

# ADJOURNED PLANNING COMMITTEE MEETING

Date: Monday 25 March 2024  
Time: 6.00 p.m.  
Venue: Town Hall, High Street, Maidstone

## Membership:

Councillors Cox, English (Vice-Chairman), Mrs Gooch, Harwood, Holmes, Jeffery, Kimmance, McKenna, Perry, Riordan, Russell, Spooner (Chairman) and D Wilkinson

*The Chairman will assume that all Members will read the reports before attending the meeting. Officers are asked to assume the same when introducing reports.*

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## AGENDA

Page No.

1. Apologies for Absence
2. Notification of Substitute Members
3. Notification of Visiting Members
4. Items withdrawn from the Agenda
5. Any business the Chairman regards as urgent including the urgent update report as it relates to matters to be considered at the meeting
6. Disclosures by Members and Officers
7. Disclosures of lobbying
8. To consider whether any items should be taken in private because of the possible disclosure of exempt information.
9. 23/504640/FULL Mote Park Kiosk, Willow Way, Maidstone, Kent 1 - 7
10. 23/505669/TPOA 20 The Trinity Foyer, First Floor Flat 1, Church Street, Maidstone, Kent 8 - 16
11. 5012/2023/TPO St Mary's Church, Old Ashford Road, Lenham, Maidstone, Kent 17 - 25
12. 23/505231/NMAMD & 23/505593/NMAMD Heather House, Bicknor Road, Maidstone, Kent 26 - 33

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**Issued on Friday 22 March 2024**

**Continued Over/:**

*Alison Broom*

**Alison Broom, Chief Executive**

- |  |         |
|--|---------|
| 13. Appeal Decisions   | 34 - 37 |
| 14. Discussion Item on Residential Development in the Countryside<br>- Appeal Decisions Attached to Aid Discussion | 38 - 65 |

**PLEASE NOTE**

**The order in which items are taken at the meeting may be subject to change.**

**The public proceedings of the meeting will be broadcast live and recorded for playback on the Maidstone Borough Council website.**

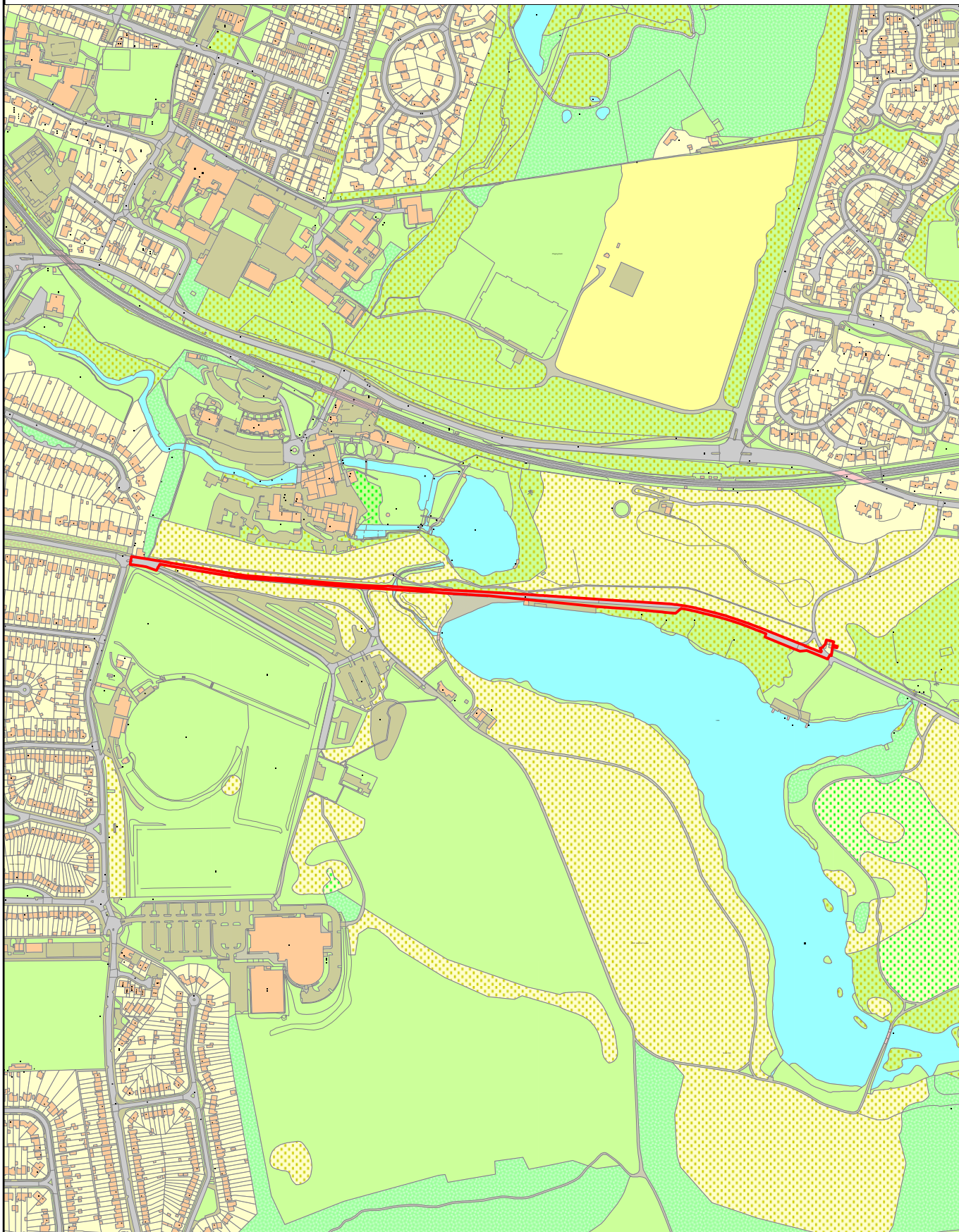
**For full details of all papers relevant to the reports on the agenda, please refer to the public access pages on the Maidstone Borough Council website. Background documents are available for inspection; please follow this link: <https://pa.midkent.gov.uk/online-applications/>**

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MAIDSTONE BOROUGH COUNCIL

23/504640/FULL



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Mote Park Kiosk, Willow Way, Maidstone,  
Kent ME15 7RN

## REPORT SUMMARY

<b>REFERENCE NO:</b> 23/504640/FULL		
<b>APPLICATION PROPOSAL:</b> Change of use of existing kiosk and WC building to storage and changing rooms. Erection of single storey side extension, including replacement of flat roof with a new pitched roof and associated landscaping works.		
<b>ADDRESS:</b> Mote Park Kiosk, Willow Way, Maidstone, ME15 7RN		
<b>RECOMMENDATION: APPROVE PERMISSION</b>		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b>  The proposed uses are associated with the management of Mote Park and recreational activities so are acceptable.  The natural slate pitch roof would enhance Mote Park (Grade II Registered Park and Garden) and the extensions to the building would not cause any harm.  A single tree would be removed but it would be replaced and the loss of an area of grass for a surfaced access to the building would not harm the historic Park.  The proposals are therefore in accordance with policies polies SP18, DM1, DM3 and DM4 of the Local Plan and permission is recommended subject to conditions.		
<b>REASON FOR REFERRAL TO COMMITTEE:</b>  Maidstone Borough Council is the applicant.		
<b>WARD:</b> Shepway North	<b>PARISH COUNCIL:</b> N/A	<b>APPLICANT:</b> Maidstone Borough Council <b>AGENT:</b> Andrew Wells Planning and Design
<b>CASE OFFICER:</b> Richard Timms	<b>VALIDATION DATE:</b> 20/10/23	<b>DECISION DUE DATE:</b> 28/03/24
<b>ADVERTISED AS A DEPARTURE:</b> No		

### Relevant Planning History

63/0035/MK1 The erection of a refreshment kiosk and public conveniences – APPROVED

### MAIN REPORT

#### 1. DESCRIPTION OF SITE

1.01 The application relates to a building formerly used as a refreshment kiosk and toilets which is in a state of disrepair. It is a small single storey building faced

with yellow bricks and has a flat roof. The building is within the north part of Mote Park adjoining surfaced paths with the A20 around 200m to the north.

1.02 Mote Park is a Grade II Registered Park and Garden and has a number of listed buildings within its grounds, notably Mote House (Grade II\*) which is around 330m to the southeast. The majority of the park is also a Local Wildlife Site and this designation washes over the site of kiosk building.

## 2 PROPOSAL

2.01 Permission is sought to extend the building to the front and west side and construct a new pitched roof. The extensions would be faced in matching bricks with a roller shutter door on the side part. Some existing windows would be bricked and there would be two new steel doors to the front. The roof would be finished in natural slate. Additional hard surfacing is proposed on the west side to allow access to the side extension/roller shutter door.

2.02 Internally the building would provide toilets, a shower/wet room, changing rooms, and storage space, and the use of the building would change to provide storage for maintenance of the park, and the other facilities for the sailing club.

## 3 POLICY AND OTHER CONSIDERATIONS

**Maidstone Borough Local Plan 2017:** SS1, SP1, SP18, DM1, DM2, DM3, DM4, DM8

**Kent Waste and Minerals Plan** (amended 2020): CSW3, DM7, DM9

The National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

**Maidstone Local Plan Review (Regulation 22):** LPRSS1, LPRSP14, LPRSP14(A), LPRSP14(B), LPRSP15, LPRENV1, LPRQ&D2

The Regulation 22 Local Plan Review (LPR) submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is therefore a material consideration and attracts some weight. The LPR has been through Stage 1 and 2 Hearings and the 'Main Modifications' the Inspector considers are required to make it sound have been out to public consultation so it is at an advanced stage.

This Council invited the Inspector to make any changes necessary to the 'Main Modifications' in order to make the Plan sound. The Inspector has done so in his Final Report (8<sup>th</sup> March 2024) and so the recommendation is simply one of adoption to PAC PI, Cabinet and, crucially, Council on the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup>, respectively, of March. However, if the recommendation to adopt is accepted then the Plan would still not have full weight because the 6 week period for judicial review would need to expire (6 weeks from the date of the Council's decision) and so, at this stage, the Plan attracts 'substantial' weight.

## 4 LOCAL REPRESENTATIONS

4.01 **Local Residents:** 1 representation received raising the following (summarised) points:

- Should keep toilet facilities at this side of the park.

## 5 CONSULTATIONS

*(Please note that summaries of consultation responses are set out below. Comments are discussed in more detail in the appraisal section where considered necessary)*

### 5.01 The Gardens Trust

*"We have considered the information provided in support of the application and liaised with our colleagues in Kent Gardens Trust. On the basis of this we confirm we do not wish to comment on the proposals at this stage. We would however emphasise that this does not in any way signify either our approval or disapproval of the proposals."*

### 5.02 MBC Conservation

**No objections:** Summary – *"Overall, the design, scale, and layout are considered appropriate from a heritage perspective and will enhance the character of Mote Park."*

### 5.03 MBC Landscape

**No objections subject to conditions** requiring a final arboricultural method statement, tree protection plan, and landscaping details.

### 5.04 KCC Minerals

**No objections.**

## 6 APPRAISAL

6.01 The proposed uses are associated with the management of Mote Park and recreational activities so are acceptable.

6.02 The key issues are therefore:

- Impact on Mote Park and the Setting of Listed Buildings
- Impact on Trees and the Local Wildlife Site

### **Impact on Mote Park and the Setting of Listed Buildings**

6.03 The proposed extensions are modest increasing the building's width by around a third to the west side and the extension to the front would be flush with the front. The limited extensions and new doors would not have any harmful impact upon Mote Park or the setting of listed buildings. The increase in hard surfacing would be limited and would also not cause any harm to the wider Park.

6.04 The pitch roof will greatly improve the appearance of the building and the proposed use of natural slates will be secured by condition. Therefore overall,

it is considered the proposals would enhance Mote Park in accordance with policies SP18, DM1 and DM4 of the Local Plan and draft policies LPRSP14(B), LPRSP15, and LPRENV1 of the Local Plan Review (LPR).

### **Impact on Trees and the Local Wildlife Site**

- 6.05 There are several trees close to the building around the west, north and east sides. The only tree that would be directly affected by the side extension is a tulip tree to the west which would need to be removed. This has been classed as a category U tree (useful life expectancy less than 10 years) under the submitted tree survey. It is proposed to remove this tree and provide a replacement tree (Alder) just to the north.
- 6.06 A crown lift 5m above ground level is proposed to the ash trees to the northeast to allow construction of the roof to which the landscape officer raises no objections. The other trees near to the development would be protected during the works as per the submitted tree protection plan.
- 6.07 The landscape officer has reviewed the submission and has raised no objections in terms of the removal, works to, and protection of trees and I consider the removal of the tree subject to a replacement would not cause harm to the Park. Conditions are required to secure the replacement, a method statement for works, and tree protection.
- 6.08 It is considered the limited hard surfacing which would result in the loss of a small area of mown grass would not have any harmful impacts upon the Local Wildlife Site in accordance with policy DM3 of the Local Plan and draft policy LPRSP14(A) of the LPR. One bat and one bird box are proposed to be attached to the building to provide some ecological enhancement which is considered proportionate to the scale of development proposed and can be secured by condition.

### **PUBLIC SECTOR EQUALITY DUTY**

- 6.09 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

## **7 CONCLUSION**

- 7.01 The proposed uses are associated with the management of Mote Park and recreational activities so are acceptable.
- 7.02 The natural slate pitch roof would enhance Mote Park and the extensions would not cause harm. A single tree would be removed but replaced and the loss of an area of grass would not harm the historic Park. The development would not have a harmful impact upon the Local Wildlife Site.
- 7.02 The proposals are therefore in accordance with policies SP18, DM1, DM3, and DM4 of the Local Plan and draft policies LPRSP14(A), LPRSP14(B), LPRSP15, and LPRENV1 of the LPR, and permission is recommended subject to conditions.

## 8 RECOMMENDATION

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

### **CONDITIONS:**

#### *Time Limit (Full Permission)*

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.

#### *Approved Plans & Compliance*

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

PL/707/03 RevA  
PL/707/01 RevA  
PL/707/02 RevB

Reason: To clarify which plans have been approved and to ensure a high-quality development.

3. The bricks to be used in the construction of the external surfaces of the extensions hereby permitted shall match those used in the existing building.

Reason: To ensure a satisfactory appearance to the development.

#### *Pre-Commencement*

4. No development shall take place until an Arboricultural Method Statement (AMS) in accordance with the current edition of BS 5837 has been submitted to and approved in writing by the local planning authority. The AMS should detail implementation of any aspect of the development that has the potential to result impact on trees and include details of the proposed tree works necessary to implement the approved scheme and include a tree protection plan.

