

REPORT SUMMARY

REFERENCE NO - 13/1585		
APPLICATION PROPOSAL An outline application for 85 residential units, open space and allotments with access from Plain Road and Napoleon Drive. All other matters (appearance, landscaping, layout and scale) reserved for future consideration.		
ADDRESS Land At Stanley Farms, Plain Road, Marden, Kent, TN12 9EH		
RECOMMENDATION Amend S106 contributions and conditions as set out in report to 30 th July 2015 Planning Committee (attached as Appendix A)		
REASON FOR REFERRAL TO COMMITTEE To seek the agreement of Members of the Planning Committee to amend the S106 contributions being sought and make minor amendments to conditions, and address matters arising in respect of the resolution of the Planning Committee on 30 th July 2015.		
WARD Marden And Yalding Ward	PARISH/TOWN COUNCIL Marden	APPLICANT Mr P Millwood Designer Homes Ltd AGENT
DECISION DUE DATE 12/12/13	PUBLICITY EXPIRY DATE 12/12/13	OFFICER SITE VISIT DATE Various
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites): None		

MAIN REPORT

1.0 BACKGROUND

- 1.01 The current application seeks outline planning permission for the erection of up to 85 dwellings and associated car parking and landscaping, with the matter of access to be considered at the current time and all other matters reserved on a site adjoining the southern boundary of the rural service centre of Marden.
- 1.02 The application was reported to the Planning Committee meeting held on 14th August 2014, at which Members resolved to give the Head of Planning and Development delegated powers to grant planning permission subject to conditions and the prior completion of a S106 legal agreement.
- 1.03 Following the “kicking in” of the CIL Regulations on 6th April 2015, the contributions were required to be revisited, and in the circumstances of this case, resulting in changes to the sums and clarification as to their purpose. It was therefore necessary to re-report the application to Planning Committee. The application was reported back to Planning Committee on 30th July 2015.
- 1.04 The Committee report, urgent update to the Committee report and relevant minutes are attached as Appendix A to this report.

2.0 REASON FOR REFERRAL BACK TO PLANNING COMMITTEE

- 2.01 As Members will be aware, concerns were raised prior to, and at, the meeting on 30th July by Marden Parish Council in respect of the failure to secure contributions towards the repair of the Marden Memorial Hall under the draft Heads of Terms.

- 2.02 Members were provided with an urgent update report on the matter (attached within Appendix A), which set out the rationale for not seeking these contributions.
- 2.03 To summarise, the contributions were not considered to be CIL compliant on the basis that:
- The work for which they are sought is part of an existing problem with the Memorial Hall and therefore they are not necessary to make the development acceptable in planning terms; and
 - The building out of the development as proposed does not affect the condition of the Memorial Hall roof and therefore they are not fairly and reasonably related in scale and kind to the development.
- 2.04 Outside of CIL compliance, in terms of policy support and the Development Plan, the specific contributions are unsupported by adopted or emerging policy, and whilst referred to in the draft Marden Neighbourhood Plan, the pre-submission stage of this document is such that its weight is negligible in the determination of applications of planning permission at the current time.
- 2.05 Therefore, in the context of the existing resolution to grant planning permission for the application (there having been no substantive relevant changes to the local or national planning context since that time) and the absence of any such request in relation to other recent applications for large residential developments in Marden, there is no justification for seeking this contribution in respect of this particular application (which in any case has not been formally evidenced or costed, which is a requirement for contributions being sought by way of S106 agreement).
- 2.06 Nonetheless, the Planning Committee resolved at the meeting held on 30th July 2015 to defer determination of the application in order for discussions to take place in respect of securing the contributions sought by the Parish Council.

