

AGENDA

PLANNING COMMITTEE MEETING



Date: Thursday 3 February 2011
Time: 6.00 p.m.
Venue: Town Hall, High Street,
Maidstone

Membership:

Councillors Ash, Barned, Chittenden, English,
Harwood, Hinder, Lusty (Chairman),
Nelson-Gracie, Paine, Paterson,
Mrs Robertson, J.A. Wilson and
Mrs Wilson

Page No.

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 Items withdrawn from the Agenda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 - 10 February 2011

Continued Over/:

Issued on 26 January 2011

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact DEBBIE SNOOK on 01622 602030**. To find out more about the work of the Committee, please visit www.maidstone.gov.uk

Alison Broom

**Alison Broom, Chief Executive, Maidstone Borough Council,
Maidstone House, King Street, Maidstone, Kent ME15 6JQ**

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 13 January 2011 1 - 6
11. Presentation of Petitions (if any)
12. Report of the Head of Development Management - Deferred Items 7 - 8
13. MA/09/1347 - LAND AT LONGSOLE CHURCH, LONG REDE LANE, MAIDSTONE 9 - 23
14. MA/10/1831 - 21 FRANKLIN DRIVE, WEAVERING, MAIDSTONE 24 - 46
15. MA/10/1892 - THE OAKS, LENHAM ROAD, KINGSWOOD, MAIDSTONE 47 - 54
16. MA/10/2008 - 20 TONBRIDGE ROAD, MAIDSTONE 55 - 64
17. MA/10/2065 - HILLVIEW, OLD LIDSING ROAD, LIDSING, GILLINGHAM, KENT 65 - 74
18. Report of the Head of Development Management - Proposed Variation of S106 Agreement Dated 1 August 2006 in Respect of Planning Application MA/05/2350 - Land at Springfield Park, Royal Engineers Road, Maidstone 75 - 91
19. Report of the Head of Development Management - Appeal Decisions 92
20. Chairman's Announcements
21. Update on Matters Referred to the Cabinet Members for Environment/Regeneration

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.

MAIDSTONE BOROUGH COUNCIL

PLANNING COMMITTEE

MINUTES OF THE MEETING HELD ON 13 JANUARY 2011

Present: Councillor Lusty (Chairman) and Councillors Ash, Barned, Chittenden, English, Harwood, Hinder, Nelson-Gracie, Paine, Paterson, Mrs Robertson, J.A. Wilson and Mrs Wilson

Also Present: Councillors Burton, Field, FitzGerald, B Mortimer and Parr

255. APOLOGIES FOR ABSENCE

There were no apologies for absence.

256. NOTIFICATION OF SUBSTITUTE MEMBERS

There were no Substitute Members.

257. NOTIFICATION OF VISITING MEMBERS

Councillors Field and FitzGerald indicated that they wished to speak on the report of the Head of Development Management relating to MA/09/2024.

Councillors B Mortimer and Parr indicated that they wished to speak on the report of the Head of Development Management relating to application MA/10/1505.

258. ITEMS WITHDRAWN FROM THE AGENDA

It was reported that no items had been withdrawn from the agenda.

259. URGENT ITEMS

Update Report

The Chairman stated that, in his opinion, the update report of the Head of Development Management should be taken as an urgent item because it contained further information relating to the applications to be considered at the meeting.

260. DISCLOSURES BY MEMBERS AND OFFICERS

Councillor J A Wilson disclosed a personal interest in the report of the Head of Development Management relating to application MA/10/1505. He stated that he was a Member of East Farleigh Parish Council, but he

had not participated in the Parish Council's discussions on the application and intended to speak and vote when it was considered.

261. EXEMPT ITEMS

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

262. MINUTES

RESOLVED: That the Minutes of the meeting held on 16 December 2010 be approved as a correct record and signed.

263. PRESENTATION OF PETITIONS

It was noted that a petition would be presented in respect of application MA/10/1505.

264. DEFERRED ITEMS

(1) MA/10/0202 – PLANNING APPLICATION FOR ERECTION OF 14 DWELLINGS – SHARP HOUSE, TOVIL GREEN, TOVIL, MAIDSTONE

It was reported that negotiations were still taking place in respect of this application.

(2) MA/09/1751 – ERECTION OF 5 DWELLINGS WITH INTEGRAL PARKING – LAND ADJACENT TO SURRENDEN MEWS, HIGH STREET, STAPLEHURST

It was reported that a meeting had been held with the applicant regarding the deferral and amended plans and details were awaited.

(3) MA/10/0839 – CONVERSION OF OAST HOUSE TO 5 NO. LIVE-WORK UNITS AND EXTERNAL ALTERATIONS, ASSOCIATED GARAGING, PARKING AND LANDSCAPING – TUTSHAM HALL, TUTSHAM FARM, WEST FARLEIGH, MAIDSTONE

It was reported that the application had been advertised as a departure from the Development Plan and that a draft legal agreement had been received and was being assessed by Officers.

265. MA/10/1505 - INSTALLATION OF WIND TURBINE AND ASSOCIATED WORKS - CASTLE FARM, HEATH ROAD, EAST FARLEIGH, MAIDSTONE, KENT

All Members of the Committee stated that they had been lobbied.

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

Dr Hibbert, an objector presenting a petition, Councillor Scott of West Farleigh Parish Council, Councillor Charlton of East Farleigh Parish Council, Mr Checkley, for the applicant, and Councillors B Mortimer and Parr addressed the meeting.

RESOLVED: That permission be granted subject to the conditions and informatives set out in the report, the additional condition set out in the urgent update report and the following additional conditions and informative and amended reason for approval:-

Additional Conditions

No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a landscape plan which shall include indications of all existing trees and hedgerows on the land outlined in blue on the 'Area Map' within the 'Appendix I – Maps' document, to be retained. The plan shall identify any gaps in hedgerows or tree lines upon this land and provide a scheme of landscaping using indigenous species to fill such gaps together with a programme for the approved scheme's implementation and long term management. The scheme shall be designed using the principles established in the Council's adopted Landscape Character Assessment and Landscape Guidelines.

Reason: To further mitigate the impact of the development in accordance with policy ENV28 of the Maidstone Borough-Wide Local Plan 2000, policy C4 of the South East Plan 2009, PPS7 and PPS22.

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 completion of the development; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: To further mitigate the impact of the development in accordance with policy ENV28 of the Maidstone Borough-Wide Local Plan 2000, policy C4 of the South East Plan 2009, PPS7 and PPS22.

A proportion of the cordwood from tree felling works required in connection with the development shall be retained and stacked safely at the site, the details of which shall be agreed with the Local Planning Authority prior to commencement of the felling works.

Reason: To enhance biodiversity through the provision of new wildlife habitat, in accordance with policy NRM5 of the South East Plan 2009 and PPS9.

Additional Informative

The applicant is advised to submit to the Local Planning Authority a travel plan for the construction phase of the development with delivery routes, that will need to avoid the use of the bridges at Teston and East Farleigh, which would not be suitable for delivery vehicles. This being in the interests of highway safety and to avoid inconvenience for delivery vehicles and other road users.

Amended Reason for Approval

The proposed development whilst contrary to policy ENV28 of the Maidstone Borough-Wide Local Plan 2000 is, subject to the conditions stated, considered to comply with the policies of the South East Plan 2009 and Central Government Guidance within PPS22 and there are no overriding material considerations to indicate a refusal of planning consent.

Voting: 7 – For 6 – Against 0 – Abstentions

266. MA/09/2024 -PART RETROSPECTIVE PLANNING PERMISSION FOR THE ERECTION OF POLYTUNNELS, MINOR LAND LEVELLING WORKS AND CHANGE OF USE OF LAND FOR THE STATIONING OF SEASONAL AND GENERAL AGRICULTURAL WORKER CARAVANS WITH LIMITED OCCUPATION DURING WINTER MONTHS - PARKWOOD FARM, BRISHING LANE, BOUGHTON MONCHELSEA, KENT

All Members of the Committee stated that they had been lobbied.

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

Mr Cooper, an objector, Councillor Munford of Boughton Monchelsea Parish Council, Mr Przyjemski, for the applicant, and Councillors Field and FitzGerald addressed the meeting.

RESOLVED: That permission be granted subject to the conditions set out in the report, as amended by the urgent update report, the additional condition set out in the urgent update report and the following additional condition and informative:-

Additional Condition

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

Drawing nos. DHA/7329/01; 02 rev B; 03 Rev A; 04; 05; 06; 07 received on 6 November 2009 together with design and access statement and as amended by additional drawings DHA/7329/08; 09; 10 received on 25 January 2010 and letter dated 21 April 2010 and FRA (incorporating drawing nos. 11286/01B; 1186/02A; 11286/03A) as received on 23 August 2010.

Reason: In the interests of visual amenity, the management of surface water run-off, biodiversity interests and residential amenity in accordance with policies ENV28 and ENV43 of the Maidstone Borough-Wide Local Plan 2000, policies NRM4, NRM5 and C4 of the South East Plan 2009, PPS7 and PPS25.

Informative

In providing the details for surface water management under condition 6, the applicant is advised to consider the use of a swale or ditch drainage system.

Voting: 13 – For 0 – Against 0 - Abstentions

267. MA/10/1904 - VARIATION OF CONDITION 5 OF PLANNING PERMISSION MA/09/1220 (INCREASE IN NUMBER OF PERMITTED TENTS FROM 10 TO 20) TO ALLOW THE SITE TO BE OPEN FOR BUSINESS FOR 364 DAYS PER YEAR (SITE TO BE CLOSED ON 9TH JANUARY AND 10TH JANUARY IN A LEAP YEAR) - THE FINCHES, CHARTWAY STREET, SUTTON VALENCE, KENT

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

Councillor Hoy of Broomfield and Kingswood Parish Council and Mr Schroeder, the applicant, addressed the meeting in respect of this application and related applications MA/10/1906 and MA/10/1907.

RESOLVED: That subject to the expiry of the newspaper advertisement and the receipt of no representations raising new issues, the Head of Development Management be given delegated powers to grant permission subject to the conditions and informative set out in the report.

Voting: 13 – For 0 – Against 0 – Abstentions

268. MA/10/1906 - VARIATION OF CONDITION 7 OF PLANNING PERMISSION MA/08/0333 (INCREASE IN NUMBER OF PERMITTED CARAVANS FROM 10 TO 20, INCLUDING REVISED ACCESS ROAD AND LAYOUT) TO ALLOW THE SITE TO BE OPEN FOR BUSINESS FOR 364 DAYS PER YEAR (SITE TO BE CLOSED ON 9TH JANUARY AND 10TH JANUARY IN A LEAP YEAR) - THE FINCHES, CHARTWAY STREET, SUTTON VALENCE, KENT

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

Councillor Hoy of Broomfield and Kingswood Parish Council and Mr Schroeder, the applicant, had previously addressed the meeting.

RESOLVED: That subject to the expiry of the newspaper advertisement and the receipt of no representations raising new issues, the Head of Development Management be given delegated powers to grant permission subject to the conditions and informatives set out in the report.

Voting: 13 – For 0 – Against 0 – Abstentions

269. MA/10/1907 - VARIATION OF CONDITION 2 OF PLANNING PERMISSION MA/09/2223 (STATIONING OF A MOBILE HOME FOR A FULL TIME WARDEN) TO ALLOW THE SITE WARDEN TO BE RESIDENT ON SITE FOR ALL DAYS WHEN SITE IS OPEN (CLOSED 9TH JANUARY AND 10TH JANUARY IN A LEAP YEAR) - THE FINCHES, CHARTWAY STREET, SUTTON VALENCE, KENT

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

Councillor Hoy of Broomfield and Kingswood Parish Council and Mr Schroeder, the applicant, had previously addressed the meeting.

RESOLVED: That subject to the expiry of the newspaper advertisement and the receipt of no representations raising new issues, the Head of Development Management be given delegated powers to grant permission subject to the conditions set out in the report.

Voting: 13 – For 0 – Against 0 – Abstentions

270. 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.

271. CHAIRMAN'S ANNOUNCEMENTS

The Chairman had no announcements.

272. UPDATE ON MATTERS REFERRED TO THE CABINET MEMBERS FOR ENVIRONMENT/REGENERATION

It was noted that there was nothing to report.

273. DURATION OF MEETING

6.00 p.m. to 9.01 p.m.

MAIDSTONE BOROUGH COUNCIL

PLANNING COMMITTEE

3 FEBRUARY 2011

REPORT OF THE HEAD OF DEVELOPMENT MANAGEMENT

1. **DEFERRED ITEMS**

1.1. The following applications stand deferred from previous meetings of the Planning Committee. The Head of Development Management will report orally at the meeting on the latest situation. The applications may be reported back to the Committee for determination.

1.2. <u>Description of Application</u>	<u>Date Deferred</u>
(1) <u>MA/10/0202 – PLANNING APPLICATION FOR ERECTION OF 14 DWELLINGS – SHARP HOUSE, TOVIL GREEN, TOVIL, MAIDSTONE</u>	25 NOVEMBER 2010

Deferred to enable the Officers to:-

- Give further consideration to the rationale for the contributions proposed to be secured through the Section 106 agreement; and
- Negotiate amendments to the layout of the proposed development to achieve an acceptable standard of car parking provision for each residential unit and improvements to the design and materials.

(2) <u>MA/09/1751 – ERECTION OF 5 DWELLINGS WITH INTEGRAL PARKING – LAND ADJACENT TO SURRENDEN MEWS, HIGH STREET, STAPLEHURST</u>	16 DECEMBER 2010
---	---------------------

Deferred for:-

- Larger scale and better quality plans;
- More details of materials;
- Negotiations to secure an improved landscaping scheme with the possibility of increasing the maintenance period; and
- Negotiations regarding the possibility of moving the housing eastwards into the wildflower meadow area to increase the separation from Crowther Close.

- (3) MA/10/0839 – CONVERSION OF OAST HOUSE TO 5 NO. LIVE-WORK UNITS AND EXTERNAL ALTERATIONS, ASSOCIATED GARAGING, PARKING AND LANDSCAPING – TUTSHAM HALL, TUTSHAM FARM, WEST FARLEIGH, MAIDSTONE

16 DECEMBER
2010

Deferred to enable the Officers to :-

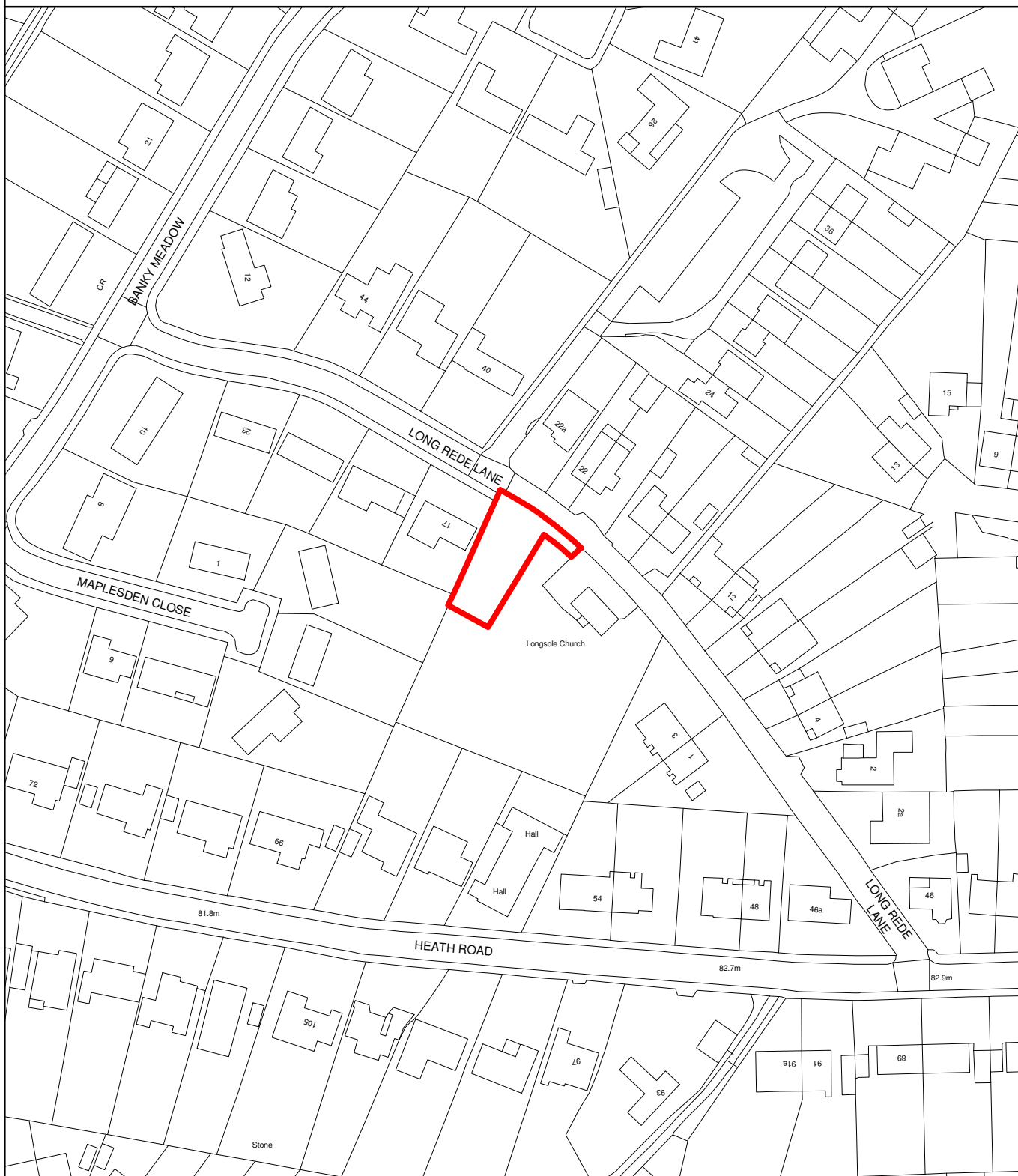
- Consider the effectiveness and suitability of conditions and/or a legal agreement in terms of ensuring that the live-work units remain as such and do not become solely residential; and
- Advertise the application as a departure from the provisions of the Development Plan.

THE MAIDSTONE BOROUGH COUNCIL

PLANNING APPLICATION NUMBER: MA/09/1347

GRID REF: TQ7255

LAND AT LONGSOLE CHURCH,
LONG REDE LANE, MAIDSTONE.



This copy has been produced specifically for Planning and Building Control Purposes only. No further copies may be made. Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationary Office ©Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. The Maidstone Borough Council No. 1000019636, 2011. Scale 1:1250



Rob Jarman
Head of Development Management

APPLICATION: MA/09/1347 Date: 22 July 2009 Received: 8 November 2010
APPLICANT: Mr I Mutch, Harrison Mutch Ltd
LOCATION: LAND AT LONGSOLE CHURCH, LONG REDE LANE, MAIDSTONE,
KENT, ME16 9LB
PARISH: Maidstone
PROPOSAL: Outline application for the erection of a detached two storey
dwelling with all matters reserved for future consideration (re-
submission of MA/09/0018).
AGENDA DATE: 3rd February 2011
CASE OFFICER: Richard Timms

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

- It is a departure from the Development Plan due to the loss of some allotment land

1. POLICIES

Maidstone Borough-Wide Local Plan 2000: ENV25, T13
The South East Plan 2009: CC1, CC4, CC6, H1, H4, H5, T4, NRM5, BE1, BE6
Government Policy: PPS1, PPS3, PPS5, PPS9, PPG17

2. HISTORY

MA/09/0018 Outline application for the erection of a detached two storey dwelling with all matters reserved for future consideration – REFUSED

3. EXTERNAL CONSULTATIONS

- 3.1 **CLlr Vizzard:** Raises objections – *"this is a loss of amenities to the local residents in that some allotment sites will be lost to use with the erection of a dwelling on this amenity land."*

4. INTERNAL CONSULTATIONS

- 4.1 **Landscape Officer:** No objections

"No objections to the dwelling as it would not have a detrimental impact upon the pine tree protected under TPO no.9 of 2007."

4.2 Conservation Officer: No objections with regards to the setting of Longsole Church.

"Long Sole Mission church has been identified as a non-designated heritage asset as defined in PPS5 for its significance to the local community. As such, the impact of development on its heritage value is material consideration in this application. The potential impact of the proposed development would be on the church's setting, not its fabric."

According to historic map analysis, this late Victorian mission room was originally built in a rural setting. Throughout the 20th century, its setting has become increasingly eroded due to the encroachment of residential development of a suburban character. Nevertheless, the immediate grounds of the church maintain a sense of its earlier rural setting as can be appreciated in views along Long Rede Lane.

In my view, the siting of a dwelling in this location could secure a sufficient distance from the church to preserve its rural character. While I recognise that in Outline Planning details will be determined at a later date, the illustrative plans submitted set the proposed dwelling back to follow the building form and line of other dwellings in the immediate vicinity, which I would recommend in urban design terms. This also would set the building back further than the church, preserving reasonable views to the church and allowing it to stand as an important focal point for the streetscape. The proposal to include landscaping could also soften the impact of a dwelling further, subject to details."

4.3 Environmental Health Manager: Raises no objections subject to informatives concerning any construction works.

5. REPRESENTATIONS

5.1 Cllr Gooch (Member of adjacent Barming & Teston Ward): Supports application

"I write as Member for the adjacent ward of Barming & Teston, (I am also Chairman of Barming Parish Council) and I write in support of the above application as amended. I regularly walk my dogs along Long Rede Lane and I am therefore fully aware of - and particularly value - its quiet environment and 'rural-like' ambiance."

