

<b>2.5 REFERENCE NO – 20/501573/FULL</b>		
<b>PROPOSAL</b> Minor material amendment to SW/01/0623 (Approval of Reserved Matters for Residential Development Pursuant to Outline Planning Permission SW/97/0623) to allow changes to approved site levels and landscaping.		
<b>SITE LOCATION</b> Nichols Transport Lydbrook Close Sittingbourne Kent ME10 1NW		
<b>RECOMMENDATION</b> Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions as set out in the report, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions as may be consequently necessary and appropriate.		
<b>APPLICATION TYPE</b> Major		
<b>REASON FOR REFERRAL TO COMMITTEE</b> The application has been referred to Committee by a local councillor		
<b>CASE OFFICER</b> Andrew Byrne		
<b>WARD</b> Homewood	<b>PARISH/TOWN COUNCIL</b> N/A	<b>APPLICANT</b> Ms Rachael Miller <b>AGENT</b> Jefferson Sheard Architects
<b>DATE REGISTERED</b> 03/06/20	<b>TARGET DATE</b>	
<b>BACKGROUND PAPERS AND INFORMATION:</b> <a href="https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=Q87IXQTYHUC00">https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=Q87IXQTYHUC00</a>		

## 1. SITE LOCATION AND DESCRIPTION

- 1.1 The application site relates to a parcel of land of approximately 1.6 Ha and is roughly rectangular in shape. It is located at the end of Lydbrook Close and was formerly part of a brick works and chalk pit, later used for many years as a haulage depot, which has now closed.
- 1.2 The site is located within the built confines of Sittingbourne and is surrounded by residential development on all sides. Due to levels changes and the former use of the site as a chalk pit, the site lies at a considerably lower level than adjacent properties on Borden Lane, Hobart Gardens and Adelaide Drive. The site is located within a Groundwater Source Protection Zone and is allocated in the Local Plan as a housing site (Policy A20).
- 1.2 The site is being developed for housing under planning permission granted in 1997 and 2001 (see paragraph 2.10 onwards for further detail relating to this and why these historic permissions remain extant).

## 2. PLANNING HISTORY

- 2.1 **SW/97/0623** – outline application for residential redevelopment of the site – Granted 24.06.1998
- 2.2 **SW/01/0623** - Approval of Reserved Matters for Residential Development Pursuant to Outline Planning Permission SW/97/0623. Granted 22.06.2001:
- 2.3 **18/503416/NMAMD** - Non-material amendment to planning permission SW/01/623 - to omit some of the garages as boxed in red on the submitted plan and to remove the proposed tree from the road/'block paved square' outside of plots 6 & 7 circled in red. Approved. Decision Date: 11.10.2018
- 2.4 **18/505356/NMAMD** - Non-material amendment to planning permission SW/01/623, consisting of minor changes to the siting of the proposed dwellings at Lydbrook Close, Sittingbourne. Approved Decision Date: 31.01.2019
- 2.5 **19/500487/NMAMD** - Non-Material Amendment to amend the gable details from a timber Barge board detail to a dry verge detail subject to SW/01/0623. Approved Decision Date: 04.03.2019
- 2.6 **19/500505/NMAMD** - Non-Material Amendment to seek approval for the removal of the brick plinths to House Types C, D, E, F, G, H, J and the Flats subject to SW/01/0623. Approved Decision Date: 05.03.2019
- 2.7 **19/500680/NMAMD** - Non-Material Amendment for minor alteration to position of plots 3 - 5 (north-east corner of site) subject to SW/01/0623. Refused Decision Date: 05.03.2019
- 2.8 **20/500892/NMAMD** - Non-material amendment in relation to planning permission SW/01/0623. Update the reserved matters to include a list of the drawings included within the original planning application. So that the works are carried out in accordance with those drawings. Approved Decision Date: 27.03.2020
- 2.9 **20/504103/NMAMD** - Non-material amendment in relation to planning permission SW/01/623. Inclusion of bin and bike store to rear of flats. As amended by revised site plan received on 27/10/20. Approved Decision Date: 23.12.2020
- 2.10 This site has a rather unusual planning history. Outline planning permission for residential development was granted for the site under SW/97/0623 and reserved matters approval for the erection of 49 dwellings was granted under SW/01/0623 in 2001. Pre-commencement conditions were subsequently discharged and the foundations for one unit were excavated and laid. The works were covered, and the site then subsequently continued its longstanding use as a haulage yard. The council sought and received a legal opinion at the time, which confirmed that the works undertaken had represented a material and lawful commencement of the development, and that the development could be re-started later when the haulage yard use ended. Confirmation was given by letter to the developer at the time that the development had been lawfully commenced.
- 2.11 The haulage yard use ended a few years ago. Although a planning application for a higher density residential development was submitted in 2017, this was subsequently withdrawn following agreement to sell the land to another developer (the current applicant), who intended to carry out the development in accordance with the permissions granted under

