

APPLICATION: MA/07/2133 Date: 5 October 2007 Received: 31 January 2008

APPLICANT: J.S. Bloor (Newbury) Ltd.

LOCATION: LAGUNA MOTORCYCLES SITE, HART STREET, MAIDSTONE

PARISH: Maidstone

PROPOSAL: Demolition of existing buildings and erection of a five storey residential development comprising of 52 studio apartments and 24 one-bed flats with 38 undercroft parking spaces and 22 external parking spaces with vehicular and pedestrian access from Hart Street together with landscaping as shown on drawing nos:A/PL-099, A/PL-200 Rev B, A/PL-210 Rev A, A/PL-205 Rev A, A/PL-300 Rev A, A/PL-400 Rev A received on the 15th October 2007 and 510.03.01 and Planting Plan received 9th June 2011.

AGENDA DATE: 10th April 2014

CASE OFFICER: Steve Clarke

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

- The intended decision does not accord with the Development Plan. Members' consideration of the viability and affordable housing issues is required as the development seek to provide less than 40%.

1. POLICIES

- Maidstone Borough-Wide Local Plan 2000: ENV6, ENV7, ENV49, H1, H10, T13, CF1
- Government Policy: NPPF 2012 NPPG 2014

2. BACKGROUND

2.1 As Members will note, this application has been lodged with the Council for a considerable period of time. This has been due to issues with regard to viability and the extent of affordable housing contributions that might be secured. Whilst these issues have now been resolved, I would advise Members that in this case the application has also had a number of differing case officers which has unfortunately added to the delays in bringing the application to Committee.

3. HISTORY

The only relevant previous planning history is as follows;

MA/87/0979: Change of use of front part of warehouse (190sqm) to retail sales
APPROVED 10/08/87

The site remains in use as a Motorcycle showroom/service centre.

4. CONSULTATIONS

- 4.1 In view of the length of time the application has been lodged with the Council a re-consultation exercise with statutory consultees and neighbours was undertaken on 25 February 2014.
- 4.2 **Environment Agency:** Originally objected to the application but once a Flood Risk Assessment had been submitted it was acknowledged that the habitable accommodation was similar to adjacent development (9.560mAOD) which is above the 100 year flood level (8.8mAOD). They also note that the position with a dry means of escape will be no worse on this site than adjacent development. They recommend that occupiers should be linked to the flood warning system operated by the Agency.
 - 4.2.1 They recommend a condition seeking to ensure that there is no habitable accommodation below 9.560m AOD. They also request a condition that details of surface water drainage are submitted for approval to ensure surface water is appropriately drained off the site.
- 4.3 **Southern Water:** Have advised that there is currently inadequate capacity to provide foul water disposal. They have also advised that there is a public sewer crossing part of the site. They recommend conditions requiring details of foul and surface water drainage and an informative requiring the need to undertake a capacity check/upgrade existing sewers and to apply for connection to the public sewer.
- 4.4 **Natural England:** Content with the habitat survey findings that there are no protected species on site and that none are likely to be affected by the development. Recommend the provision of biodiversity enhancements through the use of bird and bat boxes.
- 4.5 **Kent Wildlife Trust:** Have confirmed that their original comments stand and seek conditions securing a landscape management plan and biodiversity enhancements as recommended in the submitted habitat survey.
- 4.6 **Kent Highway Services:** No objections subject to a condition requiring the provision of visibility splays at the access to Hart Street and a condition relating to a Green Travel Plan.

4.7 **KCC Heritage Conservation:** Have confirmed that their original views expressed have not changed and continue to recommend a watching brief: This is because:

'The application site lies on the banks of the River Medway which would have acted as an important transport link and been a focus for past activity. Some 200 m. to the north is the site of a Romano-British inhumation and cremation cemetery and parts of a Romano-British building have been exposed some 360 m. to the east. Lithic flakes of prehistoric origin have been found on two sites to the west some 270 m. and 350 m. away. As such I recommend provision is made for an archaeological watching brief.'

4.8 **KCC (Mouchel):**

Originally requested contributions for Libraries: £227/dwelling (**£17,252**), Community Learning: £180/dwelling (**£13,680**) and Adult Social Services: £1201/dwelling (**£91,276**). **Total £122,208.**

'We have reviewed the other KCC services, as attached, which indicate now the following requirements:

- Community Learning £2,332.95 in total
- Libraries £10,971.23 in total
- Social Care £3,976.88 in total
- Total £17,281.06'

4.8.1 No education contributions are requested due to the flats being 1-bedroom/studio and below the size threshold where such contributions are sought by KCC.

