

ADJOURNED PLANNING COMMITTEE MEETING

Date: Monday 30 April 2018
Time: 6.00 p.m.
Venue: Town Hall, High Street, Maidstone

Membership:

Councillors Boughton, Clark, Cox, English (Chairman), Harwood, Munford, Powell, Prendergast, Round (Vice-Chairman), Spooner, Mrs Stockell and Vizzard

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

<u>AGENDA</u>	<u>Page No.</u>
1. Apologies for Absence	
2. Notification of Substitute Members	
3. Notification of Visiting Members	
4. Items withdrawn from the Agenda	
5. Any business the Chairman regards as urgent including the urgent update report as it relates to matters to be considered at the meeting	
6. Disclosures by Members and Officers	
7. Disclosures of lobbying	
8. To consider whether any items should be taken in private because of the possible disclosure of exempt information	
9. 18/500563 - The Stables, East Court, The Street, Detling, Maidstone, Kent	1 - 17
10. 5003-2018 - Tree Preservation Order - 5 Southways, Sutton Valence, Maidstone, Kent	18 - 28
11. Appeal Decisions	29 - 30

Issued on Friday 27 April 2018

Continued Over/:

Alison Broom

Alison Broom, Chief Executive

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.

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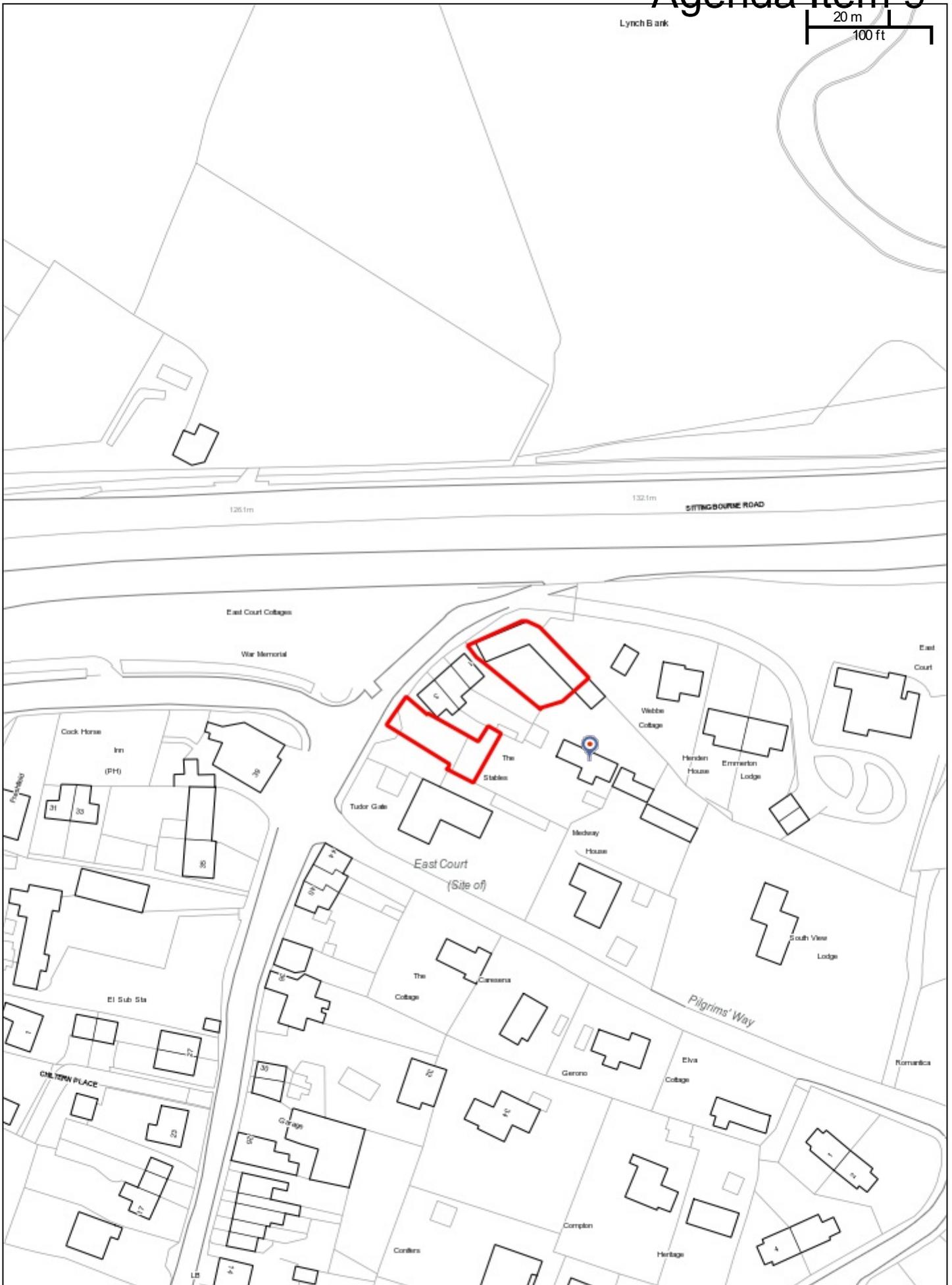
ALTERNATIVE FORMATS

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Agenda Item 9

Lynch Bank



18/500563/FULL The Stables, East Court, The Street, Detling

Scale: 1:1250

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REPORT SUMMARY

REFERENCE NO - 18/500563/FULL		
APPLICATION PROPOSAL Construction of a pair of semi-detached cottages on northern section of plot including rooflights and associated parking. (Demolition of existing kennel buildings and garden wall)		
ADDRESS The Stables East Court The Street Detling Maidstone Kent ME14 3JX		
RECOMMENDATION – APPROVE		
SUMMARY OF REASONS FOR RECOMMENDATION The proposal is similar to an extant planning permission (15/503966) for 2 dwellings; and it is not considered to adversely harm the character and appearance of the countryside and AONB hereabouts, or result in adverse harm to the amenity of any local resident, in accordance with the Maidstone Local Plan (2017) and the objectives of the NPPF.		
REASON FOR REFERRAL TO COMMITTEE - Detling Parish Council wish to see application refused and requested application is referred to committee for determination		
WARD Detling And Thurnham	PARISH COUNCIL Detling	APPLICANT Mrs Ellis AGENT Insight Architects
DECISION DUE DATE 04/04/18	PUBLICITY EXPIRY DATE 09/03/18	OFFICER SITE VISIT DATE 16/02/18
RELEVANT PLANNING HISTORY:		

- 17/504954 - 5 houses (inc. demolition of ‘The Stables’ and outbuildings) - Refused
This proposal covered a larger site area and was refused on 4 grounds:
 - loss of non-designated heritage asset known as ‘The Stables’
 - terrace of houses constituted over development of site
 - residential amenity impact of car park & terrace (general disturbance & overlooking)
- 15/503966 (Appendix A) - Pair of semi-detached houses - Approved
- MA/85/1614 - Erection of 15 unit cattery – Approved
- MA/85/0941 - Erection of 35 unit cattery - Refused
- MA/77/1145 - Reconstruction of stable to dwelling – Approved
- MA/76/1208 - Conversion of stable block to dwelling – Approved
- MA/75/1571 - 2 dwellings – Approved

MAIN REPORT

1.0 Site description

- 1.01 The application site is located on the northern edge of Detling village, on the southern side of The Street and with the A249 located to the north. The irregular shaped site does have a noticeable change in land levels, and the site is currently occupied by a collection of animal shelters in a general ‘L’ shape form around the northern corner of the site. There are a number of heritage assets within the vicinity of the application site, including the boundary wall at the front of ‘Tudor Gate’ which is grade II listed. The immediate surrounding area is predominantly residential.
- 1.02 For the purposes of the Maidstone Local Plan (2017), the proposal site is within the countryside that falls within the Kent Downs Area of Outstanding Natural Beauty (AONB); and the proposal site also partly falls within Detling Conservation Area (DCA). Part of the site (northern edge) is covered by woodland Tree Preservation Order no.10 of 1975; and an Area of Archaeological Potential is found to the south of where the proposed houses would be built.

