

REPORT SUMMARY

REFERENCE NO: - 22/505747/FULL		
APPLICATION PROPOSAL: Section 73 - Application for variation of conditions 4 (to remove the requirement for solar PV panels) and 9 (to reduce the number of electric vehicle charging points from ten to four) pursuant to 22/501405/FULL for - Change of use from 4 blocks of residential nurses accommodation to 3 no. blocks comprising of 18 X 5 bed HMO units and 1 no. block comprising of 8 X 3 bedroom residential units.		
ADDRESS: Springwood Road Nurses Accommodation, Springwood Road, Barming, ME16 9NX		
RECOMMENDATION: GRANT PLANNING PERMISSION subject to the planning conditions: (with amendment of condition 4 and condition 9 deleted)		
SUMMARY OF REASONS FOR RECOMMENDATION FOR APPROVAL:		
<ul style="list-style-type: none"> • <u>Amend condition 4</u> (energy efficiency) as follows: "Prior to first occupation of the development hereby approved the energy efficiency measures set out in the DHA letter dated 23 September 2022 shall be in place and all features shall be maintained thereafter. Reason: To ensure an energy efficient form of development". • <u>Delete condition 9</u> (electric vehicle charging points) as from June 2022 provision of electric vehicle charging points are now provided under Building Regulations. 		
REASON FOR REFERRAL TO COMMITTEE: Deferred from 23 rd March 2023 committee meeting		
WARD: Heath	PARISH: N/A	APPLICANT Jedi Developments Ltd AGENT: DHA Planning Ltd
CASE OFFICER: Tony Ryan	VALIDATION DATE: 12/02/22	DECISION DUE DATE: 27/04/2023 (EOT)
ADVERTISED AS A DEPARTURE: No		

1.0 BACKGROUND

- 1.01 This S73 application was first considered by members at the planning committee meeting on the 23 March 2023 (original application 22/501405/FULL went to the committee meeting in October 2022). The committee report to the meeting on the 23 March 2023 is provided as an appendix to this report.
- 1.02 The committee resolved to defer a decision on the application to see further information regarding:
- (a) the physical and financial viability of installing solar panels and cavity wall insulation and
 - (b) the default position in respect of the provision of electric vehicle charging points as now required under the Building Regulations.

1.03 The proposal involves the change of use of the 4 existing blocks of HMO residential nurses accommodation (currently providing 114 HMO rooms) as follows:

- 90 open market HMO rooms (arranged across three residential blocks in 18 five room HMO clusters with each cluster having a separate front door) and
- 8 three bedroom residential flats (total of 24 bedrooms in the fourth block).
- No physical internal building changes.
- Only external changes are new ground floor patio doors (requested by officers during initial application to provide improved access to external amenity areas).
- 23 off street car parking spaces (Retention of 21 existing with 2 proposed additional)

2. PROPOSAL

2.01 The current s73 application as submitted by the applicant seeks to:

- **Vary condition 4 with the removal of the underlined text below:**

"Prior to first occupation of the development hereby approved the energy efficiency measures set out in the DHA letter dated 23 September 2022 shall be in place.

Unless it can be adequately demonstrated in writing that they are not physically capable of being provided, the development should additionally, include the installation of solar PV panels (to provide at least 10% of total annual energy requirements of the development) and cavity wall insulation both provided prior to first occupation of the approved development.

All features shall be maintained thereafter for the lifetime of the development. Reason: To ensure an energy efficient form of development".

- **'Amend' condition 9 (electric vehicle charging points) as follows (with requirement reduced from 10 to 4 charging points):**

"Prior to first occupation of the development hereby approved a minimum of four operational electric vehicle charging points for low-emission plugin vehicles shall be installed and ready for the use of the new occupant with the electric vehicle charging point thereafter retained and maintained operational as such for that purpose. The siting of the electric vehicle charging points shall ensure that every parking space has access to a charging point. Reason: To promote to promote sustainable travel choices and the reduction of CO2 emissions through use of low emissions vehicles".

2.02 Notwithstanding, the proposal submitted by the applicant, officers are recommending that condition 9 relating to the provision of electric vehicle charging points be deleted (i.e not amended) from the decision.

3.0 APPRAISAL

3.01 This report seeks to respond to the following three points as set out in the committee minutes from the meeting on the 23 March 2023. The committee resolved to defer a decision on the application to see further information regarding:

- (a) the physical and financial viability of installing solar panels and cavity wall insulation and
- (b) the default position in respect of the provision of electric vehicle charging points as now required under the Building Regulations.

(a) the physical and financial viability of installing solar panels and cavity wall insulation and

- 3.02 The applicant has said that they will not be providing the viability information requested by members as listed above. The applicant has said the following:

"It is our firm view that the conditions fail the 6 tests set out with the National Planning Policy Framework (paragraph 55) which makes clear that planning conditions should be kept to a minimum and only used where they satisfy the tests...."