The area the church has set aside to sell has been carefully and sensitively thought through to enable one dwelling plot to fit appropriately into the street scene. I am fully aware that this involves a net loss of amenity land, and that this in itself is contrary to policy. However, I consider the loss to be marginal, particularly in view of the low density levels of the immediately surrounding area.

I fully support what St Margaret's Church are proposing to do, which is to use the proceeds of the sale of its land to pay for urgently needed repairs to the fabric of St Margaret's church - a beautiful, historic building which forms a vital part of Barming's landscape. Also to pay for the extension/upgrading of Church Cross House in Church Lane to provide improved kitchen/toilet facilities, to meet DDA requirements and to help meet an increasing community need. Indeed, Barming Parish Council is also looking to upgrade/replace its own pavilion in the field just opposite Church Cross House for the very same reasons, and is liaising with St Margaret's (and others) as our local community needs expand: youth clubs, educational activities, meetings and all sorts of general activities, both church based and non church based. I believe St Margaret's to be a very open church and that most of us regard ourselves in Barming as being part of one community.

Long Rede Lane lies within a residential area. An additional dwelling, if sensitively designed, would constitute infilling appropriate to the street scene and to the locality. I am not aware of any sustainable reason why this application should not be approved."

5.2 Neighbours: 45 representations received raising the following points:

- Loss of privacy/overlooking.
- Overbearing impact.
- Visually cluttered and cramped development.
- Too close to existing property.
- Harmful to the character of the area.
- Poor design.
- Highway safety/congestion/parking issues.
- Access for emergency vehicles.
- Potential damage to private lane.
- Noise and disturbance.
- Loss of allotments is contrary to policy.
- The area for the dwelling was an allotment until 2008.
- Plot 13 is only unused because the applicant wanted it unused.
- Allotment space has been reduced in preparation for this development and subsequently allocated non-allotment land.
- There are limited allotments locally and there will still be loss of allotment space which are in demand and an important aspect of the community.
- Plans do not accurately show allotment loss.
- Two large protected trees which could be damaged by building works and could become under threat by future building proposals and use of the land.

- Rear boundary is not in line with existing properties.
- Contractor's vehicles should approach the site from the Banky Meadow public highway.
- Loss of wildlife.
- Not a 'brownfield' site.
- Precedent for further development.
- Support for application.

5.3 **Petition:** A petition in support of the application with 118 signatures has been received.

6. CONSIDERATIONS

6.1 Introduction & Background

6.1.1 This is an outline application for the erection of a two storey detached dwelling with all matters reserved for future consideration at land at Longsole Church, Long Rede Lane, Maidstone.

6.1.2 The application was originally submitted in July 2009 but a decision on the application has been delayed due to the need for a reptile survey of the site, in line with Natural England's standing advice. The applicant provided this survey in November 2010, hence the delay in reaching a decision.

6.2 Site Description

6.2.1 The site relates to land owned by Longsole Church and includes some land currently in use as allotments. The single storey church building fronts the lane within the centre of the grounds. The allotments are not Council owned but privately owned by the church, and rented by the public to use with payment made on an annual basis. Around 77% of the land here is given over to allotments. Allotments are classified as 'greenfield' land under PPS3.

6.2.2 The application site is within the northwest corner of the grounds fronting the lane and adjacent to no. 17 Long Rede Lane to the west. It includes some allotment land and some unused grass land. To the west on Long Rede Lane are large detached dwellings set back from the road by 7m. Opposite are detached and semi detached dwellings fronting Long Rede Lane. To the south are rear gardens of dwellings and a village hall on Heath Road and to the southwest the rear gardens of dwellings on Maplesden Close. There is a protected pine tree (TPO no. 9 of 2007) just to the east of the site. Along the front of the site is a hedge some 1.2m in height.

6.2.3 It is on the south side of Long Rede Lane and is sited off a section of the lane that is not adopted and is privately owned by residents.

6.2.4 The application site is within the defined urban area and not within any specially designated areas.

6.3 Planning History

6.3.1 Application MA/09/0018 for outline permission for a detached dwelling was refused under delegated powers in March 2009 for the following reason:

The development would result in the loss of currently used allotment land and in the absence of information to demonstrate the allotment land is surplus to requirements in the area and without alternative provision, the development would result in the loss of a community facility for which it is considered there is a current and future need and which is of value to the local community. This is contrary to policy ENV25 of the Local Plan, policy QL11 of the Structure Plan and advice contained within PPG17: Planning for Open Space, Sport and Recreation.

6.3.2 Officers considered that a two storey dwelling could be provided at the site without causing unacceptable harm to visual or residential amenity or detriment to highway safety. The reason for refusal solely related to the loss of allotment land.

6.4 Proposed Development

6.4.1 The application seeks outline permission for a two storey detached dwelling. The site has a 13m width to the front narrowing to 10m at the rear and a depth of 27m from the lane. All matters are reserved so the Council is being asked whether the principle of such a dwelling is acceptable at the site. Although detailed plans and elevations of the dwelling have been provided, they are illustrative and do not form part of the formal consideration under this application. It is also intended to provide a new footpath across the front of the site to link with the existing footpath in Long Rede Lane to the west to provide access to the church building and allotments.

6.4.2 The difference from the previous application to compensate for the loss of allotment space is a reduction in the size of the site for the dwelling by 13.5m² and bringing an un-used allotment back into use (Plot 13).

6.4.3 The applicant states that the proposals would provide funding for the upkeep and essential maintenance of other community facilities including repairs and maintenance of Longsole Church, re-pointing, re-decorating and a replacement heating system for St Margaret's Church, Barming and works to Church Cross House, Barming.

6.5 Principle of Development

- 6.5.1 The site is within the defined urban area at a sustainable location with good access to jobs, services and public transport. A key objective of PPS3 is to provide *"housing developments in suitable locations, which offer a good range of community facilities and with good access to jobs, key services and infrastructure."*
- 6.5.2 The site is 'greenfield' land and it is acknowledged that there is currently no overriding need for residential development of greenfield sites in housing supply terms within the Borough due to the existence of a 5 year supply. However, because there is a five year supply of housing land this should not mean that windfall sites should be refused out right. This is a sustainable location with surrounding housing development and it has been accepted by officer's that it is suitable in principle to develop this greenfield site due to the absence of harm and this was did not form a ground for refusal. (I have outlined the considerations of visual impact at paragraph 6.7 below for Members)
- 6.5.3 Therefore the main consideration is that the application involves the development of allotment land, the loss of which is considered under policy ENV25 of the Local Plan and PPG17: Planning for Open Space, Sport and Recreation. Clearly, this was the only reason for refusal under the previous application.

6.6 Loss of Allotment Land

- 6.6.1 The allotments are privately owned by the Church but available for members of the public to use via an application to the owners. Representations state that they have been in use for around 50 years and it is understood that they are currently full. Private sites do not have the same protection as 'statutory' public owned sites (a change of 'statutory' sites requires permission from the SoS). Clearly the use of the allotments could cease without any need for permission.
- 6.6.2 Policy ENV25 of the Local Plan relates to allotments within the Borough but makes no distinction between private or public sites. The policy states that, *"Development of allotments for other uses will not be permitted unless alternative provision is made near at hand, and ground conditions are fully appropriate."*
- 6.6.3 Clearly, it may not be practical to comply with this policy for privately owned allotments, where any landowners may not have land available for alternative provision.

- 6.6.4 PPG17 relates to planning for open space, sport and recreation and defines allotments as open space for planning purposes. (It makes no distinction between private or public owned allotments). It states that to ensure effective planning for open space it is essential that the needs of the local community are known through robust assessments of existing and future needs. In this respect a Green Spaces Strategy was carried out in 2005, which is discussed below.
- 6.6.5 In order to address the previous reasons for refusal, the changes from the last application are as follows:
- A reduction in the size of the application site and therefore the amount of allotment land lost.
 - The reinstatement of Plot 13 to compensate for the loss of land.
- 6.6.6 Firstly, the site is smaller than the previous application by 13.5m² so this represents a reduction in the amount of allotment land loss.
- 6.6.7 Secondly, under the previous application, the agent had implied that the allotment on Plot 13 was being used and from a site inspection at that time this was incorrectly assumed to be the case. However, the agent has now stated that this allotment is only actually used as a 'dumping ground' for surplus soil etc. from other plots. Having more closely inspected this plot, I consider this to be the case and it was clearly not in use being overgrown and unlike the other allotments which had soil turned and evidence of past crops etc. The agent considers that this plot should now be taken into account as compensation for the loss to the development. With this plot currently not being used, I consider it can be taken into account as compensation.
- 6.6.8 As such there are currently 21 useable plots at the site. The application site would result in the loss of two plots but with plot 13 reinstated this would be a net loss of one plot. In land space terms, the development would result in the loss of some 143m² of currently used allotment land and the re-instated plot 13 would provide some 66m². As such, there would be a small net loss of 77m² of allotment land. This is a relatively small loss equating to some 4.8% of the total allotments compared to a loss of over 140m² under the previous application. It is a clear reduction in the amount of allotment space being lost from the previous application.
- 6.6.9 The 2005 Green Spaces Strategy outlines that the level of allotment provision within the urban area meets the Council's minimum standard of 0.21ha per 1000 residents. (The Strategy does not identify this site for specific protection as it does for some other allotment sites). In an update report from 2009 it is

considered that future population forecasts for the Borough suggest that if the popularity of allotments remains as it is, then future provision will be required. The Council's Draft Allotments Strategy from Spring 2008 also identifies a demand for allotments.

- 6.6.10 This information would suggest a current demand for allotments and that further provision is likely to be required in the future due to population growth. There is not evidence of surplus allotment land available but I still consider it would prove extremely difficult to defend a refusal based on the loss of 77m² of allotment land, especially bearing in mind it is a privately owned site. The applicant is clearly providing some compensation for the loss to the development through the reinstatement of an allotment. With this in mind and there otherwise being no harm resulting from the development, I consider that on balance, the development can be accepted as a departure from Development Plan policy ENV25.
- 6.6.11 I am mindful that the use of the allotments could cease without the need for permission at any time in order for the applicant to obtain planning permission, which would be a clear loss to the wider community.

6.7 Visual Impact

- 6.7.1 Clearly, under the previous application, officer's considered a dwelling could be suitably accommodated on the site and this was not a ground for refusal. My view on this matter remains the same as previously, being as follows.
- 6.7.2 With a plot width between 13m and 10m and a depth of some 27m, it is considered that there is sufficient room to provide a dwelling and accompanying garden land, driveway, pathways etc. without compromising the appearance and general character of the area. The size of the plot is broadly comparable to that of surrounding housing and would not appear unduly out of character. It is considered that it would be possible to provide an acceptable detailed scheme that would respect and complement the surroundings and not compromise the character and appearance of the area. I note that the indicative plans demonstrate that a two storey dwelling can be accommodated at the site whilst respecting building lines, heights and spacing between buildings.
- 6.7.3 The Council's landscape officer has confirmed that a dwelling could be sited without compromising the health of the adjacent pine tree protected under TPO no.9 of 2007.

6.8 Heritage Considerations

- 6.8.1 Since the previous decision, PPS5: Planning for the Historic Environment has been published which requires consideration of non-listed buildings regarded as being a heritage asset. Longsole Church has been identified by the Conservation Section as a non-designated heritage asset as defined in PPS5 for its significance to the local community. As such, the impact of development on its heritage value is a consideration in this application. The potential impact of the proposed development would be on the church's setting, not its fabric.
- 6.8.2 The Conservation Officer's view is that the dwelling would be sited a sufficient distance from the church to preserve its rural character. The officer states that,
- "While I recognise that in Outline Planning details will be determined at a later date, the illustrative plans submitted set the proposed dwelling back to follow the building form and line of other dwellings in the immediate vicinity, which I would recommend in urban design terms. This also would set the building back further than the church, preserving reasonable views to the church and allowing it to stand as an important focal point for the streetscape."*
- 6.8.3 I agree with this assessment and therefore consider there are no objections from a heritage conservation point of view.

6.9 Residential Amenity

- 6.9.1 As before, I consider that a design could be arrived at that does not lead to any significant loss of privacy or loss of light to neighbouring houses and gardens. There are no side windows on no. 17 Long Rede Lane immediately to the west and the nearest any other properties would be to a dwelling respecting the building line, would be 21m opposite. Other dwellings are over 23m from the site.
- 6.9.2 With there being no windows on the east side of no. 17, no loss of light would occur to any rooms on this property. With appropriate design and siting there should be no unacceptable over-bearing or overshadowing to this property. The distance to other properties would ensure no overbearing impacts.
- 6.9.3 Noise and disturbance from one additional dwelling and its vehicle movements would not be so great as to cause significant residential amenity problems.
- 6.9.4 Although the new dwelling would have allotment land bordering its boundaries, it could still benefit from sufficient privacy with appropriate boundary treatments to maintain privacy.

6.10 Highways & Parking

6.10.1 I note concern has been raised by local residents in terms of highway safety, congestion and parking, however, it is considered that a safe new access could be provided onto Long Rede Lane, which at this point is a single lane with a 30mph speed limit and sufficient space for at least 2 parking spaces and turning could be provided within the site. Sufficient visibility could be provided on this part of the road where vehicles do not travel at high speeds. I do not consider that one additional dwelling would add greatly to congestion in the area or be detrimental to conditions of highway safety.

6.11 Ecology

6.11.1 A reptile survey of the site has now been provided with the application. The report summarises that a single individual slow-worm was detected during the survey of the site. On the basis of the findings the report considers that a low population of slow-worm is present at the site. The report states that,

"The population of slow-worm present is likely restricted in size due to the small area of available habitat, the regular management of the majority of the allotment site and the isolation of the site from other large areas of suitable habitat."

6.11.2 The report concludes that as long as suitable precautionary mitigation for a low population of slow-worm is undertaken at the site prior to the start of development works, that the proposals will have no significant impact upon the population of slow-worms in the locality. The following precautionary vegetation managements is therefore recommended.

- *Brush piles should be carefully cleared by hand at a time when reptiles are active (late March – early October)*
- *Rough grass, vegetation and scrub present within any area proposed for development works, including areas proposed for storage of materials are cut to a height of 10cm, at a time when reptiles are active, and left for two weeks. This will encourage any reptiles present to disperse into the surrounding environment.*
- *After a period of two weeks, the grass/vegetation/scrub within the area of proposed works should then be cut and maintained at a short sward prior to the start of development works to discourage reptiles from entering the site.*
- *If reptiles are discovered during the vegetation management they should be carefully removed from the site and placed in an area, outside but close to the development site, that supports suitable habitat, such as rough vegetation and scrub.*

6.11.3 It is apparent that there is a low population of slow worm present and that suitable measures can be taken not to harm that population. However, the

proposals would result in the loss of a small area of this habitat. There is an area that would remain between the site and the church and I consider that this area should be maintained and improved as a habitat for slow worms and that it should be available prior to any development or recommended vegetation management clearance. This way, an improved habitat would be available for any slow worms and therefore suitable mitigation as required by PPS9. I have discussed this with the agent for the application who has confirmed the applicant is willing to provide this. With this secured by condition, I consider there would not be any significant harm to biodiversity from the development.

6.12 Other Matters

- 6.12.1 I note that many local residents state that people have been prevented from using some of the site for allotments in order to help the case for development. I am uncertain whether this has been the case, however this does illustrate the fact that the allotment users have no control over the land and their use could cease. Notwithstanding this, any assessment of the development can only be made on the basis of the current situation on the ground at the time of the decision.
- 6.12.2 Access for emergency vehicles has been raised as an issue but the site is located close to the adopted part of Long Rede Lane where access could be provided. Potential damage to the private lane from construction vehicles and services to the site has been raised. Any damage to the private road would be a matter between land owners and developers and is not a planning consideration. However, the usual informatives can be attached with regard to construction vehicles and works.
- 6.12.3 Concern has been raised that approval of the application may set a precedent for further development. Each application must be judged on its own merits and this cannot form a reason for refusing the application.

6.13 Conclusion

- 6.13.1 I consider a two storey dwelling could be designed so as to not cause harm to the character of the area, residential amenity or be detrimental to highway safety. The latest proposals would result in a low amount of allotment land being lost and balancing this against the lack of harm and the fact that the allotments are privately owned, I consider the application should be approved subject to the following conditions.

7. RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions:

1. The development shall not commence until approval of the following reserved matters has been obtained in writing from the Local Planning Authority:-
 - a. Layout
 - b. Scale
 - c. Appearance
 - d. Access
 - e. Landscaping

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

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

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

2. The details submitted pursuant to condition 1 shall show 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 measures for their protection in the course of development and a programme for the approved scheme's implementation and long term management. The scheme shall be designed using the principles established in the Council's adopted Landscape Character Assessment and Landscape Guidelines;

Reason: No such details have been submitted and to ensure a satisfactory setting to the development in accordance with policy CC6 of the South East Plan 2009, PPS1 and PPS3.

3. Allotment number 13 as shown on the 'following development' plan on drawing no. 1000.18D received on 2nd February 2010 shall be made available for use as a public allotment for public use prior to the commencement of the development hereby approved. This plot shall subsequently be maintained as available for use as an allotment for a period as long as any part of the remainder of the site edged in blue on the site location plan (drawing no. 1000.PLA received 28th July 2009) is in use as allotment land.

Reason: In the interests of maintaining provision of community facilities in accordance with policy ENV25 of the Maidstone Borough-Wide Local Plan 2000.

4. The development or the precautionary vegetation management measures as outlined in the 'Reptile Survey Report' received on 8th November 2010 shall not commence until details of the compensation hibernacula for slow worms to the east of the site have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be provided prior to any of the precautionary vegetation management measures being undertaken.

Reason: In the interests of biodiversity and ecology pursuant to PPS9.

5. The precautionary vegetation management measures as outlined in the 'Reptile Survey Report' received on 8th November 2010 shall be carried out prior to any works in association with the development hereby approved being carried out at the site.

Reason: In the interests of biodiversity and ecology pursuant to PPS9.

6. The dwelling shall achieve a minimum of Level 3 of the Code for Sustainable Homes. The dwelling shall not be occupied until a final Code Certificate has been issued for them certifying that (at least) Code Level 3 has been achieved;

Reason: To ensure a sustainable and energy efficient form of development in accordance with Policy CC4 of The South East Plan 2009.

Informatives set out below:

Attention is drawn to Sections 60 and 61 of the Control of Pollution Act 1974 and to the Associated British Standard Code of practice BS5228:1997 for noise control on construction sites. Statutory requirements are laid down for control of noise during works of construction and demolition and you are advised to contact the Environmental Health Manager regarding noise control requirements.

Clearance and subsequent burning of existing woodland or rubbish must be carried out without nuisance from smoke, etc. to nearby residential properties. Advice on minimising any potential nuisance is available from the Environmental Health Manager.

Plant and machinery used for demolition and construction shall only be operated within the application site between 0800 hours and 1900 hours on Mondays to Fridays and between 0800 hours and 1300 hours on Saturdays and at no time on Sundays and Bank Holidays.

No vehicles may arrive, depart, be loaded or unloaded within the general site except between the hours of 0800 and 1900 Mondays to Fridays and 0800 and 1300 hours on Saturdays and at no time on Sundays or Bank Holidays.

You are advised to ensure that the appointed contractor(s) is/are registered with the 'Considerate Constructors Scheme' and that the site is thereafter managed in accordance with the Scheme. Further information can be found at www.considerateconstructorsscheme.org.uk

No development shall commence until a scheme for the use of wheel cleaning, dust laying and road sweeping equipment, have been submitted to and the scheme approved in writing by the local planning authority. The approved scheme shall be

implemented in its entirety once development has commenced, for the duration of demolition/construction works at the site.

The developers shall provide adequate space within the application site for the parking/turning/unloading of contractors vehicles before any works commence on site. Such space shall thereafter be maintained during the construction process where practicable.

There shall be no burning of waste materials on site.

The provision of 'swift bricks' on the external faces of the buildings should be employed in the interest of nature conservation and biodiversity enhancement.

REASON FOR APPROVAL:

The proposed development is not in accordance with policy ENV25 of the Maidstone Borough-Wide Local Plan 2000 as there would be a small loss of allotment land despite the proposed alternative provision. However, due to the special circumstances of this case as it relates to privately owned allotments and because the development is otherwise not considered to cause any harm to the area, it is considered that this represents circumstances that outweigh policy ENV25 of the Maidstone Borough-Wide Local Plan 2000.