3.0 DISCUSSION OF REASON FOR DEFERRAL

- 3.01 As Members will be aware, my professional view is that the contributions sought by Marden Parish Council fail to comply with the CIL Regulations, for the reasons set out in paragraphs 2.03 – 2.05 (inclusive) above. This view is supported by Mid Kent Legal Services, legal advisors to Maidstone Borough Council.
- 3.02 Nevertheless, the applicant has been approached in regard to complying with the wishes of Members. It has been confirmed that their legal representative also considers the request to be non-CIL compliant, and that as this would render any resulting planning consent challengeable by third parties, the applicant would not be prepared to enter into a legal agreement upon which any planning permission was reliant which included the contributions being sought by the Parish Council towards the repair of the Marden Memorial Hall.
- 3.03 Members should be aware that, in addition to the risk of an appeal against non-determination if no resolution were arrived at by the Committee and a potential application for judicial review if the contributions remained part of the Committee resolution, in the circumstances of this case, the effective with-holding of a planning permission (particularly one subject to a previous resolution to grant) could leave the Council open to challenge on the basis that an inducement is being sought in respect of the determination of the application.

- 3.04 It is my continued recommendation, therefore, that it is not possible for the contributions sought by the Parish Council to be secured by way of the planning system.
- 3.05 However, since the Planning Committee meeting on 30th July 2015, discussions have taken place between the applicant and the Parish Council which have resulted in an informal offer of an ex gratia contribution of £20,000 towards the funding of the works intended by the Parish Council being made by the applicant. However, I must make it absolutely clear that this is a matter completely separate of the planning process between the two parties and cannot be secured by way of the S106 legal agreement or safeguarded by way of condition or informative and should play no part whatsoever in the decision-making process. If this payment were not to be made, for any reason, there can be no recourse to the Council for failure to secure its payment.
- 3.06 For these reasons, my recommendation remains the same as that to the Planning Committee meeting of 30th July 2015.
- 4.0 RECOMMENDATION – GRANT SUBJECT TO CONDITIONS** as per the report to Planning Committee (as amended by the urgent update report of 28th July 2015 to include Members' previous second and further resolutions) of 30th July 2015.
- 4.1 The recommendation, as amended in respect of the Heads of Terms as described in full in the report to Planning Committee on 30th July 2015, the deletion of conditions 12 and 14, and the re-numbering and/or amendment of conditions as appropriate for the reasons set out in the report to Planning Committee on 30th July 2015, is set out in full below for the purposes of clarity:

SUBJECT TO THE PRIOR COMPLETION OF A LEGAL AGREEMENT, IN SUCH TERMS AS THE HEAD OF THE LEGAL PARTNERSHIP ADVISES, TO PROVIDE THE FOLLOWING:

- *The provision of 40% affordable residential units within the application site; and*
- *A contribution of £2,360.96 per 'applicable' house and £590.24 per 'applicable' flat towards the build costs of extending Marden Primary School; and*
- *A contribution of £2,359.80 per 'applicable' house and £589.95 per 'applicable' flat towards the Phase 1 extension of Maidstone Grammar School for Boys; and*
- *A contribution of £48.02 per dwelling to be used to address the demand from the development towards additional book stock at Marden Library; and*
- *A contribution of £8.44 per dwelling to be used to address the demand from the development towards youth services through the funding of an officer who visits Marden one evening a week; and*
- *A contribution of £55,080 to be used to address the demand from the development towards an extension of waiting room facilities at the Marden Practice; and*
- *A contribution of £17,793.05 towards improvements at Marden railway station.*

THE HEAD OF PLANNING AND DEVELOPMENT BE GIVEN DELEGATED POWERS TO GRANT OUTLINE PLANNING PERMISSION SUBJECT TO THE IMPOSITION OF THE CONDITIONS SET OUT BELOW:

CONDITIONS

(1) The development shall not commence until approval of the following reserved matters have been obtained in writing from the Local Planning Authority:

a. Layout b. Scale c. Appearance d. Landscaping

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

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

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

(2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in strict accordance with the approved details;

Reason: In the interests of amenity and to ensure that the proposed development is satisfactorily integrated with its immediate surroundings.