4.9 **NHS Property Services (formerly West Kent PCT):**

West Kent PCT had previously requested a payment of £37,800. Now NHS Property Services, they have reconsidered their request in the light of current requirements and have commented as follows

'In terms of this particular application, a need has been identified for contributions to support the delivery of investments highlighted within the Strategic Service Development Plan. These improvements to the primary care infrastructure will enable support in the registrations of the new population, in addition to the commissioning and delivery of health services to all. This proposed development noted above is expected to result in a need to invest in a number of local surgery premises:

- Brewer Street Surgery
- College Road Surgery

All of the above surgeries are within a mile radius of the development at Hart Street Maidstone. This contribution will be directly related to supporting the improvements within primary care by way of extension, refurbishment and/or upgrade in order to

provide the required capacity. For this particular application the contribution has been calculated as such which is slightly different to any previous request:

Predicted Occupancy rates	Total number in planning application	Total occupancy	Contribution sought (Occupancy x £360)
1 bed units	76	106.4	£38,304

NHS Property Services Ltd therefore seeks a contribution of £38,304, plus support for our legal costs in connection with securing this contribution. This figure has been calculated as the cost per person needed to enhance healthcare needs within the NHS services.'

- 4.10 **Southern Gas Networks:** Have provided a plan showing a medium-pressure main running along Hart Street outside the site.
- 4.11 **Kent Police Architectural Liaison:** Advised a number of measures that could be put in place like CCTV of the parking area and low walls fronting the footway along the river, and making sure down pipes are not near balconies. Communal doors should be PAS 24 to meet Secure by Design standards.
- 4.12 **MBC Parks and Leisure:** Have requested a contribution of £1575 per unit (£119,700) to be used for the upgrading of green spaces, play areas and parks within a one mile radius of the site. (Whatman Park, Cornwallis Field and the allotments at Rocky Hill, are within this radius although these are not specified in the response).
- 4.13 **MBC Housing:** Have no objections to the proposals despite the lack of affordable housing provision on site. They have been involved in the drawing up of the proposed s106 obligations relating to the claw-back proposals.
- 4.14 **MBC Environmental Health**

The site is located in a newly developed residential area. It has been in industrial use since 1908 including use as a sheet metal works and is now used for selling and servicing motorcycles. There is therefore the potential for contamination to have occurred. Whilst construction takes place adjoining residents may potentially be subject to disturbance.

No objections subject to contaminated land and refuse storage conditions and informatives relating to conduct and hours of operation on site during construction.

5. REPRESENTATIONS

- 5.1 **Cllr Paine** has withdrawn an earlier request that the application be considered by the Planning Committee

5.2 **Six** Letters of representation have been received four having been received following the recent re-consultation. They make the following (summarised) comments.

- The area has a history of flooding
- Would be higher than surrounding buildings
- Noise will be great
- Inadequate car parking
- Will add to existing delays at the junction of Barker Road and The Broadway
- The area is already overcrowded

6. CONSIDERATIONS

6.1 Site Description

6.1.1 The site is located within Maidstone Town Centre and the defined urban area of Maidstone. It is located within the Riverside Zone of Special Townscape Importance subject to saved policy ENV7 of the Maidstone Borough-wide Local Plan (MBWLP) 2000. It is part of a wider area along Hart Street allocated for development under saved policies H1 and H10 of the MBWLP 2000.

6.1.2 The site is located on the south side of Hart Street towards its western end. It amounts to approximately 0.293ha in area. It is irregular in shape and broadens from front to back, with a street frontage of approximately 41m and a river frontage of approximately 76m. The site varies in depth from between 43m to 83m.

6.1.3 To the east, lie the former premises of Wallis builders now redeveloped for residential purposes (281 flats) and known as Wallis Place. To the west lies the former Westree Works/Clifford's Carpets site that has also been developed for residential purposes and now comprises 157 dwellings in a mixture of flats and town houses, known as Clifford Way. On the north side of Hart Street there are other residential apartment blocks within Lindisfarne Gardens. To the south of the site lies the River Medway which is fronted on its south bank by 'The Point' development in Eccleston Road. There is a footpath running from the river bank to Hart Street that runs along the site's western boundary between it and the Clifford Way development. A riverside walkway connects the site to the main part of the town centre.

6.2 Proposal

6.2.1 The application is a full planning application and seeks permission for the demolition of the existing Laguna Motorcycle retail unit (and associated out

buildings) together with the erection of a five storey residential block with undercroft and surface level car parking.

- 6.2.2 The proposed residential block would have a "T" shaped configuration, with a continuous built up frontage to Hart Street and the stem of the T running through the centre of the site towards the river. At its tallest the proposed building would measure 8 metres, with the majority of it sitting at 7-7.5 metres in height. This appears to be consistent with adjoining development.
- 6.2.3 The proposal would see a total of 76 units provided, that would consist of 24 one bedroom flats and 52 studio apartments. The ground floor would house the entrance foyer, services, refuse storage and vehicular entrance to the undercroft parking. The first floor would house 13 studio apartments and 6 one bedroom flats each with a balcony/sitting out area. This 19 unit configuration is then repeated on each of the upper floor levels.
- 6.2.4 The car parking to serve the development would be a mix of 38 undercroft spaces, including 7 dedicated disabled spaces, and 22 external spaces. This gives a total of 60 car parking spaces to serve the development. This provision equates to 0.8 car parking spaces per residential unit. Three clusters of cycle racks are also proposed within the undercroft parking area, with space for a total of 30 cycles.