24

27.01.2011

25



27.01.2011

26

27.01.2011

27

27.01.2011

28

27.01.2011

29

27.01.2011

30

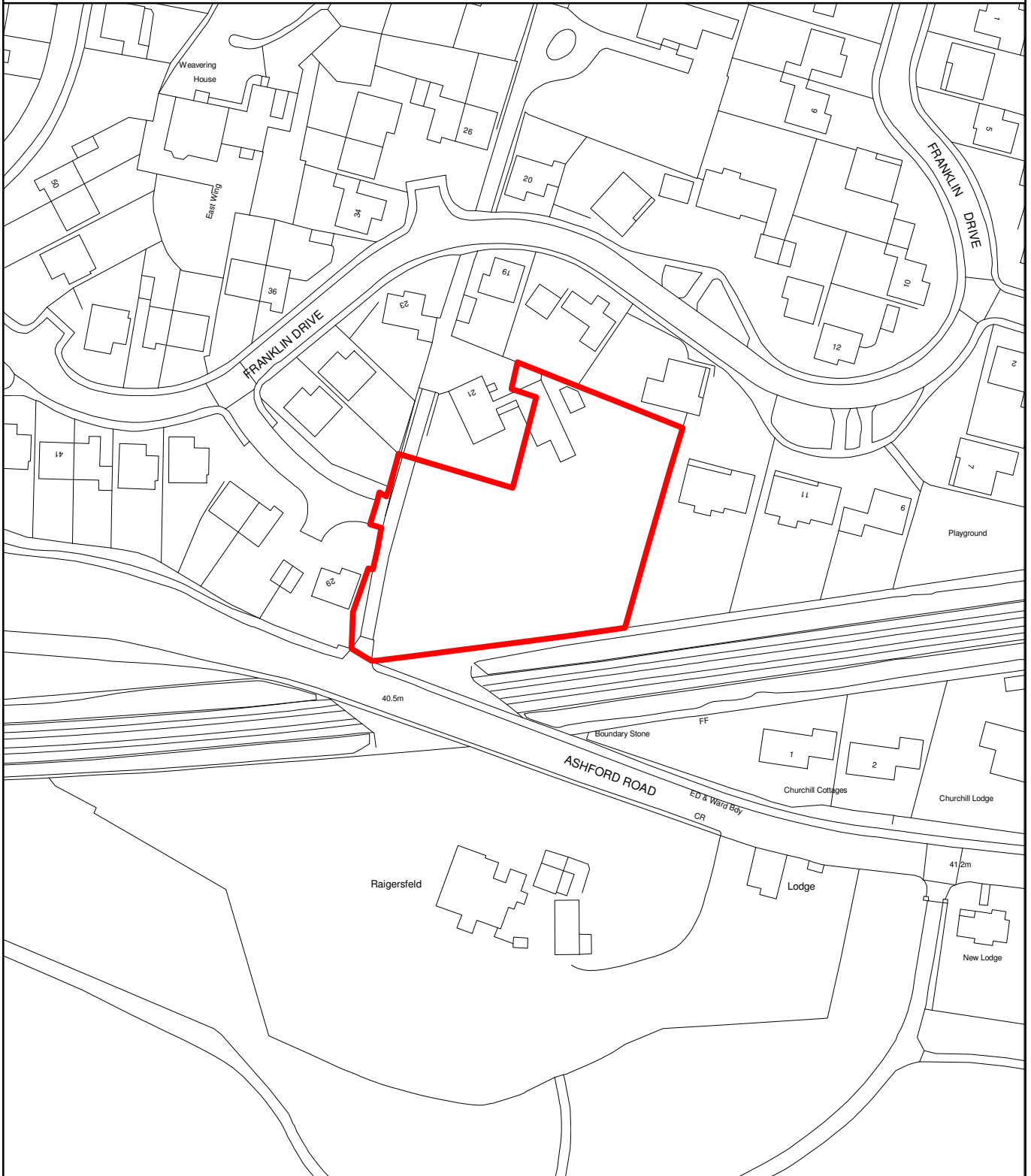
27.01.2011

THE MAIDSTONE BOROUGH COUNCIL

PLANNING APPLICATION NUMBER: MA/10/1831

GRID REF: TQ7755

21 FRANKLIN DRIVE,
WEAVERING.



This copy has been produced specifically for Planning and Building Control Purposes only. No further copies may be made. Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationary Office ©Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. The Maidstone Borough Council No. 1000019636, 2011. Scale 1:1250



Rob Jarman
Head of Development Management

APPLICATION: MA/10/1831 Date: 19 October 2010 Received: 11 January 2011
APPLICANT: Mr & Mrs Pocock &, Monro Homes
LOCATION: 21, FRANKLIN DRIVE, WEAVERING, MAIDSTONE, KENT, ME14 5SY
PARISH: Boxley
PROPOSAL: Partial demolition of 21 Franklin Drive and erection of 9 (no) houses with associated access, parking and landscaping.
AGENDA DATE: 3rd February 2011
CASE OFFICER: Richard Timms

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

- It is contrary to the views expressed by Boxley Parish Council

1. POLICIES

Maidstone Borough-Wide Local Plan 2000: ENV6, T13
South East Plan 2009: SP2, SP3, CC1, CC4, CC6, H4, H5, T4, BE1, BE6, AOSR6, AOSR7
Government Policy: PPS1, PPS3, PPS5, PPS9, PPG13, PPG24

2. HISTORY

MA/10/0951 Partial demolition of no. 21 Franklin Drive and erection of 9 No. dwellings, with associated access, parking and landscaping – WITHDRAWN

MA/08/0740 Formation of access road and erection of nine detached dwellings – WITHDRAWN

MA/94/0982 Renewal of outline planning permission granted under reference MA/89/2295 N for the erection of five dwellings and conversion of existing dwelling into two dwellings – APPROVED WITH CONDITIONS

MA/89/2295 Outline application for erection of 5 detached dwellings and conversion of existing dwelling into two dwellings – APPROVED WITH CONDITIONS

MA/88/1305 Three detached houses – REFUSED

(Nine other applications relating to extensions and outbuildings for the existing dwelling, the most recent being in 2004)

3. EXTERNAL CONSULTATIONS

3.1 **Boxley Parish Council:** Wish to see the application REFUSED and if the Planning Officer is minded to grant permission request that the application is reported to the Planning Committee. Reasons for refusal are;

- Over development of a greenfield site.
- Poor access and egress.
- Adverse impact on the existing properties at Franklin Drive.
- Additional traffic will be introduced on to Grove Green which is already over congested

"If the Planning Officer is minded to agree the Parish Council requests a Section 106 payment towards locally needed improvements. A suitable project is the fixed crossing point needed at Provender Way to allow safe pedestrian movements across this road which is unsafe due to increased traffic on local roads. If you are minded to recommend permission would it be possible to place some form of conditions on the work hours and traffic management of any vehicles connected to the development.

You will see from the planning application response that a fixed crossing point is being considered for Provender Way. The scheme has failed for the past 2 years to get enough points within the current KHS grading system but everyone (including KHS) agrees it is needed and should have been installed years ago.

County Councillor Paul Carter and the Parish Council are now going to foot the bill. The school is so concerned that it has actually agreed to donate £5,000. The Parish Council is allocating £13,000 from reserves and Cllr Carter £11,000, there is however a likely shortfall which the PC will probably have to cover.

How is Franklin Drive connected? Residents from this part of Grove Green use the minor shopping centre which means driving down Provender Way (no local uses Weaving Street). The nearest junction for New Cut Road is also avoided by many locals as it is more difficult to get out and so many use Provender Way to get to the other junction which has a roundabout on it and is closer to the M20."

3.2 **Kent Highways:** No objections subject to conditions securing –

- Parking and turning space;
- Pedestrian visibility splays;
- Closure of the existing access onto the A20; and
- Extension of the existing footway at the western end of the access road to the west of Plot 1.

3.3 **Kent Wildlife Trust:**

"The ecology survey has been compiled by an experienced and reliable ecologist and appears to be sound."

3.4 **UK Power Networks:** No objections

3.5 **Southern Water:** No objections subject to condition requiring surface water drainage details.

"Initial investigations indicate that there are no public surface water sewers in the area to serve the development. Alternative means of draining surface water from this development are required. This should not involve disposal to a public foul sewer."

"A formal application to Southern Water for connection to the public sewerage system is required"

4. **INTERNAL CONSULTATIONS**

4.1 **MBC Environmental Health Manager:** No objections subject to measures in acoustic report being conditioned.

"The site is bounded by both a busy road and a railway. Further to my earlier comments of 1/12/2010, I note that an updated noise report has now been received, this is the 3rd PPG 24 Assessment Concerning Road Traffic & Rail Traffic Noise Report, by Acoustic Associates Sussex Ltd and dated 22nd November 2010. Previously I noted that the 2nd report, dated 26th May 2010, confirmed that most of the proposed development falls into either NEC "A" or NEC "B", for both day time and night time periods; but the southern façade of Plot 9 falls into NEC "C" for both day and night time periods. However, although the report stated that the noise mitigation measures detailed in it would achieve WHO target internal noise levels for bedrooms and living rooms, it did not address the issue of noise mitigation in relation to the south facing rear gardens; in particular that of plot 9."

"The 3rd report proposes noise mitigation for the outside amenity areas in the form of a 3m high acoustic fence, and Environmental Health accept that this report successfully demonstrates that this mitigation method is likely to reduce the noise to satisfactory levels in outside amenity areas. However, Environmental Health also note that in the rear garden of plot 9 this is a very borderline case for successful mitigation since during the day only certain parts of the garden are likely to be below 55 dB L_{Aeq} (within gardens and outside amenity areas the daytime 0.700-23.00 hours level of noise should not exceed 55 dB L_{Aeq} free field)."

4.2 **MBC Conservation Officer:** No objections.

"Considering the intervening barriers of the rail line, Ashford Road and mature landscaping, these works would appear to be difficult to view from the nearby listed building and registered park – no objections."

5. REPRESENTATIONS

5.1 Eight neighbour representations have been received raising the following summarised points:

- Will detract from overall appearance of the area.
- Loss of trees.
- Object to removal of trees and shrubs.
- Density.
- Loss of privacy.
- Impact on wildlife of which there is a lot.
- Hedge on north boundary should remain to protect privacy.
- Highway safety and parking issues already exist in the area and this would be exacerbated.
- Site will take access off a private road.
- Effect of hard surfacing on drainage and the environment.
- Noise, disturbance and pollution.
- Any restrictive covenants should be considered.
- Potential damage to garden fences.
- Disturbance during construction.
- Land by access has been tended by residents and is their not a law that this becomes owned.

5.2 **CPRE Maidstone** raises the following summarised points:

- Concern over scale and density.
- Plot 9 would be especially vulnerable to noise.
- Attenuated ventilation is likely to use more electricity.
- Greenfield site so any application must be examined in detail to determine their effect on the character and appearance of the locale and in relation to the availability of previously developed land suitable for housing.
- Development appears crowded.
- Parking on internal roadway is likely.
- Adverse effect on the quality of life of existing local residents.

- Will reduce air quality and scope for biodiversity.
- Exacerbate road traffic in the area.
- No immediate requirement for development.
- No requirement for any more semi-detached properties in this part of Maidstone.

6. CONSIDERATIONS

6.1 Introduction

6.1.1 This is a full application for the erection of 9 houses with associated access, parking and landscaping at 21 Franklin Drive, Weavering, Maidstone.

6.2 Site Location & Description

6.2.1 The site is located within the defined urban area of Maidstone with no special landscape designation. It is the large rear garden of 21 Franklin Drive a detached dwelling with access off Franklin Drive to the north. There is also an access onto the A20 in the southwest corner of the garden where a driveway runs along the west side of the site through to Franklin Drive. The site is classed as greenfield land under PPS3.

6.2.2 The site is 2520m² and mainly laid to lawn with tall conifers along its east, south and near its west boundary. There are deciduous hedges along parts of the west and along the north boundary. There are also clumps of trees and shrubs near the west and south sides of the site and some flower beds. There are a number of outbuildings including a double garage, shed and storage containers in the southwest corner and a summerhouse in the northeast corner, and there is a swimming pool near the house. The existing dwelling is a large detached property in the northwest corner with a large extension on its eastern side, which would be removed as part of this proposal. The site generally falls gently southwards by around 2.5m from north to south.

6.2.3 The garden is contained by housing on three sides to the north, east and west sides and a railway line and road on the south side. From outside the site its visual contribution is made mainly by the conifer trees but an open area can be appreciated from some viewpoints. The surrounding houses are relatively modern detached and semi-detached houses with their gardens. On the west side of the site the turning head of a cul-de-sac leading from Franklin Drive which serves three houses. To the south of the site is a railway line, which lies in a cutting and the A20 Ashford Road, which bridges the railway line here. Beyond the A20 to the south is Mote Park and the Grade II listed dwelling 'Raigersfeld', just over 40m from the site.

6.3 Proposed Development

- 6.3.1 The proposal is a full planning application for the erection of 9 two storey dwellings (5 detached & 2 pairs of semi-detached), with the existing dwelling being retained but with the eastern extension and swimming pool removed. The density of the development would be 36 dwellings/hectare.
- 6.3.2 The proposal would see the adopted cul-de-sac to the west, extended into the site roughly along the centre with houses located on either side to the north and south. This access would have a width between 4.2m and 5m, and would be finished in concrete paviers for the first 17m where it is intended to be adopted and then resin bonded shingle beyond. The properties on the north side would be set back between 2m and 11m from the access, with the dwellings to the south following a more regular building line ranging from 3m to 8m from the access. Each house would have a private driveway finished in concrete paviers and lawned front gardens with hedge/shrub and tree planting alongside the access.
- 6.3.3 As one enters the site, there would two detached properties on the north side (plots 1 and 2) and a row of three detached properties on the south side (plots 9, 8 and 7). Then beyond at the east end of the site would be semi-detached properties either side of the access (plots 3, 4, 5 and 6).
- 6.3.4 Detached dwellings on Plots 2, 7 and 9 (4 bedroom) would be largely of the same form and design having ridge heights of 7.8m and eaves 4.8m with barn hipped roofs and front and rear two storey projections. Plots 2 and 7 would be finished with brickwork, tile hanging and clay roof tiles and plot 9 would be the same but with a render and mock beams to the front projection. Plot 2 would have a detached garage and plots 7 and 9 would have attached garages to the side.
- 6.3.5 Semi-detached dwellings on plots 3, 4, 5 and 6 (3 bedroom) would be largely the same design and form with ridge heights 7.8m and eaves 4.8m with fully hipped roofs with a front two storey gable projection. They would be finished with brickwork and white stained timber boarding to the front gable and clay roof tiles. Plots 3 and 4 would have attached garages to the side.
- 6.3.6 Detached dwellings on Plots 1 (3 bedroom) and 8 (4 bedroom) would be of different design. Plot 1 would have a ridge height of 7.7m and eaves of 4.8m to the front and 4.2m at the rear with fully hipped roof. It would be finished with brickwork and clay roof tiles. It would have a detached garage and driveway on the east edge of its garden. Plot 8 would have a ridge height of 7.8m and eaves 4.8m with a full hipped roof, two storey front projection and side garage with catslide roof. It would be finished with brickwork, timber boarding and clay roof tiles.

- 6.3.7 The deciduous hedge along the north boundary of the site and conifers along the east boundary would be retained. The conifers along the south boundary would be removed and replaced with a 45m strip of new native hedge/tree planting 3m in depth. Conifers near to the west boundary would be removed. The existing access onto the A20 in the southwest corner would be closed with a ragstone wall to match the existing and then a 3m acoustic fence would be provided along the south boundary with planting on the outside to soften its impact. This acoustic fence is required to reduce noise to gardens and would run along part of the west boundary with 29 Franklin Drive.
- 6.3.8 A total of 16 car parking spaces are proposed, with all but plots 5 and 6 having two spaces each (1 on driveway and 1 in garage). Although there would be room to park 2 cars for these properties overhanging the access road but not blocking it.
- 6.3.9 The application is accompanied by a sustainable construction report that indicates that the development will achieve Code Level 3 of the Code for Sustainable Homes. The applicant has submitted a 'walk over' ecological assessment, bat and reptile survey and a noise assessment, which will be discussed below.

6.4 Planning History

- 6.4.1 A similar application for 9 houses was submitted last year under application MA/10/0951. This was withdrawn following advice from officers that there were issues relating to the impact upon neighbours and the general layout, that were considered unacceptable. An application for 9 houses was also submitted in 2008, which was also withdrawn. The reasons for this appear to relate to land ownership matters. Prior to this outline permission for 5 houses was approved in 1989 and renewed in 1994 but this permission expired in 1998.

6.5 Principle of Development

- 6.5.1 The development lies within the defined urban area at a sustainable location with good access to jobs, services and public transport. A key objective of PPS3 is to provide "*housing developments in suitable locations, which offer a good range of community facilities and with good access to jobs, key services and infrastructure.*" The site is also within a private garden now classed as a 'greenfield' site under the revised PPS3 from June 2010. The effect is to remove a presumption in favour of development on such land. The old PPS3 didn't allow for the development of all garden sites however, and as a corollary, I do not consider that the amended PPS3 means that all development in gardens should now be refused. This change does not result

in a blanket restriction on garden development. The changes to PPS3 also remove minimum density requirements for housing.

- 6.5.2 It is also acknowledged that there is currently no overriding need for residential development of 'greenfield' sites in housing supply terms within the Borough, due to the existence of a 5 year supply from deliverable non-implemented planning consents and the potential from allocated local plan 'brownfield' sites. However, because there is a five year supply of housing land this does not mean that 'greenfield' windfall sites should be refused out right, if development of them is not considered to cause any harm and they are suitably located. This is a particularly sustainable location (good public transport links to the town centre and within walking distance of shops and services), with housing development on three sides and I consider that it is an appropriate site for residential development. The site is not safeguarded for any particular use within the Maidstone Borough-wide Local Plan 2000 and I therefore consider the key issues are if it is acceptable to develop this 'greenfield' site at a density of 36 dwellings/hectare and whether it causes harm to the surrounding area.

6.6 Visual Impact & Density

- 6.6.1 The development is located on a site that is bounded by residential development on three sides. The overriding character of this area is that of a housing estate with a mix of detached and semi-detached properties, with large to medium size gardens and spacing between buildings varying, and ranging from 2m to 25m. With such surrounding development on three sides, I do not consider the infilling of this site with housing would therefore be out of character with the existing pattern or layout of development within the area.
- 6.6.2 The site can be seen from public vantage points within Franklin Drive and on the A20 to the south. Its visual contribution is made mainly by the conifer trees, especially from the A20, which limit appreciation of the garden, however an open and undeveloped area can be appreciated from some viewpoints around the site. The conifers also to a degree serve to screen development within Franklin Drive but could obviously be removed without the need for permission. The site does make a contribution to the area through it being largely undeveloped and through its tall trees. However, I do not consider the loss of the garden would be harmful to the area because a considerable sense of openness would remain by virtue of the open space at the adjacent railway cutting and the grounds of Mote Park on the south side of the A20. In addition, the southern houses are set back from the south edge of the site by 9-10m, which would maintain openness here.

- 6.6.3 Any views from Franklin Drive would be broken up by, or seen in the context of existing houses so the development would not be prominent or intrusive here. From the A20, the development would be largely screened by existing houses to the southeast. However, the site would be visible from a short section by the railway line and to the west but this would be in the context of existing houses so would not be unduly intrusive. As stated above, the southern houses are set back from the south edge of the site by 9-10m, which would maintain openness here. The proposed replacement landscaping strip would in time screen and soften the development and acoustic fencing from the A20 with more appropriate native species, which I consider to be important and which can be secured by condition. I note the end of the cul-de-sac is currently landscaped, which I understand has been tended to by a local resident. Whilst this would be lost, new landscaping at the entrance to the site would soften this approach to the development.
- 6.6.4 The density of the development equates to approximately 36 dwellings/hectare. Whilst the South East Plan 2009 has been 're-instated' with a policy that requires a minimum of 40 dwellings per hectare, I consider it is a strong material consideration that PPS3 has removed the density requirement, and also that the South East Plan is likely to be revoked once more, within the near future.
- 6.6.5 The density is slightly higher than that of surrounding development but I note that paragraph 14 of PPS3 states that Local Authorities should be, "*promoting designs and layouts which make efficient and effective use of land*". In this case, I do not consider the density of the development is such that it is significantly out of character with that already existing and the proposal makes an efficient use of the application site. The spacing between the proposed properties is similar to existing nearby houses, particularly nos. 35 to 45 Franklin Drive just to the west. The rear gardens are smaller than some nearby but there are examples of those of similar size. The southern houses continue the line of dwellings on the south side of the cul-de-sac to the west and the northern houses follow the line of dwellings to the east.
- 6.6.6 The scale of the houses match surrounding two storey properties and the use of various projections at first and ground floor levels, hipped roofs and varying materials serves to reduce the massing of the buildings. The different house designs and use of different materials and architectural detailing also provides visual interest to the development and prevents monotony. The houses complement surrounding development being of similar design to in terms of their form and use of materials, and for the above reasons I consider them to be of a generally good standard. Conditions can secure quality materials and the particulars of roof overhangs, recesses, soldier courses and plinths to ensure the appropriate architectural detailing.

- 6.6.7 In terms of layout, the houses are set back from the access to allow space for front gardens with hedge and tree planting, which would create an attractive street scene and would follow the pattern of development within the area. There is landscaping at the entrance to the site, which softens the approach to the development. Rear gardens are of a decent size (9m-10m in depth), providing space around the buildings and maintaining a degree of openness. Details of general planting can be secured by condition but I consider it necessary to specifically require tree, hedge and shrub planting lining both sides of the new access road, the 3m landscape strip with tree and hedge and shrub planting along the south boundary of the site and climbing plants or other planting on the outside, south side of the acoustic fence along the south boundary of the site to ensure an appropriate setting to the development. The use of different hard surfaces would also provide visual interest.
- 6.6.8 The Conservation Officer has raised no objections in terms of the setting of the Grade II listed dwelling 'Raigersfeld' just over 40m from the site due to the intervening barriers of the rail line, Ashford Road and mature landscaping.
- 6.6.9 Overall, I consider the density and layout of the development is in keeping with the locality and the design and scale of the development to be of a good standard that would not result in any significant harm to the area. Because I do not consider there to be any significant visual harm caused by the development, I consider it is acceptable to develop this greenfield site.