SW/97/0623 and SW/01/0623 and which had been commenced on the site as set out above.

- 2.12 Several applications for non-material amendments to the approved development have also subsequently been submitted to and determined by the Council, the majority of which were determined not to materially affect or change the approved scheme.
- 2.13 Development of the site re-commenced in/around 2019. However, during the course of the construction, it became evident that the land levels within the site had been raised, the extent of which were materially different to the levels as approved under the historic planning permissions. It is primarily the effects of this change that requires permission, as well as amendments to landscaping.

### 3. PROPOSED DEVELOPMENT

- 3.1 This application seeks amendments to a reserved matters approval for the erection of 49 dwellings (including a small number of flats) on the site. Outline Planning permission had been granted under SW/97/0623 and subsequently the reserved matters approval under SW/01/0623. Construction of the development is almost complete. The approved scheme is for a range of detached, semi-detached and terraced units, consisting mainly of 2 storey dwellings with some limited 3 storey dwellings, and is being delivered as an affordable housing scheme by Moat Housing.
- 3.2 The current application seeks amendments to the site levels and landscaping of the site and is retrospective. Whilst the general layout and design of the houses has remained essentially as permitted (with some changes approved as non-material amendments), the development has not proceeded in accordance with the approved site levels. These have been raised across the majority of the site with levels progressively increasing in height from north to south, and generally raised by between 300mm and 1800mm. The application seeks the approval of this change as a minor material amendment to the approved scheme. The application states that the primary reason for raising levels has been to accommodate statutory services and drainage for the development – which can only enter via Lydbrook Close, and to enable better structural stability to the banks around the perimeter of the site.
- 3.3 The application also seeks amendments to the landscaping of the site, and it is noted that several trees and shrubs on the raised banks around the edges of the site have been removed. The application submits that this was due to works required to the bank, and the current application includes new landscaping on the slope and at the top of the bank (where appropriate) as well as within the development.

### 4. REPRESENTATIONS

- 4.1 Two rounds of consultation with neighbours have been undertaken. A site notice was also displayed at the site. Full details of representations are available online.
- 4.2 Six letters of objection have been received in objection to the development
- Lack of information to explain changes sought (the applicant subsequently provided more detailed information)
  - Removal of trees along the boundary and impact upon privacy

- Flooding impacts on Lydbrook Close
- Need for fencing / screening on boundaries
- Damage to existing road and footpath
- Additional visual impact of development from land raising

4.3 Former Councillor Truelove referred this application to Planning Committee. Whilst he is no longer a serving councillor, the referral was made when he was a councillor and triggers the requirement to report the application to committee under the Council's Scheme of Delegation.

## 5. CONSULTATIONS

5.1 **Environment Agency** – No objection provided that the surface water strategy remains as agreed previously with the developer. Advise that as agreed, no surface water will discharge into land impacted by contamination, an unsaturated zone of at least 8m will be maintained below the infiltration system, and water entering the infiltration system will pass through pollution prevention measures.

5.2 **KCC Drainage** – No objection raised

5.3 **Natural England:** – Advise that as the application is for a minor material amendment to an existing approved residential development, it would not be reasonable to require a retrospective contribution to the SAMMS strategy.

5.4 **SBC Tree Officer** – No objection to the landscaping proposals

5.5 **Southern Water** – advise that there is an increased risk of flooding arising from foul sewerage flows unless network reinforcement is provided by Southern Water. This will be part funded through the New Infrastructure Charge, and Southern Water's Capital Works programme. Advise that a condition is imposed to ensure occupation of the development is phased to align with network reinforcement.