6.3 Principle of Development

- 6.3.1 Government policy, in the NPPF, seeks to ensure that a wide choice of quality homes are delivered and states that housing applications should be considered in the context of the presumption in favour of sustainable development.
- 6.3.2 The site is clearly previously developed land, located within the Town Centre and the site is allocated for residential development under 'saved' policies H1 and H10 of the Borough-Wide Local Plan 2000.
- 6.3.3 Given the current housing land supply issue within the Borough in that the Council does not have a five year supply of housing land, this is a further factor in favour of the development.
- 6.3.4 The scheme is, therefore, acceptable in principle.
- 6.3.5 The details of the proposal must now be considered. The main issues in considering this application are:
- Design and site layout;
 - Flooding;

- Highways;
- Ecology;
- Landscaping;
- Residential Amenity
- Sustainability; and
- S106 contributions.

These issues are considered in turn below.

6.4 Design and site layout

- 6.4.1 Government planning policy highlights in chapter 7 of the National Planning Policy Framework *"good Design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people."*
- 6.4.2 It is noted that since the submission of this planning application, there has been a number of developments completed on Hart Street. In effect, this site is the last along this stretch of Hart Street to come forward for residential use, and as such is, in effect the anomaly at present. As set out above, the majority of other residential development constructed along Hart Street is four storeys in height, with car parking provided at ground floor level, although the development to the west does rise in part to six storeys. This proposal seeks to respond to this recent context with a five storey elevation facing onto Hart Street (again with car parking underneath).
- 6.4.3 The appearance of the building would also respond to the design of the neighbouring developments, being of a relatively straightforward geometric form, with the detailing, and interest generated by the layering of the building, both in terms of the use of projecting elements and the use of fenestration and balconies.
- 6.4.4 The Hart Street elevation would have a projecting five storey element, with balconies provided from the first floor upwards (two balconies upon each floor). In addition to this, there would be a recessed panel running centrally that would give the building a vertical emphasis to counter the somewhat horizontal features otherwise proposed. This is a key elevation of the building that would be required to be detailed to a particularly high standard. As precise details of the balconies and fenestration has not been submitted, it is considered appropriate to impose a condition that requires the balconies to be finished in render, with glass panelling to the front, in order that they respond to the form and design of the host property. Some timber effect cladding is proposed to be provided upon the top floor of this projection. No objection is raised to the use of this material.

- 6.4.5 The remainder of the front elevation would have less detailing, with each unit provided with large full length windows, set out in a regular pattern. As this is a very regular form of fenestration, it is appropriate to suggest the imposition of a condition that would see these windows set well back into the building to ensure that there is a good level of detail provided through layering of the building. Again, on this element of the building there would be variations in the rendering, and also the inclusion of timber effect boarding on the upper floors. This approach is considered to demonstrate a satisfactory standard of design, without raising the bar on what has already been provided along Hart Street. At the heart of the NPPF is a presumption in favour of sustainable development, this is reflected in emerging Council policy. Code for Sustainable Homes is the national standard for the sustainable design and construction of new homes.
- 6.4.6 There was no requirement at the time of submission (September 2007) for the proposal to comply with Code for Sustainable Homes. In January 2008, the Council requested that details of a pre-assessment indicator or equivalent of the level under the code that the development was likely to achieve. At that time, it was advised that the Council would expect the development to achieve at least Level 3. This request was made under Regulation 4 of the Town and Country Planning (Applications) Regulations 1988. Confirmation was received from the agent that his client was willing to meet the requirements of Code for Sustainable Homes Level 3. It is appropriate to secure this by condition.

6.5 Flooding

6.5.1 Flooding

The application site lies in an area of high flood risk (zones 2-3) within the fluvial floodplain of the River Medway. The application when, initially submitted, was not supported by a Flood Risk Assessment (FRA). Following an objection from the Environment Agency, an FRA was submitted in January 2008.

6.5.2 The Environment Agency accepted the FRA on the basis that that the 1 in 100 year flood level of 8.8m AOD was recognised and accepted by the applicant and that this level included the relevant allowance for climate changes in line with PPS25. They also accepted that the proposed finished floor levels (9.56m AOD) are in line with adjacent developments and that these are clearly demonstrated on the cross-sectional drawing included within the FRA. Subject to a condition being imposed on any permission stating that there is no habitable accommodation below 9.56mAOD, the Agency's objections on flooding grounds were overcome.

6.5.3 The Agency also advises that a condition to secure a surface water drainage scheme is also attached to any grant of planning permission.

6.5.4 Members will be aware that PPS25 is now revoked and superseded by chapter 10 of the National Planning Policy Framework (NPPF) with additional guidance on flood risk contained within the National Planning Practice Guidance. The submitted FRA meets the requirements of the NPPF and NPPG in relation to flooding.

6.6 Highways

6.6.1 Government policy within the NPPF highlights that transport policies have an important role to play in facilitating sustainable development but also in contributing to wider sustainability and health objectives. Smarter use of technologies can reduce the need to travel. Development that generates significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes can be maximised.

6.6.2 It goes on to state that when considering setting parking standards for development that local planning authorities should take into account:

- The accessibility of the development;
- The type, mix and use of the development;
- The availability of and opportunities for public transport;
- Local car ownership levels; and
- An overall need to reduce the use of high emission vehicles.

