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| REFERENCE NO - 21/503585/FULL | | | |
| APPLICATION PROPOSAL | | | |
| Section 73 - Application for Variation of condition 30 (to vary the trigger point for the delivery of the Willington Street/Deringwood Drive improvements, to prior to occupation of 100 units, rather than prior to commencement above floor slab level) pursuant to application 19/506182/FULL (Residential development for 421 dwellings with associated access, infrastructure, drainage, open space and landscaping, allowed on appeal) | | | |
| ADDRESS Land West of Church Road, Otham, ME15 8SB | | | |
| RECOMMENDATION – APPROVE WITH CONDITIONS | | | |
| SUMMARY OF REASONS FOR RECOMMENDATION | | | |
| <ul style="list-style-type: none"> • It has been demonstrated the traffic associated with 100 houses/units and construction vehicles would not result in a severe traffic or safety impact and so can be accommodated at the existing Deringwood Drive/Willington Street junction, and no objections have been raised by the Highways Authority. • It is therefore acceptable to move the trigger for the implementation of the junction improvement to the occupation of 100 units or 31st December 2023 (whichever is the sooner). | | | |
| REASON FOR REFERRAL TO COMMITTEE | | | |
| <ul style="list-style-type: none"> • Otham Parish Council strongly objects to the proposals for the reasons outlined in the report. • Councillor Newton has requested the application is considered by the Planning Committee. | | | |
| WARD Downswood & Otham | PARISH COUNCIL Otham | APPLICANT Bellway Homes Ltd AGENT None | |
| DECISION DUE DATE: 25/02/22 | PUBLICITY EXPIRY DATE: 15/11/22 | SITE VISIT DATE: Various in 2021/2022 | |
| RELEVANT PLANNING HISTORY | | | |
| App No | Proposal | Decision | Date |
| 19/506182 | Residential development for 421 dwellings with associated access, infrastructure, drainage, open space and landscaping. | REFUSED & ALLOWED AT APPEAL | 07/01/21 |
| 19/501600 | Outline application for up to 440 residential dwellings, with associated access, infrastructure, drainage, landscaping and open space (Access being sought with all other matters reserved for future consideration) | REFUSED & ALLOWED AT APPEAL | 07/01/21 |

1.0 DESCRIPTION OF SITE

1.01 The application relates to the 'Land West of Church Road' housing allocation site (H1(8)) where full and outline permission was allowed at appeal in January 2021 subject to conditions. The site is to the southeast of Maidstone and is between substantial residential areas to the north, west and southwest. To the east are open agricultural fields and immediately to the south/southeast are a number of detached residential properties at The Rectory (Grade II listed) and Squerryes Oast. St Nicholas's Church (Grade I listed) and Church House (Grade II listed) are to the north of the site.

2.0 PROPOSAL

2.01 This a 'section 73' application to vary condition 30 of the appeal decision.

Condition 30 states as follows:

The development shall not commence above floor slab level until the following off-site highways works have been provided in full:

- a) *Improvements to the Church Road/Deringwood Drive junction as shown on drawing no. 34.1 within the 'Iceni Transport Note – July 2019' or any alternative scheme agreed in writing with the local planning authority;*
- b) *Improvements to the Deringwood Drive/Willington Street junction as shown on drawing no. 14915-H01 Rev 5, or any alternative scheme agreed in writing with the local planning authority;*
- c) *Road widening and new pavement provision on Church Road as shown on drawing nos. 34.1 and 34.2 within the 'Iceni Transport Note – July 2019'.*

2.02 The applicant is proposing to change the trigger point for providing the improvements (signalisation) to the Deringwood Drive/Willington Street (DD/WS) junction listed under part (b) from 'slab level' to the occupation of 100 houses/units. The trigger for the delivery of parts (a) and (c) would not change.

3.0 POLICY AND OTHER CONSIDERATIONS

- Maidstone Borough Local Plan (2011-2031): SS1, SP1, SP3, SP23, H1, H1(8), DM1, DM21
- Otham Neighbourhood Plan (2021): ST1, ST2
- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- MBC Air Quality Guidance

4.0 LOCAL REPRESENTATIONS

4.01 **Otham Parish Council:** Strongly object to the application for the following (summarised) reasons:

- Delay to the Willington Street/Deringwood Drive improvements is unacceptable.

- The Planning Inspector clearly stated the mitigation should be in place prior to occupation and that the junction cannot remain to operate within its existing arrangement over the next few years with the various committed development schemes in southeast Maidstone.
- The Inspector was very clear that the safety of pedestrians needs to be addressed at this already busy junction and this should be by signalling prior to construction above slab level.
- Concern that there has been no counting of pedestrian or cyclists who cross at the junction as it is already extremely difficult for them to cross and this will only be exacerbated with more traffic.
- Do not agree that the impacts of the construction period will not materially impact the junction and would like to see evidence.
- Safety of pedestrians and cyclists is paramount.
- Provided a video of a HGV turning in the junction and delaying traffic.

4.02 **Bearsted Parish Council (neighbouring)**: Raises objections in the strongest possible terms due to it conflicting with the restrictions put in place by the Planning Inspectorate and KCC.

4.03 **Bearsted & Thurnham Society**: Raises objections for the following (summarised) reasons:

- Appears to be a well-practiced approach by developers to delay off-site works until they have started to accumulate profits from the sale of properties.
- Developers have little regard to their own customers, let alone existing residents.
- Developer is only concentrating on traffic and ignoring cyclist and pedestrians that will be catered for in the signalised junction.
- New residents will establish travel plans before the toucan crossing is in place.
- Delays to infrastructure while developers continue to add traffic problems is unacceptable.

4.04 **Chapman Avenue Area Residents Association**: Raises the following (summarised) points:

- Strong objection.
- The trigger point was a clearly thought through issue by the Inspector for various reasons.
- Development up to slab level will result in an increase in HGV traffic for construction and greater pressure on the already over congested Willington Street, especially at the Deringwood Drive junction.
- Existing residents considerably obstructed by new HGV traffic and increased danger.
- Danger to pedestrians and cyclists at junction.
- Ignoring HGV construction traffic.
- Any delay to the sale of houses is no justification.
- Junction improvement should not be seen in isolation.
- Do not consider evidence is accurate.

- An approval would fly in the face of the careful conditions laid down by the Inspector in deciding to grant permission and in contravention of the Council's own position.
- Whilst fitting in the road improvement may cause a slowdown of the development, safety and convenience of Maidstone residents and road users must take priority.
- Construction traffic has not been assessed.
- Disingenuous to make a point that the approved Construction Management Plan will mitigate arrival times of construction and deliveries to the site.
- Why didn't applicant make these points at the appeal.
- Additional traffic volume data that was not available to the Inspector.

4.05 **Local Residents:** 45 representations received raising the following (summarised) points:

- Improvement must be carried out as per the Inspector's requirement in full and on time, and not delayed.
- An approval would fly in the face of the Planning Inspector's requirement.
- The Planning Inspector continues to require compliance with the condition.
- Applicant should manage dependencies with 3rd parties such as KCC.
- Applicant should honour the terms of the agreed permission.
- The applicant accepted the condition at the appeal.
- Delay will cause inconvenience to local residents and delay improvements to the national cycle route.
- The improvement is required to mitigate construction traffic and other committed developments, not just the traffic of new residents.
- Policy DM21 requires mitigation measures ahead of development being occupied.
- The junction improvement is required for the safety of pedestrians and cyclists including from construction traffic.
- There has been no counting of pedestrians or cyclist who currently use the junction or evidence that construction traffic will not materially impact the junction.
- Selling houses is not a justification to delay the junction works.
- If the improvement could have been delayed the Inspector would have said so.
- Junction is already over capacity and 100 houses will cause further delay.
- There will be substantial queuing with construction traffic.
- Construction traffic has not been assessed.
- Works are key to maintaining safety.
- Signalisation should be cancelled and will not work.
- Not in line with draft Economic Development Strategy.
- Improvement is required for safety.
- If KCC are unable to fulfil their provision of a 'street works permit' in the required time, this should have been taken into consideration.
- The delay will only benefit the applicant.
- Pollution.