6.7 Ecology

- 6.7.1 A walk-over assessment has been provided to establish the likelihood of protected species issues affecting development and where necessary suitable mitigation measures and/or any required additional surveys. In view of the findings specific reptile and bat surveys were then carried out.

The surveys outline that,

"The majority of the site is mowed and short sward improved grass with a few isolated patches of rougher grassland and there are hedges around much of the site. The herbaceous vegetation on the site consists of relatively few species most of which are common in this part of Kent. The site has a relatively low botanical value, except perhaps for the native species hedge line lying along part of the southern end of the site, which should be retained.

As hedge lines do provide potential nesting areas for bird species, it is recommended that works to these features are undertaken outside of the bird nesting season (generally considered to be 1st March to late August) or only after a breeding bird survey has been undertaken."

- 6.7.2 Works to any trees or hedging can be limited to outside the nesting season and controlled by condition.

6.8 Reptiles

- 6.8.1 The walkover survey identified that the site has some limited potential to hold reptile species, which are probably present in the nearby railway cutting. As such, a further reptile survey of the site has been undertaken, which states as follows.

"The gardens at 21 Franklin Drive are currently generally very poor reptile habitat, as they are largely short mown grassland, with one potential hibernation area near to and connected by a conifer hedge to the existing Ashford to Maidstone railway line embankment; the embankment itself, which is outside of the development plot, provides excellent reptile habitat.

The potential hibernation area consists of a rockery constructed from Ragstone and soil situated at the southern end of the existing garden of 21 Franklin Drive. The rockery is due to be demolished within proposed redevelopment works and we would recommend that as direct compensation for this that a new and potentially larger hibernaculum be built along the southern end of the proposed development site as part of the proposed acoustic fence.

The construction of this 3 metre high fence can include an initial 1 metre earth bund and this could be partially constructed from the Ragstone rockery currently present in the garden of 21 Franklin Drive. Any deconstruction of the rockery must however only be undertaken by hand during early summer (June/July) when animals are unlikely to be sheltering in this area and any new hibernation bund must be completed immediately thereafter to provide a shelter area for animals in the heat of the summer and also to provide a hibernation site for reptiles the following winter.

A bund constructed to provide a large hibernaculum for reptiles at the southern end of the existing garden at 21 Franklin Drive will be directly linked to the existing good habitat that is found along the railway embankment and it will overall provide a net gain in reptile habitat in this area."

- 6.8.2 An earth bund is not proposed below the acoustic fence but the habitat compensation would take the form of a new replacement rockery area no smaller than existing, within the landscaped area at the rear of Plot 9. This can be secured by condition and I consider would provide sufficient compensation for any reptile habitat loss.

6.9 Bats

- 6.9.1 The walkover survey outlined that the house and garage provide some limited bat roost potential and both buildings should be internally examined prior to development. This has been carried out and the report states that,

"No bats or signs of bats were seen in any of the buildings on the proposed development site during the current survey. As no signs of bats were found during this survey it is considered unlikely that the buildings currently extant at 21 Franklin Road are significant bat roosts. While we feel that development of the site can proceed without further bat survey we would recommend that a watching brief by a trained bat ecologist be undertaken during the initial phases of any demolition works to fulfil Best Practice Guidelines."

There would seem to be no implications for bat species, however a watching brief can be a condition of any permission.

- 6.9.2 Overall, I consider that subject to conditions, the proposals would not cause any significant harm to ecology or biodiversity within the area and would accord with PPS9. It is recommended that all drainage designs within the development should follow SUDs guidelines, which include measures such as the design of wildlife friendly gulley pots that seek to minimise the negative impacts of this aspect of development on wildlife. The applicant has confirmed that this will be carried out. The applicant has also confirmed that he is willing to incorporate other measures such as swift bricks and bat boxes into the development to enhance biodiversity, which can form an informative.

6.10 Impact Upon Neighbouring Residential Amenity

- 6.10.1 In terms of existing properties to the north, the first floor rear windows of plots 3 and 4 would all serve bathrooms, which would be within 10m of 15 Franklin Drive and its garden. However, they can be obscure glazed and high opening to prevent any overlooking of this property. Plot 2 would have two first floor bedroom windows to the rear but these would be between 17m and 19m from the edge of house nos. 15 and 17 to the north. At this distance, I do not consider these houses or their gardens would be unacceptably overlooked.
- 6.10.2 In terms of existing properties to the west, the first floor west flank bedroom window of Plot 1 would be some 32m from the nearest dwelling no. 27, which would be acceptable. There may be a limited degree of overlooking of the rear half of this properties rear garden, but this is not unacceptable and can occur from neighbouring properties at present. The first floor west flank window on plot 9 would serve a bathroom so there would be no unacceptable overlooking of no. 29 to the west.
- 6.10.3 In terms of existing properties to the east, the retained conifers on the east edge of the site would ensure privacy and notwithstanding this, the first floor east flank bedroom window on plot 4 would not unacceptably overlook no. 13 to the east.

- 6.10.4 There would only be 2 small first floor windows to the rear of plot 1 that would serve bathrooms so there would be no unacceptable overlooking of the existing retained dwelling.
- 6.10.5 In terms of light and outlook, the main impact here is on the existing dwelling to be retained and no. 29 from the acoustic fence. Plot 1 is near to the rear of the retained dwellings where there is a conservatory and the rear eaves height of plot 1 has been lowered slightly to reduce this impact. I consider the conservatory would still retain a sufficient open aspect to the east, southeast and northeast such that it would receive sufficient light and outlook. Number 21 is orientated to face northeast and southwest and these outlooks would be maintained. The acoustic fence would run along the east side rear garden boundary of no. 29. At 3m this would be higher than a typical boundary fence, but I still do not consider it would be unduly oppressive to this property.
- 6.10.6 Otherwise, the proposed dwellings are a sufficient distance from existing neighbouring properties such that they would not cause any unacceptable loss of light or result in a poor outlook.
- 6.10.7 Inevitably there will be an increase in traffic past existing properties and those who would most notice a change would be nos. 27, 29, 31, 33 and 35 to the west, which are within, or at the junction of the cul-de-sac. Whilst I acknowledge this would result in a change to the current situation, there are obviously some movements possible on this cul-de-sac already and I do not consider such additional movements would be unacceptable within an existing large housing estate. There is already a degree of background noise from vehicles on Franklin Drive and the A20 and I do not consider noise or disturbance from nine new dwellings would be unacceptable or warrant grounds for an objection.
- 6.10.8 I am therefore of the opinion that this proposal has been designed in such a way as to minimise the impact that it has upon the amenities of the neighbouring occupiers. I consider that the proposal would not have a detrimental impact in terms of overlooking, overshadowing, outlook or noise and disturbance, and as such, I consider it to be acceptable in this respect.

6.11 Amenity of Future Occupants

- 6.11.1 The proposed dwellings are arranged such that they would have gardens of an appropriate size for family housing with suitable private space and an acceptable outlook. They would not unacceptably overlook one another.
- 6.11.2 A recent noise assessment in respect of road & rail noise has been carried out. The report summarises that the proposed development falls into either

'Noise Exposure Category (NEC) A' or 'NEC B' for both day time and night time periods, with the exception being the southern façade of Plot 9 which falls into 'NEC C' for both day time and night time periods. PPG24 at paragraph 8 states that, "*Category A represents the circumstances in which noise is unlikely to be a determining factor... Categories B and C deal with situations where noise mitigation measures may make development acceptable.*"

- 6.11.3 Therefore mitigation is recommended in the form of double glazing of varying thickness, ventilation and acoustic fencing. The report concludes that with appropriate double glazing, the majority of the development would have acceptable internal noise levels even with an open window. However for plots 6-9 an acceptable level of internal noise would only be achieved with windows closed. The report outlines that the alternative ventilation system as proposed under the heat recovery ventilation system would provide a suitable alternative method of ventilation for these properties. Based on this, no properties would suffer from unacceptable internal noise levels which is in accordance with PPG24.
- 6.11.4 In respect of gardens, the report recommends a 3m acoustic fence along the south boundary of the site to reduce noise into gardens. The Environmental Health Manager agrees that the fence is likely to reduce the noise to satisfactory levels in outside amenity areas. However, in the rear garden of plot 9 this is considered a borderline case for successful mitigation since during the day only certain parts of the garden are likely to be below the recommended standard.
- 6.11.5 I consider that whilst it is a borderline case, the noise experienced within the rear garden would not be intolerable and clearly there are other properties nearby which no doubt have a similar experience. Also, any person looking to move into the property would be aware of the situation. This is a balanced issue, but I do not consider it is grounds to refuse the application especially bearing in mind the Environmental Health Manager does not raise an objection.
- 6.11.6 Therefore, subject to conditions securing appropriate glazing, ventilation and the acoustic fence I consider future occupants would have an acceptable standard of residential amenity.

6.12 Highways & Parking

- 6.12.1 Kent County Council Highways Services were consulted and have raised no objections to this proposal. They have fully considered the proposal in terms of the parking numbers, access into the site and general highway safety matters within the site and on surrounding roads. A total of 16 car parking

spaces are proposed, with all but plots 5 and 6 having two spaces each. Although there would be room to park 2 cars for these properties overhanging the access road but not blocking it. There are currently no local parking standards, however I consider this level of parking is acceptable bearing in mind PPG13 objectives of promoting more sustainable transport choices. The site is at a sustainable location, with good access to essential facilities, on foot or by public transport.

- 6.12.2 Conditions have been requested to secure the parking and turning areas, pedestrian visibility splays at driveways and closure of the existing access on the A20 which can all be secured by condition. They have also requested that the footway from Franklin Drive is extended to the site entrance. I consider this would be beneficial, however I do not consider this is essential as there is enough space for pedestrians and vehicles to pass one another safely. Therefore its requirement would not pass the test for conditions. However, the applicant has confirmed that they will seek to provide this in conjunction with the Highways Authority through a Section 278 Agreement under the Highways Act as the land for the extended footway is outside the application site and upon Kent Highways land, which can be an informative. Within the site there is insufficient room for a footway but enough space for pedestrians and vehicles to pass one another safely. I consider the provision of landscaping is important to this scheme rather than footways which are not essential within the site.
- 6.12.3 I note some residents have raised concerns regarding increased traffic in the area and parking on roads. However, I consider that the local road network is capable of accommodating the traffic associated with nine new houses and this is confirmed with no objections being raised by Kent Highways. I am therefore satisfied that the proposal would not give rise to any highway safety concerns, and as such, I see no reason to object to this proposal on this basis.
- 6.12.4 Boxley Parish Council have requested a Section 106 payment towards local highway improvements and have referred to a fixed crossing point at Provender Way to allow safe pedestrian movements across this road which they consider is unsafe due to increased traffic on local roads. They consider residents of Franklin Drive use the minor shopping centre which means driving down Provender Way. Whether future residents would use this road is not certain, however, I do not consider it is reasonable or necessary to request that the developer provides a financial contribution for this development of nine houses. As such, I do not consider such a financial contribution would pass the tests for Section 106 agreements.

6.13 Other Matters

- 6.13.1 Issues raised by local residents and not addressed above include whether the cul-de-sac is a private road, drainage, restrictive covenants, potential damage to garden fences, disturbance during construction and the status of the land by the entrance access.
- 6.13.2 As stated above, the cul-de-sac over which access would be gained is adopted and owned by Kent Highways who have confirmed this. Any damage to neighbouring property would be a matter between the land owners and is not a planning consideration nor are covenants upon land. Potential disturbance during construction is not a material planning consideration but informatives can be attached regarding working hours etc. The land at the entrance to the site is owned by Kent Highways, who have been formally notified under the application and who have confirmed this.
- 6.13.3 The sustainable construction report indicates that the development will achieve Code Level 3 of the Code for Sustainable Homes, which can be secured by condition to achieve a sustainable and energy efficient form of development.

6.14 Conclusion

- 6.14.1 For the above reasons, I consider that the development would not cause unacceptable harm to the character or appearance of the area. I consider the development is well designed in terms of buildings, hard surfacing and landscaping. The proposals would not have any unacceptable impacts upon ecology and the amenity of existing and future occupants would be acceptable. There are no highway objections and I therefore recommend the application for approval subject to the following conditions and informatives.

7 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. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008 and the

Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any order revoking and re-enacting that Order with or without modification) no development within Schedule 2, Part 1, Class(es) A, B, and C to that Order shall be carried out without the permission of the Local Planning Authority;

Reason: To safeguard the amenity of existing properties in accordance with policy CC6 of the South East Plan 2009, PPS1 and PPS3.

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

Reason: In order to secure a satisfactory form of development having regard to the topography of the site in accordance with policy CC6 of the South East Plan 2009, PPS1 and PPS3.

4. The development shall not commence until, written details and samples of the materials (which shall include timber boarding on plots 3, 4, 5 and 6) to be used in the construction of the external surfaces of the buildings and ragstone walling hereby permitted have been submitted to and approved in writing by the Local Planning Authority and the development shall be constructed using the approved materials;

Reason: To ensure a high quality appearance to the development in accordance with PPS1 and PPS3.

5. The development shall not commence until details of the proposed materials to be used in the surfacing of the access road, parking and turning areas and pathways within the site, have been submitted to and approved by the local planning authority. The development shall thereafter be undertaken in accordance with the subsequently approved details.

Reason: To ensure a high quality external appearance to the development pursuant to PPS1 and PPS3.

6. No development shall take place until details in the form of large scale drawings (at a scale of 1:20 or 1:50) of the following matters have been submitted to and approved by the Local Planning Authority;

- i) Details of the roof overhangs and eaves.
- ii) Details of windows and doors and recesses/reveals.
- iii) Details of the soldier courses.
- iv) Details of the brick plinths

The development shall thereafter be undertaken in accordance with the subsequently approved details.

Reason: To ensure a satisfactory external appearance to the development in the interests of the visual amenity and character of the surrounding area in accordance with PPS1 and PPS3.

7. The approved details of the parking/turning areas shall be completed before the commencement of the use of the land or buildings hereby permitted and shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008 and the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them;

Reason: Development without adequate parking/turning provision is likely to lead to parking inconvenient to other road users and in the interests of road safety pursuant to policy T13 of the Maidstone Borough-wide Local Plan 2000.

8. The development shall not commence until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping, using indigenous species. The scheme shall be designed using the principles established in the Council's adopted Landscape Character Assessment and Landscape Guidelines. The submitted scheme shall include the following;

- i) details of all existing trees and hedgerows on the site clearly indicating those to be removed and those to be retained;
- ii) details of the species, size, density and location of all new planting within the site;
- iii) tree, hedge and shrub planting lining both sides of the new access road;
- iv) a 3m landscape strip with tree, hedge and shrub planting along the south boundary of the site;
- v) climbing plants or other planting provided on the outside, south side of the acoustic fence along the south boundary of the site;
- vi) details of the provision of bird and bat boxes and the provision of bat and swift bricks within the development.

Reason: No such details have been submitted and to ensure a satisfactory visual appearance to the development pursuant to policy ENV6 of the Maidstone Borough-wide Local Plan 2000 and in the interests of biodiversity and ecology pursuant to

PPS9.

9. 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(s) or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation;

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

10. The development shall not commence until, details of all fencing, walling and other boundary treatments, including the acoustic fence have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details before the first occupation of the building(s) or land and maintained thereafter;

Reason: To ensure a satisfactory appearance to the development and to safeguard the enjoyment of their properties by existing and prospective occupiers in accordance with policy CC6 of the South East Plan 2009, PPS1 and PPS3.

11. Before plots 1, 3 and 4 hereby permitted are first occupied, all proposed first floor rear bathroom/toilet window(s) shall be obscure glazed and 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 existing and prospective occupiers in accordance with policy CC6 of the South East Plan 2009, PPS1 and PPS3.

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

Reason: In the interest of pollution, flood prevention and biodiversity interests pursuant to PPS9, PPS23 and PPS25.

13. Removal of any existing trees or hedgerows containing nesting birds shall take place outside of the bird-breeding season (generally March to August).

Reason: In the interests of biodiversity and ecology pursuant to PPS9.

14. The development shall not commence until details of the compensation hibernacula for reptiles has been submitted to and approved in writing by the Local Planning Authority, which shall include use of materials from the existing rockery at the site. The approved details shall be provided within 7 days of demolition commencing on the existing rockery. Any deconstruction of the existing rockery shall only be undertaken by hand during June or July unless otherwise agreed in writing by the Local Planning Authority;

Reason: In the interests of biodiversity and ecology pursuant to PPS9.

15. The developer shall arrange for a watching brief by a trained bat ecologist to be undertaken during the initial phases of any demolition works;

Reason: In the interests of biodiversity and ecology pursuant to PPS9.

16. The dwellings shall achieve a minimum of Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that a minimum of Code Level 3 has been achieved.

Reason: To ensure a sustainable and energy efficient form of development in accordance with Kent Design 2000 and PPS1.

17. The noise mitigation measures as outlined in the 'PPG24 Assessment Concerning Road and Rail Noise' report received on 15th November 2010, including glazing, mechanical ventilation and acoustic fencing shall be carried out before the first occupation of the building(s) or land and maintained thereafter;

Reason: To provide an acceptable standard of amenity for future occupants in accordance with PPS1, PPS3 and PPG24.

18. The development hereby permitted shall not be occupied until the existing access onto the A20 in the southwest corner of the site has been permanently closed to vehicular traffic;

Reason: In the interests of road safety in accordance with PPG13.

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

Drawing nos. 100203/1/01(RevA), 100203/2/01(RevB), 100203/3/01(RevB), 100203/3/02(RevA), 100203/5/01(RevB), 100203/7/01(RevB),

100203/8/01(RevB), 100203/9/01(RevB), 100203/9/02, 100203/L/01(RevB), 100203/L/02(RevC), 100203/L/03(RevB), A4 site location plan and 5639se-01 received on 21st October 2010, Ecology Assessment and Noise Assessment received on 25th November 2010 and Reptile Survey and Bat Survey received on 11th January 2011.

Reason: To ensure the quality of the development is maintained, to prevent harm to the residential amenity of existing and prospective occupiers and in the interest of biodiversity and ecology pursuant to policy CC6 of the South East Plan 2009, PPS1, PPS3, PPS9 and PPG24.

Informatives set out below

A new pavement should be agreed with Kent County Council within the cul-de-sac immediately west of the site (Franklin Drive) under a Section 278 Agreement of the Highways Act 1980 and should be provided before the first occupation of the building(s) or land in the interests of highway and pedestrian safety in accordance with PPG13.

Attention is drawn to Sections 60 and 61 of the Control of Pollution Act 1974 and to the Associated British Standard Code of practice BS5228:1997 for noise control on construction sites. Statutory requirements are laid down for control of noise during works of construction and demolition and you are advised to contact the Environmental Health Manager regarding noise control requirements.

Clearance and subsequent burning of existing woodland or rubbish must be carried out without nuisance from smoke, etc. to nearby residential properties. Advice on minimising any potential nuisance is available from the Environmental Health Manager.

Plant and machinery used for demolition and construction shall only be operated within the application site between 0800 hours and 1900 hours on Mondays to Fridays and between 0800 hours and 1300 hours on Saturdays and at no time on Sundays and Bank Holidays.

No vehicles may arrive, depart, be loaded or unloaded within the general site except between the hours of 0800 and 1900 Mondays to Fridays and 0800 and 1300 hours on Saturdays and at no time on Sundays or Bank Holidays.

You are advised to ensure that the appointed contractor(s) is/are registered with the 'Considerate Constructors Scheme' and that the site is thereafter managed in accordance with the Scheme. Further information can be found at www.considerateconstructorscheme.org.uk

No development shall commence until a scheme for the use of wheel cleaning, dust laying and road sweeping equipment, have been submitted to and the scheme approved in writing by the local planning authority. The approved scheme shall be

implemented in its entirety once development has commenced, for the duration of demolition/construction works at the site.

The developers shall provide adequate space within the application site for the parking/turning/unloading of contractors vehicles before any works commence on site. Such space shall thereafter be maintained during the construction process where practicable.

There shall be no burning of waste materials on site.

The provision of 'swift bricks' on the external faces of the buildings and the provision of bat boxes should be employed in the interest of nature conservation and biodiversity enhancement.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and the South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.



27.01.2011

55

27.01.2011

56

27.01.2011

57

27.01.2011

58

30.06.2010

59

27.01.2011



60

27.01.2011

61

27.01.2011

62

27.01.2011

63

30.06.2010

64

30.06.2010

65

30.06.2010



69

30.06.2010

67

27.01.2011

68

27.01.2011

Representations:

(In response to the recent consultation on the Bat and Reptile Reports) –

Boxley Parish Council:

“Reports noted but previous wish to see application refused reiterated.”

CPRE Maidstone:

- Replacement reptile hibernaculum should be incorporated into a condition should permission be granted.
- Continue to oppose the application.

Officer Comment:

The reptile mitigation measures would be secured under condition 14 of the recommendation.