6.6.3 The application was accompanied by a Transport Appraisal when it was submitted in 2007. This illustrated that the proposed redevelopment of the site would reduce traffic flows compared to the existing use and these findings are accepted. Laguna Motorcycles is still operating from the site and, as such, the site's redevelopment will not only lead to a reduction in traffic generation from the site, it will also remove the element of non domestic/commercial traffic utilising what is now essentially a residential street.

6.6.4 In terms of parking, it is noted that the proposal would be served by 38 spaces within the undercroft and 22 external spaces. This gives a total of 60 spaces to serve 76 units, equating to 0.8 car parking spaces per unit. As Members will be aware, the Council does not have a set of parking standards, therefore each scheme must be considered on its own merits, utilising the guidance of the NPPF. In this instance, the application site can be considered a sustainable location in that it is within a short walking distance of the town centre, employment and leisure opportunities, public car parks and public transport links. This level of provision is, therefore, considered acceptable.

6.6.5 The Transport Appraisal contained a draft residential green transport plan for the development. This is welcomed and, although a little limited in content, it is a good starting point for a formal travel plan which will be the subject of condition.

6.7 Ecology and Landscaping

6.7.1 Government policy within the NPPF states that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity. The aims of this policy are taken forward in Policy CS13 Historic and Natural Environment of the Interim Approval of Maidstone Borough Local Plan Policies March 2013.

6.7.2 This application is supported by an extended Phase 1 Habitat Survey which comprised a desk and field study. It concluded that the proposal would not impact on any statutory or non statutory protected sites, the site offered limited potential habitat for protected reptiles and birds and the habitats within the site were of low to moderate ecological value. It recommended that vegetation clearance work is undertaken outside of the bird nesting season, emergent vegetation and trees along the riverbank are retained and protected during demolition and construction works as should any trees/hedgerows which are identified to be retained.

6.7.3 Given that the survey was undertaken in 2007, it could be argued that the survey should be updated but given that the condition of the site has remained unchanged since then, it is considered that an updated survey would draw the same conclusions as the 2007 survey.

6.7.4 If the recommendations of the survey are imposed as conditions on any planning consent, it is considered that the proposal would not have an adverse impact on ecology, but could introduce opportunities to conserve and enhance biodiversity.

6.7.5 As mentioned above, national guidance seeks to secure good design and conservation and enhancement of biodiversity within new development. Great importance is, therefore, placed on the role of landscaping in contributing to and improving the quality of the built environment. Policy ENV6 of the Maidstone Borough Wide Local Plan seeks to secure appropriate landscaping, including surfacing and boundary treatments, for development proposals.

6.7.6 The proposal as originally submitted was not accompanied by any formal landscaping submission, although the Design and Access Statement made reference to landscaping as follows:

"The development will incorporate soft landscaping along Hart Street and the footpath from the highway to the river. Along the Medway frontage there will be

an extensive area of grass, shrubs and specimen trees to provide an attractive backcloth to the river walkway."

6.7.7 The applicants subsequently submitted landscaping and planting plans (June 2011) which are considered acceptable to form the basis of a landscaping condition.

6.8 Residential Amenity

6.8.1 I do not consider that the development will result in any unacceptable impact on the residential amenities of nearby residents.

6.8.2 Firstly, the redevelopment of the site would remove what is now a non-conforming use in what has become a predominantly residential area at this end of Hart Street.

6.8.3 Secondly, the relationship between the proposed development and the development in Cilford Way to the west, Lindisfarne Gardens to the north and Wallis Place to the east is also considered to be acceptable.

6.9 S106 obligations

6.9.1 The key requirements of planning obligations as set out in paragraph 204 of the NPPF and Regulation 122 of the CIL Regulations 2010 are that they must be:

- Necessary to make the proposed development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonable related in scale and kind to the proposed development.

6.9.2 Residential development of this scale would normally be considered to impact on education, health, community facilities and open space on the basis that they bring new residents into an area that need to utilise these facilities.

6.9.3 In December 2006, the Council adopted an Affordable Housing Development Plan Document. Policy AH1 of this document requires that a minimum of 40% of all new residential developments of 15 units or more will be affordable housing unless the Council is satisfied of the exceptional circumstances that demonstrate that only a lesser proportion can be provided.

POLICY AH 1

ON HOUSING SITES OR MIXED-USE DEVELOPMENT SITES OF 15 UNITS OR MORE, OR 0.5 HECTARE OR GREATER:

A. THE COUNCIL WILL SEEK TO NEGOTIATE THAT A MINIMUM OF 40% OF THE TOTAL NUMBER OF DWELLINGS TO BE PROVIDED SHALL BE AFFORDABLE

HOUSING TO MEET THE IDENTIFIED HOUSING NEED, UNLESS THE COUNCIL IS SATISFIED OF THE EXCEPTIONAL CIRCUMSTANCES THAT DEMONSTRATE THAT ONLY A LESSER PROPORTION CAN BE PROVIDED. THE COUNCIL MAY SEEK TO NEGOTIATE AN AFFORDABLE HOUSING PROVISION OF MORE THAN 40% ON ALLOCATED GREENFIELD SITES.

