

## **MAIDSTONE BOROUGH COUNCIL**

### **PLANNING COMMITTEE**

#### **MINUTES OF THE MEETING HELD ON 27 APRIL 2017**

**Present:** Councillor Perry (Chairman) and Councillors Boughton, Cox, English, Harwood, Hastie, Hemsley, Munford, Powell, Prendergast, Round, Mrs Stockell and Wilby

**Also Present:** Councillors Brice, M Burton, Cuming, Fort and Springett

364. **APOLOGIES FOR ABSENCE**

It was noted that apologies for absence had been received from Councillor Clark.

365. **NOTIFICATION OF SUBSTITUTE MEMBERS**

It was noted that Councillor Wilby was substituting for Councillor Clark.

366. **NOTIFICATION OF VISITING MEMBERS**

Councillor Brice indicated her wish to speak on the report of the Head of Planning and Development relating to application 16/505966 – Railway Tavern, Station Road, Staplehurst.

Councillors Fort and Springett indicated their wish to speak on the report of the Head of Planning and Development relating to the appeal against the Committee's decision to refuse application 15/503288/OUT – Land at Woodcut Farm, Ashford Road, Hollingbourne, Maidstone, Kent. Councillor Springett said that she would also be speaking on behalf of Councillors Cuming, Garten and de Wiggondene.

Councillors M Burton and Cuming attended the meeting as observers.

367. **ITEMS WITHDRAWN FROM THE AGENDA**

There were none.

368. **URGENT ITEMS**

The Chairman stated that, in his opinion, the update reports of the Head of Planning and Development should be taken as urgent items as they contained further information relating to the applications to be considered at the meeting.

369. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

370. EXEMPT ITEMS

**RESOLVED:** That the item on Part II of the agenda (Exempt legal advice relevant to the appeal against the Committee's decision to refuse application 15/503288/OUT – Land at Woodcut Farm, Ashford Road, Hollingbourne, Maidstone, Kent) be considered in public, but the information contained therein should remain private. However, if Members wish to ask questions about or discuss the advice, then the public should be excluded from the meeting.

371. MINUTES OF THE MEETING HELD ON 6 APRIL 2017

**RESOLVED:** That the Minutes of the meeting held on 6 April 2017 be approved as a correct record and signed.

372. PRESENTATION OF PETITIONS

There were no petitions.

373. DEFERRED ITEMS

14/504109 - ADVERTISEMENT CONSENT FOR THE INSTALLATION OF 2 NO. NON-ILLUMINATED METAL POLE MOUNTED SIGNS (RETROSPECTIVE APPLICATION) - HUNTON C OF E PRIMARY SCHOOL, BISHOPS LANE, HUNTON, KENT

The Development Manager said that this application had been re-assigned to another Case Officer who had confirmed that it would be reported back to the next meeting of the Committee.

16/507491 - DEMOLITION OF EXISTING BUILDING AND ERECTION OF 19 NO. APARTMENTS - 3 TONBRIDGE ROAD, MAIDSTONE, KENT

The Development Manager said that he had nothing further to report in respect of this application at present.

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

374. APPLICATION 15/503288/OUT - LAND AT WOODCUT FARM, ASHFORD ROAD, HOLLINGBOURNE, MAIDSTONE, KENT

All Members stated that they had been lobbied.

The Committee considered the report of the Head of Planning and Development recommending that the reason for refusal of application 15/503288/OUT should not be defended at appeal and that the Council should adopt a neutral position in response to the appellant's proposed amendments to the application scheme.

In considering the report, the Committee had regard to legal advice provided by Counsel on the prospects of successfully defending the appeal and the risks of an award of costs being made against the Council.

The Committee also considered the urgent update report of the Head of Planning and Development setting out details of (a) representations received from CPRE Kent (on behalf of the Joint Parishes Group, CPRE (Maidstone), the Bearsted and Thurnham Society and Leeds Castle) and from a local resident and (b) lobbying material in the form of a letter sent to Members by the Kent Association of Local Councils.