(3) No development shall take place until there has been submitted to, and approved in writing by, the Local Planning Authority details of the locations, heights, designs, materials and types of boundary treatments to be erected on the site. The boundary treatments shall be completed in strict accordance with the approved details before the first occupation of the buildings or land and maintained thereafter;

Reason: in the interests of visual amenity, privacy and to ensure that the proposed development is satisfactorily integrated with its immediate surroundings.

(4) No development shall take place until details of satisfactory facilities for the storage of refuse on the site have been submitted to, and approved in writing by, the Local Planning Authority and the approved facilities shall be provided before first occupation of the buildings or land and maintained thereafter;

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

(5) No development shall take place until a detailed scheme for parking and turning areas has been submitted to, and approved in writing by, the Local Planning Authority. The approved scheme shall be completed before the commencement of the use of the building or land hereby permitted and shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them;

Reason: development without adequate parking and turning provision is likely to lead to parking inconvenient to other road users and in the interests of road safety.

(6) No development shall take place until details of the foul and surface water drainage systems to serve the development, incorporating sustainable drainage principles and an assessment of the hydro-geological context of the development and the site, shall be

submitted to, and agreed in writing by, the Local Planning Authority. The agreed scheme shall be implemented in strict accordance with the approved plans prior to the first occupation of the development hereby permitted;

Reason: to ensure that adequate drainage is provided for the development.

(7) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to, and approved in writing by, the Local Planning Authority;

Reason: To ensure that features of archaeological interest are properly examined.

(8) No development shall take place until a landscape and ecological management plan (LEMP) shall be submitted to, and be approved in writing by, the Local Planning Authority. The content of the LEMP shall include the following:

- a) Description and evaluation of features to be managed; and
- b) Ecological trends and constraints on site that might influence management; and
- c) Aims and objectives of management; and
- d) Appropriate management options for achieving aims and objectives; and
- e) Prescriptions for management actions; and
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period); and
- g) Map; and
- h) Details of the body or organization responsible for implementation of the plan; and
- i) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

Reason: To safeguard and improve natural habitats and features within the site and to mitigate against the loss of natural habitats, with particular reference to those species protected under the Wildlife and Countryside Act 1981.

(9) The proposed gully pots and pavements shall be located and designed as recommended in the Corylus Ecology Addendum GCN Survey Report dated May 2014 and Corylus Ecology Protected Species Mitigation Measures statement received 22nd November 2013 unless otherwise agreed in writing by the Local Planning Authority;

Reason: To safeguard and improve natural habitats and features within the site and to mitigate against the loss of natural habitats, with particular reference to those species protected under the Wildlife and Countryside Act 1981.

(10) If the development hereby approved does not commence (or having commenced, is suspended for more than 12 months) within 2 years from the date of the planning consent, the approved ecological measures secured shall be reviewed and, where necessary, amended and updated. The review shall be informed by further ecological surveys

commissioned to identify any likely new ecological impacts that might arise from any changes.

Where the survey results indicate that changes have occurred that will result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures will be revised and new or amended measures, and a timetable for their implementation, will be submitted to, and approved in writing by, the Local Planning Authority prior to the commencement of the development. Works will then be carried out in accordance with the proposed new approved ecological measures and timetable;

Reason: In the interests of biodiversity protection.

(11) The details of landscaping, submitted pursuant to condition 1 above, shall provide for the following indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development, and a programme of maintenance. The proposal shall include a woodland area on site to enhance biodiversity. All planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding season following commencement of the development (or such other period as may be agreed in writing by the Local Planning Authority) and 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, unless the Local Planning Authority gives written consent to any variation;

Reason: To ensure that the proposed development is satisfactorily integrated with its immediate surroundings and provides for landscaping.