2.0 Proposal

- 2.01 The proposal is for the construction of a pair of (4-bed) semi-detached houses that includes the demolition of the existing animal shelters and garden wall. The two houses would be formed of red stock bricks with hanging peg tiles and plan clay roof tiles. The development would utilise a stepped ridge level taking account of the gradient of the land and the proposed roofs would have a barn hip with a two storey gable section at the front.
- 2.02 The proposed houses are of the same design, scale and siting as approved under extant planning permission 15/503966. The main difference is that the 4 parking spaces to the front of the houses have now been placed to the south of 1-3 East Court Cottages, either side of the driveway that serves 'The Stables'.

3.0 Policy and other considerations

- Local Plan (2017): SS1, SP17, SP18, DM1, DM2, DM3, DM4, DM23, DM30
- National Planning Policy Framework (2012)
- National Planning Practice Guidance (2014)
- Detling Conservation Area Appraisal (2008)
- Detling Conservation Area Management Plan (2010)
- Air Quality Guidance SPD (2017)

4.0 Consultations

- 4.01 **Detling Parish Council:** Wishes to see application refused and reported to Planning Committee if case officer is minded to recommend approval:
- *Removal of Stables is clear dereliction of Council's principles and responsibilities to protect open and irregular nature of north end of The Street.*
 - *PC concerned proposal does not comply with Conservation Area Management Plan.*
 - *Development is out of scale, overbearing and out of character in terms of its design and appearance compared with existing development.*
 - *Cause overlooking and loss of privacy to existing properties.*
 - *Development would cause loss of existing views from neighbouring properties.*
 - *Want clarification on land ownership issues*
 - *Unacceptable parking provision - too far from houses & parked cars on-street would cause obstruction*
 - *PC objects to demolition of historical front boundary wall*
 - *PC supports local resident objections.*
- 4.02 **KCC Highways:** Raise no objection.
- 4.03 **Environmental Protection Team:** Raise no objection.
- 4.04 **Conservation Officer & Landscape Officer:** Raised no objection under 15/503966.

5.0 LOCAL REPRESENTATIONS

- 5.01 **Neighbour responses:** 6 representations received and concern is raised over;
- *Sewage disposal*
 - *Visual impact/cramped development*
 - *Residential amenity inc. position of refuse bins and parking spaces*
 - *Land ownership/loss of front boundary wall (not in ownership of applicant)*
 - *Traffic/highway safety/parking provision*
 - *Impact upon trees*
 - *Light pollution*
 - *Loss of a view*
 - *Heritage and AONB impacts*

6.0 APPRAISAL

Main Issues

- 6.01 The principal focus for residential development in the borough is the urban area, then rural service centres and then larger villages (sustainability hierarchy Local Plan policy SS1). In other locations, protection should be given to the rural character of the borough and development proposals in the countryside will not be permitted unless they accord with other policies in this Plan, they will not result in harm to the character and appearance of the area (Local Plan policy SP17), and they will respect the amenities of occupiers of neighbouring properties. Policies within the Local Plan also seek to ensure that new development affecting heritage assets (designated and non-designated) incorporates measures to conserve, and where possible enhance, the significance of the heritage asset and, where appropriate, its setting.
- 6.02 The existing extant permission (15/503966) for a pair of semi-detached houses here was considered by Planning Committee under the Maidstone Borough-Wide Local Plan 2000 on 10th September 2015. Whilst the proposal is now within the countryside and not within a defined village boundary as under the 2000 Local Plan, it is still a material planning consideration that there is an extant planning permission for a similar development on this site. This earlier extant permission is the fall-back position.
- 6.03 The details of this earlier planning application and the current proposal will now be considered.

Visual impact

- 6.04 As accepted under 15/503966, the design, scale, layout and palette of material proposed for the houses are considered to be in keeping with the character of the conservation area and in accordance with the Detling Conservation Area Appraisal/Management Plan. As previously found in the context of existing development, the 2 new houses would not have an adverse impact upon the character and setting of the AONB. Furthermore, no objection continues to be raised to the demolition of the stable block, or to the removal of the front boundary wall (which is not mentioned in the Detling Conservation Area Appraisal/Plan and where the Conservation Officer has raised no objection to its removal). The proposed parking area, set behind boundary walls, would also not cause unacceptable harm to the character and setting of the surrounding area and conservation area. It is also considered that the removal of the parking areas to the front of the houses represents a visual improvement.
- 6.05 It should also be noted that whilst the Detling Conservation Area Management Plan suggests an extension to the designated CA boundary (to include 'East Court', its grounds and outbuildings), since its adoption the grounds of 'East Court' have been developed and 3 new houses have been built.
- 6.06 Whilst the Council can now demonstrate a 5 year housing land supply and the new Local Plan has been adopted since the previous approval, significant weight must still be given to the extant planning permission, and as accepted under 15/503966 the scheme would not result in any adverse harm to the character and appearance of the countryside and AONB hereabouts. The proposal is therefore in accordance with policies SP17 and DM30 of the Local Plan.

Residential Amenity

- 6.07 As accepted under extant permission 15/503966, no objection is raised on residential amenity grounds for surrounding residents and future occupants of the 2 new houses, in terms of the scale, siting, design and layout of the 2 houses.
- 6.08 The potential impact of the location of the proposed parking area must also be considered. It should be noted at this point that under 17/504954 (refused application for 5 houses), the proposal showed a parking area in a similar location to that currently proposed. One of the earlier grounds for refusal here was that the close proximity of the car park to the rear gardens of 2 and 3 The Street and the associated general noise and disturbance, would result in a poor level of amenity for the occupiers of these houses when enjoying their garden areas and properties. However, this current application is for 4 parking spaces only (serving 2 houses), as opposed to 10 spaces (serving 5 houses), where 6 of these previously proposed spaces immediately abutted up to the neighbours gardens. The resultant comings and goings of 2 households from the 4 parking spaces is not considered to be as intrusive and harmful to the amenity of the occupiers of these houses and no objection is raised in this respect. The proposed parking area, given its location and context, would not have an adverse impact upon the amenity of any other neighbouring property.

Highway safety implications

- 6.09 The parking provision shown with this proposal (4 spaces) is in accordance with Local Plan policy and the Highways Authority has raised no objection to the proposal. As such, no objection continues to be raised in terms of highway safety.

