced with a slate covering. The existing timber doors and windows will be replaced with aluminium doors and windows.
- 9.134 The submitted plans show the relocation of the existing floor space in the roof space to the front part of the building. This space will provide new bedrooms for each of the two new units. The roof space is currently accessed by way of two roof hatches and the proposal involves two new staircases to improve accessibility. To achieve the necessary head height at the top of the stairs to meet building regulations, these staircases require roof extensions across the roof valley between the front and rear parts of the building.
- 9.135 As the extensions are lower than the two roof ridges, they will not be visible from the space at the front of the building that is shared with the listed building or to the rear of the building. In addition, the extensions are set back by over 5 metres from the north west (side) of the building of Unit 1 and at the shortest point 4 metres back from the south east (side) elevation of Unit 2. With the proposed roof eaves heights ranging between 3.2 and 3.8 metres and the set back from the edge of the roof, the existing building will provide some screening of these extensions especially in short to medium range views. Further screening of the extension on the south east side of the building will be provided by the large agricultural buildings on the adjacent site.
- 9.136 As highlighted by the submissions made by the neighbour, it is accepted that one of the extensions would be visible in longer range views from the grounds of Hollingbourne House further to the east (Donkey Garden). The extensions would be at a lower height than the roof ridges and a similar colour. With the scale of the host buildings, and with the extension seen in the context of two large

pitched roofs and the large agricultural buildings of Hollingbourne Farm the roof extension would not appear out of place in these views.

- 9.137 The courtyard between the listed building and the application building as well as access currently provides several areas of hardstanding that provides informal car parking. The submitted plans show the reorganisation of this parking to provide 10 formal spaces. These changes with the introduction of new planting and electric vehicle charging points will improve the appearance of this area.
- 9.138 An objection made on behalf of a neighbour has stated that the proposed works *"...are out of keeping with the prevailing character of the site and will detract from the agricultural character of the building and from the overall aesthetic of the estate"*. After assessing the orientation and access arrangements associated with the existing red brick building it is clear that the building has a closer relationship to the adjacent residential uses in these listed areas. The rear part of the building currently has the appearance of an agricultural barn converted to residential use and this appearance will be retained. Other than being adjacent, there is little relationship with the character and appearance of the agricultural buildings on Hollingbourne Farm or other agricultural buildings.
- 9.139 It is concluded that the current application building has a negative impact on the setting of the grade II listed building Hollingbourne House and the impact of the proposal on the significance of this heritage asset will be less than substantial.

The setting and significance of the brick garden walls (curtilage listed Grade II) and the sunken glasshouses (1 of 2 curtilage listed)

- 9.140 The submitted heritage assessment considers the significance of the curtilage listed walls and reports the following:
- On the title map of 1840 the walled gardens are in an earlier layout with the area behind the stables (studio) building yet to be fully enclosed by new walls.
  - The 1867 map shows that the gardens were still being developed and the new stable block and yard had yet to be added. The layout of the cottage garden paths was very different from today with no central path and the path close to the stable yard forward of its current position. The entrance to the garden would appear to be sited more in the corner too.
- Much of the garden development of the glasshouses and new walls are believed to date from about 1875 -88 and these appear to be present on the photograph of 1895.
- On the next photograph of 1940 glasshouses and vegetable plots show that the walled garden is largely a functional food production area. There is an access path outside the garden which helps connect the garden to the rear of the house
  - In the 1950's the owner has built new wide concrete tracks to access the gardens with tractor mowers from the main house driveway. The garden is renovated by the head gardener who builds up the right hand sunken bed to match the left hand one and replaces the cold frame with a raised bed.
  - In the rear garden the long raised bed can be seen in the 1960s with a much reduced vegetable crop. The importance of the garden relative to the setting of Hollingbourne House has been greatly impacted and diminished by the development and encroachment of the farm, its activities and its access road through the courtyard.
  - 1975 the sale of the farm and garden cottage resulted in the closing of 4 access points to the cottage garden increasing its isolation and amenity within the overall setting of the estate. The main Hollingbourne House was listed in 1984 without any mention of the walls.
  - With the location of the cottage garden to the rear of the studio building the applicant reports that current access to this residential garden is poor.
  - It is reported that at the time of the applicant's purchase the neighbours boundary wall had collapsed and this has since been rebuilt, the wall behind the

barn has long been collapsing and is currently propped up on timbers (see figure 10).

- 9.141 The heritage assessment after considering the significance of the walls advises *"...the surrounding landscape and arrangement of the walled gardens have been periodically and substantially altered since their construction. They now demonstrate numerous phases of redevelopment, with the garden walls to the west appearing to date from the construction of the previous Hollingbourne House in the seventeenth century. However, many of the walls appear to date from the late eighteenth century, with further nineteenth and twentieth century construction and intervention"* (Paragraph 3.6).
- 9.142 The wall alterations include works granted consent in August 1999 (99/1078) which involved a partial reduction in the height of garden wall to 1.2 metres and formation of new gateway.
- 9.143 Whilst the main Hollingbourne House was listed in 1984 without any mention of the walls, the council considers the walls within the garden area to the rear of the studio building to be statutorily listed due to their location in the curtilage of the grade II listed Hollingbourne House. Although in large parts not in their original form the walls have historical value in their general alignment in marking the boundaries of the walled garden and the retained bricks that the walls are constructed with.
- 9.144 The current application includes works and repairs to all of the garden walls surrounding the rear section of the application site. The applicant has advised that bricks salvaged from the proposed alterations and those retained from the 1999 alterations will be used to replace the blockwork in sealed openings or to carry out general repairs that are needed. The work will be carried out in accordance with the methodology provided at figure 12 which is submitted by the applicant.
- 9.145 The wall that runs mainly parallel to the rear of the studio building demarcated an animal yard from the walled garden and is in three different parts. The middle longer section was built at later date than the other two sections. A number of different parts of the wall have previously been rebuilt and a section lowered in accordance with a permission granted in 1999.
- 9.146 The proposed works to the wall are shown on the drawings below. A section of this wall is currently unstable and propped up as it is close to collapse (see Figure 10), this wall would be dismantled and rebuilt. The majority of the existing wall is 1.8 metres high but with an 8 metre long section (including a 2 metre wide opening) that drops down to a height of 1.2 metres that was previously granted consent. Listed building consent for partial reduction in height of garden wall and formation of new gateway, granted on the 16 August 1999 under reference 99/1078
- 9.147 The current lowered section of wall would be extended by 14 metres with two new openings formed of each 2.5 metres wide. With the many previous alterations, the value of the wall is in its alignment, the bricks used in its construction and the manner in which the original walls were constructed. With these elements protected as part of the current proposal, that will also secure the walls sustainable future, the harm to the wall is less than substantial.
- 9.148 The submitted proposals include the following works to the other garden walls:
- North west wall – likely to have been laid between 1866 and 1888 in imperial bricks with lime mortar. The wall will be repointed as joints have lost their mortar. An angled modern wall is to be removed.

- South west wall – although line of wall appears to match the original layout, the wall appears to have been rebuilt at least twice including in recent times. Laid in imperial bricks with sand and cement the piers to the opening are a modern addition in the 1950s. The propose works are to repair the wall, clear back the ivy, replace the gate with a Yew hedge infill and add caps to the brick piers.
- East garden wall – Wall dating from the early 1800's but has since had a range of different alterations including formation of new openings and a section of wall raised in the 1950's. A blocked up opening in the wall will be re blocked in more suitable bricks with a false door, ivy infestation removed and repointed. A leaning section may require buttressing.
- Northern glasshouse wall – believed to date from between 1800 – 1840 with Georgian bricks in Flemish garden bond with darker bricks in a 'diaper' pattern. The line of the wall appears in 1790. Appears that the upper section of this wall may be a later addition. The works include repointing with lime mortar and replacing blown bricks, loose sections of render from the former glasshouse removed, end of wall tied in. 1950's electrical shed repaired.

Figure 10 South wall curtilage listed showing existing propping (prior to its partial removal)



- 9.149 At the northern (rear) end of the walled garden are two sunken glasshouses. The submitted information reports that the sunken glasshouses are both currently in a highly derelict state.
- 9.150 The left hand glasshouse dates from around 1879 – 1880 and is built of imperial bricks. This earlier glasshouse is curtilage listed due to the location in the original curtilage of the main Hollingbourne House and as it existed on the 1st July 1948. The submitted proposal includes the renovation of this glasshouse include rebuilding above ground in reclaimed red brick and new glazing. The 1950s heating equipment would be removed with the interior rendered. The door frame and door would be reinstated in a design similar to the original four panel door.
- 9.151 It is thought that the right hand glasshouse was originally a sunken frame which was built up in the 1950s using buff bricks and then rendered. This 1950's glasshouse is not curtilage listed and is not a heritage asset. The applicant has

stated that the repair of the later more recent glasshouse is not economically viable so the structure will be recorded and then reduced to ground level and filled with soil. A feature outline in brick at ground level would be retained to mark its position.

9.152 The proposed works to the application building, including the reduction in the building footprint as part of the rebuilding of the rear part of the building. These changes and the proposed residential use of the building is make a positive contribution to the setting of the wall and glasshouse.

9.153 It is concluded that the current application building has a neutral impact on the setting of the curtilage listed walls and the glasshouses and the impact of the proposal on the significance of these heritage assets will be less than substantial.

Figure 11 Works to the wall at the rear of the studio building



The setting and significance of the gazebo building (Grade II),

9.154 The Gazebo is located just to the north of the Hollingbourne Hill entrance to Hollingbourne House. The building is on the national list of historically important buildings (grade II). The Historic England listing is as follows:

*"Gazebo. Late C18. Red brick in Flemish bond. Plain tile roof. Rectangular plan. Chamfered brick plinth, on flint base with stone quoins. Pyramidal roof. Rectangular window to south with Gothic panes. Blocked windows to west and north. Interior not inspected".*

9.155 The submitted heritage statement sets out *"The Gazebo was constructed as an outbuilding to the principal house and effectively serves as a gate lodge to Hollingbourne House...and marks the principal entrance into the estate. This setting is an integral component of the listed building's significance...". The connection with the principal house is also an important component of its significance with the structure designed to mark the approach to the listed building. Although both structures form part of the estate, they were historically distinct, with the Gazebo constructed to mark the entrance to the estate and be visually conspicuous. In contrast the original stabling within the Site was located to the rear of the principal building, away from public views."* (paragraphs 3.31 and 3.32).

9.156 With the lack of any meaningful functional relationship between the Gazebo and the application site and the separation distance of 95 metres, the application proposal will not impact on the setting or significance of the Gazebo with less than substantial harm.

The setting and significance of the donkey wheel (Grade II)

- 9.157 The donkey wheel is on the national list of historically important buildings (grade II). The Historic England listing is as follows:

*Donkey Wheel. C19. Wooden. Horizontal, spoked, wooden drum on vertical wooden shaft. Brake shaft towards base. Attached by wooden frame to well head about 3 metres to south.*

- 9.158 The submitted heritage statement sets out 3.33 "*The Donkey Wheel was constructed in the nineteenth century within the large walled garden, which historically housed the original Hollingbourne House. Although it now appears to be dismantled, its original significance was drawn from its historic interest as a piece of nineteenth-century engineering designed to help draw water from the well below. It also represents the continued use of animal power in the estate at this time. Its setting is intrinsically linked to the nearby well. The historic use of the structure is no longer apparent due to previous damage and the surrounding vegetation. It is possible that the Site shares some historic association with the Wheel, through its probable historic use as stabling. However, this function has long since ceased, with the structure within the Site having subsequently been reconstructed. As such, any such potential historic link is no longer legible and the Wheel base now serves an ornamental function within the garden. Its setting is therefore now largely linked to this ornamental role within a domestic setting, while its setting is also visually constrained by the surrounding wall. The Site therefore makes no contribution to the significance of the Donkey Wheel*".

- 9.159 Listed building consent was granted on the 15 June 2000 for the dismantling of a timber built donkey wheel. After considering the relationship the application site makes no contribution to the significance of the Donkey Wheel and the application will not harm its setting with less than substantial harm.

- 9.160 In overall heritage conclusions, with the above assessment it is concluded that the current application building and the application site make no contribution to the significance of the grade II listed Donkey Wheel and the Gazebo and they will not harm their setting with less than substantial harm.

- 9.161 The current application building has a negative impact on the setting of the grade II listed building Hollingbourne House and the impact of the proposal on the significance of this heritage asset will be less than substantial.

- 9.162 Policy SP18 of the Local Plan states that heritage assets will be protected to ensure their continued contribution to the quality of life. This aim will be achieved by the council encouraging and supporting measures that secure the sensitive restoration, reuse, enjoyment, conservation and/or enhancement of heritage assets, in particular designated assets identified as being at risk. NPPF (paragraph 197) states: "*In determining applications, local planning authorities should take account of... the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation...*".

- 9.163 The curtilage listed garden boundary walls have been subject of a wide range of earlier work, including repairs alterations, demolition work and rebuilding. This work has included a new opening in relation to providing a fire escape from the commercial building. The section of the wall to be rebuilt is currently unstable, propped up and in danger of collapse. In these circumstances and with reference to policy SP18 this curtilage listed wall is identified as being at risk.

- 9.164 With the many previous alterations, the value of the walls is in their alignment that marks the boundaries of the walled garden. With further value from the bricks themselves and the manner in which the 'original' walls were constructed.
- 9.165 The current application will retain the walls on their current alignment. The reconstructed walls will be built, and repairs made with bricks that are retained from the earlier work to lower the adjacent wall and the proposed demolition. The walls will be built using a garden wall bond with the spacing of headers and stretchers to match the original wall, with a mortar mix to match the existing wall. The works will be carried out using the methodology set out at figure 12. This restoration work can be controlled through a planning condition.
- 9.166 The garden and boundary walls are now in different ownership to the listed building and separated from the listed building by the large commercial application building. The use of the garden by existing occupiers is currently restricted by this lack of direct access and as the garden walls are currently unsafe.

Figure 12: Methodology for repair and rebuilding the garden walls



- 9.167 The use of the proposed building for residential use will bring the gardens back into full beneficial use. The work to restore and rebuild the walls and the new openings will ensure there is direct access from the two proposed family homes to the rear garden space and that the functional role of the walls as means of enclosure is retained.
- 9.168 With the brick wall less than 500mm away from the rear elevation of the application building the lowered section of wall will enable residential outlook to be provided to the rear windows. The lowered wall will also improve the relationship between the building and the garden space.
- 9.169 The work involving the removal and recording of the later glasshouse from the 1950s and the restoration of the later glasshouse from the 1880s as set out earlier in this report will enhance the existing historical interest in this garden area and will preserve its significance.

- 9.170 The work to the walls and the glasshouses is considered in line with SP18 with the restoration of the walls and glasshouse conserving this heritage asset and allowing the garden space to be enjoyed and used to its full potential. The proposal is in line with NPPF paragraph 197 in terms of putting the site to viable use that is consistent with its conservation. The works to repair and rebuild the curtilage listed structures and to secure their preservation is in line with paragraph 199 of the NPPF that states that great weight should be given to an asset's conservation.
- 9.171 It is concluded that the current application building has a neutral impact on the setting of the curtilage listed walls and the glasshouses and the impact of the proposal on the significance of these heritage assets will be less than substantial.
- 9.172 The harm arising from the proposal relates to the new openings in the curtilage listed wall and the roof extensions to the application building. NPPF paragraph 202 advises "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use".
- 9.173 The proposed roof extensions that are set behind and below the front and rear roof slopes and a minimum of 4 metres from the side elevations will be hidden in the majority of views of the application building. Where the roof extensions are visible, they will be seen in the context of the main building roof. The extensions are provided to provide headroom for the staircases with the staircases provision reasonable in terms of making optimum viable use of the site (NPPF, 202).
- 9.174 The curtilage listed wall at the rear of the application building is unstable and in danger of collapse. Whilst it is accepted that the proposed additional openings will result in harm to the heritage value of the wall, the benefits of providing the improved access to the rear garden and the future use of the garden that will result, outweigh this harm.
- 9.175 In addition to the individual benefits from the roof extensions and the changes to the wall the proposal will provide wider public benefits that outweigh the less than substantial harm that has been identified. As set out in this report these include the improvements to the building frontage, improvements to the listed building setting, reduction in the building footprint, new landscaping, restoration of the other walls and the glasshouse, removal of the existing commercial use and securing an optimum viable use providing 2 good quality family dwellings.
- 9.176 After having special regard to the desirability of preserving the relevant heritage assets, their setting and any features of special architectural or historic interest the proposal is in line with policy SP18 and DM4 of the adopted Local Plan and advice in the NPPF.

### **Neighbour amenity**

- 9.177 Local Plan policy DM 1 states that proposals which would create high quality design will be permitted where they respect the amenities of occupiers of neighbouring properties. Development should not result in, excessive noise, vibration, odour, air pollution, activity or vehicular movements, overlooking or visual intrusion. Built form should not result in an unacceptable loss of privacy or light enjoyed by the occupiers of nearby properties.

### Noise and disturbance

- 9.178 The operation of the existing commercial use is restricted by planning conditions

due to the proximity of adjacent residential accommodation. This accommodation is The Garden Cottage to the north, to the south Wells Cottage with Mulberry Cottage with Hollingbourne House beyond.

- 9.179 The current proposal will remove the existing commercial use and introduce a residential use that conforms with the use of neighbouring buildings. The activity, noise and disturbance from a residential use including from vehicle movements is likely to be lower than a commercial use in the building.

External lighting

- 9.180 Policy DM 8 states that external lighting will be permitted where it can be demonstrated that the lighting is the minimum amount necessary and that the design and specification of the lighting would minimise glare and light spillage. The lighting scheme should not be visually detrimental to its immediate or wider setting, particularly intrinsically dark landscapes.

- 9.181 The application site is in a group of other buildings including several other residential uses. Whilst visually any new external lighting will be seen in the context of these other buildings and uses, in order to avoid amenity issues a planning is recommended that seeks the submission of details of any lighting to be installed on the site.

Privacy, overlooking, outlook, daylight and sunlight.

- 9.182 The potential impact of the development on the amenities of the adjacent residential occupiers is considered below. These properties are Wells Cottage, Mulberry Cottage, the Garden Cottage and Hollingbourne House.

• *Wells Cottage*

- 9.183 Wells Cottage is in a two storey building that is parallel to and facing the front of the application building.

- 9.184 In terms of the front elevation, the submitted proposal involves new glazing in the front ground floor openings that are currently blocked (serving kitchen/ family room areas) and 5 roof lights on the front roof slope.

- 9.185 The middle three rooflights serve a double height covered accessway, the other two roof lights serve first floor bedrooms. With a separation distance of 22 metres (normal standard of 20 metres between directly opposing upper floor windows) across the shared public courtyard and access the proposed development is acceptable in relation to overlooking and privacy. The separation distance of 17 metres between the rooflights and the amenity space to the side of Mulberry Cottage is acceptable.

- 9.186 The introduction of glazing to the front elevation of the application building will remove the current blank appearance which will improve the appearance of the building and in turn improve the outlook for adjacent occupiers. With no increase in the height of the building that will be visible from the front elevation the proposal is acceptable in relation to daylight and sunlight provision.

• *Mulberry Cottage*

- 9.187 Mulberry Cottage is orientated at an angle of 90 degrees from the frontage of the application property. Whilst a distance of 6 metres separates the side elevation from the application property there are no windows in the side wall of this neighbouring property

- 9.188 With the screening provided by the existing Mulberry Cottage building the proposal is acceptable in relation to privacy and overlooking issues in relation to the rear amenity space of this property. With no increase in the height of the building that will be visible from the front elevation the proposal is acceptable in relation to outlook, daylight and sunlight provision.
- 9.189 The existing application building has a high level window to the south east (farm) elevation. The proposal involves the formation of a small 0.9 metre deep inset balcony in this location that is accessed through the new bedroom. This elevation of the application building is level with the rear elevation of Mulberry Cottage and the balcony that has one open side will be 8 metres from the corner of Mulberry Cottage. With this relationship, the partially enclosed nature of the balcony and the existing window in this location the proposal is acceptable in relation to residential amenity
- *The Garden Cottage*
- 9.190 In terms of the rear elevation, the submitted proposal involves new additional ground floor glazing and 5 roof lights on the rear roof slope. The rooflights serve a double height covered accessway, the windows at ground floor are to bedrooms, lounge and a study.
- 9.191 At the closest point, the rear corner of the application building will be separated from the corner of the Garden Cottage by a distance of 30 metres. With this separation distance this relationship is acceptable in relation to privacy, overlooking daylight and sun light. With the building orientation the potential impact on the amenity space of the Garden Cottage will be minimal. With no increase in the height of the building visible from the rear elevation the proposal is acceptable in relation to outlook, daylight and sunlight provision.
- *Hollingbourne House.*
- 9.192 The main Hollingbourne House is located to the rear of, and attached to, the building that is occupied by Wells Cottage and Mulberry Cottage, and separated from the front elevation of the application property by a distance of 28 metres. With the separation distance and the intervening buildings, the changes to the front elevation of the application building are acceptable in terms of this relationship and privacy, overlooking outlook, daylight and sunlight.
- 9.193 The large grounds of Hollingbourne House extend from the south to the north west side of the application site. The side elevation of the existing building has a bull's eye window at first floor level (to a double height space) and two large openings at ground level. The proposal includes the formation of a new entrance with glazing to an internal double height space to the rear section of this side elevation. To the front section the bulls' eye is replaced with a larger window and the window opening at ground floor level will be unblocked.
- 9.194 The larger opening at first floor level is to a bedroom. A distance of 11 metres separates this first floor window from the site boundary with the boundary marked by the side wall of a single storey detached small smokery building is present to the side, used as storage for bikes building. In the grounds of Hollingbourne House beyond this utility building is a further single storey detached garage with its own driveway.
- 9.195 To the north of these detached outbuildings is a wall marking a formal garden area, with this garden area also the site of the dismantled donkey wheel. An objection has been received from the neighbouring occupier in relation to the

overlooking of this garden from the proposed new glazing. The boundary of this garden is 10 metres from the new first floor window.

- 9.196 Whilst it is accepted that there may be overlooking from this window, with views partially screened by the existing detached building, trees and walls this overlooking is not sufficient to raise an objection. A separation distance of 10 metres between an upstairs window and a directly facing neighbours garden is normally considered acceptable (20 metres between directly facing windows). It is also highlighted that this overlooking impacts a very small area in the larger grounds of Hollingbourne House
- 9.197 In conclusion the submitted proposal is acceptable in relation to maintaining neighbour amenity and is in accordance with policy DM1.

**Standard of proposed residential accommodation.**

- 9.198 Local Plan policy DM1 and paragraph 130 of the NPPF states that proposals will be permitted where they create high quality design and provide adequate residential amenities for future occupiers of the development by ensuring that development is not exposed to, excessive noise, vibration, odour, air pollution, activity or vehicular movements, overlooking or visual intrusion.
- 9.199 The proposed accommodation provides a good standard of residential accommodation with adequate internal space for the intended function of individual rooms and spaces. The submitted plans show that the accommodation is provided with sufficient daylight, sunlight and outlook for future occupiers. The accommodation is provided with an external amenity area to the rear of the site.
- 9.200 In conclusion the submitted proposal is acceptable in relation to the standard of accommodation and is in accordance with Local Plan policy DM1 and paragraph 130 of the NPPF.

**Access and servicing transport and traffic**

- 9.201 Local Plan policy DM 1 states that proposals which create high quality design will be permitted, where they safely accommodate the vehicular and pedestrian movement generated by the proposal on the local highway network and through the site access.
- 9.202 The existing vehicle access to the site is from Hollingbourne Hill and this access is retained as part of the submitted proposal. The existing access is suitable including in relation to its width, driver sight lines and the future servicing of the accommodation. The bin storage is shown on the plan and will be located close to, and accessible for collection. In terms of refuse vehicles, through the commercial use of the site the access has been shown to be suitable for HGV's.
- 9.203 Local Plan DM21 seeks to ensure that the vehicle trips generated by a use can be adequately accommodated on the road network. The vehicle trips associated with the efficient operation of the commercial use on the application site would be more than those associated with the proposed residential accommodation.
- 9.204 It is acknowledged that the site is not in the most sustainable location. A planning condition is recommended requesting the submission of measures to promote sustainable travel choices by future occupiers of the accommodation. This could include information given to new occupiers, including public transport timetables.
- 9.205 In conclusion the submitted proposal is acceptable in relation to access and servicing transport and traffic and is in accordance with Local Plan policies DM1 and DM21.

### Car parking

- 9.206 Local Plan policy DM 23 states that the car parking for residential development will take into account the type, size and mix of dwellings and the need for visitor parking. Parking shall secure an efficient and attractive layout of development whilst ensuring the appropriate provision of integrated vehicle parking.

Figure 13 comparison of parking standards against the proposed car parking

Dwelling	Bedrooms	standard	Standard visitor	Standard required total	Provided
Unit 1	4	2	0.2	2.2	3
Unit 2	4	2	0.2	2.2	3
Wells Cottage	5	2	0.2	2.2	2.2*
Mulberry cottage	2	1.5	0.2	1.7	1.7*

\* Total parking required for the cottages is 3.9 spaces and 4 spaces are proposed

- 9.207 Car parking standards are set out at Local Plan Appendix B. The local plan advises that new developments should ensure that proposals incorporate electric vehicle charging infrastructure.
- 9.208 Local Plan Appendix B advises that the car parking requirements applying to the application site are set as 'minimum' standards. The guidance states that for units with four or more bedrooms 2 independently accessible spaces are required per unit with 0.2 spaces per unit for visitor spaces. In relation to two bedroom units 1.5 spaces are required with 0.2 spaces per dwelling for visitor parking.
- 9.209 As set out in the table above the proposed parking meets the standards that are required in adopted policy. The proposal also includes 4 electric vehicle charging points. The applicant has advised that "*The possibility of additional 'tandem' parking exists to ensure that the concerns of neighbours in respect of the parking are fully met*".
- 9.210 In conclusion the submitted proposal is acceptable in relation to car parking and is in accordance with Local Plan policy DM 23 and Appendix B.

### Cycle parking

- 9.211 Local Plan policy DM 23 states that cycle parking facilities on new developments will be of an appropriate design and sited in a convenient, safe, secure and sheltered location. The layout of the proposed building includes a central open area that could provide secure cycle parking.
- 9.212 Cycle standards are set out in Supplementary Planning Guidance SPG4 'Kent Vehicle Parking Standards' of the Kent and Medway Structure Plan (July 2006). These standards require 2 cycle spaces per unit for two or three bedroom dwellings and the proposal would therefore need to provide 6 spaces. A planning condition is recommended seeking details of cycle parking and for this storage to be in place prior to first occupation.
- 9.213 In conclusion with the recommended condition the submitted proposal is acceptable in relation to cycle parking and is in accordance with Local Plan policy DM 23.

### Trees and landscape

- 9.214 Local Plan policy DM1 states that proposals should create high quality design and respect the topography and respond to the location of the site and sensitively incorporate natural features such as trees, hedges and ponds worthy of retention within the site. Policy DM3 states: "To enable Maidstone borough to retain a high quality of living and to be able to respond to the effects of climate change, developers will ensure that new development protects and enhances the natural environment by incorporating measures where appropriate to protect positive landscape character, trees with significant amenity value, and important hedgerows".
- 9.215 An area of Ancient Woodland (Marshall's Shaw) is located 185 metres to the north east, a local wildlife site is located 170 metres to the south west of the site. The roadside verges between the access to the application site to a point just to the north east of the Hollingbourne Hill and Pilgrims Way junction are protected. The application site is located in the Kent Downs Area of Outstanding Natural Beauty. There are group tree preservation orders on the opposite side of the site access in Hollingbourne Hill and the isolated tree in the open field to the north east (30 metres from the application site) is also covered by a tree preservation order
- 9.216 The current application involves the demolition and rebuilding of the existing building and does not involve works that would harm existing trees. Whilst it is highlighted that the provision of some of the new parking involves the loss of a raised bed, this harm is mitigated by new planting along the frontage of the building and the general improvements. The applicant has confirmed that no works to trees are proposed.
- 9.217 In conclusion the submitted proposal is acceptable in relation to trees and landscape and is in accordance with Local Plan policy DM1 and DM3.

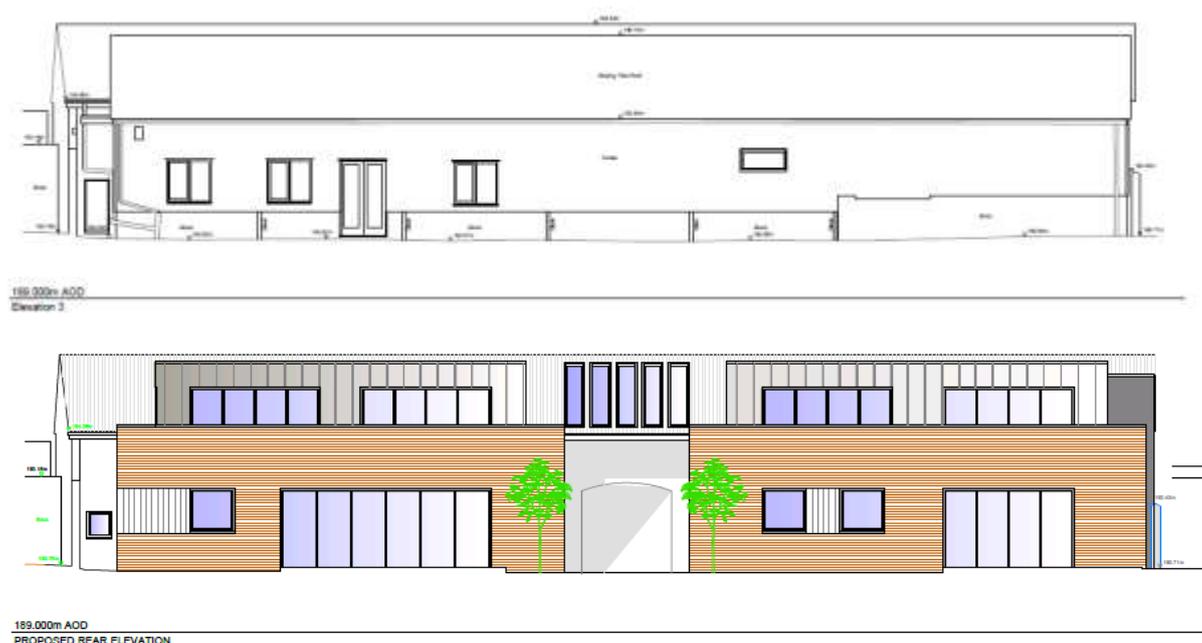
### **Ecology and biodiversity**

- 9.218 Local Plan policy DM3 states: "*To enable Maidstone borough to retain a high quality of living and to be able to respond to the effects of climate change, developers will ensure that new development protects and enhances the natural environment ...where appropriate development proposals will be expected to appraise the value of the borough's natural environment through the provision of...an ecological evaluation of development sites...to take full account of the biodiversity present, including the potential for the retention and provision of native plant species*".
- 9.219 The potential of the application site to accommodate protected species has been assessed as part of an ecological survey. This ecological survey was first carried out in 2016 and updated in December 2020.
- 9.220 The surveys found no bats or signs of bats during the internal/external inspection of the buildings. The studio buildings were not judged as offering roosting potential for bats. The brick walls around the site were searched for bats and signs of bats but no signs found with four cavities deemed suitable for single roosting bats. The ecologist recommends that the works to the walls should follow a precautionary approach by checking each wall cavity with an endoscope directly before works and that these works should only be undertaken outside the bat hibernation season (November to March).
- 9.221 The smokery building is tiled with felt below and the space between tiles and felt could be used by crevice dwelling bats however this building is being retained as part of the development. Four apple trees present towards the back of the garden offer high suitability for roosting bats as they had cavities with these trees also retained (additional two trees from the first survey). These trees are not impacted by the works. The garden may be used by foraging and commuting bats

although it is unlikely to support many prey animals and therefore is unlikely to be used more than occasionally by bats.

- 9.222 In terms of amphibians, no ponds were present on site or within 250m, the nearest being 300m to the West with only one other pond within 500m, present 480m to the North east. Due to the quality and management of the habitat on site and the distance to the nearest pond, it is judged unlikely that great crested newts would be present on site.
- 9.223 In terms of reptiles, wider local surveys have found a high likelihood of Adders being present and likely presence of the Viviparous Lizard. It is considered that the site has potential to support breeding birds within the trees. No signs of barn owls were found during the survey. It is considered that the site has no potential to support the hazel dormouse due to lack of habitat. No setts or signs of badgers were identified during the survey. It is considered that the site has moderate potential to support hedgehogs.
- 9.224 In order to maintain and enhance the biodiversity potential of the site the survey recommends a series of measures including tree protection during construction works, installation of a mix of open fronted and hole nesting bird boxes, bat roosting spaces within the buildings, provision of owl boxes, planting of climbing plants, and drought resistant wildflower planting.
- 9.225 A planning condition is recommended that seeks an ecological enhancement scheme and this could include a range of bird box types including open fronted and hole fronted nest boxes. A further planning condition recommends a landscape scheme that could include a wildlife-friendly planting scheme that uses native plant species.
- 9.226 In conclusion the submitted proposal is acceptable in relation to ecology and biodiversity and is in accordance with Local Plan policy DM1 and DM3.

Figure 14: Comparison between the existing rear elevation, the earlier refused application (18/500228/FULL) and the rear elevation currently proposed.





## **CIL**

9.227 The proposed development is CIL liable. The Council adopted a Community Infrastructure Levy on 25 October 2017 and began charging on all CIL liable applications approved on and from 1 October 2018. The actual amount of CIL can only be confirmed once all the relevant forms have been submitted and relevant details have been assessed and approved. Any relief claimed will be assessed at the time planning permission is granted or shortly after.

## **Other Matters**

- 9.228 In April 2018 planning permission was refused under delegated powers (18/500228/FULL) for the conversion and adaptation of existing photography studio into 2 dwellings with associated parking and garden area.
- 9.229 The current application involves substantial changes and improvements from the earlier submission that have satisfactorily addressed the earlier grounds for refusal.

## **PUBLIC SECTOR EQUALITY DUTY**

Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

## **10. CONCLUSIONS and PLANNING BALANCE**

### **SUMMARY OF REASONS FOR RECOMMENDATION:**

The Court of Appeal found, in summary, that the earlier decision was flawed because the Council in applying DM 5 had failed to take into consideration the entire site and had focused only on the existing building. The judgement therefore concluded that the following matters needed re-consideration:

- The respondent will need to determine whether or not the application site as a whole is of high environmental value
- The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit

The proposal has been re-considered with reference to Local Plan guidance on policy DM5 (in particular paragraphs 6.35 and 6.37) and the policy itself, the proposal site as a whole (including everything in the red line) is not considered to be of high environmental value. With the proposed works significant improvement will arise in a number of ways as set out in the report above and including :

- The proposal will remove the existing business use that is operating substantially below capacity and provide two family homes offering a good standard of space and improvements to neighbour amenity.
- The proposal involves the reinstatement of original building openings that will reduce the current blank ground floor appearance and restore the building symmetry.
- The removal of this overly restricted commercial use will remove a non-conforming use in this location with a positive impact on amenity.
- Further improvements will arise from the restoration works to the historic walls with slight modification that will allow the buildings to provide two family units with access to the rear amenity space. These works restoring the residential link to these gardens and ensuring the long term maintenance of the walls and bring the gardens back into use.
- With the substantial historical alterations to the curtilage brick walls (including LBC99/1078) the proposal will retain their significance that comes from their alignment materials, and bond.

The density reflects the character and appearance of the area and the site can reasonably be made accessible by sustainable modes to a larger village and has the benefit of removing a use that would have higher trip generation . The site will be made accessible by sustainable modes by the provision of cycle parking, electric vehicle charging points (for existing and future residents) and by other agreed measures through a condition to encourage sustainable travel options. In light of these considerations the proposal is found to be in accordance with policy DM5 of the adopted Local Plan.

Other matters which weigh in favour of the proposal and a positive recommendation for approval are :

- Large photographic studio spaces, like the one on the application site are in general decline and the current use operates below capacity and inefficiently.
- The proximity of other residential uses means the commercial use was approved as an exception subject to a number of restrictions to prevent harm to amenity. These restrictions and the proximity to residential reduce the potential for long term viable business use without harm to neighbouring residents.
- The council has previously accepted the loss of the business use granting permission for ancillary residential use as a swimming pool with a tennis court in the rear garden.
- The proposal is not a conversion and any more intense business use, due to the adjacent residential uses, would be directed to the economic development areas urban area or the rural service centres.
- The proposal includes car parking in accordance with minimum standards and is acceptable in relation to trip generation, biodiversity and landscape.
- Special regard has been had to the desirability of preserving Hollingbourne House its significance, its setting, and features of special architectural or historic interest including the curtilage listed walls.
- The harm that will result from the proposal to the significance of Hollingbourne House, the curtilage listed walls, the glasshouse, donkey wheel and gazebo will be less than substantial. The less than substantial harm to the significance of these heritage assets will be outweighed by the public benefits of the development. These public benefits include improvements to the front building elevation, heritage benefits arising from repairs to all the garden wall that will ensure their long term survival, the accessibility improvements to the garden space for future occupiers and the restoration works to the sunken glasshouses and securing the optimum viable uses consistent with their conservation.
- The proposed roof extensions facilitate the provision of staircases that allow the efficient use of the building as part of the provision of 2 good quality family homes with the existing roof space assessed by roof hatches.

