

**REPORT SUMMARY**

<b>REFERENCE NO:</b> - 22/505747/FULL		
<b>APPLICATION PROPOSAL:</b> Section 73 - Application for variation of conditions 4 (to remove the requirement for solar PV panels) and 9 (to reduce the number of electric vehicle charging points from ten to four) pursuant to 22/501405/FULL for - Change of use from 4 blocks of residential nurses accommodation to 3 no. blocks comprising of 18 X 5 bed HMO units and 1 no. block comprising of 8 X 3 bedroom residential units.		
<b>ADDRESS:</b> Springwood Road Nurses Accommodation, Springwood Road, Barming, ME16 9NX		
<b>RECOMMENDATION:</b> <b>GRANT PLANNING PERMISSION subject to the planning conditions: (with amendment of condition 4 and condition 9 deleted)</b>		
<b>SUMMARY OF REASONS FOR RECOMMENDATION FOR APPROVAL:</b> No solar photovoltaic panels are included as part of the change of use application and officers find this acceptable for the reasons set out in this report at paragraphs 5.03 to 5.08 below. The applicant is proposing the list of energy efficient measures in the report at paragraph 5.11.  <ul style="list-style-type: none"> <li>Action - Amend condition 4 (energy efficiency) as follows: "<i>Prior to first occupation of the development hereby approved the energy efficiency measures set out in the DHA letter dated 23 September 2022 shall be in place and all features shall be maintained thereafter. Reason: To ensure an energy efficient form of development</i>".</li> </ul> <p>The provision of electric vehicle charging points and the thresholds for when they are required passed from the planning system to Building Regulations in June 2022. In this context the provision of electric vehicle charging points is not a planning consideration and a planning condition requiring installation of charging points fails 3 of the six statutory tests for planning conditions ('necessary', 'relevant to planning', and 'reasonable')</p> <ul style="list-style-type: none"> <li>Action - Delete condition 9 (electric vehicle charging points) as from June 2022 provision of electric vehicle charging points are now provided under Building Regulations.</li> </ul> <p><i>(NB: the package of energy efficiency measures provided by the applicant includes 4 electric vehicle charging points. This offer by the applicant does not impact on the conclusions reached above on a standalone condition)</i></p>		
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Call in from Cllr Ashleigh Kimmance and Cllr Peter Homes as the application relates to conditions that were amended by the planning committee.		
<b>WARD:</b> Heath	<b>PARISH:</b> N/A	<b>APPLICANT</b> Jedi Developments Ltd  <b>AGENT:</b> DHA Planning Ltd
<b>CASE OFFICER:</b> Tony Ryan	<b>VALIDATION DATE:</b> 12/02/22	<b>DECISION DUE DATE:</b> 31/03/2023 (EOT)
<b>ADVERTISED AS A DEPARTURE:</b> No		

## **1.0 BACKGROUND, PROPOSAL AND RELEVANT PLANNING HISTORY**

1.01 At the committee meeting on the 20 October 2022 members considered and resolved to approve the planning application under reference 22/501405/FULL (decision issued 28.10.2022). This application was for Springwood Road Nurses Accommodation, Springwood Road, Barming, ME16 9NX.

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

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

1.03 Relevant extract from the minutes of the committee meeting on the 20 October 2022 is:

*"...That permission be granted subject to the conditions set out in the report with:*

*The amendment of condition 4 (Energy Efficiency Measures) to expand on Members' additional expectations in terms of the installation of solar PV panels within the development unless it is demonstrated that it is not physically possible to do so and cavity wall insulation; and*

*The amendment of condition 9 (EV Charging) to require a minimum of 10 operational electric vehicle charging points; the siting to ensure that every parking bay has access to a charging point..."*

1.04 An application for the removal or variation of planning conditions (s73) can be used to change or remove conditions which have been previously imposed. The Local Planning Authority can either

- grant the s73 permission unconditionally or
- grant subject to different conditions, or
- or can refuse the s73 application if they decide that the original conditions should continue.

1.05 Whatever the result of the s73 application, the original planning permission will remain and can be implemented as normal if the applicant chooses to. The applicant also has the right of appeal against the original conditions and this appeal can be submitted to the planning inspectorate up to 28 April 2023.

1.06 The current s73 application seeks to vary condition 4 (energy efficiency) and condition 9 (electric vehicle charging points) to remove the amendments that the planning committee made to these conditions.

