

# TONBRIDGE & MALLING BOROUGH COUNCIL



## EXECUTIVE SERVICES

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### Chief Executive

Julie Beilby BSc (Hons) MBA

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West Malling (01732) 844522

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**NB - This agenda contains proposals, recommendations and options. These do not represent Council policy or decisions until they have received proper consideration through the full decision making process.**

Contact: Committee Services  
[committee.services@tmbc.gov.uk](mailto:committee.services@tmbc.gov.uk)

8 April 2014

To: MEMBERS OF THE AREA 2 PLANNING COMMITTEE  
(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the Area 2 Planning Committee to be held in the Civic Suite, Gibson Building, Kings Hill, West Malling on Wednesday, 16th April, 2014 commencing at 7.30 pm. Deposited plans will be available for Members' inspection for half an hour before the start of the meeting.

Yours faithfully

JULIE BEILBY

Chief Executive

## A G E N D A

### PART 1 - PUBLIC

1. Apologies for Absence
2. Declarations of Interest

3. Minutes 5 - 8

To confirm as a correct record the Minutes of the meeting of Area 2 Planning Committee held on Wednesday 5 March 2014

**Matters for Recommendation to Council**

4. Diversion of Restricted Byway MR221A, London Golf Club, South Ash Manor, Ash 9 - 16

**Decisions to be taken by the Committee**

5. Development Control 17 - 20  
Introduction and Glossary
6. TM/13/03558/FL and TM/13/03557/FL - The White Swan, 35 Swan Street, West Malling 21 - 38
7. TM/14/00234/FL - Blackmans, Trottiscliffe Road, Addington 39 - 52
8. TM/13/03625/FL - Cedar Bungalow, Church Lane, Trottiscliffe 53 - 68
9. TM/13/01952/FL - Mill Yard, 26 Swan Street, West Malling 69 - 100
10. Urgent Items

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

**Matters for consideration in Private**

11. Exclusion of Press and Public

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**PART 2 - PRIVATE**

12. Urgent Items

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

## **MEMBERSHIP**

Cllr Mrs F A Kemp (Chairman)  
Cllr Mrs E M Holland (Vice-Chairman)

Cllr Mrs J A Anderson  
Cllr M A C Balfour  
Cllr C Brown  
Cllr F R D Chartres  
Cllr M A Coffin  
Cllr S R J Jessel  
Cllr Mrs S Luck  
Cllr B J Luker

Cllr Mrs S Murray  
Cllr T J Robins  
Cllr H S Rogers  
Cllr A G Sayer  
Cllr Miss J L Sergison  
Cllr Miss S O Shrubsole  
Cllr M Taylor

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## TONBRIDGE AND MALLING BOROUGH COUNCIL

### AREA 2 PLANNING COMMITTEE

Wednesday, 5th March, 2014

**Present:** Cllr Mrs F A Kemp (Chairman), Cllr Mrs E M Holland (Vice-Chairman), Cllr M A C Balfour, Cllr C Brown, Cllr F R D Chartres, Cllr S R J Jessel, Cllr Mrs S Luck, Cllr B J Luker, Cllr Mrs S Murray, Cllr T J Robins, Cllr H S Rogers, Cllr Miss J L Sergison, Cllr Miss S O Shrubsole and Cllr M Taylor

Councillors O C Baldock and N J Heslop were also present pursuant to Council Procedure Rule No 15.21.

Apologies for absence were received from Councillors Mrs J A Anderson, M A Coffin and A G Sayer

### PART 1 - PUBLIC

#### **AP2 14/1 DECLARATIONS OF INTEREST**

Councillor Mrs Luck declared an Other Significant Interest related to application TM/13/01952/FL (Mill Yard, 26 Swan Street, West Malling) as the development was adjacent to land in her ownership. She withdrew from the meeting during the discussion of this item.

#### **AP2 14/2 MINUTES**

**RESOLVED:** That the Minutes of the meeting of the Area 2 Planning Committee held on 11 December 2013 be approved as a correct record and signed by the Chairman.

### DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

#### **AP2 14/3 DEVELOPMENT CONTROL AND SUPPLEMENTARY REPORTS**

Decisions were taken on the following applications subject to the pre-requisites, informatives, conditions or reasons for refusal set out in the report of the Director of Planning, Housing and Environmental Health or in the variations indicated below. Any supplementary reports were tabled at the meeting.

Members of the public addressed the meeting where the required notice had been given and their comments were taken into account by the Committee when determining the application. Speakers are listed under the relevant planning application shown below.

**AP2 14/4 TM/13/01464/FL - ROTARY HOUSE, NORMAN ROAD, WEST MALLING**

Erection of a conservatory at Rotary House, Norman Road, West Malling.

**RESOLVED:** That the application be

DEFERRED for officers to seek an alternative scheme to overcome the suggested reasons for refusal, specifically with regard to the provision of alternative/additional parking.

[Speaker: Mr A Eddy – member of the public]

**AP2 14/5 TM/13/01382/FL - CROWN POINT NURSERY, SEVENOAKS ROAD, IGHTHAM**

Erection of new agricultural/nursery dwelling and demolition of existing buildings at Crown Point Nursery, Sevenoaks Road, Ightham.

**RESOLVED:** That the application be

APPROVED subject to:

- (1) The applicant entering into a satisfactory Planning Obligation (either a legal agreement or unilateral undertaking) to tie the occupation of the new dwelling to the operation of the agricultural unit (Crown Point Nursery); and
- (2) in accordance with the submitted details, conditions, reasons and informatives set out in the report of the Director of Planning, Housing and Environmental Health.

[Speakers: Ightham Parish Council (Mr J Edwards); Dr R Wickham – agent]

**AP2 14/6 TM/13/03329/FL - FOUR SEASONS PARK, LABOUR IN VAIN ROAD, WROTHAM**

Removal of condition 1 of planning permission TM/83/376 (as last varied by permission TM/94/0931/FL) to allow year round use of the whole caravan park at Four Seasons Park, Labour In Vain Road, Wrotham.

**RESOLVED:** That the application be

APPROVED in accordance with the submitted details, conditions, reasons and informatives set out in the report of the Director of Planning, Housing and Environmental Health; subject to:

- (1) Amended Reason to Condition:

1. The caravans shall be occupied for holiday purposes only and not as any person's sole or main place of residence.

Reason: In order to ensure that the approved holiday accommodation is not used for unauthorised permanent residential occupation and is only used for holiday purposes.

[Speakers: Wrotham Parish Council (Mr H Rayner); Stansted Parish Council (Mr H Bott) and Mr M Taylor – agent]

**AP2 14/7 TM/13/03598/FL - 1 MILL COTTAGES, MAIDSTONE ROAD, PLATT**

Erection of one 3 bedroom (attached) dwelling with shared access and parking and two storey extension to existing house at 1 Mill Cottages, Maidstone Road, Platt.

**RESOLVED:** That the application be

DEFERRED for a Members' Site Inspection

[Speakers: Platt Parish Council (Mrs P Darby); Mr P Hunt – member of the public and Mr S Hiscocks (AHP Architects and Surveyors) – agent]

**AP2 14/8 TM/13/01952/FL - MILL YARD, 26 SWAN STREET, WEST MALLING**

Development comprising 4 no. two bedroom town houses and one retail unit plus associated parking and external works at Mill Yard, 26 Swan Street, West Malling.

**RESOLVED:** That the application be

DEFERRED for officers to investigate the strategy for management of construction traffic.

**AP2 14/9 URGENT ITEMS**

In accordance with Council Procedure Rules the Chairman decided that due to special circumstances the following item of business was urgent.

**AP2 14/10 IMPLEMENTATION OF PLANNING PERMISSION FOR 171 DWELLINGS AT ISLES QUARRY WEST**

The main and supplementary reports of the Director of Planning, Housing and Environmental Health provided an update on the implementation and monitoring of the development at Isles Quarry West, Borough Green.

Members were reminded that the planning permission that had been granted was subject to a number of key controlling conditions and

accompanied by a S106 agreement. It was reported that perceived incidents of non-compliance with aspects of the approved scheme had been drawn to the Borough Council's attention. In view of this and the current progress of works it was considered appropriate to draw these matters to the attention of the Committee. The areas of concern were set out and addressed in the reports. Members were advised that the Borough Council monitored the site appropriately and this would continue together with a continuing dialogue with all parties concerned.

Following continuing investigations into these issues it was recommended that there was no reason for more formal intervention at this stage.

After careful consideration and serious discussion of the concerns raised, as set out in the main and supplementary reports, Members recognised that there had been a constructive response to locally expressed concerns and that officers had been active in investigating those concerns. In addition, Members were satisfied that appropriate measures were in place to address any perceived concerns and had every confidence in officers and other experts.

### **MATTERS FOR CONSIDERATION IN PRIVATE**

#### **AP2 14/11 EXCLUSION OF PRESS AND PUBLIC**

There were no items considered in private.