Overall

The proposal is in accordance with the Maidstone Borough Local Plan (2017) policies SS1, SP17, SP18, SP19, SP21 DM1, DM3, DM4, DM5, DM6, DM8, DM23 DM30, DM31 and Appendix B.

## 11.0 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 in line with the matters set out in the recommendation and as resolved by the Planning Committee.

#### 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) No development shall take place other than in accordance with the following approved plans:
  - 3094-011Rev F Proposed elevations (May 2020)
  - Appendix 1 to the Heritage Statement (Nov 2019)
  - Design and Access Statement (May 2020)
  - PDL 01 A2 rev 2 Details of construction for remedial works and new openings to existing wall (May 2020)
  - 3094-012 rev F proposed site plan (May 2020) 3094-012 rev F2 proposed site plan (May 2020)
  - 3094-010 rev E Proposals (Proposed floorplans) (May 2020)
  - PDL 01 rev v7 Proposed maintenance work to southern garden wall remaining on existing line. (May 2020)
  - PDL 02 rev v2 Proposed conservation works to northern glasshouse garden wall. (May 2020)
  - PDL 03 rev v5 Proposed maintenance and amendments to east garden wall. (May 2020)
  - PDL 04 rev v6 Proposed maintenance and minor amendments to south western garden wall. (May 2020)
  - PDL 05 rev v5 Proposed maintenance and minor amendments to north west facing garden wall by barn. (May 2020)
  - PDL 07 rev v2 Proposed restoration works to sunken glasshouses. (May 2020)
  - Built Heritage Statement (May 2020)
  - Preliminary Ecological Appraisal Survey (2016)
  - Preliminary Ecological Appraisal Survey update (December 2020)Reason: In the interests of proper planning and to ensure the quality of the development is maintained.
- 3) Prior to the commencement of the development above damp-proof course level, written details and samples of the external materials to be used in the construction of the replacement structure (to include dark stained timber weatherboarding and natural slate roof tiles) shall be submitted to and approved in writing by the Local Planning Authority The development shall be constructed using the approved materials and maintained as such thereafter.  
Reason: To ensure a satisfactory appearance to the development.
- 4) Prior to the demolition of the garden wall that lies to the immediate north-east of Courtyard Studios (as shown on drawing reference: 3094-008 Rev A), and restoration works to the remaining garden boundary walls, a schedule of works to

the garden walls and the sunken glasshouses shall be submitted to and approved in writing by the local planning authority.

The schedule of works shall include:

- a) The entire wall to be built from the bricks in the existing wall to be demolished;
- b) A rebuilt wall that shall be a minimum of 1.2m in height at any point;
- c) Full details of how the retained garden walls will be restored.
- d) details of the sunken glasshouse restoration.

The dwellings hereby approved shall not be occupied until the approved works to the garden walls and the glasshouses have been completed, and the walls and the glasshouses shall be maintained as such thereafter.

Reason: To safeguard the value of the curtilage listed garden boundary walls and the glasshouse

- 5) The development hereby approved shall not commence above slab level until details for a scheme for the enhancement of biodiversity on the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include measures for the enhancement of biodiversity through integrated methods into the design and appearance of the building by means such as swift bricks, bat tube or bricks. The development shall be implemented in accordance with the approved details prior to first occupation and all features permanently maintained thereafter.  
Reason: To protect and enhance the ecology and biodiversity on the site in the future.
- 6) Prior to the demolition of the garden wall that lies to the immediate north-east of Courtyard Studios (as shown on drawing reference: 3094-008 Rev A), and restoration works to the remaining garden boundary walls a sample panel of the rebuilt wall (with the reused bricks, mortar mix/pointing details and coping stone to be used) shall be made available for inspection by Council officers with the works proceeding in accordance with this approved panel,  
Reason: To safeguard the value of the garden boundary walls.
- 7) Prior to the commencement of the development above damp-proof course level, details of a scheme of landscaping, using indigenous species which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with a programme for the approved scheme's implementation, shall be submitted to and approved in writing by the Local Planning Authority. The landscape scheme shall be designed using the principle's established in the Council's adopted Landscape Character Assessment 2012 and shall include details of a new native hedgerow to subdivide the rear gardens. The landscaping of the site shall be carried out in accordance with the approved details.  
Reason: To ensure a satisfactory appearance to the development.
- 8) 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 building or the completion of the development, whichever is the sooner. Any seeding or turfing which fails to establish or any trees or plants which, within ten years from the first occupation of a property, die or become so seriously damaged or diseased that their long term 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.  
Reason: To ensure a satisfactory appearance to the development.
- 9) The vehicle parking spaces shown on the submitted plans shall be provided prior to first occupation of the approved dwellings and permanently retained for parking and shall not be used for any other purpose.  
Reason: To ensure adequate parking provision.

- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), and except for the repositioned rear wall (as shown on drawing reference: 3094-008 Rev A), no extensions to any building, no outbuildings, and no fencing, walling or other hard boundary treatments shall be erected within or around the site.  
Reason: To ensure a satisfactory appearance to the development.
- 11) Prior to first occupation of the approved accommodation a bin storage enclosure shall be in place and is in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority and retained for the lifetime of the development.  
Reason: To safeguard the appearance of the development and the visual amenities of the area
- 12) Prior to first occupation of the development hereby approved measures to encourage sustainable travel choices by future occupiers shall have been submitted to and approved in writing by the Local Planning Authority, the measures shall be in place prior to first occupation and maintained for the lifetime of the development.  
Reason: In the interests of sustainable travel and pollution prevention.
- 13) Any external lighting installed on the site (whether permanent or temporary) shall be in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. These details shall include, inter alia, measures to shield and direct light from the light sources so as to prevent light pollution and illuminance contour plots covering sensitive neighbouring receptors and demonstrate how the lighting meets Bat Conservation Trust guidelines. The development shall thereafter be carried out in accordance with the subsequently approved details and maintained as such thereafter.  
Reason: In the interest of amenity.
- 14) Prior to first occupation of the accommodation hereby approved details of cycle parking shall be submitted to and approved in writing with the cycle parking in place prior to occupation and maintained for the lifetime of the development.  
Reason: To promote sustainable travel choices.
- 15) The works to the garden boundary walls and the sunken glasshouses shall only take place outside the bat hibernation season (November to March) with the works following the precautionary approach with works only proceeding after each wall cavity is checked for bats with an endoscope.  
Reason: in the interest of biodiversity and ecology
- 16) The development shall not commence above slab level until details of how decentralised, renewable or low-carbon sources of energy will be incorporated into the development hereby approved have been submitted to and approved by the local planning authority. Measures shall include EV fast charging points (above 7kW) to each dwelling and details of number and location of equipment such as solar array and/or Air Source Heat Pumps. The approved details shall be installed prior to first occupation of the relevant dwelling and maintained thereafter. If any PV panels are installed and are or become defective, they shall be replaced as soon as is reasonably practicable.  
Reason: In the interests of sustainable and energy efficient form of development.

**INFORMATIVES**

- 1) The proposed development is CIL liable. The Council adopted a Community Infrastructure Levy on 25th October 2017 and began charging on all CIL liable applications approved on and from 1st October 2018. The actual amount of CIL can only be confirmed once all the relevant forms have been submitted and relevant details have been assessed and approved. Any relief claimed will be assessed at the time planning permission is granted or shortly after.

Case Officer: Rachael Elliott

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



**In the High Court of Justice  
Queen's Bench Division  
Planning Court**

CO Ref: APPENDIX A  
CO/836/2021

In the matter of an application for Judicial Review

The Queen on the application of

**GLENN KINNERSLEY**

**Claimant**

versus

**MAIDSTONE BOROUGH COUNCIL**

**Defendant**

and

**PAUL DIXON**

**Interested Party**

**Application for permission to apply for Judicial Review  
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant and the Acknowledgement of service filed by the Defendant

**Order by Timothy Mould QC (sitting as a Deputy High Court Judge)**

1. Permission is hereby refused.
2. The costs of preparing the Acknowledgment of Service are to be paid by the claimant to the defendant, in the sum of £3,848.10 unless within 14 days the claimant notifies the court and the defendant, in writing, that he objects to paying costs, or as to the amount to be paid, in either case giving reasons. If he does so, the defendant has a further 14 days to respond to both the court and the claimant, and the claimant the right to reply within a further 7 days, after which the claim for costs is to put before a judge to be determined on the papers. [Where the claimant seeks reconsideration, costs are to be dealt with on that occasion].
3. This is an Aarhus Convention Claim to which the limits on costs recoverable from the parties set out in CPR 45.43(2)(a) and (3) apply – Claimant £5,000; Defendant £35,000.

**Reasons:**

1. Ground 1 – I can detect no arguable misinterpretation of policy DM5 of the Local Plan in paragraphs 6.43 to 6.68 of the Officer's Report. Paragraph 6.45 refers to the relevant part of Policy DM5. Paragraph 6.46 directs the Defendant correctly to the guidance on the application of Policy DM5 given in paragraph 6.37 of the Local Plan. Given that the principal purpose of the planning application was to seek authority for building works to convert the existing studio building into two dwellings (paragraphs 2.01 to 2.07 of the OR), it seems to me that the planning officer's focus on the question whether the proposed works would produce an outcome that fulfilled the two policy considerations discussed in paragraphs 6.47 to 6.55 of the OR is obviously consistent with the lawful application of DM5 in accordance with its terms, to the facts of this case. Nobody was arguing for the

development of any area of existing residential garden. Insofar as the proposed development involved built development in the wider application site (i.e. the reconstruction of the existing wall), that element was regarded as positive in its environmental impact by the Conservation Officer (see OR at paragraphs 5.04 to 5.07). The change of use to residential was also seen as beneficial in environmental terms – see OR at paragraph 6.55. Ground 1 is not reasonably arguable.

2. Ground 2 – in *Mansell* at [42], Lindblom LJ said that the Court would not generally intervene in a case founded upon an alleged error in a planning officer's reported advice on a planning application unless that error involved a material misdirection to the decision making planning committee. That principle is very much in play in relation to the complaint under this ground. There is a difference of opinion evident in the reported views of conservation professionals and the planning officer in his report about the contribution that the existing studio building makes in the setting of Hollingbourne House. But even assuming that the planning officer's "inconsistent" judgment on that question is unexplained (which in itself is barely arguable – see below), it can hardly be said to have had a material bearing on the decision to grant planning permission. Nobody was arguing that the partial demolition and alteration of the existing studio building would in itself diminish the setting of the listed house in any material way. So the real question was whether the proposed replacement was acceptable in its impact on that setting. On that material question, as I understand it, the Conservation Officer was clear in her advice: the impact of the proposed works to the studio building would not materially harm the setting of the listed main house (see OR at paragraph 5.08). Applying the *Mansell* principle, ground 2 is not reasonably arguable.
3. Ground 3 – this ground asserts that the Defendant adopted a "flawed approach" to the assessment of the proposed development's heritage impact and acted in breach of its statutory duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. That contention essentially impugns paragraphs 6.90-6.170 and section 7 of the OR. In my view, it is simply unsustainable, in the light of the careful and thorough appraisal that is found in those paragraphs, supported by the advice of the Conservation Officer in paragraphs 5.02 to 5.08 of the OR. In fact, the planning officer reminded the Defendant of its statutory duty at the outset (paragraph 6.90); then set out the relevant policy requirements of the Local Plan and the NPPF (including paragraph 196 of the latter – see OR at paragraph 6.97). The setting and significance of the listed main house are described in paragraphs 6.104 – 6.133. The conclusion in paragraph 6.133 that there will be less than substantial harm to the setting of the listed main house is well explained. Paragraphs 6.134 – 6.170 address the impact on other listed elements (including the walls) and identify the benefits of the proposed development that bear upon the question whether the identified less than substantial harm should lead to refusal. In short, the planning officer's assessment sits properly within the framework of analysis set by the 1990 Act and the NPPF. As does his summary in section 7 (bullet three from the end). In short, ground 3 is, in substance an attack on the planning officer's assessment and evaluation of the impacts of the proposed development on the relevant heritage assets. That involves no arguable issue of law.
4. Ground 4 – The principles upon which the court approaches the contention that the decision maker in a planning decision has acted unlawfully in failing to take account of a relevant or "material" consideration were summarised by Lord Carnwath JSC at [30] – [31] in *R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] PTSR 221, [2020] UKSC 3. Applying those principles, the contention that the Defendant acted unlawfully in failing to take account other than fleetingly of the Claimant's putative alternative proposal is unarguable. It cannot be said that the Defendant acted irrationally in taking that course.

- APPENDIX A
5. The attack on the listed building consent is founded entirely on the asserted challenge to the legality of the decision to grant planning permission.
  6. The proposed claim is unarguable.

Signed. TIMOTHY MOULD QC

**The date of service of this order is calculated from the date in the section below**

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**For completion by the Planning Court**

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date): 05/05/2021  
Solicitors:  
Ref No.

**Notes for the Claimant**

If you request the decision to be reconsidered at a hearing in open court under CPR 54.12, you must complete and serve the enclosed FORM 86B within 7 days of the service of this order. A fee is payable on submission of Form 86B. ***For details of the current fee see the Court website <https://www.gov.uk/court-fees-what-they-are>***. Failure to pay the fee or lodge a certified Application for Fee remission may result in the claim being struck out. The form for Application for Remission of a Fee is obtainable from the Justice website <https://www.gov.uk/get-help-with-court-fees>.



Neutral Citation Number: [2022] EWHC 1825 (Admin)

Case No: CO/836/2021

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL  
Thursday 14 July 2022

**Before :**

**HHJ KAREN WALDEN-SMITH sitting as Judge of the High Court**

**Between :**

**THE QUEEN (on the application of** **Claimant**  
**GLENN KINNERSLEY)**  
**- and -**  
**MAIDSTONE BOROUGH COUNCIL** **Defendant**

**PAUL DIXON** **Interested Party**

**HARRIET TOWNSEND** (instructed by **Richard Buxton Solicitors**) for the **Claimant**  
**GILES ATKINSON** (instructed by **Mid Kent Legal Services**) for the **Defendant**

Hearing dates: 11 & 12 May 2022

**Approved Judgment**

## Introduction

1. The Claimant, Mr Glenn Kinnersley, seeks to judicially review the decisions of the Defendant, Maidstone Borough Council (“MBC”), dated 21 January 2021 to grant both planning permission and listed building consent for the development of Courtyard Studios, Hollingbourne Hill, Hollingbourne, Kent ME17 1QJ (“the development site”). The interested party, Paul Dixon, took no part in the proceedings and was not represented at the hearing of the substantive judicial review proceedings.

## The Factual Background

2. The planning permission granted to Paul Dixon is for:

“Demolition of the rear section of the building and erection of replacement structure and conversion of front section of building including external alterations, to facilitate the creation of 2 dwellings with associated parking and garden areas.

Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse (“the development”).”

3. The listed building consent is for:

“Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse.”

4. The Claimant, Mr Kinnersley, and his family, live at Hollingbourne House, a Grade II listed building, and the entirety of the application site falls within the grounds of Hollingbourne House and the curtilage of the listed building.
5. The relevant statutory development plan is the Maidstone Borough Local Plan which was adopted in 2017. The policies said to be directly relevant to this issue are:
  - (1) DM4: Development affecting designated and non-designated heritage assets;
  - (2) DM5: Development on brownfield land;
  - (3) DM30: Design principles in the countryside.
6. The application site includes two barn-type buildings which are joined and used together. These are known as the studio buildings. To the rear of the studio buildings, but adjacent to them is a historic walled garden. Hollingbourne House is at the top of Hollingbourne Hill which falls within the Kent Downs Area of Outstanding Natural Beauty and North Downs Special Landscape Area. Hollingbourne House is a Georgian property and designated heritage asset with four walled gardens, a separately listed Gazebo and Donkey Wheel.

7. Mr Dixon, the interested party, runs his photography business from the studio buildings which has B1 use for low key mixed commercial use. The dwellings known as Mulberry House and Well Cottage are also owned by Mr Dixon. These were formerly the servants' quarters of Hollingbourne House and in 2014 MBC granted planning permission for the studio buildings to be converted to use ancillary to the residential use of Mulberry and Well Cottages (for the purpose of providing an indoor swimming pool and related leisure facilities). This planning consent was not implemented.

### The Planning History

8. Mr Dixon applied in 2018 (18/500228/FULL) for permission to convert the photography studio into two new residential dwellings. That application was refused on 17 April 2018. The Conservation Officer described the studio building as a "*single, linear unadorned construction, finished in brick and weatherboard and with a dual pitched roof in slate.*" He said this:

"[W]hilst I am prepared to accept some slight modifications to the building, the property's stark, agricultural character should continue to shine through, and this is necessary in order to conform with national guidance contained with Historic England's "The Conversion of Traditional Farm Buildings", and also the planning guidance associated with the Kent Downs AONB. Both these documents argue against the suburbanisation of the countryside...

I think that the subdivision of the cowshed into two separate dwellings distorts the legibility of the traditional arrangement of outbuildings to the main house and the relationships between the various estate buildings... The essential criteria is to retain the long, linear qualities of the cowshed, its pitched slate roof and its simple agrarian form.

The relationships between the functional outbuildings and the main house need to remain legible and obvious, and the answer is to adhere more closely to the shed's simple lines."

9. A further application (18/506662/FULL) was submitted on 27 December 2018. The Claimant, Mr Kinnersley, objected to permission being given on both planning and heritage grounds. He relied upon an assessment from a heritage expert which set out that Hollingbourne House has "*clear architectural and historical interest as a late 18<sup>th</sup> century mansion with associated grounds and individually listed features (Donkey Wheel and Gazebo both separately listed grade II) ... The substantial walls encircling the four walled gardens contribute to the historical interest of the house by indicating its former grounds ... Taking into consideration the specific application site buildings for conversion, they do not specifically enhance or contribute to the setting of the listing building but are of a form that does not disrupt the hierarchy of historic spaces and are largely benign in their current state ... they are not heritage assets but [that] they play a neutral role within the setting of the listed building and at present are in keeping with the traditional outbuilding form one would expect of an estate of this type.*" This expert considered the roof of the proposed building to be "*anomalous*" and the amount

of glazing in the proposed building to be “*excessive and will serve to detract from the character of the surroundings.*”

10. Planning permission was granted for the development on 29 March 2019, which determination was quashed on 8 July 2019 with the consent of MBC.
11. The proposal for the relocation of the listed wall was abandoned by Mr Dixon in May 2020 and replaced with a proposal partially to reconstruct the demolished wall along its existing line.
12. Mr Kinnersley’s planning consultant responded to the new proposals with points of objection relating to the impact of the proposed development:

“Clearly the suburban design with a flat box roof and extensive glazing will have an impact on the setting of the Grade II listed Hollingbourne House as well as the nearby former coach house and service wings, both of which form part of the listing building. These features are out of keeping with the prevailing character of the site and will detract from the agricultural character of the building and from the overall aesthetic of the estate”

13. The officer’s report dated 17 December 2020 (“the OR”) was both long and detailed and the Planning Committee of MBC resolved to grant planning permission. Planning permission and listed building consent were both granted on 21 January 2021.

### The Challenge

14. Mr Kinnersley contends in these judicial review proceedings that the decision of MBC to grant planning permission and listed building consent was unlawful and ought to be quashed on the four following grounds:
  - (i) MBC erred in its interpretation of the Local Plan policy DM5 “Development on brownfield land”;
  - (ii) MBC was inconsistent in the approach it took to the assessment of the contribution to the setting of the listed building made by the existing studio buildings;
  - (iii) MBC was flawed in the approach taken to the assessment of heritage impact and in doing so acted in breach of its statutory duties pursuant to the provisions of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
  - (iv) MBC failed to take into account a material consideration, namely the potential for a sensitive conversion of the front studio building for the purpose of providing a dwelling.
15. MBC contend that the judicial review challenge is misconceived and must fail on each of the four grounds set out. In essence, MBC contend that the arguments raised on behalf of Mr Kinnersley are either merits challenges or founded on merits challenges.

16. Permission to bring these substantive judicial review proceedings was granted at a renewed oral hearing by Lang J. The application for permission was originally refused on the papers by Mr Tim Mould QC, sitting as a Deputy Judge of the High Court. MBC seeks to rely upon the written reasons given by Tim Mould QC. However, as I said in the course of submissions, the reasons given for refusing or granting permission in no way bind or influence the decision made at the substantive hearing and can only be there to provide the basis upon which a determination to give or refuse permission is made.

### The Legal Framework

17. In *R (Mansell) v Tonbridge & Malling BC* [2017] EWCA Civ 1314, [2019] PTSR 1452 Lindblom LJ set out the definitive summary of the principles to be applied where there is a judicial review of a planning permission based on criticism of an officer's report:

“42. The principles on which the court will act when criticism is made of a planning officer's report to committee are well settled. To summarise the law as it stands:

- (1) The essential principles are as stated by the Court of Appeal in *R v Selby District Council ex p Oxton Farms* [2017] PTSR 1103: see, in particular, the judgment of Judge LJ. They have since been confirmed several times by this court, notably by Sullivan LJ in *R (Siraj) v Kirlees Metropolitan Borough Council* [2011] JPL 571, para 19 and applied in many cases at first instance: see, for example, the judgment of Hickinbottom J in *R (Zurich Assurance Ltd (trading as Threadneedle Property Investments) v North Lincolnshire Council* [2012] EWHC 3708 (Admin) at [15].
- (2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in *R. (on the application of Morge) v Hampshire County Council* [2011] UKSC 2, at paragraph 36, and the judgment of Sullivan J., as he then was, in *R. v Mendip District Council, ex parte Fabre* (2000) 80 P. & C.R. 500, at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave (see the judgment of Lewison L.J. in *Palmer v Herefordshire Council* [2016] EWCA Civ 1061, at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed

advice it was given, the committee's decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.

- (3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R. (on the application of Loader) v Rother District Council* [2016] EWCA Civ 795), or has plainly misdirected the members as to the meaning of a relevant policy (see, for example, *Watermead Parish Council v Aylesbury Vale District Council* [2017] EWCA Civ 152). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example, *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427). But unless there is some distinct and material defect in the officer's advice, the court will not interfere"
18. The fundamental issue is whether the officer's advice to the members in this case is flawed in the way explained by Lindblom LJ. Namely, is there some distinct and material defect in the officer's report, which in this case is unusually long and thorough.
19. Insofar as the challenge is on *Wednesbury* grounds, the consideration is whether the decision is outside the range of reasonable decisions open to the decision-maker. Leggatt LJ and Carr J in *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 set out the position as follows:

"The second ground on which the Lord Chancellor's Decision is challenged encompasses a number of arguments falling under the general head of "irrationality" or, as it is more accurately described, unreasonableness. This legal basis for judicial review has two aspects. The first is concerned with whether the decision under review is capable of being justified or whether in the classic *Wednesbury* formulation it is "so unreasonable that no reasonable authority could ever have come to it": see *Associated Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223 , 233-4. Another, simpler formulation of the test which avoids tautology is whether the decision is outside the range of reasonable decisions open to the decision-maker: see e.g. *Boddington v British Transport Police* [1998] UKHL 13; [1999] 2 AC 143 , 175 (Lord Steyn). The second aspect of irrationality/unreasonableness is concerned with the process by which the decision was reached. A decision may be challenged

on the basis that there is a demonstrable flaw in the reasoning which led to it - for example, that significant reliance was placed on an irrelevant consideration, or that there was no evidence to support an important step in the reasoning, or that the reasoning involved a serious logical or methodological error. Factual error, although it has been recognised as a separate principle, can also be regarded as an example of flawed reasoning - the test being whether a mistake as to a fact which was uncontentious and objectively verifiable played a material part in the decision-maker's reasoning: see *E v Secretary of State for the Home Department* [2004] EWCA Civ 49; [2004] QB 1044.”

Ground 1:

MBC erred in its interpretation of the Local Plan policy DM5 “Development on brownfield land

20. The permitted development includes the demolition of the existing and unstable (north east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse. The walled garden itself is not part of the proposal for development. The only other parts of the development which related to the garden are the other walls, which are to be repaired, and the sunken glasshouse, which is to be restored.
21. As is set out by Lindblom LJ in *Gladman Developments Ltd v Canterbury City Council* [2019] EWCA Civ 669:

“Section 38(6) of the 2004 Act requires the determination to be made “in accordance with the [development] plan unless material considerations indicate otherwise.” The development plan thus has statutory primacy, and a statutory presumption in its favour – which government policy in the NPPF does not. Under the statutory scheme, the policies of the plan operate to ensure consistency in decision-making. If the section 38(6) duty is to be performed properly, the decision-maker must identify and understand the relevant policies, and must establish whether or not the proposal accords with the plan, read as a whole. A failure to comprehend the relevant policies is liable to be fatal to the decision.”
22. The statutory development plan that is relevant to this site is the Maidstone Borough Local Plan, which was adopted on 25 October 2017. The application was determined on the basis that the proposed development accords with the statutory development plan. It is the contention of the claimant that policy DM5 of the local plan either applies to the entirety of the site, including both the residential garden (which is greenfield) and the previously developed land (pdl) and the development is contrary to DM5; alternatively DM5 does not apply at all and there is no policy support for the development so that the countryside policies of restraint apply.

23. Policy DM5, where it applies, requires the site not to be of high environmental value and residential development to be of a density which reflects the character and appearance of individual localities.

24. Paragraphs 6.34 to 6.38 of the Maidstone Local Plan sets out the explanation for policy DM5, which includes the following:

“6.34 One of the core principles of the NPPF encourages the effective use of land by re-using land that has been previously developed, provided it is not of high environmental value. This is known as brownfield land... Making the best use of previously developed land will continue to be encouraged throughout the lifetime of this plan.

6.35 It is important to ensure that brownfield land is not underused and that the most is made of vacant and derelict land and buildings in order to reduce the need for greenfield land ...

6.38 Residential gardens in urban and rural areas are excluded from the definition of brown field site.”

25. In the summary reasons for recommendation set out in the OR the planning officer set out that the *“site is not of high environmental value, but significant improvement will arise from the works in a number of ways.”*

26. The claimant criticises MBC for applying DM5 to only part of the site, averring that MBC erred in coming to a conclusion that the development of the historic walled garden is irrelevant to the policy test requiring an environmental gain.

27. The claimant suggests that the site should not have been artificially divided so as to consider what was proposed for the brownfield site alone, as DM5 relates to the entirety of the site not just the brownfield part. It is suggested that MBC fell into error by exchanging “site” with “building” and to apply DM5 only to the building, ignoring that part of the site which is land of high environmental value, and that changes to the site would, it is said, involve harm to a heritage asset.

28. The claimant is concerned that by concentrating upon the building, as the officer’s report sets out in paragraph 6.47:

“The two key questions here [referring to DM5] are whether the large commercial building on the site is currently of high environmental value, and whether the “redevelopment” will result in a significant environmental improvement to this building”

MBC have artificially restricted the scope of DM5. The claimant avers that MBC erred in coming to a conclusion that the development of the historic walled garden is irrelevant to the policy test requiring an environmental gain. The contention of the Claimant is that had MBC applied DM5 to the entirety of the site then the proposal would have conflicted with the local plan.

29. The respondent, MBC, contends that policy DM5 simply does not apply to the development of gardens. Gardens are expressly excluded in accordance with paragraph 2 “... *brownfield sites in the countryside which are not residential gardens.*”
30. The fundamental difficulty for the claimant with respect to its arguments under ground 1 is that DM5 does not apply to residential gardens. DM5 itself expressly provides that residential gardens in urban and rural areas are excluded from the definition of a brownfield site. The walled garden to the rear of the studio building is to be retained as a residential garden and is not brownfield land.
31. DM5 is very clearly worded and provides for development on brownfield land in the following terms:
- “1. Proposals for development on previously developed land (brownfield land) in Maidstone urban area, rural service centres and larger villages that make effective and efficient use of land and which meet the following criteria will be permitted:
- i. The site is not of high environmental value; and
  - ii. If the proposal is for residential development, the density of new housing proposals reflects the character and appearance of individual localities, and is consistent with policy DM12 unless there are justifiable planning reasons for a change in density.
2. Exceptionally, the residential development of brownfield sites in the countryside which are not residential gardens and which meet the above criteria will be permitted provided the redevelopment will also result in a significant environmental improvement and the site is, or can reasonably be made, accessible by sustainable modes to Maidstone urban area, a rural service centre or larger village”
32. The officer’s report considered the impact on the wall in paragraph 5.05:
- “it is unlikely that enough bricks will be salvaged to rebuild the wall to its present height. It was also considered as acceptable that the applicant could make some new openings in the wall to suit the needs of the redeveloped adjacent build. The result will be a wall which retains the historic boundary line of the walled area and one which is stable and generally clear of other agents of decay. This seems to me to be a significant gain for the historic asset, where there is currently a high risk of collapse and loss.”
33. There was also consideration in the OR of the impact of the proposals upon the listed house. At paragraph 6.90 of the OR the planning officer noted the obligation to have special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest (section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990) and reached the conclusion, in paragraph 6.133 that

*“the current application building has a negative impact on the setting of the grade II listed building Hollingbourne House and the impact of the proposal on the significance of this heritage asset will be less than substantial.”*

34. DM5 does not apply to residential gardens and the OR correctly set out that:

“6.43 The Local Plan (paragraph 6.38) excludes residential garden land in both urban and rural locations from the definition of brownfield land.

6.44 In this context, the rear of the studio building (that is associated with the two cottages and will be retained as residential garden land) is not brownfield land. The studio building with the existing commercial use is located on brownfield land.”

35. The claimant’s contention that the manner in which MBC has applied DM5 is artificial, and an impermissible restriction of the scope of the policy and offends against the clear wording of DM5, is not a contention with which I can agree. DM5 is clearly worded. It applies to this development but it expressly does not apply to residential gardens. The officer clearly applied the policy and considered the correct issues in coming to the conclusion he did. The policy is only applicable to that part of the site which is brownfield.
36. The claimant is relying upon an incorrect interpretation of DM5 in an effort to show that the development is contrary to DM5. The officer’s report correctly refers to the relevant parts of DM5 and to the relevant guidance on the application of DM5. There was no proposal for the development of any part of the residential garden. The planning officer properly focussed on whether the proposed works would fulfil the policy considerations.
37. Ground one of the judicial review challenge therefore fails.

## Ground 2

### Inconsistent approach to the assessment of the contribution to the setting of the listed building made by the existing studio buildings without explanation or justification

38. The claimant contends that the approach taken by the officer in his report was inconsistent with respect to the planning judgment made as to the contribution made by the existing studio buildings to the significance of the listed building. It is submitted by the claimant that this inconsistency made unlawful MBC’s decision given the judgment as to the impact of the setting and significance of Hollingbourne House.
39. The fundamental principle relied upon by the claimant in support of this ground is that like cases are to be determined alike. See Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* [1993] 65 P & CR 137 where he set out the following:

“One important reason why previous decisions are capable of being material is that like cases should be decided in a like

manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system. I do not suggest and it would be wrong to do so, that like cases must be decided alike. An inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision.

To state that like cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant respect. If it is distinguishable then it usually will lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable then ordinarily it must be a material consideration. A practical test for the inspector is to ask himself whether, if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case? The areas for possible agreement or disagreement cannot be defined but they would include interpretation of policies, aesthetic judgments of assessment of need.”

40. In *R (Irving) v Mid Sussex DC & Anr* [2019] EWHC 3406 (Admin), Lang J set out that “*a local planning authority ought to have regard to its previous similar decisions as material considerations, in the interests of consistency. It may depart from them, if there are rational reasons for doing so, and those reasons should be briefly explained.*” Lang J. found on the facts of *Irving* that there was an unexplained inconsistency between the way in which the Council assessed the benefits of the proposal and how it had assessed public benefit on previous occasions and that, because the site was within a conservation area, the assessment of public benefits was a critical issue. She found the inconsistent approach to be unjustified and unlawful.
41. In this case, when planning permission for conversion of the photography studio into two new dwellings was submitted on 27 December 2018, it was not said that the studio buildings detracted from the setting or significance of Hollingbourne House. What was said by the Conservation Officer was that:

“At present it is a single, linear unadorned construction, finished in brick and weatherboard and with a dual pitched roof in slate. The proposal is to divide the building into two, to install a central walkway, and to extend out at the back with papated [sic.] extensions. The garden will be subdivided with a linear hedge.

Whilst I am prepared to accept some slight modifications to the building, the property’s stark, agricultural character should continue to shine through, and this is necessary in order to conform with national guidance...

I think that the subdivision of the cowshed into two separate dwellings distorts the legibility of the traditional arrangement of outbuildings to the main house and the relationships between the various estate buildings... The essential criteria is to retain the long, linear qualities of the cowshed, its pitched slate roof and its simple agrarian form.

The relationships between the functional outbuildings and the main house need to remain legible and obvious, and the answer is to adhere more closely to the shed's simple lines ...”

42. MBC purported to grant planning permission for the development as originally submitted, which permission was quashed on 8 July 2019. In May 2020, Mr Dixon, the IP, abandoned the proposals to relocate the listed wall and replaced that with a proposal to partially reconstruct the demolished wall along its existing line. The claimant objected to the amended proposals, including by a letter from his planning consultant that

“the suburban design with a flat box roof and extensive glazing will have an impact on the setting of the Grade II listed Hollingbourne House as well as the nearby former coach house and service wings, both of which form part of the listed building. These features are out of keeping with the prevailing character of the site and will detract from the agricultural character of the building and from the overall aesthetic of the estate”

43. The OR refers to the current construction as having a negative impact upon the nearby listed building (Hollingbourne House). In paragraph 6.33 it is said that whilst the front part of the application building is of quality construction it is not listed and *“its impact on the setting of the nearby listed building is a negative one.”* Similarly in paragraph 6.49 of the OR it is said that the commercial building makes a negative contribution to the setting of the listed building, and in paragraph 6.133:

“... the current application building has a negative impact on the setting of the grade II listed building Hollingbourne House and the impact of the proposal on the significance of this heritage asset will be less than substantial”

which opinion is repeated in paragraph 6.155 (under the heading “The setting and significance of the donkey wheel (Grade II)”.