## **2.0 POLICY AND OTHER CONSIDERATIONS**

- Maidstone Borough Local Plan policies SS1, SP1, SP19, SP20, DM1, DM2, DM3, DM6, DM8, DM9, DM11, DM21, DM23.

- Supplementary Planning Guidance: Affordable housing
- The National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (NPPG)
- Maidstone Borough Council – Local Plan Review, draft plan for submission (Regulation 22) dated October 2021. - The Regulation 22 draft is a material consideration however weight is currently limited, as it is the subject of an examination in public that commenced on the 6 September 2022 (hearings currently adjourned until 15 May when stage 2 hearings commence). The relevant policies in the draft plan are as follows:

LPRSP10:Housing  
LPRSP10(A):Housing mix  
LPRSP12:Sustainable transport  
LPRSP14:The environment  
LPRSS1:Maidstone borough spatial strategy  
LPRSP9:Development in the countryside  
LPRSP14A:Natural environment  
LPRSP14(C):Climate change  
LPRSP15:Principles of good design  
LPRTRA2:Assessing the transport impacts of development  
PRTRA4:Parking  
LPRQ&D 1:Sustainable design  
LPRQ&D 2:External lighting  
LPRQ&D 6:Technical standards

### **3.0 LOCAL REPRESENTATIONS**

3.01 No response from neighbour consultation

#### **Cllr Ashleigh Kimmance**

3.02 Would like to call this application in as it needs to be decided at committee.

#### **Cllr Peter Homes**

3.03 Would like to call this application in if officers are minded to approve as the application relates to conditions that were added by the committee.

### **4.0 CONSULTATIONS**

(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report when considered necessary)

#### **KCC Highways**

4.01 No objections, recommend standard infomatives.

#### **Kent Police**

4.02 No objection. Suggest security measures if PV panels are installed.

#### **KCC Local Lead Flood Authority.**

4.03 No objection as proposal considered low risk.

#### **KCC Minerals Team**

4.04 No objection

## 5.0 APPRAISAL

- 5.01 The key planning considerations are:
- Condition 4 energy efficiency
  - Adopted LP policy DM2: Sustainable design
  - Local Plan Review policy LPRP14(C): Climate Change
  - Statutory tests for the imposition of planning conditions
  - Condition 9 EV charging and Approved Document 'S' Building Regulations

### **Condition 4 energy efficiency**

- 5.02 The amended condition 4 on the decision notice is as follows (current application seeks to remove the underlined text).

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

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

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

### **Adopted LP policy DM2 and Approved Document Part L**

- 5.03 Policy DM2 of the adopted Local Plan states that all new homes will be expected to meet the strengthened on site energy performance standards in Approved Document Part L of the Building Regulations.
- 5.04 Building Regulations Part L1b covers renovations to existing buildings. The requirements of part L1b only apply in certain circumstances such as major renovation (major renovation defined as replacing more than a quarter of the building's surface area).
- 5.05 The current proposal does not involve any change to the internal layout, does not include the use of additional internal space and does not include building extensions.
- 5.06 Other than the new patio doors (that were requested by officers to improve the standard of the accommodation) there are no physical building changes. In this context it is understood that the proposal is not covered by Part L of the Building Regulations.
- 5.07 The only adopted policy that considers renewable energy is LP DM2, and this policy defers to the relevant thresholds and requirements of Part L of the Building Regulations. Building Regulation applications are submitted and considered outside the planning system and a condition requiring compliance with the Part L would fail the necessary and reasonableness statutory planning condition tests.
- 5.08 The applicant advises that *the cost associated with installation and maintenance and the solar panels and cavity wall installation "...in the context of the minor alterations to the building, would be disproportionate to the proposed development".* Officers agree with these conclusions and advise that there is no policy requirement to provide onsite renewable energy or cavity wall installation.

Local Plan Review policy LPRP14(C)

5.09 Whilst not adopted and as a result currently carrying little weight, policy LPRP14(C) of the Local Plan Review states:

- at point 4 of policy LPRP14(C) "...the Council will...support the provision of renewable energy infrastructure within new development". (Officer comment: note text refers to 'support' rather than 'require' renewable energy infrastructure).
- at point 8 of policy LPRP14(C) in contrast states "...the Council will...require new development involving the creation of new dwellings...to plan for and respond to the impacts of climate change..."