*Officer note: Conditions relating to foul drainage were not imposed on either the outline or reserved matters approvals previously granted. In the context of this S73 application for minor amendments to the approved reserved matters, it is not considered reasonable to impose the condition requested, given the nature of the changes proposed and that the number of dwellings has not changed.*

## 6. DEVELOPMENT PLAN POLICIES

### 6.1 **Bearing Fruits 2031: The Swale Borough Local Plan 2017**

- ST 1** (Delivering sustainable development)
- ST 3** (The Swale settlement strategy)
- ST 5** (The Sittingbourne area strategy)
- CP 3** (Delivering a wide choice of high-quality homes)
- CP 4** (Good design)
- A 20** (new allocations on sites within existing settlements)
- DM 6** (Managing transport demand and impact)
- DM 7** (Vehicle parking)
- DM 14** (General development criteria)
- DM 19** (Sustainable design and construction)
- DM 28** (Biodiversity and geological conservation)

### 6.2 **Supplementary Planning Guidance (SPG)**

Supplementary Planning Guidance Designing an Extension – A guide for Householders  
Supplementary Planning Document - Swale Parking Standards

## 7. ASSESSMENT

- 7.1 This application is reported to the Committee following referral by a Councillor (serving at the time of referral).
- 7.2 This application has been made under S73 of the Town and Country Planning Act, which specifically relates to the development of land without compliance with conditions previously attached, and is also the mechanism to determine applications for minor material amendments to planning applications. It is important to note that on such applications, the local planning authority can only consider the question of the conditions subject to which planning permission should be granted. Matters relating to the principle of residential development and wider related impacts are already accepted under the terms of the existing outline permission (SW/97/0623) and are not for further consideration under this S73 application which seeks amendments only to the reserved matters approved under SW/01/0623. Likewise, it is only the specific changes sought to the approved reserved matters that should be considered - and this is not an opportunity to re-consider the reserved matters including design and layout in detail – and which remain the same as approved (although some non-material amendments to the scheme have been approved, as set out in the planning history section). The key changes for consideration by the council are to land levels and landscaping. As the surface water drainage has been revised following the levels changes, this is also subject to consideration (as such details were required to be provided with the reserved matters application under the terms of the outline permission).
- 7.3 The original permission was not subject to any S106 Agreement and as such no contributions towards infrastructure, affordable housing or a SAMMS payment in relation to impacts upon the SPA are secured. Again, these matters are not material to the specific

changes sought under the current application and cannot be required or negotiated into the S73 application – given the existing permission was for the same number of dwellings without such infrastructure and obligations. However, it should be noted that the applicant is Moat Homes, a local affordable housing provider, and these units are being constructed as an affordable housing development, albeit outside of any requirement to provide affordable housing through the planning process.

- 7.4 An Appropriate Assessment is included at the end of this report, which confirms that this S73 application would not have any likely impacts beyond those related to the development that already benefits from planning permission.
- 7.5 Considering the proposal that has been submitted, the committee is recommended to carefully consider the following main points:
- The Principle of Development
  - Character and Appearance
  - Living Conditions
  - Landscaping

### **Principle**

- 7.6 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 sets out that the starting point for decision making is the development plan unless material considerations indicate otherwise.
- 7.7 The National Planning Policy Framework (NPPF) provides the national policy context for the proposed development and is a material consideration of considerable weight in the determination of the application. The NPPF states that any proposed development that accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan.
- 7.8 Policy ST 3 of the Swale Local Plan 2017 supports the principle of development within the built-up area boundary of established towns and villages within the borough. Policy A20 specifically allocates this site for housing development. The principle of residential development is clearly established both through the local plan and the planning history of the site, including the ability to continue with the extant permissions granted in 1997 and 2001.

### **Character and Appearance**

- 7.9 The NPPF attaches great importance to the design of the built environment and that design should contribute positively to making places better for people. The Local Plan reinforces this requirement.
- 7.10 The key visual change relates to the effect of raising land levels across much of the site. In this respect, it is important to note that much of the site lies considerably below the levels of adjacent dwellings Adelaide Drive, Hobart Gardens and Borden Lane. The exception to this

is the relationship with Lydbrook Close which is roughly at the same level at the point of access.