44. The assessment in the OR that the application building has a negative impact is not the view that was expressed in the earlier report of the Conservation Officer of MBC, or the view of the claimant's heritage expert when she said that the application site buildings *“...do not specifically enhance or contribute to the setting of the listed building but are of a form that does not disrupt the hierarchy of historic spaces largely benign in their current state. I would concur with the planning officer who dealt with the last application that they are not heritage assets but that they play a neutral role within the setting of the listed building...”*

45. With respect to the impact of the proposals on the significance of the curtilage listed walls and the glasshouses, the impact of the existing building is described by the OR to be neutral. In paragraph 6.147 it is set out that the conclusion is that the current application building has a neutral impact on the setting of the curtilage listed walls and the glasshouses and the impact of the proposal on the significance of those heritage assets “*will be less than substantial.*” This view is set out in paragraph 6.165 as a conclusion: “*the current application building has a neutral impact on the setting of the curtilage listed walls and the glasshouses and that the impact of the proposal on the significance of these heritage assets will be less than substantial*”.
46. The inconsistency that is relied upon in this challenge is that the current building was previously referred to as having a neutral impact on the listed building, whereas the OR referred to the current building as having a negative effect on the significance of the listed building. In assessing the impact of proposals on the significance of affected heritage assets in accordance with the NPPF and the associated Planning Practice Guidance, the OR’s report failed to contain any reference to the earlier conclusions of MBC’s conservation officer or the heritage statements from both the claimant’s expert in 2019 and the IP in 2020. It is the complaint of the claimant that this inconsistency was neither identified nor explained in the OR and that the failure to do so makes the decision unlawful.
47. The claimant contends that the contribution made by the existing building to the heritage asset (Hollingbourne House) is an essential element of the impact assessment and that the failure to address the inconsistency cannot be ignored. It is said by the claimant not to be a minor matter as, when considering whether there was a clear and convincing justification for the identified loss of significance resulting from new openings in the curtilage listed wall and the roof extensions to the application building, the MBC was required to weigh the less than substantial harm caused by the development to the setting of Hollingbourne House against the public benefits of the proposal.
48. It is said by the claimant that the alteration of the impact of the existing building from neutral to negative alters the base line or starting point for an assessment of impact and the Planning Committee of MBC would not have known that the expressed view in the OR was not in line with the earlier view of the Conservation Officer or the view of both the claimant and the IP’s experts.
49. However, in my judgment this is not a matter which would have materially misled the members on a matter bearing on their decision (see *Mansell*).
50. What the Planning Committee was considering was the impact of the proposals on the significance of the setting of the listed house, Hollingbourne House. There is no evidence to support any submission that the proposals of the IP were harmful to the significance of the setting of the listed house and the Conservation Officer of MBC reported that it was considered acceptable that the applicant could make some new openings in the wall to suit the needs of the redeveloped adjacent building, the result being a wall which retains the historic boundary line of the walled area and one which is stable and generally clear of other agents of decay which “... *seems to me to be a significant gain for the historic asset where there is currently a high risk of collapse and loss.*” It is also set out in the OR that the conversion of the existing studio buildings will bring about some alterations to the external appearance but that “*this is minor and*

*it is not considered that it will cause damage to the setting of the listed building.*”(para 5.08 of the OR)

51. Consequently, while there is an inconsistency between the description of the impact of the existing building on the significance of the setting of Hollingbourne House being negative rather than neutral, as previously described, this was a relevant but not a “critical aspect” of the decision making.
52. The Planning Committee were not considering whether the proposals were removing something which was negative or damaging to the significance of the listed house, but rather they were considering what was being put in the place of the existing building and whether that was damaging to the setting of the listed building. The concentration on this inconsistency between whether the existing building has a neutral or a negative impact is not where the focus should be.
53. The reporting officer was entitled to reach the planning decision he did, relying (at least in part) on the conservation officer’s conclusion that *“The conversion of the existing studio building will bring about some alterations to the external appearance but that this is minor and it is not considered that it will cause damage to the setting of the listed building.”*
54. Insofar as the Planning Committee could have been misled by what was in the report, the claimant sought to put that right by the letter he sent to the individual members of the Planning Committee on 16 December 2020, the day before the decision. In that letter he set out clearly that he disagreed with the Planning Officer that the application site currently has a negative impact and said that the site has an agricultural character that is entirely suitable to its location. In that letter he sets out, on planning grounds, why the application ought to be refused.
55. The members of the Planning Committee would, therefore, have been fully aware of the issue with respect to whether the current impact was neutral (as per the earlier report of the Conservation Officer and the reports of the experts) or negative (as per the OR).
56. In conclusion on this ground, the impact of the existing building is plainly a matter for consideration by the planning committee but it is not a “critical aspect”. The major concern for the planning committee was in assessing the impact on the significance of the setting of the listed house if the proposals were undertaken. That was explored in full in the OR. While the “baseline” may have changed from a neutral impact to a negative impact, that did not alter the impact of the proposed development which was what the planning committee were concerned about. The advice was that the proposed conversion of the existing studio building would bring about some alterations to the external appearance and that was minor and not considered that it would cause damage to the setting of the listed building. There was no inconsistency that amounted to a material misdirection to the planning committee.
57. Even if it could properly be said that the difference between the OR describing the impact on the setting of the listing building as negative, whereas the Conservation Officer had previously described it as neutral, was a material matter that required highlighting and explanation, it would not, in my judgment, lead to a different decision having been reached.

58. In all the circumstances ground two of this judicial review must also therefore fail.

Ground 3: MBC adopted a flawed approach to the assessment of heritage impact and in so doing acted in breach of its statutory duty under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”)

59. The claimant contends that in determining this application for planning permission, MBC were required to “*have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses*” (pursuant to the provisions of section 66 of the Listed Buildings Act) and that MBC failed to do so having concluded that the existing studio building had a “*negative impact on the setting of the grade II listed building and the impact of the proposal on the significance will be less than substantial*”. The claimant contends that the assessment that the existing studio buildings had a negative impact was a flawed assessment and contrasts that opinion contained in the OR with the opinion from the claimant’s expert and the earlier opinion of MBC’s conservation expert.
60. This ground is a direct attack on the planning officer’s assessment and evaluation of the impact of the proposed development on the setting of the listed house. The court will not interfere unless there is a distinct and material defect in the officer’s advice: “*The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made*”. (*Mansell*).
61. In paragraph 6.90 of the OR, the planning officer set out the statutory duty pursuant to section 66 of the Listed Building Act. In that section of the OR from 6.90 through to 6.170 the planning officer has set out a detailed appraisal of the impact of the proposed development upon heritage issues, referring in paragraphs 6.91 to 6.99 to the relevant advice from Historic England and the relevant passages from the Local Plan and the National Planning Policy Framework (NPPF), and correctly identifying that the relevant heritage considerations of the proposed development include consideration of the potential impact upon the listed building Hollingbourne House, the Gazebo, the Donkey Wheel, the brick garden walls and the sunken glasshouses.
62. It is not sufficient simply to recite the appropriate statutory and policy tests, it is necessary for the duty to be performed: *R (Liverpool Open and Green Spaces Community Interest Co) v Liverpool City Council* [2020] EWCA Civ 861, [2021] P & CR 10 per Lindblom LJ and *R (Kinsey) v Lewisham LBC* [2021] EWHC 1286.
63. The OR sets out in detail heritage considerations in the context of the setting and significance of Hollingbourne House (paragraphs 6.104 to 6.133), the setting and significance of the brick garden walls and the sunken glasshouses (paragraphs 6.134 to 6.147), the setting and significance of the Gazebo building (paragraphs 6.148 to 6.150), and the setting and significance of the Donkey Wheel (paragraphs 6.165 to 6.170).
64. Criticism is levelled against the conclusion in the OR that the courtyard studios have a negative impact on the setting of the grade II listed building and the impact of the proposal on the significance of this heritage asset “*will be less than substantial*” (paragraphs 6.133 and 6.155) and, as in the challenge contained under Ground 2, the claimant contends that the disparity between the officer’s view (that the existing building has a negative impact) with the view of the other experts and the Conservation

Officer (that the impact of the existing building is neutral) was a material consideration and it is contended that the flawed assessment of the baseline infected the judgment of impact. I do not accept that to be the case. These two paragraphs do set out the officer's view that the existing building has a negative impact, which does differ from the view of others, however, the conclusions that the impact of the proposed development is less than substantial is based upon the details set out in this part of the OR (spread over 80 paragraphs) and is thoroughly explained. Neither paragraph 6.133 nor 6.155 stand alone and must be read in the context of all that is said in that part of OR. It is a proper analysis of the heritage matters that the officer was required to consider both by reason of the Listed Buildings Act and the NPPF.

65. The second part of the challenge under this third ground, is the submission that the planning OR wrongly equates “less than substantial harm” with a less than substantial objection in breach of the duty imposed by section 66 of the Listed Building Act. Paragraphs 68 to 72 of the Statement of Facts and Grounds sets out the details of the complaint as follows:

“68 The reduction in the footprint of the building ... and the proposed residential use are said to make a positive contribution to the “setting of the wall and glasshouse” [OR 6.146]. This conclusion is bizarre since

- (a) The footprint reduction is marginal
- (b) The walled garden is already in residential use
- (c) The walls and glasshouse are of significance for the role they play in revealing the significance of the principal listed building – not in themselves

“69 The proposal, the OR goes on, would have a neutral impact on the setting of the walls and the glasshouses and the impact would be less than substantial [6.147 and 6.165]. Not only is it the setting of the principal listed building and an impact on its significance that counts, not any setting of the wall per se, but this reinforces the reader's impression that a “less than substantial” impact is – erroneously – taken by the writer to be one that is “neutral” or unimportant.

70. As for the impact on the gazebo and the donkey wheel, the OR concludes “that the current application building and the application site make no contribution to the significance of the grade II listed Donkey Wheel and the Gazebo and they will not harm their setting with less than substantial harm” [6.155]. Again, the OR appears to equate lack of impact and less than substantial harm which undermines the reader's confidence that the writer properly understood their legal duty, or the relevant policies.

71. Finally, and without any analysis at all of why this is so, the OR concludes “The harm arising from the proposal relates to

the new openings in the curtilage listed wall and the roof extensions to the application building” [6.166]. Thus, there is at least some acknowledgement that – as advised by both the IP’s expert and Liz Vinson – the development would cause less than substantial harm to the significance of the principal listed building. The roof extensions are part of it, but there were other harmful elements which are not mentioned in the OR.

72. In these several ways, the OR equates “less than substantial harm” with a less than substantial objection, in breach of the section 66 duty. It also incorrectly assesses the impact on the setting of the curtilage listed wall and glasshouse, instead of the principal listed building. The impression given by a fair reading of the OR, as illustrated by these quotes, is confused about what the heritage asset is and of the significance of the a judgment that development causes less than substantial harm”.

66. It is the contention of the claimant that the alleged confusion renders the OR materially misleading.
67. This is fundamentally an argument that the planning officer’s judgment was wrong, which is an impermissible challenge. The court will only interfere if there is a distinct and material defect in the officer’s advice and in this case the planning officer has set out a detailed analysis of the proposal on each aspect of the heritage assets. Given the detail the planning officer has given with respect to each aspect of the heritage assets it is of course possible to point to minor errors and less than tight language, but that is not what the court is concerned with. The court considers the OR and the advice contained within it as a whole to determine whether it is misleading to the planning committee.
68. The OR contains a full appraisal of the impact of the proposal on all aspects of the heritage elements and in reading the document as a whole, there is no error of law which makes the decision properly open to challenge. The planning committee were not being misled on a material matter.
69. Ground three of this judicial review consequently does not succeed.

Ground Four: alternative proposal – a sensitive conversion of the front building

70. It is contended on behalf of the claimant that MBC failed to take into account a material consideration in granting permission, namely the potential for a sensitive conversion of the front studio building to provide a dwelling in a way which avoids harm to the significance of the listed building. The claimant, through his advisors, put forward an alternative proposal for the conversion of the front studio and the claimant referred to that proposal in his letter to the members of the planning committee on the eve of the decision.
71. The MBC contend that this is an impermissible merits based challenge based upon the planning officer’s judgment being wrong. It is said on behalf of the claimant that this ground is not an attack on the planning officer’s judgment, questions of weight being a matter for the decision maker, but as a matter of law the planning committee must take

into account all material considerations when deciding whether or not to grant planning permission and that MBC failed to do so.

72. The principles with respect to such a challenge are set out in *R (Samuel Smith Old Brewery) v North Yorkshire CC* [2020] UKSC 3, [202] PTSR 221, where Lord Carnwath JSC referred to his earlier decision in *Derbyshire Dales District Council v Secretary of State for Communities and Local Government* [2010] 1 P & CR 19, the issue in that case being whether the authority had been obliged to treat the possibility of alternative sites a material consideration:

“17. It is one thing to say that consideration of a possible alternative site is a potentially relevant issue, so that a decision-maker does not err in law if he has regard to it. It is quite another to say that it is *necessarily* relevant, so that he errs in law if he fails to have regard to it.

18. For the former category the underlying principles are obvious. It is trite and long-established law that the range of potentially relevant planning issues is very wide (*Stringer v Minister of Housing and Local Government* [1970] 1 WLR 1281); and that, absent irrationality or illegality, the weight to be given to such issues in any case is a matter for decision-maker (*Tesco Stores Ltd v Secretary of State for the Environment and West Oxfordshire District Council* [1995] 1 WLR 759, 780). On the other hand, to hold that a decision-maker has erred in law by *failing* to have regard to alternative sites, it is necessary to find some legal principle which compelled him not merely empowered) him to do so.”

73. In *Samuel Smith* Lord Carnwath also said the following:

“31. I referred to the discussion of this issue in a different context by Cooke J ... and in the planning context by Glidewell LJ in *Bolton Metropolitan Borough Council v Secretary of State for the Environment and Greater Manchester Waste Disposal Authority*...

“27. ... ‘ ... *in certain circumstances there will be some matters so obviously material to a decision on a particular project that anything short of direct consideration of them by the ministers ... would not be in accordance with the intention of the Act.*’ (*In re Findlay*)

28. *It seems, therefore, that it is not enough that, in the judge’s view, consideration of a particular matter might realistically have made a difference. Short of irrationality, the question is one of statutory construction. It is necessary to show that the matter was one which the statute expressly or impliedly (because “obviously material”) requires to be taken into account ‘as a matter of legal obligation.’*”

“32. ...

The question therefore is whether under the openness proviso visual impacts, as identified by the inspector, were expressly or impliedly identified in the Act or the policy as considerations required to be taken into account by the authority “as a matter of legal obligation”, or alternatively whether, on the facts of the case, they were “so obviously material” as to require direct consideration.”

74. The alternative proposal put forward by the claimant was in fact considered in the body of the OR. In paragraph 4.01

“Following a “design exercise” carried out by the neighbour’s consultant, it is considered that an alternative scheme to convert the existing barn into one large 4-bed house is entirely achievable and is possible with less harmful impact”

While this may have been a brief consideration, it does mean that there was a consideration of the alternative proposal. The question of weight to be given to that alternative proposal is a matter for the decision maker and is not something the court will interfere with. The planning officer was entitled to consider that alternative proposal as not having any prospect of being given permission and not a proposal that needed further consideration – that is purely a planning judgment.

75. The OR includes a consideration of proposals in the context of both DM 30 (in paragraphs 6.71 to 6.81), and DM31 (in paragraphs 6.15 to 6.42) depending upon whether the proposal is properly a conversion or a new build. The conclusion in the OR that the proposals were for a new build and that, accordingly, DM31 was not relevant. The OR also advised that it did accord with DM30.
76. Given the reference to the alternative proposal put forward by the claimant and the references to the appropriate policies, it cannot be said that MBC was acting irrationally.
77. The challenge under ground 4 must also fail.

#### Listed Building Consent

78. The challenge to the Listed Building Consent rests entirely upon the challenges to the legality of the design to grant planning permission. As those four challenges to the legality of the grant of the planning permission have failed, the challenge to the Listed Building Consent must also fail.

#### Conclusion

79. For the reasons set out the judicial review challenging the decision to grant planning permission and the Listed Building Consent fails on the various grounds advanced by the claimant.
80. In summary: Ground 1 fails as there was no misinterpretation of policy DM5 of the Local Plan, there was no proposal to develop existing residential garden; Ground 2 fails

as there was no material misdirection contained within the OR; Ground 3 fails as it amounts to an attack upon the planning officer's assessment and evaluation of the impacts of the proposed development as set out in the OR; Ground 4 also fails as it is an attack upon a planning judgment, the alternative proposal having been considered but only briefly.





**LEWIS LJ:**

## **INTRODUCTION**

1. This appeal concerns the proper interpretation of a particular policy, Policy DM5, in the Maidstone Borough Local Plan (“the Local Plan”) which deals with developments on previously developed land, referred to as brownfield land. In essence, the policy provides that the residential development of brownfield sites in the countryside which are not residential gardens will be permitted if it meets certain criteria. Those include a criterion that the “site is not of high environmental value”. The principal issue on this appeal is the meaning of “site”. Does it mean the whole of the site which is the subject of the application for planning permission (including the land on which the residential development is to take place and any residential gardens forming part of that application site)? Or is it limited to the land where the residential development is to take place (leaving out of account that part of the application site which is residential garden)? The appellant, Mr Glenn Kinnersley, says it is the former. The respondent local planning authority, Maidstone Borough Council, says it is the latter. HHJ Walden-Smith sitting as a judge in the High Court (“the Judge”) decided it was the latter. A secondary issue concerns the question of whether the respondent failed to have regard to earlier views of the conservation officer which were said to be a material consideration.

## **THE LEGAL FRAMEWORK**

2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides, in essence, that applications for planning permission must be determined in accordance with the development plan for the area unless material considerations indicate otherwise. In the present case, the development plan includes the Local Plan. Relevant policies include Policy SP17 on the countryside which is defined to include all those areas outside the Maidstone urban area, rural service centres and larger villages. The proposed redevelopment in the present case is within the countryside. Paragraph 1 of Policy SP17 provides that:

“Development proposals in the countryside will not be permitted unless they accord with other policies in this plan and they will not result in harm to the character and appearance of the area.”

3. For present purposes, the material policy is DM5 which provides as follows:

“Policy DM5

### **Development on brownfield land**

1. Proposals for development on previously developed land (brownfield land) in Maidstone urban area, rural service centres and larger villages that make effective and efficient use of land and which meet the following criteria will be permitted:
  - i. The site is not of high environmental value; and

- ii. If the proposal is for residential development, the density of new housing proposals reflects the character and appearance of individual localities, and is consistent with policy DM12 unless there are justifiable planning reasons for a change in density.
2. Exceptionally, the residential redevelopment of brownfield sites in the countryside which are not residential gardens and which meet the above criteria will be permitted provided the redevelopment will also result in a significant environmental improvement and the site is, or can reasonably be made, accessible by sustainable modes to Maidstone urban area, a rural service centre or larger village.
4. There is explanatory text in the Local Plan dealing with Policy DM5. Paragraph 6.38 of that text provides that “[r]esidential gardens in urban and rural areas are excluded from the definition of a brownfield site”.

## **THE FACTUAL BACKGROUND**

### ***The Grant of Planning Permission***

5. The Interested Party, Mr Paul Dixon, applied for planning permission in respect of an area of land of approximately 0.2 hectares and comprising two barns which were joined and used together, an historic walled garden to the rear, and a proposed driveway connecting with a nearby road. That is the application site and is marked in red on the application for planning permission. The barns are currently being used as a photography studio and are referred to here as the studio building. The application for planning permission was, broadly, aimed at the conversion of the studio into two dwellings, and the demolition of an historic wall forming part of the walled garden and its reconstruction at a lower height and with two openings within the wall to facilitate access from each dwelling to the garden. The garden would be subdivided into two by a hedge. The application site is within the curtilage of Hollingbourne House, which is to the south west. That is a Grade II listed Georgian house. There are two cottages, Mulberry Cottage and Wells Cottage, attached to Hollingbourne House. Mr Dixon also applied for listed building consent for the demolition and reconstruction of the historic wall as the wall is also listed.
6. There was a detailed officer’s report dealing with the application for planning permission. That described the site. It set out the planning history. It noted that a previous proposal was rejected in 2018 and set out the reasons why it had been refused. It also noted that planning permission for a different scheme had been granted in 2019 but that that permission had been quashed on judicial review as it was accepted that the planning authority had failed to identify the setting of the listed building (Hollingbourne House) and to assess the impact of the proposal on the listed building.
7. The officer’s report then described the proposal, the relevant policies and summarised the consultation responses received. At section 6, it began its appraisal. It identified eight key issues one of which was “Brownfield Land DM5 and sustainability of the

location”. It dealt with that topic at paragraphs 6.43 to 6.68. At paragraphs 6.43-6.44, it states:

“6.43 The Local Plan (paragraph 6.38) excludes residential garden land in both urban and rural locations from the definition of brownfield land.

“6.44. In this context, the land to the rear of the studio building (that is associated with the two cottages and will be retained as residential garden land) is not brownfield land. The studio building with the existing commercial use is located on brownfield land.”

8. The report then summarises Policy DM5 noting that the relevant part is paragraph 2 and identifying the four relevant criteria which included the following “a) the site is not of high environmental value” and “b) the redevelopment will result in a significant environmental improvement”. It then assessed those matters under a heading of “Consideration of DM5 a) and b) above”. At paragraph 6.47, it said the following:

“6.47. The two key questions here are whether the large commercial building on the site is currently of high environmental value, and whether the ‘redevelopment’ will result in a significant environmental improvement to this building”.

9. The reference to the commercial building is a reference to the existing studio building. The report then assesses the existing building against the criteria in Policy DM5 and concludes at paragraph 6.68 that:

“6.68. This brownfield site in the countryside site is not on a site of high environmental value, the proposal will result in significant environmental improvement, the density reflects the character and appearance of the area and the site can reasonably be made accessible by sustainable modes to a larger village and has the benefit of removing a use that would have higher trip generation. After these considerations the proposal is in accordance with policy DM5 of the adopted Local Plan. The proposal is also in line with advice at paragraph 118 of the [National Planning Policy Framework] that states that planning decisions should encourage multiple benefits from rural land.”

10. The officer’s report also assessed heritage and noted the officer’s conclusion that the current application building had a negative impact on the setting of Hollingbourne House and the proposal would cause less than substantial harm to it. The officer’s report recommended that planning permission be granted.
11. The respondent’s planning committee met on 17 December 2020 and resolved to grant planning permission, subject to conditions, and listed building consent. Planning permission was formally granted on 21 January 2021 for:

“Demolition of the rear section of the building and erection of replacement structure, and conversion of front section of building including external alterations, to facilitate the creation of 2 dwellings with associated parking and garden areas. Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse.”

12. Listed building consent for the demolition of the existing wall and its reconstruction was also granted on 21 January 2021.

### *The Claim for Judicial Review*

13. The appellant, who is the owner of Hollingbourne House, sought judicial review of the grant of planning permission and listed building consent. It is common ground that the two stand or fall together. There were four grounds of claim but, for present purposes, it is only the first two that are material. First, the appellant contended that the respondent had misinterpreted Policy DM5 as it had had regard only to the existing studio building when deciding whether the “site” was of high environmental value and failed to have regard to whether the site as a whole, that is, the studio building, the walled garden and driveway, was of high environmental value. The second ground was that the respondent had taken an inconsistent approach to the assessment of the contribution made by the existing building. The officer had considered that the existing building had a negative effect on the setting of Hollingbourne House whereas previous officers had assessed the existing studio building as having a neutral impact. That change altered the baseline for assessment of the heritage impact.

14. The Judge dealt with ground 1 in the following terms:

“35. The claimant's contention that the manner in which MBC has applied DM5 is artificial, and an impermissible restriction of the scope of the policy and offends against the clear wording of DM5, is not a contention with which I can agree. DM5 is clearly worded. It applies to this development but it expressly does not apply to residential gardens. The officer clearly applied the policy and considered the correct issues in coming to the conclusion he did. The policy is only applicable to that part of the site which is brownfield.

36. The claimant is relying upon an incorrect interpretation of DM5 in an effort to show that the development is contrary to DM5. The officer's report correctly refers to the relevant parts of DM5 and to the relevant guidance on the application of DM5. There was no proposal for the development of any part of the residential garden. The planning officer properly focussed on whether the proposed works would fulfil the policy considerations.”

15. In relation to ground 2, the Judge held that any inconsistency between the views of earlier conservation officers and the current planning officer as to the impact of the

existing studio building on the setting of Hollingbourne House was not material. The respondent's planning committee was not considering whether the proposals were removing something that was negative or damaging to the significance of the listed building but rather they were considering whether what was put in its place was damaging to the setting of the listed building. Concentration on an inconsistency between whether the existing building had a neutral or negative impact was not where the focus should be. The Judge dismissed this ground of claim, and the other grounds, and dismissed the claim for judicial review.

16. Coulson LJ granted permission to appeal on two grounds, which correspond to grounds 1 and 2 of the claim. He refused permission to appeal on the other grounds.

## **THE FIRST ISSUE – THE PROPER INTERPRETATION OF DM5**

### ***Submissions***

17. Ms Townsend submitted that the word “site” in paragraph 1.i of Policy DM5 means the whole of the application site. That is the natural meaning of that word. That is how the word “site” is used in other parts of the Local Plan. Further, the proposed redevelopment here involved parts of the walled garden, namely the wall itself and two patio areas. In addition, the aim of the Local Plan policies was to prevent redevelopment of residential gardens in the countryside. There would be no purpose in excluding the area of the walled garden from consideration of whether the site as a whole was of high environmental value in determining whether it met the criteria for redevelopment. She submitted that the respondent therefore erred in considering only part of the application site, that is the studio building.
18. Mr Atkinson for the respondent submitted that Policy DM5 was not intended to apply to residential gardens. They were excluded from the scope of that policy. That was consistent with the explanatory text to the policy which said, at paragraph 6.38 that “residential gardens in urban and rural areas are excluded from the definition of a brownfield site”. Consequently, the reference to “site” in paragraph 1.i of DM5 should be interpreted to mean the site excluding the residential garden.

### ***Discussion***

19. This issue concerns the proper interpretation of a policy in a development plan. Planning policies should be interpreted objectively, in accordance with the language used, read in its proper context. They should not be interpreted as if they were statutes or contracts. See, generally, *Tesco Stores Ltd. v Dundee City Council (Asda Stores Ltd intervening)* [2012] UKSC 13, [2012] PTSR 983, and see the summary of relevant principles set out by Holgate J. in *Rectory Homes Ltd. v Secretary of State for Housing, Communities and Local Government* [2020] EWHC 2098 (Admin), [2021] PTSR 143 at paragraphs 43 to 45.
20. The context is that Policy DM5 is dealing with development on previously developed land (which it refers to as “brownfield land”). Paragraph 1 provides that the residential development of previously developed land in urban areas must meet certain specified criteria including that the site is not of high environmental value and that the density of the housing is acceptable and consistent with policy. Paragraph 2 provides that exceptionally, the residential redevelopment of previously developed land in the

countryside (but not land which is a residential garden) may be permitted provided that certain criteria are met. Those are that (1) the “site is not of high environmental value” (2) the density is acceptable (3) “the redevelopment will also result in a significant environmental improvement” and (4) the site is, or can reasonably be made, accessible.

21. First, on the natural interpretation of the words of Policy DM5, read in context, the reference to “site” in paragraph 1.i means the application site, that is, the site which is the subject of the application for planning permission. That is how the word “site” is used in other parts of the Local Plan. By way of example, Policy DM1 indicates that proposals should incorporate “natural features such as trees, hedges and ponds worthy of retention within the site”. The reference to “site” there must mean the application site and cannot be read as excluding parts of the area in respect of which planning permission is sought.
22. That interpretation also reflects the difference between the words used in the main body of paragraph 1 and the criteria in paragraph 1.i. The paragraph itself provides that redevelopment on “previously developed land” (defined as “brownfield land”) will be permitted if it meets certain criteria. The criterion in paragraph 1.i is that the “site” is of high environmental value. The use of a different word, “site”, instead of the phrase “brownfield land” or “previously developed land” suggests that “site” may have a different meaning or scope. The obvious difference will be where the application site includes “previously developed” or “brownfield land” together with other land. In those circumstances, the environmental value of the whole of the site (not simply the brownfield, or previously developed, land) will need to be assessed. Similarly, when paragraph 2 refers to the redevelopment of “brownfield sites”, it requires that specified criteria be met including those in paragraph 1.i. that the “site” is not of high environmental value. Paragraph 2, therefore, distinguishes between the area where redevelopment is to be permitted and the “site”. The natural inference is that the reference to the “site” is to the application site as a whole.
23. Secondly, that meaning accords with the purpose underlying DM5. The aim is to ensure that redevelopment will take place on previously developed land only if the site is not of high environmental value. Where an application site consists both of previously developed land (which may be redeveloped) and other land such as a residential garden (where redevelopment is not permitted), it does not accord with the purpose of the policy if only the environmental value of part of the application site is assessed and if the “protected” part (the residential garden) is left out of account.
24. Thirdly, the premise upon which the respondent proceeded is mistaken. They considered that the “policy” did not apply to residential gardens as the explanatory text made it clear that residential gardens were excluded from the definition of a brownfield site for the purpose of Policy DM5. That is, however, to equate the policy as a whole with the definition of “previously developed land”. It is clear that residential gardens in the countryside will not benefit from the presumption that redevelopment will be permitted if certain specified criteria are met. That does not mean, however, that other

aspects of the policy should not apply to residential gardens. In particular, where residential gardens together with other previously developed land form part of a single application for redevelopment, there is no reason why other parts of Policy DM5 cannot apply. In particular, there is no reason why the residential garden area forming part of the application for planning permission should be left out of account when deciding if the “site” as a whole is of high environmental value.

25. In the present case, it is clear that the officer’s report only considered whether the existing studio building was of high environmental value. That follows in part from paragraphs 6.43 and 6.44 of the report which concluded that the residential garden was not part of the brownfield land. It appears most clearly from paragraph 6.47 and following where the officer considered whether “the large commercial building”, that is the studio building, was of high environmental value. He did not consider whether the application site, that is the existing building, the walled gardens and the land connecting with the road, was taken as a whole of “high environmental value”. For that reason, the respondent erred in its interpretation and application of Policy DM5. I would quash the planning permission, and the listed building consent and remit the matter to the respondent for it to consider the matter afresh. The respondent will need to determine whether or not the application site as a whole is of high environmental value.
26. The respondent will also have to assess whether the other criteria are met including whether the proposed redevelopment will result in a significant environmental benefit. That latter consideration is not tied to any particular geographic area. The local authority will have to consider the proposed redevelopment as a whole (and here the proposed redevelopment includes the changes to the existing studio building and the changes to the wall forming part of the walled garden). The significant environmental improvement may be to the whole of the application site, part of the application site (e.g. the repair of the historic wall) or to areas outside the application site, or a combination.
27. This consideration also explains why interpreting “site” in paragraph 1.i of Policy DM5 as meaning the application site will not lead to other difficulties. In particular, it was suggested in argument that the application could be drafted in a way which excluded the residential gardens so, for example, the application would only be for permission to redevelop the studio building and the application site would not include the walled garden. As a matter of fact, that would not be a practical proposal here as the redevelopment presupposes that the walled garden will be divided into two separate gardens, one for each of the two dwellings, and that would require work to the wall to provide two openings. More significantly the redevelopment, in this scenario, would comprise only the demolition and rebuilding of the studio building. That more limited redevelopment would still need to result in a significant environmental improvement in the way described above. If all that was to be done was to replace the existing studio building with a different building, it may well be that that criterion would not be met.

## **THE SECOND GROUND – MATERIAL CONSIDERATION**

### *Submissions*

28. Ms Townsend submits that the grant of planning permission was unlawful as there was an inconsistency between the decision in the present case and earlier expressions of view by the respondent's then conservation officer which was not explained by the officer's report. Ms Townsend submitted that at various stages in the officer's report he referred to the impact of the existing studio building as negative and the proposal as having a less than substantial effect on the listed building. This she submitted set the baseline for assessment of the impact of the proposed redevelopment on the listed building. Previously it had been implicit that the conservation officer had considered that the effect of the existing studio building was benign or neutral as if that were not the conservation officer's view, the officer would have said so explicitly.
29. Mr Atkinson submitted that the Judge below was correct to conclude that any inconsistency was not critical as the issue was the effect of the current proposals on the listed building.

### *Discussion*

30. The existing case law establishes that a decision of a planning inspector or a local planning authority on a critical issue such as the interpretation of planning policy, aesthetic judgments, or assessments of need may depending on the circumstances, be a material consideration for subsequent planning decisions. If a subsequent decision-maker is to depart from the conclusion on such an issue, he will need to give reasons for doing so or there will be a risk that a court would conclude that the subsequent decision-maker failed to have regard to a material planning consideration: see *North Wiltshire District Council and the Secretary of State for the Environment and Clover* (1992) 65 P. & C.R. 137 especially at 145 to 146. If a decision is quashed, that decision is not capable of giving rise to legal effect. But if the decision is quashed for reasons which do not affect the conclusions of the decision-maker on a specific issue, the conclusions on that issue may be a material consideration for subsequent decision-makers: see per Coulson J. in *Vallis v Secretary of State for Local Government* [2012] EWHC 578 (Admin) cited in *R (Davison) v Elmbridge Borough Council* [2019] EWHC 1409 (Admin), [2020] 1 P. & C.R. 1 and see *Fox v Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government* [2012] EWCA Civ 1198, [2013] 1 P. & C. R. 152.
31. The first document relied upon by the appellant is a record of the conservation officer's response to consultation on an application for planning permission for conversion of the studio building into two dwellings in 2018. The officer commented on the studio building, referring amongst other things to "the long, linear qualities of the cowshed, its pitched slate roof and its simple agrarian form." Ms Townsend submitted that it is implicit in this and other comments that the then conservation officer considered that the existing studio building was neutral or benign in its impact or the officer would have said so. The refusal of planning permission was made for other reasons. The second document is a brief note of advice given by the then conservation officer when a different proposed redevelopment was granted planning permission. The officer commented that she was satisfied that the conversion of the barns would not have a negative effect. Ms Townsend again submitted that this amounted to a conclusion that the effect of the existing studio was neutral or benign which was unaffected by the

subsequent quashing of the planning permission. The planning officer therefore had to explain why he was taking a different and inconsistent view.

32. I do not consider that either of the documents relied upon amounts to a material consideration that required the planning officer in the present case specifically to give reasons as to why he was departing from their earlier reasoning. The first contains general expressions of view about aspects of the existing building contained in a consultation response. It is not possible on the facts of this case to discern any clear or implicit conclusion on a critical issue to do with the assessment of the impact of the existing studio buildings such that any later expression of a different view had to refer to and explain the departure from that earlier view. Further, the application for planning permission was refused and it is difficult to see that that refusal would amount here to an endorsement of any views on the existing building expressed by the conservation officer in the course of considering the application. Similarly, on the information before this court, I do not consider that the comments of the conservation officer in the second document that she was satisfied that a different proposed development did not have a negative impact on the adjacent heritage assets amounts to a clear conclusion on the assessment of the impact of the existing buildings. The grant of planning permission was subsequently quashed. It could not, however, be said that that left in place any discrete decision on a critical issue concerning the impact of the existing building.
33. In any event, I am satisfied that, reading the planning officer's report as a whole, the focus was on the effect of the proposed redevelopment on the listed building. In that regard, he considered that the "impact of the proposal on the significance of this heritage asset will be less than substantial" (see paragraph 6.133 and repeated at paragraph 6.155 of the report). Any difference between the current planning officer's assessment of the existing building and any earlier view was not critical or material to the advice that the officer was giving to the planning committee. The officer's advice was not based on any difference in the assessment of the impact of the existing buildings. For those reasons, I do not regard the second ground of appeal as established.

## **CONCLUSIONS**

34. The respondent failed properly to interpret Policy DM5 in that it failed to consider whether the application site as a whole had environmental value. Rather it only considered whether part of the application site, that is, the existing studio building, had a high environmental value. For that reason, I would quash the planning permission and the listed building consent and remit the matter to the respondent. It will have to decide whether or not the application site, comprising the studio building, the walled garden and the land connecting with the road, has high environmental value and whether the other criteria in DM5 are satisfied.

## **MOYLAN LJ**

35. I agree.

## **BEAN LJ**

36. I also agree.

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
PLANNING COURT

Claim No. CO/1878/19

IN THE MATTER OF A CLAIM FOR JUDICIAL REVIEW  
BETWEEN:



GLENN KINNERSLEY

Claimant

- and -

MAIDSTONE BOROUGH COUNCIL

Defendant

- and -

PAUL DIXON

Interested Party

*Rhodi P. King, City of Maidstone Deputy High Court Judge*  
*1-vii-2019*



CONSENT ORDER

1. UPON the Claimant having lodged this claim on 10 May 2019 for judicial review of the Defendant's decision, dated 29 March 2019, to grant planning permission for development at Courtyard Studios, Hollingbourne Hill, Hollingbourne, Kent ME17 1QJ ("the application site") under reference 18/506662/FULL ("the Decision");
2. AND UPON the Defendant and the Interested Party having indicated that they will not contest the claim;
3. AND UPON considering the matters set out at Schedule 1 to this order, being the statement of reasons for making this order.

BY CONSENT IT IS ORDERED that:

4. Permission to apply for judicial review is granted.
5. The Claim is allowed.
6. The Decision is hereby quashed.
7. There be no order as to costs.