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

#### *Pre-Slab Level*

5. No development above slab level shall take place until details of a replacement tree have been submitted to and approved in writing by the local planning authority. The details shall include the species, size, and location of the tree,



and a 5-year management plan. The development shall be carried out in accordance with the approved details.

Reason: To ensure appropriate mitigation for the loss of an existing tree.

6. No development above slab level shall take place until written details and images of the natural slate tiles to be used for the construction of the roof hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials and thereafter maintained.

Reason: To ensure appropriate mitigation for the loss of an existing tree.

7. The replacement tree approved under condition 5 shall be planted in the first planting season (1<sup>st</sup> October to end of February) following the first occupation/use of the building. If before a period of 10 years from the completion of the development the tree dies or becomes so seriously damaged or diseased that its amenity value has been adversely affected, it shall be replaced in the next planting season with a tree of the same species and size as approved under condition 5 unless the local planning authority gives written consent to any variation.

Reason: To ensure appropriate mitigation for the loss of an existing tree.

#### *Pre-occupation*

8. The bat and bird boxes shown on drawing no. PL/707/02 RevB shall be installed before the first occupation/use of the building and thereafter maintained.

Reason: In the interest of biodiversity enhancement.

9. The development shall not be occupied until details of any external lighting has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained.

Reason: In the interests of visual amenity.

# Agenda Item 10



Ordnance Survey - data derived from OS Premium

**23/505669/TPOA - 20 The Trinity Foyer, First Floor, Flat 1 Church Street, Maidstone, Kent ME14 1LY**

Scale: 1:1250  
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## REPORT SUMMARY

<b>CASE REFERENCE:</b> 23/505669/TPOA		
<b>ADDRESS:</b> 20 The Trinity Foyer, First Floor Flat 1 Church Street, Maidstone, Kent. ME14 1LY		
<b>PROPOSAL:</b> TPO application to: Holly (T4) install a 3 way cobra system, Ash (T9) sever Ivy and deadwood, Cherry (T12) reduce large limb over footpath by 1m and deadwood and removal of two Ash (T13 and T15),		
<b>RECOMMENDATION:</b> <b>Application Permitted</b> – subject to CONDITIONS / REASONS and INFORMATIVES		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b> The works are considered acceptable arboricultural management.		
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Maidstone Council is the applicant.		
<b>PARISH:</b> Unparished	<b>WARD:</b> High Street	
<b>APPLICANT:</b> Maidstone Borough Council	<b>AGENT:</b> Qualitree Services	
<b>CASE OFFICER:</b> Paul Hegley (MBC)	<b>SITE VISIT DATE:</b> 18.01.2024	
<b>DATE VALID:</b> 13.12.2023	<b>CONSULTATION EXPIRY:</b> 08.01.2024	<b>DECISION DUE:</b> 07.02.2024

## RELEVANT PLANNING HISTORY

### Planning:

**23/505669/TPOA** - TPO application to: Holly (T4) install a 3 way cobra system, Ash (T9) sever Ivy and deadwood, Cherry (T12) reduce large limb over footpath by 1m and deadwood and removal of two Ash (T13 and T15), - **Pending Decision** -

**TA/0046/04** - An application for consent to remove stem and Basal suckers on 17 no. Lime Trees; All trees subject to Tree Preservation Order No. 32 of 1973 - **Approved** - **07.05.2004**

### **Enforcement:**

**ENF/12533** - Enforcement Enquiry - **Pre Application Advice Closed** - **26.10.2015**

### Appeals:

None

## **MAIN REPORT**

### **1. DESCRIPTION OF TREES**

- 1.01 The trees subject to this application are located around the site boundary against the boundary fence line adjacent to the driveway and pavement of Trinity Foyer.
- 1.02 The Holly (Listed T4) is a triple stem mature Holly with a potentially weak fork at approximately 1m. The proposal is to install a bracing system to stabilise the tree.
- 1.03 The mature Ash (T9) is ivy clad and has some deadwood. The proposal is to remove the ivy to allow for tree inspection.
- 1.04 The Cherry (T12) is a mature tree extending out over the pavement and road, potentially obstructing the road to larger vehicular traffic. The proposal is to prune the branches overhanging the road by 1M.
- 1.05 The remaining two Ash (T13 & T15) are proposed to be removed. These are semi mature self-seeded trees that have established in very close proximity to the metal railing fence and are also in close proximity to two adjacent semi mature Small Leaved Lime trees of good form and condition.

### **2. PROPOSAL**

- 2.01 The application seeks consent to carry out the following works:
  - Holly (T4) install a 3 way cobra bracing system
  - Ash (T9) sever Ivy and deadwood
  - Cherry (T12) reduce large limb over footpath by 1m and deadwood.
  - Removal of two Ash (T13 and T15)

### **3. PLANNING CONSTRAINTS**

#### 3.01 Tree Preservation Order No.:

Tree Preservation Order No. 32 of 1973 under Section 60 of the Town and Country Planning Act 1971.

Group of Trees - G1 comprising 4 Holly, 3 Lime

Group of Trees - G4 comprising 2 Prunus, 2 Almond, 1 Holly.

Group of Trees - G5 comprising 5 Holly, 1 Prunus, 4 Cherry.

<http://services.maidstone.gov.uk/maps/astun.ishare.web/mymaidstone.aspx>

#### 3.02 Conservation Area:

YES - Holy Trinity Church

Description: Town and Country Planning Act 1971; as amended by The Town and Country Amenities Act 1974. Designated and extension of Conservation Areas.

Holy Trinity Church - Amended 29 December 1988

### **4. POLICY CONSIDERATIONS**

#### 4.01 Government Policy:

National Planning Policy Framework (2021)

Planning Practice Guidance Tree Preservation Orders and trees in conservation areas, March 2014.

The Town and Country Planning (Tree Preservation)(England) Regulations 2012

4.02 Compensation:

A refusal of consent to carry out works on trees subject to a Tree Preservation Order can potentially result in a claim for compensation for loss or damage arising within 12 months of the date of refusal.

**5. LOCAL REPRESENTATION**

5.01 Following the putting up of a site notice and consultations sent to neighbouring owners, no Representations supporting or objecting to the application have been received.

**6. CONSULTATIONS**

6.01 Councillors – None comments/representations received.

**7. APPRAISAL**

**7.01 T4 Holly on application form (G4 Holly in TPO 32/1971).**

Condition:

**Fair** – Showing minor signs of defects, (fork)

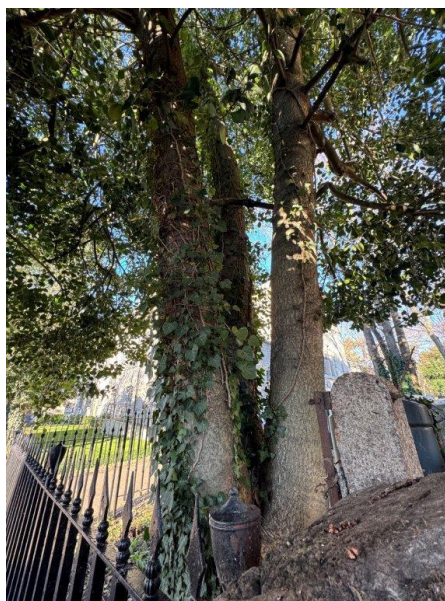
Contribution to public amenity:

**Excellent** – Prominent feature of the area/particularly suited to the location.

Retention/Longevity:

**Long** – With an estimated remaining life expectancy of at least 20 years.

**View of Holly tree T4.**



**7.02 T9 Ash on application form (Conservation Area).**

Condition:

**Good** – No significant defects noted.

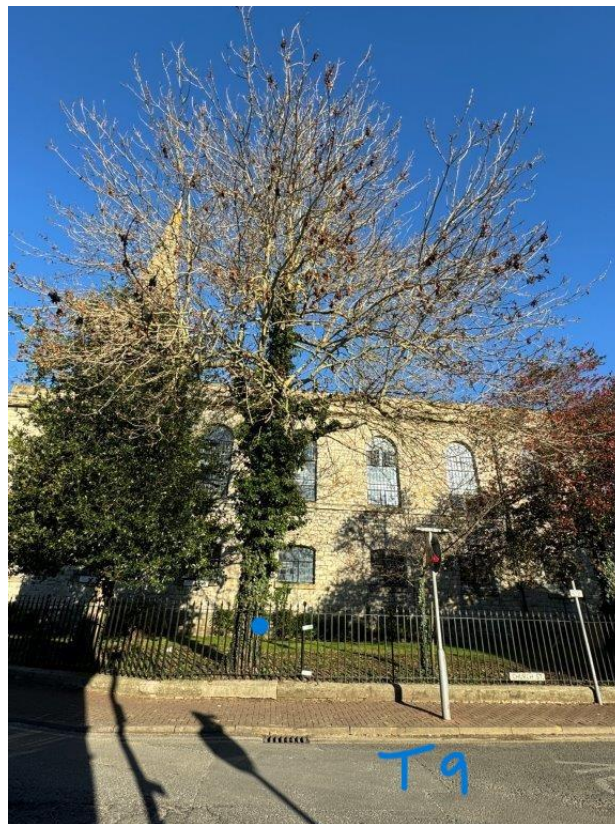
Contribution to public amenity:

**Good** – Clearly visible to the public.

Retention/Longevity:

**Long** – With an estimated remaining life expectancy of at least 20 years.

**View of Ash tree T9**



**7.03 T12 Cherry on application form (G4 Prunus in TPO 32/1971).**

Condition:

**Fair** – Showing minor signs of deterioration and/or defects.

Contribution to public amenity:

**Good** – Clearly visible to the public.

**Excellent** – Prominent feature of the area/particularly suited to the location.

Retention/Longevity:

**Long** – With an estimated remaining life expectancy of at least 20 years.

**View of Cherry tree T12**



**7.04 Ash trees T13 and T15 on application form (Conservation Area).**

Condition:

**Good** – No significant defects noted.

Contribution to public amenity:

**Good** – Clearly visible to the public.

Retention/Longevity:

**Long** – With an estimated remaining life expectancy of at least 20 years.

**View of Ash Tree T13**



**View of Ash tree T15**



**7.05 Comments/Considerations on Proposal:**

T4 Holly has a triple fork at 1m which shows a small weak compression defect in one area, although this is only partly visible due to the presence of Ivy growth. The installation of the cobra brace system within the crown will aid in the supporting of the three main stems and help alleviate any potential splitting of the lower main fork. This system is not invasive and so technically does not require any formal consent under the TPO regulations.

T9 Ash has extensive Ivy growth up the main trunk and inner scaffold branches hindering a full inspection and adding weight to the covered branches. The proposed severing of Ivy and removal of deadwood may be considered as an Exemption under TPO legislation and so no objections are raised.

T12 Cherry has a large codominant lower limb that extends some distance towards and over the main road and footpath with some lower branches exhibiting damage by high sided vehicle strikes. The proposed reduction of this lower large limb over the footpath by 1m will clear the road and fulfil the requirements of Section 154 of the Highways Act 1980 to prevent any further vehicle damage. Again, the proposed removal of the deadwood may be considered as an exemption under the current TPO legislation for which no objections are raised.



Ash trees T13 and T15 are both self-seeded specimens that have established close to the boundary iron railings, which is likely to be damaged in the future by the growth of the trees if they are allowed to mature in their current positions. The growth and position of the two Ash trees are also competing with two nearby semi mature Small Leaved Lime trees, both of which are healthy specimens of good form. Consequently, the removal of the two Ash trees is considered acceptable for the long-term benefit and continued growth of the more prominent Lime trees, plus to prevent any future damage to the boundary railings.

## **8. CONCLUSION**

- 8.01 On balance, the works proposed in this application are considered acceptable arboricultural management, and therefore it is recommended that the works are approved subject to the conditions and informatives listed below.

## **9. RECOMMENDATION**

- 9.01 **Application Permitted** – Subject to the following CONDITIONS / REASONS and INFORMATIVES.

### Conditions:

- (1) All works hereby permitted shall be carried out in accordance with the provisions of the current edition of BS 3998 by a competent person;

Reason: To ensure the work complies with good arboricultural practice to safeguard the longevity, amenity and nature conservation value of the tree/s and its/their contribution to the character and appearance of the local area

- (2) The tree surgery work hereby permitted shall consist only in the operations specified in writing;

Reason: To avoid doubt and to ensure the work complies with good arboricultural practice to safeguard the longevity, amenity and nature conservation value of the tree/s and its/their contribution to the character and appearance of the local area.