It was noted that:

- Application 15/503288/OUT was an outline application for a mixed commercial development comprising B1(a), B1(b), B1(c) and B8 units with a maximum floor space of 46,623sqm. All matters were reserved for future consideration except for access, the arrangements for which were detailed in the application.
- The application was reported to the Planning Committee on 30 June 2016 with an Officer recommendation to grant outline planning permission subject to the prior completion of a Section 106 legal agreement and conditions.
- Contrary to the recommendation, the Committee agreed to refuse permission for the following reason:

*The proposed development would be harmful to the character and appearance of the countryside, Special Landscape Area and the setting of the Kent Downs Area of Outstanding Natural Beauty and any benefits are not considered to outweigh this harm. It would also cause less than substantial harm to the setting of the Grade II listed building "Woodcut Farm" and any public benefits are not considered to outweigh this harm. The development would therefore be contrary to saved policies ENV21, ENV28 and ENV34 of the Maidstone Borough-Wide Local Plan 2000 and advice within the National Planning Policy Framework 2012.*

- Members were not given a costs warning before making their decision.
- On 22 December 2016, the applicant submitted an appeal to the Secretary of State against the Committee's decision to refuse outline planning permission. The appeal inquiry was scheduled to commence on 10 October 2017 and was estimated to continue for ten days. The Council was committed to the agreed appeal timetable which required the submission of its statement of case by 4 May 2017 (this being the second agreed extension to the original deadline).
- Practice guidance required the main parties to an appeal to inform the Planning Inspectorate of any material changes in planning circumstances relevant to the determination of the appeal; in particular, any changes in national or local planning policy that were relevant to the Planning Authority's reasons for refusal and whether those reasons

for refusal were still defensible. In accordance with these requirements, before submitting the Council's statement of case, the Officers had reviewed the reason for refusal taking account of any material changes in planning circumstances relevant to the appeal and taken advice from Counsel. There was considered to be no realistic prospect of defending the Council's reason for refusal at appeal and attempting to defend the reason for refusal would be unreasonable and very likely to fail, thereby exposing the Council to a very significant adverse costs award in addition to having to bear its own costs in defending the appeal.

- Following the Committee's decision to refuse outline planning permission, the Council did not remove the site allocation policy from the Local Plan submitted for Examination, and had defended the employment floor space allocation in Policy EMP1 (5) during the Local Plan Examination hearings. In his Interim Findings report on the Examination, the Local Plan Inspector had endorsed the general principle of the employment site allocation in Policy EMP1 (5), finding it necessary to meet identified need for employment development over the Plan period, subject to the modifications recommended in the Interim Findings which safeguarded the majority of the proposed employment floor space for B1(a)/(b) use.
- Subsequently, the Council had accepted the Local Plan Inspector's recommendation that significant changes to the draft Local Plan site allocation policy were necessary to make the submitted Local Plan sound. The Strategic Planning, Sustainability and Transportation Committee had approved a Schedule of Proposed Main Modifications for public consultation over a seven week period ending on 19 May 2017 to give effect to the Inspector's recommendations in his Interim Findings. The Schedule included alterations to draft Policy EMP1 (5), to be renumbered EMP1 (4), the principal change being that the site allocation was now required to provide a minimum of 10,000sqm of B1(a)/(b) floor space to be safeguarded from alternative uses until at least April 2026, of which 5,000sqm would be in the form of serviced land.
- As an application for outline planning permission, consideration of matters relating to layout, scale, appearance and landscaping were, and continued to be, reserved for future consideration. Accordingly, the main issues for consideration by the Committee were the principle of the development proposed and the acceptability of the detailed proposals for access to the site. It was reasonable to conclude that when determining the application, the Committee did not consider matters reserved for later consideration, and, on that basis, the Committee's reason for refusing to grant outline planning permission must be construed as an "in principle objection" to the proposed development. Such a decision was fundamentally contrary to draft Policy EMP1 (5) either as submitted or as proposed to be modified.
- However, when determining the application, the Planning Committee did not identify any basis upon which the proposal failed to accord with

the criteria within draft Policy EMP1 (5) in the reason for refusal, but, instead, decided to attach limited weight to the emerging allocation policy, and significant weight to the saved policies of the adopted Local Plan (2000) in reaching its decision.