The meeting ended at 10.00 pm



## TONBRIDGE & MALLING BOROUGH COUNCIL

### AREA 2 PLANNING COMMITTEE

16 April 2014

#### Report of the Director of Central Services

#### Part 1- Public

#### For Recommendation to Council

#### **1 DIVERSION OF RESTRICTED BYWAY MR221A, LONDON GOLF CLUB, SOUTH ASH MANOR, ASH**

1.1 Members will recall that this matter was the subject of a report to the Area 2 Planning Committee on 14 August 2013 and it was recommended to Council that approval be given for the Kent County Council to draft and advertise the Diversion Order under section 257 of the Town and Country Planning Act 1990. Approval was given by Council on 5 December 2013.

1.1.1 Consultations have been carried out by the Kent County Council as required by the 1990 Act. It has been necessary to send out two consultations, as a number of objections were received to the first proposal (diversion of MR221A and SD257/MR234). Following discussions with the applicant, the objectors and after discussing various options a new proposal was put forward. The main changes are: - a new alignment is proposed for the diversion of Restricted Byway MR221A, the diversion of SD257/MR234 is not being taken forward and it is proposed to create a new length of footpath and bridleway. Whilst the creation of the new length of footpath (as shown at Appendix A, between Points A-B) and bridleway (as shown at Appendix A, between the points X-F-G) will be processed by the County Council under section 26 of the Highways Act 1980, for completeness reference will be made to them throughout this report. The following details the responses to the second consultation.

#### **1.2 Views of consultees**

1.2.1 County Members, Mrs Sarah Hohler and Mr David Brazier were consulted but no responses were received.

1.2.2 Parish Council: Ash-cum-Ridley Parish Council is satisfied with the current proposals for Restricted Byway MR221A and the creation of a public footpath and bridleway. West Kingsdown Parish Council objected to the first consultation but no response was received to the second proposal. No response was received from Stansted Parish Council.

- 1.2.3 District/Borough Councils: Councillor Ann Kemp has no objections to the proposed diversion. Sevenoaks District Councillor Alan Pett made a number of comments regarding the proposed diversion. He queried how the planting clusters that are proposed along the eastern side of the route can be relied upon as a safety measure, to protect public rights of way users, when there are gaps along the length. He is reluctant to see the new route ending up as a tree lined tunnel stating that one of the joys of the existing route is the open nature and vistas it offers. He asked if the driving range could be re-aligned so that its axis is more north easterly, which would address the safety issue more effectively. He does state that he is reasonably content with the proposed re-routing as long as the planting is set back 2.5 metres from the edge of the path to prevent encroachment. Councillors Cameron and Carol Clark endorsed the comments made by Cllr Pett.
- 1.2.4 User Groups: The British Horse Society/British Driving Society stated that “the proposals for diverting MR221A and adding a new bridleway look excellent and are a really nice addition to the network”. The only comment they made was with reference to the proposed equestrian gates on the new length of bridleway. The representative for the Ramblers has requested gaps within the proposed planting along the eastern side of the route so that walkers can still enjoy views from the path and an enclosed corridor is not created
- 1.2.5 Statutory undertakers: Southern Gas Networks stated that there is a high pressure pipeline in close proximity to the site; however on inspecting the plan, the pipeline will not be affected by the proposal. No other objections have been received.

### **1.3 Legal Tests –Town and Country Planning Act 1990**

- 1.3.1 Section 257 of the Town and Country Planning Act 1990 “The 1990 Act” states that “a competent authority may by Order, authorise the stopping up or diversion of any footpath, bridleway or restricted byway if it is satisfied that it is necessary to do so in order for development to be carried out in accordance with planning permission granted under Part III of the Town and Country Planning Act 1990” or “if it is satisfied that an application for planning permission has been made under Part 3 of that Act and if the application were granted it would be necessary to authorise the stopping up or diversion of the footpath, bridleway or restricted byway...to enable development to be carried out” The competent authority in this instance is the Tonbridge and Malling Borough Council and the Order will need to be sealed by the Borough Council.
- 1.3.2 To satisfy the test there must be conflict between the development and the right of way. Section 55 of the 1990 Act defines development as “the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of a material change in the use of any buildings or other land.
- 1.3.3 Although the above is the only test, the Secretary of State, should the matter go before him, has discretionary powers to balance the need for development against

the effect on the public rights and enjoyment of the highway. The planning authority must therefore act in a quasi-judicial manner to consider the relevant merits of any application.

- 1.3.4 In addition consideration should be given to the case of *Vasiliou v. Secretary of State and Others [1991]* where the Court of Appeal held that the effect an Order would have on those entitled to the rights which would be extinguished had to be taken into account.
- 1.3.5 Circular 1/09 – published by DEFRA - contains the following advice to planning authorities: “The local planning authority should not question the merits of the planning permission when considering whether to make or confirm an order, but nor should they make an order purely on the grounds that planning permission has been granted. That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order”.

## 1.4 Discussion

- 1.4.1 As stated above, the proposed new practice facility will extend across the line of MR221A and it is therefore considered essential, in order to enable development to take place, to divert MR221A away from this new facility. Consent for the development was granted as a result of the planning application TM/09/03149/FL. The proposed diversion is shown on the plan at Appendix A to this report. Stopping up MR221A and the provision of an equally pleasant and safe alternative route will eliminate the potential risk presented to users of MR221A as a result of the practice facility. Furthermore the creation of a new length of bridleway and footpath will improve the network in the local area.
- 1.4.2 It was intended to maintain the existing junction with South Ash Lane (at point C on Appendix A); however a view was expressed during the consultation process that access to Public Footpath SD257 should be provided from the proposed bridleway. The applicants have agreed with this view and in order to comply it has been agreed to extend Restricted Byway MR221A south by a further 57 metres. This will therefore provide access to South Ash Lane, the public footpath and the proposed bridleway. This further extension is shown between the points C and X at Appendix A.
- 1.4.3 The length of Restricted Byway MR221A to be diverted commences at its junction with South Ash Road (point C on the plan) and runs for approximately 302 metres in a generally east south easterly direction to its connection with Byway MR200 (point D on the plan). The new length of Restricted Byway MR221A commences

at a new connection with South Ash Road, approximately 57 metres south of its existing connection (point X on the plan) and runs for approximately 451 metres in a generally north easterly through east north easterly direction to a new connection with Byway MR200 (point E on the Plan).

- 1.4.4 The new length of path will have a width of 4.0 metres and will have a geotextile base to ensure that there is no risk of the surfacing works moving under use. Then approximately 100mm of sub base with 35mm of fines will complete the surfacing. In addition to this a number of soak aways will be installed along the route to ensure that it drains adequately in inclement weather. It is proposed to install a Kent Carriage Gap at the southern end of the route (point X on the plan).
- 1.4.5 Concerns were raised regarding the proposed planting along the eastern edge of the path, with some consultees requesting that the planting is set back 2.5 metres from the edge of the path and that there are gaps in the planting so as to allow views from the path. It was also suggested that the practice facility could be realigned. In response to this, the vegetation planting across the site is subject to an imposed condition as part of the planning permission granted for the practice facility and the 9 hole golf course. It is not possible to realign the practice facility as this would require a whole new planning application which would be an expensive process. However, the screening along the proposed route E-C-X will be in clusters and will therefore allow light into the route whilst also providing views out, which in effect will stop the route from becoming a tree lined tunnel. In terms of the location of the planting, ordinarily where a route is to be bounded on either side, the County Council would ask for an additional 0.5 metres to allow for vegetation overgrowth. A 2.5 metre gap between the route and the vegetation is deemed to be excessive and would encroach too far into the practice facility. However, as a compromise the applicants are prepared to set the vegetation back 1.0 metre from the defined width which will be more than sufficient to allow for growth.
- 1.4.6 Concerns were raised in relation to the additional walking/riding, which would be necessary if the diversion were successful, to reach Byway MR200 and Footpaths MR221 and MR199. These comments were taken on board and after in-depth discussions it is proposed that the County Council takes concurrent actions, to create by way of a Public Path Creation Order under the Highways Act 1980, a new length of public footpath between the points A-B and a new length of bridleway between the points X-F-G. The new length of footpath will benefit walkers wishing to head south, to connect with the newly created bridleway, on the eastern side of South Ash Road and the new length of bridleway will improve the network substantially and in conjunction with MR221A and MR200 provide a circular route for pedestrians and equestrians. This will also result in less road walking thereby benefitting users.
- 1.4.7 Overall, it is considered that there will not be a negative effect on the local public rights of way network as a result of the diversion.

1.4.8 An assessment under the Equality Act 2010 has been undertaken and there will be no adverse impact on the use of the affected path as a result of the diversion.

1.4.9 Kent County Council is satisfied that the legal tests are met in all respects in that the Borough Council has granted planning consent under Part III of the Town and Country Planning Act 1990 for the development of the site, and that Restricted Byway MR221A would be adversely affected by such development.

## **1.5 Financial and Value for Money Considerations**

1.5.1 The costs incurred by the Kent County Council will be recovered from the London Golf Club and there will be no cost to the Borough Council.