5.10 In relation to point 4 of LPRP14(C) and the 'support' for renewable energy infrastructure the applicant has advised "*...it is acknowledged that the installation of PVs would provide sustainability benefits, however the cost associated with installation and maintenance, in the context of the minor alterations to the building, would be disproportionate to the proposed development*". In addition, the appellant advises that a requirement for cavity wall insulation "*... would have a significant financial impact on the scheme, which would be disproportionate to the proposed development*".

5.11 Whilst the policy LPRP14(C) currently carries little weight, the appellant in seeking "...to plan for and respond to the impacts of climate change..." (point 8 policy LPRP14(C)) is proposing the following list of energy efficiency measures:

- LED lighting to be provided throughout the buildings including externally.
- 400mm loft insulation to be installed inside all roofs.
- Individual thermostatic controls to the buildings heating to be installed.
- The provision of all electric 'A' rated appliances / white goods to the units.
- The fitting of flow restrictors on all showers & taps to limit the use of hot water and thus the energy required for its generation.
- Water harvesting (water butt), recycling rain water for external maintenance.
- 4 x EV charging points.

Statutory tests for imposition of planning conditions

5.12 The six statutory tests for the imposition of planning conditions are set out in NPPG guidance (Paragraph: 003 Reference ID: 21a-003-20190723) and paragraph 56 of the current (2021) version of the NPPF. These six statutory tests require planning conditions to be 'necessary', 'relevant to planning', 'enforceable', 'precise' and 'reasonable in all other aspects'.

5.13 The current proposal does not include any additional floorspace and does not include any changes to internal layout. The only physical building changes being the new patio doors.

5.14 The legislative minimum threshold for energy performance standards are Part L of the Building Regulations and the setting of these thresholds would have accounted for the financial burden on developers. In the context of the above information condition 4 as drafted fails to meet the statutory test of being 'necessary' and due to the financial burden on the project fails the 'reasonable in all other aspects' test.

**Condition 9 EV charging and Building Regulations Approved Document 'S'**

5.15 The amended condition 9 on the decision notice is as follows: "*Prior to first occupation of the development hereby approved a minimum of ten operational electric vehicle charging points for low-emission plugin vehicles shall be installed*

*and ready for the use of the new occupant with the electric vehicle charging point thereafter retained and maintained operational as such for that purpose. The siting of the electric vehicle charging points shall ensure that every parking space has access to a charging point. Reason: To promote to promote sustainable travel choices and the reduction of CO2 emissions through use of low emissions vehicles”.*

- 5.16 Building Regulations Approved Document 'S' took effect from 15 June 2022 and covers the infrastructure for charging electric vehicles. This forms part of the government's push toward the adoption of electric vehicles, the gradual removal of petrol and diesel powered vehicles by 2030 and the general reduction in carbon production.
- 5.17 Approved Document 'S' took the provision of electric vehicle charging points out of the planning system. The thresholds for when electric vehicle charging points are required and when there are required, how many are required are now covered under Building Regulations. In this context condition 4 fails to meet the statutory tests in terms of the condition being 'necessary', 'relevant to planning' and 'enforceable'.

### **Public Sector Equality Duty**

- 5.18 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.

## **6.0 CONCLUSION**

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

### **RECOMMENDATION**

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

- 1) Commencement: The development hereby permitted shall be begun before 28.10.2025.  
Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2) Plans: The development hereby approved shall be carried out in accordance with the following approved plans and documents:
  - Site Plan Existing drawing 21.208-01
  - Rowan House existing 21.208-10
  - Birch House existing 21.208-11
  - Chestnut House existing 21.208-12
  - Hawthorn House existing 21.208-13
  
  - Site Plan Proposed drawing 21.208-001 T5 (received 06.10.2022)
  - Rowan House proposed Floor Plans 21.208-200 P2 (received 06.10.2022)
  - Birch House proposed Floor Plans 21.208-201 P2 (received 06.10.2022)

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

- DHA Letter dated 23.09.2022
- DHA Covering letter and Design and Access Statement