4.06 **Borough Councillor Newton** requests the application is considered by the Planning Committee and raises the following (summarised) points:

- Refers to the video of a HGV turning in the junction and delaying traffic.

- Has seen a HGV lorry that could not get up the Willington Street hill from a standing start and delayed traffic.
- When snow and ice arrives there will be chaos in Willington Street.

4.07 **Borough Councillor Springett:** Strongly objects and raises the following (summarised) points:

- The impact of the development on this junction is already a concern.
- To delay the junction improvements will be a safety hazard.
- Large construction vehicles will be needed to bring the materials to build the 99 properties and will be slow moving at this turn and combined with the addition vehicle movements caused by the vehicles from the occupied houses will create a danger to road users.
- Application should be rejected on the grounds of safety.

4.08 **Maidstone Cycle Campaign Forum:** Raise the following (summarised points):

- The junction carries national cycle route 177 and a condition of the development was to upgrade this to improve options for pedestrian and cyclists in the area. This is part of the mitigation of the harm and the improvements need to be provided in line with the timescales set out by the Inspector.

5.0 CONSULTATIONS

Only consultee responses relevant to the proposals are set out below (those relating to highways):

5.01 **Highways England: No objections.**

5.02 **KCC Highways: No objections.**

Traffic Impacts

"KCC Highways has some concerns over the additional local congestion this development would create. The National Planning Policy Framework (NPPF) states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. That can only be judged on a case by case basis, taking account of all material factors.

KCC Highways has considered the traffic assessment and the current and likely future conditions on the local highway network. This shows that the situation is likely to be worsened, but KCC Highways are not able to conclude that it will result in conditions that could be described as a severe impact on congestion or safety. However, your Members should be made aware that the residual impact of this development is likely to be characterised by additional local traffic generation and some consequent increase in congestion, which the applicant cannot fully mitigate.

On this basis it is concluded that an objection to the proposed occupation of 100 dwellings prior to the provision of the Deringwood Drive junction improvement cannot not be justified in this instance.”

Highway Safety

“I can confirm that KCC Highways have assessed the impact of the proposals in safety, as well as capacity terms.

The existing junction arrangement is designed to a high standard. This is characterised by extensive carriageway widths, junction widths, wide junction radii and the provision of a ghost right turn lane (GRTL) on Wellington Street itself. In addition, as highlighted within KCC Highways final consultation response and the applicant’s further Transport Technical Notes Deringwood drive is a bus route. Consequently, large vehicles already use the junction without adversely impacting upon overall levels of highway safety.

I have checked the personal injury collision (PIC) record at the junction in question and can confirm that in the last 5-year period up to September 2021 3 collisions have been recorded. All 3 collisions were slight in severity, with driver error a contributory factor in all the recorded collisions. The layout or geometry of the junction is not a contributory factor in any of the collisions. The good PIC record at the junction, coupled with the fact that the junction is already used by large vehicles demonstrates that there is no evidence to indicate that construction traffic would adversely impact upon overall levels of highway safety.”

6.0 APPRAISAL

6.01 Planning permission has already been granted for the development and this application proposes to make changes to part of condition 30 only. In line with section 73 of the Town and Country Planning Act 1990, the local planning authority can only consider the consequences of the proposed changes to the condition and cannot re-visit the principle of the development or any other matters relating to the permission.

6.02 Whilst not a factor in making a decision and for information purposes, the applicant has stated they are applying to change the condition because through their discussions with the Highways Authority, they do not consider it will be possible to gain the necessary ‘street works permit’ or ‘road space’ to enable the works to proceed prior to development commencing above slab level. They want to commence the development following discharge of all pre-commencement conditions, which is potentially imminent as the final conditions are on this same committee Agenda. In terms of timescales the applicant states that, “*assuming we get a positive decision at the 17th February committee for the last 2 prestart conditions, we will be keen to commence as soon as practicable after that. We will then be at slab level for the first units around 3 months later, mid-May time. The 100th occupation based on a site start mid-February will be around Oct/Nov 2023.*”

- 6.03 I have asked KCC Highways for their view and estimate of when they anticipate the works can be programmed and they have advised that discussions on the availability of 'road space' will not take place until after the technical approval process for the highway works (section 278 agreement) is signed. This has not taken place yet but is expected to be soon.
- 6.04 Many representations consider that the developer should wait for 'road space' to be available, however, any applicant is entitled to make an application to change a condition and the local planning authority must assess the implications of the proposed change and reach a decision based on the information/evidence provided.

Planning Inspector's Reasons for Condition

- 6.05 Planning Inspector's do not put specific reasons for conditions as is the case for planning authorities but discussion of the DD/WS junction can be found at paragraphs 36-58 of the Appeal Decision (attached at **Appendix 1**). At paragraphs 175 and 185 it states the off-site junction and highway improvement works are necessary in the interest of 'highway safety and flow of traffic'.
- 6.06 The main justification for the junction improvement itself was to mitigate the traffic impact of the development but the Inspector acknowledged that it would also introduce an improved crossing for pedestrians and cyclists at paragraph 42.
- 6.07 In terms of the trigger for delivery of the junction works, this is usually set at 'prior to occupation' because applicants are only required to assess the impact of the 'development' traffic itself (i.e. the new houses) and occupation is when this additional traffic will occur. In this case, the Inspector set it at 'slab level' but no explanation is provided in the written decision. I have therefore asked the Inspector and he has stated as follows:

"The only comment I can make is that my decision states the following at paragraph 185:

Also in the interests of highway safety, conditions are necessary requiring the provision of the site accesses, off-site highway improvements, measures to maintain the access visibility splays and the provision of parking/turning areas for each building (conditions Nos. 7, 29, 30 and 32). However, I have amended the suggested condition relating access to ensure that the access points are provided prior to the commencement of any development above slab level.

The reason for the condition is in the interest of highway safety. This was discussed in the 'round table session' on conditions. It was my view that the off-site traffic management measures should be completed as soon as possible before substantive deliveries of materials and construction works occurred. This was not an amenity issue but a highway safety matter given the nature of the surrounding highway network and the relative matters discussed in the Inquiry."

6.08 So whilst not explicit in the appeal decision, the Inspector has advised that the earlier trigger was based on highway safety to limit the amount of construction traffic before the junction works take place. So, it is appropriate to consider the highway safety implications of additional 'construction' traffic beyond slab level in addition to the traffic associated with 100 houses as part of this assessment.

Traffic Impact of 100 Houses

6.09 The applicant has provided an assessment of the impact of up to 100 houses at the WS/DD junction and provided all further information requested by KCC Highways. The assessment has been modelled in 2023 when the occupation of 100 houses is predicted at the end of that year. The applicant has been asked to provide further justification as this is now less than 2 years away and has stated as follows:

"With regards to the occupation of the 100th unit, I have spoken to both the site manager and to the Managing Director at Bellway to get a definitive view. They have confirmed that their projections put the 100th unit occupation at Oct/Nov 2023. This would be around 20 months. After a short period of site set up as soon as the pre-start conditions are through (hopefully on 17th Feb) they will be into delivery straight away. The HA units are some of the first phase and these are a mixture of flats and 2/3 beds and are all transferred on construction for occupation.