- 7.11 The changes in levels that have been undertaken and are now subject to this application have progressively raised land levels across the site from north to south (other than a section on the north west corner where three dwellings have been constructed at a level approximately 700mm lower than the approved level). This has resulted in levels changes ranging from approx. 100mm to “Building B” in the north east corner and adjacent to Lydbrook Close, increasing to raised levels of approximately 1.8 metres to the land and buildings on the southern boundary of the site. However, it can be seen from the drawings that despite such significant changes, the levels remain considerably lower than adjacent land levels and that in wider visual terms, the raised levels do not result in the dwellings being visually prominent or dominant in the surrounding area. On the eastern and southern boundaries, the floor levels of dwellings closest to these boundaries as built are approximately 4-5 metres below the land levels on Borden Lane and Hobart Gardens. Likewise, the dwellings close to the west boundary are approximately 3.6-4 metres below the levels of properties on Adelaide Drive. The levels change on the north boundary is much more subtle and between 100mm-300mm.
- 7.12 It is also considered that arguably the increase in levels has improved the relationship between the new dwellings and the banks on the site boundaries – as these banks are no longer quite as high or substantial in scale in relation to the new development as they were under the approved scheme. Some parts of the bank are now held back with gabion and retaining walls to help manage the levels changes, as well as use of a geocell material designed to be laid over sloping land to stabilize it.
- 7.13 Overall, the levels changes are not considered to be harmful to the wider character and appearance of the area in accordance with the Local Plan 2017 and the NPPF.

### **Living Conditions**

- 7.14 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers.
- 7.15 Despite the site level changes, the dwellings built on the raised levels remain considerably lower than the land levels of surrounding dwellings on the east, south and west boundaries. As set out in the section above, the drawings demonstrate that the floor levels of the dwellings adjacent to the eastern boundary are approximately 4-5m lower than the land levels to rear gardens of adjacent properties on Borden Lane. In addition, these adjacent rear gardens are over 40 metres in length, with boundary enclosures and screening, meaning that views and impacts arising from the development are very limited.
- 7.16 Likewise levels on the west boundary are some 3.6m-4m lower than the rear gardens of adjacent dwellings on Adelaide Drive, albeit that the garden lengths to these properties are more modest at 13 metres. A similar levels difference of 4-5m would be maintained to Hobart Gardens to the south.
- 7.17 Much of the development is two storeys in scale. Given the difference in levels, and the existence of existing boundary fencing and screening, this has not resulted in any material

loss of privacy or light to neighbouring properties. Whilst it is true that the roofs of parts of the new development are more visible above some fence lines, this does not amount to an unacceptable visual impact.

- 7.18 There are some three storey elements within the scheme, notably Block N towards the southern boundary and Block D to the east boundary. In both instances, the effect of the levels changes does increase inter-visibility between the development and existing properties. In the case of Block D, the top floor windows enable some limited views towards the rear of a small number of dwellings on Borden Lane. This would be at a distance in excess of 50 metres, which is not considered to be unacceptable (considering that privacy distances applied are typically 21m). Furthermore, landscaping is proposed to further reduce this impact.
- 7.19 In the case of Block N, the top floor would face some dwellings on Hobart Gardens at a distance of approx. 33 metres. Again, this is not considered to be unacceptable, and landscaping is proposed on the bank to mitigate this further.
- 7.20 The difference in levels changes between the approved scheme and the “as built” scheme on the north boundary with existing dwellings on Lydbrook Close is much more subtle, with the differences being between 100mm and 300mm. The dwellings on the west side of Lydbrook Close are again sited progressively at a higher level than the application site, whereas the dwellings on the east side of Lydbrook Close are at a similar level. The closest existing dwelling at 21 Lydbrook Close is sited 9.4, and 16.5m respectively from buildings A and B within the development site which are both two storey dwellings. Given this distance and the orientation of these buildings, the minor increase in height arising from the levels changes is not considered to be unacceptable.
- 7.21 As such, the development is not considered to cause any unacceptable impacts on living conditions, and would accord with Policy DM14 of the Local Plan.

### **Landscaping**

- 7.22 The proposed landscaping includes tree, hedge and shrub planting within the development layout, a scheme of landscaping to the sloped embankments and, where appropriate, further landscaping at the top of the bank, as well as hard landscaping details including boundary enclosures and surface treatments. The soft landscaping proposals have been designed for the sloping land and a maintenance route has been devised to ensure that the landscaping can be properly managed. The landscaping would further soften and screen the development from surrounding neighbouring properties. The Council's Tree Officer is satisfied with the landscaping details proposed, and these are considered acceptable.