Other Matters

- 6.10 As was the case under 15/503966, no objection is raised in terms of archaeology, biodiversity, landscape and arboricultural issues; and no objection is raised in terms of refuse storage/collection. As under 15/503966, a condition is recommended requesting details of a scheme of foul drainage.
- 6.11 The Environmental Protection Team have raised no objection in terms of land contamination and light pollution, but have requested conditions relating to noise and air quality, given the close proximity of the site to the A249. In accordance with the adopted Local Plan and the SPD on air quality, these conditions shall be duly imposed. However, a condition for hours of construction work is not considered to meet the tests of reasonableness for imposing planning conditions.
- 6.12 In accordance with Local Plan policy, in the interests of sustainability and air quality, conditions will also be imposed for the provision of operational electric vehicle charging points for low-emission plug-in vehicles, and for details of decentralised and renewable or low-carbon sources of energy.
- 6.13 The issues raised by Detling Parish Council and local residents have been fully considered in the determination of this application. However, it should also be noted that a loss of a view is not a material planning reason to refuse an application. Furthermore, in response to the land ownership issues raised, the applicant has demonstrated that the site-outline and the ownership certificate served is correct, that the front boundary wall is within the applicant's title ownership, and that the verge to the front of the site is adopted highway. There is no reason to pursue this matter further in planning terms, or delay the determination of this application for this reason.

7.0 CONCLUSION

- 7.01 The proposal is acceptable with regard to the relevant provisions of the Development Plan, the Detling Conservation Area Appraisal/Plan, the NPPF and all other material considerations such as are relevant. A recommendation of approval of this application is therefore made on this basis.

8.0 RECOMMENDATION

- 8.01 **GRANT** planning permission subject to 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) Prior to commencement of works/development above damp-proof course (DPC) level, written details and samples of the materials to be used in the construction of the external surfaces of any buildings and hard surfaces shall be 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 interest of ecological enhancement.

- (3) Prior to commencement of works/development above damp-proof course (DPC) level on any individual property, details of all fencing, walling and other boundary treatments (incorporating gaps for the passage of wildlife) shall be 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 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.

- (4) Prior to commencement of works/development above damp-proof course (DPC) level, details of a scheme of landscaping, using indigenous species which shall include indications of all existing trees and hedgerows on the land and on adjoining sites, 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, shall be submitted to and approved in writing by the Local Planning Authority. The landscape scheme shall be designed using the principles established in the Council's adopted Landscape Character Assessment 2012. The landscaping of the site shall be carried out in accordance with the approved details over the period specified;

Reason: To ensure a satisfactory appearance to the development.

- (5) The approved landscaping associated with individual dwellings shall be in place at the end of the first planting and seeding season following completion of the relevant individual dwelling. Any other communal, shared or street landscaping shall be in place at the end of the first planting and seeding season following completion of the final unit. Any trees or plants, which, within a period of 5 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.

Reason: In the interest of visual amenity of the area.

- (6) The development hereby approved shall not commence above slab level until details for a scheme for the enhancement of biodiversity on the site shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall consist of the enhancement of biodiversity through integrated methods into the design and appearance of the extension by means such as swift bricks, bat tube or bricks. The development shall be implemented in accordance with the approved details and all features shall be maintained thereafter.

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

- (7) Prior to the commencement of development, details of decentralised and renewable or low-carbon sources of energy to be used as part of the approved development shall have been submitted to and approved in writing by the Local Planning Authority including details of how they will be incorporated into the development. The approved measures shall be in place before first occupation of the development hereby approved and maintained as such at all times thereafter;

Reason: To secure an energy efficient and sustainable form of development. Details are required prior to commencement of development to ensure that the widest range of options are available (i.e. ground source heat pumps).

- (8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extension to any property or outbuilding shall be carried out without the permission of the Local Planning Authority;

Reason: To safeguard the character and appearance of the development and the enjoyment of their properties by existing and prospective occupiers.

- (9) The development shall not commence until details of a scheme of foul drainage for the site have been submitted to and approved by the local planning authority. The development shall thereafter be carried out in accordance with the subsequently approved details;

Reason: To ensure adequate drainage arrangements. Details are required prior to commencement of development to ensure appropriate ground works are carried out.

- (10) Prior to the occupation of the buildings hereby permitted, a scheme to demonstrate that the internal noise levels within the residential units and the external noise levels in back gardens and other relevant amenity areas will conform to the standard identified by BS 8233 2014, Sound Insulation and Noise Reduction for Buildings - Code of Practice, shall be submitted to and approved in writing by the Local Planning Authority. The work specified in the approved scheme shall then be carried out in accordance with the approved details prior to occupation of the premises and be retained thereafter;

Reason: To ensure the quality of living conditions for future occupants.

- (11) Prior to the occupation of the buildings hereby permitted, a report shall be undertaken by a competent person in accordance with current guidelines and best practice, and submitted to the local planning authority for approval. The report shall contain and address the following:

1) An assessment of air quality on the application site and of any scheme necessary for the mitigation of poor air quality affecting the residential amenity of occupiers of this development.

2) An assessment of the effect that the development will have on the air quality of the surrounding area and any scheme necessary for the reduction of emissions giving rise to that poor air quality. The assessment should, where possible, quantify what measures or offsetting schemes are to be included in the development which will reduce the transport related air pollution of the development during construction and when in occupation.

Any scheme of mitigation set out in the subsequently approved report shall be implemented prior to the first occupation of the building and maintained thereafter;

Reason: To protect the health of future occupants.

- (12) Prior to the occupation of the buildings hereby permitted, a minimum of one operational electric vehicle charging point per dwelling for low-emission plug-in vehicles shall be installed and shall thereafter be retained and maintained for that purpose;

Reason: To promote reduction of CO² emissions through use of low emissions vehicles.

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

17-110 010 Rev P1 and 17-110 011 Rev P1

Reason: To ensure the quality of the development is maintained and to prevent harm to the residential amenity of neighbouring occupiers.

INFORMATIVES

- (1) It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at:

<https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-boundary-enquiries>.

- (2) A formal application for the connection to the public sewerage system is required in order to service the development. Please contact Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire SO21 2SW or www.southernwater.co.uk.

Case Officer: Kathryn Altieri

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

REPORT SUMMARY

REFERENCE NO - 15/503966/FULL		
APPLICATION PROPOSAL Construction of a pair of semi-detached cottages on northern section of plot including rooflights and associated parking as shown on drawing number 15-106 003 Rev P2; dated 28.07.2015 and 15-106 001 Rev P1 and 15-106 002 Rev P1; received 11.05.2015 and 15-106 002 Rev P2; received 18.06.2015 and Design and Access Statement Revision P1; dated May 2015.		
ADDRESS The Stables East Court The Street Detling Kent ME14 3JX		
RECOMMENDATION - Approve with conditions		
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL The proposed development is located within the village envelope of Detling and the principle of sustainable residential development is accepted in accordance with policy H27 of the Local Plan 2000 and the aims and objectives of the NPPF.		
REASON FOR REFERRAL TO COMMITTEE Detling Parish Council wish to see the application refused and have requested the application is referred to committee for determination.		
WARD Detling And Thurnham Ward	PARISH/TOWN COUNCIL Detling	APPLICANT Mrs J Bryan AGENT Insight Architects
DECISION DUE DATE 13/08/15	PUBLICITY EXPIRY DATE 13/08/15	OFFICER SITE VISIT DATE 08/07/15
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):		
App No	Proposal	Decision
85/1614	Erection of 15 unit cattery	Approved
85/0941	Erection of 35 unit cattery	Refused
77/1145	Reconstruction of stable to dwelling	Approved
76/1208	Conversion of stable block to dwelling	Approved

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The application site is located in the northern edge of Detling village on the south side of The Street with the A249 located to the north of the site. The application site is located within Detling conservation area, an Area of Outstanding Natural Beauty, Special Landscape Area, Strategic Gap and Potential Archaeological Importance. The immediate surrounding area is predominantly residential.
- 1.02 The site is roughly rectangular in shape and amounts to approximately 385 sq m. The ground levels on the site rise from east to west adjacent to The Street. The site is currently occupied by a collection of stables in an L-shape on the north and east boundary of the application site. The remaining site is laid to lawn. There are a number of trees located outside the boundary of the site to the south and southeast and trees within the neighbouring site at East Court are protected by TPO. There is

a boundary wall running along the front of the site adjacent to The Street and along the northeast and southwest boundary adjoining Webb Cottage and 1 The Street.