RECOMMENDATION

My recommendation is unchanged:

GRANT PLANNING PERMISSION subject to conditions

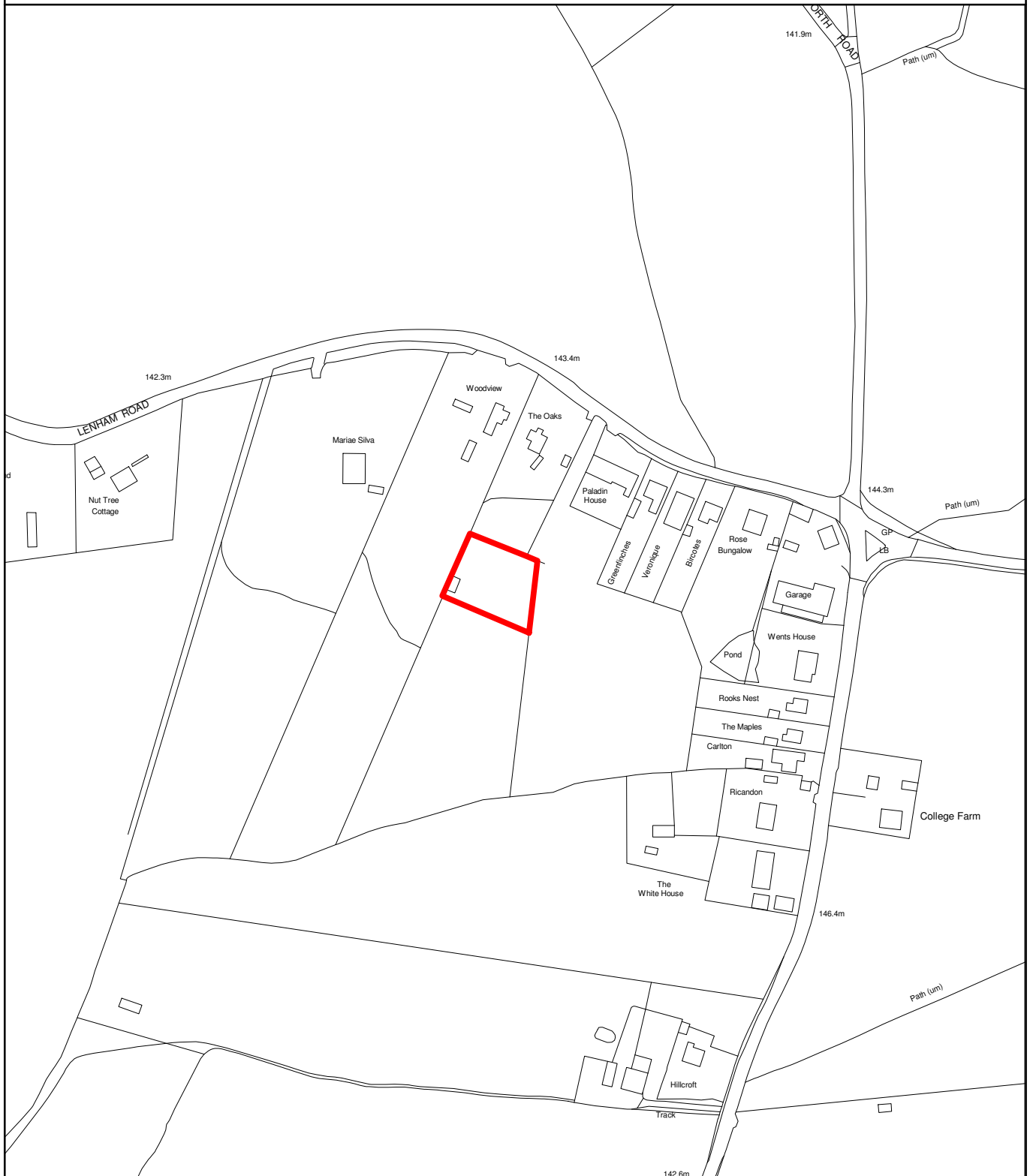
Agenda Item 15

THE MAIDSTONE BOROUGH COUNCIL

PLANNING APPLICATION NUMBER: MA/10/1892

GRID REF: TQ8450

THE OAKS, LENHAM ROAD,
KINGSWOOD.



This copy has been produced specifically for Planning and Building Control Purposes only. No further copies may be made. Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationary Office ©Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. The Maidstone Borough Council No. 1000019636, 2011. Scale 1:2500



Rob Jarman
Head of Development Management

APPLICATION: MA/10/1892 Date: 25 October 2010 Received: 29 October 2010
APPLICANT: Mr & Mrs C Wallis
LOCATION: THE OAKS, LENHAM ROAD, KINGSWOOD, MAIDSTONE, KENT,
ME17 1LU
PARISH: Ulcombe
PROPOSAL: Change of use of land from agricultural to land used for the keeping
of horses and the erection of stables, tack room and tractor shed.
AGENDA DATE: 3rd February 2011
CASE OFFICER: Amanda Marks

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

- it is contrary to views expressed by the Parish Council

1. POLICIES

Maidstone Borough-Wide Local Plan 2000: ENV6, ENV28, ENV46
The South East Plan 2009: CC1, CC6, C4, NRM5
Government Policy: PPS1, PPS7

2. HISTORY

MA/09/0412: Certificate of Lawfulness for an Existing Use or Development (CLEUD)
Use of land for garden/leisure purposes in excess of 10 years. Refused. Appeal
dismissed on 15/6/10

3. CONSULTATIONS

3.1 **Ulcombe Parish Council:** object on the following grounds;

“With reference to the above planning application please could you note that Ulcombe parish council wishes to see the application refused because they are concerned that the acreage included within the application is insufficient to support one or more horses and they concur with the view expressed by the Maidstone Committee of CPRE (letter dated 25 Nov 2010) regarding the unsuitability of the proposed hayloft.”

4. REPRESENTATIONS

- 4.1 No responses from residents
- 4.2 Maidstone CPRE: Consider the proposed building to be excessive in height, visually intrusive from the rear and feel that the hayloft is unnecessary and an out of date way of storing hay.

5. CONSIDERATIONS

5.1 Background

An application for a Certificate of Lawfulness was previously refused on part of the application site. The applicant was seeking lawful use of the land for garden/leisure purposes. A public inquiry concluded that, whilst the applicant had been using the land for leisure activities, the lawful use was still agricultural and so, therefore, the extension of the residential planning unit was unlawful. Comments were received at the time from this Council's agricultural advisor over the quality and history of the land; it is undisputed that agricultural use of the land ceased before 1991.

5.2 Site Description

The site is located in the open countryside as defined in the Maidstone Borough-Wide Local Plan 2000. The site is located on the southern side of Lenham

Road approximately 435m to the east of the village envelope of Kingswood. The main dwelling is one of several which form ribbon development on one of the main roads approaching Kingswood Village. The site is approximately 0.1 hectare in size, set to the rear of the residential curtilage and is to be portioned off from a field of approximately 0.6 hectares. The land is accessed via an existing shared access off Lenham Road between The Oaks and Palladin House to the east. There are trees within the application site on the site boundaries. There is a wooded area to the south of the application site where planting has been undertaken by the applicant in the desire to create a woodland walk for their own recreational enjoyment. The proposed development is several metres from the start of this wooded area. The residential garden to the west belonging to the property 'Woodview' also contains a much larger wooded area in the rear half of the curtilage.

5.3 The Proposal

- 5.3.1 Planning permission is sought for the erection of a building in the countryside to comprise two stables, a tack room and a tractor shed. An area contained in the roof space will be utilised as a hay store. The application also seeks consent for

the change of use from agricultural land to land for the keeping horses. The area of land is 0.1 hectare. The applicant owns 'The Oaks' which is one of the properties that fronts Lenham Road to the north of the site and the development is for their private use only.

- 5.3.2 The building would be located on the westernmost side of the site approximately 1 metre from the site boundary. The building would be inward facing to the east and accessed via an extended driveway; details also show a parking space for a horse box close to the residential curtilage of The Oaks. The surface of the new access track will comprise stone chippings. The southern boundary would contain a post and rail fence with a field gate into the remaining agricultural land. There are a number of existing trees on the north, east and west boundaries. Boundary treatment and a visual analysis will be discussed in more detail later in this report. To the east is a residential curtilage and to the west agricultural land which was formerly within the ownership of the current applicant. There is an existing outbuilding on the land which will need to be demolished for the new building. The existing building is approximately 2m in height and of a smaller footprint, it is old and of deteriorating quality and not required by the applicant for any useful purpose.
- 5.3.3 The proposed building would be constructed from timber and finished with a plain clay roof tile. The footprint of the building would be roughly 'L' shaped and 12m in length x 9m depth including an area of hardstanding of 4m x 9m within this footprint. The tractor store will be enclosed on three sides and supported at the front where it is open by an oak frame. The tiled roof will be fully hipped on the southern elevation with a barn hip on the northern elevation. The roof height varies from 4.2m to 5.7m.

5.4 **Principle of the Development**

- 5.4.1 New buildings in the countryside are generally unacceptable in principle unless it can be demonstrated that they will not harm the character and appearance of the area or the amenities of surrounding occupiers and fall within the remit of Policy ENV28 or another relevant linked policy within the Maidstone Borough-Wide Local Plan 2000. Equestrian related development is acceptable in principle as an exception to the general theme of restraint and the detail is governed by the provisions of Local Plan Policy ENV46. I will therefore consider this proposal against the criteria set out in this Policy.
- 5.4.2 As previously mentioned, these are private stables to be used in conjunction with the adjacent house. This is acceptable in principle as a rural development and means that care and security can be readily provided (Policy ENV46(7)). This can be subject to a condition.

5.4.3 Policy ENV46 (1 &2) suggests a preference for using existing buildings or grouping new buildings with existing. There is only one existing building on this land which is not capable of being used as a stable. As the existing building will be demolished and the proposed located in the same area I consider this to be within the spirit of the Policy which aims to minimise visual impact.

5.5 **Visual Impact/Landscaping**

5.5.1 The land on which the outbuilding is located is level and views of the building are severely restricted. The woodland on the western boundary and in the neighbour's garden shields views both into and out from the application site; the trees are approximately 7 metres tall and form a dense barrier on the site boundary. The boundary to the east is more open across to the adjoining agricultural land as the planting consists of a mix of tree species such as silver birch and conifers. To the south the views are open across the remainder of the applicant's agricultural land, there are no obvious public vantage points looking inward. I note the CPRE are concerned about the impact of the building from the south, which could be softened with landscaping.

5.5.2 The building is approximately 15m from the rear curtilage of the host dwelling and between this and the residential land would be positioned the access track and horse box parking space. Due to the features of the site, the severely restricted views and the appropriate scale, design and materials to be used, I do not consider the building would be harmful to the countryside or prominent in the landscape. The development is capable of falling within the aspirations of ENV46 (3&4) with regard to impact on the countryside.

5.6 **Residential Amenity**

The applicant's dwelling is located 60m to the north; the dwelling to the north north-east (Palladin House) is approximately 70m away and the dwelling to the north north-west (Woodview) is approximately 60m away. Due in part to the boundary treatment and the distances involved from the proposed building to neighbouring dwellings, I am satisfied that the proposal will not be detrimental to the amenities of these neighbouring properties by virtue of noise or smell. I am therefore satisfied that the proposal accords with Policy ENV46 (10) with regard to impact on neighbouring properties.

5.7 **Highways**

The existing access is off Lenham Road between The Oaks and Palladin House. The two residential boundaries have close board fencing which tapers in height as it gets nearer to the back of the public highway. There is a field gate set back from the highway by approximately 6m. The access is located on a slight outside bend in the road which affords adequate visibility for the limited intensity

of the proposed use. The stables are for private use only and provide for two horses, there is ample turning area within the site for a vehicle and horse box and it is considered that there should be limited vehicle movements from the use. The stables have easy access to the countryside and local rural lanes which accords with the criteria of Policy ENV46 (8 & 9).

5.8 Ecology

There are no obvious signs or evidence of ecological interest in the vicinity and no ponds within 500m. The building will be placed partially on the footprint of the existing outbuilding and the land is substantially open grassland. The trees are not considered to be close enough to be affected by this type of development. I do not consider that under the Standing Advice from Natural England that an ecological survey should be undertaken. In accordance with Policy ENV46 (11) I consider that the proposal will not have an adverse impact on nature conservation interests.

5.9 Other issues

- 5.9.1 Ulcombe Parish Council have raised objection with regard to the size of the site being sufficient to support two horses. The British Horse Society issues guidance on the appropriate size of land required. They suggest an average of 1 hectare per two horses. However, they also state that there are numerous variables to this ratio dependent on type of management i.e. is the land used for permanent grazing? is it turnout land for stabled horses? is it supplementary feed as opposed to solely grazing land? In this instance the land is supplementary and I do not consider a refusal is justifiable on the basis of inadequate land size – particularly as the applicant owns the remaining field area which could also ultimately be used for exercising the horses. I therefore consider the proposal accords with Policy ENV46 (6) – safety and comfort of horses.
- 5.9.2 Ulcombe Parish Council also support the CPRE comments regarding a hayloft. With regard to the hayloft, I do not consider this to be out of character or excessively increase the bulk of the stable building and therefore consider it to be acceptable.
- 5.9.3 It is proposed to deal with foul sewage by way of a Klargesters cess pool which would be emptied by a contractor. Similarly manure/bedding waste would be stored in a contained bund and removed from site by contractors at a minimum of every 6 months. Details of the location of the cesspool and area for manure storage have not been submitted, I consider it acceptable to ask for these by way of condition (Policy ENV46(5)).

5.10 Conclusion

I have considered this proposal against the criteria set out in Policy ENV46 and as a result I consider the proposal acceptable in principle and not to the detriment of the character of the countryside or nearby residents.

6 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: 20/23/01 and 20/23/02

Reason: In the interests of the environment and to prevent harm to the residential amenity of neighbouring occupiers in accordance with policy ENV28 of the Maidstone Borough Wide Local Plan 2000.

3. The stables hereby permitted shall be used only for the accommodation of horses that are kept for private purposes and which are in the ownership of persons living in the adjacent dwelling 'The Oaks';

Reason: To ensure that adequate care and security are provided to the horses. This is in accordance with Policy ENV46 of the Maidstone Borough -Wide Local Plan 2000.

4. The development shall not commence until there has been a scheme submitted to and approved in writing by the Local Planning Authority 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 measures for their protection in the course of development and a programme for the approved scheme's implementation and long term management. The scheme shall be designed using the principles established in the Council's adopted Landscape Character Assessment and Landscape Guidelines;

Reason: No such details have been submitted. This is in accordance with Policy ENV46 of The Maidstone Borough-Wide Local Plan 2000 and Policy NRM5 of The South East Plan 2009.

5. All planting seeding and 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(s) or the completion of the development, whichever is sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation;

Reason: To ensure a satisfactory setting and external appearance to the development. This is in accordance with Policy ENV46 of The Maidstone Borough-Wide Local Plan 2000 and Policy NRM5 of The South East Plan 2009.

6. The development shall not commence until a scheme for the disposal of run-off from the stable, hardstandings , manure heaps, stable washings and hay soaking areas has been submitted to and approved by the Local Planning Authority and these works shall be completed in accordance with the approved details before the first use of the building and land;

Reason: In the interests of the environment and in accordance with Policy ENV46 of the Maidstone Borough-Wide Local Plan 2000.

7. The development shall not commence until details of the means of storage prior to disposal and the method of disposal of faecal, bedding or other waste arising from the animals houses within the development have been submitted to and approved in writing by the Local Planning Authority. Such waste material arising from the animals shall be disposed of solely in accordance with the approved details;

Reason: In the interests of preventing contamination and in accordance with Policy ENV46 of the Maidstone Borough-Wide Local Plan 2000.

8. There shall be no external lighting installed on the site without the prior written approval of the Local Planning Authority;

Reason: In the interests of visual and residential amenity and in accordance with Policy ENV28 of the Maidstone Borough-Wide Local Plan 2000.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and the South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.

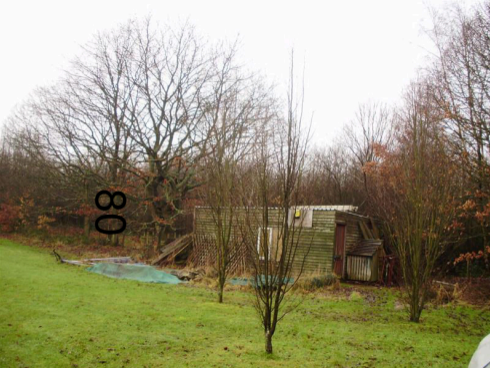
78



79

A gravel driveway leads from the foreground towards a house in the background. On the left, a wooden gate with a crisscross pattern is partially open. To the right of the driveway, a wooden fence runs along the property line, with a large, dense green bush in the foreground. The house has a red roof and yellow walls. The background is filled with bare trees and a tall evergreen tree under a grey, overcast sky.

80



81



82

A landscape photograph showing a wide, green grassy field in the foreground. In the middle ground, there is a dense line of trees, including several tall, thin, bare deciduous trees and some evergreens. The background is a pale, overcast sky. The number '82' is printed in a large, black, sans-serif font on the left side of the image, partially overlapping the trees.



84

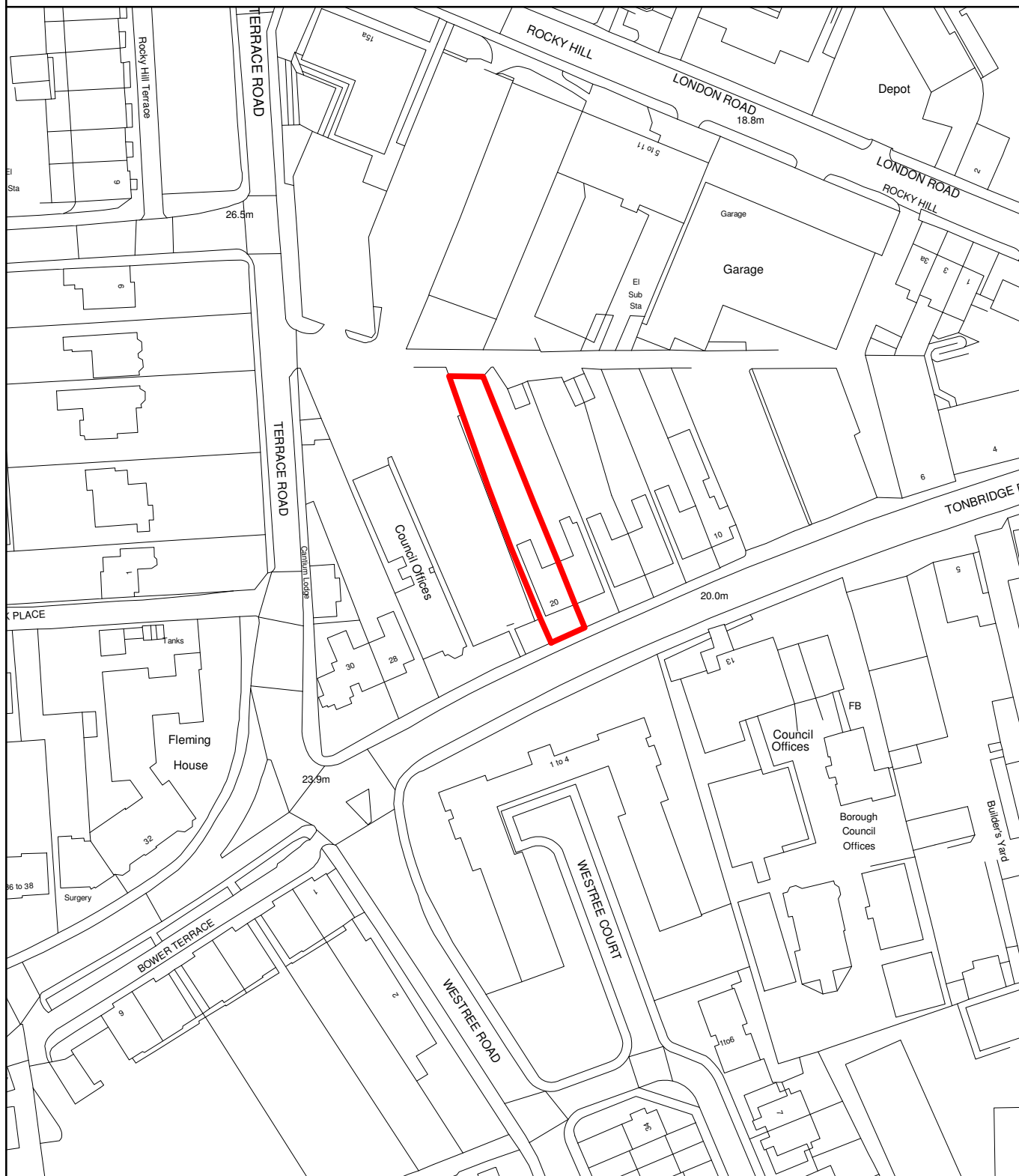


THE MAIDSTONE BOROUGH COUNCIL

PLANNING APPLICATION NUMBER: MA/10/2008

GRID REF: TQ7555

20 TONBRIDGE ROAD,
MAIDSTONE.



This copy has been produced specifically for Planning and Building Control Purposes only. No further copies may be made. Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationary Office ©Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. The Maidstone Borough Council No. 1000019636, 2011. Scale 1:1250



Rob Jarman
Head of Development Management

APPLICATION: MA/10/2008 Date: 16 November 2010 Received: 6 January 2011
APPLICANT: Mr I Edwards, Sanciuedwards Beauty Rooms Ltd
LOCATION: 20, TONBRIDGE ROAD, MAIDSTONE, KENT, ME16 8RT
PARISH: Maidstone
PROPOSAL: Change of use of first and second floors to holistic & beauty therapy clinic as shown on site location plan and floor plans received 16/11/10 and marketing agent letter received 06/01/11.
AGENDA DATE: 3rd February 2011
CASE OFFICER: Kathryn Altieri

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

- Proposal is a departure from the Maidstone Borough Wide Local Plan 2000 as it involves a non-B1 use in a designated employment area under Policy ED2

1. POLICIES

- Maidstone Borough-Wide Local Plan 2000: ED2, T13
- South East Plan 2009: CC6, BE1, T4
- Government Policy: PPS1 - Delivering Sustainable Development, PPS4 - Planning for Sustainable Economic Growth, PPG24 - Planning and Noise

2. HISTORY (1974+)

- MA/79/0291 - Alterations and extension to existing offices - approved/granted with conditions
- MA/75/1445 - Illuminated sign - withdrawn

3. CONSULTATIONS

- **MBC Regeneration and Economic Development Manager** has confirmed that there is a significant amount of vacant office space within the town centre area:

"There are currently sixty properties in the town centre area totalling some 30,708m² of vacant office stock."