As a comparison, I understand the Bicknor Wood site took circa 22 months to occupy the 100th unit. This started in Oct 2018 and achieved the 100th unit in August 2020. Whilst very similar in timing this was at a different period of the general market and crucially a lot of the first 100 were detached larger units which take longer to construct and sell. The delivery has significantly increased since then due to some smaller units coming forward and the market being strong. They have currently occupied 229 units. The first 100 of the Church Rd site are mostly HA and mostly of a smaller nature of flats, semi-detached and terraces so will be quicker and there is a very strong market for the private units at present too. We are therefore very confident that the delivery rate set out above is realistic and will be delivered. This also factors in the highways and junction works to Church Rd."

6.10 Based on the rate of build/occupation at the Bicknor Wood site it is considered reasonable that with commencement at the beginning of March 2022, 100 occupations could be reached by the end of 2023 (20/21 months). This is however quite a tight timescale so it would be appropriate to put a time limit on providing the WS/DD junction works (end of 2023) in addition to 100 occupations, or whichever is the sooner, in any approval.

6.11 The modelling of the WS/DD junction considers the cumulative effect of background traffic growth, wider committed development, and 100 houses at the Church Road site, and forecasts that the WS/DD will operate well within its design capacity. The maximum impact is the DD arm being at 81.9% capacity in the AM peak, otherwise the impact is in the 50% range.

6.12 Although not directly relevant to this application, the evidence also assesses the WS/Madginford Road and the A20/WS junctions due to the potential

knock-on effects and predicts an increased delay of approximately 6 seconds will occur when travelling across the three junctions.

- 6.13 KCC Highways have reviewed the evidence and raise no objections. They point out that local traffic levels will be worsened with increases in congestion but do not conclude it will result in conditions that could be described as a severe impact on congestion or safety.
- 6.14 Policy DM21 of the Local Plan states that the development proposals must, *"Demonstrate that the impacts of trips generated to and from the development are accommodated, remedied or mitigated to prevent severe residual impacts, including where necessary an exploration of delivering mitigation measures ahead of the development being occupied."*
- 6.15 For the above reasons, the applicant has demonstrated the trips generated from up to 100 houses can be accommodated and so it is considered acceptable to vary the trigger for delivery of the WS/DD junction to 100 houses or by 31st December 2023 (whichever is the sooner). Delivery at this point would then sufficiently mitigate the traffic impact of this amount of development (100 houses) and so it would not contravene policies SP23 or DM21 of the Local Plan or the NPPF.

Highway Safety

- 6.16 KCC Highways have confirmed they have no objections from a safety point of view with use of the existing WS/DD junction by up to 100 houses from the development and construction vehicles. This is understandable as the existing junction accommodates all modes of traffic and is used by cars, buses, and refuse vehicles. They state,

"The existing junction arrangement is designed to a high standard. This is characterised by extensive carriageway widths, junction widths, wide junction radii and the provision of a ghost right turn lane on Willington Street itself. In addition, as highlighted within KCC Highways final consultation response and the applicant's further Transport Technical Notes, Deringwood drive is a bus route. Consequently, large vehicles already use the junction without adversely impacting upon overall levels of highway safety."

I have checked the personal injury collision (PIC) record at the junction in question and can confirm that in the last 5-year period up to September 2021, 3 collisions have been recorded. All 3 collisions were slight in severity, with driver error a contributory factor in all the recorded collisions. The layout or geometry of the junction is not a contributory factor in any of the collisions. The good PIC record at the junction, coupled with the fact that the junction is already used by large vehicles demonstrates that there is no evidence to indicate that construction traffic would adversely impact upon overall levels of highway safety."

- 6.17 In addition, the approved Construction Management Plan (ref. 21/502372/SUB), requires that construction/delivery vehicles are timed to arrive and depart outside the network peak hours (8am-9/5pm-6) where there would be more traffic and likely to be more pedestrians and cyclists.

6.18 So whilst the Inspector's reason for the earlier trigger for the junction improvement was highway safety relating to construction vehicles, there is no evidence to demonstrate the existing junction is not capable of safely accommodating construction traffic, and the Highways Authority raises no objections to the later trigger. Therefore, it is considered acceptable to vary the trigger for delivery of the WS/DD junction to 100 houses as there would be no highway safety issues to warrant refusal in accordance with policy DM1 of the Local Plan and the NPPF.

Walking & Cycling

6.19 The new junction would provide controlled crossing facilities for pedestrians and cyclists and so help to promote walking and cycling through to Mote Park. As pointed out in some representations, these crossings would not be in place despite up to 100 houses being occupied and such improvements are usually required prior to occupation to influence travel behaviour from the outset. However, this is not considered a sufficient reason to refuse permission and also bearing in mind the primary reason for the junction improvement was to mitigate traffic congestion.

Representations

6.20 Representations in general relate to traffic congestion, highway safety, and pedestrian/cycle use of the junction, which has been considered above.

6.21 Some representations consider the WS/DD junction is already over capacity and refer to the Appeal Decision and the Inspector's comments between paragraphs 38 and 41 where he states,

"38.The submitted information identifies that, on completion of local committed developments, the junction will experience capacity issues, specifically on the Deringwood Drive arm, with drivers unable to exit this arm due to the increasingly heavy traffic volumes on Willington Street. This issue would be exacerbated by the implementation of the proposed development."

"41. Therefore, irrespective of whether the appeal schemes are allowed, the submitted Transport Assessment suggests that the WS/DD junction cannot remain to operate within its existing arrangement over the next few years with the various committed development schemes currently completed or under construction in south-east Maidstone."

6.22 The Inspector did not state the WS/DS junction was over capacity at the time of the Appeal and was referring to the 'next few years' or 'on completion of local committed developments'. However, it is noted at paragraph 40 he refers to the 'Iceni Transport Note' (September 2019), which forecasted the DD arm of the junction would be at 138% in 2019. I have asked the applicant for an explanation as to why their forecast in 2023 is much lower and they state,

"Paragraph 40 of the appeal decision refers to the assessment undertaken by Iceni which included a significant over-estimate of the build-out of wider committed developments and background traffic growth in their 2019 horizon test."

You may recall that in my Rebuttal Statement to the Inquiry, I explained that we had refined our approach to the inclusion of committed developments and background traffic growth to address this issue.

Our more recent work for the S.73 application has also factored in MBC's latest housing trajectory and known build-out positions on local sites, which are behind what was anticipated pre-Covid."

6.23 The latest evidence has been accepted by the Highways Authority and does not include 6 developments that were in the original 'Iceni' evidence because they will either not come forward by 2023 (permissions have lapsed) or have been completed and so are already on the network. It also shows that the Iceni forecasts did not occur. Ultimately it shows the WS/DD junction will not be over capacity with 100 houses in 2023 and this has been accepted by the Highways Authority.

6.24 There is also a general view that any approval would fly in the face of the conditions laid down by the Inspector and so there should not be any change. Officers can understand this view, however, the applicant is entitled to apply for changes to conditions and has provided additional evidence to demonstrate this is acceptable (which was not before the Inspector), to which no objections have been raised by the Highways Authority, and with which officers agree.