### Informatives:

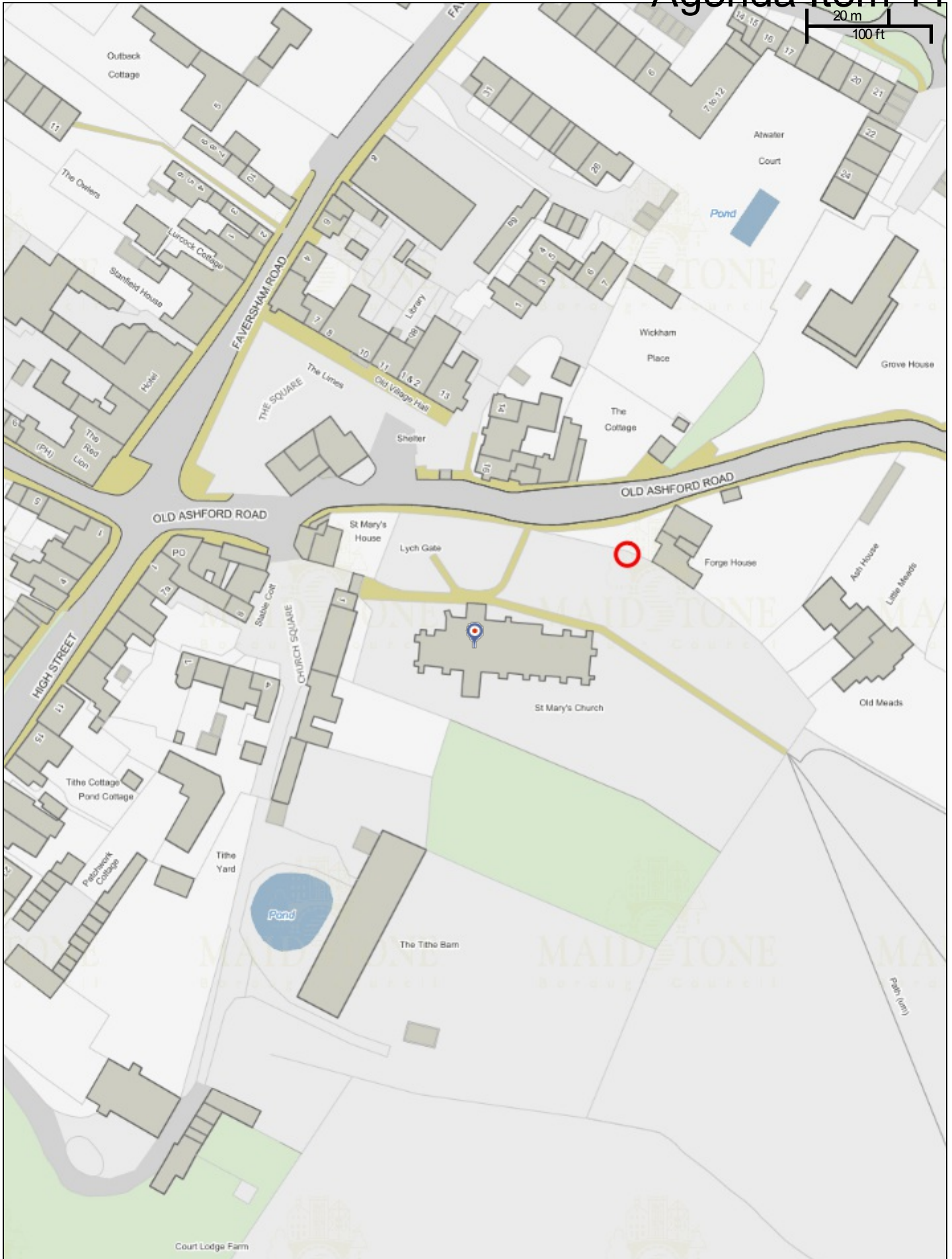
- (1) Adjacent trees should be protected from damage during the course of the tree works hereby allowed/permitted in accordance with the current edition of BS3998. Any damage which occurs as a result of poor arboricultural practice and which affects the structural stability and/or health and longevity of adjacent trees may result in legal action against you.

- (2) Works to trees could result in disturbance to wild animals, plants and important wildlife sites protected by law. Therefore, the works hereby permitted should be carried out in a manner and at such times to avoid disturbance. Further advice can be sought from Natural England and/or Kent Wildlife Trust.

- (3) The material generated from the tree work hereby permitted should be disposed of, or processed as necessary, to leave the site in a safe and tidy condition following each phase/ completion of the work.
- (4) All arisings from Ash trees should be treated in accordance with the Forestry Commission's current good practice guidelines to help prevent the spread of infectious pests and diseases.
- (5) Removal of dead wood from protected trees is an exception to current legislation and does not require a formal application. However, the regulations require five days notice in writing of intention to carry out such works. Its inclusion on this application is considered to satisfy that requirement.

**Case Officer:** Paul Hegley (MBC)

NB – For full details of all papers submitted with this application, please refer to the relevant Public Access Pages on the Council's website.



Ordnance Survey - data derived from OS Premium

## REPORT SUMMARY

<b>CASE REFERENCE:</b> 5012/2023/TPO	
<b>ADDRESS:</b> St Mary's Church, Old Ashford Road, Lenham, Maidstone, Kent	
<b>RECOMMENDATION:</b> <b>CONFIRM</b> Tree Preservation Order <b>No. 5012/2023/TPO without MODIFICATION</b> as per the attached Order.	
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b>  The Council considers that the Thuja tree contributes to amenity and local landscape character, and it is expedient to make a Tree Preservation Order (TPO) due to the submission of a section 211 notice for its removal under application 23/502720/TPO.	
<b>REASON FOR REFERRAL TO COMMITTEE:</b>  One objection to the making of the TPO has been received from the owner of the tree Lenham Parish Council.	
<b>PARISH:</b> Harrietsham and Lenham	<b>WARD:</b> Harrietsham and Lenham
<b>CASE OFFICER:</b> Paul Hegley (MBC)	<b>SITE VISIT DATE:</b> 01/08/2023
<b>PROVISIONAL TPO MADE:</b> 12.10.2023	<b>PROVISIONAL TPO EXPIRY:</b> 12.04.2024
<b>PROVISIONAL TPO SERVED:</b> 12.10.2023	<b>TPO OBJECTION EXPIRY:</b> 08.11.2023

## RELEVANT PLANNING HISTORY

### Planning:

**20/505489/TPOA** - TPO Application 1 x Lime (T2) to fell as per arboriculturalist report. - **Approved - 12.02.2021**

**23/502720/TCA** - Conservation area notification to remove one Thuja. - **Tree Preservation Order Served - 13.10.2023**

### Enforcement:

**19/500212/LSTBP1** - Enforcement Enquiry - **Pre Application Advice Closed - 04.06.2019**

**19/500217/OPDEV** - Enforcement Enquiry - **Pre Application Advice Closed - 16.04.2019**

### Appeals:

None

## MAIN REPORT

### 1. INTRODUCTION AND BACKGROUND

1.01 Tree Preservation Order No. 5012/2023/TPO was made on the 12.10.2023 on a provisional basis, following the submission of a 6 week notification (section 211 notice)

to fell a Thuja tree growing within the grounds of St Marys Church, Lenham that lies within Lenham Conservation Area.

- 1.02 The main reasons cited in the application for the removal of the Thuja was because of signs of disease, root rotting and its size so close to the main road and adjacent property Forge House. Following an inspection by the Councils arboriculturalist on 1<sup>st</sup> August 2023 the Thuja did not display any signs of disease or decay to justify its removal, so in accordance with the current regulations it was considered expedient to make it subject to a TPO to prevent its removal. A copy of TPO No. 5012/2023/TPO is attached at Appendix A of this report.

## **2. DESCRIPTION OF TREES**

- 2.01 The Thuja tree (Western Red Cedar) subject to TPO 5012/2023/TPO is located within the grounds of St Mary's Church, Lenham. It is growing within a small, unmaintained area of the churchyard, some 0.8m from the low stone and flint boundary wall, on the northern boundary, adjacent to Forge House.

- 2.02 It is of good form and prominent from both the churchyard and Old Ashford Road as seen in photo 1 below.

Photo 1 – View of the Thuja from Old Ashford Road



### **3. OBJECTIONS**

3.01 One objection has been received by Lenham Parish Council to the making of the TPO, which has been summarised below.

#### **3.02 Objections Summary:**

Lenham Parish Council wish to object to the proposed Tree Preservation Order (TPO) on the Thuja tree in St Mary's churchyard, Lenham. The following points outline the reasons for this objection:

1. The tree is in the Lenham Village Conservation area and is therefore already protected, it cannot be touched without the approval of Maidstone Borough Council (MBC) – a TPO is superfluous.
2. The tree is a thuja (Western Red Cedar) which is not a native species.
3. This type of tree is not suitable for a Village Church cemetery. We appreciate it will probably not reach the height or girth of the Californian redwood with the Roadway cut through the trunk, but it is already very tall and will continue to grow.
4. Due to the above the tree is out of character for this area, it does not add to the character of the landscape or contribute to amenity as suggested.
5. We understand that this species normally grows in hilly, well drained areas – this location is only 1m above the East Lenham Vale and therefore only two or three metres above the winter water table. The headwater of the river Stour emanating from the water table is only 100m or so away. This could be a future issue in respect of the stability of the tree if allowed to continue to grow.
6. It should also be noted that the extensive root system, especially if it is shallow, will cause disturbance of the graves and could also impact on the structural integrity of Grade 2\* listed Forge House, the church wall, and the listed mounting block.

### **4. REPRESENTATIONS**

4.01 Following service of the TPO on the landowner, owner occupier of Forge House and any other persons who have an interest in the land no other representations have been received to the making of the TPO.

### **5. APPRAISAL**

5.01 The Thuja tree is a mature specimen, approximately 20m tall, with an average crown spread of 7m and a stem diameter (measured at a height of 1.5m) of 800mm.

5.02 At the time inspection it appeared in good health with dense, green foliage of normal size for the species. It also appears structurally sound with no obvious significant defects (a percussion test with a plastic mallet did not indicate any decay or cavities in the stem base or buttress roots). It overhangs part of the garden to Forge House and a few gravestones in the churchyard. A pile of old tree prunings and an old, small, dead Christmas tree have been heaped against/adjacent to the western side of the stem base.

5.03 Growing directly to the west within the neighbouring garden of Forge House is a similar sized Thuja designated as T1 of confirmed TPO 12 of 2011.

5.04 The Thuja tree subject to this order is a good example of its species and a prominent feature of the landscape. It is of high amenity value and merits protection with a TPO (TEMPO assessment score 16+, definitely merits TPO).

### **6. RESPONSE TO OBJECTIONS**

6.01 Having considered the six points raised in the Parish Council's objection in section 3 of this report, I would respond to each point as follows:

1. The Thuja is indeed located within Leham Conservation area and therefore automatically protected. However, the submission of the section 211 notice to fell the tree meant that in line with current guidance/legislation the Council had no choice but to make the TPO in order to prevent its removal. Therefore, the TPO is not considered superfluous.
2. Thuja or Western Red Cedar as it is known, is a native of North America and whilst not a native of this country it has become an important species in the British landscape particularly for timber production and its ability to tolerate shade. It is often planted in domestic gardens as hedging or as individuals which can become focal trees giving valued shelter to wildlife in the winter months. Under the current TPO guidance any tree of any species can be made subject to a TPO, so to exclude non-native species would go against government guidance and good practice.
3. In its current growing context within the churchyard, the Thuja is considered to be a suitable species for the area contributing to the sylvan character.
4. The Thuja is of a size and growing position that makes it fully visible from surrounding public areas (roads & footpaths) and as such is considered to be of significant amenity value.
5. No evidence has been provided to suggest the tree's growing location/ground conditions will have a bearing on its future stability which is deemed to be good when inspected.
6. No evidence has been provided to indicate that root growth from the Thuja will cause disturbance of the graves and could also impact on the structural integrity of Grade 2\* listed Forge House, the church wall, and the listed mounting block.

## **7. CONCLUSION**

- 7.01 The objections raised by the Parish Council are not considered sufficient reasons not to confirm the TPO or raise sufficient doubt to question its validity. The Thuja tree is considered to have significant amenity value so its loss would erode the mature and verdant landscape of the area by a marked degree and would thus give rise to significant harm to its character and appearance. Therefore, it is considered expedient to confirm the TPO to secure its long-term retention/protection.

## **8. RECOMMENDATION**

**CONFIRM** Tree Preservation Order **No. 5012/2023/TPO without MODIFICATION** as per the attached Order.

**Case Officer:** Paul Hegley (MBC)

**Date:** 04.03.2024

*Note: Tree Officer assessments are based on the condition of the trees on the day of inspection. Whilst every effort is made to ensure that the assessments are accurate, it should be noted that the considerations necessary for determining applications/notifications may be able to be made off-site and, in any case, no climbing or internal inspections or excavations of the root areas have been undertaken. As such, these comments should not be considered an indication of safety.*

**APPENDIX A – Copy of Tree Preservation order No. 5012/2023/TPO**



## Tree Preservation Order

### Town and Country Planning Act 1990

#### The Tree Preservation Order No. 5012/2023/TPO

**Location: St. Mary's Church Old Ashford Road Lenham Maidstone Kent ME17 2PX**

The **Maidstone Borough Council** in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

#### Citation

1. This Order may be cited as Maidstone Borough Council Tree Preservation Order No. 5012/2023/TPO – St Mary's Church Old Ashford Road Lenham Maidstone Kent ME17 2PX

#### Interpretation

2. (1) In this Order "the authority" means the Maidstone Borough Council  
 (2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

#### Effect

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.  
 (2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—
  - (a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
  - (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

#### Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees). This Order takes effect as from the time when the tree is planted.

Dated this 12th day of October 2023

*R. L. Jarman*

Authorised Officer to sign in that behalf  
 Rob Jarman  
 Head of Development Management  
 Maidstone Borough Council

**SCHEDULE****Specification of trees****The Tree Preservation Order No. 5012/2023/TPO****Location: St. Mary's Church Old Ashford Road Lenham Maidstone Kent ME17 2PX****Trees specified individually**

(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
<b>T1</b>	Thuja (Western Red Cedar)	Located along the northern boundary of St Mary's Churchyard Lenham

**Trees specified by reference to an area**

(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
<b>NONE</b>		

**Groups of trees**

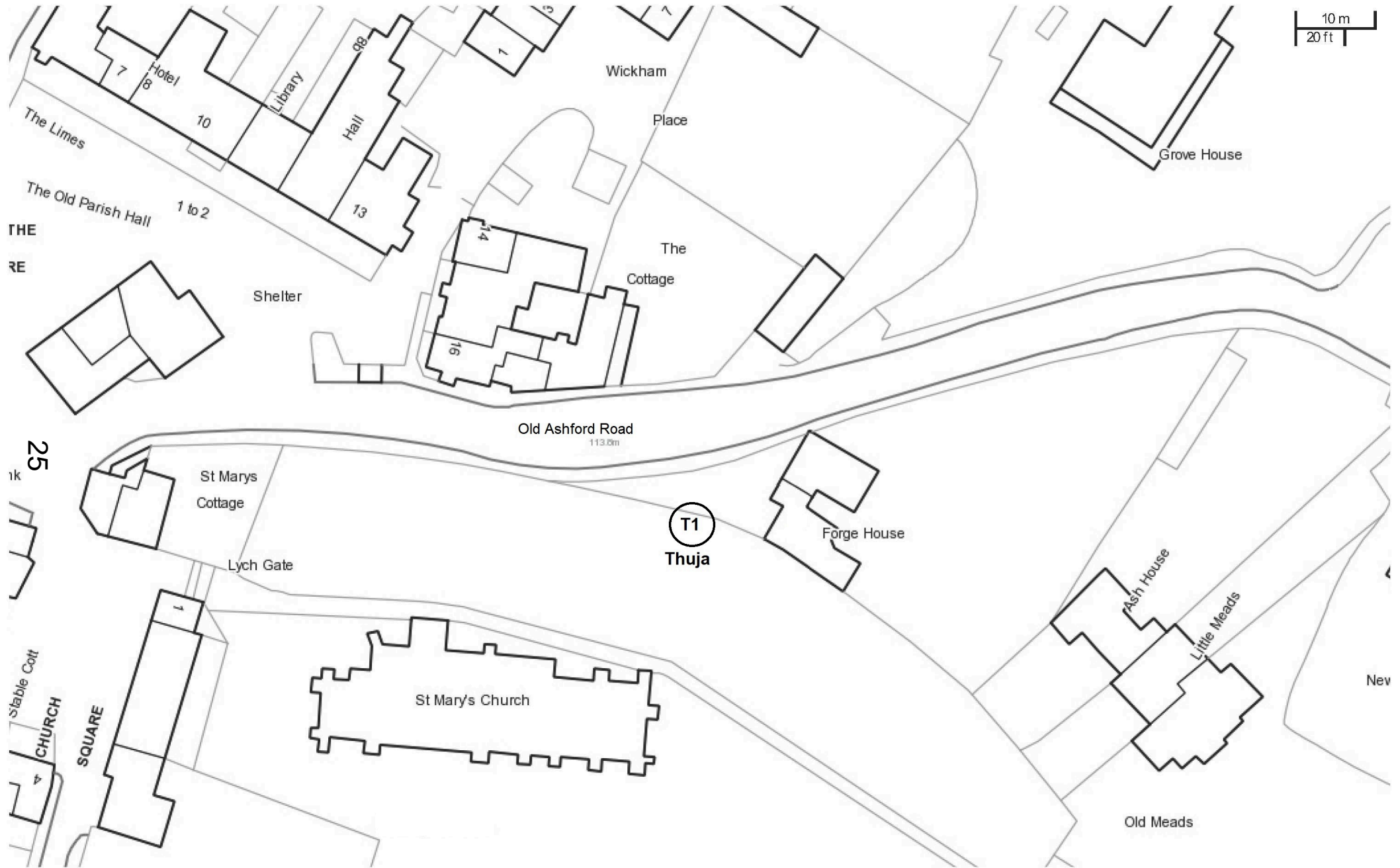
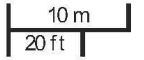
(within a broken black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
<b>NONE</b>		

