

APPLICATION: MA/11/0679 Date: 26 April 2011 Received: 27 April 2011

APPLICANT: Mr G Norton, Wealden Homes

LOCATION: LAND R/O 125, TONBRIDGE ROAD, MAIDSTONE, KENT, ME16 8JS

PARISH: Maidstone

PROPOSAL: Erection of three dwellings comprising one detached dwelling with integral garage and two semi detached dwellings with access to Tonbridge Road via access permitted under (MA/08/2323) as shown on plan numbers PL-079-01, PL-079-02, PL-079-03, PL-079-04, PL-079-05, PL-079-06, PL-079-07, PL-079-08, PL-079-09, PL-079-10, PL-079-11, PL-079-12, PL-079-13, PL-079-14, PL-079-15, PL-079-16, design and access statement and application form received 27th April 2011 and plan number P030-035 received 15th March 2011.

AGENDA DATE: 8th March 2012

CASE OFFICER: Kevin Hope

The recommendation for this application is being reported to Committee for decision because:

Councillor Paine has requested it be reported for the following reasons:-

- The impact of the development upon neighbouring amenity
- The quality and quantity of landscaping within the proposed development

## **1. BACKGROUND**

1.1 This application was reported to Planning Committee on 13<sup>th</sup> October 2011 with a recommendation of approval with conditions. I attach a copy of my Committee Report and Urgent Update Report as appendix one. Members deferred making a decision to enable:

- That this application be deferred for the submission of a fully detailed landscaping scheme to enable full consideration of the scheme and layout.

1.2 Discussions subsequently took place with the agent to discuss the reasons for this deferral and the details that would be required. Following these discussions a fully detailed landscaping scheme was submitted to the council for consideration. Following this, the application was reported back to planning committee on 12<sup>th</sup> January 2012. This report detailed the submitted landscaping scheme together with considerations and a case study regarding the provision

for a legal agreement at this site due to the relationship between the application site and the previously approved development of MA/08/2323. Members agreed to defer the application for a 'cooling off' period with a resolution to refuse planning permission. The 'cooling off' period was to allow members time to consider, in more detail, the Council's position in the likelihood of an appeal and specifically to gain the advice of Counsel on the general issue of pre-meditated avoidance of S106 thresholds on linked developments, whether this case could be seen as a linked development, the likelihood of a risk of costs at appeal and the wording of a reason for refusal.

- 1.3 Counsel's advice has now been sought on these issues which will be outlined under section 5 below.

## **2. CONSIDERATIONS**

### **2.1 Provision for legal agreement**

- 2.1.1 Counsel's advice details the planning issues involved within this case and offers advice on these issues. A copy of this advice is included as an exempt appendix under paragraph 5 of Part I of Schedule 12A to the Local Government Act 1972.
- 2.1.2 Within the legal advice previously sought and detailed within the committee report of 12<sup>th</sup> January 2012 (appendix two), particular reference was made to a case study raising similar issues to this application. The case study was City of Westminster v First Secretary of State and Brandlord Ltd [2003] JPL 1066 and this case was again discussed within the advice received from Counsel. The facts of the case and its relevance to this application were detailed within the committee report of 12<sup>th</sup> January 2012 so this will not be highlighted again here.
- 2.1.3 The Inspector in the Brandlord case did not find that the sites were phasing of the same development. Although, the Inspector considered three main issues in assessing whether the developments should be considered as one being 1) The ownership of the sites, 2) The physical relationship of the sites, 3) The development proposed. An assessment of these issues was included within the committee report of 12<sup>th</sup> January 2012 and therefore a second full assessment will not be provided, however, it is important to highlight a number of key points.
- 2.1.4 With regard to ownership, it is noted that the applicant is not the current owner of the land. However, in the case that planning permission would be granted, it is likely that ownership would then be transferred. With regard to the physical relationship of the sites, a relationship does clearly exist between the two developments in that they abut each other. With regard to the third test, the development at the application site is reliant upon that at All Angels Close. There is reliance upon the access and the provision of drainage measures through All

Angels Close. There is no possibility of access to the application site without that provided through All Angels Close. There are also similarities in scale and character.

- 2.1.5 The issue of contributions was initially raised within the committee report to the planning committee of 13<sup>th</sup> October 2011 under section 6. The outcome of this meeting was that Members agreed to defer the application pending a more detailed landscaping scheme. However, comments were also raised during the meeting with regard to contributions and members requested that further research should be undertaken in this respect. Further research was then included within the committee report of 12<sup>th</sup> January 2012 together with a case study raising similar issues to that of this application. The recommendation remained for approval subject to conditions. Members considered the points raised within the report and decided to give more weight to the issue of contributions and affordable housing than was expressed within the recommendation and report. As such, a resolution to refuse planning permission was resolved at the 12<sup>th</sup> January 2012 committee meeting. For clarity, this issue was raised from the initial discussion of the application at planning committee in October 2011.
- 2.1.6 In considering the considerations involved within this application, the view of Counsel is that it would not be unreasonable for the council to treat the previously approved development at All Angels Close and this application as one site. This is on the basis that there is an interdependent relationship between this proposal and the development at All Angels Close in its siting, the access to the dwellings proposed and the character and appearance of the dwellings which mirrors that of All Angels Close. Whilst some time has elapsed since the original submission of the application, detailed consideration has taken place since the original discussion of this issue took place as outlined within the paragraph above.
- 2.1.7 With regard to affordable housing, once the threshold of 15 dwellings has been reached, 40% of the development should be provided as affordable housing. With regard to affordable housing, this cannot be provided in this case as the original development at All Angels Close is near to completion and is available for purchase on the open market; therefore affordable housing cannot be accommodated within this element of the development. In the case that the three dwellings proposed under this application were provided as affordable housing, this would remain under the 40% threshold as required by the affordable housing DPD. Therefore, the applicant would be required either to provide the 40% affordable housing on a separate site which can be identified or a commuted sum would be payable to the council to contribute to providing this affordable housing within the borough. Detailed information regarding the site specifically is required in order to calculate this figure which is currently being

discussed with the applicant. At this stage, there is no indication that the applicant is prepared to meet these costs.

2.1.8 It is therefore considered that planning permission should be refused on the basis that there is no provision for affordable housing and no contributions towards open space, education or West Kent Primary Care Trust are to be provided. In any case, the contributions which would be required would be £4725 towards open space provision, £7305 towards education provision and £2700 towards West Kent Primary Care Trust. Therefore, a total contribution of approximately £14,730 would be payable for the proposed development. It should be noted that a S106 agreement under (MA/08/2323) for All Angels Close secured contributions towards the same facilities to the sum of £60,080. Therefore the contributions outlined above are an extension of this.

### **3. CONCLUSION**

3.1 In conclusion, in light of the legal advice received with regard to the issue of affordable housing and contributions, it is recommended that planning permission could be refused as per the considerations as outlined above.

### **4. RECOMMENDATION**

Refuse planning permission for the following reason:

1. The adjoining "All Angels Close" site is being developed by the same applicant. Due to the interconnected and dependent relationship of the application site with the adjoining 'All Angels Close', the sites should be considered together as a single site and the proposals together as a single development. Therefore contributions towards open space, healthcare, community facilities and affordable housing provision are considered to be necessary. In the absence of such contributions, the proposal is contrary to policy CF1 of the Maidstone Borough-Wide Local Plan 2000, the Council's Affordable Housing DPD 2006 and Open Space DPD 2006.