7.0 CONCLUSION

7.01 For the above reasons it is considered acceptable to change the trigger for the WS/DD junction improvements to 100 occupations and the new condition would read as follows:

The development shall not commence above floor slab level until the following off-site highways works have been provided in full:

- a) Improvements to the Church Road/Deringwood Drive junction as shown on drawing no. 34.1 within the 'Iceni Transport Note – July 2019' or any alternative scheme agreed in writing with the local planning authority;***
- b) Road widening and new pavement provision on Church Road as shown on drawing nos. 34.1 and 34.2 within the 'Iceni Transport Note – July 2019'.***

The following off-site highways works shall be provided no later than the occupation of 100 units or 31st December 2023, whichever is the sooner. The development shall not be occupied beyond this point until these off-site highways works have been provided:

- c) Improvements to the Deringwood Drive/Willington Street junction as shown on drawing no. 14915-H01 Rev 5, or any alternative scheme agreed in writing with the local planning authority;***

7.02 An approval will create a new planning permission and so all conditions must be re-attached. These are set out below where some refer to details already approved, and some to details under consideration. The section 106 legal agreement relating to the original permission has a clause (8.3) which ties it to any new permission so there is no requirement for a new legal agreement.

8.0 RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions with delegated powers to the Head of Planning and Development to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

Conditions:

Time limit

- 1) The development hereby permitted shall begin before 7th January 2024.

Details and drawings subject to the permission

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

Location plan - 16206 S101 Rev A
Existing Site Survey – 16206 S102 Rev B
Site Layout Masterplan – 16206 P101 Rev U
Coloured Site Layout Masterplan – 16206 C101 Rev S
Site Layout (North) – 16206 P102 Rev D
Site Layout (South) – 16206 P103 Rev B
Site Layout (Colour coded by type) – 16206 P104
Site Layout (Hard surfaces) – 16206 P105 Rev A
Proposed Street Scenes A-A & B-B -16206 P110 Rev E
Proposed Street Scenes C-C & D-D – 16206 P111 Rev E
Proposed Street Scenes E-E to G-G – 16206 P112 Rev D
Proposed Street Scenes H-H & J-J – 16206 P113 Rev E
Proposed Street Scenes K-K to M-M – 16206 P114 Rev D
Proposed Street Scenes N-N & P-P – 16206 P115 Rev D
Proposed Street Scenes Q-Q & R-R – 16206 P116 Rev D
Coloured Street Scenes A-A & B-B – 16206 C110 Rev D
Coloured Street Scenes C-C & D-D – 16206 C111 Rev D
Coloured Street Scenes E-E to G-G – 16206 C112 Rev C
Coloured Street Scenes H-H & J-J – 16206 C113 Rev B
Coloured Street Scenes K-K to M-M – 16206 C114 Rev B
Coloured Street Scenes N-N & P-P – 16206 C115 Rev B
Coloured Street Scenes Q-Q & R-R – 16206 C116 Rev B
Affordable House types, 2 Bedroom – 16206 P120
Affordable House types, 3 Bedroom (1 of 2) – 16206 P121
Affordable House types, 3 Bedroom (2 of 2) – 16206 P122
Affordable House types, 4 Bedroom – 16206 P123 Rev A
Private 2 Bed Houses - Type 2A (1 of 2) – 16206 P130 Rev A

Private 2 Bed Houses - Type 2A (2 of 2) - 16206 P131 Rev A
Private 2 Bed Houses - Type 2A & 2B terrace – 16206 P132 Rev A
Private 2 Bed Houses - Type 2B (1 of 3) – 16206 P133 Rev A
Private 2 Bed Houses - Type 2B (2 of 3) – 16206 P134 Rev A
Private 2 Bed Houses - Type 2B (3 of 3) – 16206 P135 Rev A
Private 3 Bed Houses - Type 3A (1 of 2) – 16206 P136
Private 3 Bed Houses - Type 3A (2 of 2) – 16206 P137
Private 3 Bed Houses - Type 3B (1 of 2) – 16206 P138 Rev A
Private 3 Bed Houses - Type 3B (2 of 2) – 16206 P139 Rev B
Private 3 Bed Houses - Type 3C (1 of 2) – 16206 P140 Rev C
Private 3 Bed Houses - Type 3D (1 of 3) – 16206 P141
Private 3 Bed Houses - Type 3D (2 of 3) – 16206 P142
Private 3 Bed Houses - Type 3D (3 of 3) – 16206 P143
Private 3 Bed Houses - Type 3D/3B (1 of 7) – 16206 P144
Private 3 Bed Houses - Type 3D/3B (2 of 7) – 16206 P145 Rev A
Private 3 Bed Houses - Type 3D/3B (3 of 7) – 16206 P146
Private 3 Bed Houses - Type 3D/3B (4 of 7) – 16206 P147
Private 3 Bed Houses - Type 3D/3B (5 of 7) – 16206 P148 Rev A
Private 3 Bed Houses - Type 3D/3B (6 of 7) – 16206 P149 Rev A
Private 3 Bed Houses - Type 3D/3B (7 of 7) – 16206 P150 Rev A
Private 3 Bed Houses - Type 3E – 16206 P151 Rev B
Private 3 Bed Houses - Type 3C (2 of 2) – 16206 P152 Rev A
Private 3 Bed Houses - Type 3C1 – 16206 P153
Private 4 Bed Houses - Type 4A (1 of 2) – 16206 P155
Private 4 Bed Houses - Type 4A (2 of 2) – 16206 P156
Private 4 Bed Houses - Type 4B (1 of 4) – 16206 P157 Rev A
Private 4 Bed Houses - Type 4B (2 of 4) – 16206 P158 Rev A
Private 4 Bed Houses - Type 4B (3 of 4) – 16206 P159 Rev A
Private 4 Bed Houses - Type 4B (4 of 4) – 16206 P160 Rev B
Private 4 Bed Houses - Type 4C – 16206 P161
Private 4 Bed Houses - Type 4D (1 of 4) – 16206 P162
Private 4 Bed Houses - Type 4D (2 of 4) – 16206 P163 Rev B
Private 4 Bed Houses - Type 4D (3 of 4) – 16206 P164 Rev A
Private 4 Bed Houses - Type 4D (4 of 4) – 16206 P165 Rev A
Affordable apartments - Block 1 Plans (1 of 2) – 16206 P170 Rev B
Affordable apartments - Block 1 Plans (2 of 2) – 16206 P171 Rev B
Affordable apartments - Block 1 Elevations – 16206 P172 Rev B
Affordable apartments - Block 2 Plans (1 of 2) – 16206 P173 Rev B
Affordable apartments - Block 2 Plans (2 of 2) – 16206 P174 Rev B
Affordable apartments - Block 2 Elevations – 16206 P175 Rev C
Affordable apartments - Block 3 Plans – 16206 P176 Rev C
Affordable apartments - Block 3 Elevations – 16206 P178 Rev B
Affordable apartments - Block 4 Plans – 16206 P179 Rev B
Affordable apartments - Block 4 Elevations – 16206 P180 Rev B
Affordable apartments - Block 5 Plans – 16206 P181 Rev D
Affordable apartments - Block 5 Elevations – 16206 P182 Rev C
Affordable apartments - Block 6 Plans – 16206 P183 Rev C
Affordable apartments - Block 6 Elevations – 16206 P184 Rev D
Affordable apartments - Block 7 Plans – 16206 P185 Rev D
Affordable apartments - Block 7 Elevations – 16206 P186 Rev C
Affordable apartments - Block 8 Plans – 16206 P187 Rev C
Affordable apartments - Block 8 Elevations – 16206 P188 Rev C

Affordable apartments - Block 9 Plans – 16206 P189 Rev B
Affordable apartments - Block 9 Elevations – 16206 P190 Rev B
Private apartments - Block 10 Plans (1 of 2) – 16206 P191 Rev B
Private apartments - Block 10 Plans (2 of 2) – 16206 P192 Rev B
Private apartments - Block 10 Elevations – 16206 P193 Rev B
Private apartments - Block 11 Plans – 16206 P194 Rev B
Private apartments - Block 11 Elevations – 16206 P195 Rev C
2 Bedroom F.O.G - Plans & Elevations (1 of 2) – 16206 P196
2 Bedroom F.O.G - Plans & Elevations (2 of 2) – 16206 P197 Rev A
2 Bedroom Gate House - Plans & Elevations – 16206 P198 Rev A
Ancillary Buildings (Garages & substation) – 16206 P199 Rev B