Richard Buxton Solicitors / LP

RICHARD BUXTON SOLICITORS for the CLAIMANT



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MID KENT LEGAL SERVICES for the DEFENDANT

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PAUL DIXON for the INTERESTED PARTY

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RICHARD BUXTON SOLICITORS for the CLAIMANT

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MID KENT LEGAL SERVICES for the DEFENDANT

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*P. R. Dixon*

\_\_\_\_\_  
PAUL DIXON for the INTERESTED PARTY

*Approved by  
Philip I. Loring  
sitting as  
Deputy High Court Judge  
1-vii-2019*

*By the Court*

## SCHEDULE 1 - Statement of reasons for making the order

The following is agreed between the Claimant and the Defendant:

1. In December 2018, the Interested Party applied to the Defendant for planning permission for "the conversion and adaptation of the existing photographic studios into 2no dwellings." The works proposed involve the demolition of the rear section of the application building and the demolition and relocation of part of the listed wall. The application was given reference 18/506662/FULL.
2. Hollingbourne House is a Grade II listed building owned and occupied by the Claimant and his family. The application site consists of a barn and adjoining land within the ownership of the Interested Party. The Claimant and Defendant agree that the application site falls within the curtilage of Hollingbourne House. The Interested Party does not agree that the application site falls within the curtilage of Hollingbourne House and reserves his position in this respect.
3. On approximately 26 February 2019, the description of the development was amended to read:
 

"Demolition of the rear section of the building and erection of replacement structure, and conversion of front section of building including external alterations, to facilitate the creation of 2 dwellings with associated parking and garden areas."
4. The Claimant submitted multiple letters of objection, including by planning consultants Kember Loudon Williams and heritage expert, Ms Liz Vinson of Heritage Collective.
5. On 29 March 2019, the Council issued a decision notice granting planning permission to application 18/506662/FULL ("the Decision").
6. The Decision was taken by an officer of the Council exercising delegated powers. The Council was therefore required by Regulation 7 of the Openness in Local Government Regulations 2014 to record its reasons for the decision. These are

found within the 9-page officers' report which recommended that planning permission be granted. [CB/2/301]

7. On 7 May 2019, the Claimant's solicitors wrote to the Defendant in accordance with the Pre-Action Protocol for Judicial Review setting out four proposed grounds of challenge. The letter also noted that the Claimant's solicitors had been instructed very recently and, in light of the pending deadline to lodge the claim (which was 10 May 2019), indicated that if the Defendant confirmed in writing by 21 May 2019 that it would not contest the claim, the Claimant would not seek an order for the recovery of his costs from the Defendant incurred up to and including the lodging of the claim.
8. On 10 May 2019, the Claimant lodged Judicial Review proceedings challenging the claim on four grounds – the same four grounds that had been set out, in outline, in the Claimant's pre-action letter of 7 May 2019. The four grounds are as follows:-
  - i) The Planning Authority failed to address the question whether or not the proposal "accorded with" the Development Plan as a whole, in breach of its statutory duty under section 38(6) of the Planning and Compulsory Purchase Act 2004.
  - ii) It is clear from a fair reading of the officer's report that the Planning Authority's decision was tainted by significant errors of policy interpretation and/or failures to take account of material considerations in the application of policy to the facts of the case. The Claimant's Statement of Facts and Grounds ("SOFG") identified six significant failings (SOFG paragraphs 37-43).
  - iii) The Council adopted a flawed approach to the assessment of heritage impact and in so doing acted in breach of its statutory duty under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Claimant relied on seven errors in this regard (SOFG paragraphs 52-58).
  - iv) The Planning Authority failed to comply with its duty to give reasons for its decision under Regulation 7 of the Openness in Local Government Regulations 2014 (SOFG, paragraph 61).

9. By letter dated 16 May 2019 and emailed to the Claimant on 17 May 2019, the Defendant indicated that it accepted that *"there has been a failure to clearly identify what the setting to the listed building is in order to then set out how any impact, if any, to the setting of the Listed Building is mitigated by the proposed development."* The Defendant therefore accepted that for this reason it would not contest the claim, which should succeed under the Claimant's grounds 2 and 3.
10. This consent order is made without prejudice to the parties' positions on the other grounds.
11. The Defendant agrees that it will reconsider the application in accordance with the law and without any reliance on any part of the reasoning in the officer's report associated with the impugned decision notice.
12. On 31 May 2019, the Interested Party, Mr Dixon, indicated his consent to the draft order, in light of the agreement set out above between the Claimant and the Defendant.

### Conclusion

In light of the above, the Parties are agreed that it would be appropriate for the Court to make an order in the terms set out.

*By the Court*

# Agenda Item 22

50 m  
100 ft



Ordnance Survey - data derived from OS Premium

**19/506031/LBC Courtyard Studios, Hollingbourne House, Hollingbourne Hill, Hollingbourne, Maidstone, Kent, ME17 1QJ**

Scale: 1:2500  
N

Printed on: 9/5/2023 at 14:43 PM by JoannaW

## REPORT SUMMARY

<b>REFERENCE NO:</b> - 19/506031/LBC
<b>APPLICATION PROPOSAL:</b> Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse.
<b>ADDRESS:</b> Courtyard Studios Hollingbourne House Hollingbourne Hill Hollingbourne Maidstone Kent ME17 1QJ
<b>RECOMMENDATION:</b> Grant Listed Building Consent subject to conditions set out in Section 11.0
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b> The Court of Appeal found, in summary, that the earlier decision was flawed because the Council in applying DM 5 had failed to take into consideration the entire site and had focused only on the existing building. The judgement therefore concluded that the following matters needed re-consideration:  - The respondent will need to determine whether or not the application site as a whole is of high environmental value  - The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit  As set out in the High Court ruling, it was considered common ground that both decisions referred to (19/506031/LBC and 18/506662/FULL) <i>stand or fall together</i> . As such both the decisions made by members on the Listed Building Consent and Planning Permission have been quashed and both applications are now put back before members for due consideration and decision in light of the Court of Appeal's judgment about the proper interpretation of policy DM5.  The appraisal relating to the heritage matters remains principally unchanged from earlier consideration, subject to where necessary in relation to those matters raised at 5.0.  A local planning authority in making decisions must have special regard to the desirability of preserving any features of special architectural or historic interest. Adopted policy states that the aim of protecting the characteristics, distinctiveness, and quality of heritage assets will be achieved by the council supporting measures that secure the sensitive restoration and reuse of heritage assets.  The garden walls have been subject of a wide range of works, alterations, demolition and rebuilding in the past. The submitted proposal involves repair and restoration works that will generally maintain the character of the walls to ensure that they meet the functional role as means of enclosure.  In addition to the restoration works, the proposal includes the lowering of the middle section of the southern wall and the formation of two new openings. The lowering of the wall, which will match a previously approved adjacent lowered wall, will improve the access to the rear garden space as part of the proposal to introduce family accommodation in the studio building. As the walls have previously been significantly altered it is considered that the important characteristics that require protection relate to the reuse of the bricks, the wall alignment and the manner in which the walls are constructed (bond, mortar mix etc).  The significance of the walls and historic interest are limited to the materials used, method of construction and wall alignment. The proposed works involving the lowering of the wall

and the formation of the two new openings are considered to represent less than substantial harm. The less than substantial harm will be outweighed by the public benefits of the development, which include heritage benefits arising from repairs to all the garden wall, the accessibility improvements to the garden space for future occupiers and the restoration works to the sunken greenhouse.

**REASON FOR REFERRAL TO COMMITTEE:**

Cllr Patrik Garten has referred this application to committee.

**WARD:**  
North Downs

**PARISH/TOWN COUNCIL:**  
Hollingbourne

**APPLICANT:** Mr Dixon  
**AGENT:** DHA Planning

**CASE OFFICER:**  
Rachael Elliott

**VALIDATION DATE:**  
03/06/20

**DECISION DUE DATE:**  
22/01/21

**ADVERTISED AS A DEPARTURE: NO**

**MAIN REPORT**

**Relevant Planning History**

18/506662/FULL Demolition of the rear section of the building and erection of replacement structure, and conversion of front section of building including external alterations, to facilitate the creation of 2 dwellings with associated parking and garden areas. Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse. Pending Consideration (separate report on this agenda).

18/500228/FULL Conversion and adaptation of existing photography studio into 2 dwellings with associated parking and garden area. Refused 17.04.2018 for the following reasons:

- 1) *The proposed external works and extension due to the, design, scale and bulk of the proposals fail to respect the character and appearance of the existing buildings and would result in an overly domestic, urban and disjointed appearance that fails to respect the existing buildings contrary to Policies SP17, DM1, DM30, DM31 and the National Planning Policy Framework 2012.*
- 2) *The application fails to demonstrate that the buildings are of sound construction and their re-use and the reconstruction in the form proposed can be achieved without major or complete reconstruction contrary to Policy DM31 of the Maidstone Borough Local Plan 2017.*
- 3) *The proposed development would be located in an isolated position within the defined countryside, as established by adopted Local Plan Policy SS1 and SP17 which places emphasis on housing development within sustainable locations. The application for the creation of additional dwellings here has failed to demonstrate a significant environmental improvement and that the site can be reasonably made, accessible by sustainable modes to Maidstone urban area, a rural service centre or larger village as is therefore contrary to Policies SS1, SP17 and DM5 of the Maidstone Borough Local Plan 2017 and the National Planning Policy Framework 2012.*

- 14/0201 Change of use of studio outbuilding and associated service areas to a purpose incidental to the enjoyment of Mulberry and Well Cottages, and erection of fencing around a tennis court. Granted 07.04.2014

- 99/1078 Listed building consent for partial reduction in height of garden wall and formation of new gateway Granted 16.08.1999

- 99/0120 Retrospective listed building consent application for partial demolition of garden wall to provide fire escapes to building regulations requirements and amenity to office and workroom facilities. Refused 19.03.1999 for the following reasons *"The section of wall, the subject of this proposal is listed having been erected prior to 1948 and is within the historic curtilage of Hollingbourne House which is a grade II listed building. It is considered that this section of wall forms an important and integral part of the historic setting of Hollingbourne House and its demolition adversely affects the special historic and architectural interest of this listed building and its curtilage contrary to policy ENV19 of the Kent Structure Plan 1996, policies ENV3 and ENV4 of the Maidstone Local Plan 1993 and policies ENV11 and ENV12 of the Maidstone Wide Local Plan (Deposit) draft"*.
- 99/0119 (Part retrospective) Insertion of windows and doors to north east elevation of the office and workroom facilities Granted 19.03.1999
- 97/1765 Change of use to a mixed use for photographic business (B1) and continuation of existing carpentry business ancillary to existing electronic workshop, and external alterations. Granted 01.05.1998 with conditions including a restriction to only B1(b) and B1(c) for the reason that "Unrestricted use of the building or land would cause demonstrable harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers" and stating that no activity in connection with the uses hereby permitted shall be carried out outside the hours of 18:00 and 08:00 and not at any time on Sundays, Bank or Public Holidays in order to safeguard the enjoyment of their properties by adjoining residential occupiers.
- 89/1936 Erection of detached garage block. Granted 20.02.1990
- 83/1419 Retrospective application for change of use from residential to electronic workshop and office. Granted 28.12.1983

**1. DESCRIPTION OF SITE**

See separate report for 18/506662/FULL

**2. PROPOSAL**

- 2.01 This application is linked to the application for full planning permission under reference 18/506662/FULL which is under consideration separately on the agenda.
- 2.02 The application for listed building consent relates to the demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other curtilage listed garden walls and restoration of 1 sunken glasshouse.

**3. BACKGROUND**

- 3.01 The Council issued a planning decision notice on the 29 March 2019 for the application under reference 18/506662/FULL, with the decision notice granting conditional planning permission.
- 3.02 On behalf of the occupier of Hollingbourne House, the Council were informed on the 7 May 2019 (Pre-Action Protocol letter) of the intention to submit a judicial review against the decision to grant planning permission on four separate grounds.
- 3.03 The Council indicated in a response letter dated 16 May 2019 that it accepted that *"there has been a failure to clearly identify what the setting to the listed building is in order to then set out how any impact, if any, to the setting of the Listed Building is mitigated by the proposed development"*. The Council accepted that

for this reason it would not contest the claim which should succeed under Claimant's grounds 2 and 3.

- 3.04 A High Court Consent Order dated 8 July 2019 quashed the decision made by the Council to grant planning permission on the 29 March 2019.
- 3.05 This application, together with a Listed Building Consent application for the *Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse..* were subsequently reported to Planning Committee on 17<sup>th</sup> December 2020 to reconsider the decision on this application and determine the Listed Building Consent submission. Members resolved to grant planning permission for the development specified in Section 1.0 above and Listed Building Consent under application 19/506031/LBC.
- 3.06 The decisions were issued on 21<sup>st</sup> January 2021.
- 3.07 A case to Judicially Review the decision was subsequently brought forward by the immediate neighbour in relation to both the grant of full planning permission (18/506662/FULL) and Listed Building Consent (19/506031/LBC). This was initially refused permission to proceed by Mr Tim Mould QC, decision dated 5 May 2021. A renewed oral hearing by Lang J granted permission to bring forward substantive judicial review proceedings on four grounds. These being as follows :
- (i) MBC erred in its interpretation of the Local Plan policy DM5 "Development on brownfield land";
  - (ii) MBC was inconsistent in the approach it took to the assessment of the contribution to the setting of the listed building made by the existing studio buildings;
  - (iii) MBC was flawed in the approach taken to the assessment of heritage impact and in doing so acted in breach of its statutory duties pursuant to the provisions of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
  - (iv) MBC failed to take into account a material consideration, namely the potential for a sensitive conversion of the front studio building for the purpose of providing a dwelling.
- 3.08 The High Court in a ruling dated 14 July 2022 rejected all 4 grounds stating, in summary, the following :
- Ground 1 fails as there was no misinterpretation of policy DM5 of the Local Plan, there was no proposal to develop existing residential garden; Ground 2 fails as there was no material misdirection contained within the OR; Ground 3 fails as it amounts to an attack upon the planning officer's assessment and evaluation of the impacts of the proposed development as set out in the OR; Ground 4 also fails as it is an attack upon a planning judgment, the alternative proposal having been considered but only briefly.***
- 3.09 Permission was granted by the Court of Appeal to appeal against the High Court's decision on 2 grounds these in summary being :

1. The proper interpretation of, Policy DM5, in the Maidstone Borough Local Plan and the meaning of 'site'; in particular whether this means the whole of the site the subject of the application, including the garden to the rear of the main application building, or whether 'site' in the context of DM5 excluded the garden to the rear.
2. Whether the respondent failed to have regard to earlier views of the conservation officer which were said to be a material consideration

In its decision dated 22 February 2023 the Court of Appeal found that the Council had misinterpreted policy DM5, stating that :

*The respondent failed properly to interpret Policy DM5 in that it failed to consider whether the application site as a whole had environmental value. Rather it only considered whether part of the application site, that is, the existing studio building, had a high environmental value. For that reason, I would quash the planning permission and the listed building consent and remit the matter to the respondent. It will have to decide whether or not the application site, comprising the studio building, the walled garden and the land connecting with the road, has high environmental value and whether the other criteria in DM5 are satisfied.*

- 3.10 The second ground of appeal was rejected by the Court of Appeal.
- 3.11 All four decisions referred to above are attached for information as appendices to this report as described below :

Appendix A : Copy of Timothy Mould QC decision on the papers dated 5 May 2021

Appendix B : Copy of High Court Judgement dated 14 July 2022

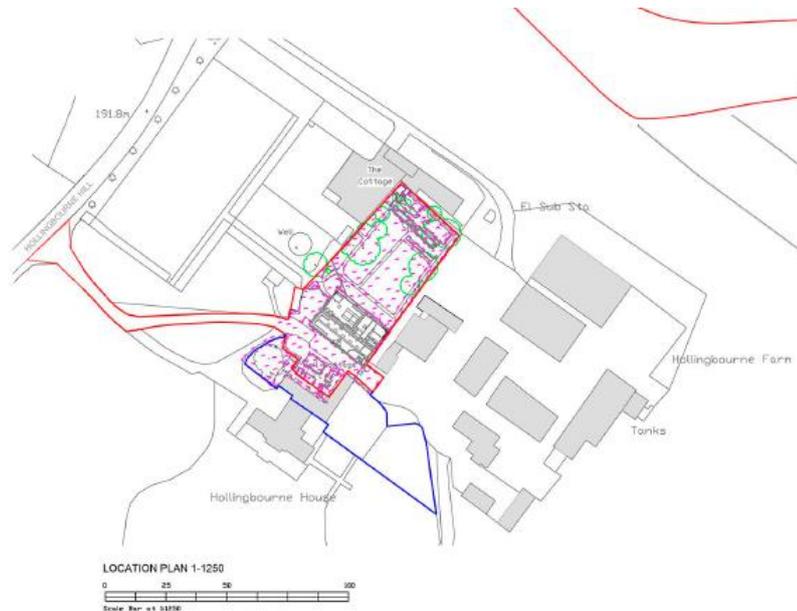
Appendix C : Copy of Court of Appeal Judgement dated 22 February 2023

Appendix D : Copy of Order to Consent dated 8 July 2019

- 3.12 As set out in the High Court ruling, it was considered common ground that both decisions referred to (19/506031/LBC and 18/506662/FULL) *stand or fall together*. As such both the decisions made by members on the Listed Building Consent and Planning Permission have been quashed and both applications are now put back before members for due consideration and decision in light of the Court of Appeal's judgment about the proper interpretation of policy DM5.

#### **4. KEY JUDGEMENT SUMMARY**

- 4.01 The Court of Appeal found that the Council's earlier determination of what constitutes 'the site' in this case for the purposes of applying Policy DM5 was erroneous. , The December 2020 committee report solely considered the building itself in relation to its environmental value, rather than the entire site outlined in red (see map area identified as being within the red line (extract below)



4.02 The point which was made by the Appellant and which was accepted by the Court of Appeal is that in order to make a proper planning judgment in the application of DM5 about whether or not the site is of high environmental value and whether the proposed development will result in significant environmental improvement, it is necessary to consider the site in its entirety, including the main application building but also the walled garden to its rear and the access route to the highway. The judgement highlights what should be considered as 'the site', which is *the existing building, the walled gardens and the land connecting with the road* (paragraph 25 of Appendix C.)

4.03 Paragraphs 25 and 26 continue by setting out the key considerations the Council will need reconsider, now that the court of Appeal has quashed the Council's decision. In summary being :

- The respondent will need to determine whether or not the application site as a whole is of high environmental value
- The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit

## 5. MATERIAL CHANGES SINCE EARLIER DECISION

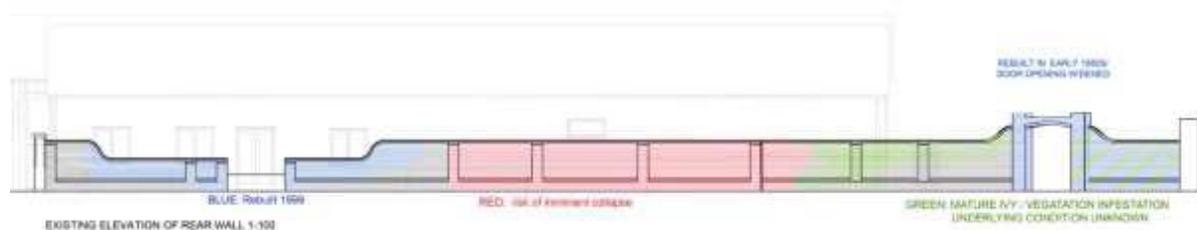
5.01 The Maidstone Borough Council – Local Plan Review Regulation 22 Submission has been made and Local Plan Hearings are ongoing. The regulation 22 submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is a material consideration, and some weight must be attached to the document because of the stage it has reached. The weight is however limited, as it has yet to be the subject of a full examination in public.

5.02 The National Planning Policy Framework (NPPF) was revised on 20 July 2021.

5.03 Due to health and safety concerns, a section of the north-east facing garden wall has been removed/lowered and the bricks stored securely behind the remaining wall.



- 5.04 The existing elevations of the wall submitted with the application (see plan below), therefore now differ from the 'on the ground' situation. Areas highlighted in green have now been removed and those in red lowered.



- 5.05 The applicant is aware that the works carried out are without the benefit of a current consent. Amended plans are not required as the existing plan indicates the lawful height and position of the wall.

## 6. POLICY AND OTHER CONSIDERATIONS

- Maidstone Borough Local Plan 2017 Policies SP18, DM1, DM4,
  - National Planning Policy Framework (NPPF)
  - National Planning Practice Guidance (NPPG)
  - Emerging Policies – Maidstone Borough Council – Local Plan Review Regulation 22 Submission  
The regulation 22 submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is a material consideration, and some weight must be attached to the document because of the stage it has reached. The weight is limited, as it has yet to be the subject of a full examination in public
- Policy LPRSP15 (B) – The Historic Environment  
Policy LPRENV 1 – Historic Environment

## 7. LOCAL REPRESENTATIONS

### Local Residents:

See separate report for 18/506662/FULL

### Councillor Patrik Garten

- 7.01 The policy determining conversion of rural buildings, Policy DM31 permits residential use only where every reasonable attempt has been made to secure a

business re-use of the building. Evidence setting out why the business re use is not appropriate for the buildings needs to be provided and ought to be scrutinised by committee.

- 7.02 Neighbours allege that the proposed works are unsympathetic, overly domesticated and fail to respect the character and appearance of the setting of the Grade II listed Hollingbourne House. As this is partially a subjective assessment, it should be considered by a committee.
- 7.03 As my previous reasons explains, the reason for call-in is mainly to secure public confidence in the planning process, which was previously thwarted and required a judicial review. While I welcome the amended details, they do not overcome the unfortunate history of this case.

**Hollingbourne Parish Council**

- 7.04 Do not wish to comment/object.

**8. CONSULTATIONS**

(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)

**Historic England**

- 8.01 No comment. On the basis of the information provided, we do not consider that it is necessary for this application to be notified to Historic England under the relevant statutory provisions.

**Conservation Officer (MBC)**

- 8.02 I support the application and raise no objections from a conservation point of view. The works are wholly in line with our discussions on site and the submission is clear and of good quality
- 8.03 The initial proposal relating to the historic wall adjacent to the development site was that it would be demolished and relocated. I took the view that this would cause harm to a heritage asset and for no clear benefit.
- 8.04 The solution agreed with the applicant was to keep the wall in its historic location but it would be taken down and rebuilt using the viable bricks from the surviving wall supplemented by some bricks salvaged from earlier work. This will deal with the serious problems affecting the wall particularly its dangerous lean and the general decay of the masonry caused by invasive vegetation.
- 8.05 It is unlikely that enough bricks will be salvaged to rebuild the wall to its present height and accordingly it was agreed that the wall could be rebuilt at a lower height. It was also considered as acceptable that the applicant could make some new openings in the wall to suit the needs of the redeveloped adjacent building. The result will be a wall which retains the historic boundary line of the walled area and one which is stable and generally clear of other agents of decay. This seems to me to be a significant gain for the historic asset where there is currently a high risk of collapse and loss.
- 8.06 The works to the remainder of the boundary wall are measured and proportionate. Repairs and alterations have been carried out over the years and this is a continuation of that process which will enhance the appearance and condition of the boundary wall. The line of the boundary will be maintained
- 8.07 There is a historic glass house within the walled area. The structure is partly below ground and this part survives. All the above ground construction has been lost and there are no records of the form of the glass house. The applicant has proposed to build a lightweight structure on the historic base which will bring the

building back into use as a glass house. The new construction will sit on top of the historic fabric but none of that original material will be removed or damaged by the new work. This work will protect the historic fabric from further decay.

- 8.08 The conversion of the existing studio building will bring about some alterations to the external appearance but this is minor and it is not considered that it will cause damage to the setting of the listed building. There is some upward extension of the building which will affect the roof line but this work is contained within the valley of the existing roof and will not be visible from Mulberry and Well Cottages. There is also a proposal to replace some of the infill panels on the southwest elevation with glazing instead of solid panels. This, in heritage terms, is simply a change in material and will not impact on the setting of the listed building.

## 9. APPRAISAL

The Court of Appeal found, in summary, that the earlier decision was flawed because the Council in applying DM 5 had failed to take into consideration the entire site and had focused only on the existing building. The judgement therefore concluded that the following matters needed re-consideration:

- The respondent will need to determine whether or not the application site as a whole is of high environmental value
- The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit

As set out in the High Court ruling, it was considered common ground that both decisions referred to (19/506031/LBC and 18/506662/FULL) *stand or fall together*. As such both the decisions made by members on the Listed Building Consent and Planning Permission have been quashed and both applications are now put back before members for due consideration and decision in light of the Court of Appeal's judgment about the proper interpretation of policy DM5.

The appraisal relating to the heritage matters remains principally unchanged from earlier consideration, subject to where necessary in relation to those matters raised at 5.0.

### Main Issues

- 9.01 The key issues for consideration with the application for Listed Building Consent relate to the potential heritage impacts on the curtilage listed walls and sunken glasshouse.
- 9.02 The implications of the original decision being quashed principally relate to those matters whereby some public benefit was considered to arise as a result from the residential re-use of the site, providing somewhat the justification for the works to the wall (in particular where new opening are to be created). Discussion regarding whether the residential use of the site when considered under Policy DM5 is acceptable is contained within the agenda item for 18/506662/FULL. The appraisal below is based on that scheme being found acceptable and the report remains fundamentally unchanged from the December 2020 committee report appraisal. Except where amendments have been necessary as a result of those matters discussed in Section 5.0 above. The Court of appeal judgement found no fault in relation to matters pertaining to the impact on the Listed Building.
- 9.03 In making a decision on all listed building consent applications for works, a local planning authority must have special regard to the desirability of preserving the

building, or its setting, or any features of special architectural or historic interest. This obligation, found in section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and applies to all decisions concerning listed buildings.

- 9.04 Policy SP18 of the Local Plan relates to the historic environment states that the characteristics, distinctiveness, diversity and quality of heritage assets will be protected and, where possible, enhanced to ensure their continued contribution to the quality of life in the borough. This aim will be achieved by the council encouraging and supporting measures that secure the sensitive restoration, reuse, enjoyment, conservation and/or enhancement of heritage assets, in particular designated assets identified as being at risk, to include securing the sensitive management and design of development which impacts on heritage assets and their settings.
- 9.05 Policy DM4 of the Local Plan relates to development affecting designated and nondesignated heritage assets. Applicants will be expected to ensure that new development incorporates measures to conserve, and where possible enhance, the significance of the heritage asset and, where appropriate, its setting. A Heritage Assessment should respond to the value of the historic environment by assessing and taking full account of heritage assets, and their settings, which could reasonably be impacted by the proposals. The assessment should consider the significance of the assets and the scale of the impact of development on the identified significance.
- 9.06 Policy DM4 states that the council will apply the relevant tests and assessment factors specified in the National Planning Policy Framework when determining applications for development which would result in the loss of, or harm to, the significance of a heritage asset and/or its setting. The National Planning Policy Framework (paragraph 197) states: *"In determining applications, local planning authorities should take account of: a) desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; b) positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and c) desirability of new development making positive contribution to local character and distinctiveness"*.
- 9.07 NPPF paragraph 199 advises *"When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance"*. Paragraph 200 adds *"Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification..."*
- 9.08 In assessing the level of harm that may occur and the planning balance NPPF paragraph 202 advises *"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use"*.
- 9.09 Further guidance on considering the significance of heritage is provided by Historic England (Managing Significance in Decision Taking in the Historic Environment (2015) and The Setting of Heritage Assets (2017)).
- 9.10 Policy DM4 of the Local Plan states that where development is proposed for a site which includes or has the potential to include heritage assets with archaeological

interest, applicants must submit an appropriate desk-based assessment and, where necessary, a field evaluation. The application site is not in an area known to have archaeological interest. The buildings on the site are also relatively modern and their construction is likely to have destroyed anything that was present. It is for these reasons that no further archaeological information is required.

9.11 The relevant heritage considerations as part of the current works include the need to consider the potential impact on the significance of the brick garden wall (curtilage listed Grade II) and the sunken glasshouses where one of the structures is grade II curtilage listed. The setting and significance of the brick garden walls (curtilage listed Grade II) and the sunken glasshouses (1 of the 2 structures are curtilage listed)

9.12 The submitted heritage assessment considers the significance of the curtilage listed walls and reports the following:

- On the title map of 1840 the walled gardens are in an earlier layout with the area behind the stables (studio) building yet to be fully enclosed by new walls.
- The 1867 map shows that the gardens were still being developed and the new stable block and yard had yet to be added. The layout of the cottage garden paths was very different from today with no central path and the path close to the stable yard forward of its current position. The entrance to the garden would appear to be sited more in the corner too.
- Much of the garden development of the glasshouses and new walls are believed to date from about 1875 -88 and these appear to be present on the photograph of 1895.
- On the next photograph of 1940 glasshouses and vegetable plots show that the walled garden is largely a functional food production area. There is an access path outside the garden which helps connect the garden to the rear of the house
- In the 1950's the owner has built new wide concrete tracks to access the gardens with tractor mowers from the main house driveway. The garden is renovated by the head gardener who builds up the right hand sunken bed to match the left hand one and replaces the cold frame with a raised bed.
- In the rear garden the long raised bed can be seen in the 1960s with a much reduced vegetable crop. The importance of the garden relative to the setting of Hollingbourne House has been greatly impacted and diminished by the development and encroachment of the farm, its activities and its access road through the courtyard.
- 1975 the sale of the farm and garden cottage resulted in the closing of 4 access points to the cottage garden increasing its isolation and amenity within the overall setting of the estate. The main Hollingbourne House was listed in 1984 without any mention of the walls.
- With the location of the cottage garden to the rear of the studio building the applicant reports that current access to this residential garden is poor.
- It is reported that at the time of the applicant's purchase the neighbours boundary wall had collapsed and this has since been rebuilt, the wall behind the barn has long been collapsing and is currently propped up on timbers (see figure 10).

9.13 The heritage assessment after considering the significance of the walls advises *"...the surrounding landscape and arrangement of the walled gardens have been periodically and substantially altered since their construction. They now demonstrate numerous phases of redevelopment, with the garden walls to the west appearing to date from the construction of the previous Hollingbourne House in the seventeenth century. However, many of the walls appear to date from the late eighteenth century, with further nineteenth and twentieth century construction and intervention"* (Paragraph 3.6).

- 9.14 The wall alterations include works granted consent in August 1999 (99/1078) which involved a partial reduction in the height of garden wall to 1.2 metres and formation of new gateway.
- 9.15 Whilst the main Hollingbourne House was listed in 1984 without any mention of the walls, the council considers the walls within the garden area to the rear of the studio building to be statutorily listed due to their location in the curtilage of the grade II listed Hollingbourne House. Although in large parts not in their original form the walls have historical value in their general alignment in marking the boundaries of the walled garden and the retained bricks that the walls are constructed with.
- 9.16 The current application includes works and repairs to all of the garden walls surrounding the rear section of the application site. The applicant has advised that bricks salvaged from the proposed alterations and those retained from the 1999 alterations will be used to replace the blockwork in sealed openings or to carry out general repairs that are needed. The work will be carried out in accordance with the methodology provided at figure 12 which is submitted by the applicant.
- 9.17 The wall that runs mainly parallel to the rear of the studio building demarcated an animal yard from the walled garden and is in three different parts. The middle longer section was built at later date than the other two sections. A number of different parts of the wall have previously been rebuilt and a section lowered in accordance with a permission granted in 1999.

Figure 1 South wall curtilage lists showing existing propping



- 9.18 The proposed works to the wall are shown on the drawings below. A section of this wall was shown in the December 2020 committee report to be unstable and propped up as it is close to collapse (see Figure 1). As set out in Section 5.0 above, parts of this wall have now been removed/lowered as given the passage of time since the above photograph further weathering has meant for health and safety reasons remedial works have been necessary. This wall would be dismantled and rebuilt. The majority of the existing wall is 1.8 metres high but with an 8 metre long section (including a 2 metre wide opening) that drops down

to a height of 1.2 metres that was previously granted consent. Listed building consent for partial reduction in height of garden wall and formation of new gateway, granted on the 16 August 1999 under reference 99/1078.

Figure 2 Works to the wall at the rear of the studio building



- 9.19 The current lowered section of wall would be extended by 14 metres with two new openings formed of each 2.5 metres wide. With the many previous alterations, the value of the wall is in its alignment, the bricks used in its construction and the manner in which the original walls were constructed. With these elements protected as part of the current proposal, that will also secure the walls sustainable future, the harm to the wall is less than substantial.
- 9.20 The submitted proposals include the following works to the other garden walls:
- North west wall – likely to have been laid between 1866 and 1888 in imperial bricks with lime mortar. The wall will be repointed as joints have lost their mortar. An angled modern wall is to be removed.
  - South west wall – although line of wall appears to match the original layout, the wall appears to have been rebuilt at least twice including in recent times. Laid in imperial bricks with sand and cement the piers to the opening are a modern addition in the 1950s. The propose works are to repair the wall, clear back the ivy, replace the gate with a Yew hedge infill and add caps to the brick piers.
  - East garden wall – Wall dating from the early 1800’s but has since had a range of different alterations including formation of new openings and a section of wall raised in the 1950’s. A blocked up opening in the wall will be re blocked in more suitable bricks with a false door, ivy infestation removed and repointed. A leaning section may require buttressing.
  - Northern glasshouse wall – believed to date from between 1800 – 1840 with Georgian bricks in Flemish garden bond with darker bricks in a ‘diaper’ pattern. The line of the wall appears in 1790. Appears that the upper section of this wall may be a later addition. The works include repointing with lime mortar and replacing blown bricks, loose sections of render from the former glasshouse removed, end of wall tied in. 1950’s electrical shed repaired.
- 9.21 At the northern (rear) end of the walled garden are two sunken glasshouses. The submitted information reports that the sunken glasshouses are both currently in a highly derelict state.
- 9.22 The left hand glasshouse dates from around 1879 – 1880 and is built of imperial bricks. This earlier glasshouse is curtilage listed due to the location in the original curtilage of the main Hollingbourne House and as it existed on the *1st July 1948*. The submitted proposal includes the renovation of this glasshouse include

rebuilding above ground in reclaimed red brick and new glazing. The 1950s heating equipment would be removed with the interior rendered. The door frame and door would be reinstated in a design similar to the original four panel door.

- 9.23 It is thought that the right hand glasshouse was originally a sunken frame which was built up in the 1950s using buff bricks and then rendered. This 1950's glasshouse is not curtilage listed and is not a heritage asset. The applicant has stated that the repair of the later more recent glasshouse is not economically viable so the structure will be recorded and then reduced to ground level and filled with soil. A feature outline in brick at ground level would be retained to mark its position.
- 9.24 The proposed works to the application building, including the reduction in the building footprint as part of the rebuilding of the rear part of the building. These changes and the proposed residential use of the building is make a positive contribution to the setting of the wall and glasshouse.
- 9.25 It is concluded that the current application building has a neutral impact on the setting of the curtilage listed walls and the glasshouses and the impact of the proposal on the significance of these heritage assets will be less than substantial.
- 9.26 In conclusion, policy SP18 of the Local Plan states that heritage assets will be protected to ensure their continued contribution to the quality of life. This aim will be achieved by the council encouraging and supporting measures that secure the sensitive restoration, reuse, enjoyment, conservation and/or enhancement of heritage assets, in particular designated assets identified as being at risk. NPPF (paragraph 197) states: "In determining applications, local planning authorities should take account of... the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation...".
- 9.27 The curtilage listed garden boundary walls have been subject of a wide range of earlier work, including repairs alterations, demolition work and rebuilding. This work has included a new opening in relation to providing a fire escape from the commercial building. The section of the wall to be rebuilt is currently unstable, propped up and in danger of collapse. In these circumstances and with reference to policy SP18 this curtilage listed wall is identified as being at risk.

Figure 3: Methodology for repair and rebuilding the garden walls

***Methodology for the repair and rebuilding of sections of the garden wall and repairs to other areas of garden walling***

- *Any section of wall that is need of complete rebuilding will be carefully taken down by hand. At first mortar would be remove as far as possible by a trowel or putty knife. Then bricks would be cleaned using a solution of 10 parts water and 1 part muriatic acid and a stiff brush. Industry standard personal protective equipment would be required and relevant guidance would need to be followed. Ehen bricks have been cleaned they must thoroughly be washed in clean water and stacked for re-use.*
- *Salvaged bricks would be set aside and stored for re-building*
- *Any spalded bricks would be reused where possible with the previous internal face cleaned and used as the new outer face*
- *The wall would be reconstructed using a garden wall bond with the spacing of headers and stretchers to match the existing*
- *The mortar mix of the wall would be considered and matching mortar mix used in the reconstruction*
- *Other repairs to the walls will involve repointing with the use of appropriate lime mortar mixed to match that used historically*
- *Where spalded bricks are to be removed the following will take place*
  1. *Remove the damaged brick with a suitable brick cutting tool*

2. *Clean away mortar*
3. *Either turn the brick and reuse/ or insert new or reclaimed brick into the prepared hole*
4. *Repoint with suitable mortar*
5. *Assist the carbonation of the lime mortar by covering pointed or repaired areas with hessian and mist spraying over a period of 3-4 days*

- 9.28 With the many previous alterations, the value of the walls is in their alignment that marks the boundaries of the walled garden. With further value from the bricks themselves and the manner in which the 'original' walls were constructed.
- 9.29 The current application will retain the walls on their current alignment. The reconstructed walls will be built, and repairs made with bricks that are retained from the earlier work to lower the adjacent wall and the proposed demolition. The walls will be built using a garden wall bond with the spacing of headers and stretchers to match the original wall, with a mortar mix to match the existing wall. The works will be carried out using the methodology set out at figure 3. This restoration work can be controlled through a planning condition.
- 9.30 The garden and boundary walls are now in different ownership to the listed building and separated from the listed building by the large commercial application building. The use of the garden by existing occupiers is currently restricted by this lack of direct access and as the garden walls are currently unsafe.
- 9.31 The use of the proposed building for residential use will bring the gardens back into full beneficial use. The work to restore and rebuild the walls and the new openings will ensure there is direct access from the two proposed family homes to the rear garden space and that the functional role of the walls as means of enclosure is retained.
- 9.32 With the brick wall less than 500mm away from the rear elevation of the application building the lowered section of wall will enable residential outlook to be provided to the rear windows. The lowered wall will also improve the relationship between the building and the garden space.
- 9.33 The work involving the removal and recording of the later glasshouse from the 1950s and the restoration of the later glasshouse from the 1880s as set out earlier in this report will enhance the existing historical interest in this garden area and will preserve its significance.
- 9.34 The work to the walls and the glasshouses is considered in line with SP18 with the restoration of the walls and glasshouse conserving this heritage asset and allowing the garden space to be enjoyed and used to its full potential. The proposal is in line with NPPF paragraph 197 in terms of putting the site to viable use that is consistent with its conservation. The works to repair and rebuild the curtilage listed structures and to secure their preservation is in line with paragraph 199 of the NPPF that states that great weight should be given to an asset's conservation.
- 9.35 It is concluded that the current application building has a neutral impact on the setting of the curtilage listed walls and the glasshouses and the impact of the proposal on the significance of these heritage assets will be less than substantial.
- 9.36 The harm arising from the proposal relates to the new openings in the curtilage listed wall. NPPF paragraph 202 advises "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use".