- **MBC Environmental Health Officer:** Raised no objections subject to conditions/informatives;

"The site is in a mixed residential area and the background noise is fairly high due to the traffic on this busy road. One of the supporting documents with this application states that "no loud music or noisy equipment will be used on site". It appears from the plans supplied that staff and customers will be parking at the rear of the property, entering this parking area from Terrace road. One concern might be the loss of amenity due to fumes and noise from vehicle movements at the rear of the property, but I suspect that this would be unlikely since there is a relatively high background noise during the day and there are no complaints on Environmental Health's complaints system dating back to when the site was used as offices. Restrictions on hours would probably be the best way to ensure that nearby residents are protected from disturbance from noise etc.

Prior to any conversion activities the property should be checked for the presence of asbestos and any found should only be removed by a licensed contractor.

In addition to the above I note that no details appear to have been provided on how waste will be stored and disposed of, this information should be required in the future.

Recommended conditions:

No activity in connection with the use hereby permitted shall be carried out outside the hours of 0900 to 1800hrs Mondays to Fridays and 0900 to 1800hrs on Saturdays and not at any time on Sundays, Bank or Public Holidays;

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

Prior to the commencement of the development, details of satisfactory facilities for the storage of refuse on the site shall be submitted to and approved in writing by the LPA and the approved facilities shall be provided before the first occupation of the building(s) or land and maintained thereafter.

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

Recommended informatives:

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.

Any redundant materials removed from the site should be transported by a registered waste carrier and disposed of at an appropriate legal tipping site."

4. REPRESENTATIONS

4.1 None

5. CONSIDERATIONS

5.1 Site description

5.1.1 The application site relates to a rectangular shaped plot that is occupied by a semi-detached three storey office building that is set back more than 5m from Tonbridge Road. Located some 55m to the east of the junction with Terrace Road, the property is within the urban area of Maidstone. The ground floor office space of 20 Tonbridge Road is occupied by 'Macmillan Cancer Support' and the two upper floors are currently vacant. The three nearest buildings to the north-east of the site are occupied by flats (14, 16 and 18 Tonbridge Road). The surrounding area is generally a mixture of residential and business accommodation of differing style, scale and age and Maidstone West train station is some 130m to the east of the site.

5.1.2 The land immediately to the south-west of the site is undeveloped but does have planning permission for a budget hotel (MA/08/1789).

5.1.3 The site does falls within an 'area of economic activity' (ED2 [xxvi]), as shown by the Maidstone Borough Wide Local Plan 2000, which designates the site as suitable for uses with Use Class B1.

5.2 The Proposal

5.2.1 The proposal is solely for the change of use of the first and second floors of 20 Tonbridge Road from office space (B1 Use) to a holistic and beauty therapy clinic (sui generis Use), employing around ten part-time and full-time members of staff. These two floors are currently vacant. Under this application, there would be six therapy rooms for such treatments as massages, facials, manicures/pedicures, spray tanning and waxing. The proposal involves no external alterations to the building and there would be seven car parking spaces available to the rear of the building.

5.2.2 The total floor area of the two floors subject to this planning application measures some 100m².

5.3 Planning Issues

Principle of development

5.3.1 The application has been advertised as a departure from the Development Plan because the proposed use (Sui generis Use) does not fall within Class B1 Use. Indeed, the application site is within an area designated for employment purposes (B1 Use) under saved Policy ED2 of the Maidstone Borough Wide Local Plan 2000. The Policy states;

'Planning permission will not be granted to redevelop or use vacant business, industrial, storage or distribution sites or premises for non-employment purposes unless the retention of the site or premises for employment use has been explored fully without success.'

5.3.2 Central government guidance and advice has changed since the Maidstone Borough Wide Local Plan (2000) was adopted. Therefore, when determining this application, it is appropriate to give weight to the more recent central government guidance and assess whether this would override the existing local policy.

5.3.3 However, Planning Policy Statement 4 – 'Planning for the Sustainable Economic Growth' (December 2009) supersedes policy ED2 of the Development Plan and does set out the government objectives for national sustainable growth whilst broadening the definition of 'economic development' to;

"For the purposes of the policies in this PPS, economic development includes development within the B Use Classes, public and community uses and main town centre uses. The policies also apply to other development which achieves at least one of the following objectives;

- *Providing employment opportunities;*
- *Generates wealth; or*
- *Produces or generates an economic output or product.*

5.3.4 I am satisfied that the proposed change of use would generate employment opportunities and as such, is identified as a form of economic development. I appreciate that it would be a relatively low level of employment, but it should be put into context that this proposal is only concerned to two floors (100m²) of a modestly sized three storey building.

5.3.5 Policy EC11 of PPS4 is of most relevance to this proposal, as it relates to the determination of planning applications for economic development not in accordance with an up to date Development Plan. This policy states;

"In determining planning applications for economic development other than for main town centre uses which are not in accordance with the development plan, local planning authorities should:

a. weigh market and other economic information alongside environmental and social information

b. take full account of any longer term benefits, as well as the costs, of b. development, such as job creation or improved productivity including any wider benefits to national, regional or local economies; and

c. consider whether those proposals help to meet the wider objectives of the development plan"

Marketing information from applicant

5.3.6 Due to this employment designation, the applicant was asked to demonstrate that the retention of the site for B1 Use based employment purposes has been fully examined, without success.

5.3.7 The applicant's supporting information demonstrates that the premises have been vacant since the 23rd April 2009; and so from the end of January 2011 these offices would have been empty for some twenty-one months. Furthermore, 'Harrisons Chartered Surveyors' have thoroughly marketed these premises since October 2009, by way of a large 'To Let' sign along Tonbridge Road (still in position at time of writing this report), extensively using mailing lists and advertising the property on their own website as well as a national website ('Estates Gazette'). The applicant first showed interest in these premises in November 2010 and to date no other interest has been shown by any other party.

5.3.8 The chartered surveyors ('Harrisons') also refers to research carried out by 'Focus (Costar)' in December 2010 which states that there is currently 49,332m² of vacant office accommodation available in Maidstone.

Assessment of supporting evidence

5.3.9 By reason of the amount of vacant office space, the submitted evidence does appear to show an over-provision of office accommodation within Maidstone town centre. Furthermore, work carried out to date, by GVA Grimley on behalf of the Council (Employment Land Review - September 2009) showed that there was an excess of 50,000m² of vacant office space within the borough of Maidstone; and that 3,268m² of this was within the Tonbridge Road/London Road area. I consider this study to be a material consideration in the determination of this planning application. No interest has been shown in this accommodation being used as office space since April 2009 and what with the current economic climate, there is little indication that this form of economic growth is imminent.

5.3.10 In addition to this, the Council's Regeneration and Economic Development Manager confirmed that there is 30,708m² of vacant office stock within the town

centre area (details given 10th Jan 2011), which is similar to the figure given by 'Harrisons Chartered Surveyors' (that being some 49,332m²). This figure includes four sites within 200m of 20 Tonbridge Road that, in total, have some 3651m² of vacant office space available. These sites are Concorde House (London Road), London House (London Road), 4 Tonbridge Road and 2 Westree Road.

- 5.3.11 Together with the existing over supply of office accommodation, there are several outstanding planning permissions that will further expand the provision within the town. As an example, the Springfield site will have three purpose built blocks equating to some 16,500m². This shows that there is a clear over-supply of poor quality accommodation; and those interested in re-locating to, or enlarging within the town are seeking more high specification office space.
- 5.3.12 There has been a trend over recent years for moving away from office accommodation to residential in this area for viability reasons. For example, part of Bower Terrace (itself designated as B1 employment under policy ED2) was granted planning permission for student and housing accommodation under MA/05/1251 despite the employment designation.
- 5.3.13 I am therefore happy that there is up-to-date economic information that supports an alternative use of the site and consider it appropriate to assess the potential viability of this proposal to provide employment within other sectors, in accordance with PPS4.
- 5.3.14 Therefore, whilst the application is technically a departure from the Development Plan, in that it would not provide B1 employment accommodation within the application site, it would, nonetheless provide employment which is suited to a town centre use, whilst falling within the broadened employment definition set out in PPS4. Therefore, on considering the supporting evidence, I consider this proposed change of use would be in accordance with policies EC1, EC10 and EC11 of PPS4. This together with the Council's research currently being undertaken, points towards the acceptability of alternative uses on this allocated site.

Impact upon the neighbours

- 5.3.15 The relatively low intensity of customer usage and the nature of this proposed business would result in a change of use that would not have a significant detrimental impact upon the neighbouring apartments to the north-east of the site (14, 16 & 18 Tonbridge Road), in terms of noise, disturbance, loss of privacy, outlook, daylight and sunlight. To elaborate on the issue of sound and disturbance, the majority of the treatments would not involve the use of noisy equipment that would have a detrimental impact upon the neighbours (i.e. massages, pedicures, facials, waxing and spray tanning). Furthermore,

Tonbridge Road is a busy, main route out of Maidstone centre and I consider the levels of noise generated by the proposed change of use would not cause a significant increase in disturbance to the neighbours, when compared to what is already generated by the large volume of traffic using Tonbridge Road.

5.3.16 Whilst it is considered that the treatments would not generate an unacceptable level of noise for adjoining neighbours, the general comings and goings of staff and customers could result in unacceptable levels of disturbance. I therefore consider it justified to impose a condition on restricting the opening hours of usage for this proposed change of use (09:00 and 20:00 Mondays to Fridays, 09:00 and 18:00 Saturdays and not at any time on Sundays or Bank or Public Holidays).

5.3.17 There has been no information submitted with regards to what level of ventilation from aerosols there would be, how this would impact upon the residential amenity of the neighbours and what storage facilities there are for refuse on the site. In the interest of neighbour amenity, I have therefore imposed conditions for these details to be submitted.

5.3.18 Therefore, subject to condition, I believe that this proposal would not have an adverse impact upon the amenity of neighbouring residential properties.

Impact upon the property and the streetscene

5.3.19 This proposal is for a change of use only and would not involve any external alterations to the building.

Impact upon parking and highway

5.3.20 Due to the nature of the proposed business and its low-level customer use per day, it would not significantly increase the volume of traffic to and from the site, enough to warrant refusal on highway safety grounds. Furthermore, there would be seven off-street parking spaces available for staff and customers behind the site and the property is within walking distance of the town centre and the various public car parks.

5.3.21 The premises are on the Tonbridge Road, a main route in and out of Maidstone that is well serviced in terms of bus routes and Maidstone West train station is within easy walking distance of the site. I therefore consider this proposal, because of its nature and sustainable location, would not have a significant impact upon the parking provision or generate a significant need; and nor would it have a detrimental impact upon highway safety.

6. Conclusion

6.1 I conclude that it is appropriate and justified to depart from the existing Development Plan and to give greater weight to the more recent guidance provided by Central Government (PPS4). I therefore recommend conditional approval of the application on this basis.

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 shall not commence until details of an extraction ventilation scheme to deal with particulates from aerosol spraying commensurate with the intensity of the scheme have been submitted to and approved in writing by the local planning authority. The development shall thereafter be undertaken in accordance with the subsequently approved details and maintained thereafter.

Reason: In the interest of residential amenity in accordance with PPS1.

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

Reason: No such details have been submitted and in the interest of amenity in accordance with PPS1.

4. No activity in connection with the use hereby permitted shall be carried out outside the hours of 09:00 and 20:00 Mondays to Fridays, 09:00 and 18:00 Saturdays and not at any time on Sundays or Bank or Public Holidays;

Reason: To safeguard the enjoyment of the occupiers of the neighbouring residential properties, especially 18a and 18b Tonbridge Road, in terms of noise and disturbance in accordance with PPS1 and PPG24.

Informatives set out below

1. The applicant should contact the Environmental Health Department, in order to fully comply with Health and Safety legislation on (01622) 602184.
2. Any redundant materials removed from the site should be transported by a registered waste carrier and disposed of at an appropriate legal tipping site.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and the South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.

30-11-2010

95



30 11 2010

TO LET

96



A street scene in a residential area. On the left, there are several multi-story brick houses with white window frames and bay windows. A small patch of snow is on the ground in front of the houses. In the center, a road with white lane markings and a double yellow line runs towards the background. A dark car is driving on the road. On the right, there is a sidewalk and a building with a blue sign. Bare tree branches are visible in the upper right corner. The sky is overcast.

97

30.11.2010

Item 16, Page 55

**20 TONBRIDGE ROAD,
MAIDSTONE, ME16 8RT**

Reference number: MA/10/2008

The reason for approval shown at the end of the report (*page 64*) should read;

"The proposed development would be a departure from the Development Plan, in that it would not provide B1 Use employment accommodation within the application site. However, the proposed change of use would not be prejudicial to its designation and is in accordance with PPS4 which supersedes policy ED2 of the Maidstone Borough Wide Local Plan 2000."

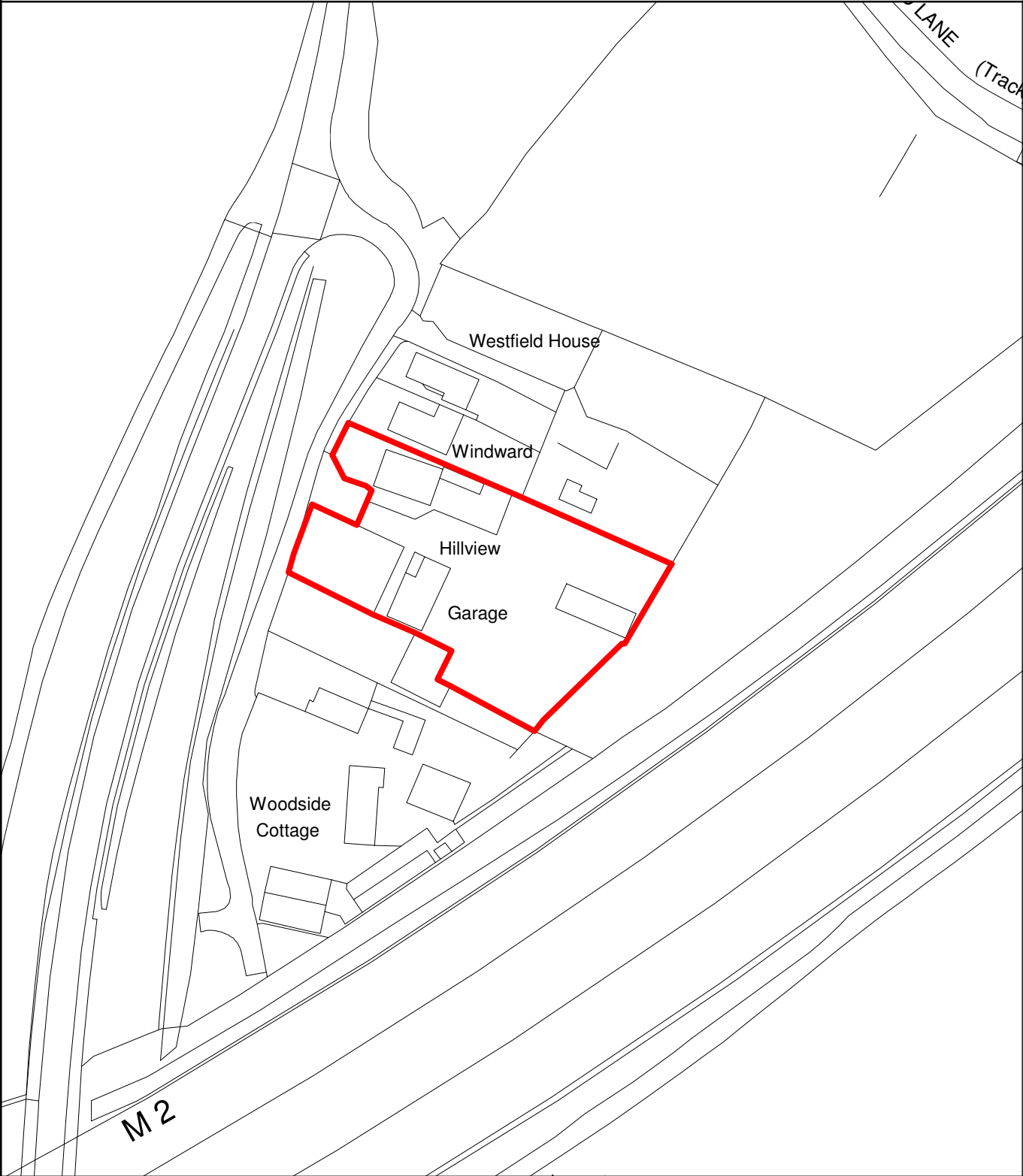
My recommendation remains unchanged.

THE MAIDSTONE BOROUGH COUNCIL

PLANNING APPLICATION NUMBER: MA/10/2065

GRID REF: TQ7861

HILLVIEW, OLD LIDSING ROAD,
LIDSING.



This copy has been produced specifically for Planning and Building Control Purposes only. No further copies may be made. Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationary Office ©Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. The Maidstone Borough Council No. 1000019636, 2011. Scale 1:1250



Rob Jarman
Head of Development Management

APPLICATION: MA/10/2065 Date: 13 December 2010 Received: 13 December 2010

APPLICANT: Mr Sword

LOCATION: HILLVIEW, OLD LIDSING ROAD, LIDSING, GILLINGHAM, KENT, ME7 3NH

PARISH: Boxley

PROPOSAL: Demolition of existing building and shed and erection of two new storage buildings as shown on the site location plan, existing block plan, proposed block plan and drawing number received 24th November 2010, and detailed block plan and design and access statement received 13th December 2010.

AGENDA DATE: 3rd February 2011

CASE OFFICER: Catherine Slade

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

- it is contrary to views expressed by the Parish Council

1. POLICIES

Maidstone Borough-Wide Local Plan 2000: ENV28, ENV35, ENV44, ED2, T21

South East Plan 2009: CC1, CC4, CC6, RE3, C4

Village Design Statement: Not applicable

Government Policy: PPS1 Delivering Sustainable Development, PPS4 Planning for Sustainable Economic Growth, PPS7 Sustainable Development in Rural Areas

2. HISTORY

- MA/10/1581 - An application for a Certificate of Lawful Development for a proposed development being single storey extensions to two existing buildings - APPROVED
- MA/09/2337 - Demolition and erection of a replacement building for existing building number 9 – APPROVED WITH CONDITIONS
- MA/09/0298 - Change of use of site from vehicle recovery depot to class B8 storage and distribution use with occupation of the dwelling 'Hillview' by a member of staff - APPROVED WITH CONDITIONS
- MA/95/1094 - Variation of condition (iii) of MA/87/1055 to allow the continued use of the site as a vehicle recovery operators depot with occupation of the dwelling 'Hillview' thereon by a member of staff engaged in that business - APPROVED WITH CONDITIONS
- MA/88/1348 - Change of use part of existing garage/stable block to cottage industry - light industrial - APPROVED WITH CONDITIONS

- MA/87/1055 - Use of the site with and including buildings thereon by new owners for family home and their own businesses as vehicle recovery operator - APPROVED WITH CONDITIONS
- MA/86/0161 - Development of site from former vehicle yard to garden for ex-dwelling and part to accommodate vehicles for existing small family haulage business - APPROVED WITH CONDITIONS
- 71/0409/MK2 - Erection of a building for storage use – REFUSED
- 68/0147/MK2 - Change of existing authorised usage to that of Transport Yard to accommodate six vehicles in connection with agricultural work – WITHDRAWN
- 65/0367/MK2 - Outline application for the parking of agricultural machinery vehicles - REFUSED
- 63/0393/MK2 - The erection of two bungalows and garages – REFUSED
- 63/0173/MK2 - Fencing and joinery works with office block - WITHDRAWN
- 63/0068/MK2 - Outline application for fencing and joinery factory - REFUSED

3. **CONSULTATIONS**

Boxley Parish Council: wish to see the application refused, and reported to Planning Committee on the following grounds:

The proposed new unit (number 4) will have, contrary to ENV28, ENV35 and ENV44) an adverse impact on the ALLI due to its bulk and size.