**Woodlands**

(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
<b>NONE</b>		



**THE MAIDSTONE BOROUGH COUNCIL**

Tree Preservation Order No. 5012/2023/TPO  
St Mary's Church, Old Ashford Road, Lenham, Kent. ME17 2PX



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Scale: 1:656 © Maidstone Borough Council



**REPORT SUMMARY**

<b>REFERENCES:</b> (A) 23/505231/NMAMD & (B) 23/505593/NMAMD		
<b>PROPOSAL:</b>		
<p>(A) Non Material Amendment to Condition 30 (drainage) of 22/500222/FULL: Demolition of Heather House Community Centre and construction of a New Community Centre to include changing rooms and storage related to the Sports use of Parkwood Recreation Ground and change of use of part of site to Parkwood Recreation Ground. Demolition of the Pavilion Building and erection of 11no. dwellings on the site of the Pavilion and partly on adjacent Parkwood Recreation Ground. Both with associated parking, vehicular and pedestrian access and landscaping</p> <p>(B) Non Material Amendment: canopy projection reduction to community centre, internal road alignment to the residential site and elevational and layout changes to the residential plots - 22/500222/FULL: Demolition of Heather House Community Centre and construction of a New Community Centre to include changing rooms and storage related to the Sports use of Parkwood Recreation Ground and change of use of part of site to Parkwood Recreation Ground</p>		
<b>ADDRESS:</b> Heather House, Bicknor Road, Maidstone, Kent, ME15 9PS		
<b>RECOMMENDATION:</b>		
<p>(A) Grant Non-Material Amendment</p> <p>(B) Grant Non-Material Amendment</p>		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b>		
When considered cumulatively, it is considered that the proposed changes are of a scale and nature that they fall within the remit of Non Material Amendments to the parent permission, 22/500222/FULL as approved on 1 June 2023		
<b>REASON FOR REFERRAL TO COMMITTEE:</b>		
The applicant is Maidstone Borough Council		
<b>WARD:</b> Park Wood	<b>PARISH/TOWN COUNCIL:</b> Unparished	<b>APPLICANT:</b> Maidstone Borough Council <b>AGENT:</b> Chartway Group
<b>CASE OFFICER:</b> Sean Scott	<b>VALIDATION DATE:</b> 14/12/23	<b>DECISION DUE DATE:</b> 11/01/24
<b>ADVERTISED AS A DEPARTURE:</b> No		

**Relevant Planning History**

22/500222/FULL - Demolition of Heather House Community Centre and construction of a New Community Centre to include changing rooms and storage related to the Sports use of Parkwood Recreation Ground and change of use of part of site to Parkwood Recreation Ground. Demolition of the Pavilion Building and erection of 11no. dwellings on the site of the Pavilion and partly on adjacent Parkwood Recreation Ground. Both with associated parking, vehicular and pedestrian access and landscaping - Approved 01.06.2023

23/504215/SUB - Submission of details to discharge condition 17 - Preliminary Ecological Appraisal, Subject to 22/500222/FULL (new Community Centre and erection of 11 houses) - Approved 10.11.2023

23/504352/SUB - Submission of details to discharge condition 9 - Scheme for Archaeological Investigation, Subject to 22/500222/FULL (new Community Centre and erection of 11 houses) - Approved 20.11.2023

23/504740/SUB - Submission of details to discharge condition 10 - External Materials, Subject to 22/500222/FULL (new Community Centre and erection of 11 houses) - Approved 18.12.2023

23/504744/SUB - Submission of details to discharge condition 7 - Recreation Ground Access , Subject to 22/500222/FULL (new Community Centre and erection of 11 houses) - Approved 08.02.2024

23/504755/SUB - Submission of details pursuant to condition 12 (proposed slab levels and existing site levels) of application 22/500222/FULL (new Community Centre and erection of 11 houses) - Approved 24.11.2023

23/504756/SUB - Submission of details pursuant to condition 25 (details of foundation design) in relation to planning permission 22/500222/FULL (new Community Centre and erection of 11 houses) - Approved 20.12.2023

23/504767/SUB - Submission of details pursuant to conditions 24 (Arboricultural Method Statement) and 26 (structural planting protection and ground designated for new structural planting) of application 22/500222/FULL (new Community Centre and erection of 11 houses) - Approved 14.12.2023

23/504830/SUB - Submission of details to discharge condition 4 (letting contract) of planning application 22/500222/FULL (new Community Centre and erection of 11 houses) Pending Consideration

23/504834/SUB - Submission of details to discharge condition 8 (refuse/recycling strategy) of planning application 22/500222/FULL (new Community Centre and erection of 11 houses) - Approved 12.02.2024

23/504835/SUB - Submission of details to discharge condition 11 (boundary treatments) of planning application 22/500222/FULL (new Community Centre and erection of 11 houses) - Pending Consideration

23/504836/SUB - Submission of details to discharge condition 16 (ecological management plan) of planning application 22/500222/FULL (new Community Centre and erection of 11 houses) - Approved 24.01.2024

23/504841/SUB - Submission of details to discharge condition 27 (landscape scheme) of planning application 22/500222/FULL (new Community Centre and erection of 11 houses) - Pending Decision

23/504873/SUB - Submission of Details pursuant to condition 15 (Biodiversity Net Gain Report) of application 22/500222/FULL - Approved 24.01.2024

## **MAIN REPORT**

### **1. DESCRIPTION OF SITE**

1.01 The site comprises of 2 separate areas within the Parkwood area of Maidstone: Heather House and the Pavilion which are both Council owned buildings adjacent to the Council owned Parkwood Recreation Ground.

- 1.02 The existing Pavilion building is the northernmost and is single storey and mainly flat roofed. It was originally occupied by the Royal British Legion, now being a licensed bar/social area and changing room facilities used by 2 rugby clubs (who also use the recreation ground sports pitches).
- 1.03 The Pavilion fronts Bicknor Road, close to the redevelopment scheme at Wallis Avenue/Longshaw Road, part of which is up to 4 storeys high. To the north are adjoining bungalows at Rosemary Gardens. The western and southern boundaries are to Parkwood Recreation Ground.
- 1.04 As shown in the history section of this report planning permission (22/500222/FULL) was granted in June 2023 for demolition of Heather House Community Centre and construction of a New Community Centre to include changing rooms and storage related to the Sports use of Parkwood Recreation Ground and change of use of part of site to Parkwood Recreation Ground. Demolition of the Pavilion Building and erection of 11no. dwellings on the site of the Pavilion and partly on adjacent Parkwood Recreation Ground. Both with associated parking, vehicular and pedestrian access and landscaping.

## **2. PROPOSAL**

- 2.01 Following the approval of the parent application, further technical reviews have been undertaken which mean that amendments to the proposals will be necessary.

*NMA (A):*

- 2.02 Relates to the community centre part of the application site. The drainage scheme has been redesigned to make cost efficiencies, by including a shallower attenuation system (which includes permeable paving and permavoid attenuation crates) and removing the need for a pumping station. Additionally, the redesigned drainage will avoid the root protection area of protected trees.

*NMA (B):*

- 2.03 For the residential scheme the following amendments are sought:

- canopy projection reduction to community centre;
- internal road alignment to the residential site; and
- elevational and layout changes to the residential plots.

## **3. POLICY AND OTHER CONSIDERATIONS**

Maidstone Borough Local Plan (2011-2031): SS1, SP1, SP19, SP20, ID1, DM1, DM3, DM6, DM12; DM19, DM20; DM2; and DM23

Kent Waste and Minerals Plan (amended 2020)

The National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

Supplementary Planning Documents: Maidstone Building for Life; Affordable and Local Needs Housing

- 3.01 Local Plan Review:

- 3.02 On 8 March 2024, the Council received the Final Report on the Examination of the Maidstone Borough Local Plan Review prepared by the Planning Inspector. The

Inspector's Report concludes that the Maidstone Borough Local Plan Review is sound, subject to the main modifications being incorporated.

- 3.03 Following publication of the March committee papers, the next stages for the LPR are the Planning, Infrastructure and Economic Development Policy Advisory Committee on the 18 March 2024 and Cabinet on the 19 March 2024. It is anticipated that Council adopts the LPR on 20 March 2024.
- 3.04 If adopted on the 20 March 2024, at the time of the March planning committee meetings, LPR policies will carry 'substantial' but not 'full' weight. LPR policies will only carry 'full weight' 6 weeks after the date of adoption (judicial review period).
- 3.05 There are not considered to be any draft policies in the Local Plan Review that need to be considered in the determination of this specific planning application.

#### **4. LOCAL REPRESENTATIONS**

##### **Local Residents:**

- 4.01 Due to the application being for a non-material amendment, public notification was not required.

#### **5. CONSULTATIONS**

##### KCC Flood and Water Management

- 5.01 No objection.

#### **6. APPRAISAL**

- 6.01 The consideration of these applications relates to a single issue, to ascertain whether the proposals constitute a Non Material Amendment.

##### **Non Material Amendment Appraisal**

- 6.02 It is necessary to consider if the proposed amendments fall within the remit of a non-material amendment to parent permission ref. 22/500222/FULL as approved on 1 June 2023.
- 6.03 National Planning Practice Guidance (NPPG) advises that there is no statutory definition of 'non-material'. It will be dependent on the context of the overall scheme – an amendment that is non-material in one context may be material in another. The Local Planning Authority must be satisfied that the amendment sought is non-material in order to grant an application under section 96A of the Town and Country Planning Act 1990. The interests of a third party or body who participated in or were informed of the original decision should not be disadvantaged in any way and the amendment should not be contrary to any policy of the Council.
- 6.04 Each application will be considered in turn below.

##### Application A - 23/505231/NMAMD:

- 6.05 This application covers both the residential and Community Centre elements of the scheme.
- 6.06 In considering the proposal to amend the drainage scheme, it is considered that there wouldn't be notable above ground alterations. The drainage scheme has been redesigned to achieve a more cost-effective build, avoiding root protection areas of TPO trees. Overall, it is considered that the alterations to the drainage scheme would still continue to serve the initially intended purpose for drainage with only



very limited visible changes above ground. Officers are therefore satisfied that Application A would fall within the remit of a Non-Material Amendment.

6.07 For clarity this non-material amendment will amend Condition 30 of the parent application as set out in the table below:

<b>Condition 30 as approved under 22/500222/FULL</b>	<b>Proposed amendment to Condition 30 under 23/505231/NMAMD</b>
<p>Surface Water Drainage for each element of the development hereby approved shall be carried out in accordance with the Drainage Strategy ref K220363/C5/004 dated 29.07.22.</p> <p>Reason: In the interests of pollution and flood prevention.</p>	<p>(deleted text = <del>strikethrough</del> / new text = <b>bold</b>)</p> <p>Surface Water Drainage for each element of the development hereby approved shall be carried out in accordance with <del>the Drainage Strategy ref K220363/C5/004 dated 29.07.22.:</del></p> <ul style="list-style-type: none"> <li>• <b>DWG No. HHM-PPC-00-XX-DR-C-800 P1 – Heather House Drainage Strategy (Residential Site);</b></li> <li>• <b>DWG No. 5978-3201 Rev 06 Heather House Drainage Strategy.</b></li> <li>• <b>Technical Note to Redesign Drainage Strategy - Community Centre Site (11874); and</b></li> <li>• <b>Technical Note to Redesign Drainage Strategy - Residential Site (11874).</b></li> </ul> <p>Reason: In the interests of pollution and flood prevention.</p>

Application B - 23/505593/NMAMD

*Community Centre alterations*

6.08 It is proposed to reduce the canopy projection of the roof. The approved drawings for the community centre showed a 3.6m projecting canopy above the main entrance. Upon technical review it was found that there would be the ability for users of the adjacent skate park and open space to climb onto the roof. Therefore, it is now proposed to reduce the projection of the canopy from 3.6m to 1.8m. It is noted that the canopy will still be sufficient to provide rain cover to the main entrance and the bike storage as originally intended.

*Residential Alterations*

- Realignment of an Internal Road: this is due to the parent application not being compliant with refuse and fire tender tracking and reversing. Officers note that the changes appear to comprise minor chamfering of the road to accommodate the necessary vehicle tracking.
- Elevational and layout changes across the residential units – the following changes are proposed:
  - Levels of glazing reduced – the inclusion of spandrel panels has been proposed to address an overheating issue.
  - Some doors have been moved slightly some associated glazing removed. It is understood that the primary reason to make this change is to address security concerns.

- Glazing has been removed (Plots 9 & 10) as it would open over the boundary, facing the park. This change is to address fire safety requirements and for security.
  - Minor changes to the layout of units have been included to make the layout more efficient.
- 6.09 Since approval of the parent application, the residential development has been subject to a technical appraisal. This exercise has highlighted the need to address fire safety, security, overheating and energy efficiency, mainly to accord with Building Regulations requirements.
- 6.10 The most notable change is to the detached houses where glazing on the second floor at the front, rear and side elevations was proposed to extend into the pitch of the roof. It is now proposed to use more conventional square glazing that does not extend into the roof pitches. It is understood that this particular change is to address overheating and fire safety issues. While a loss in the expanse of glazing is disappointing in design terms, it is considered that overall, the original design concept has been maintained.
- 6.11 In relation to the realignment of the road, this change is not considered to affect the originally conceived design. With regards to elevational and layout changes it is considered that overall, the design concept of the scheme would be maintained.