- 9.37 The curtilage listed wall at the rear of the application building is unstable and in danger of or has collapsed. Whilst it is accepted that the proposed additional openings will result in less than substantial harm to the heritage value of the wall, the benefits of providing the improved access to the rear garden and the future use of the garden that will result, will outweigh this harm.
- 9.38 After having special regard to the desirability of preserving the relevant heritage assets, their setting and any features of special architectural or historic interest the proposal is in line with policy SP18 and DM4 of the adopted Local Plan and advice in the NPPF.

### **PUBLIC SECTOR EQUALITY DUTY**

- 9.39 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

### **10 CONCLUSION**

- 10.01 A local planning authority in making decisions must have special regard to the desirability of preserving any features of special architectural or historic interest. Adopted policy states that the aim of protecting the characteristics, distinctiveness, and quality of heritage assets will be achieved by the council supporting measures that secure the sensitive restoration and reuse of heritage assets.
- 10.02 The garden walls have been subject of a wide range of works, alterations, demolition and rebuilding in the past. The submitted proposal involves repair and restoration works that will generally maintain the character of the walls to ensure that they meet the functional role as means of enclosure.
- 10.03 In addition to the restoration works, the proposal includes the lowering of the middle section of the southern wall and the formation of two new openings. The lowering of the wall, which will match a previously approved adjacent lowered wall, will improve the access to the rear garden space as part of the proposal to introduce family accommodation in the studio building. As the walls have previously been significantly altered it is considered that the important characteristics that require protection relate to the reuse of the bricks, the wall alignment and the manner in which the walls are constructed (bond, mortar mix etc).
- 10.04 The significance of the walls and historic interest are limited to the materials use, method of construction and wall alignment. The proposed works involving the lowering of the wall and the formation of the two new openings are considered to represent less than substantial harm. The less than substantial harm will be outweighed by the public benefits of the development, which include heritage benefits arising from repairs to all the garden walls, the accessibility improvements to the garden space for future occupiers and the restoration works to the sunken greenhouses.
- 10.05 The proposed works involving the lowering of the wall and the formation of the two new openings are considered to represent less than substantial harm. The less than substantial harm will be outweighed by the public benefits of the development. These public benefits include heritage benefits arising from repairs to all the garden wall that will ensure their long term survival, the accessibility improvements to the garden space for future occupiers and the restoration works to the sunken glasshouses.

## 11 RECOMMENDATION

### **GRANT listed building consent 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 in line with the matters set out in the recommendation and as resolved by the Planning Committee.

1) The works to which this consent relates must be begun before the expiration of three years from the date of this consent.

Reason: In accordance with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2) Prior to the demolition of the garden wall that lies to the immediate north-east of Courtyard Studios (as shown on drawing reference: 3094-008 Rev A), and restoration works to the remaining garden boundary walls, a schedule of works to the garden walls and the sunken glasshouses shall be submitted to and approved in writing by the local planning authority.

The schedule of works shall include: a)The entire wall to be built from the bricks in the existing wall to be demolished; b)A rebuilt wall that shall be a minimum of 1.2m in height at any point; c)Full details of how the retained garden walls will be restored. d) details of the sunken glasshouse restoration. The dwellings hereby approved shall not be occupied until the approved works to the garden walls and the glasshouses have been completed, and the walls and the glasshouses shall be maintained as such thereafter.

Reason: To safeguard the value of the curtilage listed garden boundary walls and the glasshouse

3) Prior to the demolition of the garden wall that lies to the immediate north-east of Courtyard Studios (as shown on drawing reference: 3094-008 Rev A), and restoration works to the remaining garden boundary walls a sample panel of the rebuilt wall (with the reused bricks, mortar mix/pointing details and coping stone to be used) shall be made available for inspection by Council officers with the works proceeding in accordance with this approved panel,

Reason: To safeguard the value of the garden boundary walls.

### Informative

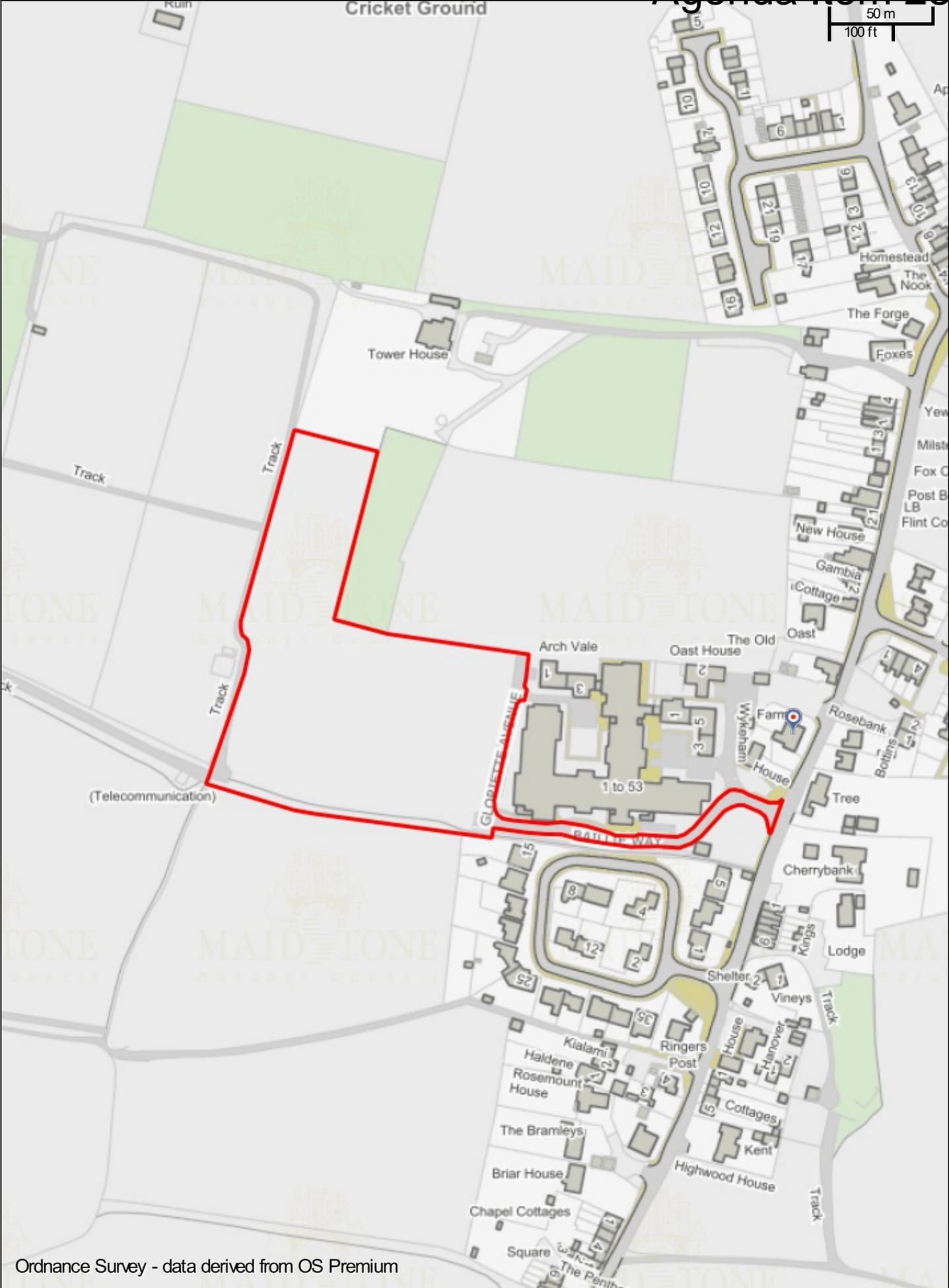
The applicant is advised that the following plans and documents were considered as part of the assessment of this application:

- 3094-011Rev F Proposed elevations (May 2020)
- Appendix 1 to the Heritage Statement (Nov 2019)
- Design and Access Statement (May 2020)
- PDL 01 A2 rev 2 Details of construction for remedial works and new openings to existing wall (May 2020)
- 3094-012 rev F proposed site plan (May 2020) 3094-012 rev F2 proposed site plan (May 2020)
- 3094-010 rev E Proposals (Proposed floorplans) (May 2020)
- PDL 01 rev v7 Proposed maintenance work to southern garden wall remaining on existing line. (May 2020)
- PDL 02 rev v2 Proposed conservation works to northern glasshouse garden wall. (May 2020)
- PDL 03 rev v5 Proposed maintenance and amendments to east garden wall. (May 2020)
- PDL 04 rev v6 Proposed maintenance and minor amendments to south western garden wall. (May 2020)
- PDL 05 rev v5 Proposed maintenance and minor amendments to north west facing garden wall by barn. (May 2020)

- PDL 07 rev v2 Proposed restoration works to sunken glasshouses. (May 2020)
- Built Heritage Statement (May 2020)

Case Officer: Rachael Elliott

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



Ordnance Survey - data derived from OS Premium


**23/501361/FULL Ledian Farm, Upper Street, Leeds, Kent, ME17 1RZ**  
 Scale: 1:2500  
 Printed on: 10/7/2023 at 13:45 PM by JoannaW

<b>REFERENCE NO</b> - 23/501361/FULL		
<b>APPLICATION PROPOSAL</b> Section 73 - Application for minor material amendment to approved plans condition 2 (to allow installation of photovoltaic panels on the buildings within Phase 2) pursuant to 19/506387/FULL for - Erection of 44no. Assisted Living Units (Class C2) with associated parking and landscaping (Amendment to outline permission MA/12/2046 and Reserved Matters consent MA/17/501933/REM).		
<b>ADDRESS</b> Ledian Farm Upper Street Leeds Kent ME17 1RZ		
<b>RECOMMENDATION</b> Application Permitted		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The addition of 274 PV panels to the traditional vernacular roofs of phase 2 of the Care Village will cause some visual harm to a site that is in the countryside, is adjacent to open countryside and is close to a Conservation Area and the setting of a Listed Building, in conflict with policy DM1 of the MBLP. The objective of the applicant to make the development carbon net zero is supported subject to the changes that have been negotiated to remove panels that were considered to be most visually harmful to the public domain. This balancing of renewable energy benefits against visual harm aligns with the spirit of policy DM24 of the MBLP. PV panels added during the construction phase as opposed to a permitted development installation post completion can be more flush with the roof slope and their renewable energy can be made use of much earlier in the timeline of the Care Village's occupation.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Contrary to the views of Leeds Parish Council		
<b>WARD</b> Leeds	<b>PARISH/TOWN COUNCIL</b> Leeds	<b>APPLICANT</b> Senior Living (Ledian Farm) Ltd <b>AGENT</b> DHA Planning
<b>TARGET DECISION DATE</b> 31/07/23		<b>PUBLICITY EXPIRY DATE</b> 16/05/23

### Relevant Planning History

18/503361/FULL

Section 73 application (MMA) to amend approved plans condition of Hybrid planning application MA/12/2046 (as amended by MA/17/500896/NMAMD) for the redevelopment of Ledian Farm to provide a Continuing Care Retirement Community scheme (C2 Use Class) amending the unit types and adding a wellness suite/swimming pool extension to north elevation and minor elevational changes including ridge height changes  
Approved 22.11.2018

19/506387/FULL

Erection of 44no. Assisted Living Units (Class C2) with associated parking and landscaping (Amendment to outline permission MA/12/2046 and Reserved Matters consent MA/17/501933/REM)  
Approved 28.04.2020

21/506208/FULL

Erection of 39 no. units for assisted living (Class C2) as Phase 3 of Ledian Gardens continuing care retirement community development with associated substation and ancillary buildings, open space, landscaping, parking and vehicular access via Phase 1 with additional 8 off-street parking spaces for Upper Street residents

Approved 03.08.2022

23/500205/FULL

Erection of 1no. assisted living unit (in place of previously approved energy centre no longer required due to amended, more sustainable energy strategy) with associated landscaping.

Approved 22.06.2023

## **MAIN REPORT**

### **1. DESCRIPTION OF SITE**

- 1.01 This site is in the countryside and is located at the south western edge of the village of Leeds and the roadside element of the access road falls within the Upper Street Leeds Conservation Area and is just south of the Grade II Listed Building of Ledian Farmhouse. The buildings within phase 2 are approx. 130m from these heritage assets.
- 1.02 The application site comprises 3.06 hectares of land, being a former agricultural field further to the west of the original (and now demolished) industrial workshop development which has recently been redeveloped for phase 1 of a Continuing Care Village in Class C2 (Extra Care).
- 1.03 The phase 2 site borders open countryside on its western boundary and is contained by the site access road and hedgerow along its southern edge. It includes an Open Space in the NW corner to serve all future residents of the Care complex. To the NE is a field on which phase 3 of the Care Village was granted planning permission last year under ref 21/506208/FULL.
- 1.04 Existing residential development lies to the south. A public footpath KH245 runs along the site's southern boundary, linking Upper Street with the open farmland to the west of the site.

### **2. PROPOSAL**

- 2.01 Phase 2 derives from 2 planning permissions- 19/506387/FULL for 44 Care units and 23/500205/FULL for 1 additional Care unit. It will therefore comprise of 45 units, a number of blocks mostly 2 storeys high but with some blocks up to 3 storeys high and one single storey cottage and some single storey incidental and ancillary buildings such as stores and car ports.
- 2.02 This application only relates to the main 44 unit scheme and is to amend the roofs of the buildings to include inset PV panels. These are intended to contribute towards reducing the carbon footprint of this phase of the development.
- 2.03 Originally, the submission was for a total of 354 PV panels and this has been reduced by 80 to 274 on negotiation. Most of these will be on the pitched roofs of the buildings, with approx. 38 on flat roof elements.

### **3. POLICY AND OTHER CONSIDERATIONS**

Maidstone Borough Local Plan 2017 DM1, DM24

Kent Minerals and Waste Local Plan 2013-30 as amended by Early Partial Review (2020)

Supplementary Planning Documents; Domestic and Medium Scale Solar PV Arrays (up to 50KW) and Solar Thermal (2014)

National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)

The Regulation 22 Local Plan Review submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is therefore a material consideration and attracts some weight. However, this weight is limited as although Stage 1 and 2 Hearings have recently concluded, the Plan is still in Examination.

In terms of this application, the relevance of the LPR is draft policy LPRINF3: "Renewable and low carbon energy schemes".

#### **4. LOCAL REPRESENTATIONS**

##### **Local Residents:**

- 4.01 2 representations received from local residents raising the following (summarised) issues
- black panels will have negative visual impact to a Conservation Area.
  - The quality palette of materials of the scheme should not be watered down because this is phase 2.
  - Sets an unwelcome precedent

#### **5. CONSULTATIONS**

(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)

##### Parish Council

- 5.01 Object to the visual impact within the local community and the negative impact on the landscape character.

#### **6. APPRAISAL**

##### **Main Issues**

- 6.01 The key issue for consideration relate to:
- Visual Impact
  - Renewable Energy benefits

##### **Visual Impact**

- 6.02 Policy DM1 of the MBLP requires high quality design, responding positively to, and where possible enhancing, the local or historic character of the area. Particular regard to, inter alia, vernacular materials where appropriate.
- 6.03 The NPPF paragraph 135 states that Local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme.
- 6.04 Phase 1 of the Care Village abutted Upper Street Leeds Conservation Area and the Grade II Listed building of Ledian Farmhouse. Hence its design and materials were

expressly vernacular to reflect the sensitive setting. Whilst phase 2 is located further from the heritage assets by over 100m, nonetheless it was intended that this sensitivity in appearance continued into the approved design and materials of phase 2. The location of phase 2 next to open countryside also meant that its roof form in particular was important to be of high quality and comprised traditional steep pitches with brick chimneys, a majority of plain clay roof tiles (by Marley). The fascias and soffits were timber.

- 6.05 Clearly the addition of PV panels to a plain clay tiled roof is a modern idiom rather than traditional vernacular. The panels will measure 1.13m x 1.72m. It is the case that by permitting this alteration at the construction stage, it will allow any PV panels approved in a planning application to be integrated ('in slope') panels meaning that they will be flush against the roof structure, with limited upward projection. This does therefore reduce the impact of the panels on the character of the local area, the rural landscape and heritage settings.
- 6.06 The scheme originally submitted included 354 panels. Due to the rather complex roof forms in this development, to have this many panels located in a position and orientation that allowed adequate solar gain meant that double rows were proposed on a large number of roof planes and also some panels were poorly sited in the roof slope, being near the verges, ridges or eaves. Double rows would be approx. 3.5m high and could over dominate the relatively small roof planes in this development by being disproportion relative to the amount of tiling.
- 6.07 Overall, the revision negotiated reduces the number of panels by 80. In terms of visual impact, it removes the vast majority of double rows and reduces the number of panels set at the edges of the roof plane. It also reduces the number of panels on roofs which lie on the southern edge where the PROW passes and which is the most visible part of phase 2 from the public domain and the part most likely to be viewed in the context of the Conservation Area of Upper Street to the east or the open countryside to the west. Hence whilst a high number of panels is still being proposed, 38 are on flat roof elements and most of the rest are on roofs which are inward facing and therefore would be mostly visible from within the site rather than from the wider public domain.
- 6.08 This revised submission is considered to strike an acceptable balance in minimising the harmful visual impact with an acceptance that the aim of moving towards carbon net zero via use of PV panels provides design challenges with traditional vernacular roof design.

### **Renewable Energy benefits**

- 6.09 Policy DM24 of the MBLP relates to "Renewable and low carbon energy schemes" but is generally aimed at solar farms, wind farms and biomass and so, whilst being supportive in general, is not particularly relevant to this scale of planning application. Notwithstanding, the policy does require a balance of the benefits of renewable energy against landscape and visual impact of development and any impact on heritage assets and their setting. It should be remembered that in addition to low or zero carbon, a fundamental of 'sustainable planning' is getting growth in sustainable locations i.e. where there is good public transport and the ability to walk to social infrastructure (e.g. health facilities) and amenities (e.g. shops).
- 6.10 Draft policy LPRINF3 of the Local Plan Review is based on policy DM24 and does not change the policy context for this application.
- 6.11 The strategy of the applicant to add a very significant number of PV panels to the construction of this phase is part of the company's ambition to be the UK's most sustainable operator of retirement villages. It aims to remove the need for the buildings to be heated through a gas fired boiler plant as originally proposed. These

aims are supported with the caveat that in sensitive village/countryside locations, the renewable energy benefits need to be balanced against any harmful visual impact.

- 6.12 The changes sought by adding PV panels are necessary at the construction stage to ensure that low carbon benefits can be obtained as early as possible rather than via a retrofit once the buildings are completed (e.g. by using permitted development rights).

### **Other Matters**

- 6.13 The concerns of the local resident and the PC on the originally submitted scheme for 354 PV panels were shared by officers in that the scope of amendment would have materially diminished the quality of approved development, contrary to the NPPF and DM1. However, the applicant has agreed to remove 80 of the panels that were considered to be most visually harmful to the public domain and the revised scheme is now considered to be acceptable when balanced against the considerable renewable energy benefits that will arise.
- 6.14 The parent planning permission was subject to a s106 legal agreement, the terms of which continue to apply to any s73 variation thereof. Conditions need to be re-imposed, updated where applicable. The final plans list condition will be reported in an Urgent Update.
- 6.15 The proposed development is CIL liable. The Council adopted a Community Infrastructure Levy on 25 October 2017 and began charging on all CIL liable applications approved on and from 1 October 2018. The actual amount of CIL can only be confirmed once all the relevant forms have been submitted and relevant details have been assessed and approved. Any relief claimed will be assessed at the time planning permission is granted or shortly after.

### **PUBLIC SECTOR EQUALITY DUTY**

- 6.16 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

## **7. CONCLUSION**

- 7.01 The addition of 274 PV panels to the traditional vernacular roofs approved for phase 2 of the Care Village (albeit 38 of the panels will be on flat roof elements) will cause some visual harm to a site that is in the countryside, is adjacent to open countryside and is close to a Conservation Area and the setting of a Listed Building, all in conflict with policy DM1 of the MBLP.
- 7.02 The objective of the applicant to make the development carbon net zero is supported subject to the changes that have been negotiated to remove 80 panels that were considered to be most visually harmful to the public domain. This balancing of renewable energy benefits against visual harm aligns with the spirit of policy DM24 of the MBLP.
- 7.03 PV panels added during the construction phase as opposed to a permitted development installation post completion can be more flush with the roof slope and their renewable energy can be made use of much earlier in the timeline of the Care Village's occupation.

## **8. RECOMMENDATION**

GRANT planning permission subject to the following conditions:

- 1) The development hereby permitted shall be begun before 20/04/2023  
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) Plans list condition TBC
- 3) Materials to be used in the construction of the external surfaces of the buildings hereby permitted shall accord with those approved under ref 22/503982/SUB.  
Reason: To ensure a satisfactory appearance to the development.
- 4) The following shall accord with those approved under ref 22/503982/SUB.
  - a) new external joinery
  - b) details of eaves and roof overhangs
  - c) details of balconies, projecting bays and porch canopies
  - d) details of window headers and cills and door headers.Reason: To ensure an appropriate design and appearance for the development.
- 5) 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 2015 (or any order revoking and re-enacting that Order, with or without modification) or any other statutory provision, 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.
- 6) The development shall be landscaped in accordance with the scheme, planting specification, programme of implementation and management plan approved under ref 22/504099  
Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development.
- 7) The approved landscape details shall be carried out during the first planting season (October to February) following first occupation of the development. Any seeding or turfing which fails to establish or any trees or plants which, within five years from the first occupation of a property, commencement of use or adoption of land, die or become so seriously damaged or diseased that their long term 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.  
Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development.

- 8) All fencing, walling and other boundary treatments shall be carried out in accordance with the details approved under ref 22/503982 before the first occupation of any of the buildings in Phase 2 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.
- 9) The development shall be carried out in full accordance with the hereby approved Arboricultural Implications Assessment in relation to tree and hedgerow protection measures and specifically Appendix 3 (Tree Protection Drawing J38.82/06 Rev A) and Appendix 4 (Fencing Specification and Signage).
- Reason: to ensure the protection of existing trees as part of the development.
- 10) No later than the first planting season after the first use of the buildings hereby permitted, the Open Space shall be laid out and the Shelter shall be installed in accordance with elevational details that have been submitted to and approved by the Local Planning Authority.
- Reason: To ensure an adequate amenity area for the residents.
- 11) The sustainable surface water drainage scheme for the site shall accord with details approved under ref 22/504797/SUB.
- 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.
- 12) 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 the suitable modelled operation of the drainage system where the system constructed is different to that 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, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of National Planning Policy Framework.
- 13) Infiltration used to manage the surface water from the development hereby permitted should accord with details approved under 22/504797/SUB.
- Reason: To protect vulnerable groundwater resources and ensure compliance with the National Planning Policy Framework
- 14) With the exception of the approved access and demolition works, the development hereby approved shall be carried so as not to exceed the proposed finished floor levels as shown on drawing no. 1564\_L\_201\_B unless otherwise approved in writing and the proposed ground levels of the gardens, roadways and car parking

areas shall be in accordance with details that have been submitted to and approved in writing by the Local Planning Authority, such submitted details clearly showing existing site levels.

Reason: In order to secure a satisfactory form of development having regard to the topography of the site.

- 15) A programme of archaeological work for phase 2 shall be implemented in accordance with details approved under MA/17/506036/SUB before the development is completed.

Reason: To ensure that features of archaeological interest are properly examined and recorded.

- 16) The development shall be undertaken in accordance with the Ecological Enhancement and Management Plan. Approved under 19/506387/FULL

Reason: To ensure appropriate management and enhancement within the site in the interests of ecology and biodiversity.

- 17) The internal areas of the development shall conform to Lifetime Homes standards.

Reason: To ensure the development is compatible with its intended care use.

Case Officer: Marion Geary

# Agenda Item 24



Ordnance Survey - data derived from OS Premium

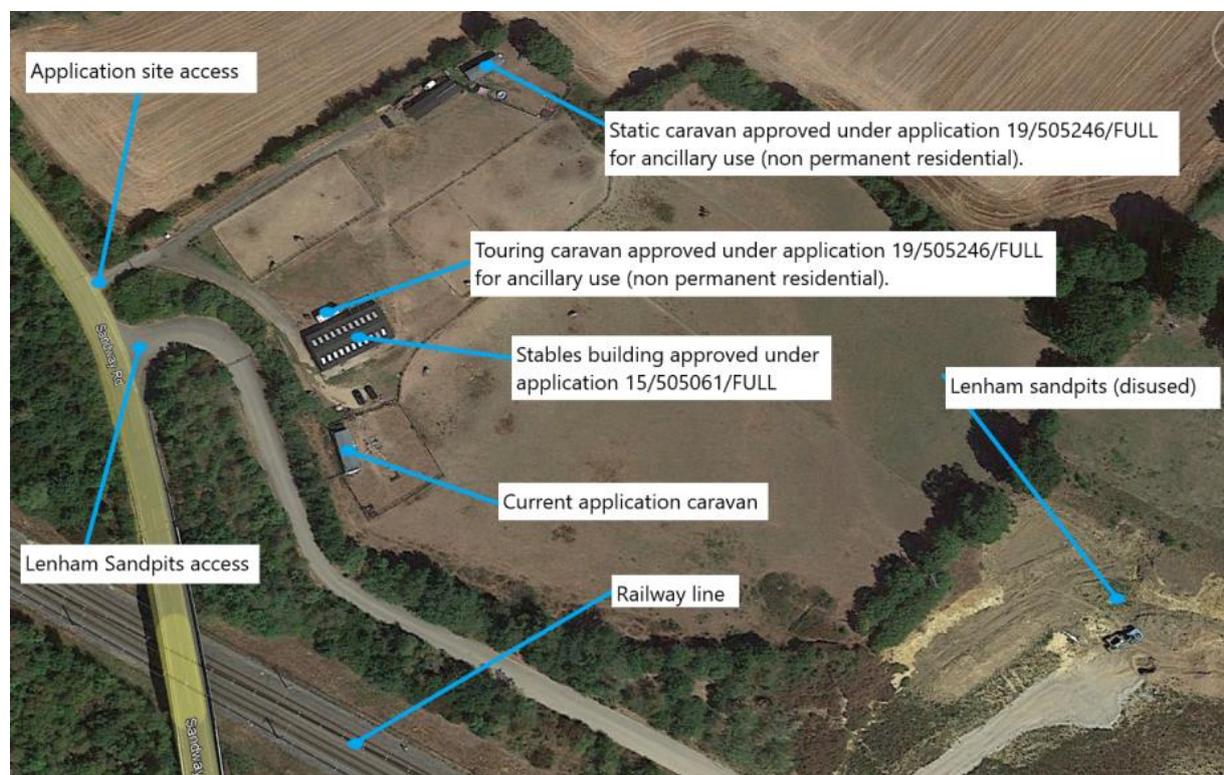
<b>REFERENCE NO</b> – 22/505066/FULL		
<b>APPLICATION PROPOSAL</b> Change of use of land for permanent siting of the mobile home to provide rural worker's accommodation ancillary to the existing business.		
<b>ADDRESS</b> Sunny Hill View Equestrian Stables, Sandway Road, Sandway, ME17 2LU		
<b>RECOMMENDATION</b> GRANT PLANNING PERMISSION subject to conditions subject to the planning conditions in Section 8 of this report		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>  The level of harm to the character and appearance of the countryside is minimised as: <ul style="list-style-type: none"> <li>• the caravan is screened from most public viewpoints by established boundary vegetation.</li> <li>• the caravan will be seen in the context of the larger stables building</li> <li>• the caravan is lower in height than a two storey dwelling that could be considered in the circumstances.</li> </ul> <p>The current application seeks the permanent retention of a rural workers caravan that has been in place for more than 3 years. The application demonstrates a functional and financial need for the dwelling in this countryside location and the application is in accordance with Local Plan policy DM34.</p> <p>A second part of policy SP17 requires development in the countryside to be in accordance with other local plan policies. The relevant policy in this case is DM34 which permits residential accommodation in the countryside for rural workers. The assessment in this report demonstrates that the current application is in accordance with policy DM34.</p>		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Call in from Lenham Parish Council for reasons given in section 4 of this report.		
<b>WARD</b> Lenham and Harrietsham	<b>PARISH COUNCIL</b> Lenham	<b>APPLICANT</b> Mr Paul Collins <b>AGENT</b> Equine Commercial Legal
<b>CASE OFFICER:</b> Tony Ryan	<b>VALIDATION DATE:</b> 09/11/2022	<b>DECISION DUE DATE:</b> 28/07/23
<b>ADVERTISED AS A DEPARTURE:</b> No		

**Relevant planning history**

- 20/500875/FULL - Creation of outdoor riding arena ancillary to commercial equestrian use of the site. Approved 27.04.2020.
- 19/505246/FULL - Retrospective application for the siting of 1no. additional caravan and 1no. touring caravan ancillary to the commercial equestrian use. –Approved 23.12.2019.
- 19/503697/FULL - Temporary change of use of land (expired 13.09.22) for stationing of static mobile home to be used for residential purposes in association with the business operations of Sunny Hill View Stables. Approved (*Officer comment: approval of permission followed the submission of information on 'need' by the applicant. The current application seeks to make this temporary permission permanent*).

- 15/505061/FULL - Erection of a stable building and laying of hardstanding Approved 26.10.2015
- 14/0549 Certificate of Lawfulness application for the use of land for equestrian purposes

### Site context



## **MAIN REPORT**

### **1. DESCRIPTION OF SITE**

- 1.01 The application site is in the countryside, outside of any Local Plan designated settlement and circa 1.2 km from Harrietsham. The site is to the east of Sandway Road, with the access road to Lenham Sandpits separating the site from the Channel Tunnel Railway Link to the south. The site is in the KCC Minerals Safeguarding Area
- 1.02 The red line application site (0.07 hectares) is on the eastern part of a larger site that is in equestrian use (3.2 hectares: application 14/0549 Certificate of Lawfulness application for the use of land for equestrian purposes) with the level grazing land divided into paddocks. There are currently twelve horses on site of which six are full liveries.
- 1.03 The larger site has landscaping around all boundaries with a wider belt to the east and south. A public footpath (KH414B) runs around the southern boundary of the equestrian use.
- 1.04 The red line application site includes a static caravan (temporary approval under 19/503697/FULL) and an adjacent enclosed amenity area. The stables building to the north was approved under application 15/505061/FULL. 14/0549 Certificate of Lawfulness application for the use of land for equestrian purposes.

## 2. PROPOSAL

- 2.01 The proposed development seeks the permanent change of use of land for siting of the mobile home (approved for temporary use under application 19/503697/FULL) to provide rural worker's accommodation ancillary to the existing business. The business plan states that the applicants are establishing their own breeding programme to produce horses to 'show' and sell alongside providing a training/livery service for client's horses.
- 2.02 The mobile home has cladded external finishes, UPVC front door and windows and an artificially tiled roof. The application also includes the retention of the amenity area around the mobile home.

### Existing caravan



## 3. POLICY AND OTHER CONSIDERATIONS

Maidstone Borough Local Plan 2017: Policies SS1, SP17, DM1, DM3, DM8, DM30, DM34, DM41

Kent Minerals and Waste Local Plan 2013-30 as amended by Early Partial Review (2020)

Maidstone Borough Council – Local Plan Review

The Regulation 22 draft is a material consideration however weight is currently limited, as it is the subject of an examination in public that commenced on the 6 September 2022 (Stage 2 concluded on the 9 June 2023).

LPRSP14 - Environment

LPRSP14(A) - Natural environment

LPRSS1 - Spatial strategy

LPRTRA2 - Assessing transport impacts

LPRQ&D2 - External lighting

LPRCD3 Accommodation for rural workers

LPRCD7 Equestrian development

The National Planning Policy Framework (NPPF):

National Planning Practice Guidance (NPPG):

#### **4. LOCAL REPRESENTATIONS**

##### **Local residents**

- 4.01 One representation received in support for the following (summarised) reasons:
- the applicants have sought to ensure that the development on site is in keeping with the surrounding area.
- 4.02 One representation received objecting for the following (summarised) reasons:
- The applicants are not the registered owners of the land and there are covenants on the land which prevent permanent homes. *(Officer comment: there is no requirement for an applicant to own the land on which they have submitted a planning application. As covenants are outside the planning system the presence of a covenant does not prevent the granting of planning permission. It a separate decision for the owner of the covenant as to whether they wish to enforce the covenant restrictions).*

##### **Lenham Parish Council**

- 4.03 Object due to the unacceptable level of cumulative development on the site and that the number of horses kept on site exceeds the British Horse Safety Guidelines. *(Officer comment: Issues surrounding British Horse Safety Guidelines are not material planning considerations and therefore cannot be considered in the determination of this application. The other matters raised by neighbours and other objectors are discussed in the detailed assessment below).*

#### **5. CONSULTATIONS**

(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)

##### **KCC Minerals and Waste Planning Policy Team**

- 5.01 No objections

##### **Council's Rural Planning Consultants.**

- 5.02 No objections as satisfied that the relevant functional and financial tests have been met.

#### **6. APPRAISAL**

##### **Main issues**

- 6.01 The key issues are:
- SP17 a) Character and appearance.
  - SP17 b) Accordance with other Local Plan policies
  - Design and appearance
  - Residential amenity
  - Biodiversity
- 6.02 The application site is in the countryside and the starting point for assessment of all applications in the countryside is Local Plan Policy SP17.
- 6.03 Policy SP17 states that development proposals in the countryside will not be permitted unless:
- a) they will not result in harm to the character and appearance of the area and
  - b) they accord with other Local Plan policies

Static caravan elevations



**SP17 a) Character and appearance.**

- 6.04 In public views from Sandway Road and from the nearby railway bridge to the south, the mobile home is screened by substantial bands of landscaping. The site and the existing static caravan are however visible from public right of way (KH414B) that crosses east to west to the south boundary of the application site.
- 6.05 Policies DM1 and DM30 consider the principles of good design and design principles in the countryside. In longer distance views the application site is generally screened from views because of its location behind mature boundary vegetation especially to the south of the site. It is accepted that views may change in the winter, due to less leaf coverage, but it is not a noticeable change due to the impact of existing sporadic developments in the immediate vicinity of the application site on the landscape.
- 6.06 The supporting text to Policy SP17 advises “*The countryside has an intrinsic character and beauty that should be conserved and protected for its own sake*”. In this context, even if completely screened from public viewpoints, the mobile home would still result in harm to the intrinsic character of the countryside.
- 6.07 The level of visual harm in this case is minimised as the caravan will be seen in the context of the larger stables building and as the caravan is lower in height than a two storey dwelling. With the location of the footpath, the harm to intrinsic character and to reduce the harmful impact of domestic paraphneilia in rural

locations from a permanent planning permission (current temporary permission has expired) a planning condition is recommended seeking landscape planting.

- 6.08 Policy SP17 states that development proposals in the countryside will not be permitted unless they accord with other Local Plan policies. Policy SP17 thereby accepts a degree of countryside harm in the specific circumstances set out in other Local Plan policies. Policy DM34 is relevant and assessed below.

**SP17 b) Accordance with other Local Plan policies**

- 6.09 Local Plan policy DM34 accommodation for agricultural and forestry workers is relevant to this application. In applying policy DM34 references to agricultural and forestry workers also include all other rural workers.

DM34 (Accommodation for agricultural and forestry workers).