B. NOT LESS THAN 24% OF THE TOTAL NUMBER OF DWELLINGS TO BE PROVIDED SHALL BE AFFORDABLE RENTED HOUSING TO MEET THE IDENTIFIED HOUSING NEED, UNLESS THE COUNCIL IS SATISFIED OF THE EXCEPTIONAL CIRCUMSTANCES THAT DEMONSTRATE THAT ONLY A LESSER PROPORTION CAN BE PROVIDED. THE BALANCE OF THE TOTAL NUMBER OF AFFORDABLE DWELLINGS SECURED SHALL PROVIDE FOR SHARED OWNERSHIP, SHARED EQUITY OR DISCOUNTED MARKET RENT PROPERTIES.

C. SUITABLE CONTROLS, INCLUDING LEGAL AGREEMENTS AND PLANNING CONDITIONS, WILL BE USED TO SECURE AFFORDABLE HOUSING THROUGH A REGISTERED SOCIAL LANDLORD OR OTHER APPROPRIATE HOUSING PROVIDERS TO ENSURE THAT THE DWELLINGS REMAIN GENUINELY AVAILABLE TO MEET THE NEEDS OF THOSE WHO ARE UNABLE TO AFFORD A PROPERTY ON THE OPEN MARKET.

D. AFFORDABLE HOUSING WILL BE INTEGRATED WITH MARKET HOUSING AND PROPOSALS FOR INTEGRATION MUST BE APPROVED BY THE BOROUGH COUNCIL. THIS SHOULD BE SHOWN AT THE TIME OF THE SUBMISSION OF ANY APPLICATION. IN EXCEPTIONAL CIRCUMSTANCES WHERE AFFORDABLE HOUSING CANNOT BE PROVIDED ON-SITE, THE BOROUGH COUNCIL WILL ACCEPT APPROPRIATE OFF-SITE PROVISION, THROUGH ALTERNATIVE SERVICED SITES PROVIDED BY THE DEVELOPER OR THROUGH THE PURCHASE OF SUITABLE EXISTING MARKET ACCOMMODATION PROVIDED BY THE DEVELOPER.

6.9.4 This proposal was the subject of detailed pre-application discussions around S106 requirements and in particular the applicant's contention that the scheme was not sufficiently viable to support the provision of affordable housing. These discussions sought to fix the content of the s106 and continued after the submission of the planning application. The applicants advise that the proposal would not be viable if it were required to meet the financial contributions which had been requested together with the provision of 40% affordable units. They cited the significant abnormal site costs relating to factors such as contaminated land, the probable need for piling due to the site's location close to the river, costs of relocating the business, the declining housing market, and significant upfront costs adding to the interest burden and cash flow difficulties as being factors in this conclusion. Discussions primarily centred on the provision of affordable housing within the scheme and whether, if this could not be provided; there was scope for a contribution to secure affordable provision off site. Discussion also took place on the hierarchy of potential contributions and given that affordable housing is the Council's topmost priority, it was agreed that any

contributions that were possible should be directed to the provision of affordable housing.

6.9.5 As mentioned above, the Council does have the discretion to relax S106 requirements on schemes where it can be demonstrated that these requirements are onerous and would make a scheme unviable.

6.9.6 A Residual Valuation was submitted to the Council in September 2009. This document is confidential in that it contains sensitive financial data. This was assessed by the District Valuer in October 2009. They provided the following commentary:

"The market for both commercial and residential property has been significantly negatively impacted by the economic difficulties experienced over the last year. The uncertainty and financial difficulties experienced by both residential and commercial occupiers has resulted in a fall in demand and consequently levels of value and this is well documented. The situation has been further aggravated by the credit crunch and severe problems in obtaining finance in all sectors of the market. The market for residential flats and apartments has been especially affected with falling prices and weak demand.

However, in the long term one can expect values to recover, at least to some degree, especially in view of the overall shortage of housing land in the South East. However, the timing and extent of such a recovery is currently unpredictable. The viability of a development is effectively a snapshot in time having regard to costs and values currently pertaining and, therefore, these can alter significantly during the normal life of any permission granted (i.e. the usual three year period). Maidstone Borough Council may therefore consider, in view of the viability problems which currently exist in respect of this development, the possibility of granting a time limited planning permission and/or an overage or claw back cause in the Section 106 legal agreement which would enable a further viability assessment to be made before final completion of the units. If, therefore, at this later date the market has recovered sufficiently and delivery of an element of affordable housing was found to be viable, then it would be possible to secure some affordable housing within the scheme."

6.9.7 Following these comments, the applicants offered the following:

- £100,000 to provide 4 affordable one bed units off site, payable to the Council on the sale of the 38th unit within the development scheme;
- A further commuted sum for the provision of further affordable 1 bed units off site via a claw back arrangement as suggested by the District Valuer; and
- The transfer of the riverside path to the Council on commencement of development.