OSP drawings listed within the drawing issue sheet dated 5/09/2020 (CD132)
(all drawings in CD1, CD50-CD130, and CD133-137)

Materials Distribution Diagram - 16206 - SK55D
Landscape Strategy Plan – 6703.LSP.ASP5 Rev L
Proposed Access Arrangement - Drawing 16-T114 06 Rev F
Proposed Amendments to Church Road Northern Section (Junction with Deringwood Drive) - 16-T114 34.1
Proposed Amendments to Church Road Section Immediately Outside Site Area - Drawing 16-T114 34.2
Proposed Off Site Highway Improvements (1 of 4) - 14590-H-01 P1
Proposed Off Site Highway Improvements (2 of 4) - 14590-H-02 P1
Proposed Off Site Highway Improvements (3 of 4) - 14590-H-03 P2
Proposed Off Site Highway Improvements (4 of 4) - 14590-H-04 P2
Willington Street/Deringwood Drive Junction – Proposed Traffic Signals - 14195-H-01 P5
Spot Lane Junction Potential Adjustments - 14195-H-02 P2

Compliance

- 3) The development shall be carried out in accordance with the boundary treatments as shown on drawing nos. 16206 P101 Rev U and 16206/SK55D and shall be retained and maintained thereafter.
- 4) The development shall be carried out in accordance with the hard surfaces as shown on drawing no. 16206 P105 Rev A and maintained thereafter.
- 5) All planting, seeding and turfing specified in the approved landscape details shall be carried out either before or in the first planting season (October to February) following the occupation of the building(s) or the completion of the development to which phase they relate, whichever is the sooner; and any seeding or turfing which fails to establish or any trees or plants which, within five years from the first occupation of a property, commencement of use or adoption of land, die or become so seriously damaged or diseased that their long term amenity value has been adversely affected shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme unless the local planning authority gives written consent to any variation.

- 6) Excluding the area in the southeast corner of the site adjacent to ancient woodland, the areas of open space as shown on pages 58 and 59 of the Design & Access Statement shall be maintained as publicly accessible open space in perpetuity.
- 7) The approved details of the parking/turning areas for each building shall be completed before the commencement of the use of the land or buildings to which they relate 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 parking/turning areas for each building or in such a position as to preclude vehicular access to them.

Pre-Commencement

- 8) The development shall be carried out in accordance with the Construction Environment Management Plan (CEMP) approved under application 21/502372/SUB.
- 9) Unless approved under application 21/503538/SUB (which if approved the details shall be provided before any of the dwellings hereby permitted are first occupied and retained as such thereafter), before any part of the development hereby permitted is first commenced, details of a ramp to provide accessibility for all users including disabled persons, wheelchairs, pushchairs and cycles at the steps to the north west of the site along PROW KM86 shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be provided before any of the dwellings hereby permitted are first occupied and shall be retained as such thereafter.
- 10) The development shall not commence above slab level until the car park for St Nicholas Church approved under application 21/502372/SUB has been constructed and is available for use in accordance with the details approved. Once implemented the car park shall only be used in connection with use of the Church for parking purposes.
- 11) Unless approved under application 21/503538/SUB (which if approved the details shall be provided before any of the dwellings hereby permitted are first occupied and retained as such thereafter), before any part of the development hereby permitted is first commenced, a plan and construction design specification shall be submitted to and approved by the local planning authority, which shows:
 - a) all pedestrian/cycle routes and design details, including links to the national cycle network and road network at the north east and south cycle/pedestrian access points;
 - b) measures to ensure that cyclists can gain cycle access to 'The Beams' and the Play area to the north west of the site from the cycle routes. Such design specification shall ensure that the cycle routes provided are no less than 3m wide.

The approved pedestrian/cycle routes shall be provided before any of the dwellings hereby permitted are first occupied and shall be retained as such thereafter.

- 12) The development shall be carried out in accordance with the Phasing Plan for the development approved under application 21/502372/SUB unless otherwise agreed in writing by the local planning authority.
- 13) The development shall be carried out in accordance with the ecological mitigation measures approved under application 21/502372/SUB.
- 14) The development shall be carried out in accordance with the detailed sustainable surface water drainage scheme approved under application 21/505011/SUB
- 15) The development shall be carried out in accordance with the sustainable surface water drainage infiltration details approved under application 21/505011/SUB.
- 16) The development shall be carried out in accordance with contaminated land details approved under application 21/502372/SUB. A Closure Report shall be submitted upon completion of the contamination/remediation works. The closure report shall include full verification details and include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean. Any changes to these components require the express consent of the local planning authority.

The development shall be undertaken in accordance with the approved scheme.

- 17) The development shall be carried out in accordance with the Written Scheme of Archaeological Investigation approved under application 21/502372/SUB. Before archaeological works cease, a post-excavation assessment report, full report and publication programme shall be agreed with the County Archaeologist and submitted to the local planning authority for approval in writing.
- 18) The development shall be carried out in accordance with the Arboricultural Method Statement (AMS) approved under application 21/502372/SUB.
- 19) The development shall be carried out in accordance with the slope stability report, recommendations, and sterilisation strip and details approved under application 21/503301/SUB.

Pre-Floor Slab Level

- 20) Unless approved under application 22/500170/SUB (which if approved the development shall be carried out in accordance with the approved details), no development above floor slab level shall take place until specific details of the landscaping proposals, which shall follow the principles shown on the

Landscape Strategy Plan (drawing no. 6703 LSP ASP5 Rev L), have been submitted to and approved in writing by the local planning authority. The scheme shall be designed in accordance with the principles of the Council's landscape character guidance and include a planting specification, a programme of implementation and a 5 year management plan. The landscape scheme shall specifically address the need to provide the following:

- a) A landscape phasing plan for the site which shall include the planting along the west boundary within the first phase.
- b) Strengthening and replacement native hedge planting along the site frontage with Church Road.
- c) Structural native tree and shrub planting along the site frontage with Church Road.
- d) Retention of trees along the western boundary and new native tree and shrub planting.
- e) Retention of trees along the southern boundary and new native tree and shrub planting.
- f) Retention of trees along the boundaries with the property 'Squerrys Oast'
- g) Native woodland and shrub planting to create at least a 30m buffer from the Ancient Woodland in the south east corner
- h) Orchard planting to the south of St Nicholas Church.
- i) Native hedge planting within the development.
- j) LEAP and LAP details.
- k) All proposed boundary treatments for the site beyond those approved under condition No. 3.

Landscaping shall be implemented in accordance with the approved details and programme.

- 21) Unless approved under application 21/505211/SUB (which if approved the development shall be carried out in accordance with the approved details), no development above floor slab level shall take place in any phase until full details of the ecological enhancements outlined in the Ecological Appraisal and their delivery have been submitted to and approved in writing by the local planning authority for that phase. The development shall be carried out in accordance with the approved details and measures which shall include the following:
 - a) Wildflower grassland
 - b) Measures to allow hedgehogs to move through the development
 - c) Bat and bird boxes
 - d) Habitat piles.
- 22) Unless approved under application 21/505661/SUB (which if approved the development shall be carried out in accordance with the approved details), no development above floor slab level shall take place in any phase until written details and samples of the materials to be used in the construction of the external surfaces of the building(s) for that phase have been submitted to and approved in writing by the local planning authority. The materials shall

follow the 'Materials Distribution Diagram' (16206/SK55D) and include the following unless otherwise agreed in writing by the local planning authority:

- a) Multi stock facing bricks
- b) Clay hanging tiles
- c) Clay roof tiles
- d) Slate roof tiles
- e) Ragstone on buildings
- f) Ragstone walling.