Concern is expressed about the proposed security lights as if not properly managed there will be an adverse impact on the neighbouring residential properties. The adjacent motorway is now dark between the hours of 2300 and 0500 and there is concern about the potential impact on motorway drivers.

The Planning Officer is asked to ensure that the bulk and height of the replacement building does not exceed the existing structure as this would have an adverse impact on the ALLI contrary to ENV35. If the replacement building is larger then the Parish Council wishes to see it refused.

Concern was raised about the proposed use and the Planning Officer is asked to ensure that it does not exceed Class B designation as the descriptions of the types of items to be stored indicate the introduction of large scale transport vehicles which are unsuitable for the existing highway infrastructure. The Planning Officer is asked to ensure that the access and egress to the site will be sufficient so as not to cause health and safety issues to road users.

Members felt that the addition of another larger building indicated significant new development that would possibly contravene policy T21 as there would be additional traffic generated.

The Planning Officer is asked to investigate the statement "The client is going to rent land to the east with a view to purchasing in the future" this area is prime agricultural land and this seems to indicate further development but it is not clear whether it is connected to this development.

If the Planning Officer is minded to agree the development then the Parish Council wishes to see the following conditions

- *No activity on the site outside the hours of 0800 – 1800 Monday to Friday, 0800 – 1400 Saturday and at no time on Sunday, Bank and Public holidays.*
- *No open storage shall take place on the site.*
- *The use hereby permitted shall only continue for so long as the dwelling known as Hillview (or any subsequent replacement) is occupied by an employee of the permitted use being carried on from the site.*

4. REPRESENTATIONS

Campaign to Protect Rural England: wish to see the application refused on the grounds that the proposed buildings are excessive in scale and would cause harm to the openness of the countryside. The concern is also raised that insufficient information has been submitted with regard to the use of the building, and that the development would not be sustainable.

5. CONSIDERATIONS

5.1 Site Description

- 5.1.1 The proposal site is the same as that of the previous applications and the site is currently in lawful B8 use conditional on the residential occupation of Hillview by an employee of the business operating out of the site.
- 5.1.2 The proposal site is occupied by buildings including Hillview, a detached bungalow in residential use, and a substantial detached building used for offices ancillary to the use of the land. In the rear of the site are various single storey storage buildings and structures to allow open storage of materials. Planning permission was granted for a storage and distribution use of the site and residential occupation of Hillview (subject to conditions) under MA/09/0298. The site is located in open countryside with the Maidstone Borough-Wide Local Plan (2000) designation of being within an Area of Local Landscape Importance (ALLI) in the Parish of Boxley.
- 5.1.3 The site is within a cluster of development on a wedge of land between the Old Lidsing Road to the west and the M2 to the south and east. The M2 is at approximately the same level as the surrounding land. A section of agricultural land (with a maximum width of 39.6m) runs between the site boundary and the M2, and is believed to be in the ownership of the Highways Agency.
- 5.1.4 The site is level and approximately 0.28 hectares in area comprising various buildings and areas of hardsurfacing. Landscaping on the site is limited to hedges to the north east and south east site boundaries. There is some

landscaping to the rear (south east) site boundary both within and outside the proposal site which screens the site from views from the M2. The proposed buildings are effectively screened from views from Old Lidsing Road, which is a private access serving Hillview and the adjacent properties, by existing buildings fronting onto the highway.

- 5.1.5 The neighbouring buildings include Woodside Cottage and associated buildings in use as a kennels to the south of the proposal site, and a pair of detached dwellings to the north, which are a minimum of approximately 36m from the closest part of the proposed development.

5.2 Proposal

- 5.2.1 The proposed development is the demolition of two existing storage buildings and the erection of two replacement buildings for the purpose of storage and uses ancillary to the lawful use permitted under MA/09/0298. The proposed replacement structures would comprise two detached buildings identical in scale, size and overall appearance. The southern building would be sited on the footprint of the existing larger building and would be similar in size, and the other would be sited parallel to this, approximately 6m to the north, and would be larger than the existing building to be replaced.

- 5.2.2 The existing buildings comprise two single storey buildings located in the north east corner of the site. The larger of these is set at 90° to the site boundary, and is a double height building of breeze block and corrugated steel construction with a pitched roof. The smaller building is positioned at 90° to the larger building and is constructed of similar materials, and is approximately half the height and footprint of the larger building. Both buildings are conventional storage/agricultural buildings in appearance, and are of single skin construction with pitched roofs.

- 5.2.3 The proposed buildings would each have footprints of 105.6m², heights to ridge of 4.9m and to eaves of 3.9m. They would be double height, each with a roller shutter to the west elevation and would have internal mezzanines in the north of the buildings accessed by internal stairways. Natural light would be provided to the interior through the insertion of clear panels to the roofs and two windows to both front (west) elevations.

5.3 Principle of Development

- 5.3.1 The current application seeks planning permission for the erection of replacement buildings for purposes ancillary to the lawful use. The proposal site has been previously granted planning permission for the use of the land and buildings as a dwelling (Hillview) for occupation by an employee of the business operating from the site and B8 storage use under MA/09/0298 subject to a condition requiring the residential and B8 uses to cease in the event of the occupation of Hillview ceasing to be by someone in the employment of the business operating from the site (condition 5 of MA/09/0298), for the purpose of

preventing harm to the residential amenity of the occupiers of Hillview. This permission has been implemented.

5.3.2 The use of the land for employment and economic development falling within Use Class B8 is therefore currently lawful providing that the condition set out above is complied with. The use of the proposed buildings for B8 storage is similarly bound by the condition preventing separation of ownership of the residential and B8 uses. An informative to that end is attached to the recommendation.

5.3.3 The matters to be considered are therefore the impact of the proposed operational development on the character and appearance of the open countryside designated as ALLI, views from the M2, the amenity of adjacent residential and commercial occupiers, and highway safety.

5.4 Visual Impact

5.4.1 The proposed development would result in the loss of the existing buildings which are of no interest historically or architecturally. The proposed buildings, whilst of no particular interest, are of standard design and appearance, and would not be considered to be out of keeping in a rural setting. The development would take place within the confines of the site, and would replace existing buildings, one of which is similar in scale to that proposed. Although the development would result in a net increase in the scale of the storage buildings on the site, for the reasons set out above, it is not considered that the proposal would result in significant harm to the character, openness and appearance of the countryside or the ALLI.

5.4.2 The side elevations and roof would be formed of galvanised metal cladding, and although the colour has not been specified in the application documentation, the finish and colour can be controlled through conditions requiring the submission and approval of details.

5.4.3 Views from the proposed development would be restricted from the north, south and west of the site by virtue of the position of the buildings within the existing yard. The structures would have limited views from the M2, and despite the increase in the mass of the built development in this corner of the site that would result from approval of the scheme, the development would be seen in the context of the existing buildings on the site and the adjacent land. The south east elevations of the buildings would be immediately adjacent to the site boundary, and therefore the potential for boundary screening is limited, however this is true of the existing buildings, and therefore there is no justification for refusing the application on this ground. In addition, the site is screened from the M2 by landscaping outwith the site, and whilst this planting is not within the control of the applicant, there is no reason to expect that this will be removed.

5.5 Residential Amenity

5.5.1 The proposal would not result in any harm to the amenity of neighbouring occupiers with regard to overlooking/loss of privacy, loss of daylight/sunlight or outlook by virtue of the siting of the development within the proposal site, and the distance from the buildings to the nearest residential occupiers, the closest property being Hillview, occupied by an employee, located approximately 25m from the closest part of the proposed buildings.

5.6 Highways

5.6.1 Given the use of the site and the existing buildings it is not considered that the proposal would result in any significant additional traffic. There is an existing vehicular access to Old Lidsing Road, and from there onto Lidsing Road, and the proposal would not result in the significant loss of off road parking.

5.6.2 The Parish Council has raised concern with regard to the impact of security lighting on drivers on the M2 and the amenity of the occupiers of neighbouring residential properties. Although reference has been made to lighting in section 10 (materials) of the application form, it is understood that this relates to internal lighting, and no details have been submitted of security lighting to the buildings. No windows are proposed to the south east elevations, which would face the M2. Nonetheless, a condition should be attached to the permission requiring planning permission for the installation of external lighting in order to prevent such conflicts in the future and to secure the residential amenity of the occupiers of neighbouring dwellinghouses and the visual amenity of the open countryside. Given the distance of the proposed buildings from the M2 and the lighting along the motorway at this point, it is not considered necessary or appropriate to attach a condition restricting the insertion of windows to the facing elevations.

5.7 Landscaping

5.7.1 Given the limited views of the site from public vantage points and the siting of the proposed development within the site as set out above, it is not considered necessary or reasonable to impose landscaping conditions. The design and access statement has made reference to landscaping within the site and to the north of the buildings, and this is considered adequate in this case.

5.8 Other Matters

5.8.1 Concern has also been raised with regard to the future ownership of adjacent sites. Ownership is not generally a matter for the planning system, but an informative should be added to the permission drawing attention to the fact that planning permission would be required for any change of use from agriculture of the adjacent fields.

- 5.8.2 The Parish Council have requested the imposition of conditions relating to the hours of use, control of open storage and the occupation of Hillview remaining tied to the operation of the business.
- 5.8.3 To deal with each in turn, the hours of use are set on the existing planning permissions as being 0800 to 1800 Monday to Friday inclusive, between 0800 and 1400 on Saturdays and at no time on Sundays, Public and Bank Holidays for the purposes of safeguarding the amenity of neighbouring occupiers. These restrictions are considered to be appropriate, and such a condition should be applied to restrict the use of the proposed buildings to these hours in the event of planning permission being granted.
- 5.8.4 A condition is attached to planning permission MA/09/0298 preventing the use of the land for open storage. Although at the time of the site visit materials were being stored in the open, there is no record of any applications having been submitted to vary or remove this condition. The purpose of the current application is to increase the capacity for internal storage, and as such would be expected to result in the cessation of open storage. The condition attached to MA/09/0298 is considered adequate to secure cessation of the open storage on the site, and an informative should be attached to the permission to this effect.
- 5.8.5 The occupation of Hillview is not a matter for consideration at the current time, and it is considered that the condition attached to MA/09/0298 is adequate to secure its occupation to that of an employee of the business. Again, an informative should be attached to the permission to this effect.

6. CONCLUSION

- 6.1 For the reasons set out above, I do not consider that the proposal would result in significant harm to the character, openness and appearance of the countryside or the ALLI. The occupiers of the neighbouring residential properties would not be affected by the proposal, and the development would not be detrimental to highway safety. As such, I consider the proposal to be in accordance with the provisions of the Maidstone Borough-Wide Local Plan 2000, South East Plan 2009 and central government planning policy and guidance, and there are no overriding material considerations to indicate a refusal of planning consent.

7. 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 not commence until, written details and samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority and the development shall be constructed using the approved materials;

Reason: To ensure a satisfactory appearance to the development and safeguard the character and visual amenity of the countryside in accordance with policies ENV28, ENV35 and ENV44 of the Maidstone Borough-Wide Local Plan 2000, CC6 and C4 of the South East Plan 2009 and central government policy advice in PPS7 Sustainable Development in Rural Areas.

3. No external lighting whether permanent or temporary shall be installed on the development hereby permitted without the prior written consent of the Local Planning Authority;

Reason: To preserve the character and visual amenity of the countryside and neighbouring amenity in accordance with policies ENV28 and ENV35 of the Maidstone Borough-Wide Local Plan 2000, CC6 and C4 of the South East Plan 2009 and central government policy advice in PPS7 Sustainable Development in Rural Areas.

4. No activity in connection with the use of the development hereby permitted including deliveries taken at or despatched from the site shall be carried out outside of the hours of 0800 and 1800 Monday to Friday 0800 and 1400 Saturday and at no time on Sundays, Bank and Public Holidays;

Reason: To safeguard the enjoyment of their properties by adjoining residential occupiers in accordance with policies ENV28, ENV35 and ENV44 of the Maidstone Borough-Wide Local Plan 2000, CC6 and C4 of the South East Plan 2009 and central government policy advice in PPS1 Delivering Sustainable Development and PPS7 Sustainable Development in Rural Areas.

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

Proposed Block Plan scale 1:500, Proposed Block Plan scale 1:300 and drawing number 1;

Reason: To ensure the quality of the development is maintained and to prevent harm to the residential amenity of neighbouring occupiers and the visual amenity of the open countryside in accordance with policies ENV28 and ENV35 of the Maidstone Borough-Wide Local Plan 2000, CC6 and C4 of the South East Plan 2009 and central government policy advice in PPS7 Sustainable Development in Rural Areas.

Informatives set out below

Pre-commencement conditions 3 (materials) and 4 (site investigation) attached to planning permission MA/09/2337 have not yet been submitted or discharged.

All other conditions attached to MA/09/0298 and MA/09/2337 remain in force and should be complied with. Please note that condition 2 attached to MA/09/0298 seeks to prevent open storage on the site. If cessation of open storage on the site does not occur, the activity may be the subject of formal enforcement action.

Any change of use of the land to the rear (east) of the site, whether for activities connected with the current proposal site or not, would require the benefit of planning permission.

Please note that condition 5 attached to MA/09/0298 requires that the use of the land for B8 purposes shall cease in the event of the property known as Hillview to cease to be occupied by an employee of the business operating from the site. The development permitted under MA/10/2065 facilitates the use permitted under MA/09/0298, and as such is bound by the same condition relating to the use of the land.

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000 and the South East Plan 2009) and there are no overriding material considerations to indicate a refusal of planning consent.

109

18.01.2011

110

18.01.2011

MAIDSTONE BOROUGH COUNCIL

PLANNING COMMITTEE

03 FEBURARY 2011

REPORT OF HEAD OF DEVELOPMENT MANAGEMENT

Report prepared by Steve Clarke

1. **Proposed variation of s106 agreement dated 1 August 2006 in respect of planning application reference MA/05/2350: (Erection of class B1 offices comprising 3 No. buildings, residential accommodation comprising 192 No. flats, retail unit for class A1 and A3 use and additionally for use as a community hall and as a crèche on the ground floor of the retail unit only, together with associated car parking, landscaping and amended access arrangements)**
Land at Springfield Park, Royal Engineers Road, Maidstone.

- 1.1 Issue for Decision

- 1.1.1 To consider a proposed Deed of Variation to the s106 agreement dated 1 August 2006 in respect of planning application MA/05/2350 to amend the order in which the office blocks permitted under the permission must be constructed.

- 1.2 **Recommendation: That the proposed Deed of Variation be Approved**

- 1.2.1 That a Deed of Variation be completed deleting and replacing with a newly worded version existing clause 3.2 of the s106 agreement dated 1 August 2006 in respect of planning application MA/05/2350.

- 1.2.2 The current clause 3.2 states as follows:

3.2 The Owner undertakes that:

3.2.1 it will complete the construction of Office Block C as defined on Plan C of Schedule 1 to this Deed before the first occupation of any of the residential units to be constructed as permitted by the Planning Permission;

3.2.2 it will commence and thereafter complete the construction of the Office Block B as defined on Plan C of Schedule 1 to this Deed once the owner has exchanged contracts for arrangements for lease for 75% or more of the units in the

Office Block C to be constructed as permitted by the Planning Permission; and

3.2.3 the Retail Unit shall be constructed and completed and made ready for occupation upon the earlier of:

- (a) the first occupation of Office Block C; or
- (b) the first occupation of the 50th residential unit to be constructed as permitted by the Planning permission.'

1.2.3 It is proposed to replace it with the following clause:

'3.2 The Owner undertakes that:

3.2.1 it will complete the construction of Office Block A as defined on Plan C of Schedule 1 to this Deed before the first occupation of any of the residential units to be constructed as permitted by the Planning Permission and that Office Block A shall not be occupied until first occupation of the first residential unit; and

3.2.2 the Retail Unit shall be constructed and completed and made ready for occupation upon the earlier of:

- (a) the first occupation of Office Block A; or
- (b) the first occupation of the 50th residential unit to be constructed as permitted by the Planning Permission.'

1.2.4 Therefore, the difference is that the current agreement requires the completion of Office Block C (7200m² of gross external area) prior to the first occupation of any residential units, whereas the proposed agreement requires the completion of Office Block A (3697m² gross external area) prior to the first occupation of any residential units.

1.3 **Reasons for Recommendation**

Background

1.3.1 On 1 August 2006 a s106 agreement was completed and planning permission was granted under planning application reference MA/05/2350 for land at Springfield Park, Royal Engineers Road, Maidstone. The permission was for the:

'Erection of class B1 offices comprising 3 No. buildings, residential accommodation comprising 192 No. flats, retail unit for class A1 and A3 use and additionally for use as a community hall and as a crèche on the ground floor of the retail unit only, together with associated car parking, landscaping and amended access arrangements.'

The permitted Class B1 offices in total amounts to approximately 16,750m² (gross external area) that comprises, as stated above, three separate buildings.

Attached at Appendix One is a site plan showing the development as approved.

- 1.3.2 Subsequent to the granting of planning permission, all 'precedent' conditions (those that require discharging prior to the commencement of the development) relating to application MA/05/2350 have been discharged. Part of the roadway serving the approved scheme as well as Springfield Mansion was constructed in 2007. However, the applicant company subsequently went into administration, leaving the site in the hands of a receiver, who instigated the demolition of the remaining buildings on the site necessary for the development to be constructed. This work was undertaken in July 2009.
- 1.3.3 Under application MA/10/1327 on 23 September 2010, a Certificate of Lawful Development was issued certifying that the development approved under planning application MA/05/2350 had been implemented within the three year period from the date of the original planning permission because of the demolition and construction of the roadway that had occurred.

Proposal

- 1.3.4 Clause 3.2 of the s106 agreement as currently drafted states as follows;

'3.2 The Owner undertakes that:

- 3.2.1 it will complete the construction of Office Block C as defined on Plan C of Schedule 1 to this Deed before the first occupation of any of the residential units to be constructed as permitted by the Planning Permission;
- 3.2.2 it will commence and thereafter complete the construction of the Office Block B as defined on Plan C of Schedule 1 to this Deed once the owner has exchanged contracts for arrangements for lease for 75% or more of the units in the Office Block C to be constructed as permitted by the Planning Permission; and
- 3.2.3 the Retail Unit shall be constructed and completed and made ready for occupation upon the earlier of:
 - (a) the first occupation of Office Block C; or

- (b) the first occupation of the 50th residential unit to be constructed as permitted by the Planning Permission.'

1.3.5 The new owners of the site are currently in discussion with a potential tenant in respect of their occupation of the entirety of office building A on the approved scheme. These discussions have reached the stage of an exchange of draft heads of terms, which took place in December 2010 and the owners are hoping for a formal commitment to the project in early March. However, there is no guarantee with regard to this timescale and no specific timescales built into the proposed legal agreement. Should the potential tenant take up the building this would entail building the approved scheme in a different order to that prescribed in the existing s106 agreement. This phase of the development would see the construction of office building A, the associated undercroft car parking, the external plaza area, the foundations of office building B and the retail unit.

1.3.6 The new owners are therefore seeking a Deed of Variation to the original agreement to enable office building A to be constructed first. They have submitted a draft deed to the Council for consideration, (attached at Appendix Two). The proposed new clause would read as follows

'3.2 The Owner undertakes that:

- 3.2.1 it will complete the construction of Office Block A as defined on Plan C of Schedule 1 to this Deed before the first occupation of any of the residential units to be constructed as permitted by the Planning Permission;(repeat suggested amendment) and
- 3.2.2 the Retail Unit shall be constructed and completed and made ready for occupation upon the earlier of:
 - (a) the first occupation of Office Block A; or
 - (b) the first occupation of the 50th residential unit to be constructed as permitted by the Planning Permission.'

Assessment

1.3.7 The permitted development scheme as outlined above comprised (in addition to the 192 residential apartments and the shop-crèche/community facility building), three separate B1 office buildings. Building A was 3697m² gross external area, Building B 5853m² gross external area and Building C, 7200m² gross external area.

- 1.3.8 The original s106 agreement sought to secure the provision of an element of the commercial B1 office floorspace on the site prior to the occupation of any of the residential units. This was to safeguard against the repetition of what happened in the earlier phase of the Springfield redevelopment when only residential development was completed.
- 1.3.9 Block C was chosen because it was the largest (7200m²) of the three office buildings and represented a significant commitment to delivering the project by the then applicant and also was a significant contribution at around 5% of the employment guidelines in the then deposit draft of the Kent & Medway Structure Plan.
- 1.3.10 There has been a technical start to the development, however, the construction of the buildings have not followed and the site remains derelict. The construction of a building, albeit the smallest office building of the three, would represent a significant start to the development and the introduction of development on this derelict urban site would improve the area. The floorspace of 3697m² still equates to a major investment in the Maidstone Office market where there has been very little growth over the last 3 years.
- 1.3.11 Whilst building A is smaller than the previously agreed Building C, it is only marginally smaller, by 146m² at 3697m² than the recently completed 'Towergate' building at Eclipse Park (3843m²) the most significant new office development completed in the Borough since 2006.
- 1.3.12 Building A is larger than other approved (but not commenced) B1 office buildings on Plots 6, 7 and 8 at Eclipse Park which have detailed approval which are 2288m², 2749m² and 2034m² gross external area respectively. The provision of Building A on the Springfield site would therefore in my view still represent the provision of a significant element of B1 employment floorspace on the site.
- 1.3.13 As proposed, the revised clause would still ensure that an element of B1 floorspace, the retail unit as well as the car parking serving buildings A and B and the foundations of building B would be completed prior to the occupation of any of the residential units, so the original intent behind the clause would not be lost and still represents a significant investment on the site.
- 1.3.14 In addition, given the current economic situation and the general downturn in the property market it is considered that providing a degree of flexibility to facilitate the delivery of at least part of the approved B1 office development and the commencement of construction on this key gateway site at the entrance to the Town

Centre that has lain dormant for a number of years should be encouraged.