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3) Biodiversity: Prior to first occupation of the development hereby approved details of a scheme for the enhancement of biodiversity on the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall consist of the enhancement of biodiversity through means such as swift bricks, bat tubes or bee bricks, and through provision within the site curtilage such as bird boxes, bat boxes, bug hotels, log piles, wildflower planting and hedgehog corridors. The development shall be implemented in accordance with the approved details prior to first occupation of the development hereby approved and all features shall be maintained thereafter. Reason: To enhance the ecology and biodiversity on the site.
- 4) Energy Efficiency: Prior to first occupation of the development hereby approved the energy efficiency measures set out in the DHA letter dated 23 September 2022 shall be in place and all features shall be maintained thereafter. Reason: To ensure an energy efficient form of development.
- 5) Landscaping details: Prior to first occupation of the development hereby approved a soft landscaping scheme (designed using the principle's established in the Council's adopted Landscape Character Assessment 2012) shall be submitted to and approved in writing by the local planning authority. The soft landscaping scheme shall include the following:
- a) Indications of all existing hedgerows on the land, and confirmation of those to be retained,
  - b) A planting schedule using indigenous species (including location, planting species, spacing, maturity and size). Only non-plastic guards shall be used for the new trees and hedgerows.
  - c) A programme for the approved scheme's implementation and long term management, including long term design objectives, management responsibilities and a maintenance schedule for the landscaped areas.
- Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development
- 6) Landscaping implementation: All planting, seeding and turfing specified in the approved landscape scheme shall be completed by the end of the first planting season (October to February) following first occupation of the dwelling hereby approved. The approved long term management details shall be carried out with the approved details and any seeding or turfing which fails to establish or any trees or plants which, within five years from the first occupation of a property, die or become so seriously damaged or diseased that their long term amenity value has been adversely affected shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme.

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

- 7) Boundary treatment: Prior to first occupation of the development hereby approved details of all boundary treatments shall be submitted to and approved in writing by the Local Planning Authority (to include gaps at ground level in the boundaries to allow the passage of wildlife) and the development shall be carried out in accordance with the approved details before the first occupation of the buildings and maintained as such thereafter. Reason: To ensure a satisfactory appearance to the development and to safeguard the enjoyment of their properties by existing and prospective occupiers and for the passage of wildlife.
- 8) Provision of garden areas Prior to first occupation of the development hereby approved the hedging shown on drawing 21.202-001 T5 shall be provided (including hedging to protect the ground floor windows) and shall be maintained for the lifetime of the development. Reason: In the interests of landscape and amenity.
- 9) Car Parking Management Plan Prior to the first occupation of the dwelling hereby approved a car parking management plan shall be submitted to and approved in writing by the local planning authority. The plan should include arrangements for the management of the car parking area, the electric vehicle charging points and the allocation of spaces. Reason: In the interests of amenity and highway safety.
- 10) Bin and cycle storage: Prior to the first occupation of the dwelling hereby approved, facilities for
  - (a) the storage and screening of refuse bins,
  - (b) the collection of refuse bins, and
  - (c) secure bicycle storageshall be in place that are in accordance with details that have previously been submitted to and approved by the Local Planning Authority. These details will be maintained as such thereafter. Reason: To ensure a satisfactory appearance to the development
- 11) Parking, turning and access: Prior to the first occupation of the dwelling hereby approved the approved parking, turning and access details shall be completed and shall thereafter be retained. No development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude their operation. Reason: Development without adequate parking, turning and access provision is likely to lead to parking inconvenient to other road users and in the interests of road safety.
- 12) External lighting: Any external lighting installed on the site (whether permanent or temporary) shall be in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. These details shall include, inter alia, measures to shield and direct light from the light sources so as to prevent light pollution and illuminance contour plots covering sensitive neighbouring receptors. The development shall thereafter be carried out in accordance with the subsequently approved details and maintained as such thereafter. Reason: In the interests of amenity.
- 13) Removal of permitted development: Notwithstanding the provisions of the Town and Country Planning General Permitted Development (Amendment) (England) Order 2015 (or any order revoking and re-enacting that order with or without modification), no development within Schedule 2, Part 1, Classes A, B, C, D, E and



F; and Schedule 2, Part 2, Class A, to that Order shall be carried out. Reason: To ensure a satisfactory appearance to the development.

- 14) Site Management Plan: Prior to the first occupation of the dwelling hereby approved a site management plan shall be submitted to and approved in writing by the local planning authority. The plan should include arrangements for the upkeep and maintenance of the open areas of the site and details of a complaints procedure and management contact. Reason: In the interests of amenity.
- 15) Car Parking Management Plan: Prior to the first occupation of the dwelling hereby approved a car parking management plan shall be submitted to and approved in writing by the local planning authority. The plan should include arrangements for the management of the car parking area, the electric vehicle charging points and the allocation of spaces. Reason: In the interests of amenity and highway safety.