## **1.6 Risk Assessment**

1.6.1 The proposed diversion is considered to be necessary to allow the development proposal to be implemented and to pose acceptable changes that will improve the public rights of way network in this location.

## **1.7 Equality Impact Assessment**

1.7.1 See 'Screening for equality impacts' table at end of report

## **1.8 Recommendations**

1.8.1 Members are asked to **RECOMMEND** to Council that approval be given to :

1) the making of an Order under section 257 of the Town and Country Planning Act 1990 to divert Restricted Byway MR221A at Stansted (as shown at Appendix A to this report) in order to enable the proposed development to be carried out;

2) the confirmation of the Order, if unopposed; or

3) referral of the Order to the Secretary of State for Communities and Local Government for determination if any objections are sustained.

Background papers: Correspondence file TM-H1-2

contact: Cliff Cochrane

Nil

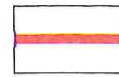
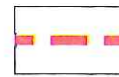
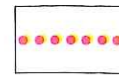
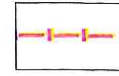

**Adrian Stanfield**

Director of Central Services

<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	N/A	N/A
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	N/A	N/A
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

*In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.*

Key-

-  DIVERTED RESTRICTED BYWAY (footpath/byway/bridleway)
-  PROPOSED PUBLIC FOOTPATH (footpath/byway/bridleway)
-  OTHER PUBLIC RIGHTS OF WAY (footpath/byway/bridleway)
-  PROPOSED BRIDLEWAY
-  PROPOSED RESTRICTED BYWAY plus the additional length highlighted yellow C-X

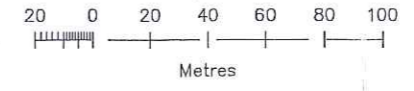
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FOR DIAGRAMMATIC  
PURPOSES ONLY**

Page 15



Key-

- A-B....PROPOSED FOOTPATH (2.5m WIDTH)
- B....PEDESTRIAN GATE
- C-D....DIVERTED RESTRICTED BYWAY
- C-E....PROPOSED RESTRICTED BYWAY (4.0m WIDTH)
- C....KENT CARRIAGE GAP + EQUESTRIAN GATE
- F....EQUESTRIAN GATE
- C-F-G....PROPOSED BRIDLEWAY (3.0m WIDTH)
- G....EQUESTRIAN GATE



rev	reason	date
client		
LONDON GOLF CLUB		
project		
LAND TO EAST AND WEST OF SOUTH ASH ROAD, SEVENOAKS, KENT		
title		
PLAN OF PROPOSED DIVERSIONS OF PUBLIC RIGHTS OF WAY		
drwg	rev	scale date
DHA/9405/01		1:1250 OCT 2013
<b>dha</b> urban design A development masterplanning		
Eclipse House, Eclipse Park, Sittingbourne Road Maldstone, Kent, ME14 3EN		
t: 01622 776226 e: info@dhaplanning.co.uk		f: 01622 776227 w: www.dhaplanning.co.uk
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## TONBRIDGE & MALLING BOROUGH COUNCIL

### AREA PLANNING COMMITTEES

#### Report of the Director of Planning, Housing & Environmental Health

#### Part I – Public

#### Section A – For Decision

#### DEVELOPMENT CONTROL

In accordance with the Local Government Access to Information Act 1985 and the Local Government Act 1972 (as amended), copies of background papers, including representations in respect of applications to be determined at the meeting, are available for inspection at Planning Services, Gibson Building, Gibson Drive, Kings Hill from 08.30 hrs until 17.00 hrs on the five working days which precede the date of this meeting.

Members are invited to inspect the full text of representations received prior to the commencement of the meeting.

Local residents' consultations and responses are set out in an abbreviated format meaning: *(number of letters despatched/number raising no objection (X)/raising objection (R)/in support (S))*.

All applications may be determined by this Committee unless (a) the decision would be in fundamental conflict with the plans and strategies which together comprise the Development Plan; or (b) in order to comply with Rule 15.24 of the Council and Committee Procedure Rules.

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#### GLOSSARY of Abbreviations and Application types

#### used in reports to Area Planning Committees as at 16 August 2013

AAP	Area of Archaeological Potential
AODN	Above Ordnance Datum, Newlyn
AONB	Area of Outstanding Natural Beauty
APC1	Area 1 Planning Committee
APC2	Area 2 Planning Committee
APC3	Area 3 Planning Committee
ASC	Area of Special Character
BPN	Building Preservation Notice
BRE	Building Research Establishment
CA	Conservation Area
CBCO	Chief Building Control Officer
CEHO	Chief Environmental Health Officer

CHO	Chief Housing Officer
CPRE	Council for the Protection of Rural England
DEFRA	Department for the Environment, Food and Rural Affairs
DETR	Department of the Environment, Transport & the Regions
DCLG	Department for Communities and Local Government
DCMS	Department for Culture, the Media and Sport
DLADPD	Development Land Allocations Development Plan Document (part of the emerging LDF)
DMPO	Development Management Procedure Order
DPD	Development Plan Document (part of emerging LDF)
DPHEH	Director of Planning, Housing & Environmental Health
DSSL	Director of Street Scene & Leisure
EA	Environment Agency
EH	English Heritage
EMCG	East Malling Conservation Group
FRA	Flood Risk Assessment
GDPO	Town & Country Planning (General Development Procedure) Order 1995
GPDO	Town & Country Planning (General Permitted Development) Order 1995
HA	Highways Agency
HSE	Health and Safety Executive
HMU	Highways Management Unit
KCC	Kent County Council
KCCVPS	Kent County Council Vehicle Parking Standards
KDD	Kent Design (KCC) (a document dealing with housing/road design)
KWT	Kent Wildlife Trust - formerly KTNC
LB	Listed Building (Grade I, II* or II)
LDF	Local Development Framework
LMIDB	Lower Medway Internal Drainage Board
LPA	Local Planning Authority
LWS	Local Wildlife Site
MAFF	Ministry of Agriculture, Fisheries and Food
MBC	Maidstone Borough Council
MC	Medway Council (Medway Towns Unitary Authority)
MCA	Mineral Consultation Area
MDEDPD	Managing Development and the Environment Development Plan Document
MGB	Metropolitan Green Belt
MKWC	Mid Kent Water Company
MLP	Minerals Local Plan
MPG	Minerals Planning Guidance Notes
NE	Natural England
NPPF	National Planning Policy Framework
ODPM	Office of the Deputy Prime Minister

PC	Parish Council
PD	Permitted Development
POS	Public Open Space
PPG	Planning Policy Guidance Note
PPS	Planning Policy Statement (issued by ODPM/DCLG)
PROW	Public Right Of Way
RH	Russet Homes
RPG	Regional Planning Guidance
SDC	Sevenoaks District Council
SEW	South East Water
SFRA	Strategic Flood Risk Assessment (prepared as background to the LDF)
SNCI	Site of Nature Conservation Interest
SPAB	Society for the Protection of Ancient Buildings
SPD	Supplementary Planning Document (a statutory policy document supplementary to the LDF)
SPN	Form of Statutory Public Notice
SSSI	Site of Special Scientific Interest
SWS	Southern Water Services
TC	Town Council
TCAAP	Tonbridge Town Centre Area Action Plan
TCG	Tonbridge Conservation Group
TCS	Tonbridge Civic Society
TMBC	Tonbridge & Malling Borough Council
TMBCS	Tonbridge & Malling Borough Core Strategy (part of the Local Development Framework)
TMBLP	Tonbridge & Malling Borough Local Plan
TWBC	Tunbridge Wells Borough Council
UCO	Town and Country Planning Use Classes Order 1987
UMIDB	Upper Medway Internal Drainage Board
WLP	Waste Local Plan (KCC)
AGPN/AGN	Prior Notification: Agriculture
AT	Advertisement
CA	Conservation Area Consent (determined by Secretary of State if made by KCC or TMBC)
CAX	Conservation Area Consent: Extension of Time
CNA	Consultation by Neighbouring Authority
CR3	County Regulation 3 (KCC determined)
CR4	County Regulation 4
DEPN	Prior Notification: Demolition
DR3	District Regulation 3
DR4	District Regulation 4
EL	Electricity
ELB	Ecclesiastical Exemption Consultation (Listed Building)
ELEX	Overhead Lines (Exemptions)