- 6.10 The supporting text to DM34 advises "*...residential development in the countryside may be justified when there is an essential need for a rural worker to live permanently at, or in the immediate vicinity of, their place of work*".

- 6.11 The supporting text goes to advise that if a new dwelling is essential "*... it should normally be provided by a caravan or other temporary accommodation for the first three years. This is to ensure that the enterprise is viable and to prevent the retention of unnecessary built development within the countryside*".

- 6.12 In September 2019 a temporary 3 year planning permission (19/503697/FULL) was granted on the application site for "*... stationing of static mobile home to be used for residential purposes in association with the business operations of Sunny Hill View Stables*".

- 6.13 The officer report assessing 19/503697/FULL provides comments from the Agricultural Advisor "*The submitted details include references to the applicant's equestrian background, and...details of financial budgeting, over 3yrs, with figures that suggest (even allowing for a degree of over-optimism) a prospect of a sufficient livelihood for a full-time worker. Report also explains the livery venture has now commenced, with 5 full-time liveries. .... my advice would be that the applicants have now provided sufficient financial and functional justification for the mobile home to meet the relevant policy tests.*

- 6.14 The process set out in policy DM34 is that after three years when the need for the residential accommodation has been proven and there is evidence that the business is viable an application for a permanent dwelling can be made. Proposals for permanent accommodation are required to meet the list of criteria set out in DM34 (3) and these criteria are set out in turn below:

- Clearly established existing functional need for the dwelling

- 6.15 The functional test requires assessment as to the specific need for a new dwelling in the countryside in connection with a rural enterprise and for a 24 hour site presence. In granting temporary permission under reference 19/503697/FULL, the Council previously accepted that the functional test had been met.

- 6.16 A statement in support of the current application from the agent (BSc Equine Welfare with Business Management, LL Dip Law degree and PgC Agricultural Law ) provides the following information:

- "*...currently 12 horses on site, ranging from in foal breeding mares, foals, youngstock and riding horses. Six of these are owned by clients*".
- "*...the number and particularly the type of horses on site creates a functional need for 24-hour supervision*"

- *"The breeding mares need close supervision prior to foaling, both for their own welfare and that of their foals. The mares are put in foal again shortly after foaling. The foals continue to need close supervision and are then weaned"*
  - *"Without constant monitoring the welfare of such horses could be seriously compromised. Horses stabled for long periods are predisposed to developing colic, becoming cast, or choking, all of which require immediate attention"*
  - *"If any horse belonging to a client suffered an injury or illness that was not identified sufficiently early, confidence in the business would be severely undermined. A client would not return their horse to the yard. This would seriously impact on the viability of the enterprise"*
  - *"The provision of skilled supervision around the clock is essential, not only for the welfare of the horses, but to ensure the continuation of the business. It is imperative that clients have complete confidence in the supervision of their horses at all times"*
- 6.17 After consideration of submitted information, it is concluded that the functional test for a 24 hour presence provided by a dwelling on the site has been met. In line with policy DM34 there is a clearly established existing functional need for the dwelling on this site for a rural worker.
- Need relates to a full-time worker or one who is primarily employed in agriculture and does not relate to a part time requirement
- 6.18 In granting the 3 year temporary planning permission, and with 11 horses on site the delegated report for 19/503697/FULL concluded *"The proposal has justified the essential need for a full-time worker to be on site (and not elsewhere) for the efficient development and running of the rural enterprise"*.
- 6.19 It is concluded after assessment of the current situation, that the operation of the site (that now accommodates 12 horses) includes a need for a full time worker.
- Unit and the agricultural or forestry activity have been
    - a) established for at least 3 years,
    - b) profitable for at least one of the 3 years,
    - c) are currently financially sound, and
    - d) have a clear prospect of remaining financially sound.
- 6.20 In relation to point a) the evidence provided as part of both planning applications demonstrates that the equestrian use on the application site has been established for over 3 years.
- 6.21 In relation to points b), c) and d) the applicants have submitted financial information as part of the current application. The submitted information has been considered by the Council's Rural Planning Consultants.
- 6.22 The submitted information shows that the enterprise made a net profit in the three financial years of 2019/20, 2020/21 and 2021/22. After considering the submitted information and advice from the Council's Rural Planning Consultants. it is concluded that the enterprise is currently financially sound and with projections has a clear prospect of remaining financially sound.
- The functional need could not be fulfilled by another dwelling on the unit, or any other existing accommodation in the area which is suitable and available for occupation by the worker concerned.
- 6.23 The current planning application seeks the permanent retention of the caravan (in full time residential occupation) that received a three year temporary permission under application reference 19/503697/FULL.

- 6.24 The separate planning permission (19/505246/FULL) in December 2019 was for the siting of an additional caravan and a touring caravan on the wider equestrian site. In *Wealden District Council v SSE and Colin Day 1987* it was concluded that a caravan could represent an ordinary piece of equipment on an agricultural unit. No reason was found in this case why uses such as storing and mixing of feed, some office work and the taking of shelter could not be carried out in such a caravan and as a result this ruling found the caravan ancillary to the agricultural use of the land.
- 6.25 The officer report for 19/505246/FULL noted that the caravan was "...for the storage of items needed to run the onsite business; and for the occasional overnight stay when necessary for staff if horses cannot be moved from the top field shelter and close supervision is essential...". In this context these caravans are ancillary to the wider equestrian use and are not available for the permanent residential occupation provided by the current application.
- The new dwelling is no larger in size than is justified by the needs of the enterprise or more expensive to construct than the income of the enterprise can sustain.
- 6.26 The initial three year temporary period set out in policy DM34 for a rural workers dwelling is intended to provide evidence of the stability of a rural business. Now at the end of this three year period, a bricks and mortar dwelling on the application site could be acceptable under policy DM34 subject to the assessment of other issues.
- 6.27 The current application does not seek a bricks and mortar dwelling but the permanent retention of the existing caravan. It was previously accepted that the size of the caravan was appropriate to the needs of the equestrian use and there has been no change in circumstances that would alter this conclusion.
- 6.28 The proposal has justified the essential need for a full-time worker to be on site (and not elsewhere) for the efficient development and running of the rural enterprise; there is clear evidence the enterprise has been planned on a sound financial basis and there is firm intention and ability to develop it; there are no other suitable buildings on the site to convert; and the development is sited close to the main stable building, containing the spread of development in the site.

### **Residential amenity**

- 6.29 Policy DM1 encourages new development to respect the amenities of neighbouring properties and provide adequate residential amenities for future occupiers by ensuring that development does not result in, or is exposed to, excessive noise, vibration, odour, air pollution, activity, or vehicular movements, overlooking or visual intrusion. In terms of orientation and separation distances the proposed house will not have a harmful impact on residential amenity of neighbours.

### **Trees and landscaping and biodiversity**

- 6.30 Policy DM1 sets out that proposed development should respond to the location of the site and sensitively incorporate natural features such as such as trees, hedges worthy of retention within the site. The NPPF (para 174) states that planning decisions should contribute to and enhance the natural and local environment providing net gains for biodiversity, and (para 180) opportunities to improve biodiversity in and around developments should be integrated as part of their design.
- 6.31 It is recommended that planning conditions are attached to this permission that require new landscape screening and biodiversity enhancement to the undertaken.

### **Other matters**

- 6.32 The application site is located within an area that, according to information provided by the Environment Agency, is of 'very low risk' of both fluvial and surface water flooding. Very low risk means that this area has a chance of flooding of less than 0.1% each year.
- 6.33 No objections have been raised by Waste and Minerals Planning Policy Team and no comments have been received with regards to the impact upon highways.
- 6.34 The application site is not in the Stour River catchment area and not in the catchment area of Lenham wastewater treatment works (which in turn discharges into the Stour River catchment). The current application in addition does not include additional overnight accommodation. In this context it is concluded that the application does not require screening under the Habitat Regulations and, consequently, the undertaking of an Appropriate Assessment

### **PUBLIC SECTOR EQUALITY DUTY**

- 6.35 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

## **7. CONCLUSION**

- 7.01 The level of harm to the character and appearance of the countryside is minimised as:
- the caravan is screened from most public viewpoints by established boundary vegetation.
  - the caravan will be seen in the context of the larger stables building
  - the caravan is lower in height than a two storey dwelling that could be considered in the circumstances.
- 7.02 The current application seeks the permanent retention of a rural workers caravan that has been in place for more than 3 years. The application demonstrates a functional and financial need for the dwelling in this countryside location and the application is in accordance with Local Plan policy DM34.
- 7.03 A recommendation of approval of the application is therefore made on this basis.

## **8. RECOMMENDATION GRANT PLANNING PERMISSION subject to the following conditions:**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of the 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 hereby permitted shall be carried out in accordance with the following approved plans and documents:
  - Site Location Plan
  - Site/block plan
  - Planning Statement prepared by Equine Commercial Legal (September 2022)
  - Drawing No. DHA/13192/04 dated August 2018 (Proposed Mobile Home Elevations)

Reason: To ensure that the development is undertaken in accordance with the approved drawings and documents.

- 3) No more than one static mobile home and as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the site at any one time, and no further caravans shall be placed at any time anywhere within the site. The external amenity areas shall be laid out and the static mobile home shall be stationed only in the positions shown on the plan (site/block plan) hereby approved. Reason: To safeguard the visual amenity, character, and appearance of this countryside location.
- 4) Notwithstanding the provisions of Schedule 2, Part 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and/or re-enacting that Order with or without modification), no temporary buildings or structures shall be stationed on the land without the prior permission of the Local Planning Authority other than as expressly permitted by this decision; Reason: To safeguard the visual amenity, character and appearance of the open countryside location.
- 5) The use hereby permitted shall cease and the caravan, structures, equipment, and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within 6 weeks of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
  - i) Within 6 weeks of the date of this decision a Site Development Scheme, hereafter referred to as the 'Scheme', shall have been submitted for the written approval of the Local Planning Authority. The Scheme shall include details of:
    - a) means of enclosure,
    - b) extent of existing hardstanding and parking.
    - c) existing external lighting on the boundary of and within the site.
    - d) details of existing landscaping and details of soft landscape enhancements
    - e) details of the measures to enhance biodiversity at the site; and,
    - g) a timetable for implementation of the scheme including a) to d) with all details implemented in accordance with the agreed timetable and all details retained for the lifetime of the development.
  - ii) Within 11 months of the date of this decision the Scheme shall have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve the Scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted Scheme shall have been approved by the Secretary of State.
  - iv) The approved Scheme shall have been carried out and completed in accordance with the approved timetable and thereafter maintained and retained as approved.

Reason: To ensure the visual amenity, character, and appearance of the open countryside location.
- 6) The landscaping required by condition 5 shall be designed in accordance with the principles of the Council's Landscape Guidelines (Maidstone Landscape Character Assessment Supplement 2012). The scheme shall use predominantly native or near-native species as appropriate and show all existing trees, hedges and blocks of landscaping on, and immediately adjacent to, the site and indicate whether they are to be retained or removed. It shall also provide details of replacement planting to mitigate any loss of amenity and include a plant specification, implementation details, a maintenance schedule and a [5] year management plan.

Reason: In the interests of landscape, visual impact, and amenity of the area and to ensure a satisfactory appearance to the development
- 7) All landscaping approved under condition 5 shall be carried out during the planting season (October to February). Any seeding or turfing which fails to establish or any

trees or plants which, within five years of planting die or become so seriously damaged or diseased that their long term 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.

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

- 8) The biodiversity enhancement required by condition 5 shall include integrated methods into the design and appearance of the building structure (where possible) by means such as swift bricks, bat tube or bricks and additionally through provision within the site curtilage of measures such as bird boxes, bat boxes, bug hotels, log piles, wildflower planting and hedgerow corridors. Reason: To protect and enhance the ecology and biodiversity on the site in the future.
- 9) Any external lighting installed on the site (whether permanent or temporary) shall be in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. The submitted details shall be in accordance with the Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2011 (and any subsequent revisions) and follow the recommendations within Bat Conservation Trust's 'Guidance Note 8 Bats and Artificial Lighting', and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The development shall thereafter be carried out in accordance with the subsequently approved details and maintained as such thereafter. Reason: To safeguard the character and appearance of the countryside and in the interests of residential amenity.



**REPORT SUMMARY**

<b>REFERENCE NO:</b> 23/501009/FULL		
<b>APPLICATION PROPOSAL:</b> Erection of a third floor to create additional business space.		
<b>ADDRESS:</b> Chord Electronics Ltd. The Old Pump House Farleigh Bridge East Farleigh Maidstone Kent ME16 9NB		
<b>RECOMMENDATION:</b> GRANT PLANNING PERMISSION- subject to the planning conditions set out in Section 5.0 of the report.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b> For the reasons set out below the proposed erection of a third floor to create additional business space would be acceptable and would not cause significant visual harm, it would not harm neighbouring amenity or highway safety. The proposal is acceptable in terms of any other material planning considerations and is in accordance with current policy and guidance.		
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Call in from Cllr Gooch for the reasons set out at paragraph 4.02		
<b>WARD:</b> Barming And Teston	<b>PARISH/TOWN COUNCIL:</b> Barming	<b>APPLICANT:</b> Chord Electronics <b>AGENT:</b> DHA Planning
<b>CASE OFFICER:</b> Chloe Berkhauer-Smith	<b>VALIDATION DATE:</b> 30/03/23	<b>DECISION DUE DATE:</b> 28/07/23
<b>ADVERTISED AS A DEPARTURE:</b> No		

**1. BACKGROUND**

- 1.01 This application was first considered by members at the planning committee meeting on the 22<sup>nd</sup> June 2023. The committee report to this meeting is provided as an appendix to this report.
- 1.02 The committee resolved to defer a decision on the application for the following reasons:
  - (a) Seek further details in relation to proposed condition 6 (External Lighting) given the sensitive location of the application site from a historic landscape and riverside perspective and the evidence that red spectrum is softer and causes less harm to biodiversity than blue and green light
  - (b) Strengthen proposed condition 7 relating to renewables.

**2. PROPOSAL**

- 2.01 This application is for the construction of an additional building storey (at third floor level) over the main part of the building to create additional floorspace for the existing commercial use. The additional floor is intended to provide showroom space.
- 2.02 The additional building storey would have the same width and depth of the main building which is approximately 7m wide and depth of 14.7m (additional 70 square metres). The proposal would increase the main building eaves height from 11m to 13m and the roof ridge height from 12.3 metres to 15.7m.

### 3. APPRAISAL

3.01 This report seeks to address the following two points as set out in the committee minutes from the meeting on the 22<sup>nd</sup> June 2023:

- (a) Seek further details in relation to proposed condition 6 (External Lighting) given the sensitive location of the application site from a historic landscape and riverside perspective and the evidence that red spectrum is softer and causes less harm to biodiversity than blue and green light
- (b) Strengthen proposed condition 7 relating to renewables.

3.02 These two points in the minutes are considered in turn below.

**(a) Seek further details in relation to proposed condition 6 (External Lighting) given the sensitive location of the application site from a historic landscape and riverside perspective and the evidence that red spectrum is softer and causes less harm to biodiversity than blue and green light**

3.03 Members have requested that given the sensitive location of the application site from a historic landscape and riverside perspective, the wording of condition 6 (external lighting) should be amended to refer to red spectrum lighting as it is softer and causes less harm to biodiversity than blue and green light.

3.04 The wording of condition (6) has been amended to state:  
*"Notwithstanding the lighting details submitted after the meeting on the 22 June 2023, any external lighting installed on the site (whether permanent or temporary) shall be in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. These details shall include, inter alia, the conclusions of an investigation into the use of red lighting in the interests of ecology and the environment and if feasible the introduction of this lighting, measures to shield and direct light from the light sources so as to prevent light pollution and illuminance contour plots covering sensitive neighbouring receptors and the sensitive landscape location. The development shall thereafter be carried out in accordance with the subsequently approved details and maintained as such thereafter. Reason: In the interest of amenity and wildlife".*

**(b) Strengthen proposed condition 7 relating to renewables.**

3.05 Members have requested that the wording of condition 7 (renewables) be amended.

3.06 The wording of the condition has been amended to state:  
*"The development shall not commence above slab level until details of how decentralised and renewable or low-carbon sources of energy will be incorporated into the development hereby approved to provide at least 10% of total annual energy requirements of the building, have been submitted to and approved in writing by the local planning authority. The approved details shall be installed prior to first occupation of the approved extension and maintained thereafter. Reason: To ensure an energy efficient form of development".*

#### **PUBLIC SECTOR EQUALITY DUTY**

3.07 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

### 4. CONCLUSION

4.01 Overall, for the reasons outlined in this report, the proposed development would accord with the policies of the Local Plan (2017) and, as such the recommendation is to grant planning permission subject to conditions.

## 5. 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 in line with the matters set out in the recommendation and as resolved by the Planning Committee.

- 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 hereby permitted shall be carried out in accordance with the following approved plans:  
Proposed Second Floor Plan – Drawing No. 348(P)033 Rev 1 – Received 27/02/2023  
Proposed Third Floor Plan – Drawing No. 348(P)034 Rev 2 – Received 27/02/2023  
Proposed Roof Plan – Drawing No. 348(P)035 Rev 1 – Received 27/02/2023  
Proposed South Elevation – Drawing No. 348(P)040 Rev 4 – Received 27/02/2023  
Proposed East Elevation – Drawing No. 348(P)041 Rev 3 – Received 27/02/2023  
Proposed North Elevation – Drawing No. 348(P)042 Rev 4 – Received 27/02/2023  
Proposed West Elevation – Drawing No. 348(P)043 Rev 4 – Received 27/02/2023  
Proposed Section AA – Drawing No. 348(P)045 Rev 1 – Received 27/02/2023  
Proposed Site Plan – Drawing No. 348(P)003 Rev 1 – Received 08/03/2023  
Reason: To clarify which plans have been approved.
- 3) No development shall take place until a Construction Management Plan for the site has been submitted to and approved in writing by the local planning authority. The Construction Management Plan shall include the following details-
  - (a) Routing of construction and delivery vehicles to / from site
  - (b) Parking and turning for construction and delivery vehicles and site personnel
  - (c) Timing of deliveries
  - (e) Temporary traffic management / signage
  - (f) Measures to control dust.The construction works shall proceed only in accordance with the approved Construction Management Plan.  
Reason: In the interests of residential amenity and highway safety
- 4) Prior to first occupation of the approved accommodation measures taken for the on-site enhancement of biodiversity shall be in place that are in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the enhancement of biodiversity through integrated methods into the design and appearance of the building structure (where possible) by means such as swift bricks, bat tube or bricks and additionally through provision within the site curtilage of measures such as bird boxes, bat boxes, bug hotels, log piles, wildflower planting and hedgerow corridors. All features shall be maintained permanently thereafter.  
Reason: To enhance ecology and biodiversity on the site in line with the requirement to achieve a net biodiversity gain from all development.
- 5) No external work shall take place on the building until details (manufacturer name, product name, and photographs) of the external facing materials to be used for the extension 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 and maintained as such thereafter.  
Reason: To ensure a satisfactory appearance to the development.

- 6) Notwithstanding the lighting details submitted after the meeting on the 22 June 2023, any external lighting installed on the site (whether permanent or temporary) shall be in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. These details shall include, inter alia, the conclusions of an investigation into the use of red lighting in the interests of ecology and the environment and if feasible the introduction of this lighting, measures to shield and direct light from the light sources so as to prevent light pollution and illuminance contour plots covering sensitive neighbouring receptors and the sensitive landscape location. The development shall thereafter be carried out in accordance with the subsequently approved details and maintained as such thereafter.  
Reason: In the interest of amenity and wildlife.
- 7) The development shall not commence above slab level until details of how decentralised and renewable or low-carbon sources of energy will be incorporated into the development hereby approved to provide at least 10% of total annual energy requirements of the building, have been submitted to and approved in writing by the local planning authority. The approved details shall be installed prior to first occupation of the approved extension and maintained thereafter.  
Reason: To ensure an energy efficient form of development.
- 8) The vehicle parking spaces and turning facilities as shown on the submitted plans shall be permanently retained for parking and turning and shall not be used for any other purpose.  
Reason: In the interest of highways safety and parking provision.
- 9) The extension hereby permitted shall not be occupied until the following have been submitted to, and approved in writing by, the local planning authority
- details of measures to be put in place to encourage the use of sustainable (non-private vehicle) modes of travel for staff and customers,
  - details of measures to be put in place to prevent adjacent parking spaces being used as vehicle turning areas.
- The approved measures shall be in place prior to the first use of the approved extension hereby permitted and thereafter retained permanently.  
Reason: Due to the limited parking provision and to promote more sustainable methods of travel.

**REPORT SUMMARY**

<b>REFERENCE NO:</b> 23/501009/FULL		
<b>APPLICATION PROPOSAL:</b> Erection of a third floor to create additional business space.		
<b>ADDRESS:</b> Chord Electronics Ltd, The Old Pump House, Farleigh Bridge, East Farleigh Maidstone Kent ME16 9NB		
<b>RECOMMENDATION:</b> GRANT PLANNING PERMISSION– subject to the planning conditions set out in Section 8.0 of the report.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b> For the reasons set out below the proposed erection of a third floor to create additional business space would be acceptable and would not cause significant visual harm, it would not harm neighbouring amenity or highway safety. The proposal is acceptable in terms of any other material planning considerations and is in accordance with current policy and guidance.		
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Call in from Cllr Gooch for the reasons set out at paragraph 4.02		
<b>WARD:</b> Barming And Teston	<b>PARISH/TOWN COUNCIL:</b> Barming	<b>APPLICANT:</b> Chord Electronics <b>AGENT:</b> DHA Planning
<b>CASE OFFICER:</b> Chloe Berkhauer-Smith	<b>VALIDATION DATE:</b> 30/03/23	<b>DECISION DUE DATE:</b> 30/06/23
<b>ADVERTISED AS A DEPARTURE:</b> No		

**Relevant planning history**

89/2153 : Alterations renovation and refurbishment of existing building plus demolition of some existing buildings Approved 06.06.1990

89/2159: Demolition of single storey to 'The Egyptian Building' and subsequent renovation alteration and refurbishment Approved 17.07.1990

90/1292: The carrying out of the development permitted by planning permission MA/89/2153W without complying with condition (xiii) (hours of work). Approved 02.11.1990

90/1345: Amendment to fenestration of west elevation of building formerly known as Egyptian Building. Approved 15.10.1990

90/1362: Listed Building Consent for amendment to fenestration of west elevation of building formerly known as Egyptian Building. Approved 15.10.1990

96/0788: Change of use and conversion of existing buildings to provide three no. dwellings with associated parking and amenity areas Approved 03.12.1996

96/1087: Conversion of existing buildings to form 3 no. dwellings with associated parking areas. Approved 02.10.1996

96/1517: Listed Building Consent application for alterations internally and externally including new fenestration staircases garage doorway and velux rooflights. Approved 31.01.1997

96/1559: Alterations and insertion of additional first floor to existing workshop including insertion of garaging doorway. Approved 31.01.1997

97/0655: Listed Building Consent for the insertion of 3 rooflights. Approved 31.07.1997

97/1135: Advertisement consent application to install a wall mounted sign to east elevation. Approved 24.09.1997

## **MAIN REPORT**

### **1. DESCRIPTION OF SITE**

- 1.01 The site is in the countryside as defined in the Local plan. The site is in an area of built development between the River Medway in the south, and the railway line and East Farleigh Railway Station in the north. The applicant reports *"The whole complex was converted in the 1990s to provide office accommodation and new housing to the west following a period of dereliction"*.
- 1.02 The single track vehicle access from Farleigh Lane is shared with Empress Riverside Park. Empress Riverside Park located to the west consists of a gated residential estate of 36 park homes. Empress Riverside Park plots 34 and 35 are closest to the application site. The single storey timber clad building called The Malthouse to the south of the application site provides 5 dwellings.
- 1.03 The former waterworks building (known as The Works) built in stock brick is to the south east of the application site (east of The Malthouse) and is Grade II Listed. Permission was granted in 2019 for the conversion of first floor office space into a single self-contained flat (19/500694/FULL), with self-contained office space at ground floor. Permission was granted in August 2021 for alterations to fenestration and doors, creation of rear steps to balconies and erection of second floor roof extension to provide additional office space (20/505875/FULL).
- 1.04 The Works is at the northern end of the East Farleigh Station Road bridge which is Grade I Listed. To the north of The Works and east of the application site is a terrace of two storey brick houses fronting Farleigh Lane (No's 1 and 2 River Lodge)
- 1.05 Immediately to the north of the application site is a railway embankment with the railway track at a higher level. There is a general rise in ground level when travelling north away from the site on Farleigh Lane and a slight fall in ground level from the east to the west across the site.
- 1.06 The building on the application site is constructed in yellow brick with red brick detailing including curved brick window lintels and piers. The application building is curtilage listed due to its relationship with Grade II The Works building with a separate application for listed building consent on this committee agenda. The application building is provided with 8 off street car parking spaces, with two spaces to the east side of the building and the remainder on the west side.
- 1.07 The application building is currently used as a business space for Chord Electronics who are a designer and manufacturer of high-end HiFi electronics.

### **2. PROPOSAL**

- 2.01 This application is for the construction of an additional building storey (at third floor level) over the main part of the building to create additional floorspace for the

existing commercial use. The additional floor is intended to provide showroom space.

- 2.02 The additional building storey would have the same width and depth of the main building which is approximately 7m wide and depth of 14.7m (additional 70 square metres) . The proposal would increase the main building eaves height from 11m to 13m and the roof ridge height from 12.3 metres to 15.7m.
- 2.03 The applicant has provided the following background information:
- *"Chord Electronics are an established designer and manufacturer of high-end HiFi products, having been established in 1989. Chord Electronics is a key generator of high skilled manufacturing jobs.*
  - *Chord Electronics have experienced exponentially growth over the last decade or so, and whilst expanding operations into 'The Works' provided much needed additional space, custom built space with high acoustic qualities is required to showcase products, provide quality meeting space and an area for training. With this additional space, Chord's operation on the site (and the job opportunities available in the company) are safeguarded in the medium and long-term.*
  - *The additional floor space will not result in more employees being present on the site at any one time but will improve the existing function of the Chord Electronics site".*

### **3. POLICY AND OTHER CONSIDERATIONS**

#### Maidstone Borough Local Plan (2011-2031):

SS1 - Spatial strategy

SP17 - Countryside

SP18 - Historic environment

SP21 - Economic development

SP23 - Sustainable transport

DM1 - Principles of good design

DM2 - Sustainable design

DM3 - Natural environment

DM4 - Development affecting designated and non-designated heritage assets

DM6 - Air quality

DM8 - External lighting

DM21 - Assessing transport impacts

DM23 - Parking standards

DM30 - Design principles in countryside

DM37 - Expansion of existing businesses in rural areas

#### Maidstone Borough Council – Local Plan Review

The Regulation 22 draft is a material consideration however weight is currently limited, as it is the subject of an examination in public that commenced on the 6 September 2022 (Stage 2 concluded on the 9 June 2023). The relevant policies in the draft plan are as follows:

LPRS7 - Larger villages

LPRSP7(A) - East Farleigh

LPRSP11 - Economic development

LPRSP11(A) - Safeguarding existing employment sites and premises

LPRSP11(B) - Creating new employment opportunities

LPRSP12 - Sustainable transport

LPRSP14 - Environment

LPRSP14(A) - Natural environment

LPRSP14(B) - Historic environment

LPRSP14(C) - Climate change

LPRSP15 – Principles of good design

LPRSS1 - Spatial strategy  
LPRTRA2 - Assessing transport impacts  
LPRTRA4 - Parking  
LPRENV1 - Historic environment  
LPRQ&D1 - Sustainable design  
LPRQ&D2 - External lighting

The National Planning Policy Framework (NPPF):

National Planning Practice Guidance (NPPG):

#### **4. LOCAL REPRESENTATIONS**

##### **Local residents**

4.01 5 representations received raising the following (summarised) issues:

- Overshadowing
- Traffic and parking
- Loss of privacy
- Drainage concerns

The other matters raised by neighbours and other objectors are discussed in the detailed assessment below.

##### **Councillor Gooch**

4.02 A decision on this application should be made by the Planning Committee and not through the delegated procedures to balance benefits against harm and for the following reasons:

- I urge officers to revisit the Daylight and Sunlight assessment on 1-2 River Lodge, which will be dwarfed by this proposal. The degree of separation between the two buildings (The Old Pump House and River Lodge) is not sufficiently reasonable, consequently the impact on River lodge will be inescapable all year round, particularly during winter months when the sun is at its lowest in the sky and daylight hours are shortest.
- Just as for the yet-to-be-completed conversion of The Works, parking is still totally inadequate with no turning space on this narrow site. No additional parking is provided, I would suggest because there isn't any more to be had on site. The private car parking spaces to 1-2 River Lodge are frequently used as turning spaces causing angst and disturbing the quality of life and environmental amenity of the residents.
- Local residents' local amenity, enjoyment of the locality and quality of life - particularly that of 1-2 River Lodge - is already impeded by the ongoing noise and disturbance, mess and dust of ongoing conversion works to The Works. If planning permission were to be granted, I request that a condition be imposed to preclude commencement of this proposal until completion of The Works conversion 20/505875.
- This proposal may well generate more visits and in time maybe more jobs, yet no travel plan has been submitted to discourage parking on site or to encourage use of sustainable transport. This requirement was conditioned to planning permission 20/505875 to convert The Works and has yet to be met, so I would have thought it would have accompanied this proposal.

##### **Barming Parish Council**

4.03 Support this application, but have the following concerns:

- There is no transport policy to encourage the use of bicycles/trains to get to the site (bicycle station etc),
- Not enough environmental improvements have been considered (rain water catchers and highest BREEAM standards) and
- Concern about future parking pressures.

## 5. CONSULTATIONS

*(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)*

### **MBC Conservation Officer**

- 5.01 No objection and recommend approval for reasons set out in the assessment later in this report.

### **KCC Minerals and Waste**

- 5.02 No objection. No minerals or waste management capacity safeguarding objections or comments to make regarding this proposal.

### **Historic England**

- 5.03 No comment. This should not be interpreted as comment on the merits of the application.

### **KCC Public Rights of Way**

- 5.04 No objection to the proposal. Planning application will not have any impact on public footpath KM15, which passes along the lane adjacent to The Old Pump House on its' Southern side. Safe access to the Right of Way must be maintained at all times, and particularly when work is taking place overhead.

### **KCC Highways**

- 5.05 No objection for the following reasons:
- Whilst adopted guidance (SPG4) indicates that up to three additional parking spaces should be provided, this is a maximum figure. In any event, there appears to be no additional land within the site for this purpose.
  - In the absence of additional on-site parking provision there is an increased potential for overspill car parking onto adjoining streets. Empress Riverside Park does not form part of the publicly maintained highway network, but it is noted that the adjacent section of Farleigh Lane has double yellow lines.
  - Given the limited additional parking demand associated with the extension and restrictions in place on Farleigh Lane, an objection on parking grounds is likely to be difficult to sustain.

## 6. APPRAISAL

The key issues are:

- Character and appearance
- Heritage
- Visual impact
- Residential amenity
- Highways and parking
- Expansion of existing rural businesses
- Flooding
- Biodiversity
- Sustainable construction.

- 6.01 The site is located within the countryside as defined in the adopted local plan. The starting point for assessment of applications in the countryside is Local Plan Policy SP17. Policy SP17 states that development proposals in the countryside will not be permitted unless:
- a) they will not result in harm to the character and appearance of the area and
  - b) they accord with other Local Plan policies.

**Character and appearance (policy SP17 a)**

- 6.02 Whilst located in the countryside, with the application site in a group of existing buildings the character and appearance of the immediate area is of built development.
- 6.03 With the nearby listed building and bridge and the curtilage listed status of the application building, heritage considerations form an important part of existing character and appearance and in the assessment of the potential impact of the development.

**Heritage and design (policies SP18, DM1, DM4 and DM30)**

- 6.04 Policy SP18 of the Local Plan relates to the historic environment and requires that, inter-alia, the characteristics of heritage assets are protected, and design is sensitive to heritage assets and their settings. Policy DM4 of the Local Plan also relates to development affecting designated heritage assets and requires applicants to ensure that new development affecting heritage assets conserve, and where possible enhance, the significance of the heritage asset.
- 6.05 The NPPF (paragraphs 201 and 202) requires the impact on the significance of a designated heritage asset to be assessed as either “substantial harm” or “less than substantial harm” with NPPG guidance setting out that “substantial harm” has a high threshold “Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use”.

**(left to right) The Maltings, The Works building and East Farleigh bridge (with the application building and River Lodge in the background).**



- 6.06 NPPF guidance (paragraphs 199 and 200) states that when assessing the impact of development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the

greater the weight should be). This is irrespective of whether any potential harm to significance amounts to substantial harm, total loss or less than substantial harm.

6.07 Decision making on all listed building consent applications or any decision on a planning application for development that affects a listed building or its setting, must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. Preservation in this context means not harming the interest in the building, as opposed to keeping it utterly unchanged. This obligation, found in found in sections 16(LBC) and 66(FULL) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (1).

6.08 The south east corner of the application building is 12 metres away from the north east corner of the grade II listed former East Farleigh Waterworks. In terms of existing character and appearance the Historic England official listing description of the building is as follows:

*"...Former East Farleigh Waterworks GV II Waterworks, now coachworks and joinery. 1860, by James Pilbrow, in an Egyptian style. Gault brick in English bond. Rectangular. 2 storeys. Coursed stone plinth towards river to south. Battered clasping buttress to each corner, and 2 set close together towards centre of each long side, all running into deep brick plat band under eaves. Rendered coved cornice with deep roll to base and chamfer to top. Low rendered parapet. Truncated projecting brick stack, formerly tall and tapering, filling most of east gable end, with cornice carried round it and bearing the initial "P". Irregular fenestration to south of one small first-floor casement almost filling the narrow central bay and one broad 10- pane window with thin glazing bars to each outer bay of ground floor, all with rendered architraves and deep rendered coved and splayed cornices. 2 inserted 3-light wooden casements. Similar first-floor window to north. First-floor door to left gable end. Single-storey section in a similar style adjoining north-west corner. 2 doorways with rendered coved and splayed ridge cornices flanking base of stack to east. Interior not inspected. (J.S. Curl, *The Egyptian Revival*, 1982)".*

6.09 The conservation officer has highlighted historic photographs which show that the application building previously had an additional storey in place of the existing "strange roof structure. The conservation officer also makes the following points:

- The proposed scheme looks to form a similar scale and form of the lost upper floor and roof structure, but in a contemporary design. This will allow the changes to be clearly visible but reinstate the wider appearance of the building.
- While many industrial buildings are often considered as ugly, or harmful to the more rural setting, they form an important part of our history and development, often forming key buildings within the landscape.
- Solar panels are usually discouraged on listed buildings, but the use of modern technology on a former industrial building continues the ethos of the original building and in this case, the use of solar panels on the curtilage listed building is supported.
- The proposed design is not considered to cause harm to the significance of the curtilage listed building, or the setting of the adjoining designated heritage assets.
- The interior of the building was formed when converted to an office, and has limited significance to the building, and the proposed internal works are considered to cause no harm to the curtilage listed building.

6.10 Whilst allowing for larger amounts of glazing than the original form, the extension design and materials proposed are in keeping with the character of the building reflecting the existing architecture and original scale and form of the building.

- 6.11 The proposed materials respond to the main building on the application site but also introduce modern materials which connect to the new extension to main adjacent listed building The Works. This approach ensures that the connection between the buildings remains.
- 6.12 The proposal would incorporate solar panels to the west elevation. Solar panels on listed buildings are usually discouraged, however the conservation officer does not object to this given the general appearance of the application building.

**Existing and proposed south elevations**



- 6.13 The scale and design of the proposal is subservient and in keeping with the original building. The proposed scheme would reinstate a similar scale and form of the original upper floor and roof structure and would reflect the historic form of the original building. The proposed design and materials would reflect the architectural style of the host building.
- 6.14 The building extension in terms its scale, height, materials, detailing and articulation is in keeping with the character and appearance of the existing building and responds positively to local character. The extension will have no significant adverse impact on the form, appearance or setting of the building, and will respect the architectural and historic integrity of adjoining buildings. The design and appearance of the extension is in keeping with policies DM1 and DM30.
- 6.15 It is concluded that the extension will lead to 'less than substantial harm' to the significance of the grade II listed The Works building. In these circumstances the NPPF (paragraph 202) advises that "...this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use".
- 6.16 The purpose of the extension is to provide additional commercial floorspace for the existing business that occupies the application building. The business employs 17 full time staff and 6 part time staff. Whilst the current application is not intended to increase staff numbers, the applicant has stated "With this additional space, Chord's operation on the site (and the job opportunities available in the company) are safeguarded in the medium and long-term". Enabling the continued commercial occupation of the building and the employment is a public benefit and overall the proposal will result in a positive impact.