- Upon adoption of the Local Plan, the saved policies cited in the Council's reason for refusal would no longer form part of the Development Plan.
- The appellant had yet to respond formally to the Local Plan Modifications Consultation. However, to inform the preparation of the Officers' full statement of case, at the Officers' request, the appellant had provided details of proposed amendments to the application scheme intended to address the modified requirements of draft Policy EMP1 (5). It would be for the Planning Inspector to consider, amongst other things, whether the development would be so changed that to grant permission would be to deprive those who should have been consulted of the opportunity of consultation.
- At this stage, the Officers did not consider it necessary or appropriate to support the appellant's proposed amendments to the application proposals. The appellant's proposed amendments, considered as a whole, constituted a substantial alteration to the proposals considered by the Planning Committee in June 2016, and the appellant should be encouraged to submit a new application for outline planning permission for the amended proposals before formally applying to amend the application proposal. This would ensure that interested persons were given an opportunity to comment on the proposals and participate in the decision making process.
- The circumstances of the case were unusual and there were other issues that the Planning Inspector should take into account when considering whether to determine the appeal by reference to the amended proposal, including the history of the planning application and appeal, the public interest in delivering development on the site that accorded with the key priorities of the emerging Development Plan as modified, and the futility of determining the appeal on the basis of a scheme that neither the appellant nor the Council supported. It was recommended that the Council should adopt a neutral position in response to the appellant's proposed amendments to the application scheme.
- In addition, it was recommended that, in the event of the appellant pursuing the appeal on the basis of the application scheme or the Planning Inspector refusing to accept the amendments, it would be reasonable for the Council to defend the appeal on the basis that the application proposals did not accord with emerging Local Plan policy, in particular, Policy EMP1 (5) as proposed to be modified.
- The Committee was also being asked to give delegated powers to the Head of Planning and Development to negotiate the terms of any Section 106 agreement to ensure that the development was acceptable in planning terms if the Inspector allowed the appeal.

The Development Manager reiterated that it was the advice of the Officers and of Counsel that the Council's reason for refusal could not be sustained at appeal and to attempt to defend the reason would have significant cost implications for the Council's budget. The Director of Finance and Business Improvement had confirmed that significant cost implications for the Council's budget currently stood at £30,000. The bespoke inquiry into the appeal was scheduled to run for ten days and it was estimated, based on previous experience, that if a costs award were to be made against the Council, costs, including the Council's costs in defending the reason for refusal, could be in the region of approximately £350k to £450k.

Councillor Bennett of Hollingbourne Parish Council and Councillors Fort and Springett (speaking also on behalf of Councillors Cuming, Garten and de Wiggonde) addressed the meeting.

During the ensuing discussion, Members spoke both for and against defending the Committee's reason for refusal at appeal, raising the following summarised points:

- The Council should delay a decision on whether or not to defend the reason for refusal at appeal until after the public consultation on the Schedule of Proposed Main Modifications to the submitted Local Plan and the Local Plan Inspector had issued his final report.
- When the Committee agreed to refuse permission, two reasons were cited; namely that the proposed development would be harmful to the character and appearance of the countryside, Special Landscape Area, and the setting of the Kent Downs Area of Outstanding Natural Beauty and that it would also cause less than substantial harm to the Grade II listed building "Woodcut Farm". The Committee had not been told that these reasons would not be sustainable at appeal and Members were not given a costs warning before making their decision.
- Nothing had changed since the decision was made.
- The Local Plan Inspector had asked the Council to carry out an assessment of employment needs and commuting patterns across the wider area. This seemed to imply that the Local Plan Inspector might conclude that the Borough's employment needs could be met by reaching agreement with neighbouring authorities.
- The issue of how people would travel to and from the site as an employment hub should be addressed, including the need for a Leeds Langley by-pass.
- It was too late now to change the Committee's reason for refusal. The reason for refusing permission was an "in principle" objection to the proposed development and did not explain how the proposals would cause harm to the character and appearance of the countryside, the Special Landscape Area and the setting of the AONB, or the extent of that harm. The reason for refusal did not explain how the proposal caused less than substantial harm to the setting and the significance of

the Grade II listed "Woodcut Farm". It would be necessary to think very carefully about how to defend the appeal on these grounds notwithstanding public opinion. In defending the Waterside Park decision, the Council was able to evidence the harm.