- 1.03 There are several listed buildings located to the south of the application site, none of which directly adjoin the application site. The boundary wall at the front of Tudor Gate is also grade II listed.
- 1.04 Three new houses have been built fairly recently in the grounds of East Court to the northeast of the application site as approved at appeal ref: 10/0943.

2.0 PROPOSAL

- 2.01 The application proposes the erection of a pair of semi-detached two storey houses with living accommodation in the roof and two off-street parking spaces located at the front / side of each house. Both houses have four bedrooms. The two houses would be formed of red stock bricks with hanging peg tiles and plan clay roof tiles. The development would utilise a stepped ridge level taking account of the gradient of the land and the proposed roofs would have a barn hip with a two storey gable section at the front.
- 2.02 Two off-street parking spaces are proposed at the front / side of each house with vehicle access afforded from The Street. Amended drawing No. 15-106 003 Rev P2 supersedes drawing 15-106 003 Rev P1 and increases the soft landscaping at the front of the properties. Refuse storage is proposed to the side of each house. Rear gardens will mainly be laid to lawn with a small patio area directly at the rear of each house.
- 2.03 The existing brick boundary wall would be retained along the northeast and southwest boundary. New boundary treatment would consist of 1.8m high close boarded fencing at the rear of the plots and 1m high white peg boundary fence at the front.

3.0 POLICY AND OTHER CONSIDERATIONS

- Maidstone Borough-Wide Local Plan 2000: H27, ENV6, ENV31, ENV33, ENV34, T13
- The National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (NPPG)
- MBC Management Plan for Detling Conservation Area 2010
- Nationally Described Space Standards

4.0 LOCAL REPRESENTATIONS

- 4.01 Some 6 letters of representation have been received from neighbouring properties. Comments are summarised as follows:
- The three storey houses would be out of keeping with the adjoining properties.
 - Increased traffic and highways safety.
 - The proposal does not enhance or preserve the special character of the conservation area.
 - The site is garden land.
 - The ridge heights would dominate the neighbouring properties.
 - Loss of privacy, overshadowing and overlooking.
 - Parking is not acceptable at the front of the houses.

- Refuse should not be sited at the front of the houses.
- Contrary to Policy H27.
- Detrimental impact on AONB.
- Impact on neighbouring listed buildings.
- Connection to sewers.
- Noise and disturbance from construction works and use of properties.
- Proposed development is out of character with surrounding development.
- This is Phase 1 of 2 developments on this site.
- Land ownership regarding the parcel of land proposed for vehicle parking.

5.0 CONSULTATIONS

5.01 **KCC Highways:** Raise no objections on behalf of the highways authority.

5.02 **MBC Environmental Health:** Habitable rooms will be fitted with acoustic glazing and mechanical ventilation. Asbestos should be checked for during demolition. The scale of the development would not warrant an air quality assessment and the site is approx. 1km from the nearest Air Quality Hotspot. There is no indication of contamination at this site. No objections subject to informatives.

5.03 **MBC Conservation Officer:** Initial comments received from the conservation officer advised that the design, vernacular style and materials proposed are acceptable. The conservation officer raised concerns regarding the amount of hardstanding at the front of the properties which would be urban in character.

Amended plans were received and the conservation officer advised the inclusion of soft landscaping at the front was a substantial improvement to the proposal. No objections on heritage grounds.

5.04 **KCC Archaeological Officer: No comments to make**

5.05 **Southern Water:** Initial investigations indicate that there are no public sewers in the area to serve this development. Alternative means of draining surface water from this property are required. Southern Water requires a formal application for a connection to the public foul sewer. Requests an informative is attached.

5.06 **Detling Parish Council:** Objects to the proposal on the following (summarised) grounds:

- Proposal is contrary to the Detling Conservation Area Management Plan.
- The design is not in keeping with the properties in the immediate area.
- The height of the houses will dominate neighbouring development.
- Windows will overlook the gardens of East Court Cottages.
- Parking should be at the rear.
- Front gardens should have white picket fences.
- The wall along the front of the site enhances the conservation area and should not be demolished.
- Impact to trees.

'We therefore reiterate our objection to this application and wish to see this refused. Should the Borough Councils opinion differ from the Parish Councils, we would then wish to have this application determined by the Planning Committee'.

6.0 AMENDED PLANS

Drawing No. 033 Rev B was received on 31 July 2015 and supersedes drawing no 003 Rev P1. The amendments include the following:

- Relocation of refuse storage to the side of each property.
- Tandem parking at the property referred to Yeoman Cottage.
- Soft landscaping in the front gardens of both houses.
- 1m high white peg fence along section of the front boundary.

7.0 APPRAISAL

Principle of Development

- 7.01 The site is located within the defined village envelope of Detling where the principle of additional housing is acceptable in accordance with the Local Plan and NPPF. The site is identified as appropriate for minor residential development as set out in Policy H27 and normally, this would be restricted to proposals for one or two houses. There are no policies that seek to retain the current use of the premises and therefore the principle of the development is acceptable. I consider the key issues to be the impact upon the character and appearance of the conservation area and ANOB, the impact upon neighbour amenity, highways safety and parking congestion and impact on trees.

Visual Impact

- 7.02 The application site is located within the Detling Conservation Area and Detling village envelope. The site is also located within the Strategic Gap, ANOB and Special Landscape Area although given that that the site is within the village envelope the principle of additional residential development is accepted and less weight is therefore afforded to rural policies. I consider the key consideration visually is the impact on the character and appearance of the conservation area and streetscape, and the setting of neighbouring listed buildings.
- 7.03 Although largely concealed behind the existing boundary wall fronting onto The Street, the existing stable block on the site is in a dilapidated state, does not constitute a high standard of design and does not enhance or preserve the character of the conservation area. No objections are raised to the demolition of the stable block.
- 7.04 Several neighbours have objected to the demolition of the boundary wall fronting onto The Street, stating that the wall enhances the character of the conservation area and should therefore be retained. There is no mention of the wall in the Detling Conservation Area Plan and the Council conservation officer has raised no objection to the removal of a section the wall along The Street.
- 7.05 The Detling Conservation Area Management Plan finds a number of positive elements which contribute to the special character of the Conservation Area, including:
- The dominant use of a limited palette of largely local building materials.
 - A differing pattern of development on either side of The Street.
 - A predominance of steeply-pitched roofs.
 - A largely residential character.

- 7.06 The Detling Conservation Management Plan is in accordance with the NPPF and advises also that:

'The overriding consideration in dealing with any proposal for development will be whether or not it would either preserve or enhance the special character of the Conservation Area ... The Council will not insist on any particular architectural style for new building works, but the quality of the design and its execution will be paramount.'

