

**APPENDIX A**

<b>2.3 REFERENCE NO 24/502460/FULL</b>		
<b>PROPOSAL</b> Section 73 - Application for Variation of Condition 5 (to allow change of the reduction in Dwelling Emission Rate from 50% to 25%) pursuant to 21/501143/FULL		
<b>SITE LOCATION</b> 34 Key Street Sittingbourne Kent ME10 1YS		
<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> Section 73 - Application for Variation of Condition		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Councillor Baldock referred the application to Committee		
<b>CASE OFFICER</b> Guy Martin		
<b>WARD</b> Borden And Grove Park Ward	<b>PARISH/TOWN COUNCIL</b> Borden Parish Council	<b>APPLICANT</b> Mr S Hafeez  <b>AGENT</b> Blackburn Architects Limited
<b>DATE REGISTERED</b> 19.06.24	<b>TARGET DATE</b> 23.08.24	
<b>BACKGROUND PAPERS AND INFORMATION:</b>  Documents referenced in report are as follows: -  All drawings submitted: Part La Overview Report Plot 1 Compliance Report Plot 2 Compliance Report Plot 3 Compliance Report Plot 4 Compliance Report  The full suite of documents submitted pursuant to the above application are available via the link below: -  <a href="https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=SF295UTYKU100">https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=SF295UTYKU100</a>		

1. SITE LOCATION AND DESCRIPTION

- 1.1 The site is located to the rear of 34 Key Street, Sittingbourne and was previously used as a tool hire shop comprising of a yard with outbuildings to the rear.
- 1.2 The site is located within the built confines of Sittingbourne and to the east of the Key Street roundabout in a predominantly residential area. The site adjoins the Pine Lodge care home and is reached by an existing access off the A2.

**APPENDIX A**

- 1.3 The site is now comprised of the partially built residential development as originally approved under ref. 20/500367/FULL and amended via ref. 21/501143/FULL as set out in the Planning History section below.

**2. PLANNING HISTORY**

- 2.1 24/502378/FULL – Application under consideration for Section 73 - Application for Minor Material Amendment to approved plans condition 2 (to allow increase in the height of the building comprising plots 1, 2 and 3) pursuant to 21/501143/FULL.
- 2.2 24/501304/SUB - Submission of details approved on 16.04.2024 to discharge condition 7.1 - Contaminated Land Assessment and 7.2 - Remediation Method Statement, Subject to 20/500367/FULL.
- 2.3 22/500723/FULL – Application withdrawn on 24.06.2024 for Section 73 - Application for removal of condition 5 (50% reduction in Dwelling Emission Rate) pursuant to 21/501143/FULL for - Section 73 - Application for Minor Material Amendment to approved plans condition 2 (addition of dormer windows to units 2 and 3) pursuant to 20/500367/FULL for - Demolition of existing storage buildings and erection of 1 no. two bed and 3 no. one bed dwelling units with associated parking turning and amenity space as amended by drawings BA-2008-P-20 Revision A and BA-2008-P-40 Revision A.
- 2.4 21/501143/FULL – Planning permission granted on 28.07.2021 for Section 73 - Application for Minor Material Amendment to approved plans condition 2 (addition of dormer windows to units 2 and 3) pursuant to 20/500367/FULL for - Demolition of existing storage buildings and erection of 1 no. two bed and 3 no. one bed dwelling units with associated parking turning and amenity space as amended by drawings BA-2008-P-20 Revision A and BA-2008-P-40 Revision A.
- 2.5 20/500367/FULL – Planning permission granted on 26.05.2020 for Demolition of existing storage buildings and erection of 1no. two bed and 3no. one bed dwelling units with associated parking turning and amenity space as amended by drawings BDS-1624-P04 Rev B, BDS-1624-P02 Rev B and BDS-1624-P03 Rev D.

**3. PROPOSED DEVELOPMENT**

- 3.1 This application seeks planning permission to vary condition 5 (to allow the change of the reduction in Dwelling Emission Rate from 50% to 25%) pursuant to approved application 21/501143/FULL. The previous approvals have granted planning permission for four dwellings on this site in two separate buildings.
- 3.2 Condition 5 of 21/501143/FULL is worded as follows:

*The dwelling units hereby approved shall be constructed and tested to achieve the following measure:*

*At least a 50% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended);*

*No development shall take place until details of the measures to be undertaken to secure compliance with this condition have been submitted to and approved in writing*

**APPENDIX A**

*by the local planning authority. The development shall be carried out in accordance with the approved details.*

*Reason: In the interest of promoting energy efficiency and sustainable development.*

**4. CONSULTATION**

4.1 One round of consultation has been undertaken, during which letters were sent to neighbouring occupiers and a notice was displayed at the application site. Full details of representations are available online.