### **Drainage**

- 7.23 Although not part of the list of reserved matters, the outline planning permission granted under SW/97/0623 required details of surface water drainage to be submitted with the reserved matters application. The changes to site levels have brought about amendments to the surface water drainage scheme previously approved under SW/97/0623.



7.24 The surface water drainage scheme as installed is a soakaway system including the installation of a cellular storage system under the area of open space. This system is acceptable to both the KCC Drainage team and the Environment Agency.

## 8. CONCLUSION

8.1 The minor material amendments are to the reserved matters previously approved under SW/01/0623 and specifically to levels changes and landscaping, and related changes to the drainage proposals. Taking into account that the development of 49 dwellings has the benefit of an extant planning permission and that this application is only seeking the specific changes above, the development is considered acceptable and in accordance with the local plan. As such, it is recommended that planning permission be granted.

## 9. CONDITIONS

- (1) The development hereby permitted shall be carried out in accordance with the following approved plans: 04, 05, 06, 07, 08, 09, 10, 11, 12 Rev A, 13, 19, 1292-JSA-XX-XX-DR-A-03201 Rev P1, 1292-JSA-XX-XX-DR-A-91201 Rev C2, 1292-JSA-XX-XX-DR-A-02004 Rev C16, 1292-JSA-XX-XX-DR-A-02005 Rev C5, 1292-JSA-XX-XX-DR-A-02501 Rev C11, 1292-JSA-XX-XX-DR-A-02502 Rev C10, 1292-JSA-XX-XX-DR-A-02503 Rev C10, 1292-JSA-XX-XX-DR-A-02504 Rev C10, S16-SFL-EX-00-DR-L-0501 P10, S16-SFL-EX-00-DR-L-0502 P02, 5366-D1 Rev A, 5366-D10 Rev A, 5366-D11 Rev A, 5366-D4 Rev A.

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

- (2) The external finishing materials to be used on the dwellings hereby permitted shall be as approved by the local planning authority under 18/506405/SUB.

Reason: In the interests of visual amenity.

- (3) The hard and soft landscape works shall be carried out in accordance with the approved details as shown on drawings 1292-JSA-XX-XX-DR-A-02004 Rev C16 (for hard and soft landscaping within the development layout), 1292-JSA-XX-XX-DR-A-02005 Rev C5, 1292-JSA-XX-XX-DR-A-02501 Rev C11, 1292-JSA-XX-XX-DR-A-02502 Rev C10, 1292-JSA-XX-XX-DR-A-02503 Rev C10, 1292-JSA-XX-XX-DR-A-02504 Rev C10, S16-SFL-EX-00-DR-L-0501 P10 (for landscaping on the banks around the edges of the site), S16-SFL-EX-00-DR-L-0502 P02. Hard landscaping shall be completed in accordance with the approved details prior to first occupation of the development. Soft landscaping shall be completed in accordance with the approved details within 6 months following the completion of the development or occupation of the first dwelling (whichever is sooner). Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within ten years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (4) The proposed estate road, footways, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, access, carriage gradients as appropriate, shall be constructed and laid out in accordance with the details approved by the Local Planning Authority under 18/505321/SUB and 18/505486/SUB.

Reason: To ensure that the roads are constructed and laid out in a satisfactory manner.

- (5) The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling, before it is occupied, shall be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.

Reason: To ensure the development is served by an adequate means of access.

- (6) The development hereby approved shall not be brought into use until that part of the service road which provides access to it has been constructed in accordance with the approved plans.

Reason: To ensure that the development is served by an adequate means of access.

- (7) Unless specifically shown on the approved plans, no walls or fences shall be erected fronting onto any road, square, footway or other open area without the express consent of the local planning authority.

Reason: In the interests of visual amenity

### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), September 2023 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

### **Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.**

This Appropriate Assessment (AA) has been undertaken without information provided by the applicant.

The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

The proposal therefore has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites.

The recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, *"it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site."* The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group.

NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG), and that such strategic mitigation must be in place before the dwellings are occupied.

However, this application has been made under S73 of the Planning Act to make minor material amendments to an existing permitted scheme for 49 dwellings. Whilst the permitted scheme does not make any contributions to impacts upon the SPA, the nature of the amendments sought under the S73 application would not be likely to increase any impacts or pressure on the SPA over and above those that would occur from the existing permission. Based on this and the correspondence with Natural England in relation to this application, it is concluded that off-site mitigation is not required.