6.9.8 Whilst the Council had concerns about the precise details relating to the proposed commuted sums, the principle of such an approach was accepted. The S106 for this application will secure the following:

- £100,000 for the provision of affordable units off site, payable to the Council prior to the first occupation of the development hereby permitted;
- A further commuted sum for the provision of further affordable units off site via a claw back arrangement; and
- The transfer the riverside path to the Council on commencement of development.

6.9.9 The other potential contributions are set out earlier in the report. These are as follows

Kent County Council:

Community Learning £2,332.95 in total for dedicated centres and community outreach;

Libraries £10,971.23 in total for bookstock and services at local libraries;

Social Care £3,976.88 in total for Telecare and Changing Places and community projects.

NHS Property Services: £38,304, towards services at Brewer Street Surgery and College Road surgery

MBC Parks and Leisure: £119,700 to be used on projects within a one mile radius of the site.

6.9.10 Given the findings of the viability assessment and the comments of the District Valuer and the fact that the provision of affordable housing is the Council's highest priority for seeking s106 contributions, I remain of the view in this case that any contributions that are received should be directed towards affordable housing provision.

6.9.11 It must be noted that the residual valuation and its assessment by the District Valuer were in 2009 and the initial question must be should the valuation be updated and reassessed.

6.9.12 In my view the abnormal costs of the site such as contamination remediation and foundation design etc. are unlikely to have changed in the intervening period. However, as members will be aware, the housing market has now moved on and there are a number of new government initiatives relating to the new-build housing market that have emerged. Therefore in my view it is necessary for these variable figures relating to likely unit sales prices etc. to be revisited and updated.

6.9.13 Subject to a revised assessment being submitted with up-to date- figures and costings, I remain of the view that the principles agreed on the draft heads of terms are acceptable and will secure a level of affordable housing that the scheme can support, albeit not the 40% as set out in policy AH1.

7. CONCLUSION

7.1 It is considered that the proposal would:

- Align with the Local Plan designation that the site is suitable for residential purposes;
- Not result in an adverse impact on residential amenity;
- Not have a detrimental impact on the capacity or operation of the local road network or its junctions;
- Makes satisfactory provision for onsite parking;
- Encourage pedestrian linkages;
- Ensure that measures are in place to satisfactorily remediate the site;
- Not prejudice protected species and introduces opportunities to preserve and enhance both biodiversity and landscaping;
- Not be at risk of flooding or increase the risk of flooding off site.

7.2 The proposal is considered to be broadly compliant with central government guidance and relevant Development Plan policies. Subject to the updated viability assessment being submitted I am satisfied in this case that the applicants have demonstrated that a reduced level of affordable housing provision is appropriate. Therefore, it is concluded that there are sound planning reasons for this application to be recommended for approval.

7.3 In formulating this recommendation, all other matters which were drawn to the Council's attention have been taken into account, but nothing of sufficient weight was found to override the factors which led to this recommendation for approval.

8. RECOMMENDATION

Subject to:

A: The submission of an updated viability assessment that contains up-to-date figures and which is based on current market conditions:

B: The prior completion of a legal agreement, in such terms as the Head of Legal Services may advise, to secure;

- £100,000 for the provision of affordable units off site, payable to the Council prior to the first occupation of the development hereby permitted;

- A further commuted sum for the provision of further affordable units off site via a claw back arrangement; and
- The transfer of the riverside path to the Council on commencement of development.

The Head of Planning & Development be given delegated powers to GRANT PERMISSION subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission;

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

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

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

3. A Landscape Management Plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas shall be submitted to, and approved in writing by, the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.

Reason: To ensure satisfactory management and maintenance of the hard and soft landscaping, and parking areas.

4. The development hereby permitted shall only be carried out in accordance with the approved Phase 1 Habitat Survey (October 2007) unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of safeguarding the ecological and nature conservation interests of the application site.

5. The development shall not commence until there has been submitted to, and approved in writing by, the Local Planning Authority details showing the location and design of bird and bat boxes to be placed/erected within the site. The subsequently approved details shall be implemented prior to the first occupation of any of units hereby permitted.

Reason: In the interests of safeguarding the ecological and nature conservation interests of the application site.

6. The development shall not commence until the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification, which has been submitted to and approved by the Local Planning Authority.

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

7. The development shall not commence until, details of all fencing, walling and other boundary treatments have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details before the first occupation of the building(s) or land and maintained thereafter;

Reason: To ensure a satisfactory appearance to the development and to safeguard the enjoyment of their properties by existing and prospective occupiers.

8. Notwithstanding the details illustrated on the approved plans, prior to the first residential occupation of any of the residential units hereby permitted, a detailed lighting plan for the development including the car parking areas, footways/cycleways, shall be submitted to, and agreed in writing with, the Local Planning Authority. Such details shall include the siting and design of any lighting together with details of the spread and intensity of the lighting. The lighting shall be installed in strict accordance with the agreed details prior to first residential occupation of the dwellings hereby permitted and thereafter retained and maintained in the agreed form without any further additions.

Reason: In the interests of highway safety, amenity and to ensure that the proposed development is satisfactorily integrated with its immediate surroundings and avoids an adverse effect on biodiversity.