- There seemed to be some confusion on the part of the public as to the role of the Planning Committee. The Committee was a Regulatory Committee responsible for determining planning applications having regard to and interpreting national and local planning policy and guidance. It could negotiate improvements to the quality of development, but it could not refuse an application which was compliant with emerging Local Plan policy with no details of matters which it could have input into.
- The Council should defend the reason for refusal recorded in the decision notice having regard to the sensitivity of the site and the views expressed by local residents.
- The Council should defend the reason for refusal recorded in the decision notice as the proposed development would have a huge impact on the character and appearance of the countryside in this location, the Special Landscape Area and on views to and from the AONB. The public expected the Council to defend the appeal. Any development at this location should be sensitive and of the right quality.
- Members should have regard to all of the issues, not just the risk of incurring costs in defending the appeal.
- The Council should defend the reason for refusal. Members had received legal advice as to the prospects of successfully defending the appeal and the risks of an award of costs being made against the Council, but could, having assessed the situation, come to a different conclusion.
- The situation was that the reason for refusal was poorly worded and could not be changed. An objection was being raised to an allocation which had been endorsed by the Council. The Committee had attached limited weight to emerging Local Plan policies and significant weight to the saved policies of the adopted Local Plan (2000). However, upon adoption of the Local Plan, the saved policies cited in the reason for refusal would no longer form part of the Development Plan. To continue to defend the appeal could expose the Council to a significant adverse costs award. The Council had a responsibility to the residents directly affected and to other residents due to the impact on the public purse. It was necessary to consider whether the reason for refusal could be sustained at appeal and to balance that against the risk of incurring costs which would impact on the public purse.

In response to questions/comments by Members, the Head of Planning and Development and the Principal Planning Officer explained that:

- The Council had approved the Maidstone Borough Local Plan for submission to the Secretary of State for examination and the Officers had defended it during the Local Plan Examination hearings. In the Local Plan submitted for examination, the Council said that there was a need to make provision for some 32,000sqm of B class employment floor space in the Borough and the Woodcut Farm site was the main strategic location, the other sites were much smaller. The Council was not aware of better locations of this size elsewhere in the Borough.
- The purpose of the Local Plan Inspector's Interim Findings report was to identify changes required to make the Plan sound. In his Interim Findings, the Local Plan Inspector had not recommended the deletion of this site allocation.
- The Local Plan Inspector had found however that unless alternative provision was identified, there was likely to be a shortfall in the delivery of office floor space against the identified requirement over the Plan period. The Schedule of Proposed Main Modifications to the submitted Local Plan now included a requirement for the Woodcut Farm site allocation to provide a minimum of 10,000sqm of B1(a)/(b) floor space to be safeguarded from alternative uses until at least April 2026, of which 5,000sqm would be in the form of serviced land.
- During the Local Plan Examination the Council was asked by the Local Plan Inspector to carry out further work to establish whether there would be sufficient land in Maidstone and neighbouring Boroughs to accommodate future employment needs overall and what effect there might be on commuting patterns. Having considered the assessment and the comments made by other parties, the Inspector did not ask for further work to be undertaken to assess whether the Borough's employment needs could be met by reaching agreement with neighbouring authorities.
- Circumstances had changed since the Committee's decision to refuse the application; the Council had not removed the site allocation policy from the Local Plan and had defended the employment floor space allocation in Policy EMP1 (5) during the Local Plan Examination hearings. It was considered that the Local Plan Inspector had endorsed the general principle of the Woodcut Farm employment allocation, finding it necessary to meet the identified need for employment development over the Plan period subject to the proposed modifications. The Local Plan Inspector had not requested that a proposed Main Modification to delete the Woodcut Farm allocation be included in the current Main Modifications consultation.
- The Council could not delay a decision on whether or not to defend the reason for refusal at appeal until after the public consultation on the Schedule of Proposed Main Modifications to the submitted Local Plan and the Local Plan Inspector had issued his final report as the Council was committed to the agreed appeal timetable which required the submission of its Statement of Case by 4 May 2017 to outline its position in relation to the appeal.