1.4 Alternative Action and why not Recommended

1.4.1 Not entering into the Deed of Variation as proposed is likely to result in this key site at the gateway to the town centre remaining undeveloped for a further indeterminate period.

1.5 Impact on Corporate Objectives

1.5.1 Agreeing to the Deed of Variation would facilitate the provision of part of a previously approved B1 office development scheme that enhances the Borough's commercial floorspace 'offer' and the range of employment floorspace available in the Borough in accordance with the Council's economic development strategy.

1.6 Risk Management

1.6.1 The greatest risk is that the prospective tenant and the owners of the site do not reach agreement and the construction of building A does not proceed. However, if this is the case, the Council would still have an appropriate s106 agreement in place that would ensure the provision of office floorspace prior to the occupation of any of the residential apartments also approved under the 2005 planning application.

1.7 Other Implications

1.7.1

- 1. Financial
- 2. Staffing
- 3. Legal
- 4. Equality Impact Needs Assessment
- 5. Environmental/Sustainable Development
- 6. Community Safety
- 7. Human Rights Act
- 8. Procurement
- 9. Asset Management

x

1.7.2 The legal implications are dealt with in the report.

1.8 Conclusions

1.8.1 The proposed deed of variation could facilitate the commencement of construction of an element of the office floorspace approved under MA/05/2350 albeit in a different sequence to that envisaged in the existing s106 agreement. Varying the agreement would allow the owners of the site a degree of flexibility in seeking to carry out the development to meet the requirements of a prospective tenant whilst maintaining the previously agreed mechanism to ensure that an element of the B1 office floorspace is provided prior to the occupation of any of the residential units also approved under planning application MA/05/2350.

1.9 Relevant Documents

1.9.1 Appendices

One: Site layout plan as approved for application MA/05/2350

Two: Draft proposed Deed of Variation received 14 January 2011

1.9.2 Background Documents

Planning application reference MA/05/2350 and related s106 agreement dated 1 August 2006

IS THIS A KEY DECISION REPORT?

Yes

No

If yes, when did it first appear in the Forward Plan?

.....

This is a Key Decision because:

.....

Wards/Parishes affected:

.....

APPENDIX ONE

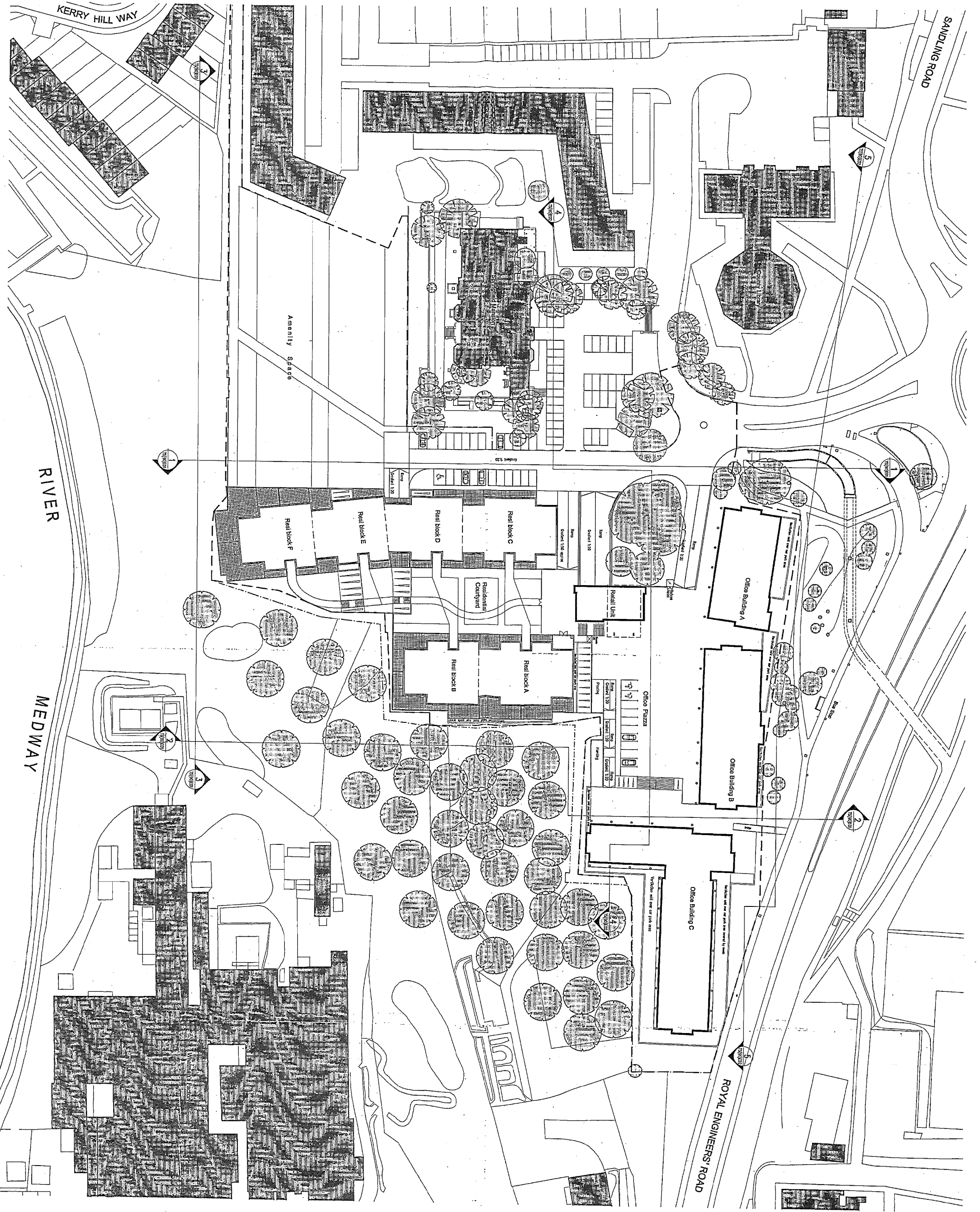
- NOTES
- 1 The contractor must check and confirm dimensions
 - 2 All discrepancies must be reported and resolved by the architect before work commences
 - 3 This drawing is not to be scaled
 - 4 All work and materials to be in accordance with current approved Statutory Regulations and to comply with all relevant Codes of Practice and British Standards.



LEGEND:

- - - Application site boundary
- ▨ private terraces/gardens
- - - Existing fence line

NOTE:
NEW TREES + PLANTING SHOWN ON
LOYD BORE LANDSCAPE MASTERPLAN
DRAWING



13 Planning application submission, 04/2/05
 12 Draft Planning application submission, NOV 2005
 11 Draft Planning application submission, OCT 2005
 10 Planning application submission, SEP 2005

ROLFE JUDD
 PLANNING
 ARCHITECTS
 INTERIORS

POST ROOM TR,
 4 B DEC 2005

051 Church Gate
 Church Road
 The Old
 London SW18 1NZ
 Telephone: 020 7255 1500
 Fax: 020 7255 1501
 www.rolfe-judd.co.uk

Client
MOUNTBRANCE (MADSTONE) LTD

Project
**SPRINGFIELD PARK
 MADSTONE**

Drawing
SITE PLAN AS PROPOSED

Scale	Date	Drawn
1:500 (A1)	OCT 05	DBH/MA
Drawn by		
4105 / T-S-(30) P00		T3
Col. Ref. No.		
© Rolfe Judd Ltd 2005		

APPENDIX TWO

DATED

2011

(1) [Mountgrange (Maidstone) Limited (In Administration)]

and

(2) Maidstone Borough Council

**DEED OF VARIATION OF A SECTION 106 AGREEMENT
Relating to
Land and Premises known as Springfield Park,
Royal Engineer's Road, Maidstone**

irwinmitchell ^(IM)

TABLE OF CONTENTS

	Page
1. INTERPRETATION	1
2. VARIATIONS OF THE AGREEMENT.....	2
3. REGISTRATION.....	2
4. RELEASE	2
5. COSTS	2
6. GOVERNING LAW.....	2
7. CONTRACTUAL RIGHTS OF THIRD PARTIES	2
THE SCHEDULE.....	3

THIS DEED is made on

2011

BETWEEN:

- (1) [MOUNTGRANGE (MAIDSTONE) LIMITED (In Administration) incorporated and registered in England and Wales with company number 5084941 whose registered office is at c/o Deloitte LLP, Hill House, 1 Little New Street, London EC4A 3TR] ("the **Owner**");
- (2) MAIDSTONE BOROUGH COUNCIL of 13 Tonbridge Road, Maidstone, Kent ME16 8HG ("the **Council**")

RECITALS

- A. This deed is supplemental to the Agreement.
- B. The Council is the local planning authority for the purposes of the Town and County Planning Act 1990 (as amended) for the area within which the Application Site is situated and is entitled to enforce obligations on the part of the Owner herein for the purposes of section 106(9) of the Act.
- C. The Owner is registered as the owner of the freehold interest in the Application Site at HM Land Registry under title number K818886 and the Owner is interested in the Application Site within the meaning of s106(1) of the Act to the intent that the covenants and undertakings and agreements on the part of the Owner contained herein shall apply to the Application Site and shall remain enforceable against the Owner.
- D. The Owner intends to carry out the Development on the Application Site.
- E. The covenants on the part of the Owner contained herein creates a planning obligation on the part of the Owner for the purposes of s106(9) of the Act.
- F. The parties have agreed to revise the Agreement as set out in this deed but having regard to the interests of proper planning of the area with the intention that the covenants contained herein may be enforced by the Council against any person or persons deriving title from the Owner.

IT IS AGREED as follows:

1. INTERPRETATION

- 1.1 The definitions in this clause apply in this deed.

"Act" means the Town and Country Planning Act 1990 (as amended)

"Agreement" means the deed dated 1 August 2006 between the [Owner] and the Council entered into under section 106 of the Act

"Application Site" means the land known as Springfield Park, Royal Engineer's Road, Maidstone shown edged red on Plan A of Schedule 1 to the Agreement,

- 1.2 Except where a contrary intention appears, a reference to a clause or Schedule, is a reference to a clause of, or Schedule to, this deed and a reference in a Schedule to a paragraph is to a paragraph of that Schedule.

- 1.3 Clause, Schedule and paragraph headings do not affect the interpretation of this deed.

1.4 Except to the extent that they are inconsistent with the definitions and interpretations in clause 1 of this deed, the definitions and interpretations in clause 1 of the Agreement shall apply to this deed.

2. VARIATIONS OF THE AGREEMENT

2.1 Statutory basis

This deed is made pursuant to the provisions of section 111 of the Local Government Act 1972 and sections 106 and 106A of the Act.

2.2 Variations made

From and including the date of this deed, the Agreement shall be read and construed as varied by the provisions set out in the Schedule.

2.3 Agreement remains in force

The Agreement shall remain fully effective as varied by this deed and the terms of the Agreement shall have effect as though the provisions contained in this deed had been originally contained in the Agreement.

3. REGISTRATION

Promptly following completion of this deed the Council will ensure that it is registered with the Agreement as a Local Land Charge.

4. RELEASE

Save in respect of liability for any antecedent breach of this deed upon parting with all or part of its interest in the Application Site, the Owner shall be released from all obligations, rights and duties under the terms of this deed in respect of the interest thus parted with Provided always that the provisions of this deed shall continue to bind the successor in title of the Owner and its successors in title pursuant to S106(3) of the Act.

5. COSTS

On completion of this deed the Owner shall pay the reasonable costs and disbursements of the Council in connection with this deed, such costs to be limited to a maximum of £[].

6. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

7. CONTRACTUAL RIGHTS OF THIRD PARTIES

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this deed and no person other than the Owner or the Council (and any successors in title or assigns or successor bodies) shall have any rights under or be able to enforce the provisions of this deed.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The Schedule

VARIATIONS TO THE AGREEMENT

Clause 3.2 of the Agreement shall be deleted and replaced by the following clause:

"3.2 The Owner undertakes that:

3.2.1 it will complete the construction of Office Block A as defined on Plan C of Schedule 1 to this Deed before the first occupation of any of the residential units to be constructed as permitted by the Planning Permission; and

3.2.2 the Retail Unit shall be constructed and completed and made ready for occupation upon the earlier of:

(a) the first occupation of Office Block A; or

(b) the first occupation of the 50th residential unit to be constructed as permitted by the Planning Permission."

EXECUTED (but not delivered until)
the date hereof) **AS A DEED** by
[MOUNTGRANGE (MAIDSTONE)
LIMITED)]
acting by

.....
Director

.....
Director/Secretary

THE COMMON SEAL of **MAIDSTONE**)
BOROUGH COUNCIL was hereunto.....)
affixed in the presence of:

.....
Authorised Signatory

Officer comment

I would advise Members that further negotiations have taken place with the applicants. This has led to the proposed Deed of Variation being amended (the latest version is appended).

The changes are as follows:

1. A requirement to build-out the car park relating to office blocks A & B is now specifically included.
2. The requirement set out on the papers (see para 1.3.6) requiring office block A not to be occupied prior to the first occupation of any of the residential units has also been deleted. The clause now accords in this respect with the requirements of the s106 agreement as previously completed which only required the completion of the construction of office block C prior to the first occupation of any of the residential units.

The proposed clause therefore now reads as follows:

'3.2 The Owner undertakes that:

3.2.1 it will complete the construction of Office Block A as defined on Plan C of Schedule 1 to this Deed (including the building out of all the car park – part of which will be underground – serving office blocks A and B) before the first occupation of any of the residential units to be constructed as permitted by the Planning Permission; and

3.2.2 the Retail Unit shall be constructed and completed and made ready for occupation upon the earlier of:

(a) the first occupation of Office Block A; or

(b) the first occupation of the 50th residential unit to be constructed as permitted by the Planning Permission.'

Amendments to recommendation

A Deed of Variation be completed to vary clause 3.2.1 and 3.2. of the S106 agreement dated 1 August 2006 in respect of planning application MA/05/2350 as follows:

'3.2 The Owner undertakes that:

3.2.1 it will complete the construction of Office Block A as defined on Plan C of Schedule 1 to this Deed (including the building out of all the car park – part of which will be underground – serving office blocks A and B) before the first occupation of any of the residential units to be constructed as permitted by the Planning Permission; and

3.2.2 the Retail Unit shall be constructed and completed and made ready for occupation upon the earlier of:

- (a) the first occupation of Office Block A; or
- (b) the first occupation of the 50th residential unit to be constructed as permitted by the Planning Permission.'

DATED

2011

(1) [Mountgrange (Maidstone) Limited (In Administration)]

and

(2) Maidstone Borough Council

DEED OF VARIATION OF A SECTION 106 AGREEMENT
Relating to
**Land and Premises known as Springfield Park,
Royal Engineer's Road, Maidstone**

irwinmitchell 

TABLE OF CONTENTS

	Page
1. INTERPRETATION.....	1
2. VARIATIONS OF THE AGREEMENT	2
3. REGISTRATION	2
4. RELEASE.....	2
5. COSTS.....	2
6. GOVERNING LAW	2
7. CONTRACTUAL RIGHTS OF THIRD PARTIES.....	2
THE SCHEDULE	3

THIS DEED is made on

2011

BETWEEN:

- (1) [MOUNTGRANGE (MAIDSTONE) LIMITED (In Administration) incorporated and registered in England and Wales with company number 5084941 whose registered office is at c/o Deloitte LLP, Hill House, 1 Little New Street, London EC4A 3TR] (“the **Owner**”);
- (2) MAIDSTONE BOROUGH COUNCIL of 13 Tonbridge Road, Maidstone, Kent ME16 8HG (“the **Council**”)

RECITALS

- A. This deed is supplemental to the Agreement and the First Variation.
- B. The Council is the local planning authority for the purposes of the Town and County Planning Act 1990 (as amended) for the area within which the Application Site is situated and is entitled to enforce obligations on the part of the Owner herein for the purposes of section 106(9) of the Act.
- C. The Owner is registered as the owner of the freehold interest in the Application Site at HM Land Registry under title number K818886 and the Owner is interested in the Application Site within the meaning of s106(1) of the Act to the intent that the covenants and undertakings and agreements on the part of the Owner contained herein shall apply to the Application Site and shall remain enforceable against the Owner.
- D. The Owner intends to carry out the Development on the Application Site.
- E. The covenants on the part of the Owner contained herein creates a planning obligation on the part of the Owner for the purposes of s106(9) of the Act.
- F. The parties have agreed to revise the Agreement as set out in this deed but having regard to the interests of proper planning of the area with the intention that the covenants contained herein may be enforced by the Council against any person or persons deriving title from the Owner.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 The definitions in this clause apply in this deed.

“**Act**” means the Town and Country Planning Act 1990 (as amended)

“**Agreement**” means the deed dated 1 August 2006 between Mountgrange (Maidstone) Limited and the Council entered into under section 106 of the Act

“**Application Site**” means the land known as Springfield Park, Royal Engineer’s Road, Maidstone shown edged red on Plan A of Schedule 1 to the Agreement

“**First Variation**” means the supplemental deed to the Agreement dated 21 January 2008 and made between Mountgrange (Maidstone) Limited and the Council

1.2 Except where a contrary intention appears, a reference to a clause or Schedule, is a reference to a clause of, or Schedule to, this deed and a reference in a Schedule to a paragraph is to a paragraph of that Schedule.

1.3 Clause, Schedule and paragraph headings do not affect the interpretation of this deed.

1.4 Except to the extent that they are inconsistent with the definitions and interpretations in clause 1 of this deed, the definitions and interpretations in clause 1 of the Agreement shall apply to this deed.

2. VARIATIONS OF THE AGREEMENT

2.1 Statutory basis

This deed is made pursuant to the provisions of section 111 of the Local Government Act 1972 and sections 106 and 106A of the Act.

2.2 Variations made

From and including the date of this deed, the Agreement shall be read and construed as varied by the provisions set out in the Schedule.

2.3 Agreement remains in force

The Agreement shall remain fully effective as varied by the First Variation and this deed and the terms of the Agreement shall have effect as though the provisions contained in this deed had been originally contained in the Agreement.

3. REGISTRATION

Promptly following completion of this deed the Council will ensure that it is registered with the Agreement and the First Variation as a Local Land Charge.

4. RELEASE

Save in respect of liability for any antecedent breach of this deed upon parting with all or part of its interest in the Application Site, the Owner shall be released from all obligations, rights and duties under the terms of this deed in respect of the interest thus parted with Provided always that the provisions of this deed shall continue to bind the successor in title of the Owner and its successors in title pursuant to S106(3) of the Act.

5. COSTS

On completion of this deed the Owner shall pay the reasonable costs and disbursements of the Council in connection with this deed, such costs to be limited to a maximum of £[].

6. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

7. CONTRACTUAL RIGHTS OF THIRD PARTIES

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this deed and no person other than the Owner or the Council (and any successors in title or assigns or successor bodies) shall have any rights under or be able to enforce the provisions of this deed.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The Schedule

VARIATIONS TO THE AGREEMENT

Clause 3.2 of the Agreement shall be deleted and replaced by the following clause:

“3.2 The Owner undertakes that:

3.2.1 it will complete the construction of Office Block A as defined on Plan C of Schedule 1 to this Deed (including the building out of all the car park – part of which will be underground – serving office blocks A and B) before the first occupation of any of the residential units to be constructed as permitted by the Planning Permission; and

3.2.2 the Retail Unit shall be constructed and completed and made ready for occupation upon the earlier of:

(a) the first occupation of Office Block A; or

(b) the first occupation of the 50th residential unit to be constructed as permitted by the Planning Permission.”

EXECUTED (but not delivered until)
the date hereof) **AS A DEED** by)
[MOUNTGRANGE (MAIDSTONE))
LIMITED].....)
acting by)

.....
Director

.....
Director/Secretary

THE COMMON SEAL of MAIDSTONE.....)
BOROUGH COUNCIL was hereunto)
affixed in the presence of:)

.....
Authorised Signatory

Agenda Item 19

THE MAIDSTONE BOROUGH COUNCIL **PLANNING COMMITTEE – 3rd February 2011**

APPEAL DECISIONS:

1. **MA/09/1171** **Erection of a Scout hall building and associated access parking area shown on drawing no. 03/12/02 and design and access statement received 06/07/2009, drawing no. 03/12/01RevA received on 28/07/2009 and arboricultural assessment and badger report received 07/12/2009.**

APPEAL: Dismissed

LAND AT, IMPTON LANE, WALDESLADE, KENT

(Delegated Powers)

-
2. **– MA/10/0914** **An application for listed building consent for the erection of a single storey glazed link extension as shown on drawing numbers DHA/7185/01& DHA/7185/31RevA received on 26/05/10 and DHA/7185/30RevA, DHA/7185/31RevA & DHA7185/32RevA received on 08/07/10.**

APPEAL: Dismissed

THE ROUNDELS, GATEHOUSE FARM OAST, HUNTON ROAD, MARDEN, TONBRIDGE, KENT TN12 9SG

(Delegated Powers)