9. Notwithstanding the information on the approved plans, the development shall not commence until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to, and approved in writing by, the Local Planning Authority. The development shall thereafter be carried out in accordance with the subsequently approved details unless changes have been agreed in writing by the local planning authority.

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

10. Notwithstanding the Town and Country Planning Act and the provisions of the Town & Country Planning (General Permitted Development)) Order 1995 or any subsequent re-enacting Act or Order, no electricity, gas or water meter boxes, soil ventilation pipes, air extraction pipes, boiler flues, ventilation grilles or ducting, satellite dishes, burglar alarms, security lighting, video cameras or floodlighting, surface wiring or pipe work shall be fixed to the external fabric of the buildings without the prior written approval of the Local Planning Authority.

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

11. The development shall not commence until details have been submitted to and approved in writing by, the Local Planning Authority showing the existing and proposed site levels and the finished floor levels of the buildings hereby permitted (which shall show no habitable accommodation below 9.56mAOD), together with a land raising method statement. Development shall be carried out in strict accordance with the subsequently approved details.

Reason: To ensure that the proposed development is satisfactorily integrated with its immediate surroundings and in the interests of flood risk.

12. Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995, or any subsequent re-enacting Order, the development hereby permitted shall be equipped with communal satellite dishes, details of the number, size, external appearance and the positions of the satellite dishes shall be submitted to, and agreed in writing by, the Local Planning Authority prior to the installation of such systems. The communal satellite dish systems as agreed shall be installed in strict accordance with the agreed scheme prior to the residential occupation of the development and thereafter retained. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification) other than those agreed by way of the above scheme no additional satellite dishes or aerials shall be fixed to the building comprising the flats hereby permitted.

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

13. All electrical and telephone services to the development shall be run underground.

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

14. The development shall not commence the following further details including large scale plans (1:20 or 1:50) as applicable have been submitted for approval to the local planning authority.
 - i) details of balconies (including their design, dimensions and materials)
 - ii) details of window and door recesses/projections
 - iii) details of rainwater goods

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

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

15. The dwellings shall achieve at least code 3 of the Code for Sustainable Homes. A final Code certificate shall be issued not later than one calendar year following first occupation of the dwellings certifying that level 3 has been achieved.

Reason: to ensure a sustainable and energy efficient form of development.

16. No development shall take place until a scheme demonstrating at least 10% of the development's energy will be derived from decentralised and low or renewable sources has been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in complete agreement with these details unless otherwise agreed in writing with the Local Planning Authority.

Reason: To ensure that development takes place in an environmentally sensitive way, to assist the Government in meeting its targets of reducing carbon dioxide emissions.

17. The development shall not commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the demolition and construction periods. The Statement shall provide for, but not necessarily be limited to, #

- i) the parking of vehicles of site operatives and visitors
- ii) measures to control the emission of dust and dirt during both demolition and

the construction of the development

iii) details of construction traffic routing, including details of the access to be used during construction

iv) the phasing of development and the location of construction compounds

v) details of wheel washing facilities, including a barrier to stop all vehicles before they enter the highway. Mud and other debris from wheels and the undercarriage of all vehicles leaving the site during the period of works shall be cleaned off prior to such vehicles entering the highway

vi) loading, unloading and storage of plant and materials

Reason: In the interest of residential amenity.

18. The development shall not commence until details of the method of piling and hours of piling operations have been submitted to, and agreed in writing by, the Local Planning Authority. All piling works shall be carried out in accordance with the agreed details, unless otherwise agreed, in writing, with the Local Planning Authority.

Reason: in the interests of residential amenity.

19. The development hereby permitted shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) (January 2008) and no habitable accommodation shall be located below 9.56m AOD.

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site, to ensure safe access and egress from and to the site, to ensure the structural integrity of the proposed development and to reduce the impact of flooding on the proposed development, future occupants of the development and the surrounding area.

20. The development shall not commence until details of foul and surface water drainage have been submitted to and approved by the local planning authority. The development shall thereafter be undertaken in accordance with the subsequently approved details.

Reason: To ensure an appropriate scheme of surface water drainage in the interest of flood prevention.

21. The visibility splays shown on drawing A/PL-200 rev B (October 2007) shall be implemented with no obstruction to visibility at or above a height of 600mm when measured from the level of the adjoining highway carriageway prior to the first occupation of any of the units hereby permitted. The visibility splays shall thereafter be retained and maintained as such.

Reason: In the interest of highway and pedestrian safety.

22. Cycle parking facilities shall be provided as detailed on drawing A/PL-200 rev B (October 2007), prior to the first residential occupation of the development hereby permitted, unless otherwise agreed in writing with the Local Planning Authority. These facilities shall thereafter be permanently retained for sole use for cycle parking for the residents of the development hereby permitted.

Reason: To reduce reliance on the use of private cars, in the interests of sustainability, highway safety and amenity.