For the avoidance of doubt the changes proposed to the drawings under Application B (23/505593/NMAMD) are set out in the table below:

<b>Parent Application 22/500222/FULL</b>		<b>This proposal 23/505593/NMAMD</b>	
<b>Drawing title</b>	<b>Approved drawing</b>	<b>Document Title</b>	<b>Replacement Drawing</b>
Elevations Plots 1-5	PL-08 Rev 2	Plots 1-5 Changes Required for Building Regs	5978 HT-A Amendments P1
Elevations Plots 6-8	PL-10 Rev 3	Plots 6-8 Changes Required for Building Regs	5978 HT-B Amendments P1
Elevations Plots 9 - 11	PL-12 Rev.2	Plots 9-11 Changes Required for Building Regs	5978 HT-C Amendments P1
Proposed Plots 1-5 Rev 2	PL-07 Rev.2	White Line Drawing House Type A – Plots 1-5	5978 HT-A 0250 P3
Proposed Plots 6-8 Rev 3	PL-09 Rev.3	White Line Drawing House Type B – Plots 6-8	5978 HT-B 0251 P4
Proposed Plots 9-11 Rev 2	PL-11 Rev.2	White Line Drawing House Type C – Plots 9-11	5978 HT-C 0252 P3
Proposed Residential Site	PL-14 Rev 5	Pavilion Site (Residential): Site Refuse Strategy	0200 P1
Proposed Community Centre Site Rev 3	PL-13 Rev.3	Reduction In Canopy Projection Plan	5978-CC Amendments Rev P1
Proposed Elevations Community Centre	PL-06 Rev.1	Block Plan Elevations Community Centre	2034 P1

## **PUBLIC SECTOR EQUALITY DUTY**

- 6.12 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

## **7. CONCLUSION**

- 7.01 Overall, the cumulative impact of applications (A) 23/505231/NMAMD & (B) 23/505593/NMAMD have been taken into account. It is considered that the changes do not materially alter the scheme.
- 7.02 It is therefore recommended that this Non-Material Amendment application is permitted.
- 7.03 Should Application B be minded for approval an informative is suggested to remind the applicant that it is likely to be necessary to re-discharge Condition 10 (materials) in relation to the material finish of the spandrels/window panels.

## **8. RECOMMENDATION**

- (A) Grant Non-Material Amendment under ref. 23/505231/NMAMD**
- (B) Grant Non-Material Amendment under ref. 23/505593/NMAMD**

# Agenda Item 13

## **THE MAIDSTONE BOROUGH COUNCIL** **PLANNING COMMITTEE – 21<sup>st</sup> MARCH 2024**

### **APPEAL DECISIONS:**

- 1. 23/500451/FULL** Conversion of existing stable block to 1no. independent dwelling, including roof alterations, erection of a cycle store and refuse store, and change of use of land from equestrian to residential.

**APPEAL: DISMISSED**

Yew Tree Stables  
Grange Lane  
Sandling  
Kent

(Delegated)

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- 2. 22/504287/FULL** Demolition of existing workshop and erection of 1no. 5 bedroom detached dwelling with associated parking.

**APPEAL: ALLOWED**

3 Warmlake Cottages  
Warmlake Road  
Sutton Valence  
Kent  
ME17 3LP

(Delegated)

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- 3. 22/504619/FULL** Change of use of land from agricultural land to residential to accommodate the existing siting of a static caravan ancillary to the main dwelling (Retrospective).

**APPEAL: DISMISSED**

Babylon Farm  
Babylon Lane  
Hawkenbury  
Tonbridge  
Kent  
TN12 0EG

(Delegated)

---

**4. 22/502585/FULL**

Demolition of existing day room and erection of replacement day room.

**APPEAL: DISMISSED**

The Oaklands  
Lenham Road  
Headcorn  
Kent  
TN27 9LE

(Delegated)

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**5. 22/505064/FULL**

Demolition of existing stable building and change of use of existing barn to a residential dwelling, including erection of a single storey side extension, with associated shed/cycle store and parking.

**APPEAL: DISMISSED**

Land North Of Timbers  
Boarley Lane  
Sandling  
Kent  
ME14 3DE

(Delegated)

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**6. 23/501591/FULL**

Retrospective change of use of site to contractor depot and erection of new workshop and office buildings, together with removal of unauthorised hardstanding, new hard and soft landscaping and ecological enhancements (resubmission of 22/503709/FULL).

**APPEAL: DISMISSED**

Windy Bottom  
Sittingbourne Road  
Detling  
Kent  
ME14 3ES

(Delegated)

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**7. 22/505206/FULL**

Change of use from Class C4 6 Bedroom HMO to Sui-Generis 8 bedroom HMO to include erection of a single storey rear extension and loft conversion with a rear dormer and 1no. front rooflight (Resubmission of 22/503713/FULL).

**APPEAL: ALLOWED**  
**COSTS: AWARDED**

14 Charles Street  
Maidstone  
Kent  
ME16 8ET

(Committee – against officer recommendation)

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**8. 23/500899/OUT**

Outline application for the erection a building for storage and distribution (Class B8 use) with a floorspace up to 10,788sqm (Gross External Area), ancillary offices, associated car parking, HGV parking, landscaping and infrastructure (All matters reserved except for access).

**APPEAL: DISMISSED**

Land North Of The A20  
Ashford Road  
Hollingbourne  
Kent

(Delegated)

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**9. 22/504216/FULL**

Demolition of 3(no) existing garages and greenhouse, reconfiguration of garden land, and erection of 3(no) terraced dwellings, 2(no) carports and store, with associated access and parking.

**APPEAL:** DISMISSED

Land At Carman's Close  
Loose  
Kent  
ME15 0AT

(Delegated)

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**10. 23/502968/FULL**

Change of use from 6-person HMO (Use Class C4) to 11-person HMO (Sui-Generis).

**APPEAL:** DISMISSED

**COSTS:** REFUSED

7 Upper Fant Road  
Maidstone  
Kent  
ME16 8BP

(Delegated)

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## Appeal Decision

Site visit made on 15 August 2023

**by David Wyborn BSc(Hons) MPhil MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7 September 2023**

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### **Appeal Ref: APP/U2235/W/23/3315823**

### **Glenrowan House, Roundwell, Bearsted, Maidstone ME14 4HL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Ms Emma Homewood against the decision of Maidstone Borough Council.
  - The application Ref 21/506239/OUT, dated 29 November 2021, was refused by notice dated 1 August 2022.
  - The development proposed is an outline application for the erection of 2no. residential units with all matters reserved for future consideration aside from access.
- 

### **Decision**

1. The appeal is allowed and planning permission is granted for an outline application for the erection of 2no. residential units with all matters reserved for future consideration aside from access at Glenrowan House, Roundwell, Bearsted, Maidstone ME14 4HL in accordance with the terms of the application, Ref 21/506239/OUT, dated 29 November 2021, and the conditions in the attached schedule.

### **Preliminary Matters**

2. The application has been made in outline with access for consideration at this stage. Matters of appearance, landscaping, layout and scale have been reserved for consideration at the reserved matters stage. Plans showing the possible layout of the proposed two dwellings have been included in the submissions and I have treated them as indicative as to what the appellant has in mind for the development.

### **Main Issues**

3. The main issues are:
  - whether or not the development plan would support the proposed residential development in this location, and
  - the effect of the development on the character and appearance of the area, having regard to the location in relation to the Kent Downs Area of Outstanding Natural Beauty (AONB).

### **Reasons**

#### *Location*

4. Policy SS1 of the Maidstone Borough Local Plan 2017 (the Local Plan) establishes the spatial strategy and settlement hierarchy for the delivery of development across the plan area. The principal focus is to be an expanded Maidstone urban area, then Rural Service Centres and then the identified



Larger Villages. Beyond those areas the land is designated as countryside and the Local Plan explains that it is important that the quality and character of the countryside outside of settlements in the hierarchy is protected and enhanced.

5. Policy SP17 of the Local Plan concerns development within the countryside and that the countryside is defined as all those parts of the plan area outside the settlement boundaries, in this case, of the Maidstone urban area. Criterion 1 of the policy is that development proposals in the countryside will not be permitted unless they accord with other policies in the plan, and they will not result in harm to the character and appearance of the area.
6. In this case, the appeal site is an irregularly shaped section of garden land at Glenrowan House. It lies to the broadly south west of this residential building and would be accessed from the unmade driveway that serves Glenrowan House and the other residential properties at the end of this cul-de-sac.
7. The west and south west boundaries of the appeal site adjoin the Barty Farm new housing estate. This is a fairly sizeable residential development on a site that was previously open farm land but was identified as a housing allocation in the Local Plan. This development appears to have been completed. The housing allocation extended the urban settlement boundary of Maidstone up to the western and south western boundaries of the appeal site.
8. The appeal site is contiguous with, but outside, the settlement boundary of Maidstone. Consequently, in planning terms, the appeal site is located within the countryside. The scheme for two open market dwellings would not meet with any of the allowances for development in the countryside within the Local Plan.
9. In the light of the above analysis, I conclude that, with the location of the appeal site outside the settlement boundary, the development plan would not support the proposed residential development in this location. The scheme would conflict, in this respect, with Policies SS1 and SP17 of the Local Plan which set the settlement strategy and approach for the distribution of development across the plan area.

#### *Character and appearance*

10. While once Glenrowan House and the nearby farm house and other buildings, including dwellings, were somewhat separated from the edge of Maidstone, the Barty Farm housing development has brought the settlement edge up close. The new development has created a clearly defined built edge along its south east boundary with the drive to Glenrowan House and along the north east edge with the adjoining open countryside.
11. The housing allocation, and now the edge of the settlement, followed the previous field boundaries. However, the appeal site was not included as this was outside this field area and this has resulted in an irregular boundary line to the settlement adjoining the garden to Glenrowan House.
12. Within the appeal site, and adjoining the drive, there is an informal line of reasonably mature and established trees. These trees largely screen the appeal site when viewed from the open countryside to the very broadly east. When I walked the public right of way across the adjoining field, a section of the housing at Barty Farm is quite apparent. However, the effect of the trees largely screen the appeal site from this location. From this open land to the

very broadly east of the site, the drive provides an effective division within the landscape such that the appeal site, because of the informal line of trees and the adjoining new housing, appears to be visually separated from this part of the open countryside.

13. When viewed from within the appeal site, the trees along the eastern section of the site effectively screen views of the open countryside to the broadly east. The new housing immediately adjoins the site to the largely west and the sizeable Glenrowan House bounds part of the north east part of the appeal site. This provides a built context within this space. Furthermore, from within the site there are bushes and some trees that extend across the gap between the new housing and Glenrowan House that largely obscures views when looking towards the countryside to the broadly north. The result is that the appeal site is quite self-contained with it positioned between the built form of the Barty Farm estate and Glenrowan House. With the screening provided by the trees along the boundary with the drive, the appeal site does not visually or functionally link with the open countryside, and it has a much greater affinity with the adjoining built development.
14. In terms of the proposed development, some modest sized trees would be removed to accommodate the likely position of the dwellings. However, the most important trees would remain and, in all likelihood, with a sensitively designed development the proposed dwellings would be substantially screened from the locations beyond the wider site, even when the leaves were off the trees. The indicative plans show that it should be possible to accommodate two dwellings with acceptable spacing around them to retain trees and also provide amenity spaces for the future occupants. The Council's Landscape Officer/Arboriculturist, after receiving an updated Arboricultural Report, did not object to the scheme in relation to its effect on trees.
15. Car parking and the related domestic paraphernalia, which would commonly result from a residential use, should be able to be adequately screened within the site because of the extent of boundary planting. With an appropriate design and layout at the reserved matters stage, the provision of two dwellings on the site should not cause any undue harm to the adjoining rural surroundings and the development would merge visually with the existing built form.
16. The AONB boundary lies about 500m to the north east. The National Planning Policy Framework (the Framework) requires that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs which have the highest status of protection in relation to these issues. Furthermore, the Framework explains that the development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on AONBs.
17. The Council's Landscape Character Assessment identifies the general area which the appeal site falls as within the Leeds Castle Parklands (Caring Pastures) Landscape Character Area (LCA); and that this LCA is a highly sensitive location that is indicated to provide the setting to the Kent Downs AONB.
18. In the broad direction of the AONB, in the intervening countryside, there is the railway line which is bound by a line of mature trees, and which provides to a large extent a visual barrier that prevents longer distance views to and from the AONB from the appeal site. Coupled with the vegetation around the appeal

site and the screening effect of Glenrowan House, and with the surroundings of the adjoining Barty Farm development, the appeal development with suitably designed dwellings, would have no discernible effect or harmful impact on the special qualities of the AONB.

19. I appreciate that setting is more than simply a direct visual relationship. However, in this case, the additional two dwellings on the appeal site would be experienced in the context of the existing and quite sizeable Barty Farm development which is fairly apparent in the wider landscape and where this housing is visible from the countryside to the north, in the direction of the AONB. With the contained nature of the appeal site, the character of the landscape and the surroundings in which the AONB is appreciated and experienced would not be adversely affected by the addition of two appropriately designed dwellings on this site.
20. To conclude on this issue, with a suitable scheme at the reserved matters stage, I am satisfied that the development would not harm the setting to the AONB and would not adversely affect its landscape and scenic beauty.
21. Additionally, the appellant has drawn my attention to the assessment of the wider area which formed part of the Local Plan considerations for the allocation of the Barty Farm development site. It is explained that within the 2016 SHEDLAA<sup>1</sup> it states that the area is "screened from the AONB by the Maidstone East railway line and is screened from the south and west by a mixture of topography and existing development". It was on this basis that the Council, and I assume the Local Plan Inspector, recognised that this site was acceptable for the allocation of residential development. Given this assessment and the resulting development, which provide the context for this appeal proposal, I am satisfied that the scheme, with appropriate details at the reserved matters stage, would not have an adverse effect on the setting of the AONB or the intrinsic character and beauty of the countryside, including this part of the LCA.
22. The Council draw attention to the appeal decision at Hockers Lane<sup>2</sup>. That was a housing proposal further from the AONB boundary than the present scheme and the Hockers Lane scheme was dismissed because of the harm to the setting of the AONB. There are some similarities in principle with the present proposal, with it being a housing scheme outside the settlement and where the AONB setting was an issue. However, while I have carefully considered all the evidence, including that from the Council and Parish Council on this matter, each site will have its own landscape, topographical situation and relationship to adjoining countryside and the AONB. While I have taken into account the Hockers Lane appeal decision, I am satisfied that this situation is different, particularly because of the effect of the adjoining and recently agreed housing scheme. That development exerts an influence on the character of the area, and was found acceptable in relation to the AONB. I have found in this case, that the appeal site would be largely screened and would not be harmful in its setting and general surroundings. I therefore attribute the Hockers Lane appeal limited weight in my assessment of the effects of the present scheme on the area.