FC	Felling Licence
FL	Full Application
FLX	Full Application: Extension of Time
FLEA	Full Application with Environmental Assessment
FOPN	Prior Notification: Forestry
GOV	Consultation on Government Development
HN	Hedgerow Removal Notice
HSC	Hazardous Substances Consent
LB	Listed Building Consent (determined by Secretary of State if made by KCC or TMBC)
LBX	Listed Building Consent: Extension of Time
LCA	Land Compensation Act - Certificate of Appropriate Alternative Development
LDE	Lawful Development Certificate: Existing Use or Development
LDP	Lawful Development Certificate: Proposed Use or Development
LRD	Listed Building Consent Reserved Details
MIN	Mineral Planning Application (KCC determined)
NMA	Non Material Amendment
OA	Outline Application
OAEA	Outline Application with Environment Assessment
OAX	Outline Application: Extension of Time
ORM	Other Related Matter
RD	Reserved Details
RM	Reserved Matters (redefined by Regulation from August 2006)
TEPN56/TEN	Prior Notification: Telecoms
TNCA	Notification: Trees in Conservation Areas
TPOC	Trees subject to TPO
TRD	Tree Consent Reserved Details
TWA	Transport & Works Act 1992 (determined by Secretary of State)
WAS	Waste Disposal Planning Application (KCC determined)
WG	Woodland Grant Scheme Application

<b>West Malling</b> West Malling And Leybourne	<b>568120 157816</b>	<b>16 December 2013</b>	<b>(A) TM/13/03558/FL</b> <b>(B) TM/13/03557/FL</b>
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Proposal:

(A) Section 73 application to vary conditions (relating to hours of restaurant use and noise levels) of planning permission TM/99/00046/FL (as subsequently varied by permissions TM/99/00835/FL and TM/01/00833/FL) for change of use to restaurant including alteration, restoration and single storey extension to existing building and replacement of garage block for staff quarters

(B) Erect a temporary marquee for six months of the year for private functions

Location: The White Swan 35 Swan Street West Malling Kent ME19 6JU  
 Applicant: Swan Brasserie Ltd

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**1. Description:**

- 1.1 Applications (A) and (B) for the Swan Brasserie premises are inter-related and therefore have been presented together within this single report.
  
- 1.2 The applicant originally submitted 3 planning applications: two S.73 applications to vary conditions and a full application for the erection of a marquee for 6 months of the year for private functions. However, in response to a request from the Council the applicant has combined the two S.73 applications by withdrawing application ref. TM/13/03559/FL and amending the application form relating to ref. TM/13/03558/FL. This single S.73 application now consolidates the proposed changes to 2 different conditions of the original restaurant permission within one application to seek one consolidated and up to date planning permission.
  
- 1.3 A Noise Management Plan has also been submitted that is relevant to both applications. This management plan provides a plan of conduct for operating the day-to-day restaurant use of the premises.
  
- 1.4 In addition to the amended application form, amended plans were received on 19 February 2014 revising the “red line” on the Location Plan and the green line on the Proposed Site Layout (Drawing no.DHA/9929/05) to more accurately reflect the area shown on the Premises Licence (the significance of which is explained later in this report).
  
- 1.5 Application (A) proposes, under Section 73 of the Town and Country Planning Act 1990 (as amended), to make changes to conditions of previous planning permissions. An application under Section 73 is, in strict legal terms, an application “for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted”. In

dealing with such an application, the local planning authority may refuse the application (in which case the pre-existing condition(s) will remain in force), or grant permission subject to conditions that are different from those that appeared on the previous permission(s). The precise form of those “new” conditions need not necessarily match any wording proposed by the applicant and in that sense this is not, strictly, an application to “vary” the relevant conditions to achieve specific ends. However, any conditions that are imposed must meet all the “tests” that apply to any other case where conditions are contemplated. Moreover, the legislation requires that the local planning authority can only consider the question of the conditions subject to which permission should be granted – in other words the principle behind the initial permission itself cannot be re-visited. The previous planning permissions in this case include the original permission for the change of use to a restaurant under reference TM/99/00046/FL, and planning permissions TM/99/00835/FL and TM/01/00833/FL which varied the original permission.

- 1.6 The first of the conditions proposed to be changed relates to the hours of the restaurant use. This condition, in its most recent iteration, currently states that *“with regard to the restaurant use of the premises, customers shall vacate the building by midnight.”*
- 1.7 The applicant has proposed that this condition be replaced with two new conditions: one of which proposes extended opening hours for the restaurant and the second imposing specific controls to restrict the times of use of the external outdoor areas of the premises.
- 1.8 The second of the conditions proposed to be changed relates to controls over the level of noise from the restaurant use. This condition currently states that *“noise from the restaurant shall be inaudible on the boundary of adjoining noise sensitive properties.”*
- 1.9 The applicant has proposed that this condition be replaced by a condition that takes a different approach (but with the same overall objective of protecting neighbouring premises) and that provides controls over the playing of music within the building and external areas of the premises.
- 1.10 Application (B) proposes that a marquee be erected for 6 months of the year, between 1 April and 30 September, for the purpose of private functions associated with the existing restaurant use. It is proposed to accommodate a maximum of 110 guests for sit down only meals for private functions. A small bar will be provided within the marquee for table service only.
- 1.11 The marquee is to be located in the rear garden and is to measure 20.7m x 8.1m x 4m high and will extend almost the full width of the site and in front (south) of the staff quarters building. It is to consist of a steel frame with a traditional white durable fire retardant polyethylene covering to the walls and roof.

1.12 A small external outdoor area will be associated with the marquee use which is marked in green on the amended proposed site layout (drawing no. DHA/9929/05A).

**2. Reason for reporting to Committee:**

2.1 Applications (A) and (B) are both of local public interest.

**3. The Site:**

- 3.1 The application site relating to Applications (A) and (B) is located on the north side of Swan Street, midway between the High Street and Police Station Road, in the historic centre of West Malling. It comprises a Grade II Listed hotel that was originally a late medieval open hall. The building has been re-fronted in stucco and has some C20 alterations. The building is large and prominent within the street-scene, situated on the front boundary of the site. The premises now house the Swan Brasserie restaurant/bar. A large courtyard is situated to the rear of the main building which is set at two levels with a step up to the rear. A long single storey staff quarters building, clad in painted horizontal weatherboards and clay roof tiles, extends across the full width of the site and up against the rear boundary. A small timber smoking shelter is positioned within the centre of the courtyard. A small section of the marquee is erected close to the eastern boundary and up against the staff quarters building. The site is enclosed on its east and west sides by high brick walls. Access exists down the east side of the main building which provides parking for several vehicles. The refuse storage area for the premises lies at the end of this access, immediately to the south of the small house No.37 Swan Street, which the application site wraps around.
- 3.2 The site is within the settlement confines of West Malling, the West Malling Conservation Area and an Area of Archaeological Potential. Swan Street is a Classified Road. The site is also designated as being within a Retail Centre under policy R1(1)(e) of the DLADPD.
- 3.3 The terraced dwelling of No.41 Swan Street, which is attached to the Nat West Bank building on its east side, is situated adjacent to the eastern boundary of the site. It has a vehicular driveway and gates between the application site and the dwelling and a large residential garden extends the full length of the application site and beyond. It also has a detached garage adjacent to the staff quarters building on the application site. A car parking area at the rear of the retail units of No.23-27 Swan Street lies to the west side of the restaurant building. A car park associated with offices at the rear of retail units fronting the High Street also lies further to the north, adjacent to the western boundary of the site opposite the courtyard and staff quarter building. The two storey dwelling of 2 Abingdon Mews and its residential curtilage lies to the north of the staff quarters building. Mill Yard,

the West Malling Post Office, the retail units of 14-20 Swan Street and accommodation and grounds associated with St Marys Abbey lie to the south, across Swan Street.

#### 4. Planning History:

TM/59/10327/OLD grant with conditions 27 August 1959

Erection of 6 garages.

TM/63/10377/OLD grant with conditions 3 July 1963

New front elevation and extension to car park.

TM/99/00046/FL Grant With Conditions 29 March 1999

change of use to restaurant including alteration, restoration and single storey extension to existing building and replacement of garage block for staff quarters

TM/99/00835/FL Grant With Conditions 16 March 2000

removal of conditions 3 and 6 relating to TM/99/00046/FL (change of use to restaurant) - customers to vacate by midnight and restriction on playing of live/amplified music

TM/01/00833/FL Section 73 Approved 22 April 2002

Variation of condition 1 of permission TM/99/00835/FL to vary hours of the restaurant

TM/02/02044/FL Grant With Conditions 6 December 2002

Extension to staff accommodation to provide staff changing/toilet facilities

#### 5. Consultees:

(A) TM/13/03558/FL:

5.1 PC: No objections.

5.2 Private Reps: 3/0X/0S/3R + site notice and LB/CA press notice. Three letters of objection have been received, two from the same neighbour. The following concerns have been raised:

- The extension of hours and use of the marquee for functions would result in additional parking and traffic pressures and noise disturbance from people waiting for taxis and from the comings and goings from taxis and mini-buses as well as staff cleaning up and leaving the premises.



- The extension of hours would result in further noise disturbance from later staff clear up operations and staff waiting to be collected after work.
- Noise impact from music being played in the external outdoor area.
- Doors will be opened and closed in the upper levels of the building where late night music will be played.
- Support of local taxi firms is not an appropriate argument for extending opening hours of the premises.
- The existing noise condition is still reasonable but if minded to grant permission the Council should provide a definition of background music.
- The Noise Management Plan should be reviewed.