(12) Notwithstanding the details illustrated on the approved plans, prior to the first residential occupation of any of the residential units hereby permitted a detailed lighting plan for the development including the road, car parking areas, footways/cycleways, shall be submitted to and agreed in writing with the Local Planning Authority. Such details shall include the siting and design of any lighting together with details of the spread and intensity of the lighting. It should also identify those areas/features on site that are particularly sensitive for bats and where lighting is likely to cause disturbance along important routes used to access key areas of their territory and show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. The lighting shall be installed in strict accordance with the agreed details prior to first residential occupation of the dwellings hereby permitted and thereafter retained and maintained in the agreed form without any further additions;

Reason: In the interests of highway safety, amenity and biodiversity.

(13) The development shall not commence until details of the proposed materials to be used in the surfacing of all access roads, parking and turning areas and pathways with the site, and the design of the kerb stone/crossing points which shall be of a wildlife friendly design, have been submitted to, and approved by, the Local Planning Authority. The development shall thereafter be undertaken with the subsequently approved details;

Reason: To ensure a high quality external appearance to the development.

(14) If, during development, contamination not previously identified is found to be present at the site then no further development (unless Otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, a remediation strategy detailing how

this unsuspected contamination shall be dealt with. The remediation shall be implemented as approved;

Reason: To protect vulnerable groundwater resources.

(15) Prior to the commencement of any development, details shall be submitted to, and agreed in writing by, the Local Planning Authority showing the existing and proposed site levels and the finished floor levels of the building(s) hereby permitted. The development shall thereafter be undertaken in strict accordance with the details agreed;

Reason: In the interest of amenity.

(16) No part of the development shall be occupied until a Sustainable Travel Statement, providing measures and incentives to encourage trips by alternative means to the private car and to include a Residential Travel Information Pack, has been submitted to, and approved in writing by, the Local Planning Authority. The approved details shall be carried out in full;

Reason: In the interests of sustainable transport use.

(17) Notwithstanding the Town and Country Planning Act and the provisions of the Town & Country Planning (General Permitted Development) (England) Order 2015 (or any Act or Order revoking and re-enacting that Act or Order, with or without modification) or not, no electricity, gas or water meter boxes, soil ventilation pipes, air extraction pipes, boiler flues, ventilation grilles or ducting, satellite dishes, burglar alarms, security lighting, video cameras or floodlighting, surface wiring or pipe work shall be fixed to the external fabric of the buildings without the prior written approval of the Local Planning Authority;

Reason: In the interest of visual amenity and the integrity of the design.

(18) No development shall take place until a scheme for the incorporation of bird nesting boxes and swift bricks has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be implemented as agreed prior to the first occupation of the residential units hereby permitted and thereafter permanently retained;

Reason: In the interests of supporting and promoting the biodiversity interests of the site.

(19) Prior to the first occupation of the development hereby permitted the visibility splays as shown on drawing number 5500Z/01 rev C received 12th September 2013 shall be implemented with no obstruction to visibility at or above a height of 600mm when measured from the level of the adjoining highway carriageway and the visibility splays shall thereafter be retained and maintained as such;

Reason: In the interests of highway and pedestrian safety.

(20) No development shall commence until an Air Quality Assessment has been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in strict accordance with the approved details;

Reason: In the interests of amenity.

(21) The development hereby permitted shall have a maximum height of two storeys;

Reason: To preserve the character and appearance of the nearby listed building.

(22) The approved details of the accesses as shown on drawing number 5500Z/01 rev C received 12th September 2013 and Transport Assessment (issue C) received 28th May 2014 shall be completed before the commencement of the use of the land and be maintained thereafter;

Reason: In the interests of highway safety.

(23) No development shall take place until full details of the following works have been submitted to, and approved in writing by, the Local Planning Authority in consultation with the Highway Authority:

1. Measures to improve the bus waiting area in Plain Road; and
 2. Bus stop improvements within the High Street, to provide raised bus boarders; and
 3. Upgrading of the existing zebra crossing to a puffin crossing on Goudhurst Road;
- and
4. The provision of a new pedestrian crossing on Church Green close to its junction with the access to Marden Station; and
 5. Extension of the 30mph speed limit on Albion Road to include the junction of Plain Road and to extend into Plain Road past the proposed site access.