- 7.08 The Detling Conservation Area Management Plan also suggests an extension to the designated boundary to include East Court, its grounds and outbuildings. However, since the adoption of the Detling Conservation Area Management Plan the grounds of East Court have been developed and three new houses have been built and approved under planning application 10/0943.
- 7.09 The proposed palette of materials is considered acceptable for this location and would be in accordance with the Detling Conservation Area Management Plan which advises appropriate building materials would include, inter alia, red bricks, clay plain tiles for roofs or hanging tiles, painted timber windows and ragstone boundary walls and picket fences. The conservation officer advises the materials are acceptable and a condition will be attached to ensure a high standard of building materials are used to compliment the conservation area.
- 7.10 The gradient of the application site increases from the west to east and the pair of semi-detached houses would have a stepped ridge line to account for the slope of the site. The houses would be higher than the adjacent terrace row of Nos.1-3 The Street, however the additional height (approx. 1 – 1.5m) would not be a significant increase taking into account the slope in the land, and the gap between the adjacent terrace (approx. 5m) and the barn hipped roof design, would ensure the proposal does not unacceptably dominate these adjacent properties. The pitch of the roofs would also be in accordance with the Detling Conservation Area Management Plan and the scale, height and form of the proposed development would be in keeping with other residential properties within the conservation area.
- 7.11 The off-street parking at the front of the properties is regrettable, however given the constraints of the site and double yellow lines located on The Street, directly to the front of the site this is the only feasible location for parking. The forecourt parking, in my view, would not warrant refusal of the application on its own. In addition, amended plans have been received to include picket front boundary fencing and soft landscaping at the front of the houses which would soften the impact of the development and be in keeping with neighbouring developments. Further, tandem parking is proposed at one of the properties relocating one of the parking spaces to the side of the house and the refuse has been relocated to the side of each house enabling space for landscaping at the front of each house.
- 7.12 Overall the design, scale, layout and palette of material proposed is considered to be in keeping with the character of the conservation area and in accordance with Detling Conservation Area Management Plan.

Residential Amenity

- 7.13 Residential properties directly to the south of the site include 1-3 The Street, with the closest property to the application site No.1 The Street. No.1 The Street benefits from a ground floor lean-to rear / side extension abutting the boundary of the application site. The proposal would project some 1.8m beyond the rear building

line of the ground floor extension at No.1 The Street and some 6m beyond the rear elevation of the main two storey element at No.1 The Street. Given the separation distance between the proposed development and two storey element of No.1, coupled by the orientation of the rear windows at ground level, location of the outdoor private amenity space and open aspect at the rear of No.1, I do not consider that the proposed development would result in an unreasonable loss of outlook or light to this neighbouring property. The proposed drawings also indicate that the development would be in accordance with the BRE guidelines.

- 7.14 The proposal would be located approx. 19m distance from The Stable located to the south east of the site and over 20m distance from the front elevation of Webb Cottage, located to the east of the site. Given these separation distances I do not consider the proposed development would result in an unacceptable loss of amenity to these properties.
- 7.15 Some overlooking would be afforded into the rear garden areas of neighbouring properties, however levels of overlooking would not be significantly worse than current levels of mutual overlooking between neighbouring residential properties in a built up area such as this. Importantly, the proposal would not result in any direct loss of privacy or overlooking into the private amenity areas or habitable rooms of any neighbouring properties due to the separation distances involved and orientation of windows.
- 7.16 The internal room sizes and private outdoor amenity proposed is considered to offer an acceptable standard of living accommodation for future occupants in accordance with the Nationally Described Space Standards.

Highways

- 7.16 The proposal includes two off-street parking spaces for each property in accordance with the councils parking standards. KCC Highways have not raised any objections on parking or highways safety grounds. A condition will be attached to secure cycle parking as part of the development to promote sustainable modes of travel.

Landscaping and ecology

- 7.17 The existing site currently comprises dilapidated stable block and an area land to a maintained lawn. The front of the site between the boundary wall and the road comprise a small section of grass verge. There are no trees on the site.
- 7.18 The proposal includes an element of soft landscaping at the front of the houses which is considered to enhance the character and appearance of the conservation area. A condition will be attached to ensure native species are planted at the front of the site.
- 7.19 The existing site is a managed brown field site and I do not consider that any significantly adverse impact upon biodiversity or nature conservation interests is likely to occur as a result of the development.
- 7.20 There are trees outside the site adjacent the north and northeast boundary of the application site which make a positive contribution to the conservation area. The trees are located a sufficient distance from the proposed houses and would not be significantly affected, and the proposed development would not prejudice the health of the trees. Due to the construction activity and new close boarded fencing

proposed in proximity to the trees I consider it would be appropriate to attach a condition to ensure the trees are suitably protect during any construction works.

Other Matters

- 7.21 The strip of land between the boundary wall and The Street (hatched red on location plan) is unregistered land and forms part of the application site. Ownership Certificate D on the Planning Application form has been completed and the applicant has confirmed they are in the process of applying for a possessory title for this piece of land, stating that they have maintained the land for a long period. The applicant published a notice in The Kent Messenger on 12.05.2015 in relation to Certificate D notifying owners of the land about the planning application and inviting them to make representations. This notification is in accordance with The Town and Country Planning (Development Management Procedure) (England) Order 2015.

8.0 CONCLUSION

- 8.01 The proposed development is located within the village envelope of Detling and the principle of sustainable residential development is accepted in accordance with policy H27 of the Local Plan 2000 and the aims and objectives of the NPPF.
- 8.02 It is therefore considered that the development of the site for two dwellings is acceptable and it is recommended planning permission is granted subject to conditions.

9.0 RECOMMENDATION – GRANT 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:

Drawing Nos. 15-106 003 Rev P2; dated 28.07.2015 and 15-106 001 Rev P1 and 15-106 002 Rev P1; received 11.05.2015 and 15-106 002 Rev P2; received 18.06.2015 and Design and Access Statement Revision P1; dated May 2015.

Reason: To ensure the quality of the development is maintained and to prevent harm to the residential amenity of neighbouring occupiers.

- (3) The development shall not commence until, written details and samples of the materials to be used in the construction of the external surfaces of any buildings and hard surfaces have been submitted to and approved in writing by the Local Planning Authority and the development shall be constructed using the approved materials;

The details and samples of the materials submitted shall include details of swift and / or bat bricks incorporated into the eaves of the proposed housing units;

Reason: To ensure a satisfactory appearance to the development and interest of ecological enhancement.

- (4) The development shall not commence until, details of all fencing, walling and other boundary treatments have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details before the first occupation of the 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.

- (5) 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 which shall include indications of all existing trees and hedgerows on the land and on adjoining sites, 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 landscape scheme shall be designed using the principle's established in the Council's adopted Landscape Character Assessment 2012 and shall include details of the repair and retention of existing hedgerows and tree lines within the site;

The landscaping of the site shall be carried out in accordance with the approved details over the period specified;

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

- (6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation;

Reason: To ensure a satisfactory external appearance to the development.

- (7) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015, no further development shall take place on the site without the prior written consent of the Local Planning Authority;

Reason: To ensure the appearance and the character of the building is maintained.

- (8) The development shall not commence until details of a scheme of foul and surface water drainage for the site have been submitted to and approved by the local planning authority. The development shall thereafter be carried out in accordance with the subsequently approved details.

Reason: To ensure adequate drainage arrangements.

- (9) The development shall not commence until, details of cycle storage on the site have been submitted to, and approved in writing by, the Local Planning Authority. The approved facilities shall be provided before the first occupation of the buildings hereby permitted and maintained thereafter.