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<sup>1</sup> Strategic Housing and Economic Development Land Availability Assessment.

<sup>2</sup> Appeal Ref APP/U2235/W/21/3266433 – 127 Hockers Lane, Thurnham, Maidstone ME14 5JY – dismissed 1 November 2021.

23. Drawing these matters together, I conclude that the scheme, with suitable details at the reserved matters stage, would not harm the character and appearance of the area and, in particular, would not adversely affect the setting to or the landscape and scenic beauty of the AONB. In these respects, the scheme would comply with the requirements of Policies SP17, DM1 and DM30 of the Local Plan and the Framework which seeks, amongst other things, that proposals should not have a significant adverse impact on the setting of the Kent Downs AONB.

### **Other Matters**

24. I have carefully considered all the representations and objections to the scheme made at the application and appeal stages, including those from local residents, Councillors and Thurnham Parish Council. I have examined the main issues raised in respect of the policy situation and the effects on landscape character above.

25. In terms of the relationship to other properties, the site is a satisfactory size to ensure, at the reserved matters stage, the windows of the proposed dwellings could be positioned to prevent any material level of overlooking of the adjoining dwellings. These adjoining residents in the new estate would be aware of the new dwellings on the other side of the boundary, and it would change the character from a garden area to a development with two dwellings. However, with appropriate details at the reserved matters stage, the bulk, position and design of the scheme should not adversely affect the living conditions of the occupants of neighbouring houses.

26. The scheme has been the subject of ecological investigations and, with suitable conditions attached to any approval, there should not be an adverse effect on biodiversity resulting from the development.

27. Concerns have also been raised with the highway access, in particular the junction with Barty Way. I saw this road layout at my site visit, and while care is needed at this junction, the Highway Authority has not raised any road safety objections and I have found no reason to believe that there would be any unacceptable impact on highway safety that would result from the scheme. In terms of access, which is being considered at this stage, the proposal would be acceptable.

28. Residents raise concerns that the building works would cause disruption and be noisy and would thereby adversely affect their amenities. While there would inevitably be some impact from building works, if there was any undue noise or disturbance, this could be addressed by the Council's Environmental Health Department under other legislation. To construct the development, the site could be accessed via the drive and construction traffic would not need to directly pass by the front of the dwellings on the new estate. Furthermore, the works would be temporary and of a nature in proportion to the construction of two dwellings. It is not considered that any potential harm to neighbouring amenity whilst works took place could form a reason for refusal or should necessarily be unreasonable.

29. The Council consider that Glenrowan House should be judged a non-designated heritage asset, but do not believe that the scheme would harm its setting or significance. I have found no reason to disagree. Barty Farm Barn is a listed building that is located within the group of buildings broadly to the east of the

site. The barn is fairly well separated from the appeal site, with intervening buildings, such that there would be no direct intervisibility and the proposal would not result in any adverse impact on the setting of the listed barn.

### **Planning Balance**

30. The development of the two dwellings would be located outside the settlement area in land designated as countryside. The location for the proposal would, therefore, fail the policies for the distribution and location of residential development set out in the Local Plan. The Council is able to demonstrate a Framework compliant supply and delivery of housing land. Consequently, policies that restrict the location of housing would not appear to hinder the delivery of the identified supply. I therefore attach the relevant policies, SS1 and SP17 of the Local Plan, full weight in the circumstances of this appeal. The scheme's conflict with these policies is such that there would be conflict with the development plan when considered as a whole.
31. The indications are that the Emerging Local Plan will be able to demonstrate a sound strategy to deliver the identified housing in the future and this supports the present position in relation to the approach to housing delivery.
32. On the other hand, the scheme is sited in a location which the Council accept has good access to services and facilities. Indeed, the adjoining site was allocated in the Local Plan and then a fairly sizeable housing scheme was permitted and built. Occupants of the proposed two dwellings would be able to access the services and facilities in Bearsted by foot and bicycle and they would be reasonably close to public transport, including the railway station at Bearsted, and the wider services and facilities in Maidstone.
33. Furthermore, the location is sited adjoining the settlement boundary of the urban area of Maidstone. Policy SS1 of the Local Plan identifies Maidstone as the principal focus for new development, as this is the largest and most sustainable location. Paragraph 4.23 of the Local Plan explains that the town of Maidstone cannot accommodate all of the growth that was then required on existing urban sites, and the most sustainable locations for additional planned development are at the edge of the urban area, expanding the boundary of the settlement in these locations. This helps explain the basis for the allocation of the housing adjoining the site and also provides some of the background that the appellant argues supports the case for the development of this site.
34. I consider that the appeal site is well contained and has a greater affinity with the built up area than with the open countryside. The change of this garden land to accommodate two dwellings would make efficient use of the site and would utilise an existing drive to access the development. The scheme would effectively infill the space between the new housing estate and Glenrowan House on land that does not make a valuable contribution to the openness of the countryside. The proposal, with a suitable design and layout at the reserved matters stage, would not harm the character and appearance of the area and would not, in character or visual terms, be experienced as an encroachment of development into the countryside.
35. The Council can demonstrate a five year housing land supply, but this figure is not a limit in itself to new development and the provision of two dwellings would provide a small boost to the supply of housing. There would be economic

and social benefits to the area during construction and in subsequent occupation. These are all benefits of the scheme.

36. I am conscious that the Framework explains that, where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. However, the Framework also states that local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.
37. I understand the importance of the plan led system, however there are very specific circumstances in this case, including with the nature of the site, its containment and affinity with the built up area and the relationship to the new housing estate, the good access to local services and facilities, and the lack of harm to the character and appearance of the area in the way that I have identified. When all the benefits of the scheme and the specific circumstances of this site are taken into account, I consider that these benefits and characteristics should afford such weight that they outweigh the conflict with the development plan. In these circumstances, I am satisfied that a decision other than in accordance with the development plan is merited. I wish to make it clear that this is due to the specific circumstances and character of this site which I consider would be unlikely to be replicated by circumstances elsewhere.

### **Conditions**

38. I have had regard to the conditions suggested by the Council and the advice in the Planning Practice Guidance. I have amended the wording where necessary in the interests of clarity or to meet the tests in the Guidance. The statutory time limits are required for an outline proposal and a condition specifying the approved plans is necessary in the interests of certainty.
39. A condition requiring details for the site levels of the development is necessary in the interests of the character and appearance of the area, to protect trees and to provide a satisfactory relationship with adjoining properties. Conditions concerning the protection and mitigation for reptiles and amphibians, method statement for the removal of buildings and vegetation to conserve protected species, as well as ecological enhancements, are necessary in the interests of the biodiversity of the site and protected species. It is necessary that these (with the exception of the ecological enhancement condition) are pre-commencement conditions to ensure that these matters are addressed, agreed and implemented from the outset, including in relation to levels because of the potential impact on trees.
40. Conditions that the Council has requested in terms of the external materials for the development, fencing, walls and other boundary treatments, and hard and soft landscaping, are not required at this outline stage because they would be the subject of the reserved matters submissions. The Council also seek a condition to remove permitted development rights for the erection of fences and other means of enclosure. However, the initial means of enclosure would be agreed at the reserved matters stage, and it is not considered that the case has been made for the removal of such rights subsequently, given the nature and character of the site within its surroundings. Consequently, such removal of permitted development rights would not be reasonable or necessary.

41. A condition requiring the submission and agreement of decentralised and renewable or low-carbon sources of energy to be incorporated into the scheme is necessary in the interests of sustainability and minimising the carbon footprint of the development. A condition requiring the provision of covered and secure cycle parking is needed in the interests of encouraging sustainable transport options for future occupants of the site.
42. The trees are an especially important feature of the site. A condition is necessary to ensure that the trees are protected during work in accordance with the submitted Arboricultural Report and plan details.
43. The Council seek a condition that prior to commencement a scheme to demonstrate that the internal and external noise environment levels are at such a level to meet identified British Standards. The Environmental Health Section explain that this is because there is a railway line to the north of the site, and although it is at some distance away, it suggests a noise condition is attached to any permission for this application, as a precaution. However, the rail route is at times in a cutting, partially screened by trees and some distance from the site. There is no persuasive evidence that rail noise is a particular problem for inhabitants in this locality and the evidence does not demonstrate that the proposed condition would meet the tests of necessity or reasonableness.
44. Details of any external lighting should require prior submission and approval in the interests of ecological protection, the amenities of adjoining residents and the character and appearance of the area.

### **Conclusion**

45. In the light of the above analysis, and taking all matters into account, I conclude that the appeal should succeed, and outline planning permission should be granted.

*David Wyborn*

INSPECTOR

### Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: DHA/15657/01 Rev A and DHA/15657/04 Rev A.
- 5) Prior to the commencement of the development hereby approved, details of existing and proposed site levels; and finished floor levels of the buildings shall be submitted to and be approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels and shall be maintained as such thereafter.
- 6) Prior to the commencement of the development hereby approved (including site clearance), a reptile and amphibian mitigation strategy shall be submitted to and be approved in writing by the Local Planning Authority. The mitigation strategy shall provide the following information:
  - (i) Detailed methodology for the capture and translocation of reptiles and amphibians demonstrating that the methods are in accordance with best practice guidance and are aligned with the proposed phasing of construction;
  - (ii) Detailed locations of the reptile populations and likely amphibian populations proposed for capture and translocation and the proposed receptor site shown on plans of a suitable scale;
  - (iii) Details of the receptor site preparation and ecological enhancements necessary to improve the receptor site and make it suitable for reptiles and amphibians prior to translocation;
  - (iv) Management prescriptions to maintain the receptor site in a suitable condition for reptiles and amphibians in the long term.

The approved strategy and translocation shall be implemented and completed prior to the commencement of the development hereby approved (including site clearance), and any mitigation measures shall be retained throughout the life of the development.
- 7) Prior to the commencement of the development hereby approved (including site clearance), a precautionary method statement for the removal of the buildings and trees and shrubs on the site shall be submitted to and be approved in writing by the Local Planning Authority. The content of the precautionary method statement shall include:
  - (i) Detailed working methods necessary to avoid the killing or injury of breeding birds, and bats;



- (ii) Extent and location of proposed works, shown on appropriate scale maps and plans;
- (iii) Timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction and taking into consideration the active and the sensitive periods for these animal groups;
- (iv) Persons responsible for implementing the works, including times during site clearance/ construction when specialist ecologists need to be present on site to undertake/oversee works;
- (v) Provision for bat 'rescue' if animals are encountered;

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

- 8) Prior to the commencement of development above damp-proof course level, details of ecological enhancements integrated into the design and fabric of each of the dwellings hereby approved, to include swift bricks, bat tubes and bee bricks, shall be submitted to and be approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details prior to the first occupation of the relevant dwelling and all features shall be maintained as such thereafter.
- 9) Prior to the commencement of development above damp-proof course level, details of how decentralised and renewable or low-carbon sources of energy will be incorporated into the development hereby permitted shall be submitted to and be approved in writing by the Local Planning Authority. The approved details shall be installed and be operational prior to the first occupation of each dwelling and shall be maintained as such thereafter.
- 10) Details of covered and secure cycle parking facilities for each dwelling shall be submitted to and be approved in writing by the Local Planning Authority. The approved details shall be in place prior to the occupation of the relevant dwelling and shall be maintained as such thereafter.
- 11) The development hereby approved shall be carried out in accordance with the submitted Arboricultural Impact Assessment and Preliminary Tree Protection Plan (Dated: 22nd Feb 2022) and drawing references: PJC/5913/21/D (Tree Protection Plan); PJC/5913/21/C (Root Protection Area Incursion Plan); and PJC/5913/21/B (Tree Retention Plan).
- 12) No external lighting, whether temporary or permanent, shall be placed or erected within the site unless details have been submitted to and been approved in writing by the Local Planning Authority. Any details to be submitted shall be in accordance with the Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2005 (and any subsequent revisions), and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. Any details to be submitted shall also accord with the measures outlined in the recommendations of Section 4.4 of the submitted Preliminary Ecological Appraisal (Dated: 12th November 2021); and the guidance contained in Guidance Note 08/18 Bats and Artificial Lighting in the UK (Bat Conservation Trust and the Institute of Lighting Professionals). The development shall thereafter be carried out

in accordance with the approved details and maintained as such thereafter.

End of Schedule



## Appeal Decision

Site visit made on 22 November 2022

by **B Pattison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 18 JANUARY 2023**

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**Appeal Ref: APP/U2235/W/22/3293651**

**Land adj. West View, Maidstone Road, Staplehurst TN12 0RE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr D Saunders against the decision of Maidstone Borough Council.
  - The application Ref 21/504975/OUT, dated 8 September 2021, was refused by notice dated 20 December 2021.
  - The development proposed is outline application for the erection of up to four detached dwellings including creation of new vehicular and pedestrian access. Means of access and layout to be determined.
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### Decision

1. The appeal is allowed, and outline planning permission is granted for the erection of up to four detached dwellings at land adjoining West View, Maidstone Road, Staplehurst, TN12 0RE in accordance with the terms of the application, Ref: 21/504975/OUT dated 8 September 2021, subject to the conditions set out in the attached Schedule.

### Preliminary Matters

2. The application was made in outline with all matters except the means of access and layout reserved for subsequent approval. However, the application was accompanied by an indicative plan showing the scale of the houses and landscaping (amongst other things), which I shall treat as being for illustrative purposes only.

### Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area.

### Reasons

4. The appeal site is approximately 2km from the centre of Staplehurst on Maidstone Road and is located beyond any settlement boundary. The western side of Maidstone Road consists of a variety of two storey and single storey dwellings of differing architectural designs. Their plots are linear, and the dwellings are arranged on a loose building line, with driveways and vehicular accesses. When viewed across the Maidstone Road the site is located to the left-hand side of 'West View'. The built form punctuates either side of the road along this busy transport corridor within an area which provides a transition in character from the more open countryside to the north and the Staplehurst settlement boundary to the south.