The highway works shall be provided in strict accordance with the approved details prior to occupation of the development hereby permitted;

Reason: In the interests of highway and pedestrian safety.

(24) Prior to construction of any impermeable surfaces on the site, details of suitable attenuation drainage ditches shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in strict accordance with the approved details;

Reason: In the interests of sustainable drainage.

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

Drawing numbers 2242-100 (site location plan), 2242-101E (illustrative site plan) and 2791-DR-003 Rev D (landscape masterplan), and Monson Transport Assessment and drawings contained within dated 1st July 2014;

Reason: For the purposes of clarity and in the interests of highway safety.

INFORMATIVES

(1) No furniture may be erected on or across Public Rights of Way without the express consent of the Highway Authority.

There must be no disturbance of the surface of the right of way, or obstruction of its use, either during or following any approved development without the permission of the Highway Authority.

There should be no close board fencing or similar structure over 1.2m erected which will block out the views.

No hedging or shrubs should be planted within 1m of the edge of the public path.

No materials can be stored on the right of way.

The granting of planning permission confers on the developer no other permission or consent or right to close or divert any Public Right of Way at any time without the express permission of the Highway Authority.

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. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

All construction traffic associated with this development, including operatives' vehicles, should be accommodated within the site.

All construction and operatives' traffic should use Plain Road for access to and from the development site and suitable signage should be erected to ensure this.

Wheelwashing facilities should be provided prior to commencement of work on site and for the duration of construction.

(2) There should be no close board fencing or similar structure over 1.2m erected which will block out views.

(3) The applicant/developer should enter into a formal agreement with Southern Water to provide the necessary sewerage infrastructure required to service this development. Please contact Southern Water, Southern House, Sparrowgrove, Otterbourne, Hampshire, SO21 2SW (Tel. 0330 303 0119) or www.southernwater.co.uk.

Kent County Council (KCC) has been identified as the lead Flood Local Authority for this area and will be responsible for approval of surface water drainage infrastructure for new development. Sustainable Drainage Advisory Board (SAB) will be required in addition to planning consent. Recommend that the applicant makes contact with the SAB at KCC to discuss details of the proposed surface drainage infrastructure. Enquiries should be made to Kent County Council via email at suds@kent.gov.uk.

No soakaway should be sited in, or allowed to discharge into, land impacted by contamination or land previously identified as being contaminated.

Only clean uncontaminated roof water shall drain directly to soakaways entering after any pollution prevention methods.

Any activities producing potentially polluting run off should also be sited on impermeable hardstanding areas that drain to foul sewer or sealed container.

(4) Attention is drawn to sections 60 & 61 of the COPA 1974 and to the Associated British Standard COP BS 5228:2009 for noise control on construction sites. Statutory requirement are laid down for control of noise during works of construction and demolition and you are advised to contact the Environmental Health Manager (EHM) regarding noise requirements.

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

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

Vehicles may only arrive, depart, be loaded or unloaded within the general site between the hours of 0800 -1900 Mondays to Fridays and 0800 to 1300 hours on Saturdays and at no time on Sunday and Bank Holidays.

Adequate and suitable provision in the form of water sprays should be used to reduce dust from the site.

Provision should be made for the separate storage of recyclables from household waste.

Advice on recycling can be obtained from the EHM.

Second Resolution:

An Implementation Committee should be established comprising the developer, Maidstone Borough Council Officers, the local Ward Members and a representative of the Parish Council to oversee the implementation of this development.

Further resolved:

The delegation to the Head of Planning and Development to determine any reserved matters application pursuant to this application be withdrawn and that any application for approval of the reserved matters shall be reported to the Planning Committee.

Case Officer: Catherine Slade

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.