- 6.17 Farleigh Lane road bridge over the River Medway is Grade I listed. The road bridge is separated from the application site by The Works building. In this context, it is considered that the current proposal will not harm the significance of the Grade I listed bridge.

### **Neighbour amenity**

- 6.18 Local Plan policy DM1 states that development must “*Respect the amenities of occupiers of neighbouring properties and uses by ensuring that development does not result in, or is exposed to, excessive noise, vibration, odour, air pollution, activity or vehicular movements, overlooking or visual intrusion, and that the built form would not result in an unacceptable loss of privacy or light enjoyed by the occupiers of nearby properties*”.

### **Daylight and sunlight**

- 6.19 The industry standard best practice guidance for assessing daylight and sunlight impact is published by the Building Research Establishment called “Site Layout Planning for Daylight and Sunlight – A guide to good practice” Third Edition 2022. The applicants have carried out an assessment of potential impact using this best practice, and the conclusions of this assessment has been submitted with the planning application.
- 6.20 The assessment identified potential impact and assessed this impact on the windows in the four neighbouring properties The Malthouse, 1-2 River Lodge and 33 and 34 Riverside Park. The assessment considers the additional building height and the relationship of the buildings in terms of the sun path throughout the day. The application building is to the north of The Malthouse, to the west of 1-2 River Lodge and to the east of 33 and 34 Riverside Park.
- 6.21 After assessment of impact on sunlight, it was found that daylighting provided to windows in neighbouring buildings will be within limits set as being acceptable by BRE guidelines. The assessment concludes that the change in daylight to neighbouring windows will be insignificant and unlikely to be noticed by adjacent occupiers.
- 6.22 The assessment of impact has shown that despite some reductions seen in the number of probable sunlight hours to relevant neighbouring windows (including River Lodge), sunlight hours for neighbouring windows and amenity areas would be within the thresholds that BRE guidelines deem as acceptable.

### **Privacy and overlooking**

- 6.23 The potential impact on privacy and overlooking has been considered in relation to The Malthouse, 1-2 River Lodge and 33 and 34 Riverside Park.
- No.1-2 River Lodge
- 6.24 No.1-2 River Lodge are two storey semi-detached properties located to the east of the application site and fronting Farleigh Lane. Distance of approximately 13m separates the application property from the rear elevation of River Lodge across a parking area shared between the two buildings.
- 6.25 The proposed extension would be situated much higher than the No.1-2 River Lodge and therefore no direct window-to-window views would result and any views that may occur would be oblique. The views available from the proposed extension would also be similar to those available from the existing second-floor windows. It is therefore concluded that no significant loss or privacy or overlooking would result.

- No.1-5 The Malthouse
- 6.26 The Malthouse is 4.6 metres to the south of the application building. In terms of a loss of privacy and overlooking, again the proposed extension would be situated much higher than The Malthouse and therefore no direct window-to-window views would result, and any available views would be oblique. The proposed windows on the third floor would also offer similar views to those available from the existing second-floor windows. It is therefore concluded that no loss of privacy or overlooking would result.
- No.33-34 Riverside Park
- 6.27 No.33-34 Riverside Park are to the west of the application site. They are located approximately 14.3m from the application building and are situated approximately 2.2m higher than the ground level.
- 6.28 In terms of any loss of privacy or overlooking, the proposed windows would offer similar views to those available from the existing second-floor windows and the proposed extension would be situated much higher than both No.33-34 Riverside Park and therefore any views available would be oblique. It is therefore concluded that no significant loss of privacy or overlooking would result.

#### Construction phase

- 6.29 The impact of construction works on residential amenity has been raised in consultation responses, including the possibility of approved works on the application site and The Works building (20/505875/FULL) taking place simultaneously.
- 6.30 A planning permission can be implemented any time within the 3 years after approval and it would be unreasonable and fail the necessary tests to seek to prevent implementation until works on the neighbouring site have been completed.
- 6.31 Generally potential problems associated with the construction phase , for example, hours of work, noise, dust, and construction vehicles are also not planning considerations. In this instance, given the unique circumstances with multiple planning permissions and the current efficient use of application site land, a planning condition is justified requesting the submission of a construction management plan.
- 6.32 Overall, the proposals would not result in a significant harm to neighbouring residential amenity that would warrant a refusal. The applicant states "*The operations carried out on the site by Chord will change and, as such, these proposals would have no additional effects in terms of noise and other general amenity impacts*".

#### **Access, servicing parking, traffic, and highway safety**

- 6.33 The application building currently provides 381 square metres of floorspace and the extension will add 70 square metres (total of 451 square metres). The applicant has stated that proposed extension will allow the floorspace to operate more effectively but the extension will not increase the level of existing employment on the site (17 full time jobs and 6 part time staff).

#### Access, servicing, and trip generation

- 6.34 Local Plan policy DM 1 states that proposals will be permitted, where they can safely accommodate the associated vehicular and pedestrian movement on the local highway network and through the site access.

- 6.35 In relation to trip generation, the applicant has advised:
- The application will not increase the amount of people employed on the site. The development is to allow for additional internal space for meetings and training and will not result in additional staffing numbers.
  - The development will not result in additional visitors coming to the site. Visitors currently come to the site to view and listen to audio products, albeit, at present, there is not a designated room to host visitors. The proposed developments will not make visitor trips more frequent but will provide a dedicate space to showcase products.
- 6.36 Consultation comments refer to potential future changes on the application site, the current application must be assessed based on the impact of the current proposal.
- 6.37 The absence of a Travel Plan has been questioned in consultation responses. Travel Plans are normally required for non-residential development providing more than 1,000 square metres. The current application is significantly below this threshold providing 70 square metres.
- 6.38 The proposal will use the existing vehicle access. The existing access has been assessed in relation to its anticipated level of use, its width, driver sight lines and the future servicing of the accommodation and is considered suitable.
- This requirement was conditioned to planning permission 20/505875 to convert The Works and has yet to be met, so I would have thought it would have accompanied this proposal.

#### Car and cycle parking

- 6.39 Local Plan policy DM 23 states that the car parking for non-residential uses will consider the following:
- The accessibility of the development and availability of public transport.
  - The type, mix and use of the development proposed, and
  - Whether development proposals exacerbate on street car parking to an unacceptable degree.
- 6.40 The application site is in East Farleigh. Following the 2021 assessment of population, village services and facilities across the borough the local plan review recommends that East Farleigh is designated as a 'larger village' (sustainability location hierarchy of urban area-rural service centre-larger villages). The local plan review advises that in East Farleigh "*There are a moderate number of services and light industrial sites in and around the settlement, there is a primary school in the southern part of the village*".
- 6.41 The application site is immediately adjacent to the public transport offered by East Farleigh Railway Station (connections to Maidstone town centre, Paddock Wood, Tonbridge and the Medway Towns). A nearby riverside footpath provides pedestrian and cycle access to Maidstone. Whilst the accessibility issues caused by the nearby single track grade I listed road bridge are acknowledged, the application provides a modest level of additional floorspace and does not involve any additional employees on the site.
- 6.42 Car parking standards for non-residential uses are set out in Supplementary Planning Guidance SPG 4 Kent Vehicle Parking Standards July 2006. In terms of the proposed floorspace, the guidance states that a maximum (not minimum) or up to three additional car parking spaces should be provided.

- 6.43 There is no available space on the application site for any additional parking car parking. The nearby vehicle access to Empress Riverside Park (residential estate of 36 park homes) is gated, with the estate also not part of the publicly maintained highway network. The section of Farleigh Lane close to the application site has double yellow lines. The East Farleigh Railway Station car park is located close to the application site, the 35 spaces are available for non-rail passengers.
- 6.44 There is no space available on the application site for any cycle parking in the open areas of the site and in the context of no new staff or customer trips resulting from the proposal the lack of cycle parking is acceptable.
- 6.45 The NPPF states "*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe (Paragraph 111)*".
- 6.46 It is concluded that the impact of the application on highway safety will be acceptable and the impact on the road network will not be 'severe'. The impact of the proposal is found to be acceptable for the following reasons:
- The application involves a modest level of additional floorspace which is ancillary and does not involve any additional staff or customer trips.
  - Parking standards are set as maximum and there is no available space on the site for additional parking.
  - On street parking is restricted on Farleigh Lane with double yellow lines but the railway station car park is nearby.
  - The application has been assessed by the highways authority and they raise no objection.
- 6.47 Local Plan policy DM1 sets out that new development should provide adequate vehicular and cycle parking to meet adopted council standards, encouraging good access routes.

**Expansion of existing rural businesses (policy DM37)**

- 6.48 Policy DM37 of the Local Plan allows the expansion of existing rural businesses in rural areas subject to the criteria listed below. Each criteria is followed by comment.
- i) *New buildings are small in scale and provided the resultant development as a whole is appropriate in scale for the location and can be satisfactorily integrated into the local landscape.*
- 6.49 The current proposal relates to an extension of part of the application building and not a new building. The assessment above concludes that the extension is appropriate in scale for the location and will be integrated into the area.
- ii) *The increase in floorspace would not result in unacceptable traffic levels on nearby roads or a significant increase in use of an existing substandard access.*
- 6.50 As set out above, the proposal has been found to be acceptable in relation to traffic and travel impact.
- iii) *The new development, together with the existing facilities, will not result in an unacceptable loss in the amenity of the area. In particular the impact on nearby properties and the appearance of the development from public roads will be of importance; and*
- 6.51 As set out above, the proposal has been found to be acceptable in relation to amenity impact.

*iv) No open storage of materials will be permitted unless adequately screened from public view throughout the year.*

- 6.52 There is no space available on the application site for open storage and a condition is recommended that requires the parking spaces to be retained.

### **Flooding**

- 6.53 The application site is situated within flood zones 2 and 3. The submitted flood risk assessment states that it can be demonstrated that the development proposal is compatible with the predicted flood risk profile.
- 6.54 Furthermore, it states that the proposed development is not predicted to increase the risk of flooding to others over the development lifetime and it is therefore concluded that with regards to the Flood Risk requirements of the NPPF, the development proposals are acceptable.
- 6.55 Considering this and the nature of the proposal, whereby it would not be adding any ground floor accommodation or staff, the proposal would not result in any issues in terms of flood risk.

### **Biodiversity**

- 6.56 Local Plan policy DM3 states: "To enable Maidstone borough to retain a high quality of living and to be able to respond to the effects of climate change, developers will ensure that new development protects and enhances the natural environment ...where appropriate development proposals will be expected to appraise the value of the borough's natural environment through the provision of...an ecological evaluation of development sites...to take full account of the biodiversity present, including the potential for the retention and provision of native plant species".
- 6.57 The proposal would not result in the need for further ecological surveys, and there are no protected species which would be at risk. Policy DM1, DM3 and the NPPF do however all promote ecological enhancement. With the nature and extent of the proposals a condition is recommended seeking integral biodiversity enhancements.

### **Sustainable construction**

- 6.58 The Parish Council have referred to the BREEAM standards. Policy DM2 of the Local Plan states that BREEAM standards (for non-residential development - includes measures on water consumption) should only be applied where technically and financially viable.
- 6.59 The current application is not for a new building but for an modest extension to an existing building and in these circumstances it would not be technically possible or financially viable to seek BREEAM compliance. (min area as a rule of thumb to be viable would be 500 square metres and the current proposal is 70 square metres).

## **PUBLIC SECTOR EQUALITY DUTY**

- 6.60 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

## **7. CONCLUSION**

- 7.01 For the reasons set out above the proposed erection of a third floor to create additional business space would be acceptable and would not cause significant

visual harm, harm to neighbouring amenity nor would it be unacceptable in terms of any other material planning considerations. The proposed developments is in accordance with current policy and guidance.

**8. 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 in line with the matters set out in the recommendation and as resolved by the Planning Committee.

- 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 hereby permitted shall be carried out in accordance with the following approved plans:  
Proposed Second Floor Plan – Drawing No. 348(P)033 Rev 1 – Received 27/02/2023  
Proposed Third Floor Plan – Drawing No. 348(P)034 Rev 2 – Received 27/02/2023  
Proposed Roof Plan – Drawing No. 348(P)035 Rev 1 – Received 27/02/2023  
Proposed South Elevation – Drawing No. 348(P)040 Rev 4 – Received 27/02/2023  
Proposed East Elevation – Drawing No. 348(P)041 Rev 3 – Received 27/02/2023  
Proposed North Elevation – Drawing No. 348(P)042 Rev 4 – Received 27/02/2023  
Proposed West Elevation – Drawing No. 348(P)043 Rev 4 – Received 27/02/2023  
Proposed Section AA – Drawing No. 348(P)045 Rev 1 – Received 27/02/2023  
Proposed Site Plan – Drawing No. 348(P)003 Rev 1 – Received 08/03/2023v  
Reason: To clarify which plans have been approved.
- 3) No development shall take place until a Construction Management Plan for the site has been submitted to and approved in writing by the local planning authority. The Construction Management Plan shall include the following details-
  - (a) Routing of construction and delivery vehicles to / from site
  - (b) Parking and turning for construction and delivery vehicles and site personnel
  - (c) Timing of deliveries
  - (e) Temporary traffic management / signage
  - (f) Measures to control dust.The construction works shall proceed only in accordance with the approved Construction Management Plan.  
Reason: In the interests of residential amenity and highway safety
- 4) Prior to first occupation of the approved accommodation measures taken for the on-site enhancement of biodiversity shall be in place that are in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the enhancement of biodiversity through integrated methods into the design and appearance of the building structure (where possible) by means such as swift bricks, bat tube or bricks and additionally through provision within the site curtilage of measures such as bird boxes, bat boxes, bug hotels, log piles, wildflower planting and hedgerow corridors. All features shall be maintained permanently thereafter.  
Reason: To enhance ecology and biodiversity on the site in line with the requirement to achieve a net biodiversity gain from all development.
- 5) No external work shall take place on the building until details (manufacturer name, product name, and photographs) of the external facing materials to be used for the extension 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 and maintained as such thereafter.

Reason: To ensure a satisfactory appearance to the development.

- 6) Any external lighting installed on the site (whether permanent or temporary) shall be in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. These details shall include, inter alia, measures to shield and direct light from the light sources so as to prevent light pollution and illuminance contour plots covering sensitive neighbouring receptors and the sensitive landscape location. The development shall thereafter be carried out in accordance with the subsequently approved details and maintained as such thereafter.

Reason: In the interest of amenity and wildlife.

- 7) The development shall not commence above slab level until details of how decentralised and renewable or low-carbon sources of energy will be incorporated into the development hereby approved to provide at least 10% of total annual energy requirements of the development, have been submitted to and approved in writing by the local planning authority. The approved details shall be installed prior to first occupation of the approved dwelling and maintained thereafter.

Reason: To ensure an energy efficient form of development.

- 8) The vehicle parking spaces and turning facilities as shown on the submitted plans shall be permanently retained for parking and turning and shall not be used for any other purpose.

Reason: In the interest of highways safety and parking provision.

- 9) The extension hereby permitted shall not be occupied until the following have been submitted to, and approved in writing by, the local planning authority

- details of measures to be put in place to encourage the use of sustainable (non-private vehicle) modes of travel for staff and customers,
- details of measures to be put in place to prevent adjacent parking spaces being used as vehicle turning areas.

The approved measures shall be in place prior to the first use of the approved extension hereby permitted and thereafter retained permanently.

Reason: Due to the limited parking provision and to promote more sustainable methods of travel.



**REPORT SUMMARY**

<b>REFERENCE NO:</b> 23/501008/LBC		
<b>APPLICATION PROPOSAL:</b> Listed Building Consent for erection of a third floor to create additional business space.		
<b>ADDRESS:</b> Chord Electronics Ltd. The Old Pump House Farleigh Bridge East Farleigh Maidstone Kent ME16 9NB		
<b>RECOMMENDATION: GRANT LISTED BUILDING CONSENT</b> – subject to the planning conditions set out in Section 5.0 of the report.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b> There is no significant harm to the appearance and setting of the curtilage listed building, or the setting of the adjoining designated heritage assets. The proposal complies with local and national planning policies and is recommended approval.		
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Call in from Cllr Gooch to allow committee discussion on sunlight and daylight car parking and residential amenity.		
<b>WARD:</b> Barming And Teston	<b>PARISH/TOWN COUNCIL:</b> Barming	<b>APPLICANT:</b> Chord Electronics <b>AGENT:</b> DHA Planning
<b>CASE OFFICER:</b> Chloe Berkhauer-Smith	<b>VALIDATION DATE:</b> 23/03/23	<b>DECISION DUE DATE:</b> 28/07/23
<b>ADVERTISED AS A DEPARTURE:</b> No		

**1. BACKGROUND**

- 1.01 This application was first considered by members at the planning committee meeting on the 22<sup>nd</sup> June 2023. The committee report to this meeting is provided as an appendix to this report.
- 1.02 The committee resolved to defer a decision on the application for the following reasons:

*"That consideration of this application be deferred to enable Members to see the Conservation Officer's assessment of the impact of the proposed development on the significance and setting of designated heritage assets, including the Farleigh Lane road bridge over the River Medway, and weigh any potential harm against the public benefits of the proposal".*

**2. PROPOSAL**

- 2.01 This application is for the construction of an additional building storey (at third floor level) over the main part of the building to create additional floorspace for the existing commercial use. The additional floor is intended to provide showroom space.
- 2.02 The additional building storey would have the same width and depth of the main building which is approximately 7m wide and depth of 14.7m (additional 70 square metres). The proposal would increase the main building eaves height from 11m to 13m and the roof ridge height from 12.3 metres to 15.7m.

### 3. APPRAISAL

- 3.01 This report seeks to address the following point as set out in the committee minutes from the meeting on the 22<sup>nd</sup> June 2023:

*"That consideration of this application be deferred to enable Members to see the Conservation Officer's assessment of the impact of the proposed development on the significance and setting of designated heritage assets, including the Farleigh Lane road bridge over the River Medway, and weigh any potential harm against the public benefits of the proposal".*

- 3.02 The NPPF (paragraphs 201 and 202) requires the impact on the significance of a designated heritage asset to be assessed as either "substantial harm" or "less than substantial harm" with NPPG guidance setting out that "substantial harm" has a high threshold "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use".
- 3.03 The building is situated within a sensitive location, within the setting of the Grade I listed bridge, Grade II\* listed Church of St Mary, and the Grade II listed Railway Station and Bridge House.
- 3.04 The proposed site is set behind the Waterworks and the Malthouse but can be seen over the roof. Due to the height of the building, it has the potential of more of an impact on the wider setting of the listed building.
- 3.05 The conservation officer has highlighted historic photographic evidence that shows the current building had an additional storey in place of the existing "strange roof structure" The proposal seeks to reinstate a similar scale and form of the lost upper floor and roof structure, but in a contemporary design.
- 3.06 It is concluded that due to the nature of the proposal whereby it is proposed to reinstate a similar scale and form of the lost upper floor and roof structure, but in a contemporary design would lead to 'less than substantial harm' to the significance of the grade II listed The Works building. In these circumstances the NPPF (paragraph 202) advises that "...this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use".
- 3.07 The purpose of the extension is to provide additional commercial floorspace for the existing business that occupies the application building. The business employs 17 full time staff and 6 part time staff. Whilst the current application is not intended to increase staff numbers, the applicant has stated *"With this additional space, Chord's operation on the site (and the job opportunities available in the company) are safeguarded in the medium and long-term"*. Enabling the continued commercial occupation of the building and the employment is a public benefit and overall, the proposal will result in a positive impact.
- 3.08 Farleigh Lane road bridge over the River Medway is Grade I listed. The road bridge is separated from the application site by The Works building. In this context, it is considered that the current proposal will not harm the significance of the Grade I listed bridge.
- 3.09 A copy of the conservation officers' comments can be found as an appendix of this report.

## **PUBLIC SECTOR EQUALITY DUTY**

- 3.10 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

## **4. CONCLUSION**

- 4.01 For the reasons outlined above, I do not consider there to be significant harm to the appearance and setting of the curtilage listed building, or the setting of the adjoining designated heritage assets. The proposal is therefore considered to comply with local and national planning policies and is recommended approval.

## **5. RECOMMENDATION**

### **GRANT LISTED BUILDING CONSENT 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 in line with the matters set out in the recommendation and as resolved by the Planning Committee.

- 1) The works to which this consent relates must be begun before the expiration of three years from the date of this consent. Reason: In accordance with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:  
Proposed Second Floor Plan – Drawing No. 348(P)033 Rev 1 – Received 27/02/2023  
Proposed Third Floor Plan – Drawing No. 348(P)034 Rev 2 – Received 27/02/2023  
Proposed Roof Plan – Drawing No. 348(P)035 Rev 1 – Received 27/02/2023  
Proposed South Elevation – Drawing No. 348(P)040 Rev 4 – Received 27/02/2023  
Proposed East Elevation – Drawing No. 348(P)041 Rev 3 – Received 27/02/2023  
Proposed North Elevation – Drawing No. 348(P)042 Rev 4 – Received 27/02/2023  
Proposed West Elevation – Drawing No. 348(P)043 Rev 4 – Received 27/02/2023  
Proposed Section AA – Drawing No. 348(P)045 Rev 1 – Received 27/02/2023  
Proposed Site Plan – Drawing No. 348(P)003 Rev 1 – Received 08/03/2023  
Reason: To clarify which plans have been approved.
- 3) No external work shall take place on the building until details (manufacturer name, product name, and photographs) of the external facing materials to be used for the extension 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 and maintained as such thereafter. Reason: To ensure a satisfactory appearance to the development.
- 4) No works shall take place until detailed drawings at a suggested scale of 1:5 of all new external and internal joinery work and fittings together with sections through glazing bars, frames and mouldings have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details. Reason: In the interest of the special architectural or historic interest of the listed building.
- 5) No works shall take place until detailed drawings at a suggested scale of 1:5 of how the new storey will connect with the existing structure have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details. Reason: In the interest of the special architectural or historic interest of the listed building.

**REPORT SUMMARY**

<b>REFERENCE NO:</b> 23/501008/LBC		
<b>APPLICATION PROPOSAL:</b> Listed Building Consent for erection of a third floor to create additional business space.		
<b>ADDRESS:</b> Chord Electronics Ltd, The Old Pump House Farleigh Bridge East Farleigh Maidstone Kent ME16 9NB		
<b>RECOMMENDATION: GRANT LISTED BUILDING CONSENT-</b> subject to the planning conditions set out in Section 8.0 of the report.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b> There is no significant harm to the appearance and setting of the curtilage listed building, or the setting of the adjoining designated heritage assets. The proposal complies with local and national planning policies and is recommended approval.		
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Call in from Cllr Gooch to allow committee discussion on sunlight and daylight car parking and residential amenity.		
<b>WARD:</b> Barming And Teston	<b>PARISH/TOWN COUNCIL:</b> Barming	<b>APPLICANT:</b> Chord Electronics. <b>AGENT:</b> DHA Planning
<b>CASE OFFICER:</b> Chloe Berkhauer-Smith	<b>VALIDATION DATE:</b> 23/03/23	<b>DECISION DUE DATE:</b> 30/06/23
<b>ADVERTISED AS A DEPARTURE:</b> No		

**Relevant Planning History**

89/2153 : Alterations renovation and refurbishment of existing building plus demolition of some existing buildings Approved 06.06.1990

89/2159 : Demolition of single storey to 'The Egyptian Building' and subsequent renovation alteration and refurbishment Approved 17.07.1990

90/1292 : The carrying out of the development permitted by planning permission MA/89/2153W without complying with condition (xiii) (hours of work).Approved 02.11.1990

90/1345 : Amendment to fenestration of west elevation of building formerly known as Egyptian Building. Approved 15.10.1990

90/1362 : Listed Building Consent for amendment to fenestration of west elevation of building formerly known as Egyptian Building. Approved 15.10.1990

96/0788 : Change of use and conversion of existing buildings to provide three no. dwellings with associated parking and amenity areas Approved 03.12.1996

96/1087 : Conversion of existing buildings to form 3 no. dwellings with associated parking areas Approved 02.10.1996

96/1517 : Listed Building Consent application for alterations internally and externally including new fenestration staircases garage doorway and velux rooflights Approved 31.01.1997

96/1559 : Alterations and insertion of additional first floor to existing workshop including insertion of garaging doorway Approved 31.01.1997

97/0655 : Listed Building Consent for the insertion of 3 rooflights Approved 31.07.1997

97/1135 : Advertisement consent application to install a wall mounted sign to east elevation Approved 24.09.1997

## **MAIN REPORT**

### **1. DESCRIPTION OF SITE**

- 1.01 The site is in the countryside as defined in the Local plan. The site is in an area of built development between the River Medway in the south, and the railway line and East Farleigh Railway Station in the north. The applicant reports *"The whole complex was converted in the 1990s to provide office accommodation and new housing to the west following a period of dereliction"*.
- 1.02 The single track vehicle access from Farleigh Lane is shared with Empress Riverside Park. Empress Riverside Park located to the west consists of a gated residential estate of 36 park homes. Empress Riverside Park plots 34 and 35 are closest to the application site. The single storey timber clad building called The Malthouse to the south of the application site provides 5 dwellings.
- 1.03 The former waterworks building (known as The Works) built in stock brick is to the south east of the application site (east of The Malthouse) and is Grade II Listed. Permission was granted in 2019 for the conversion of first floor office space into a single self-contained flat (19/500694/FULL), with self-contained office space at ground floor. Permission was granted in August 2021 for alterations to fenestration and doors, creation of rear steps to balconies and erection of second floor roof extension to provide additional office space (20/505875/FULL).
- 1.04 The Works is at the northern end of the East Farleigh Station Road bridge which is Grade I Listed. To the north of The Works and east of the application site is a terrace of two storey brick houses fronting Farleigh Lane (No's 1 and 2 River Lodge)
- 1.05 Immediately to the north of the application site is a railway embankment with the railway track at a higher level. There is a general rise in ground level when travelling north away from the site on Farleigh Lane and a slight fall in ground level from the east to the west across the site.
- 1.06 The building on the application site is constructed in yellow brick with red brick detailing including curved brick window lintels and piers. The application building is curtilage listed due to its relationship with Grade II The Works building with a separate application for listed building consent on this committee agenda. The application building is provided with 8 off street car parking spaces, with two spaces to the east side of the building and the remainder on the west side.
- 1.07 The application building is currently used as a business space for Chord Electronics who are a designer and manufacturer of high-end HiFi electronics.

### **2. PROPOSAL**

- 2.01 This Listed Building Consent application seeks consent for erection of a third floor to create additional business space.
- 2.02 The proposed extension would have the same width and depth of the main building which is approximately a width of 7m and depth of 14.7m. The proposed extension

would raise the height of the building resulting in an eaves height of approximately 13m and a ridge height of 15.7m.

### **3. POLICY AND OTHER CONSIDERATIONS**

Maidstone Borough Local Plan (2011-2031):

SP18 - Historic Environment

DM1 - Principles of good design

DM4 - Development affecting designated and non-designated heritage assets

DM30 - Design principles in countryside

Maidstone Borough Council – Local Plan Review

The Regulation 22 draft is a material consideration however weight is currently limited, as it is the subject of an examination in public that commenced on the 6 September 2022 (Stage 1 hearings concluded and stage 2 hearings due to start on the 15 May 2023).

LPRSP14(B) - Historic environment

LPRSP15 – Principles of good design

LPRENV1 - Historic environment

The National Planning Policy Framework (NPPF):

National Planning Practice Guidance (NPPG):

### **4. LOCAL REPRESENTATIONS**

4.01 **Local residents:** 5 representations received from local residents raising the following (summarised) issues:

- Overshadowing
- Traffic and parking
- Loss of privacy
- Drainage concerns

The nuisance resulting from construction works is not a material planning consideration and therefore cannot be considered in the determination of this application. The other matters raised by neighbours and other objectors are discussed in the detailed assessment below.

#### **Councillor Gooch**

4.02 A decision on this application should be made by the Planning Committee and not through the delegated procedures to balance benefits against harm and for the following reasons:

- I urge officers to revisit the Daylight and Sunlight assessment on 1-2 River Lodge, which will be dwarfed by this proposal. The degree of separation between the two buildings (The Old Pump House and River Lodge) is not sufficiently reasonable, consequently the impact on River lodge will be inescapable all year round, particularly during winter months when the sun is at its lowest in the sky and daylight hours are shortest.
- Just as for the yet-to-be-completed conversion of The Works, parking is still totally inadequate with no turning space on this narrow site. No additional parking is provided, I would suggest because there isn't any more to be had on site. The private car parking spaces to 1-2 River Lodge are frequently used as turning spaces causing angst and disturbing the quality of life and environmental amenity of the residents.
- Local residents' local amenity, enjoyment of the locality and quality of life - particularly that of 1-2 River Lodge - is already impeded by the ongoing noise and disturbance, mess and dust of ongoing conversion works to The Works. If planning permission were to be granted, I request that a condition be imposed to preclude commencement of this proposal until completion of The Works conversion 20/505875.

- This proposal may well generate more visits and in time maybe more jobs, yet no travel plan has been submitted to discourage parking on site or to encourage use of sustainable transport. This requirement was conditioned to planning permission 20/505875 to convert The Works and has yet to be met, so I would have thought it would have accompanied this proposal.

**Barming Parish Council**

4.03 Support this application, but have the following concerns:

- There is no transport policy to encourage the use of bicycles/trains to get to the site (bicycle station etc),
- Not enough environmental improvements have been considered (rain water catchers and highest BREEAM standards) and
- Concern about future parking pressures.

**5. CONSULTATIONS**

*(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)*

**MBC Conservation Officer**

5.01 No objection and recommend approval for reasons set out in the assessment later in this report.

**6. APPRAISAL**

The key issues are:

- Heritage and design

**Heritage and design (policies SP18, DM1, DM4 and DM30)**

6.01 Policy SP18 of the Local Plan relates to the historic environment and requires that, inter-alia, the characteristics of heritage assets are protected, and design is sensitive to heritage assets and their settings. Policy DM4 of the Local Plan also relates to development affecting designated heritage assets and requires applicants to ensure that new development affecting heritage assets conserve, and where possible enhance, the significance of the heritage asset.

6.02 The NPPF (paragraphs 201 and 202) requires the impact on the significance of a designated heritage asset to be assessed as either "substantial harm" or "less than substantial harm" with NPPG guidance setting out that "substantial harm" has a high threshold "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use".

6.03 NPPF guidance (paragraphs 199 and 200) states that when assessing the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm to significance amounts to substantial harm, total loss or less than substantial harm.

6.04 Decision making on all listed building consent applications or any decision on a planning application for development that affects a listed building or its setting, must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. Preservation in this context means not harming the interest in the building, as opposed to keeping it utterly unchanged. This obligation, found in found in sections 16(LBC) and 66(FULL) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (1).

- 6.05 The south east corner of the application building is 12 metres away from the north east corner of the grade II listed former East Farleigh Waterworks. In terms of existing character and appearance the Historic England official listing description of the building is as follows:

*"...Former East Farleigh Waterworks GV II Waterworks, now coachworks and joinery. 1860, by James Pilbrow, in an Egyptian style. Gault brick in English bond. Rectangular. 2 storeys. Coursed stone plinth towards river to south. Battered clasping buttress to each corner, and 2 set close together towards centre of each long side, all running into deep brick plat band under eaves. Rendered covered cornice with deep roll to base and chamfer to top. Low rendered parapet. Truncated projecting brick stack, formerly tall and tapering, filling most of east gable end, with cornice carried round it and bearing the initial "P". Irregular fenestration to south of one small first-floor casement almost filling the narrow central bay and one broad 10- pane window with thin glazing bars to each outer bay of ground floor, all with rendered architraves and deep rendered covered and splayed cornices. 2 inserted 3-light wooden casements. Similar first-floor window to north. First-floor door to left gable end. Single-storey section in a similar style adjoining north-west corner. 2 doorways with rendered covered and splayed ridge cornices flanking base of stack to east. Interior not inspected. (J.S. Curl, The Egyptian Revival, 1982)".*

- 6.06 The conservation officer has highlighted historic photographs which show that the application building previously had an additional storey in place of the existing "strange roof structure. The conservation officer also makes the following points:
- The proposed scheme looks to form a similar scale and form of the lost upper floor and roof structure, but in a contemporary design. This will allow the changes to be clearly visible but reinstate the wider appearance of the building.
  - While many industrial buildings are often considered as ugly, or harmful to the more rural setting, they form an important part of our history and development, often forming key buildings within the landscape.
  - Solar panels are usually discouraged on listed buildings, but the use of modern technology on a former industrial building continues the ethos of the original building and in this case, the use of solar panels on the curtilage listed building is supported.
  - The proposed design is not considered to cause harm to the significance of the curtilage listed building, or the setting of the adjoining designated heritage assets.
  - The interior of the building was formed when converted to an office, and has limited significance to the building, and the proposed internal works are considered to cause no harm to the curtilage listed building.
- 6.07 The complex was formed of different architectural styles, and the host building has a strong Neo-Romanesque style. Whilst allowing for larger amounts of glazing than the original form, the extension design and materials proposed are in keeping with the character of the building reflecting the existing architecture and original scale and form of the building.
- 6.08 The proposed materials respond to the main building on the application site but also introduce modern materials which connect to the new extension to main adjacent listed building The Works. This approach ensures that the connection between the buildings remains.
- 6.09 The proposal would incorporate solar panels to the west elevation. Solar panels on listed buildings are usually discouraged, however the conservation officer does not object to this given the general appearance of the application building.

- 6.10 The scale and design of the proposal is subservient and in keeping with the original building. The proposed scheme would reinstate a similar scale and form of the original upper floor and roof structure and would reflect the historic form of the original building. The proposed design and materials would reflect the architectural style of the host building.
- 6.11 The building extension in terms its scale, height, materials, detailing and articulation is in keeping with the character and appearance of the existing building and responds positively to local character. The extension will have no significant adverse impact on the form, appearance or setting of the building, and will respect the architectural and historic integrity of adjoining buildings. The design and appearance of the extension is in keeping with policies DM1 and DM30.
- 6.12 It is concluded that the extension will lead to 'less than substantial harm' to the significance of the grade II listed The Works building. In these circumstances the NPPF (paragraph 202) advises that *"...this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use"*.
- 6.13 The purpose of the extension is to provide additional commercial floorspace for the existing business that occupies the application building. The business employs 17 full time staff and 6 part time staff. Whilst the current application is not intended to increase staff numbers, the applicant has stated *"With this additional space, Chord's operation on the site (and the job opportunities available in the company) are safeguarded in the medium and long-term"*. Enabling the continued commercial occupation of the building and the employment is a public benefit and overall, the proposal will result in a positive impact.
- 6.14 Farleigh Lane road bridge over the River Medway is Grade I listed. The road bridge is separated from the application site by The Works building. In this context, it is considered that the current proposal will not harm the significance of the Grade I listed bridge.
- 6.15 The representations received from neighbouring properties have been discussed within the accompanying FULL application regarding neighbouring residential amenity.

## **7. CONCLUSION**

- 7.01 For the reasons outlined above, I do not consider there to be significant harm to the appearance and setting of the curtilage listed building, or the setting of the adjoining designated heritage assets. The proposal is therefore considered to comply with local and national planning policies and is recommended approval.

## **8. RECOMMENDATION GRANT LISTED BUILDING CONSENT 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 in line with the matters set out in the recommendation and as resolved by the Planning Committee.**

- 1) The works to which this consent relates must be begun before the expiration of three years from the date of this consent.  
Reason: In accordance with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:  
Proposed Second Floor Plan – Drawing No. 348(P)033 Rev 1 – Received 27/02/2023

Proposed Third Floor Plan – Drawing No. 348(P)034 Rev 2 – Received 27/02/2023  
Proposed Roof Plan – Drawing No. 348(P)035 Rev 1 – Received 27/02/2023  
Proposed South Elevation – Drawing No. 348(P)040 Rev 4 – Received 27/02/2023  
Proposed East Elevation – Drawing No. 348(P)041 Rev 3 – Received 27/02/2023  
Proposed North Elevation – Drawing No. 348(P)042 Rev 4 – Received 27/02/2023  
Proposed West Elevation – Drawing No. 348(P)043 Rev 4 – Received 27/02/2023  
Proposed Section AA – Drawing No. 348(P)045 Rev 1 – Received 27/02/2023  
Proposed Site Plan – Drawing No. 348(P)003 Rev 1 – Received 08/03/2023  
Reason: To clarify which plans have been approved.

- 3) No external work shall take place on the building until details (manufacturer name, product name, and photographs) of the external facing materials to be used for the extension 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 and maintained as such thereafter.  
Reason: To ensure a satisfactory appearance to the development.
  
- 4) No works shall take place until detailed drawings at a suggested scale of 1:5 of all new external and internal joinery work and fittings together with sections through glazing bars, frames and mouldings have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.  
Reason: In the interest of the special architectural or historic interest of the listed building.