23. Prior to the first residential occupation of the development hereby permitted, a Green Travel Plan shall be submitted to and agreed in writing with the Local Planning Authority. The Green Travel Plan shall include detailed and specific measures to reduce the number of journeys made by car to the site and shall include specific details of the operation and management of the proposed measures. The commitments explicitly stated in the Green Travel Plan shall be binding on the applicants or their successors in title. The measures shall be implemented upon the first residential occupation of the development hereby permitted and shall be permanently kept in place unless otherwise agreed in writing with the Local Planning Authority. Upon written request, the applicant or their successors in title shall provide the Local Planning Authority with written details of how the measures contained in the Green Travel Plan are being undertaken at any given time.

Reason: To reduce reliance on the use of private cars, in the interests of sustainability.

24. No development shall take place within 8 metres of the river, allowing the natural vegetation to be retained within the functioning river corridor.

Reason: To retain and enhance the river corridor.

25. The approved details of the parking/turning areas shall be completed before the commencement of the use of the land or buildings hereby permitted and shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008 and the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them;

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

26. The development shall not commence until:

1. The application site has been subjected to a detailed scheme for the investigation and recording of site contamination and a report has been submitted to and approved by the Local planning authority. The investigation strategy shall be based upon relevant information discovered by a desk study. The report shall include a risk assessment and detail how site monitoring during decontamination shall be carried out. The site investigation shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology and these details recorded.

2. Detailed proposals in line with current best practice for removal, containment or otherwise rendering harmless such contamination (the 'Contamination Proposals') have been submitted to and approved by the Local Planning Authority. The Contamination Proposals shall detail sources of best practice employed.

3. Approved remediation works have been carried out in full on site under a Quality Assurance scheme to demonstrate compliance with the proposed methodology. If, during any works, contamination is identified which has not previously been identified additional Contamination Proposals shall be submitted to and approved by, the local planning authority.

4. Upon completion of the works, this condition shall not be discharged until a closure report has been submitted to and approved by the local planning authority. The closure report shall include full details of the works and certification that the works have been carried out in accordance with the approved methodology. The closure report shall 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;

Reason: To prevent harm to human health and pollution of the environment.

27. The development hereby permitted shall be carried out in accordance with the following approved plans:

A/PL-099, A/PL-200 Rev B, A/PL-210 Rev A, A/PL-205 Rev A, A/PL-300 Rev A, A/PL-400 Rev A received on the 15th October 2007 and 510.03.01 and Planting Plan received 9th June 2011;

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

Informatives set out below

Any works in, over or under the channel of the watercourse or on the banks within 8 metres of the top of the bank will require the prior approval of the Environment Agency under the Water Resources Act 1981 and associated Byelaws.

The applicant is advised to ensure future residents connect to the Environment Agency's flood warning service and ensure that occupiers are made aware of the risk of flooding and the procedure for evacuation.

Attention is drawn to Sections 60 and 61 of the Control of Pollution Act 1974 and to the Associated British Standard Code of practice BS5228:1997 for noise control on construction sites. Statutory requirements are laid down for control of noise during works of construction and demolition and you are advised to contact the Environmental Health Manager regarding noise control requirements.

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

No vehicles in connection with the construction of the development may arrive, depart, be loaded or unloaded within the general site except between the hours of 0800 and 1900 Mondays to Fridays and 0800 and 1300 hours on Saturdays and at no time on Sundays or Bank Holidays.

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

A formal application for connection to the public sewerage system is required in order to service this development. To initiate a sewer capacity check to identify the appropriate connection point for the development and to ensure the development does not affect existing sewers in the vicinity, please contact Atkins Ltd. Anglo Street James House, 39A Southgate Street, Winchester, SO23 9EH.

The importance of notifying local residents in advance of any unavoidably noisy operations, particularly when these are to take place outside the normal working hours, cannot be stressed enough. Where possible, the developer shall provide the Council and residents with a name of a person and maintain dedicated telephone number to deal with any noise complaints or queries about the work,

for example scaffolding alarm misfiring late in the night/early hours of the morning, any over-run of any kind.

The developer may be required to produce a Site Waste Management Plan in accordance with Clean Neighbourhoods and Environment Act 2005 Section 54. As per the relevant act and the Site Waste Management Regulations 2008, this should be available for inspection by the Local Authority at any time prior to and during the development.

Planning permission does not convey any approval for construction of the required vehicular crossings, or any other works within the highway for which a statutory licence must be obtained. Applicants should contact Kent County Council - Highways and Transportation (web: www.kent.gov.uk/roads_and_transport.aspx or telephone: 0300 333 5539) in order to obtain the necessary Application Pack.

You are advised that:

1. No furniture may be erected on or across Public Rights of Way KMX30 and KMX31 without the express consent of the Highway Authority:
2. There must be no disturbance of the surface of the right of way, or obstruction of its use, either during or following any approved development without the permission of the Kent County Council Public Rights of Way Office.
3. There should be no close board fencing or similar structure over 1.2 metres in height erected which will block out the views:
4. No hedging or shrubs should be planted within 1.0 metre of the edge of the Public Path.
5. No Materials can be brought onto site or stored on the Right of Way.

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

The proposed development, subject to the conditions stated, is considered to comply with the policies of the Development Plan (Maidstone Borough-Wide Local Plan 2000) and there are no overriding material considerations to indicate a refusal of planning consent.