(B) TM/13/03557/FL:

5.3 PC: No objections.

5.4 KCC (Highways): The site is in a sustainable location in the centre of the village and public car parks are located nearby. I do not consider that the proposal will adversely affect the highway safety or capacity, therefore I do not wish to raise objection.

5.5 Private Reps: 6/0X/0S/6R + site notice and LB/CA press notice. Six letters of objection have been received. The following concerns have been raised:

- The marquee is of a size and appearance that is out of scale and proportion with the surrounding buildings.
- The marquee will be visibly intrusive from neighbouring properties and its covering and appearance would not respect the character of the CA.
- Functions in the marquee and activities within the external areas of the premises would result in noise disturbance that would impact on neighbouring amenities and living conditions.
- There will be noise impact from the PA system and speeches in the marquee.
- The extension of hours and use of the marquee for functions would result in additional parking and traffic pressures and noise disturbance from people waiting for taxis and from the comings and goings from taxis and mini-buses as well as staff cleaning up and leaving the premises.
- There should be a restriction on the number of guests attending the functions relating to the marquee.

- The erected marquee is damaging lime trees in the neighbouring property adjacent to the eastern boundary.
- Bins are emptied late at night.
- The inclusion of the marquee would be overdevelopment of the site.
- The marquee is visible from No.41 Swan Street to the east and a screen should be erected along the boundary to lessen the noise and visual impact.
- A quarter of the marquee has remained erected over the winter period.

## **6. Determining Issues:**

- 6.1 In March 1999, planning permission was granted for a change of use of the hotel to a restaurant which included restoration of the building, an extension and replacement of the rear garage with a building for staff quarters (TM/99/00046/FL). Conditions on this original permission were subsequently varied under planning permissions TM/99/00835/FL (March 2000) and TM/01/00833/FL (April 2002). These included temporary changes to opening hours and a change to the permitted level of noise emanating from the premises.
- 6.2 The opening times are currently defaulted back to Condition 3 of permission TM/99/00046/FL - *With regard to the restaurant use of the premises, customers shall vacate the building by midnight.*
- 6.3 Noise from the use is currently controlled under Condition 2 of TM/99/00835/FL - *Noise from the restaurant shall be inaudible on the boundary of adjoining noise sensitive properties.*
- 6.4 The two applications brought before the Committee consist of proposed changes to the above two conditions and the addition of a proposal to erect a marquee in the rear garden area for a 6 month period each year for private functions. These inter-relate and therefore it is prudent that they be assessed and presented together.
- 6.5 The proposals also need to be assessed in the context of the new Premises Licence (Licence No. 13/00965/PREM) for the site, granted on 12 December 2013 under the Licensing Act 2003. The Premises Licence outlines the licensed opening hours and restrictions on the sale of alcohol, and the provision of live music, recorded music and light refreshments. Additional operational conditions have been specified within 4 Annexes to the Licence. It is important to understand that there is no absolute necessity for the terms of a Premises Licence and those of a parallel planning permission to precisely coincide. They are two separate regulatory regimes and the material considerations to each are different. However, those material considerations do to some extent overlap. It is therefore desirable that there be some affinity between the two and, purely in terms of

enforcement (on the one hand) and adherence (from the perspective of the operator and, indeed, third parties) there is merit in the two regimes working in concert, where that is legally achievable.

- 6.6 The two planning applications are intended both to formalise the unauthorised marquee use, which has been in use for the past few years, and to provide revised and additional conditions relating to the hours of the restaurant use and noise levels to better reflect modern day requirements and to provide improved enforceability.
- 6.7 The main issues to be considered are the effect of the proposals on the amenities of neighbouring occupiers, the aural environment of the local area, the visual amenity and character of the CA and impact on the setting of adjacent listed buildings.
- 6.8 The policies most relevant to this application are policy CP24 of the TMBCS, policies SQ1 and SQ8 of the MDEDPD, policy R1 of the DLADPD and paragraphs 56, 57, 60, 61, 129 and 131 of the NPPF.

(A) TM/13/03558/FL:

Hours of restaurant use

- 6.9 The existing condition controlling opening times for the premises requires patrons to vacate the restaurant building by midnight, this condition having been established for the premises in 1999. The planning application seeks to extend the opening hours to reflect more modern day requirements for a restaurant use in a rural centre. The opening hours proposed are as follows:

Sunday to Thursday 09:00 to 00:30 the following day  
Friday and Saturday 09:00 to 01:00 the following day  
Good Friday & Christmas Day 09:00 to Midnight  
New Year's Eve 09:00 to 03:00 on New Year's Day

With the exception of the specific provision for Good Friday and Christmas Day, these times reflect those specified in the recently granted Premises Licence.

- 6.10 In comparing the proposed hours to those approved by the earlier planning permissions, the opening hours for Sunday-Thursday are to be extended by 30 minutes, with the hours for Friday and Saturday being extended by 1 hour. I consider these hours provide acceptable increases that are robust and pragmatic in relation to the operation of the restaurant. I also consider that the introduction of an extended opening time for New Year's Eve until 3am the next morning to be an appropriate once-a-year exception. Hours for Good Friday and Christmas Day would maintain the midnight closure time. The proposed condition will also now provide an earliest opening time of 9am each day which was not previously provided for. These closing times are 30 minutes after the latest time specified in

the Premises Licence for the sale of alcohol and the provision of late night refreshments (apart from Sundays, when the interval is 60 minutes), and an hour after the latest time for the playing of live or recorded music (which is only permitted on Fridays, Saturdays and New Year's Eve). It is worth noting that some of the opening hours permitted under planning conditions in the past on a temporary basis allowed for occasional late night "extensions" for a limited number of "special occasions". The regime now proposed does not include any such occasional variations.

- 6.11 An additional condition is proposed that will provide a separate restriction on the times of use of the external outdoor areas between the rear of the restaurant and the area relating to the marquee. This area appears to have been used extensively for outdoor eating and so on during the summer months and this has, on occasions, given rise to concerns. The particular wording of the current (1999) relevant controlling condition means that its applicability to the external areas is debateable. It is proposed that the use of this external area for food and drinks will cease at 11pm each day, except for patrons completing a meal that they have already started and smokers using the designated smoking area, who are to vacate these external areas by 11.30pm. This reflects the restrictions outlined in Annex 3 of the Premises Licence. I am satisfied that the proposed times of use of the external areas of the premises are appropriate for the restaurant use it relates to and would sufficiently safeguard the amenity of neighbouring occupiers. This represents a more robust formula of control than currently exists.

#### Noise levels

- 6.12 The existing condition relating to the control of noise from the use of the premises requires noise from the restaurant to be inaudible on the boundary of adjoining noise sensitive properties. The proposal looks to replace this condition with one that provides a more bespoke, robust and enforceable noise control regime.
- 6.13 There are a number of proposed new conditions. These conditions restrict the playing of live and amplified live music to the first and second floors of the restaurant building only, with the doors and windows to be kept closed. This restriction is also outlined within Annexes 2 and 3 of the Premises Licence. The conditions will also restrict music played in the external outdoor areas of the premises to background music only. Background music is to be defined as recorded music played at a low level which is not the main focus of patrons and enables normal conversation to take place unhindered or unaffected by the playing of the music.
- 6.14 The playing of music, in particular within the external outdoor areas of the premises, can be an issue of concern for immediately adjoining neighbours. However, I consider that the restrictions within this condition will provide a clearer indication of appropriate types and levels of music able to be played on the premises and ensure that noise from music sources is contained within the

building and limited within the outdoor areas. Some level of other audible noise from patrons conversing and staff cleaning up can be expected with such a use in the centre of a market town. However, I consider that the new condition controlling opening times, together with the appropriate implementation of the submitted Noise Management Plan, would sufficiently limit these other noise sources, especially within the external outdoor areas where there is a greater potential for noise to carry. I am thus satisfied that the new conditions will adequately safeguard the amenities of neighbouring occupiers.

(B) TM/13/03557/FL:

Marquee for private functions

- 6.15 The restaurant has been using a marquee erected in the rear courtyard for private functions during the summer months for the past few years without the benefit of planning permission. On recent visits to the site, a section of the marquee was visible adjacent to the east side boundary, with the remainder of the structure apparently stored within it.
- 6.16 The applicant seeks planning permission to erect the marquee between 1 April and 30 September each year, to be used for private functions during the warmer summer period.
- 6.17 The use of the marquee is for private functions which I consider to be consistent with the restaurant use of the site and therefore acceptable in principle.
- 6.18 The marquee is large, providing a floor area of 168m<sup>2</sup>, and would extend near enough the full width of the site. The structure, though, is relatively modest in height (4m) and is much lower than the height of the adjacent staff quarters building. It is also temporary in appearance and its white polyethylene covering would not, in my view, be unduly distracting to the main listed building or the staff quarters building. Accordingly, I do not consider that the structure would harm the significance of the listed building, its setting with the other adjacent listed buildings or the character of the CA. The proposal therefore satisfies paragraphs 129 and 131 of the NPPF.
- 6.19 The marquee would be partially visible from the properties to the east and west above the boundary walls as, when fully erected, it would be located close to both boundaries. The staff quarters building completely screens the marquee from properties to the north. A car park lies adjacent to the marquee to the west and this helps to mitigate any harmful visual impact. The retained section of the marquee, when not fully erected, is currently partially visible from No.41 Swan Street. However, the high brick and stone wall that divides the properties screens a large part of the structure, a garage is sited adjacent to the marquee's north side and a row of 5 trees inside the boundary of No.41 provides a reasonable level of screening. In any event, I do not consider the marquee to be visually intrusive such that it would harm the outlook or amenity of the occupiers of No.41. The

occupiers of No.41, within their representation, have requested that additional screening along the boundary be provided adjacent to the side of the marquee; however the wall is already relatively high and I do not consider that such screening is justified in this case. The marquee also would not result in any unacceptable shadowing as the marquee is of a modest height and positioned adjacent to the neighbour's driveway.