Reason: In the interests of promoting sustainable travel.

- (10) No development shall take place until details of tree protection, for all retained on-site trees and trees in adjoining properties in proximity to the site boundary, in accordance with the current edition of BS 5837 have been submitted to and approved in writing by the local planning authority. All trees to be retained on site must be protected by barriers and/or ground protection.

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

INFORMATIVES

to Applicant: APPROVAL

The Council's approach to this application:

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The applicant/agent was advised of minor changes required to the application and these were agreed.

The applicant/agent was provided formal pre-application advice.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

Asbestos

Adequate and suitable measures should be carried out for the minimisation of asbestos fibres during works, 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.

Case Officer: Andrew Jolly

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

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

Agenda Item 10



THE MAIDSTONE BOROUGH COUNCIL

Tree Preservation Order No. 5003/2018/TPO
5 Southways, Sutton Valence, Maidstone, Kent ME17 3HT



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**Maidstone Borough Council
PLANNING COMMITTEE
26 April 2018**

REPORT BY THE HEAD OF PLANNING SERVICES

**The Maidstone Borough Council
TREE PRESERVATION ORDER NO 5003/2018/TPO**

5 Southways, Sutton Valence, Maidstone, Kent

EXECUTIVE SUMMARY

This report seeks the permission of the Planning Committee to Confirm without modification Tree Preservation Order No 5003/2018/TPO for which objections have been received.

FOR DECISION

RELEVANT PLANNING HISTORY

MA/87/0692E Land adjacent Southways, North Street, Sutton Valence. Erection of one no. four-bedroom and five no. five- bedroom detached houses as amended by drawing nos. K091/09 K091/10 K091/11 received on 13th July 1987 and further amended and validated by drawing no. K091/01 Rev D received 21st August 1987. Permission granted subject to conditions 14 April 1987.

SUMMARY TPO INFORMATION

TPO Served (Date): 18 January 2018	TPO Expiry Date 18 July 2018
Served on: The owner/occupier, 5 Southways, Sutton Valence, Maidstone, Kent Property owners identified on Land Registry search Kent County Council as adjoining landowner	
Copied to: Kent Highway Services Mid Kent Division GIS Team MKIP Parish/Town Council Land Charges Team Planning Applications Unit	

PRE-APPLICATION ADVICE

The owners of 5 Southways submitted a request for pre-application advice in respect of the potential removal of four very large Wellingtonia trees to the front of 5 Southways, as they were perceived to be discouraging interest in the sale of the property and causing damage to surrounding structures. The removal of the trees was understood to be controlled by to conditions (iv) and (vii) of planning permission MA/87/0692E, reproduced below:

(iv) All trees (other than fruit trees) shown for retention on Drawing No.K091/01/D received on 21st August, 1987 shall be retained;

Reason: to protect the general character and appearance of the site and preserve the many fine mature trees in the interests of amenity

(vii) No trees on the site, the subject of this permission, shall be felled, topped, lopped or destroyed without the consent in writing of the District Planning Authority:-

- a) Levels shall not be raised or lowered in relation to the existing ground level within the spread of the branches of the tree;
- b) No roots shall be cut, trenches dug or soil removed within the spread of the branches of the tree;
- c) No buildings, roads or other engineering operations shall be constructed or carried out within the spread of the branches of the tree;
- d) No fires shall be lit within the spread of the branches of the tree;
- e) No vehicles shall be driven over the area below the spread of the branches of the tree;
- f) No materials or equipment to be stored within the spread of the branches of the tree;

Reason: to preserve trees on the site in the interests of visual amenity and environment

A pre-application site meeting took place at the property, where the Landscape officer met with the owner of the property and inspected the trees that they intend to fell.

The trees are four Wellingtonia, planted in a row. They are very large, reaching an estimated height in excess of 20m and with stem diameters of between 1.1m and 1.7m.

Historic damage was noted on one of the buttress roots of the northernmost tree and was found to have an associated cavity up to 28cm deep. However, the trees have a bark thickness of around 10cm, so the depth of the cavity is about 18cm in structural wood. Given the size of the tree, this is not considered to be structurally significant. An area of delaminating bark is present on the north side of the tree that might indicate that some associated decay is present, but no significant decay was found during inspection. No evidence of damage or decay was found in the other three trees.

No damage to the buildings was reported or observed, but there is significant disruption and damage to the garden paths likely to be attributable to the growth of the roots of the trees.

During the site visit, the public visibility of the trees was assessed from public viewpoints, principally from North Street, from which the trees are set back about 80 metres and partially obscured from view by the doctors surgery close to North Street and by 5 Southways itself. Despite this, the tops of the trees area clearly visible from North Street over the top of these two buildings and are skyline trees. It should also be noted that the road into Southways is a publicly maintainable highway in KCC ownership and is also therefore considered a public viewpoint, albeit that it is probably used only by the residents of Southways and their visitors.

The pre-application advice response is set out below:

'When we met to discuss the trees, we were aware of the planning conditions from 1987 that specifically stated that all trees (other than fruit trees) shall be retained and shall not be 'felled, topped, lopped or destroyed without the consent in writing of the Local Planning Authority'. I originally advised you that I thought that you could seek that consent through the submission of an application to vary or remove the condition, which would attract a fee. The alternative would be for us to make the trees the subject of a Tree Preservation Order (TPO) and for you to make an application under that Order, which would not attract a fee. You indicated when we met that the former would be your preferred approach.

However, having discussed your situation further with Planning Enforcement Officers, I am now advised that the planning conditions would be considered by them to have expired and that an application to vary or remove them would therefore not be appropriate/possible. It also means that there are no longer any controls in force that require you to seek the consent of the Local Planning Authority before felling the trees.

This left me with a difficult decision, as I am aware of your reasons for wanting to fell, but also required to consider the contribution that the trees make to local landscape character and visual amenity. After we met, I viewed the trees from various public viewpoints and found them to be quite prominent. As such, and having discussed the situation with colleagues, we have decided that we have no option other than to make the trees the subject of a Tree Preservation Order. This has been made today, and I attach an electronic copy.

I know that this is not the outcome that you were hoping for, but the trees make a significant contribution to the area and the Council has a duty to protect such trees. You can still make an application to fell them (I attach a form and guidance notes) with a right to appeal a refusal and additionally you have 28 days to submit an objection to the making of the TPO, which the Council will consider before deciding whether the TPO should be made permanent. The details of how to do this will be in the formal letter accompanying the paper copy of the TPO which is sent by post.'

The tree preservation Order was therefore made and served on 18 January 2018, protecting the four Wellingtonia trees as individual trees, numbered T1 –T4.

OBJECTIONS

Objections to the TPO were received on behalf of the owners of 5 Southways from Alex Chapman, Bradford and Company Solicitors and Ben Larkham Associates (Arboricultural consultant) in the form of a detailed tree report.

A representation in support of the objections was also received from Kent County Councillor Eric Hotson.

Alex Chapman co-ordinated the objection material and summarises the grounds for objection as follows:

- there are only broken views of the trees from North Street;
- the trees negatively impact on local amenity given the overbearing relationship to the property and adverse impact on the open appearance of Southways;
- the trees are causing a loss of sunlight to the property, damage to existing lightly loaded structures, maintenance issues related to the management of gutters and roof surface; and
- there is potential for future structural influence

Bradford and Company “outlines liabilities that Maidstone Borough Council should be responsible for should the TPO be confirmed and the owner is unable to carry out works to the trees immediately, including felling, unimpeded. These liabilities include any future damage to the property and structures within its curtilage, including, but not limited, to the driveway and footpaths; any future damage to neighbouring properties and their curtilages; any harm to humans; and costs associated with applications to do works to the trees.”