*a) Layout*

5. The previous appeal<sup>1</sup> confirmed that the proposed development would be in a suitable location for housing. The proposal is for the construction of four new dwellings on the site, with parking areas available to each property, and would include an access road onto the main highway. The dwellings would be located in a linear form, directly reflecting the pattern of development on this stretch of Maidstone Road, with dwellings facing the highway and gardens to the area. This layout is a distinct change from the previous “nucleated converted farmstead” approach which was dismissed by a previous appeal.
6. The site has existing built form to the north and south and the proposed development would act as continuation of this ribbon of built form. It would also replicate the existing ribbon development on the opposite side of the road. However, unlike many dwellings on the western side of Maidstone Road the proposed development would maintain the existing dense vegetation screening and landscaping along the site frontage. This would reduce its prominence when viewed from the road and would assist in integrating the development into the local landscape. The depth of the development towards the rear of the site would also be reduced when compared to the dismissed appeal scheme, and it would not appear overly prominent in surrounding views including those from the nearby public footpath. This ensures that the development would not have a domesticating impact on the existing character and spatial quality of the landscape.
7. The development of the appeal site would not result in an erosion in space between settlements along Maidstone Road. A significant gap between the appeal site and the nearest hamlet at Cross at Hand approximately 1.5km to the north would remain.
8. Importantly, a significant proportion of the southern part of the appeal site would remain free from development. This would maintain a development free gap and feeling of spaciousness between the appeal site and the nearest property to the south. Overall, the density of the proposed development would be reflective of the pattern of development of existing dwellings along the road.

*b) Access*

9. Whilst the vehicular access would introduce hard surfacing, where currently there is none, it would be located within the southern half of the site, within an existing gap in the natural boundary screening. This location avoids the requirement for significant tree loss along the site’s western boundary, thereby minimising the visual impact of the access. The Local Highways Authority has confirmed that the design and siting of the new vehicular access is acceptable. Additional supplementary planting is also proposed and could be secured as part of a future reserved matters application. The proposed access would comprise of a 3m wide surfaced carriageway with additional run-off areas to allow two vehicles to pass. The width is not dissimilar to the width of accesses to neighbouring properties on the opposite side of Maidstone Road and would not appear as an uncharacteristic addition.

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<sup>1</sup> APP/U2235/W/20/3246516

10. A separate pedestrian access within the northern half of the site, as a result of its minimal width, would not have a significant impact on character and appearance of the area.
11. For the above reasons, I conclude that the proposed development would not cause harm to the character and appearance of the area. Accordingly, I find no conflict with Policies SP17, DM1 and DM30 of the Maidstone Local Plan 2017 (MLP) and Policy PW2 of the Staplehurst Neighbourhood Plan (2016-2031) (2016) (SNP), which require that development should respond positively to, and where possible enhance, the local, natural or historic character of the area. For similar reasons, the proposal complies with the principles of the National Planning Policy Framework (the Framework) which includes the aim that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting.

### **Other Matters**

12. Interested parties have raised concerns about the impact of the proposed development on Peartrees Cottage, the adjoining Grade II Listed property, the impact on surface water flooding, and the potential for the development to set a poor precedent. Given the separation distance, the retention and proposed further planting on the shared boundary, I do not find that the layout proposed development would have a harmful impact on the setting of the Listed property. With regard concerns about surface water flooding and the impact on a local watercourse the provision of necessary drainage on the site could be assessed and conditioned as part of future reserved matters. As I have found that the proposed development would cause no harm to the character and appearance of the area it would not create a precedent for other developments that would cause harmful effects in this regard.
13. Parties also state that the site is not sustainably located as there is no footpath from the site into Staplehurst. There is a pathway on the opposite side of Maidstone Road which provides a direct route to Staplehurst by foot. Whilst the road is reasonably busy, pedestrians crossing the road from the site entrance would have good visibility in both directions, enabling them to cross safely. In terms of highway safety, an independent Road Safety Audit was submitted, and demonstrated that the proposed development would not have a harmful impact on highway safety. Interested parties have raised concerns about the proposed development's impact on local wildlife. However, I satisfied that the imposition of appropriate planning conditions can mitigate the development's impact on local wildlife.
14. A number of other matters have been raised by interested parties and I have taken them all into account. This includes matters such the impacts on highways safety, sewage services and local infrastructure. However, whilst I take these representations seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these matters.

### **Conditions**

15. I have imposed standard conditions relating to the submission and timing of reserved matter applications and the commencement of development. I have imposed an approved plans condition in the interests of certainty.

16. I have imposed conditions requiring the submission of a Construction Management Plan in the interests of highway safety. Similarly, I have included conditions related to the provision and retention of off-street parking, electric vehicle charging points and cycle and refuse storage, in the interests of highway safety and to promote low emission vehicles.
17. I have also included conditions requiring a Landscape and Ecological Management Plan and a revised reptile and Great Crested Newt mitigation strategy in order to protect and enhance biodiversity on the site. Conditions requiring further details of external lighting and tree protection measures are also required in the interests of landscape, visual impact and biodiversity.
18. I have included the Council's suggested conditions related to the provision of renewable or low-carbon sources of energy within the development. This is in the interest of ensuring energy efficient development. Conditions relating to further details of boundary treatments and existing site levels and proposed slab levels are included in the interests of character and appearance. The site is located within an area of archaeological potential and consequently a written scheme of investigation condition is imposed.
19. Bearing in mind the PPG's advice that such conditions should only be used in exceptional circumstances, I have not been provided with sufficient evidence as to why it would be reasonable or necessary to restrict several classes of the permitted development rights order. Consequently, I have not imposed the Council's suggested condition which would remove permitted development rights.

### **Conclusion**

20. Overall, I conclude that approval of details of the means of access and layout would amount to an acceptable form of development that would satisfy the policies of the development plan and the Framework when taken as a whole. Therefore, for the reasons given above, taking into account all matters raised, I conclude that the appeal should be allowed.

*B Pattison*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby approved shall not commence until approval of the following reserved matters has been obtained in writing from the local planning authority:
  1. Scale
  2. Appearance
  3. Landscaping

The application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

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

18-083-004\_Rev F

716-PL01 - P3

716-PL02 - P4

Tree Location Plan and Tree Constraints Plan (for illustrative purposes only)

- 3) Prior to the commencement of any development on site a Construction Management Plan shall be submitted to and approved in writing by the Local planning Authority. This shall include the following:
  - a) Routing of construction and delivery vehicles to / from site
  - b) Parking and turning areas for construction and delivery vehicles and site personnel
  - c) Timing of deliveries
  - d) Provision of wheel washing facilities
  - e) Temporary traffic management / signage

Development shall only be carried out in accordance with the approved plan.

- 4) The development hereby approved shall not commence until details of the a) the existing site levels and b) the proposed slab levels of the buildings have been submitted to and approved in writing by the local planning authority and the development shall be completed strictly in accordance with the approved levels.
- 5) The development shall not commence above slab level until details of how decentralised and renewable or low-carbon sources of energy (such as air or ground source heat pumps with no fossil fuels to be used in heating systems) will be incorporated into the development hereby approved to provide at least 10% of total annual energy requirements of the development, have been submitted to and approved in writing by the local planning authority. The approved details shall be installed prior to first occupation and maintained thereafter.
- 6) The development hereby approved shall not commence until details of tree protection in accordance with the current edition of BS 5837 have been submitted to and approved in writing by the local planning authority. All trees to be retained must be protected by barriers and/or ground protection. No equipment, plant, machinery or materials shall be brought onto the site prior to the erection of approved barriers and/or ground protection except to carry out pre commencement operations approved in writing by the local planning authority. Nothing shall be stored or placed, nor fires lit, within any of the protected areas. No alterations shall be made to the siting of barriers and/or ground protection, nor ground levels changed, nor excavations made within these areas without the written consent of the local planning authority. These measures shall be maintained until all equipment, machinery and surplus materials have been removed from the site.
- 7) With the first reserved matters application and before any works commence (including site clearance), a revised reptile and Great Crested Newt mitigation strategy will be submitted to, and approved by, the local planning authority. This will be based on the 'Great Crested Newt Survey and Mitigation Strategy Report' and the 'Reptile Survey and Mitigation Strategy' (KB Ecology July 2019). Prior to the first occupation of the development, the

measures will be carried out in accordance with the approved strategy, unless varied by a Natural England licence.

- 8) With the first reserved matters application, a Landscape and Ecological Management Plan (LEMP) will be submitted to, and be approved in writing by, the local planning authority. The LEMP will be based on the 'Ecology Mitigation Plan' (Ubique Architects September 2021) and will include the following:
- a) Description and evaluation of features to be established/maintained
  - b) Ecological trends and constraints on site that might influence management
  - c) Management objectives and appropriate management prescription for achieving these objectives
  - d) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period)
  - e) Details of the body or organisation responsible for implementation of the plan.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The approved plan will be implemented in accordance with the approved details.

- 9) The development hereby approved shall not commence above slab level until details of the proposed boundary treatments to the boundaries of the application site have been submitted to and approved in writing by the Local Planning Authority. The boundary treatments (to include gaps at ground level in the boundaries to allow the passage of wildlife) shall be implemented in accordance with such approved details.
- 10) Prior to the first occupation of the development, facilities for the (a) storage and screening of refuse bins (b) collection of refuse bins, and (c) cycle storage shall 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 thereafter.
- 11) Prior to first occupation of the dwellings, at least one all Electric Vehicle charger shall be provided for each dwelling. They must be provided to Mode 3 standard (providing up to 7kw) and SMART (enabling Wi-Fi connection). Approved models are shown on the Office for Low Emission Vehicles Homecharge Scheme approved chargepoint model list <https://www.gov.uk/government/publications/electric-vehicle-homecharge-scheme-approved-chargepoint-model-list>
- 12) 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 and the sensitive landscape location. The development shall thereafter be carried out in accordance with the subsequently approved details and maintained as such thereafter.



- 13) The areas shown on the submitted plan as car parking spaces shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not (other than the erection of private garages), shall be carried out on the land shown. The car parking spaces, and access thereto shall be provided prior to the occupation of the dwellings hereby permitted.
- 14) The approved landscaping shall be carried out during the first planting season (October to February) following first occupation. 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.
- 15) Prior to commencement of development (including demolition) the applicant shall secure the implementation of a programme of archaeological work in accordance with a written scheme of investigation by an archaeological organisation approved in writing by the Local Planning Authority. Access shall be permitted to the site at all reasonable times for the carrying out of the investigations, including making necessary records of items of interest and finds



## Appeal Decision

Site visit made on 12 October 2023

**by R Lawrence MRTPI, BSc (Hons), PGDip (TP)**

**an Inspector appointed by the Secretary of State**

**Decision date: 4<sup>th</sup> December 2023**

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### **Appeal Ref: APP/U2235/W/23/3321211**

### **Anerley, Forge Lane, Bredhurst, Kent ME7 3JW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr and Mrs M Dorrington against the decision of Maidstone Borough Council.
  - The application Ref 22/505361/FULL, dated 10 November 2022, was refused by notice dated 29 March 2023.
  - The development proposed is for the demolition of existing garage and erection of a single dwellinghouse with associated landscaping.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the demolition of existing garage and erection of a single dwellinghouse with associated landscaping at Anerley, Forge Lane, Bredhurst, Kent ME7 3JW in accordance with the terms of the application, Ref 22/505361/FULL, dated 10 November 2022, subject to the conditions in the attached schedule.

### **Preliminary Matter**

2. On 22 November 2023, all areas in England and Wales designated as an Area of Outstanding Natural Beauty (AONB) were retitled National Landscapes. There has been no change to the legal designation and policy status of these areas. For the sake of consistency and legibility with the evidence submitted I have referred to the Kent Downs AONB rather than the Kent Downs National Landscape in my decision.

### **Main Issue**

3. The main issue is the effect of the development on the character and appearance of the area, including the effect on the Kent Downs Area of Outstanding Natural Beauty.

### **Reasons**

4. The appeal site is part of the residential garden serving Anerley, with its own access from Forge Lane via a track. The site is set behind a row of residential properties which front onto Forge Lane and lies adjacent to two newly constructed two-storey dwellings. The site lies within the village of Bredhurst, within the Countryside. Bredhurst lies outside of the settlement boundary and is not identified as a settlement within the Maidstone Local Plan (LP), as a result it is not a focus for new residential development and a restrictive approach to development applies. The site also falls within the Kent Downs Area of Outstanding Natural Beauty (AONB) and the National Planning Policy Framework (the Framework) states that great weight should be given to

- conserving and enhancing its landscape and scenic beauty, which has the highest status of protection. The site forms part of a residential garden and lies within the Bedhurst and Stockbury Downs landscape character area, both parties agree this has moderate sensitivity.
5. There is existing residential development on three sides of the appeal site. This surrounding residential development includes full two storey dwellings. Although the site and its surroundings have a rural feel, it does not form part of an open area of countryside. There is a sporadic, loose knit pattern of residential development to the rear of Forge Lane. The development of the site to provide a new dwelling would not therefore involve an extension to the built envelope associated with the village.
  6. The development would involve a large increase in built form on the site in comparison to the existing garage building. The dwelling would contain accommodation over two levels, albeit with the upper floor set within the roof space, thereby resulting in increases in the height, bulk and footprint. However, having regard to the scale of surrounding buildings, which include substantial two storey dwellings, the proposal would appear in keeping with this. A large amount of space would be retained around the dwelling, with good separation to the site boundaries. As such, the siting and footprint of the dwelling within the plot would reflect the rural character and the sporadic pattern and grain of development that exists around the site.
  7. The proposal would be of an appropriate design, with its appearance reflecting surrounding architecture. This includes in respect of the roof form, scale and materials. The 1.5 storey form would avoid the dwelling appearing unduly prominent and would ensure it blends in with surrounding built form. It is relevant to have regard to the cumulative effects of the development, particularly given there has been a number of residential developments completed or underway close to/adjacent to the site. As the proposal in isolation would reflect the rural character of the area, and would not be harmful, there is also no evidence to indicate any cumulative harm would result from the appeal proposal.
  8. There would be an increase in residential paraphernalia, because of the introduction of an additional dwelling. As the site is already in residential use, the increase in the residential paraphernalia associated with a single dwelling would not represent a significant change compared with the existing position. The proposal would necessitate the removal of a small number of fruit trees on site. There would be sufficient space retained within the site to accommodate a soft landscaping scheme such to mitigate the tree loss and preserve the site's natural features.
  9. My attention has been drawn to recommendations contained within the Maidstone Landscape Character Assessment (2013). This document places emphasis on the need to adhere to requirements set out within the AONB management plan and to restore and improve the rural setting through delivery of appropriate architectural and landscape design.
  10. The AONB Management Plan, places emphasis on tree retention and highlights the potential cumulative effects from pressure for small scale development and change. Although some tree loss would be required, tree protection measures could be secured by condition, together with a soft landscaping scheme to

provide suitable replacement trees, such to preserve the landscape character of the site and the character and beauty of the AONB.