6.20 The main issue here is the potential noise impact from the use of the marquee. The restaurant premises have been in existence since 1999 and occupy a central location in West Malling within a designated Retail Centres (R1) area where Class A uses, including A3 restaurant uses, are encouraged. I acknowledge that a number of residential properties surround the courtyard where the marquee is to be sited and that the juxtaposition of these different uses can create conflict. However, I consider that, with appropriate controls, noise impact and other nuisance from the addition of the marquee for private functions can be made acceptable from a planning point of view.

6.21 It is proposed that the use of the marquee would have the following restrictions:

- The marquee will be erected for a 6 month period between 1 April and 30 September each year. This will control the period of use of the marquee in a way that the Premises Licence does not. For the rest of the year the marquee will be for the most part dismantled, removed and stored within a small section of the marquee which is to be retained adjacent to the eastern boundary of the site.
- The marquee will be for pre-booked events and functions only and for no more than one pre-booked event or function on any given day. This is reflected in Annex 3 of the Premises Licence. It will also be used for no more than 4 pre-booked events within any one week. This provides a restriction that the Licence does not.
- The marquee and its associated external area will not be used by patrons between the hours of 10pm and 9am the following day. This is reflected in Annex 3 of the Premises Licence.
- Only background music will be allowed to be played within the marquee and its associated external areas up to 10pm daily, when the marquee is in use. Background music will be defined as recorded music played at a low level which is not the main focus of patrons and enables normal conversation to take place unhindered or unaffected by the playing of the music. Also all amplified sound played within the marquee or its associated external areas (for speeches etc) will cease by 7pm, other than background music. This provides a restriction that the Premises Licence does not.

- The use of the marquee is to be operated in strict accordance with the submitted Noise Management Plan. This is in addition to the Premises Licence.

- 6.22 The restriction on the number of private functions will limit the number of days the marquee would be in use during the 6 month period of use. The requirement for patrons to vacate the marquee and its external areas by 10pm will restrict the time each day that it is used to a time appropriately sympathetic to the expected night time amenities of neighbouring residents. This would, in my view, minimise the potential noise impact from the private functions. Furthermore it is noted that although the marquee area is to be vacated by 10pm, it has been stated within the Noise Management Plan that patrons will be directed to the first floor private bar at 9pm so that staff can clear the marquee area by 10pm.
- 6.23 The music played in the marquee area will be restricted to background music, which has been discussed at paragraph 6.13 above. The same controls will apply here. However, the marquee area can only be used up to 10pm on the days of use which would limit noise impact on neighbouring occupants.
- 6.24 Amplified sound from microphones used for speeches is to be restricted to 7pm. This is also outlined in the Noise Management Plan.
- 6.25 Overall, I am satisfied that the erection and use of the marquee for private functions would be an acceptable temporary and seasonal extension to the restaurant's existing facilities. The proposal utilises the site's centre of village location and promotes the growing vitality of the retail core of West Malling which is supported by Local and Central Government planning policy. I consider that the conditions, in conjunction with the submitted Noise Management Plan, provide an acceptable regime to minimise noise impact from the use of the marquee on neighbouring residential occupiers to an acceptable level.

#### Other Material Considerations

- 6.26 A Noise Management Plan has been submitted with both applications. This is a welcome addition to the working practices of the premises and provides an appropriate plan of conduct to manage the restaurant use so as to minimise noise impact from the premises' day to day activities.
- 6.27 It is also noted that the Premises Licence requires the licence holder to maintain a log book of noise incidents, which is required to be open to inspection by the Council's Environmental Health Officers and the Licensing Authority. A condition on one of the previous permissions (TM/01/00833/FL) also requires a log book to be maintained on the premises. It is suggested that this condition could be carried forward to any consolidated planning permission.

- 6.28 The refuse area for the premises is situated close to the eastern boundary adjacent to the dwelling at No.41 Swan Street. As the emptying of bottles and other rubbish into the bins in the refuse storage area can create substantial noise, a condition will be added to restrict the time of emptying such refuse in this area to between 9am and 11pm daily.
- 6.29 The site is within the centre of West Malling where retail and other A Class uses, essential to establishing a vibrant rural town centre, are encouraged. The proposals will increase the overall intensity of the restaurant use to some degree but I do not consider that the increase in patronage, given the premises' central location where public parking is provided and the West Malling railway station is only a short walk away, would result in any harm to highway safety in the area. KCC Highways has concurred with this view. The proposals therefore satisfy policy SQ8 of the MDEDPD.
- 6.30 I note the concerns raised by a number of local residents near to the application premises. These concerns relate chiefly to noise impact from the extended opening hours and private functions to be held in the marquee. Reference has also been made to some existing issues relating to music within the upper floors of the building, music and noise from the external outdoor areas, and noise from patrons and staff after close.
- 6.31 I am mindful that the proposed extended hours and use of the proposed marquee for functions will lead to some additional noise impact and that there is the likelihood of some additional disturbance from patrons leaving the premises. Notwithstanding this, a balance needs to be struck between promoting a vibrant and prosperous rural town centre and protecting neighbouring amenities.
- 6.32 As mentioned in paragraph 1.5, an application for variation of conditions does not provide an opportunity to reconsider the principle of the use of the premises – it is only the appropriateness of the conditions themselves that may be examined. I am of the view that the amended conditions now proposed, in conjunction with the recently granted Premises licence and compliance with the Noise Management Plan, will enable the premises to be operated without demonstrably harming the amenities of neighbouring occupiers. Similarly, with regard to the application for the marquee, I believe that the proposed conditions will adequately safeguard local residents' amenities.
- 6.33 Accordingly, the proposals would satisfy policy CP24 of the TMBCS, policy SQ1 of the MDEDPD and policy R1 of the DLADPD.
- 6.34 In light of the above, I consider that the proposals outlined in these two planning applications accord with the relevant provisions of the Development Plan and NPPF, and therefore approval is recommended.



**7. Recommendations:**

(A) TM/13/03558/FL:

**7.1 Grant Planning Permission** in accordance with the following submitted details:

Letter dated 19.11.2013, Other NOISE MANAGEMENT PLAN dated 19.11.2013, Other LETTERS OF SUPPORT dated 19.11.2013, Plan DHA/9929/03 dated 19.11.2013, Location Plan DHA/9929/01 A dated 19.02.2014, Other AMENDED APPLICATION FORM dated 19.02.2014, Letter dated 19.11.2013, subject to the following:

**Conditions**

- 1 The restaurant use of the premises, including any use of the private dining rooms for private functions, shall cease operating and patrons shall vacate the building by 00:30 Sunday night to Thursday night (i.e. by 00:30 Monday morning to Friday morning), by 01:00 Friday night and Saturday night (i.e. Saturday and Sunday morning), by midnight on Good Friday and Christmas Day, and on New Year's Eve by 03:00 on New Year's Day, unless otherwise agreed in writing with the Local Planning Authority. Following such closure, the premises shall not re-open for business before 09:00 on any day.

Reason: To safeguard the amenities of nearby residential properties and the local aural environment.

- 2 The use of the restaurant's external area marked (B) on the plan attached to this planning permission for the consumption of food and drink shall cease at 23:00 daily, except for patrons completing a meal and smokers using the designated smoking area. Patrons shall vacate this external area by 23:30 daily.

Reason: To safeguard the amenities of nearby residential properties and the local aural environment.

- 3 The external area marked (A) on the plan attached to this planning permission shall not be used by patrons between the hours of 22:00 and 09:00 the following day.

Reason: To safeguard the amenities of nearby residential properties and the local aural environment.

- 4 The playing of live and amplified live music shall only take place within the first and second floor of the restaurant building, with the doors and windows kept closed. No music shall be played in the external areas of the premises other than background music, and the playing of such music shall cease by 23:00 daily within the area marked (B) on the plan attached to this planning permission and by 22:00 daily within the area marked (A) on the plan attached to this decision notice.

Background music means recorded music played at a low level which is not the main focus of patrons and enables normal conversation to take place unhindered or unaffected by the playing of the music.