4.2 No representations were received from neighbours.

4.3 **Borden Parish Council** did not respond.

4.4 **Cllr Mike Baldock** (one of the Ward Councillors) requested that the application be reported to Planning Committee *'as it goes against policy and Members might have objections.'*

**5.0 REPRESENTATIONS**

5.1 **KCC Archaeology** – Did not wish to comment on the application.

5.2 **KCC Minerals and Waste** – The County Council has no land-won minerals or waste management capacity safeguarding objections or comments to make regarding this particular application.

5.3 **KCC Rights of Way** – Had no comment to make.

5.4 **Natural England** - No response received.

5.5 **SBC Climate Change Officer** - No objection to the 25% reduction.

5.6 **SBC Design / Conservation** – No comment.

5.7 **Mid-Kent Environmental Health** - No objection.

**6.0 DEVELOPMENT PLAN POLICIES****6.1 Bearing Fruits 2031: The Swale Borough Council Local Plan 2017**

DM14 General development criteria

DM19 Sustainable Design and Construction

**7.0 ASSESSMENT**

7.1 This application is reported to the Committee because Councillor Baldock has called the item to Committee for the reasons set out in paragraph 4.4 above. Considering these

**APPENDIX A**

comments and the scheme that has been submitted the Committee is recommended to consider the following points:

- Principle of development
- Sustainability / Energy

**Principle**

- 7.2 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.
- 7.3 The National Planning Policy Framework 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.
- 7.4 This application seeks a variation to condition 5 of the planning permission granted under ref. 21/501143/FULL. The relevant section of the Act (Section 73) that this application has been submitted under is very clear in that “On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted”. As a result, the only consideration as part of this application is whether the variation, as set out in the proposal section above is acceptable. Therefore, the principle of developing dwellings on this site has been accepted and is not able to be considered further.

**Sustainability / Energy**

- 7.5 Policy DM19 of the Swale Local Plan states that development proposals will include measures to address and adapt to climate change in accordance with national planning policy and, where appropriate, will incorporate amongst other matters:
- Use of materials and construction techniques which increase energy efficiency and thermal performance, and reduce carbon emissions in new development over the long term unless considerations in respect of the conservation of heritage assets indicate otherwise;
  - Design of buildings which will be adaptable to change and reuse over the long term and which include features which enable energy efficient ways of living (e.g. adequate drying space, cycle storage, home working and good daylighting).
- 7.6 The NPPF states that the planning system should support the transition to a low carbon future in a changing climate and should help to shape places in ways that contribute to radical reductions in greenhouse gas emissions.
- 7.7 The Council also has a document entitled “*Guidance for complying with the climate change planning condition to reduce operational carbon of new dwellings in Swale by 50%*”, and the Council’s declaration of a Climate and Ecological Emergency has been confirmed by a Planning Inspector (in regards to the appeal related to ref. 18/503135/OUT – Land at Barton Hill Drive) as being a material planning consideration.

**APPENDIX A**

However, the same Inspector also commented that the condition suggested by the Council in respect of that development (which was a staged approach requiring dwellings to be built with an increasing reduction in dwelling emissions dependant on when they were built, starting at 50%) not to be supported by local or national policies. This was effectively the same position that the Secretary of State took when considering the appeal related to ref. 17/505711/HYBRID – Land at Wises Lane, in saying that the 50% condition was not supported by local or national policy. The same local policy applies now and the NPPF which has been revised since this decision, does not set a target figure.

- 7.8 In addition to the above, the matter of imposing the condition requiring a 50% reduction in dwelling emissions against the Building Regs was directly addressed by an Inspector in respect of an appeal related to a development at Land to the rear of 25-29 Station Street, Sittingbourne (ref. 21/503221/OUT). Here the Inspector stated:

*“The Council seeks at least a 50% reduction in dwelling emission rates compared to the Target Emission Rates required under the Building Regulations. This is a laudable response to climate change but the Framework is clear that any local requirements should reflect the Government’s policy for national technical standards. Such a condition therefore goes beyond national policy. Policy DM19 refers to sustainable design and construction in generic terms and so this specific requirement is not part of the development plan. As such, this stipulation is not justified.”*