11. Having regard to the above considerations, the development would be acceptable in respect of its effect on the character and appearance of the area, including in terms of the effect on the AONB. The proposal would accord with Development Plan Policies SP17, DM1 and DM30 of the LP, as well as the Kent Downs AONB Management Plan 2021-2026 and the Framework. These policies and guidance taken together, seek amongst other matters, to ensure that development enhances the local distinctiveness of an area, avoids harm to character and appearance of the area, and requires great weight should be given to the conservation and enhancement of the AONB.

### **Other Matters**

12. My attention has been drawn to a number of appeal decisions by the Council. The Forge Lane decision, is of some relevance as it relates to land adjacent to the appeal site. However, the development to which the decision relates was of a more significant scale than currently proposed, and dates from 2011, so a different policy framework was in place at the time. The Highfield house, Marden decision is much more recent and addresses similar issues to those relevant to this appeal, including confirming the relevance of considering the cumulative effects of development. The site is however, located in a different part of the district and from the block plan the site appears to be in a different context as it is not as enclosed as the appeal site. Given these factors, these decisions do not alter the conclusions above. A further appeal decision has been drawn to my attention, at Firwood Lodge. This decision confirms the Council's housing land supply position, however housing land supply is not a determinative matter in this decision.
13. In addition to concerns about character and appearance, which I have addressed above, third parties have raised concerns about other matters. These include the effect on the living conditions of neighbouring properties having regard to privacy, noise and disturbance and outlook; highway safety including the suitability of the access road and Forge Lane, biodiversity as well as the effects of the construction process.
14. The increase in vehicle numbers associated with one dwelling would be low. Whilst I note that Forge Lane is single track, there is no substantive evidence to suggest that the increase in traffic would lead to adverse effects on highway safety. I also note that the Council and highway authority did not raise objection to the proposal on these grounds.
15. In respect of the effect on the living conditions of neighbouring occupiers, the siting of windows on the proposed dwelling would avoid any direct overlooking at first floor level or above, thereby avoiding any harmful loss of privacy. There would be a good separation between the neighbouring dwellings and the appeal site. Whilst there are some garden areas in relatively close proximity to the site, there would nonetheless be sufficient separation to avoid adverse harm.
16. An interested party has made reference to a potential breach of article 8 of the Human Rights Act, in respect of the effect of the proposal on their enjoyment of their garden which is close to the appeal site. Article 8 deals with the right to respect for family life and the home. I have given consideration to these rights, however, there is no substantive evidence that the proposal would lead to an

unacceptable adverse effect on the living conditions of any neighbouring occupier and no conflict has been identified with the Development Plan.

17. There is no substantiated evidence that the proposal would harm biodiversity. Whilst there would be some tree loss associated with the development there would be sufficient opportunities for soft landscaping within the site to maintain existing ecological interests. As such, there is no clear justification to depart from the Council's position, who raise no objection in respect of the effect of the development on biodiversity.
18. Construction associated with developments such as proposed do inevitably result in some adverse impacts such as noise, dust and disturbance. However, such impacts would be for a temporary period only and would be limited by the scale of the development.
19. Concerns in relation to damage to properties from passing vehicles, the loss of views and the loss of value to property are private matters and as such are of very limited weight and which does not lead me to find otherwise than that the proposed development is acceptable.

### **Conditions**

20. The Council has suggested a number of conditions in the event of my allowing the appeal, I have considered these in accordance with the Planning Practice Guidance and the National Planning Policy Framework. I have edited some of the suggested conditions for clarity and enforceability.
21. Conditions 1 and 2, to limit the timeframe for implementation together with a plan numbers condition, are required in the interests of certainty. Conditions 3-6 which secure details of proposed materials, land levels, landscaping works and refuse protection details are required in the interests of the character and appearance of the area. Condition 7, which secures tree protection details is also necessary in the interests of the landscape character of the area, this, along with condition 8 are necessary to safeguard and enhance biodiversity on site. Condition 9 is required to control the addition of further windows/openings at first floor level or above such to protect the privacy of neighbouring occupiers.
22. A condition to secure details of any external lighting has been suggested to me, however, my attention has not been drawn to any particular reason why this would be necessary to protect amenity, the addition of external lighting associated with a single dwelling would be unlikely to cause material harm. I do not propose to include this condition.

### **Conclusion**

23. For the reasons given above, I conclude that the development would accord with the development plan and there are no other material considerations which would lead to a different decision. The appeal is therefore allowed.

*R Lawrence*

INSPECTOR

### **Schedule of conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PL01, PL03 B (Proposed Floor Plans); PL04 B (Proposed Elevations) and PL05 B (Proposed Site Plan).
- 3) No development above damp-proof course level shall take place until samples of all external facing materials and surfacing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 5) The development hereby approved shall not commence above slab level until a scheme of hard and soft landscape works has been submitted to and approved in writing by the local planning authority. The scheme details shall include.
  - i) all existing trees, hedges and blocks of landscaping on, and immediately adjacent to, the site and indicate whether they are to be retained or removed.
  - ii) details of proposed planting to mitigate any loss of amenity and biodiversity value and include a planting specification,
  - iii) means of enclosure, boundary treatments and retaining structures including gaps at ground level to allow the passage of wildlife.
  - iv) a programme of implementation and
  - v) a 5-year management plan.

The approved soft landscaping works shall be carried out in accordance with the approved details and in the first planting and seeding seasons following the first occupation of the development or the completion of the development, whichever is the sooner.

Any trees or plants, which, within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

All approved hard landscaping shall also be carried out in accordance with the approved details prior to the first occupation of the development or the completion of the development, whichever is the sooner.

- 6) The development hereby approved shall not commence above slab level until, details of satisfactory facilities for the storage of refuse on the site and a suitable refuse collection point have been submitted to and approved in writing by the local planning authority and the approved facilities shall be provided before the first occupation of the development and shall be maintained thereafter.
- 7) The development hereby approved shall not commence until details of tree protection in accordance with the current edition of BS 5837: Trees

in relation to design, demolition and construction, have been submitted to and approved in writing by the local planning authority. All trees to be retained must be protected by barriers and/or ground protection. No equipment, plant, machinery or materials shall be brought onto the site prior to the erection of approved barriers and/or ground protection except to carry out pre commencement operations approved in writing by the local planning authority. Nothing shall be stored or placed, nor fires lit, within any of the protected areas. No alterations shall be made to the siting of barriers and/or ground protection, nor ground levels changed, nor excavations made within these areas without the written consent of the local planning authority. These measures shall be maintained until all equipment, machinery and surplus materials have been removed from the site.

- 8) Prior to the first occupation of the development hereby approved, details of biodiversity enhancements including a timetable for provision and management of bird nesting boxes and native species planting, shall be submitted to and approved in writing by the local planning authority. The installation of the bird nesting boxes shall be carried out in accordance with the approved details and they shall be retained thereafter.
- 9) No additional windows, doors, voids or other openings shall be inserted, placed or formed at any time in the elevations at first floor level or above, of the building hereby permitted.

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# Appeal Decision

Site visit made on 3 May 2022

by **G Pannell BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24<sup>th</sup> May 2022

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**Appeal Ref: APP/U2235/W/21/3286695**

**Cocketts, Bimbury Lane, Stockbury, ME9 7QX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr S Bricani against the decision of Maidstone Borough Council.
  - The application Ref 21/503774/FULL, dated 20 July 2021, was refused by notice dated 22 September 2021.
  - The development proposed is demolition of existing house and outbuildings and construction of new house.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Although not a reason for refusal, the effect of the proposal on protected species is potentially a determinative issue. Therefore, I have elevated this matter as a main issue.

## Main Issue

3. The main issues in this appeal are the effect of the proposed development on protected species and on the character and appearance of the area, having particular regard to the location of the site within the Kent Downs Area of Outstanding Natural Beauty (AONB).

## Reasons

### *Biodiversity*

4. Paragraph 99 of Circular 06/2005<sup>1</sup> states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.

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<sup>1</sup> Circular 06/2005: Biodiversity and geological conservation - statutory obligations and their impact within the planning system



5. Paragraph 180 a) of the National Planning Policy Framework (the Framework) advises that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less than harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
6. The appellant has provided a Preliminary Ecological Appraisal Report, which was produced in May 2021. This report recommends further ecological surveys for the presence absence of roosting bats within the buildings to be demolished and reptiles such as common lizard and slow worm. This would inform suitable avoidance, mitigation, compensation and enhancement measures for those species groups.
7. Although the appellant had indicated that these surveys would be carried out in the summer of 2022 and requested that any decision on the appeal is delayed until such surveys are completed, I have had regard to Annex M of the Procedural Guide Appeals – England which advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people’s views were sought.
8. In addition, the further survey work for roosting bats requires two dusk emergence/dawn re-entry surveys between May and September with surveys to be spaced at least 2 weeks apart. Furthermore, the survey works required for reptiles requires seven visits to be undertaken on non-consecutive days with artificial cover objects being left for at least 10 days prior to the first survey visit. This leads to a degree of uncertainty of the length of time it would take to complete the survey work and produce a report. Notwithstanding the length of time it may take for the surveys to be submitted, the results of the survey could require a need for mitigation and/or revisions to the scheme. Therefore, I have dealt with the appeal on the basis of the submitted evidence.
9. In conclusion, in the absence of sufficient evidence to the contrary, the proposals would potentially cause unacceptable harm to protected species. This would be contrary to policies DM1 and DM3 of the Maidstone Borough Local Plan 2017 (LP) which together require ecological evaluation of development sites to take full account of the biodiversity present and to protect and enhance any on-site biodiversity and geodiversity features or provide sufficient mitigation measures. For similar reasons, the proposal would not accord with the Framework, including paragraphs 174 and 180.

#### *Character and appearance*

10. The appeal site is located on the corner of Bimbury Lane and South Street Road, and comprises a detached bungalow and a number of existing outbuildings. The site is screened from the road by existing landscaping and has no direct frontage access, with the access being located at the far end of the site. All of the buildings on the site are in a state of disrepair. The area is characterised by a sporadic pattern of dwellings in large plots spaced along Bimbury Lane.
11. Policy DM32 of the LP accepts, outside of settlement boundaries, the replacement of a dwelling in the countryside, provided that the mass and volume of the replacement dwelling is no more visually harmful than the original dwelling and would be visually acceptable in the countryside.

12. It has been put to me that the increased height of the proposed two storey dwelling, which would increase significantly from that of the original dwelling, would be visually harmful. The supporting text to the policy indicates that in considering the mass and visual prominence of the resulting building, the volume will be more critical than its footprint. However, the policy does not prevent increases in the mass and volume of replacement dwellings provided that there is no greater visual impact arising from the development.
13. The scale of development would be similar to that of the neighbouring dwelling and as such would not be incongruous when viewed within the immediate context of the site and would be visually acceptable within the wider countryside.
14. Furthermore, the site benefits from extensive screening and the submitted landscape strategy demonstrates how this can be retained and enhanced as part of the redevelopment of the site. The proposed dwelling would be partially screened as a result. The dwelling would also be sited centrally within the plot, whereas the original dwelling is located closer to the junction of Bimbury Lane and South Street Road. This in combination with the existing screening will result in the dwelling being no more visually harmful when viewed from the existing junction.
15. Therefore, having regard to the scale of the surrounding development and the proposed siting of the dwelling, in combination with the existing landscaping, I conclude that the proposed replacement dwelling, despite its increased height, would result in a development which is visually acceptable in the countryside and would not be more visually harmful than the original dwelling.
16. The site is located within the Kent Downs AONB where policy SP17 of the LP states that great weight should be given to its conservation and enhancement. and the National Planning Policy Framework places great weight on protecting and enhancing landscape beauty in AONB's which have the highest status of protection in relation to these issues.
17. I have been referred to the Kent Downs AONB Management Plan (MP) which echoes the requirements of the Framework, in seeking to ensure that AONBs are conserved and enhanced. Policy SD2 of the MP requires the local character, qualities and distinctiveness of the AONB to be conserved and enhanced in the design, scale, setting and materials of new development.
18. The overall design and appearance of the proposed dwelling would incorporate features which are reflective of existing buildings within the locality, including a hipped and tiled roof, weatherboarding and red stock bricks. The development would enhance the appearance of the site as it would result in the clearance of the existing buildings. The replacement with the proposed scheme with materials and a colour palette more appropriate to its rural location, would take into account the local character and its location within the AONB.
19. In addition, the extent of the existing outbuildings are visible, in particular from South Street Road. Whilst I accept that these buildings are single storey, their overall footprint and sprawl across the depth of the site are significant and are detrimental to the appearance of the wider area. Therefore, the replacement of this sprawl of outbuildings with the proposed dwelling would result in a consolidation of the built development on site and lead to a limited enhancement of the AONB.

20. I therefore conclude that the proposed development would not harm the character and appearance of the area or the landscape quality and setting of the AONB. It would not conflict with policies SS1, SP17, DM1, DM5 and DM30 of the LP which together seek to ensure high quality design which is of a type, siting, materials, density and design which reflects the character and appearance of an area, maintaining or where possible enhancing local distinctiveness and requires great weight to be given to the conservation and enhancement of the Kent Downs AONB.

### **Other Matters**

#### *Setting of Listed buildings*

21. Section 66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses when dealing with planning applications. Paragraph 199 of the Framework states that when considering the impact of a proposed development on the significance of a designated asset, great weight should be given to the asset's conservation; the more important the asset, the greater the weight should be.

22. I have considered the effect on the Grade II Listed Building Beaux Aires Farmhouse which is within the vicinity of the site. Beaux Aires Farmhouse is contained within its own landscaping, as such, even developed, the site would not have a significant impact on how the listed building would be appreciated or the elements that form its setting. Therefore, I conclude that the development would not result in harm to the setting of the listed building Beaux Aires Farmhouse.

### **Conclusion**

23. In conclusion, whilst I have found no demonstrable harm to the character and appearance of the area, in the absence of sufficient evidence to the contrary, the proposal would potentially cause unacceptable harm to protected species.

24. The proposal would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict. For the reasons given above, I conclude that the appeal should be dismissed.

*G Pannell*

INSPECTOR