The Committee took the recommendations set out in the report separately as follows:

**Recommendation 1 – To agree that the sole reason for refusal recorded in the Council’s decision notice should not be defended on appeal.**

In accordance with Council Procedure Rule 21.4, three Members of the Committee requested that a named vote be taken on this recommendation.

Members voted against the recommendation. The voting was as follows:

FOR (5)	AGAINST (8)
Councillor Cox	Councillor Boughton
Councillor English	Councillor Hastie
Councillor Harwood	Councillor Hemsley
Councillor Munford	Councillor Perry
Councillor Wilby	Councillor Powell
	Councillor Prendergast
	Councillor Round
	Councillor Mrs Stockell

Councillor Harwood requested that his dissent be recorded.

Immediately after the vote was taken, the Head of Planning and Development, upon the advice of the representative of the Head of Legal Partnership, referred the application to the Planning Referrals Committee pursuant to paragraph 29.3 of Part 3.1 of the Council’s Constitution and paragraph 17 of the Local Code of Conduct for Councillors and Officers Dealing with Planning Matters.

**Recommendation 2 – To agree that the Council should adopt a neutral position in response to the appellant’s proposed amendments to the appeal proposals.**

In accordance with Council Procedure Rule 21.4, three Members of the Committee requested that a named vote be taken on this recommendation.

Members voted against the recommendation. The voting was as follows:

FOR (5)	AGAINST (8)
Councillor Cox	Councillor Boughton
Councillor English	Councillor Hastie
Councillor Harwood	Councillor Hemsley
Councillor Munford	Councillor Perry
Councillor Wilby	Councillor Powell
	Councillor Prendergast
	Councillor Round
	Councillor Mrs Stockell

**Recommendation 3 – In the event that the appellant does not apply to amend the proposals, or if the Inspector does not accept the amendments, to defend the appeal, if necessary, on the basis that the application proposal does not accord with emerging Local Plan policy, in particular, Policy EMP1 (5) as proposed to be modified.**

The Committee was informed that this recommendation no longer applied as Members had voted against not defending the sole reason for refusal recorded in the Council's decision notice. The recommendation would, however, be included in the report to the Planning Referrals Committee.

**Recommendation 4 - To agree that Members delegate authority to the Head of Planning and Development to negotiate the contents of any Section 106 Agreement.**

**RESOLVED:** That the Head of Planning and Development be given delegated powers to negotiate the terms of any Section 106 agreement if the Planning Inspector allows the appeal.

Voting: 13 – For 0 – Against 0 – Abstentions

Note: During the discussion on this item, Councillor English asked that his dissent to the use of named votes at Planning Committee be recorded.

375. 16/504892 - DEMOLITION OF EXISTING PROPERTY OF HEADCORN HALL AND ASSOCIATED OUTBUILDINGS. ERECTION OF 10 FOUR BEDROOM HOUSES AND 4 FIVE BEDROOM HOUSES TOTAL 14 HOUSES. CREATION OF NEW VEHICULAR ACCESS VIA SHENLEY ROAD. PROVISION OF ACCESS ROAD, LANDSCAPING AND ASSOCIATED INFRASTRUCTURE; EXISTING ACCESS VIA BIDDENEN ROAD TO BE CLOSED - HEADCORN HALL, BIDDENDEN ROAD, HEADCORN, KENT

Councillors English, Round and Prendergast stated that they had been lobbied.

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

**RESOLVED:** That subject to the prior completion of a S106 legal agreement in such terms as the Interim Head of Legal Partnership may advise to secure an affordable housing viability review mechanism, the Head of Planning and Development be given delegated powers to grant permission subject to the conditions and informatives set out in the report, as amended by the urgent update report, and the additional condition set out in the urgent update report.

Voting:        13 – For        0 – Against        0 – Abstentions

376. 16/505966 - CHANGE OF USE AND CONVERSION OF THE RAILWAY TAVERN TO ONE DWELLING AND THE ERECTION OF A NEW DETACHED DWELLING WITH PARKING AND LANDSCAPING - RAILWAY TAVERN, STATION ROAD, STAPLEHURST, KENT

All Members except Councillor Hemsley stated that they had been lobbied.