- 7.9 In this case, construction work on the proposal has started with the development having been built up to the second-floor level. Due to wider concerns with the building not being built in accordance with the approved drawings, the Council have instructed the development to stop, whilst these matters are regularised. In terms of the reduction in dwelling emission rates, the applicant has advised that there is insufficient space to achieve a 50% reduction in emissions due to the design of the roof limiting the capacity for solar panels and that there is insufficient space on site for ground source heat pumps and that the cost would make the scheme unviable.
- 7.10 The applicant advises that due to the tight plot arrangement, dwelling sizes and roof configuration that the applicant is unable to achieve a 50% reduction in the Dwelling Emission Rate and has provided evidence to show that a 25% reduction in the Dwelling Emission Rate can be met through an increased fabric performance and a sustainable heating, ventilation and air conditioning systems and also the use of PV panels.
- 7.11 The applicant’s agent has confirmed that works started on site on the 20<sup>th</sup> February 2022 which would require the developer to meet the 2013 Building Control regulations.
- 7.12 Therefore, whilst it is noted that a 25% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended) would result in a reduction in the rate originally set out within Condition 5, it would still result in a reduction in emission rates above that set by 2013 building control regulations.
- 7.13 The key policy in the determination of this application is DM19, which does not set a target figure and refers to development proposals reducing carbon emissions over the long term. Ultimately, the scheme would achieve this via the methods set out above and the adopted policy would outweigh the material consideration in terms of the Council’s Climate and Ecological Emergency. Due to the circumstances of the case the

**APPENDIX A**

Council's Climate Change Officer was consulted on the proposal and had no objections to the proposed variation to the condition.

**Conclusion**

- 7.14 In view of the adopted policies and the way that this matter has been dealt with on various occasions by Planning Inspectors / Secretary of State, it is recommended that condition 5 be varied in accordance with the amendment being sought and planning permission is granted. As this is a S.73 application the other conditions imposed on 21/501143/FULL are repeated below with the following updates.
- 7.15 Firstly, the time limit condition is no longer necessary as the development has commenced. As a result, the condition which is the subject of this application, originally numbered 5 is now numbered 4 as below. Further to this, the approved drawing condition (1 below) has been amended in line with the recommendation related to the application submitted under ref. 24/50278/FULL which also appears on this agenda. In the event that separate application was refused and this application approved, then that condition would be required to be altered back to that as originally imposed on 21/501143/FULL. The same applies to the drawing number listed in what is now condition 2 below, which, if that separate application is refused would need to refer back to the original. Finally, condition 7 below related to contamination has been altered to reflect the details which have subsequently been submitted and approved.

**CONDITIONS**

(1) The development hereby permitted shall not be carried out otherwise than in complete accordance with drawings BA-2008-P02, BA-2008-P20 Revision B & BA-2008-P40 Revision B.

(2) The facing materials used on the development hereby approved shall accord with the specification set out on approved drawing BA-2008-P20 Revision B.

Reason: In the interests of the amenities of the area.

(3) Notwithstanding the approved drawings the rooflights to Units 2 and 3 shall have a cill height of at least 1.7m above finished floor level.

Reason: In the interests of residential amenity.

(4) The dwelling units hereby approved shall be constructed to achieve at least a 25% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended) as set out within the details submitted.

Reason: In the interest of promoting energy efficiency and sustainable development.

(5) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwelling units shall not be occupied unless the notice for that dwelling unit of the potential consumption of water per person per day required by the Building Regulations has been given to the Building Control Inspector.

Reason: In the interests of water conservation and sustainability.

## APPENDIX A

- (6) Prior to first occupation of any dwelling unit hereby approved, at least one electric vehicle charging point shall be installed and made ready for use close to the parking areas within the site as shown on drawing BA-2008-P02 for use of residents of the dwelling units hereby approved.

Reason: In the interests of promoting sustainable development.

- (7) The development hereby permitted shall deal with the risks associated with contamination as set out within the remediation method strategy as submitted and approved under ref. 24/501304/SUB.

A Closure Report shall be submitted upon completion of the remediation works. The closure report shall include full verification details. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean.

Any changes to these components will require the written consent of the Local Planning Authority. The scheme shall thereafter be implemented as approved.

Reason: To ensure any land contamination is adequately dealt with.

- (8) The areas shown on drawing BA-2008-P02 for car parking and cycle storage space shall made available prior to first occupation of any dwelling unit hereby approved, and these facilities shall be kept available for such use at all times. 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, shall be carried out on the land so shown or in such a position as to preclude vehicular access to the car parking spaces referred to above.

Reason: Development without adequate provision for the parking or garaging of cars is likely to lead to car parking inconvenient to other road users.

- (9) Upon completion, no further alterations or extension of the approved dwelling units, whether permitted by Classes A, B, C or D of Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order) or not, shall be carried out.

Reason: In the interests of the amenities of the area.

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

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), 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.

**APPENDIX A**



**APPENDIX A**