The development shall be constructed using the approved materials unless otherwise agreed in writing by the local planning authority.

- 23) Unless approved under application 21/505661/SUB (which if approved the development shall be carried out in accordance with the approved details), no development above floor slab level shall take place in any phase until written details and large-scale plans showing the following architectural detailing have been submitted to and approved in writing by the local planning authority for that phase:

- a) Soldier courses
- b) Bricked arches above windows
- c) Bullnose hanging tile detailing.
- d) Roof overhangs.

The development shall be constructed in accordance with the approved materials.

- 24) Unless approved under application 21/505661/SUB (which if approved the development shall be carried out in accordance with the approved details), no development above floor slab level shall take place until a sample panel of the ragstone for the walling and buildings, including mortar mix details, has been submitted to and approved in writing by the local planning authority. Such details as approved shall be fully implemented on site.
- 25) Unless approved under application 21/505443/SUB (which if approved the development shall be carried out in accordance with the approved details), no development above floor slab level shall take place until the specific air quality mitigation measures, which shall include the type and location of electric vehicle charging points (which equates to 1 EV charge point per dwelling with dedicated parking) and details of charging for properties without on-plot parking, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 26) Unless approved under application 22/500168/SUB (which if approved the development shall be carried out in accordance with the approved details), no development above floor slab level shall take place until a "bat sensitive lighting scheme" for the site boundaries has been submitted to and approved in writing by the local planning authority. The lighting plan shall:

- a) Identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory;
- b) 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 the above species using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the approved scheme and these shall be maintained thereafter.

- 27) Unless approved under application 22/500298/SUB (which if approved the development shall be carried out in accordance with the approved details), no development above floor slab level for any phase shall take place until details of lighting for streets and houses have been submitted to and approved in writing by the local planning authority for that phase. The lighting provided shall be carried out in accordance with the approved scheme.
- 28) Unless approved under application 21/506368/SUB (which if approved the development shall be carried out in accordance with the approved details), no development above floor slab level shall take place until a written statement of public art to be provided on site in the form of a Public Art Delivery Plan in line with the thresholds set within the Public Art Guidance has been submitted to and approved in writing by the local planning authority. This should include the selection and commissioning process, the artist's brief, the budget, possible form, materials and locations of public art, the timetable for provision, maintenance agreement and community engagement.

The development shall be carried out in accordance with the approved details.

- 29) No development above floor slab level shall take place until the access points hereby permitted have been provided in accordance with drawing No. 16-T114 06 Rev F (Proposed Access Arrangement) and thereafter the visibility splays shall be kept free of obstruction above a height of 1 metre.
- 30) The development shall not commence above floor slab level until the following off-site highways works have been provided in full:
 - a) Improvements to the Church Road/Deringwood Drive junction as shown on drawing no. 34.1 within the 'Iceni Transport Note – July 2019' or any alternative scheme agreed in writing with the local planning authority;
 - b) Road widening and new pavement provision on Church Road as shown on drawing nos. 34.1 and 34.2 within the 'Iceni Transport Note – July 2019'.

The following off-site highways works shall be provided no later than the occupation of 100 units or 31st December 2023, whichever is the sooner. The

development shall not be occupied beyond this point until these off-site highways works have been provided:

c) Improvements to the Deringwood Drive/Willington Street junction as shown on drawing no. 14915-H01 Rev 5, or any alternative scheme agreed in writing with the local planning authority;

31) The development shall be carried out in accordance with the PV panels approved under application 21/504922/SUB and they shall be retained thereafter.

Pre-Occupation

32) The development shall not be occupied until the following off-site highways works have been provided in full:

a) The proposed work as shown in drawing Nos 14590 H-01 P1, 14590 H-02 P1, 14590 H-03 P2, and 14590 H-04 P2;

b) Extension of the 30mph speed limit to the south of the application site to a position agreed in writing with the local planning authority; and

c) Improvements to the A20 Ashford Road/Spot Lane/Roseacre Lane junction as shown on drawing no. 14915-H-02 Rev P2, or any alternative scheme agreed in writing with the local planning authority.

33) Unless approved under application 22/500169/SUB (which if approved the development shall be carried out in accordance with the approved details), the development shall not be occupied until a Detailed Travel Plan for the development which follows the principles of the Framework Travel Plan has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved Detailed Travel Plan.

34) Unless approved under application 21/505211/SUB (which if approved the development shall be carried out in accordance with the approved details), the development shall not be occupied until a site-wide landscape and ecological management plan (LEMP), including timetable for implementation, long term design objectives, management responsibilities and maintenance schedules for all landscaped, open space, and drainage areas, but excluding privately owned domestic gardens, has been submitted to and approved in writing by the local planning authority. Landscape and ecological management shall be carried out in accordance with the approved plan and its timetable unless the local planning authority gives written consent to any variation.

35) Unless approved under application 21/503538/SUB (which if approved the development shall be carried out in accordance with the approved details), the development shall not be occupied until details of the pedestrian and cycle link to and across the area of Council owned land to the south of the site providing a link to Woolley Road and the timing of its delivery have been

submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

- 36) No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report pertaining to the surface water drainage system, carried out by a suitably qualified professional, has been submitted to the local planning authority which demonstrates the suitable modelled operation of the drainage system such that flood risk is appropriately managed, as approved by the Lead Local Flood Authority. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; topographical survey of 'as constructed' features; and an operation and maintenance manual for the sustainable drainage scheme as constructed. No development shall be occupied until the approved scheme has been implemented.
- 37) If during construction/demolition works evidence of potential contamination is encountered, works shall cease and the site fully assessed to enable an appropriate remediation plan to be developed. Works shall not recommence until an appropriate remediation scheme has been submitted to and approved in writing by the local planning authority and the remediation has been completed. Upon completion of the building works, this condition shall not be discharged until a closure report has been submitted to and approved in writing by the local planning authority.

The closure report shall include details of:

- a) Details of any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology;
 - b) Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site;
 - c) If no contamination has been discovered during the construction works then evidence (e.g. photos or letters from site manager) to show that no contamination was discovered should be included.
- 38) Unless approved under application 21/503538/SUB (which if approved the development shall be carried out in accordance with the approved details), the development shall not be occupied until details of upgrade works to PROW KM86 have been submitted to and approved in writing by the local planning authority.