There is no sound policy basis for imposing conditions 4 and 9 on the planning permission, for a material change of use. ...the applicant has offered a suite of energy efficiency measures that go above and beyond what is required by Maidstone's adopted planning policy and that required by building regulations (Part L). Therefore, there is no sound basis or mechanism to justify the request for the additional documentation requested by the Planning Committee. Should the application be refused, we will appeal this decision".

- 3.03 The recommendation from officers is that condition 4 be amended with the underlined text shown in paragraph 2.01 above removed from the condition.

- 3.04 The amended condition reads as follows:

"Prior to first occupation of the development hereby approved the energy efficiency measures set out in the DHA letter dated 23 September 2022 shall be in place. All features shall be maintained thereafter for the lifetime of the development.

Reason: To ensure an energy efficient form of development".

- 3.05 This officer recommendation is made for the following two reasons i) the planning policy background and ii) whether the requests are reasonable.

i) planning policy background

- 3.06 There is no planning policy support in the adopted plan for the measures that have been outlined.

- 3.07 The adopted Local Plan does not include a policy on the provision of cavity wall insulation. A planning policy is not required as cavity wall insulation is not a planning consideration and is dealt with outside the planning system under Approved Document Part L of the Building Regulation (title "Conservation of fuel and power").

ii) whether the requests are reasonable.

- 3.08 The applicant has advised *"...the cost associated with installation and maintenance, (of solar panels) in the context of the minor alterations to the building, would be disproportionate to the proposed development".*

- 3.09 In addition, the appellant advises that a requirement for cavity wall insulation "... *would have a significant financial impact on the scheme, which would be disproportionate to the proposed development*".
- 3.10 The applicant has chosen not to provide viability information and there is no policy requirement for them to provide this information. The applicant has stated that the requests for solar panels and cavity wall insulation would make the development unviable. It is concluded that the provision of a condition in this context would fail the statutory test of reasonableness.

(b) the default position in respect of the provision of electric vehicle charging points as now required under the Building Regulations.

- 3.11 The applicant has stated that 4 electric vehicle charging points will be provided and that this is in accordance with Part S of the Building Regulations. The applicant has confirmed that the development will meet the requirement in the Building Regulations that each dwelling will always have 'access to' an EV charging point.
- 3.12 Part S of the Building Regulations states:
"Where one or more dwellings with associated parking result from a building, or a part of a building, undergoing a material change of use at least one associated parking space for the use of each such dwelling must have access to an electric vehicle charge point" (committee report emphasis).
- 3.13 The relevant thresholds and delivery of electric vehicle charging points are not planning considerations. It is also not normally the role of the planning system to 'top up' any requirement for charging points under Building Regulations.
- 3.14 Approved Document 'S' took the provision of electric vehicle charging points out of the planning system. The thresholds for when electric vehicle charging points are required and the quantity required are now covered under Building Regulations. In this context condition 4 fails to meet the statutory tests in terms of the condition being 'necessary', 'relevant to planning' and 'enforceable'.

4.0 CONCLUSION

- 4.01 Amend condition 4 (energy efficiency) as follows: *"Prior to first occupation of the development hereby approved the energy efficiency measures set out in the DHA letter dated 23 September 2022 shall be in place and all features shall be maintained thereafter. Reason: To ensure an energy efficient form of development"*.
- 4.02 Delete condition 9 (electric vehicle charging points) as provision of electric vehicle charging points are now provided under Building Regulations.

RECOMMENDATION

GRANT PLANNING PERMISSION subject to the following conditions: (with amendment of condition 4 and condition 9 deleted)

- 1) Commencement: The development hereby permitted shall be begun before 28.10.2025.
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) Plans: The development hereby approved shall be carried out in accordance with the following approved plans and documents:
- Site Plan Existing drawing 21.208-01
 - Rowan House existing 21.208-10
 - Birch House existing 21.208-11
 - Chestnut House existing 21.208-12
 - Hawthorn House existing 21.208-13

 - Site Plan Proposed drawing 21.208-001 T5 (received 06.10.2022)
 - Rowan House proposed Floor Plans 21.208-200 P2 (received 06.10.2022)
 - Birch House proposed Floor Plans 21.208-201 P2 (received 06.10.2022)
 - Chestnut House proposed Floor Plans 21.208-202 P2 (received 06.10.2022)
 - Hawthorn House proposed Floor Plans 21.208-203 P2 (received 06.10.2022)
 - Rowan House proposed Elevations 21.208-300 (received 06.10.2022)
 - Birch House proposed Elevations 21.208-301 (received 06.10.2022)
 - Chestnut House proposed Elevations 21.208-302 (received 06.10.2022)
 - Hawthorn House proposed Elevations 21.208-303 (received 06.10.2022)
 - Rowan House Area Comparison
 - Birch House Area Comparison
 - Chestnut House Area Comparison
 - Hawthorn House Area Comparison
 - Vehicle Swept Path Analysis 11.4 Refuse 16675-T-01-P1