Reason: To safeguard the amenities of nearby residential properties and the local aural environment.

- 5 The use of the restaurant, including the internal and external areas, shall be operated in strict accordance with the Noise Management Plan hereby approved.

Reason: To safeguard the amenities of nearby residential properties and the local aural environment.

- 6 No refuse shall be emptied into the bins within the designated refuse storage area between the hours of 23:00 and 9:00 daily.

Reason: To safeguard the amenities of nearby residential properties and the local aural environment.

- 7 Any gates to be installed at the vehicle entrance to the site shall accord with the details approved under planning reference TM/99/00841/RD, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the development does not harm the character and appearance of the existing building or visual amenity of the locality and to enable vehicles to stand off the highway whilst any gates are being operated.

- 8 The mechanical air extraction for the kitchen, including arrangements for the continuing maintenance of the equipment and any noise attenuation measures required in connection with the equipment, grease filters, pre-filters and odour treatment system shall accord with the details approved under planning reference TM/99/02730/RD, unless otherwise agreed in writing by the Local Planning Authority. No cooking of food shall take place unless the approved extraction system is being operated.

Reason: In the interests of the amenities of nearby properties.

- 9 Noise emissions from the extraction system and other fixed plant shall at no time exceed 35 dB(A) at the facade of adjacent premises.

Reason: In the interests of the amenities of nearby properties.

- 10 A log book of noise incidents shall be maintained at the premises, which shall be made available for inspection by the Local Planning Authority.

Reason: To ensure the use proper management of the restaurant use of the premises in order to safeguard the amenities of neighbouring occupiers.

(B) TM/13/03557/FL:

**7.2 Grant Planning Permission** in accordance with the following submitted details:

Letter dated 19.11.2013, Other NOISE MANAGEMENT PLAN dated 19.11.2013, Other LETTERS OF SUPPORT dated 19.11.2013, Plan DHA/9929/03 dated 19.11.2013, Block Plan DHA/9929/04 dated 19.11.2013, Floor Plan dated 13.12.2013, Email dated 12.12.2013, Location Plan DHA/9929/01 A dated 19.02.2014, Site Layout DHA/9929/05 A dated 19.02.2014, Elevations 01 dated 20.02.2014, subject to the following:

**Conditions**

- 1 The marquee shall only be fully erected between 1 April and 30 September each year. For the period between 1 October and 31 March each year the marquee shall be dismantled and stored as shown and described on Drawing No.01 - Marquee Elevations and Storage Details dated 20.02.2014, hereby approved.

Reason: To safeguard the amenities of nearby residential properties and the local aural environment

- 2 The marquee shall be used for pre-booked events and functions only, and shall be used for no more than 4 pre-booked events within any one week (Sunday - Saturday) and for no more than one pre-booked event or function on any given day.

Reason: To safeguard the amenities of nearby residential properties and the local aural environment.

- 3 The area marked (A) on the plan attached to this planning permission, which includes the marquee, shall not be used by patrons between the hours of 22:00 and 09:00 the following day.

Reason: To safeguard the amenities of nearby residential properties and the local aural environment.

- 4 No music shall be played within the area marked (A) on the plan attached to this planning permission, which includes the marquee, other than background music, and the playing of such music shall be restricted to 09:00 to 22:00 daily.

Background music means recorded music played at a low level which is not the main focus of patrons and enables normal conversation to take place unhindered or unaffected by the playing of the music. All amplified sound, including that for speeches, played within this specified area, other than background music, shall cease by 19:00.

Reason: To safeguard the amenities of nearby residential properties and the local aural environment.

- 5 The use of the restaurant, including the internal and external areas, shall be operated in strict accordance with the Noise Management Plan hereby approved.

Reason: To safeguard the amenities of nearby residential properties and the local aural environment.

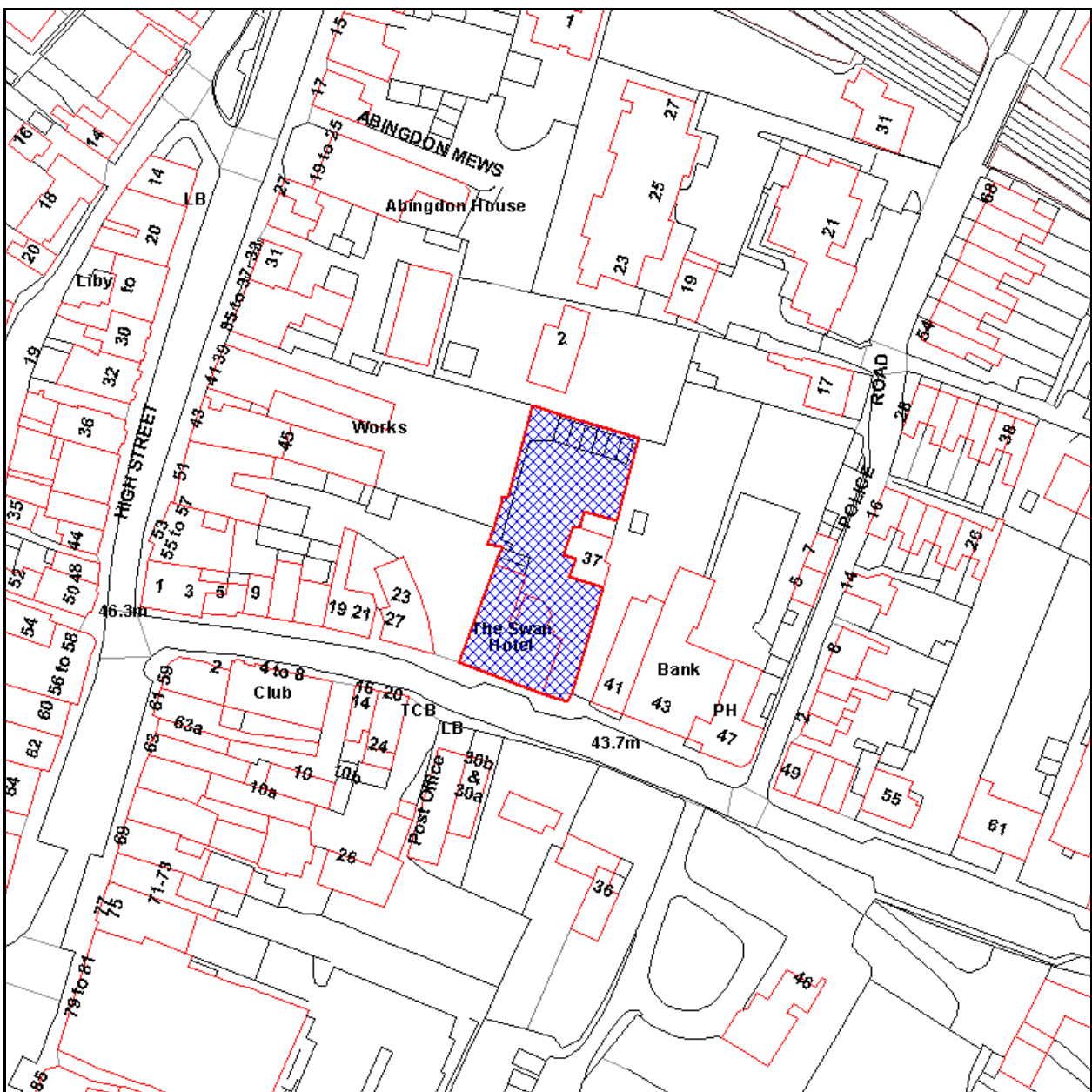
Contact: Mark Fewster

**(A) TM/13/03557/FL & (B) TM/13/03558/FL**

The White Swan 35 Swan Street West Malling Kent ME19 6JU

(A) Erect a temporary marquee for six months of the year for private functions & (B) Section 73 application to vary conditions relating to hours of restaurant use and noise levels of planning permission TM/99/00046/FL (as subsequently varied by permissions TM/99/00835/FL and TM/01/00833/FL) for change of use to restaurant including alteration, restoration and single storey extension to existing building and replacement of garage block for staff quarters

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**Addington Downs**                      **565941 158921**    **23 January 2014**                      **TM/14/00234/FL**

Proposal:                      Erection of 3 no. detached dwellings with provision of new associated new access and parking facilities  
Location:                      Blackmans Trottiscliffe Road Addington West Malling Kent ME19 5AZ  
Applicant:                      Blue Ribbon Developments Ltd.