CASE REF: 23/501008/LBC & 23/501009/FULL

SITE: CHORD ELECTRONICS LTD THE OLD PUMP HOUSE  
FARLEIGH BRIDGE EAST FARLEIGH

### DESCRIPTION OF WORKS

Listed Building Consent for erection of a third floor to create additional business space.

### SIGNIFICANCE

#### *Designation and context*

The property forms part of a complex of former industrial buildings that were constructed as part of the water works. The Works, the adjoining building is Grade II. The submitted heritage statement provides background to the development of the site.

The complex was formed of different architectural styles, and the host building has a strong Neo-Romanesque style, and photographic evidence provided shows that the pump house was taller with a pitched roof. The Old Pump House is a tall building that housed the pumping gear, and this is reflected in the external appearance both in original height and the window configuration.

The setting is sensitive. Set within a valley, the area has developed and evolved. The earliest remaining structure, aside from the Church (late C11/early C12) which sits on the opposite side of the valley to the site, is the bridge (East Farleigh Bridge – GI & SM). The bridge is probably from the C14 and noted in the listing description as ‘possibly one of the finest medieval bridges in the south of England.’ Of a similar age is Gallants Manor (0.5miles SW) which tree-ring dating suggests c.1320. The current building is smaller than the original, and much altered.

The remaining properties started to be constructed from the C15 (such as Becketts Place & Gae House Farmhouse) and continued to be developed to include the GII East Farleigh Station (opened 1844), a simple painted weatherboarded structure, with a slate roof. The evolving character of the settlement adds to the character of the village, but most are centred on agriculture, and the Victorian ‘improvements’. These include the School (now parish hall) 1855 (which replaced the Butterfield School of 1846) of Gothic architecture, together with the associated Masters House; the adjoining Workers Cottages & Oast House (1869), the pumping station (1860 – James Philbrow, Engineer) and the proposed site, engine & boiler house (1878 – Henry Teague, Engineer)

These large Victorian structures would have changed the appearance and character of the village, introducing larger building in different architectural styles, such as Gothic (school) and mock- Egyptian (waterworks), as well as different materials, such as red and yellow brick and slate roof covering (station). With these buildings, there would have been changes to the everyday lives of the villagers.

Many industrial buildings fell from grace, deemed as dirty, unsightly (or not pretty) and many have been lost, but over recent years, the importance of these buildings have been recognised, both for the impact on the community, but also as feats of engineering. Where they remain (with original interiors and engines), they are now

CASE REF: 23/501008/LBC & 23/501009/FULL

SITE: CHORD ELECTRONICS LTD THE OLD PUMP HOUSE  
FARLEIGH BRIDGE EAST FARLEIGH

being restored (such as Crossness Pumping Station). The interior of the proposed site and the upper storey have been lost, and a new use (offices for Chord Electronics Ltd) has been found. The building responds to the changing recognition of our industrial heritage, and our changing views on Victorian architecture.

The property is not within a Conservation Area but is within the wider setting of East Farleigh Lower Road Conservation Area.

The Old Pump House is considered to be curtilage listed due to the connection with the GII Former East Farleigh Waterworks.

**COMMENTS**

**Planning history**

Pre-application advice was provided for this application, and the proposed scheme responds to the advice given.

**Relevant policies**

**Form**

The proposed scheme is to 'reinstate' the removed upper storey.

**Design**

The proposed pre-application design offered a more 'light-weight' structure, with large areas of glazing. This was considered to be in-appropriate to the existing structure as the original building had limited windows/ openings due to the original function as an engine and boiler house.

The revised design has responded to these comments, and whilst allowing for larger amounts of glazing than the original form, it responds to the existing architecture with the proposed scale and form copying that of the lost floor and roof structure. An element of contemporary architect is offered to compliment that on the Waterworks building and to allow for future understanding of the development of the host building.

**Materials**

The proposed materials respond to the main building but introduces modern materials. This ensures that the connection between the buildings is remained.

**Impact on character and setting**

The building is within a sensitive location, within the setting of the GI bridge, GII\* Church of St Mary, and the GII Railway Station and Bridge House. Due to the height of the structure, it has the potential of more of an impact on the wider setting of the listed building within this part of the settlement (Beckets Place and associated Oast and the Station).

It is worth noting that the views from Lower Road Conservation Area (across the valley) are glimpsed to the wider landscape, and the view from Lower Road down Station Road are blocked due to the tree growth and built form, until just past River Close. The proposed site is set behind the Waterworks and the Malthouse but can be seen over the roof.

CASE REF: 23/501008/LBC & 23/501009/FULL

SITE: CHORD ELECTRONICS LTD THE OLD PUMP HOUSE  
FARLEIGH BRIDGE EAST FARLEIGH

Due to the valley, there is a strong visual connection between the site and looking back towards the setting of the CA & church. This is enhanced by the bridge and the river setting. The river and the valley forms an important of the setting of the listed buildings, and for the reason of the Waterworks.

Historic photographic evidence (within the submitted Heritage Statement) shows that the current building had an additional storey which would explain the slightly truncated appearance of the building which abruptly stops with a strange roof structure. The proposed scheme looks to reform the lost upper floor and roof structure, but in a contemporary design. This will allow the changes to be clearly visible but reinstate the wider appearance of the building. While many industrial buildings are often considered as ugly, or harmful to the more rural setting, they form an important part of our history and development, often forming key buildings within the landscape.

The interior of the building was formed when converted to an office, and has limited significance to the building, and the proposed internal works are considered to cause no harm to the curtilage listed building.

Solar panels are usually discouraged on listed buildings, but the use of modern technology on a former industrial building continues the ethos of the original building and in this case, the use of solar panels on the curtilage listed building is supported.

The proposed design is considered to cause no harm to the significance of the curtilage listed building, or the setting of the adjoining designated heritage assets as this is contemporary reinstatement of the original floor and roof structure. However, under the wording of the NPPF (para 201 & 202), it is considered the harm is less than substantial (at the lowest end of the scale), and this harm is mitigated with the public benefit of the building being in commercial use.

**Conditions**

- Samples of bricks and external materials
- Connection details (1:5/ 1:10) of how the new storey will connect to the existing structure – to ensure that no harm is undertaken to the original fabric.

**CONCLUSION**

*Approve - I raise no objection to this application on heritage grounds*

**FURTHER GUIDANCE**

For further guidance please click the relevant link.

- *Manual For Streets* ( [LINK HERE](#) )
- *Kent Design Guide* ( [LINK HERE](#) )
- *National Design Guide* ( [LINK HERE](#) )
- *Urban Design Compendium* ( [LINK HERE](#) )
- *Placecheck Users Guide* ( [LINK HERE](#) )
- *Setting of Heritage Assets* [LINK HERE](#)
- *Adapting Traditional Farm Buildings* [LINK HERE](#)

CASE REF: 23/501008/LBC & 23/501009/FULL

SITE: CHORD ELECTRONICS LTD THE OLD PUMP HOUSE  
FARLEIGH BRIDGE EAST FARLEIGH

- *Stopping the Rot* [LINK HERE](#)
- *Conservation Principles* [LINK HERE](#)
- *Listed Buildings and Curtilage* [LINK HERE](#)
- *BS 7913 2013*
- *Statements of Heritage Significance* [LINK HERE](#)
- *Traditional windows* [LINK HERE](#)



Ordnance Survey - data derived from OS Premium



23/500383/FULL Land West Of The Hawthorns, Pye Corner, Ulcombe, Maidstone, Kent, ME17 1EF

Scale: 1:2500

Printed on: 10/7/2023 at 13:28 PM by JoannaW



## REPORT SUMMARY

<b>REFERENCE NO:</b> 23/500383/FULL		
<b>APPLICATION PROPOSAL:</b> Change of use of the land for the stationing of four static mobiles, four touring caravans for Gypsy / Traveller occupation. Associated hard and soft landscaping. (Amended version to that approved under reference MA/17/502714/FULL) (Part retrospective).		
<b>ADDRESS:</b> Land West of The Hawthorns Pye Corner Ulcombe Maidstone Kent ME17 1EF		
<b>RECOMMENDATION: GRANT PLANNING PERMISSION subject to conditions</b>		
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL</b> <ul style="list-style-type: none"> <li>The proposal has been assessed in relation to harm to the character and appearance of the countryside, cumulative impact, sustainability, highways, residential amenity, flooding and drainage and found to be acceptable.</li> </ul>		
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Ulcombe Parish Council referral		
<b>WARD:</b> Headcorn	<b>PARISH/TOWN COUNCIL:</b> Ulcombe	<b>APPLICANT:</b> Mr. J Cook <b>AGENT:</b> SJM Planning Limited
<b>CASE OFFICER:</b> Pieter De Villiers	<b>VALIDATION DATE</b> 25/05/23	<b>DECISION DUE DATE:</b> 26/07/2021 (EoT)
<b>ADVERTISED AS A DEPARTURE:</b> No		

### Relevant Planning History

14/504606/FULL - Change of use of land to create two additional plots for the accommodation of gypsies. Each plot to contain, one static caravan, a septic tank, parking for two vehicles and associated hardstanding. Refused

17/502714/FULL - Change of use of land to create two additional plots adjacent to an existing Gypsy site, for the accommodation of two Gypsy Traveller families. Each plot to contain one static caravan, one touring caravan, a septic tank, parking for two vehicles and associated hardstanding. Granted

## MAIN REPORT

### 1. DESCRIPTION OF SITE

1.01 This site is in open countryside within Ulcombe Parish. This is an area characterised by grassed paddocks on level land to the south of the Greensand Ridge. The site is located within Low Weald Landscape Character Area, specifically within the Ulcombe mixed farmlands area. The site is not subject to national landscape designation.

1.02 A long access track leads south-eastwards from Pye Corner, passing the Roydon Farm gypsy site on the south side, before arriving at the site on its north side. Much of the length of the track is shared with Public Footpath KH330 (which joins Pye Corner to the north with Crumps Lane to the south). The footpath passes the

site and leads to a group of dwellings based around Kingsnood Farmhouse further to the southeast.

- 1.03 The site is accessed from the aforementioned access track, which serves other properties including Roydon Farm and other G&T sites and extends to Kingsnood Farm and Kingsnood Oast some 150m to the south-east. The access track joins the public highway at Eastwood Road, an unclassified county road, 400m to the north-west.
- 1.04 The application site is located to the eastern side of the access track and is contained within a larger triangular shaped level field enclosure defined by native species hedgerows and mature vegetation along the north-eastern boundary and to the north-west of an irregularly shaped area of flat land, known as Hawthorn Farm.
- 1.05 Hawthorn Farm has been allocated as a Gypsy and Traveller site for a total of 5 pitches in accordance with Policy GT1(15) of the Maidstone Borough Local Plan (subject to certain landscaping requirements). This allocation includes the existing 3 authorised pitches at Hawthorn Farm. The allocation site is separate from the current proposal site.
- 1.06 Views from higher land to the north would be interrupted to an extent by the various intervening field boundaries with mature vegetation. The site is more exposed in views from the south and west and it is clearly visible in short distance views from the public footpath close to the site entrance. Longer distance views from the public footpath are partially screened by hedging along field boundaries to the north-east and south-east.
- 1.07 At the time of the officer site visit, the application site included two access points, 2 existing mobile homes, 4 touring caravans, 2 welfare trailers, one dayroom of timber construction and two small sheds. There is rough hardstanding, principally of rubble and roadstone, mostly access tracks and in the vicinity of the caravans. The site is enclosed by close boarded fencing including some low-level brick walls centrally located on the southern part of the site.

## **2. PROPOSAL**

- 2.01 Planning Permission is sought retrospectively for change of use of the land for the stationing of four static mobiles, four touring caravans for Gypsy / Traveller occupation. Associated hard and soft landscaping. (Amended version to that approved under reference MA/17/502714/FULL) (Part retrospective).
- 2.02 It should be noted the current proposal will include the existing site which was granted permission in 2017 (17/502714/FULL) for two plots for the accommodation of two Gypsy Traveller families. The 2017 permission restricts the number of caravans on site to no more than 4 caravans, of which no more than 2 shall be static caravans.
- 2.03 The proposal is in effect an extension to the existing site granted permission in 2017 to allow for 2 additional static mobiles, 2 touring caravans and associated hard and soft landscaping.
- 2.04 The proposed plans show the siting of two mobile homes in a similar position to that approved in 2017 (eastern part of the site) and the extension of the site westwards to include a 2 mobile homes. The proposal would retain both entrances onto the private track, retain the existing day room and will provide a larger area of soft landscaping, areas of grassland, meadow planting, new

hedging and biodiversity areas and significant changes to the frontage to include the removal of the existing close board fencing and replace that with post/rail fencing, trees and hedging.

### **3. POLICY AND OTHER CONSIDERATIONS**

Maidstone Borough Local Plan 2017:

SS1 - Spatial strategy

GT1(15) - Hawthorn Farm, Pye Corner, Ulcombe

SP17 - Countryside

DM1 - Principles of good design

DM3 - Natural environment

DM15 - Gypsy, Traveller and Travelling Showpeople accommodation

DM30 - Design principles in the countryside

National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

Supplementary Planning Documents:

- Maidstone Landscape Character Assessment (amended 2013),
- Planning Policy for Traveller Sites 2015 (PPTS)
- Gypsy and Traveller and Travelling Showpeople Topic Paper (2016)
- Gypsy and Traveller and Travelling Showpeople Accommodation Assessment (GTAA) (2012)

Maidstone Borough Council – Local Plan Review, draft plan for submission (Regulation 22) dated October 2021. The Regulation 22 draft is a material consideration however weight is currently limited. relevant policies in the draft plan are as follows:

LPRSP10: Housing

LPRSP10(A): Housing mix

LPRSP12: Sustainable transport

LPRSP14: The Environment

LPRSS1: Maidstone borough spatial strategy

LPRSP9: Development in the countryside

LPRSP14A: Natural environment

LPRSP14(C): Climate change

LPRSP15: Principles of Good Design

LPRHOU 8: Gypsy and traveller accommodation

LPRTRA2: Assessing the transport impacts of development

PRTRA4: Parking

LPRQ&D 1 Sustainable design

LPRQ&D 2: External lighting

LPRQ&D 6: Technical standards

### **4. LOCAL REPRESENTATIONS**

#### **Local Residents:**

4.01 No response to neighbour consultation

#### **Ulcombe Parish Council:**

4.02 Ulcombe Parish Council objects to this application on the following grounds:

- Absence of evidential proof for Traveller status.
- Harm to the local landscape Low Weald Landscape of Local Value.
- The site does not fulfil the definition of "sustainability" in policy DM15.

- The effect of this proposal on protected species
- The site is not allocated within the Local Plan 2017
- Increase vehicle movements causing harm to the highway network.
- Screening to have negative impact and likely to appear out of place in an area that has an existing and established open character.

## 5. CONSULTATIONS

(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary).

### **KCC Public Rights of Way:**

- 5.01 No objection to the proposal.

### **MBC Landscape Officer:**

- 5.02 Drawing no. 2022-1423v1-PropBlock titled *Proposed Block Plan* supersedes the original plan featuring 17x native fruit trees incorporated into the design and is acceptable in principle.

There are insufficient landscape grounds to justify refusal of this application. If the case officer is minded approving the application, then I would suggest drawing no. 2022-1423v1-PropBlock is secured by way of condition and would also suggest other relevant landscape conditions are applied for the site.

### **Environmental Health:**

- 5.03 No objection, subject to conditions and informatives.

## 6. APPRAISAL

- 6.01 The key issues for consideration relate to:

- Supply and need for sites
- Gypsy Status
- Visual and Landscape impact
- Cumulative Impact
- Highways
- Sustainability
- Residential amenity
- Flooding / Drainage

### **Supply and need for Gypsy sites**

- 6.02 The Gypsy, Traveller and Travelling Showpeople Accommodation Assessment is the only complete assessment of need that is currently available forming part of the evidence base to the Local Plan (Total need Oct 2011 to March 2031 of 187 pitches). The GTAA when it was carried out provided a reasonable and sound assessment of future pitch needs. However, this is now over 11 years old and because of its age, little weight can be attached to this document.
- 6.03 The Local Plan Review examination in public commenced on the 6 September 2022 (Stage 2 hearing concluded mid-June 2023). Whilst this document is a material planning consideration, at this time it is not apportioned much weight. Furthermore, the Council has chosen to separate the matter of gypsy and traveller policy from the LPR and is pursuing a separate DPD on this matter. This DPD is yet to go out to first stage consultation.

- 6.04 A call for sites exercise ran from 1 February 2022 to 31 March 2022 as part of the process. The Gypsy, Traveller and Travelling Showpeople DPD is at its early stages and is not due to be adopted until 2024 at the earliest.
- 6.05 In contrast to the full assessment in the 2012 GTAA, (and whilst it is highlighted that nothing has to date been published), the work completed so far on an up to date assessment has indicated a significant emerging need for Gypsy and Traveller accommodation in the borough.
- 6.06 Importantly, in the recent Meadows appeal decision (APP/U2235/C/18/3210851 and others), dated 17 March 2023, the Inspector concluded that the 2012 GTAA does not represent a robust and accurate assessment of need within the Borough. Into the future, the Inspector found that evidence points to an existing shortfall of sites and a shortfall in the supply of 5 years' worth of deliverable sites. At the same time, the Council accepted the need for pitches over the plan period to 2037, is likely to be significant.
- 6.07 The Local Plan, with a plan period of 2011 to 2031, includes policies and allocations for traveller sites to meet the identified need. The application site is adjacent Hawthorn Farm, which has been allocated as a Gypsy and Traveller site for a total of 5 pitches in accordance with Policy GT1(15) of the Maidstone Borough Local Plan (subject to certain landscaping requirements). This allocation includes the existing 3 authorised pitches at Hawthorn Farm.

**Gypsy Status:**

- 6.08 A judgement dated 31 October 2022, from the Court of Appeal in Smith v. SoS for Levelling Up, Housing and Communities (CA-2021-00171, 31st October 2022) concerned a planning inspector's reliance on the definition of Gypsies and Travellers in Planning Policy for Traveller Sites. This guidance was introduced by the government in August 2015.
- 6.09 The previous definition before August 2015. had been: "Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' education or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such". The new definition post 2015 deleted "or permanently".
- 6.10 The SoS accepted that this indirectly discriminated against elderly and disabled Gypsies and Travellers but argued that the discrimination was justified. The appeal court judgement sets out 66... "the nature of the discrimination before the judge was the negative impact on those Gypsies and Travellers who had permanently ceased to travel due to old age or illness, but who lived or wanted to live in a caravan. This discrimination was inextricably linked to their ethnic identity". 139 "... the effect of the relevant exclusion was – as the Secretary of State has conceded – discriminatory, and that, on the evidence before the court in these proceedings, there was no proper justification for that discrimination..."
- 6.11 Permission is sought on the basis that the site is required to satisfy an identified need for 2 Gypsy and Traveller families. The 2017 permission was granted for the use of the site by members of the family currently occupying Hawthorn Farm, who are confirmed to be of Gypsy heritage and are from the travelling community. However, the site is now occupied separately.
- 6.12 The agent has submitted that the intended occupiers of the site qualify for Gypsy and Traveller status for planning purposes. The families are related to other Gypsy and Traveller families in the south-east. It is understood the intended

occupiers often travel for economic purposes and there remains a strong need and desire to travel for cultural purposes such as attending attend local and regional Horse Fairs such as Appleby and Stow on the Wold but also to Ireland for several family gatherings. Additionally, there is an obvious need for schooling and a structured family life.

- 6.13 Based on the evidence available it can be reasonably concluded that the intended occupants are of Gypsy heritage and are from the travelling community and the site provides a settled base. A condition is recommended to ensure that the site shall not be used as a caravan site by any persons other than Gypsies or Travellers and their family and/or dependants, as defined in Annex 1 of the Planning Policy for Traveller Sites 2015.

### **Visual and Landscape Impact**

- 6.14 Guidance in the PPTS states that local planning authorities should very strictly limit new traveller development in the countryside but also states that where sites are in rural areas they should not dominate the nearest settled community and or place undue pressure on local infrastructure. Specifically, policy DM15 of the Local Plan allows for Gypsy accommodation in the countryside provided certain criteria are met. This includes allowing development that does not result in significant harm to the landscape and rural character of the area.
- 6.15 The Maidstone Landscape Character Assessment advises that the site lies within the Low Weald Landscape Character Area, specifically within the Ulcombe mixed farmlands area. The Low Weald Landscape of Local Value (LLV), for the purposes of the Local Plan, is a landscape that is highly sensitive to significant change and is recognised as having distinctive landscape features: mosaic like field patterns, many of medieval character, hedgerows, stands of trees, field ponds and streams and buildings of character should be conserved and enhanced where appropriate.
- 6.16 It is generally accepted that mobile homes comprise visually intrusive development that are out of character in the countryside. Where such developments are normally permitted, it is on the basis of being screened by existing permanent features such as hedgerows, tree belts, buildings or land contours, as required by policy DM15 of the adopted Local Plan. Consequently, unless well screened or hidden away in unobtrusive locations, mobiles homes are normally considered unacceptable in their visual impact.
- 6.17 There is a public right of way immediately to the south of the application site and the site is visible from this PROW with minimal screening along the southern boundary. However, from further afield the application site is generally screened from views because of its location behind other parcels of land where mature boundary vegetation exists, resulting in the application being screened on four sides. Additionally, from more distant views, such as from Mansion Farm on Knowle Hill, the overall impression looking south across the landscape is of an expanse of woodland, with Pye Corner visible and some isolated dwellings. The application site and nearby gypsy and traveller sites are not easily recognised, if at all. It is accepted that views may change in the winter, due to less leaf coverage, but it is not considered a noticeable change due to the impact of existing sporadic developments in the immediate vicinity of the application site, including other lawful gypsy and traveller sites, on the landscape.
- 6.18 Drawing no. 2022-1423v1-PropBlock drawn by SJM Planning titled Proposed Block Plan has been submitted with the application and provides details on the proposed landscaping for the site. The landscaping proposals, which also indicates slightly smaller parking and turning areas than existing on the site, includes

habitat grassland (gras and wildflower mix) and biodiversity areas, and amenity grass areas.

- 6.19 Along with the existing boundary planting to be retained in the southern corner of the site, the landscaping proposals include significant hedgerows along the boundaries, including 17 x native fruit trees and post and rail fencing instead of the existing close-boarded fencing. The additional tree planting and hedgerows around the site is in line with the MBC Landscape Character Assessment and would increase the biodiversity.
- 6.20 MBC Landscape Officer deemed the landscaping proposals to be acceptable and suggested other relevant landscape conditions are applied for the site. It was also suggested the existing boundary planting to be retention as this could be beneficial to the local ecosystem.
- 6.21 Overall, given the minor increase on the current development, the harm is only considered to be localised with no significant medium to long range impact.

### **Cumulative Impact**

- 6.22 Policy DM15 advises that the cumulative effect on the landscape arising as a result of the development in combination with existing lawful caravans needs to be assessed and to ensure no significant harm arises to the landscape and rural character of the area.
- 6.23 The proposal is essentially an extension to the existing site granted permission in 2017 and will allow for 2 additional static mobiles, 2 touring caravans and associated hard and soft landscaping. The proposal would retain both entrances, provides a larger area of soft landscaping, areas of grassland, meadow planting, new hedging and biodiversity areas including several native fruit trees.
- 6.24 The application site is generally screened from views because of its location behind other parcels of land where mature boundary vegetation exists, resulting in the application being screened on four sides from more distant viewpoints. As mentioned above, from more distant views, such as from Mansion Farm on Knowle Hill, the overall impression looking south across the landscape is of an expanse of woodland, with Pye Corner visible and some isolated dwellings. The application site and nearby gypsy and traveller sites are not easily recognised, if at all.
- 6.25 The character of the area comprises existing sporadic developments, including other lawful gypsy and traveller sites and it was concluded above the harm caused by the extension of the existing lawful site would be minimal and not such to warrant refusal. The site layout along with the landscaping proposals are reflective of PPTS 2015 which states sites should be well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness. Overall, minimal harm would be caused by any cumulative effects because of the proposal.

### **Highways**

- 6.26 Policy DM1 states that applications must ensure that development does not result in, amongst other things excessive activity or vehicle movements. Policy DM15 states that there must be safe site access from the highway. DM30 also continues this theme stating that proposals must not result in unacceptable traffic levels on nearby roads or unsympathetic changes to the character of rural lanes.

- 6.27 There are no highway issues as an existing access is to be used. Although the track running from the unclassified county road also benefits from footpath status, the track is also subject to vehicular rights of access. It is my opinion that the vehicle movements from the application site can easily be accommodated on the local road network.

#### **Sustainability**

- 6.28 The site is located outside of the urban settlement boundaries and the nearest village, Ulcombe, which has very little in the way of basic amenities/services. Bus services are infrequent, and, given the nature of the local road network, being unlit with no pavements, cars are the only realistic mode of transport to access local services and facilities.
- 6.29 The supporting text to policy DM15 states in relation to gypsy and traveller accommodation "It is preferable for sites to be located close to existing settlements where there are community facilities such as schools and health services. However, the rural location of the site is not untypical of Gypsy and Traveller lifestyle choices which results in a preference for sites in these locations.
- 6.30 The site would be approximately 5km from a Local Service Centre and thus not so far removed from basic services and public transport opportunities as to justify refusal on this basis. The Local Plan acknowledges that traveller sites will be in rural areas because of land availability, and this is reflected in the criteria of Policy DM 15 and the location of the allocated sites. The application site is adjacent to such a site.

#### **Residential Amenity**

- 6.31 Policy DM1 states that proposals will be permitted where they "respect the amenities of occupiers of neighbouring properties...by ensuring that development is not exposed to, excessive noise, activity, overlooking or visual intrusion, and that the built form would not result in an unacceptable loss of privacy or light enjoyed by the occupiers of nearby properties".
- 6.32 The application site is essentially an extension to the existing site granted permission in 2017 to allow for 2 additional static mobiles, 2 touring caravans and associated hard and soft landscaping. The proposal would retain both entrances, provides a larger area of soft landscaping, areas of grassland, meadow planting, new hedging and biodiversity areas including several native fruit trees, as such, there would be sufficient amenity space for the future occupiers.
- 6.33 The existing day room located is centrally located within the site and measures approximately 7.2m x 4.1m with a pitched roof measuring approximately 2.6m to the top of the ridge. This is typical of day rooms found on Gypsy and Traveller sites and no concerns are raised to its scale or location.
- 6.34 A group of dwellings exist to the southeast, however, the site would be reasonably distant and as such would not be readily visible to these neighbours. In addition, existing boundary vegetation are to be retained and additional landscaping would be introduced and secured by condition, which with the passage of time would provide enhanced screening and provide enhanced separation. Consequently, the impact on residential amenity is considered acceptable.

#### **Flooding and Drainage**

- 6.35 The site lies within Flood Zone 1, consequently flooding is not an issue. A planning condition will however be imposed in order to secure permeability of site hardstanding and assist in surface water drainage.

- 6.36 The application form suggest foul drainage is to be disposed of via a septic tank, however, no details have been provided regarding the type and size of septic tank(s) to be installed/used, and the submitted drawings does not indicate any labelled location or details pertaining to a septic tank. Further details of the provision of potable water and how foul sewage will be dealt are to be secured by way of condition (including the size of any septic tank or cesspool and where it will overflow to).

#### **PUBLIC SECTOR EQUALITY DUTY**

- 6.37 Article 8 of the European Convention on Human Rights, as incorporated into UK law by the Human Rights Act 1998, protects the right of an individual to, amongst other things, a private and family life and home.
- 6.38 Race is one of the protected characteristics under the Equality Act and ethnic origin is one of the things relating to race. Romany Gypsies and Irish Travellers are protected against race discrimination because they are ethnic groups under the Equality Act. This application has been considered with regard to the protected characteristics of the applicant and the gypsies and travellers who occupy the caravans. I am satisfied that the requirements of the PSED have been met and it is considered that the application proposals would not undermine objectives of the Duty.
- 6.39 Due regard has been had to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010. The ethnic origins of the applicant and his family and their traditional way of life are to be accorded weight under the PSED.

#### **7. CONCLUSION**

- 7.01 A new GTAA is being prepared to inform the Gypsy, Traveller and Travelling Showpeople Development Plan Document (the DPD). Survey work commenced in September 2019 but the publication of the GTAA has been delayed, not least by the restrictions related to the Covid pandemic. In a recent Meadows appeal decision (APP/U2235/C/18/3210851 and others), dated 17 March 2023, the Council accepted the need for pitches over the plan period to 2037, is likely to be significant.
- 7.02 Local Plan policy DM15 allows for gypsy and traveller accommodation in the countryside provided certain criteria are met; and policies SP17 and DM30 allow for development provided it does not result in harm to the character and appearance of the area. The Council's Regulation 22 Local Plan, although not apportioned much weight at this time, states that there is a potentially significant emerging need for gypsy and traveller accommodation.
- 7.03 The proposal has been assessed in relation to its visual and landscape impact, highways impact, sustainability, residential amenity and flooding / drainage and found to be acceptable. The development is acceptable with regard to the relevant provisions of the Development Plan, the NPPF and all other material considerations such as are relevant.
- 7.04 For the reasons set out above, it is recommended that permission be granted.

- 8. RECOMMENDATION – GRANT 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 in line with the matters set out in the recommendation and as resolved by the Planning Committee.

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
- Drawing no. 2022-1423v1-Location – Site Location
  - Drawing no. 2022-1423v1-ExistBlock – Pre-existing Block Plan
  - Drawing no. 2022-1423v1-Mobile – Example Mobile Home Plans

received on 23 January 2023

- Drawing no. 2022-1423v1-ExistBlg – Existing Outbuilding Plans received on 21 February 2023
- Drawing no. 2022-1423v1-PropBlock – Proposed Block Plan received on 22 May 2023
- Planning Statement received on 04 July 2023

Reason: For the avoidance of doubt and in the interests of proper planning.

- 2) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.

Reason: The site is in an area where the stationing of caravans/mobile homes is not normally permitted.

- 3) No more than eight caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as amended (of which no more than four shall be a static caravan/mobile home) shall be stationed on the land at any time.

Reason: To safeguard the character and appearance of the countryside.

- 4) If the lawful use of the site ceases, all caravans, structures, equipment and materials bought onto the land for the purposes hereby permitted including hardstandings and buildings shall be removed within two months from the date of the use ceasing.

Reason: To safeguard the character and appearance of the countryside.

- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the land and no commercial or business activities shall take place on the land including the storage of materials.

Reason: To prevent inappropriate development; to safeguard the character and appearance of the countryside; and in the interests of residential amenity.

- 6) Notwithstanding the provisions of Schedule 2 Part 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no temporary buildings or structures shall be stationed on the land other than those expressly authorised by this permission (as shown on the approved plans).

Reason: To prevent inappropriate development and safeguard the amenity, character and appearance of the countryside; and in the interests of residential amenity.

- 7) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 6 weeks of the date of the failure to meet any one of the requirements set out in (i) to (iv) below:
- i) Within 6 weeks of the date of this decision a Site Development Scheme, hereafter referred to as the 'Scheme', shall have been submitted for the written approval of the Local Planning Authority. The Scheme shall include details of:
- a) means of enclosure,
  - b) extent of existing hardstanding and parking.
  - c) the means of foul and surface water drainage at the site, along with details regarding the provision of potable water and waste disposal. These details should include the size of individual cess pits and/or septic tanks and/or other treatment systems. Information provided should also specify exact locations on site plus any pertinent information as to where each system will discharge to, (since for example further treatment of the discharge will be required if a septic tank discharges to a ditch or watercourse as opposed to sub-soil irrigation).
  - d) existing external lighting on the boundary of and within the site.
  - e) details of existing landscaping and details of soft landscape enhancements
  - f) details of the measures to enhance biodiversity at the site; and,
  - g) a timetable for implementation of the scheme including a) to g) with all details implemented in accordance with the agreed timetable and all details retained for the lifetime of the development.
- ii) Within 11 months of the date of this decision the Scheme shall have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve the Scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted Scheme shall have been approved by the Secretary of State.
- iv) The approved Scheme shall have been carried out and completed in accordance with the approved timetable and thereafter maintained and retained as approved.

Reason: To ensure the visual amenity, character and appearance of the open countryside location which forms part of the designated Low Weald Landscape of Local Value is safeguarded.

- 8) The landscaping required by condition 7 (i) (e) shall be designed in accordance with the principles of the Council's landscape character guidance (Maidstone Landscape Character Assessment Supplement 2012). The landscaping details shall:
- show all existing trees, hedges and blocks of landscaping on, and immediately adjacent to, the site and indicate whether they are to be retained or removed,
  - include a planting specification, implementation details and a [5] year landscape management plan (Only non-plastic guards shall be used for the new trees and hedgerows, and no Sycamore trees shall be planted).

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

- 9) All planting, seeding and turfing specified in the approved landscape details shall be completed by the end of the first planting season (October to February) following its approval. Any seeding or turfing which fails to establish or any existing or proposed trees or plants which, within five years from planting die or become so seriously damaged or diseased that their long term 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.

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

- 10) No additional external lighting shall be installed unless full details of any such lighting have first been submitted to, and approved in writing by, the local planning authority. The approved details shall be in accordance with the Institute of Lighting Obtrusive Light Limitations for Exterior Lighting Installations for Environmental Zone E1. The development shall thereafter be carried out in accordance with the approved details and retained as such thereafter.

Reason: In order to protect dark skies and prevent undue light pollution, in accordance with the maintenance of the character and quality of the countryside.

- 11) The enhancement of biodiversity on the site, required by condition 7 shall include the installation of a minimum of one bat tube on the approved mobile homes and the installation of ready-made bird and bat boxes on the site. The development shall be implemented in accordance with the approved details prior to the first occupation of the mobile homes hereby approved and all these features shall be maintained as such thereafter.

Reason: To enhance ecology and biodiversity on the site in line with the requirement to achieve a net biodiversity gain from all development.

- 12) All hardstanding areas shall be of permeable construction as indicated on drawing no. 2022-1423v1-PropBlock.

Reason: In the interests of amenity.

# Agenda Item 28

## **THE MAIDSTONE BOROUGH COUNCIL** **PLANNING COMMITTEE – 20<sup>th</sup> JULY 2023**

### **APPEAL DECISIONS:**

1.     **22/501811/FULL**           **The erection of a single storey dwelling and detached plant room(following the approval of 20/503182/FULL and 19/505751/PNQCLA).**

**APPEAL:** DISMISSED

Hilltop Farm  
Shingle Barn Lane  
West Farleigh  
ME15 0PL

(Delegated)

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2.     **22/501471/FULL**           **Erection of 1 no. detached single storey dwellinghouse with associated parking.**

**APPEAL:** DISMISSED

Land Rear To The Stables  
Green Hill  
Otham  
Maidstone  
Kent  
ME15 8RR

(Delegated)

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3.     **22/504209/FULL**           **Erection of security fencing (part retrospective resubmission of 22/501027/FULL).**

**APPEAL:** DISMISSED

21 Padsole Lane  
Maidstone  
Kent  
ME15 6ED

(Delegated)

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**4. 22/502991/FULL**      **Sitting of 1no. additional mobile home including removal of existing amenity building and erection of a dayroom (Part retrospective).**

**APPEAL:** ALLOWED  
**COSTS:** AWARDED

Pear Paddock  
Symonds Lane  
Yalding  
Kent  
ME18 6HA

(Delegated)

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**5. 22/504669/FULL**      **Demolition of existing bungalow and erection of 7(no) dwellings with associated parking and car barn for plot 2.**

**APPEAL:** DISMISSED

Wyndrush  
6 Headcorn Road  
Platts Heath  
Kent  
ME17 2NH

(Delegated)

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**6. 22/503480/FULL**      **Demolition of existing outbuilding, erection of 1no. outbuilding including repositioned site access and associated landscaping.**

**APPEAL:** ALLOWED

Barnside  
Headcorn Road  
Grafty Green  
Maidstone  
Kent  
ME17 2AP

(Delegated)

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7. 22/504016/FULL

**Demolition of existing agricultural barn and erection of 2no. residential dwellings with associated parking, landscaping and ecology enhancements.**

**APPEAL:** DISMISSED

Newstead Farm  
Couchman Green Lane  
Staplehurst  
Tonbridge  
Kent  
TN12 0RT

(Delegated)

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8. 22/502627/FULL

**Retention of existing hand car wash facility and office/customer waiting room, and proposed alterations including installation of acoustic enclosure and provision of a new customer parking area (part retrospective).**

**APPEAL:** ALLOWED

Boughton Service Station  
Heath Road  
Boughton Monchelsea  
Kent  
ME17 4JD

(Committee – against officer recommendation)

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