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

The Development Manager advised the Committee that earlier that day, he had been notified that the Parish Council had submitted an application for the public house to be registered as an asset of community value. The representative of the Interim Head of Legal Partnership explained that the effect of a building being listed as an asset of community value was that if the property was subsequently to be sold, then it had to be offered to the community before being placed on the open market. If a listing had been made, and it had not, it would only affect the disposal of the property and it would be an additional material consideration to be taken into account as part of the planning process.

Mr Lenham, an objector, Councillor Mrs Buller of Staplehurst Parish Council, Mr Barraclough, for the applicant, and Councillor Brice (Visiting Member) addressed the meeting.

Contrary to the recommendation of the Head of Planning and Development, the Committee agreed to refuse permission. In making this decision, Members considered that insufficient evidence had been submitted which demonstrated that the operation as a public house was not viable and it was unlikely to become commercially viable, contrary to saved policy R11 of the Maidstone Borough-Wide Local Plan 2000. The proposals would also result in the loss of a community facility contrary to saved policy R11 of the Maidstone Borough-Wide Local Plan 2000, policy SP10 (paragraph 5) and policy SP5 (paragraph 3) of the emerging Maidstone Local Plan and paragraph 70 of the National Planning Policy Framework. The benefits arising from the long-term use of the building were not considered to outweigh the loss of the community asset.

In addition, Members considered that the proposals would fail to meet Objective 12 of the adopted Staplehurst Neighbourhood Plan which sought to support a strong local economy with good access to jobs and employment opportunities.

**RESOLVED:** That permission be refused for the following reasons:

1. Insufficient evidence has been submitted which demonstrates that the operation as a public house is not viable and it is unlikely to become commercially viable, contrary to saved policy R11 of the Maidstone Borough-Wide Local Plan 2000. The proposals would also result in the loss of a community facility contrary to saved policy R11 of the Maidstone Borough-Wide Local Plan 2000, policy SP10 (paragraph 5) and policy SP5 (paragraph 3) of the emerging Maidstone Local Plan and paragraph 70 of the National Planning Policy Framework. The benefits arising from the long-term use of the building are not considered to outweigh the loss of the community asset.
2. The proposals would fail to meet Objective 12 of the adopted Staplehurst Neighbourhood Plan which seeks to support a strong local economy with good access to jobs and employment opportunities.

Voting: 13 – For 0 – Against 0 – Abstentions

**FURTHER RESOLVED:** That in the event of the application being taken to appeal, the Officers, when defending the decision, should put forward appropriate conditions, including a suitable condition regarding the use of renewable energies.

Voting: 13 – For 0 – Against 0 – Abstentions

377. 16/508545 - MOVING MOBILE HOME AND ERECTION OF NEW DAY BUILDING - 4 QUARTER PADDOCKS, BLETCHENDEN ROAD, HEADCORN, KENT

The Committee considered the report of the Head of Planning and Development.

**RESOLVED:** That permission be granted subject to the conditions set out in the report.

Voting: 8 – For 0 – Against 5 – Abstentions

378. APPEAL DECISIONS

The Committee considered the report of the Head of Planning and Development setting out details of appeal decisions received since the last meeting. It was pointed out that the decision to refuse application 13/1456 for a solar farm and associated works at Great Pagehurst Farm had been made by the Planning Committee and not by the Officers acting under delegated powers.

In response to questions:

The Development Manager confirmed that he was awaiting a response to his letter to the Quality Assurance Unit at the Planning Inspectorate regarding inconsistencies in appeal decisions.

The Vice-Chairman confirmed that clarification regarding the role of Members, particularly Planning Committee Members, at appeals was being addressed as part of the review being undertaken of the provisions of the Council's Constitution relating to the Planning Committee.

**RESOLVED:** That the report be noted, and that the Officers be congratulated on their work on the appeals.

379. CHAIRMAN'S ANNOUNCEMENTS

The Chairman said that, since this was the last meeting of the Municipal Year, he would like to thank Members, the Vice-Chairman in particular, and Officers for their work and support.

380. DURATION OF MEETING

6.00 p.m. to 9.10 p.m.