The development shall not be occupied until the approved works have been carried out in full.

| | | | |
|---|--|---|-------------|
| REFERENCE NO - 21/503585/FULL | | | |
| APPLICATION PROPOSAL | | | |
| Section 73 - Application for Variation of condition 30 (to vary the trigger point for the delivery of the Willington Street/Deringwood Drive improvements, to prior to occupation of 100 units, rather than prior to commencement above floor slab level) pursuant to application 19/506182/FULL (Residential development for 421 dwellings with associated access, infrastructure, drainage, open space and landscaping, allowed on appeal) | | | |
| ADDRESS Land West of Church Road, Otham, ME15 8SB | | | |
| RECOMMENDATION – ADVISE THE PLANNING INSPECTORATE THAT THE COUNCIL WOULD HAVE APPROVED PERMISSION SUBJECT TO CONDITIONS | | | |
| SUMMARY OF REASONS FOR RECOMMENDATION | | | |
| <ul style="list-style-type: none"> For the reasons set out in the report, officers advise it is likely that a refusal based on the proposed ground would not be sustainable at the now lodged Appeal and would result in an award of significant costs against the Council for unreasonable behaviour. It is therefore recommended the Planning Committee decides to advise the Planning Inspectorate that they 'would have' approved permission as per the original recommendation contained in the officer's report to 17th February 2022 meeting but with an amendment to condition 30 to remove reference to '31st December 2023' for the reasons set out in this report. | | | |
| REASON FOR REFERRAL TO COMMITTEE | | | |
| <ul style="list-style-type: none"> Otham Parish Council strongly objects to the proposals for the reasons outlined in the original report. Councillor Newton has requested the application is considered by the Planning Committee. | | | |
| WARD Downswood & Otham | PARISH COUNCIL Otham | APPLICANT Bellway Homes Ltd AGENT None | |
| DECISION DUE DATE: 25/02/22 | PUBLICITY EXPIRY DATE: 15/11/22 | SITE VISIT DATE: Various in 2021/2022 | |
| RELEVANT PLANNING HISTORY | | | |
| App No | Proposal | Decision | Date |
| 19/506182 | Residential development for 421 dwellings with associated access, infrastructure, drainage, open space and landscaping. | REFUSED & ALLOWED AT APPEAL | 07/01/21 |
| 19/501600 | Outline application for up to 440 residential dwellings, with associated access, infrastructure, drainage, landscaping and open space (Access being sought with all other matters reserved for future consideration) | REFUSED & ALLOWED AT APPEAL | 07/01/21 |

1.0 BACKGROUND & PROCEDURE

1.01 This application was heard at Planning Committee on 17th February 2022. The application was recommended for approval and the Committee Report and Appeal Decision is attached at the **Appendix**. Contrary to the recommendation of the Head of Planning and Development, a motion was proposed and seconded to refuse the application for the following reason:

The impact of construction traffic and from 100 dwellings, in advance of the approved Willington Street/Deringwood Drive junction improvement, would result in unacceptable and severe impacts upon highway safety conditions for pedestrians and cyclists crossing the existing junction, as considered by the Appeal Planning Inspector. The junction is very well used by pedestrians and cyclists providing a link between major residential areas and Mote Park on national Cycle Route 17. This would be contrary to policy DM21 of the Maidstone Borough Local Plan (2017), policies ST1 and ST2 of the Otham Parish Neighbourhood Plan (2020-2035), and Paragraphs 110 and 111 of the National Planning Policy Framework.

1.02 This Motion triggered the procedure set out in paragraph 31.3 of Part 3.1 of the Council's Constitution. Pursuant to that procedure, the Head of Planning and Development advised the Committee he did not consider the reason for refusal was sustainable at Appeal and that it would more likely than not cause significant cost implications to be incurred by the Council because of unreasonable behaviour. The threshold for 'significant costs' under this procedure is set at £50,000. As a result, the Constitution requires that the Committee's decision be deferred to its next meeting on 24th March 2022 to enable the provision of further advice on the risks involved in pursuing a refusal.

1.03 Paragraph 31.3 (b) of Part 3.1 states at the next meeting (24th March),

"If, during consideration at the next meeting of an application deferred under Rule 31.3(a), after a motion has been proposed and seconded, the Head of Planning and Development or their representative, in consultation with the Legal Officer present at the meeting, believes that the Planning Committee's reasons to justify refusal/the imposition of conditions would not be sustainable at appeal and would more likely than not cause significant cost to be incurred by the Council because of unreasonable behaviour, then they will inform the Committee that if the motion is agreed it will be referred to the Policy and Resources Committee upon the agreement of the Planning Committee Chairman and Vice-Chairman; or failing which, a resolution of the Planning Committee to that effect."

1.04 Paragraph 31.3(c) then states,

"Following the vote, if the motion was agreed, the Head of Planning and Development or their representative will ask the Chairman and Vice-Chairman if they agree to refer the decision to Policy and Resources Committee. If they do not both agree to the referral, the Committee will take a vote on whether to refer the item to the Policy and Resources Committee."

If either consent is given, the item will be referred. If neither consent is given, the decision will be implemented.”

2.0 UPDATES & ADVICE

2.01 During the intervening period since 17th February meeting,

- (1) The Applicant has lodged an Appeal with the Planning Inspectorate;
- (2) Although not relevant to the reason for refusal, the Applicant has provided further evidence as to the traffic impacts on the road network to 2024; and
- (3) Officers have sought Counsel’s advice on the proposed ground of refusal and the associated risk of costs at appeal. Instructions to Counsel together with Counsel’s full advice (which pre-dates the appeal being lodged) are attached as an **Exempt Appendix** to this report.

New Appeal

2.02 On 10th March the applicant submitted an Appeal to the Planning Inspectorate (PINS) on the grounds of ‘non-determination’ of the application following expiry of the agreed determination date of 25th February. The applicant has requested a Public Inquiry and officers have advised PINS they consider this procedure is appropriate given the level of local interest. PINS have advised that, subject to validation, the appeal will follow this procedure but at the time of publishing this report, no ‘start date’ for the appeal has been given by PINS.

2.03 This means the decision on this application now lies with PINS and not the Council. The decision now made by Committee will be to inform PINS what decision the Council ‘would have’ made and therefore what position MBC will take at the Appeal. It remains the case that any refusal must be defended by the Council at the Appeal.

Additional Transport Evidence

2.04 As outlined at paragraph 6.09 of the original committee report, the application is supported by traffic modelling in 2023 when the occupation of 100 houses is predicted at the end of that year. The applicant has now submitted additional traffic modelling up to 2024 and states,

“We are still of the view that the 100 occupation forecast by the end of 2023 is appropriate and robust but want this to be part of the application documents for completeness, should the application/appeal process stretch on further than current timescales.”

2.05 This forecasts that the WS/DD junction would still remain within capacity in 2024 and KCC Highways have been consulted, agree with the evidence, and maintain their position of raising no objections. This does not affect the grounds for refusal proposed by Members as they relate to highway safety and not traffic congestion. However, if Members decide that they would have approved permission, within this, condition 30 should be amended to remove

reference to 31st December 2023 and just have a trigger point of '100 occupations'.

Advice

2.06 As outlined in the original committee report at paragraph 6.07, the Planning Inspector's explanation for the condition being set at 'slab level' when asked in relation to this current application is as follows (*my emphasis*):

"The only comment I can make is that my decision states the following at paragraph 185:

Also in the interests of highway safety, conditions are necessary requiring the provision of the site accesses, off-site highway improvements, measures to maintain the access visibility splays and the provision of parking/turning areas for each building (conditions Nos. 7, 29, 30 and 32). However, I have amended the suggested condition relating access to ensure that the access points are provided prior to the commencement of any development above slab level.

*The reason for the condition is in the interest of highway safety. This was discussed in the 'round table session' on conditions. It was my view that the off-site traffic management measures should be completed as soon as possible before substantive deliveries of materials and construction works occurred. This was not an amenity issue **but a highway safety matter** given the nature of the surrounding highway network and the relative matters discussed in the Inquiry."*

2.07 The key issue in determining this Section 73 application is therefore whether new material has come to light which justifies a different view to that of the Planning Inspector as to the safety implications of construction traffic upon the highway network prior to the highway improvements coming forward.

2.08 The applicant has provided new material/evidence relating to the additional traffic impact within their application and their view on the impact of construction traffic in their Transport Technical Note (June 2020 paragraphs 1.3.1 and 1.3.2) as follows:

"...the sole purpose of the WS/DD signalisation scheme is to mitigate the impact of the additional vehicle, pedestrian and cycle trips arising from the permanent development, rather than its construction phase. The existing junction layout is of a sufficient standard to safely and efficiently accommodate larger vehicle turning movements, and indeed already does so on a regular basis (being on a high-frequency bus route, for example).