 - DHA Letter dated 23.09.2022
 - DHA Covering letter and Design and Access Statement
- Reason: For the avoidance of doubt and in the interests of proper planning.
- 3) Biodiversity: Prior to first occupation of the development hereby approved details of a scheme for the enhancement of biodiversity on the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall consist of the enhancement of biodiversity through means such as swift bricks, bat tubes or bee bricks, and through provision within the site curtilage such as bird boxes, bat boxes, bug hotels, log piles, wildflower planting and hedgehog corridors. The development shall be implemented in accordance with the approved details prior to first occupation of the development hereby approved and all features shall be maintained thereafter. Reason: To enhance the ecology and biodiversity on the site.
- 4) Energy Efficiency: Prior to first occupation of the development hereby approved the energy efficiency measures set out in the DHA letter dated 23 September 2022 shall be in place and all features shall be maintained thereafter. Reason: To ensure an energy efficient form of development.
- 5) Landscaping details: Prior to first occupation of the development hereby approved a soft landscaping scheme (designed using the principle's established in the Council's adopted Landscape Character Assessment 2012) shall be submitted to and approved in writing by the local planning authority. The soft landscaping scheme shall include the following:
- a) Indications of all existing hedgerows on the land, and confirmation of those to be retained,
 - b) A planting schedule using indigenous species (including location, planting species, spacing, maturity and size). Only non-plastic guards shall be used for the new trees and hedgerows.
 - c) A programme for the approved scheme's implementation and long term management, including long term design objectives, management responsibilities and a maintenance schedule for the landscaped areas.

Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development

- 6) Landscaping implementation: All planting, seeding and turfing specified in the approved landscape scheme shall be completed by the end of the first planting season (October to February) following first occupation of the dwelling hereby approved. The approved long term management details shall be carried out with the approved details 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, 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. Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development
- 7) Boundary treatment: Prior to first occupation of the development hereby approved details of all boundary treatments shall be submitted to and approved in writing by the Local Planning Authority (to include gaps at ground level in the boundaries to allow the passage of wildlife) and the development shall be carried out in accordance with the approved details before the first occupation of the buildings and maintained as such thereafter. Reason: To ensure a satisfactory appearance to the development and to safeguard the enjoyment of their properties by existing and prospective occupiers and for the passage of wildlife.
- 8) Provision of garden areas Prior to first occupation of the development hereby approved the hedging shown on drawing 21.202-001 T5 shall be provided (including hedging to protect the ground floor windows) and shall be maintained for the lifetime of the development. Reason: In the interests of landscape and amenity.
- 9) Car Parking Management Plan Prior to the first occupation of the dwelling hereby approved a car parking management plan shall be submitted to and approved in writing by the local planning authority. The plan should include arrangements for the management of the car parking area, the electric vehicle charging points and the allocation of spaces. Reason: In the interests of amenity and highway safety.
- 10) Bin and cycle storage: Prior to the first occupation of the dwelling hereby approved, facilities for
 - (a) the storage and screening of refuse bins,
 - (b) the collection of refuse bins, and
 - (c) secure bicycle storageshall be in place that are in accordance with details that have previously been submitted to and approved by the Local Planning Authority. These details will be maintained as such thereafter. Reason: To ensure a satisfactory appearance to the development
- 11) Parking, turning and access: Prior to the first occupation of the dwelling hereby approved the approved parking, turning and access details shall be completed and shall thereafter be retained. 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 their operation. Reason: Development without adequate parking, turning and access provision is likely to lead to parking inconvenient to other road users and in the interests of road safety.

- 12) External lighting: Any external lighting installed on the site (whether permanent or temporary) shall be in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. These details shall include, inter alia, measures to shield and direct light from the light sources so as to prevent light pollution and illuminance contour plots covering sensitive neighbouring receptors. The development shall thereafter be carried out in accordance with the subsequently approved details and maintained as such thereafter. Reason: In the interests of amenity.
- 13) Removal of permitted development: Notwithstanding the provisions of the Town and Country Planning General Permitted Development (Amendment) (England) Order 2015 (or any order revoking and re-enacting that order with or without modification), no development within Schedule 2, Part 1, Classes A, B, C, D, E and F; and Schedule 2, Part 2, Class A, to that Order shall be carried out. Reason: To ensure a satisfactory appearance to the development.
- 14) Site Management Plan: Prior to the first occupation of the dwelling hereby approved a site management plan shall be submitted to and approved in writing by the local planning authority. The plan should include arrangements for the upkeep and maintenance of the open areas of the site and details of a complaints procedure and management contact. Reason: In the interests of amenity.
- 15) Car Parking Management Plan: Prior to the first occupation of the dwelling hereby approved a car parking management plan shall be submitted to and approved in writing by the local planning authority. The plan should include arrangements for the management of the car parking area, the electric vehicle charging points and the allocation of spaces. Reason: In the interests of amenity and highway safety.