The Ben Larkham Associates report is referred to, highlighting existing damage to paths and the driveway and considers that “Whilst the contribution of the roots to any potential subsidence at the property are unknown at this time, it is beyond reasonable doubt, especially given the nature and age of the trees, that there is an extensive root zone that could contribute to subsidence in the future”. It is stated that the “owner is keen to ensure that there is no further damage to the property or risk to human safety and requests the ability to fell the trees immediately. The owner can also confirm that the felling of the trees will also assist in the sale of the property as prospective purchasers have raised the very concerns highlighted here.”

The trees’ contribution to amenity is challenged and considers that the TPO ignores the damage that the trees have already caused and are likely to cause in the future, that the TPO was made in the knowledge of the owner’s desire to fell the trees and in the full knowledge that there were grounds for the trees to be felled and considers that there is a gross failing in procedure, that Maidstone Borough Council has acted entirely unreasonably and should assume liability in the areas outlined should the TPO not be withdrawn, and requests a review of procedures for issuing a provisional TPO.

The reference to the sale of the property is supported by a letter from Savills estate agents, which states:

“As we have discussed, the trees have been the consistent negative in respect of feedback. Many parties not only expressing concerns over the proximity of the large Sequoias and the implication these have on the structural integrity of the building but also their impact in respect of

shade/maintenance – two couples mentioning in particular the consequence of ‘damp’ environment (lichen build up), the house ‘feeling’ dark and the mess caused from falling needles (blocked gutters etc.).

Whilst we continue to extol the many virtues of the property, it is fair to say in a more challenging and sensitive market place, the extent of the trees at 5 Southways are a concern to buyers. In our view some kind of professional reduction/removal will have a positive effect on saleability.”

Eric Hotson states:

“Having read the correspondence and detailed objection by Ben Larkham Associates Ltd, I wish to record my support of the objection.

I recall the original planning application for development at Southways and was concerned at the time of the close proximity of substantial trees to the new house (No 5).

The consultant’s objection very clearly details the existing and highly likely future problems the trees will cause to the property.

I consider that the felling of the described trees will not have an adverse effect or impact on the landscape character or visual amenity for there will still be substantial trees, hedges and bush growth within the development.

For the above reasons, I support the objection and trust my concerns will be disclosed at the appropriate planning committee.”

APPRAISAL

The trees are large, mature and have no significant defects to suggest that their structural stability is threatened at this time.

There is no evidence of damage to structures other than garden paths at this time.

Their public visibility is challenged and whilst they are visible from Southways, which itself is a public highway, relatively few people are likely to view the trees from this viewpoint. Views of the trees from North Street are partially obscured by buildings and other trees, and at a distance of 80 metres. From some viewpoints the tops of the trees are visible as skyline trees.

There was a clear intention to retain these trees when planning permission was granted to build the property. The conditions that were put in place to ensure their retention at the time are now considered to have no effect, so without the protection of a TPO, the owners would be able to fell or prune the trees without restriction. It is true that the construction of a property at this distance from the trees is unlikely to be considered appropriate under current guidance.

It is not considered that there is currently insufficient information to be able to determine that there is a subsidence risk to the property. More detailed soil investigation and testing would be needed to demonstrate this.

A TPO does not pass liability to Maidstone Borough Council. In the event that MBC refuses an application for works, the applicant may be able to make a compensation claim in certain

circumstances, but generally only in the event that works are refused in the face of evidence that the refusal will result in loss or damage.

At this time, it is not considered that there is any clear evidence to justify the felling of the trees. It is therefore recommended that the TPO is confirmed to ensure their retention until such evidence is available, and can be considered under the application process.

RECOMMENDED

That Tree Preservation Order No.5003/2018/TPO be confirmed without modification.

Contact Officer: Nick Gallavin

Head of Planning Services

Ben Larkham Associates Ltd Objection to the service of the Order

The full report submitted in objection to the service of the Order was originally attached to the Committee Report, but had to be removed before publication of the agenda for data protection reasons. The objection is summarised below:

The Wellingtonia or Giant Sequoia is a tree native to the Sierra Nevada, California. In its native environment it can attain a height of over 100 metres and 27 metres in girth. It was introduced to the United Kingdom in 1853 during a period of Victorian overseas plant hunting and introductions of 'exotic' forms of new trees and shrubs. Wellingtonia trees are commonly seen in grand avenues approaching private estates and as isolated specimens in lawns to large houses, both being situations where the trees have the opportunity to develop to their full potential.

The trees would have formed part of the estate planting to the larger original property on the site. At the time of the residential redevelopment (of Southways) in 1987 the British Standard current at that time focused on the above ground parts of the tree with little attention or understanding of the below ground root environment. The spread of the canopy or crown of the tree was seen as the important criterion when establishing how close to build without detriment to the tree. Knowledge of trees and their rooting environment has developed and if an application were submitted today then 5 Southways would not have been built in such proximity to the Wellingtonia trees and a clearance of 14.0-15.0 metres would be required by the Local Planning Authority. By today's standards, there is an inappropriate relationship between the trees and structures

Root loss would have inevitably occurred to these trees during construction of number 5 and the associated garage.

The current buildings are at their closest point 2.7 metres from centre of stem to the garage and between 7.3 and 9.1 metres from centre of stem to the main house. The row of trees creates, in effect, a vertical obstructing element to the west side of the property. The presence of the trees obstructs western sunlight and a significant proportion of ambient skylight to this elevation.

The trees at this proximity to the house are oppressive and dominant to the scale of the building. As a result of this proximity the gutters of the property on the west side require year round attention to remove needle fall and build up of 'detritus' from the trees. Lack of airflow around the building results in a build up of moss on the roof. Failure of branches and deadwood from the trees has resulted in the loss of roof tiles.

T1 was previously struck by lightning and is of limited future viability as a result of associated defects. T2 –T4 were reduced in height approximately 2.5 years ago to attempt to mitigate their overbearing nature however they remain obviously dominant in relation to the property. The trees are contributing to damage of the existing concrete block paving paths and surfaces. The disruption to ground levels and lightly loaded structures are a result of root development and the continued radial expansion of that root mass.

The service of any TPO is principally founded in the contribution the tree makes to amenity. Whilst not defined in the legislation amenity is usually understood to be the visual

contribution or benefit a tree provides from a public viewpoint. The trees could be said to be visible by pedestrian use of the footpaths but little by motorists given the presence of the Sutton Valence School and Primary School any driver's attention is focused to the road. There is a break in the frontage planting at the entrance to Sutton Valence Primary School and also over the front garden of the detached property to the north of no 5. The upper parts of the trees are also seen above the Doctors surgery which occupies no 6 Southways to the east of the subject property and which divides it from North Street.

It is important to consider that these are broken views of the trees also being seen through the winter canopy of a number of larger trees fronting North Street. When these trees are in leaf any contribution arguably provided by these trees would be diminished significantly. Within the south western corner of no 6 Southways there is also a mature Western Red Cedar which obscures much of the visibility onto the Wellingtonia trees when viewed from North Street. Aside from the dominant Wellingtonia trees Southways as a development has an open plan appearance with frontage trees and shrubs appropriate to the scale of the space and setting of the development.