Construction traffic will be low-intensity and scheduled outside of the network peak hours wherever possible, as confirmed in the submitted Construction Environmental Management Plan (April 2021)."

and in their Technical Note (October 2021 paragraph 1.6.6) as follows:

"The Construction and Environmental Management Plan confirms that construction vehicles will be timed to arrive and depart the site outside of the network peak hours. Moreover, it is noted that the WS/DD junction is currently accessed by buses, refuse and delivery vehicles on a daily basis and as such is safe and suitable to accommodate these larger vehicle types."

2.09 KCC Highways have assessed this new material/evidence and in relation to highway safety impacts from construction traffic and from up to 100 houses (which is the grounds for refusal) advise that (*my emphasis*),

"I can confirm that KCC Highways have assessed the impact of the proposals in safety, as well as capacity terms.

The existing junction arrangement is designed to a high standard. This is characterised by extensive carriageway widths, junction widths, wide junction radii and the provision of a ghost right turn lane (GRTL) on Wellington Street itself. In addition, as highlighted within KCC Highways final consultation response and the applicant's further Transport Technical Notes Deringwood drive is a bus route. Consequently, large vehicles already use the junction without adversely impacting upon overall levels of highway safety.

*I have checked the personal injury collision (PIC) record at the junction in question and can confirm that in the last 5-year period up to September 2021 3 collisions have been recorded. All 3 collisions were slight in severity, with driver error a contributory factor in all the recorded collisions. The layout or geometry of the junction is not a contributory factor in any of the collisions. **The good PIC record at the junction, coupled with the fact that the junction is already used by large vehicles demonstrates that there is no evidence to indicate that construction traffic would adversely impact upon overall levels of highway safety.***

2.10 Therefore, new material/evidence has been provided by the applicant which was not before the Planning Inspector at the original Appeal, and the advice on this new material/evidence from the qualified expert highways officers at KCC is:

- There is no evidence that construction traffic would adversely impact upon highway safety in advance of the WS/DD highway improvements coming forward.
- The proposal (to move the condition trigger point) would not result in a severe residual impact upon the highway network (congestion).
- By implication, the proposed change to condition 30 would not result in a development which is contrary to the NPPF and/or the Local Plan.

Proposed Reason for Refusal

2.11 In considering the ground of refusal it is important that Members are reminded of the need to give full, clear, and precise reasons and refer to all relevant Development Plan policies. Whilst they may be briefly stated, the courts have stated that the reasons must be "proper, adequate and intelligible" particularly in controversial cases where they disagree with an officer's recommendation.

2.12 In terms of the guidance on the award of costs at appeal, Paragraph: 028 Reference ID: 16-028-20140306 of National Planning Practice Guidance states (*my emphasis*):

"The aim of the costs regime is to [inter alia]:

- *encourage local planning authorities to properly exercise their development management responsibilities, **to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case**, not to add to development costs through avoidable delay, ..."*

2.13 Paragraph 049 Reference ID: 16-049-20140306 states.

"What type of behaviour may give rise to a substantive award against a local planning authority?

Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:

- *preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.*
- ***failure to produce evidence to substantiate each reason for refusal on appeal***
- ***vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.***

(This list is not exhaustive.)"

2.14 It is therefore necessary to consider:

- Whether there is evidence to substantiate the proposed reason for refusal; and
- Whether the proposed reason for refusal is supported by objective analysis or whether it would be likely to be categorised as 'vague, generalised assertions' about the proposals impact.

2.15 In respect of the ground that the change to condition 30 would, "*result in unacceptable and severe impacts upon highway safety conditions for pedestrian and cyclists crossing the existing junction, as considered by the Appeal Planning Inspector*", officers advise that the ground does not identify any specific reasons why construction vehicles will give rise to unacceptable risks to safety. There is also no evidence, such as accident data, to counter the points made by KCC officers relating to the standard of the junction, the layout of the junction, that large vehicles (buses) already use the route without safety implications, the good personal injury collision record, and the absence of layout or geometry contributing to the accidents which have occurred.

2.16 In short, it is advised that the ground does not offer a specific explanation backed up with evidence as to why the junction will become unsafe for pedestrians and cyclists from the addition of construction traffic.

- 2.17 In respect of the assertion that, "*The junction is very well used by pedestrians and cyclists providing a link between major residential areas and Mote Park on national Cycle Route 17*", officers advise that this must be backed up by evidence such as walking/cycling surveys of the WS/DD junction to show it is well-used by pedestrian and cyclists, and this would need to be outside network peak hours (8am-9/5pm-6) because the approved construction management plan requires construction/delivery vehicles are timed to arrive and depart outside these hours. The Council does not have this specific evidence, and so officers advise that this is also likely to be viewed as a 'generalised assertion'.
- 2.18 It is advised that the reference to the Appeal Inspector within the grounds of refusal cannot be relied upon as the material/evidence presented by the applicant and accepted by KCC Highways for this new application was not before him. As the Inspector did not have any evidence of the impact of construction traffic beyond slab level or from 100 units before him, or the updated material/evidence relating to highway safety, it would be unreasonable to rely upon the Inspector's previous conclusions relating to highway safety.

3.0 CONCLUSION

- 3.01 Officers advise that the proposed reason for refusal does not provide a rational basis for refusing the section 73 application and could not be sustained at the appeal. Since the proposed reason for refusal could not be sustained and the circumstances fall within those the NPPG identifies as meriting an award of costs against a local planning authority, it is likely that a refusal based on the proposed ground would not be successful at the Appeal and would result in an award of significant costs against the Council for unreasonable behaviour.
- 3.02 The Appeal is likely to proceed under the Public Inquiry procedure and the applicant would have legal representation, and present expert highways and planning evidence to rebut any case presented by the Council. In the opinion of officers, the costs implications of this will exceed the £50,000 threshold for 'significant' costs within the Council's Constitution.
- 3.03 Given their consultation responses, KCC would not be able to support the local planning authority at the Appeal so the Council would need to appoint an external highways consultant to defend any refusal. Whilst unknown at this stage, Members must be aware there is a possible scenario whereby the Council may not be able to secure a qualified highways witness willing to defend the ground of refusal.
- 3.04 For the reasons outline above, our advice is that the Committee should reconsider its position in relation to this application and advise the Planning Inspectorate that they 'would have' approved permission as set out in the original committee report subject to the change to condition 30 in the terms set out at paragraph 2.05.
- 3.05 Notwithstanding this advice, should Members continue with the ground for refusal it is recommended that the following amendments are made:

- Remove reference to the Appeal Inspector for the reasons outlined at paragraph 2.18.
- Remove reference to the traffic impact from 100 dwellings as the 'slab level' trigger was only applied in relation to safety implications from construction traffic; and correct to Cycle Route 177 (not 17).

The ground for refusal would therefore read:

*The impact of construction traffic ~~and from 100 dwellings~~, in advance of the approved Willington Street/Deringwood Drive junction improvement, would result in unacceptable and severe impacts upon highway safety conditions for pedestrians and cyclists crossing the existing junction, ~~as considered by the Appeal Planning Inspector~~. The junction is very well used by pedestrians and cyclists providing a link between major residential areas and Mote Park on national Cycle Route **177**. This would be contrary to policy DM21 of the Maidstone Borough Local Plan (2017), policies ST1 and ST2 of the Otham Parish Neighbourhood Plan (2020-2035), and Paragraphs 110 and 111 of the National Planning Policy Framework.*

3.06 Members are reminded that they are required to give reasons for their decision. As outlined above, the reasons must be "proper, adequate and intelligible" and can be briefly stated.

Case Officer: Richard Timms