The benefit these trees provide to the locality may, as suggested by the local authority, be seen as positive in respect of amenity, or as I would contend negatively in the context of the setting of the site with the height and mass of the trees being so incongruous to no 5 and the overall open appearance of Southways.

The owner of the property has been attempting to market it through estate agents now for approximately seven months. There have been no offers on the property due to the presence of the trees. The preservation order thus provides a material obstacle to the effective sale of the property.

In considering the proximal relationship of the trees to the existing property the owner has raised concerns over the potential for the trees to contribute to a subsidence risk. At the distance found the trees would definitely be within a zone of potential influence to the soil beneath the foundations of the house and garage. I have been unable to source information on foundation detail through the Maidstone Borough Council website. My experience of Berkeley Homes is that they are a building firm of good reputation and it is likely that in 1987, or shortly after when the houses were built that the trees would have been of mature proportions. The foundation design to the structures should therefore have reflected the presence of the trees to meet building regulation approval current at that time.

Whilst on site I took a soil sample to approximately 50 centimetres depth adjacent to tree T1. This sample was found to both hold its shape when squeezed and also when rolled into a solid form cylinder. In the absence of further analysis this simple test suggests a soil with a higher percentage clay content. I have also referenced the 1:50000 scale Geological Survey of Great Britain (England and Wales) Solid and drift – sheet no 288 Maidstone which identifies the subject property as falling within an area of head deposits, over Hythe Beds, over Atherfield clay over Weald Clay. Given the poorly sorted and stratified variability of head deposits, and on the basis of the sample taken, the notes following within this objection are written on the understanding that clays are present.

I have looked over the external fabric of the property from a lay person's perspective and not noted any features associated with settlement. However given the presence of clay and the continued growth of these trees the future potential for settlement associated with a persistent moisture deficit cannot be ruled out. It is recommended that further investigation as to the construction specification for the foundations to both the house and garage is undertaken.

What is also pertinent is that if the TPO is not confirmed there clearly remains a limitation on the owner from undertaking any material tree removal. The trees predate the construction of the property therefore any tree removal could result in an increase in soil volume through re-hydration with a potential for ground heave. The burden of responsibility for retention/management or part removal of the trees due to their proximal relationship to the property and those liabilities and risks, both current and future, should remain with the property owner without the imposition of a TPO.

It is therefore evident that the placement of the TPO on these trees is misguided for the reasons stated above including - proximal relationship, overbearing nature, loss of sunlight, damage to existing lightly loaded structures, management of gutters and roof surface and potential for future structural influence. These effects from the presence of the trees have a current and future potential cost implication to the owner of the property.

For the above reasons I would respectfully request that Tree Preservation Order 5003/2018/TPO is not confirmed. The owner is best placed to consider the long term management of these trees especially given the risk of heave from removal.

I would suggest that if the local authority wishes to see an element of protection afforded to these trees out of principle, that the order be modified to omit trees T1-T3 with only tree T4 being retained under the order. This tree is just over 9.0 metres from the corner of the house and would continue to provide the amenity contribution to the locality that the Local Authority is seeking to preserve.

Should members be mindful to confirm the order unmodified then my client would be obliged to make an immediate application to remove trees T1-T3, which would be accompanied with our request for a prompt refusal to be issued. This will allow an immediate appeal to be made to the planning inspectorate. If the inspector were to uphold the appeal the decision on phased removal and works to mitigate heave potential would be made by the client. Should the Local Authority be mindful to refuse a future application on confirmation of the order they may legitimately be held responsible for compensation following that decision and for the reasonable costs of any future loss or damage arising after the date of that decision.

Officer response

The factual elements of the report are considered to be an accurate description of the trees and their relationship to the property. However, the more speculative and subjective comments made are the author's opinion.

Officers do not consider that there is evidence to suggest that T1 is structurally compromised by the lightning strike and associated defects at this time and potentially could continue to make a contribution to amenity for several decades. Trees 2-4 do not have any significant defects. The public amenity contribution that the trees make is set out in the report. Whilst the objection discusses their partially obscured visibility from public viewpoints on the A274 North Street, the Southways road itself is also considered a public viewpoint, from which closer views of the trees can be obtained, albeit by fewer people, principally residents of Southways and people using the road for parking.

Anecdotal evidence about the trees being the reason for the lack of offers on the sale of the house is not necessarily a complete picture. Potential buyers may be discouraged for other reasons, but not voice them, preferring to cite the presence of the trees as the reason.

The soil assessment made in the report is crude; the simple presence of a clay content in a soil is not evidence that it possesses the physical characteristics that can lead to subsidence or heave. Whilst the potential for future damage cannot be ruled out, the risk of such

damage occurring seems very low, given the absence of damage since the property was built. There is currently no settlement damage to the house reported, which suggests that either the soil is not of a type likely to result in damage or the foundations to the property were constructed to a standard designed to withstand such effects. More detailed investigation would be required before any conclusions can be drawn on this matter. Notwithstanding this, with the property for sale, it is unlikely that the current owners have any interest in the long term management of the trees as suggested.

Damage to lightly founded structures such as garden paths is not generally considered to be justification to fell trees. Similarly, inconvenience from problems such as leaf litter blocking gutters can be addressed through regular maintenance and is not generally considered to be justification to fell trees of perceived amenity value.

The decision on whether or not to confirm the Order does not directly raise the issue of compensation, which is a consideration when determining an application for works to trees, when a refusal is being considered.

The Council has the option to confirm the order without modification, to choose not to confirm it, or to confirm with modification (the latter can only remove, not add trees to an Order).

The Council must consider whether the confirmation Order is appropriate on the grounds of the trees' contribution to amenity and whether it is expedient to continue to protect them. In simple terms, whether they are considered to be of sufficient quality and prominence to merit protection and if they are under threat of works that would be detrimental to those attributes.

It is not considered that the grounds for objection or the evidence submitted demonstrates that the harm to amenity that would result from the intended felling of the trees is outweighed and it is therefore appropriate that the Local Planning Authority should seek to continue to have a measure of control over works proposed to the trees by confirming the Order.

The recommendation remains unchanged

THE MAIDSTONE BOROUGH COUNCIL **PLANNING COMMITTEE – 26th April 2018**

APPEAL DECISIONS:

17/505252/FULL

Single storey side and rear extension.

APPEAL: DISMISSED

10 Creve Coeur Close
Thurnham
Maidstone
Kent
ME14 4PR

(Delegated)

2. 17/502657/FULL

Variation of Condition (02) of planning permission MA/13/1348 - Demolition of redundant cattle shed and other structures and conversion of traditional courtyard buildings to provide 2 no. dwellings with access, parking and landscaping (to allow the use of hand made clay tiles in place of Kent peg tiles)

APPEAL: ALLOWED

Street Farm
The Street
Boxley
Kent
ME14 3DR

(Delegated)

3. 17/504832/FULL

Conversion of garage into habitable space

APPEAL: DISMISSED

7 Angelica Square
Maidstone
Kent
ME16 0FT

(Delegated)

4. 16/508522/HYBRID

Hybrid application for outline application for 14 self/custom build detached dwellings (Access

being sought) and full detailed application for associated road infrastructure, access and landscaping.

APPEAL: DISMISSED

Land Adjacent To Westholme
Maidstone Road
Sutton Valence
Kent
ME17 3LR

(Delegated)