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## **1. Description:**

- 1.1 Planning permission is sought for the redevelopment of the vacant site for three houses. The site was previously occupied by one chalet bungalow which has subsequently been demolished following Prior Notification to the Council (see planning history in section 4 below).
- 1.2 A scheme for three dwellings (TM/13/00786/FL) was refused on 16 August 2013 and there is currently a Written Representations appeal in progress under Planning Inspectorate reference APP/H2265/A/13/2206984. A date is yet to be set for the Inspector's accompanied Site Inspection.
- 1.3 Amended plans were submitted on 20 March 2014 which has been out to consultation. The formal consultation period expires on Friday 4 April 2014. Any further representations received will be included in a Supplementary Report.
- 1.4 The proposed scheme, as amended, includes the following:
  - Two dwellings (plots 1 and 2) side by side and facing Trottiscliffe Road. Shared new access off Trottiscliffe Road and turning area to front of dwellings.
  - Plot 1 – Two storey dwelling with habitable roof space, attached projecting double garage to front with bedroom over. Traditional design with plain tiled roof, hanging tiles and facing bricks.
  - Plot 2 – One and three-quarter storey house with half dormer design. Attached double garage to the side with bedroom over. Traditional design with plain tiled roof, hanging tiles and facing bricks.
  - Plot 3 – Located to the rear of Plots 1 and 2. Served by new access off Trottiscliffe Road and existing driveway route to former dwelling "Blackmans". Two storey dwelling with attached garage in front projection with bedroom over. Traditional design with plain tiled roof, hanging tiles and facing bricks.
  - The layout and design for the site frontage have been scaled back, compared to the refused scheme, and simply proposes regraded banks and no walls, railings, gates or fences forward of the building line are proposed.

- The existing access which serves Blackmans and Laurelle Lodge would remain but would become a separate access solely for Laurelle Lodge.

**2. Reason for reporting to Committee:**

- 2.1 Called in by Cllr Mrs Ann Kemp due to the potential impact of the development on the village and the planning history associated with the site.

**3. The Site:**

- 3.1 The site lies within the village confines of Addington. The front boundary of the site with Trottiscliffe Road, and the eastern boundary of the site with East Street, form the edge of the built confines and start of the Metropolitan Green Belt and a protected area of Open Space [OS1A(b)] which is formed by land owned by West Malling Golf Club.
- 3.2 To the rear of the site (north) lies the residential property and garden of Brookland, East Street and the gardens of Newlands, East Street and 6 Plowenders Close. To the west lies the residential property and associated garden of Laurelle Lodge, Trottiscliffe Road, which currently shares the existing access and drive with the Blackmans site.
- 3.3 Laurelle Lodge was built within the grounds of Blackmans under Outline Planning Permission TM/96/01511/OA. Permission was originally sought for two dwellings on the current plot at Laurelle Lodge, however, this was considered by the Council to be over development at the time, and the application was amended to propose one chalet style dwelling.
- 3.4 The front of site is banked up from the level of the road by approximately 1m and the land rises again to the north. The section of lawn forward of the site of the removed house is approximately 3m above road level. The finished floor level of the demolished house was set at 4.56m above road level and the land rises further still the rear of the site. To the southern edge of the close-boarded fence with Brookland the land level is shown to be 6.5m above road level and the land to the rear of Brookland rises to a maximum of approximately 8m above road level as there is a near vertical bank in this section of the application site. This higher area of land to the rear of Brookland has been left to scrub/bramble and is not currently used or maintained in the same way as the rest of the garden area.
- 3.5 It is noted that the close-boarded fence to the southern boundary of Brookland (to the north of the application site) is set on raised land approx 1.8-2m above the ground level of the Blackmans site at this point.
- 3.6 Three Cedars are covered by a Tree Preservation Order (TPO), two on the south east corner of the site and a third Cedar to the south east of the existing swimming pool.



#### 4. Planning History:

TM/54/10714/OLD grant with conditions 6 May 1954

Dwelling house and garage.

TM/97/01582/FL Grant With Conditions 5 November 1997

replacement of existing outbuilding with new conservatory

TM/13/00786/FL Refuse 16 August 2013  
Appeal Pending

Demolition of existing detached dwelling house and erection of 3 no. detached dwellings with associated new access and parking and garaging facilities

TM/13/02771/DEN Prior Approval Required 18 October 2013

Prior Notification of Demolition: Demolition of 1no. dwellinghouse (Blackmans)

TM/13/03479/DEA Application Withdrawn 13 March 2014

Prior Approval for demolition of 1no. dwellinghouse (Blackmans)

TM/13/03554/DEN Prior Approval Not 17 December 2013  
Required

Prior Notification Of Demolition of Blackmans House down to ground level along with associated out buildings

#### 5. Consultees:

- 5.1 Addington PC: We object to the above proposal. We have considered this revised application against the original objections and still believe this to be overdevelopment of the site which is within the confines of the village. Like many of the properties along Trottiscliffe Road, the original house was set back from the road and this adds to the openness of our historic village on one of the main approaches. Although we appreciate that the height of the proposed dwelling at the rear has been reduced in height, we still believe the design of the properties is also out of keeping with the area and we would like to see a more aesthetic approach. We feel the sight lines on this stretch of road are unsatisfactory and that vehicles entering and coming out of the proposed entrances/exits would be a threat to the safety of other road users. We would urge to you to refuse this application as we have demonstrated that the impact of the proposals on the visual amenities of the locality, the residential amenities of the locality and the highway/access safety would not be acceptable.

5.1.1 If the planning application was approved, we request that aesthetic landscaping and screening, sympathetic to the rural location, is a condition. We would also welcome a review of the speed limits on our rural roads aligned to the aspiration to get a further 40% reduction addressed in the draft Casualty Reduction Strategy.

5.1.2 Additional Comments: We have read the highways report from KCC and would disagree with the findings. We still feel the sight lines on this stretch of road are unsatisfactory and that vehicles entering and coming out of the proposed entrances/exits would be a threat to the safety of other road users. We regularly carry out speedwatch on this section of the road and remain concerned about the speed of the traffic at this location which is near to a bend in the road.

5.2 Trottiscliffe PC: Object because of over intensification of the site and highway considerations.

5.3 KCC Highways: As discussed by the applicants' agent's e-mail of 14th February, I confirm that my response of 10th February regarded some preferences (not requirements) and in terms of the application submitted and on behalf of the Highway Authority, I write to confirm that I have no objection to the proposals. As previously advised :-

- The gradient of accesses should be no steeper than 1 in 10 for the first 1.5 metres from the highway boundary and no steeper than 1 in 8 thereafter.
- Planning permission does not convey any approval for construction of the required vehicular crossing, or any other works within the highway for which a statutory licence must be obtained.
- It is also considered that measures preventing the discharge of surface water onto the highway will be required, should this application be approved. If I can be of any further assistance, please do not hesitate to contact me.

5.4 Private Reps + Site Notices (12/1X/9R/4S): One neighbour sent 2 representations in support and one raising no objection. Two neighbours have each sent 2 representations raising objection (as a result of re-consultation). Comments received in summary:

In support:

- No objection to three dwellings and the scheme is not overcrowded.
- The original (refused) scheme would have been just as acceptable.
- We are keen for the scheme to be built.
- There have not been any accidents along this section of Trottiscliffe Road.

- The replacement dwelling at Clematis Cottage, a few doors along from Blackmans, was passed and that is an eyesore.
- The scheme will be more attractive than the former run down property.

Raising objection:

- The site appears larger now the site has been cleared. However, if the site were developed for three houses the site would appear squashed.
- Two dwellings would be more in keeping with other properties on Trottscliffe Road.
- Insufficient parking.
- New accesses would be dangerous. Cars exceed the speed limit in this location.
- The site is not Previously Developed Land and cannot be described as Minor Infill.
- The rear garden of Brookland will be almost permanently cast in the shadow of Plot 3.
- The rear windows of Plot 3 would overlook the rear garden of Newlands.
- The loss of trees, prior to the original planning application, has resulted in a loss of habitat for birds, bats and wildlife.
- The proposal is contrary to Policies CP1, CP6, CP13 and CP24 of the TMBCS and Policy SQ1 of the MDE DPD.
- The proposal would represent overdevelopment of the site.
- The parking of cars would dominate the appearance of this development, altering the character of this part of the village.
- All the previous objections to the application last year apply.
- The buildings would be too close together.
- The Blackmans site which did have an attractive garden and beautiful trees, gave a very appropriate entrance to the village over the last 50 years.
- In approximately 10 years when Hanson's lease for sand quarrying at Addington ends, there will be acres of brownfield sites for building. So there is no need to squash as many buildings as possible in to the existing infrastructure right now.

- Perhaps one dwelling with access to East Street would be a better alternative.
- The proposal is not appropriate for the scale and character of the village.
- The proposed houses are too large and too close to the front of the property.
- The heights of buildings as seen from Trottiscliffe Road are too imposing.
- If the houses were erected, the former “Blackmans” footprint would be trebled without doubt, this equates to overdevelopment.

Raising no objection:

- Comments regarding the conduct of the Parish Council at their Planning Meeting.
- Hillreed development in Brickfields, West Malling is significantly more dense than the Blackmans proposal and that gained planning permission.

## **6. Determining Issues:**

- 6.1 Policy CP13 of the TMBCS allows for new development within the confines, being restricted to minor development appropriate to the scale and character of the settlement. Paragraph 53 of the National Planning Policy Framework 2012 states that Local Planning Authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.
- 6.2 Paragraphs 57 and 58 of the NPPF, and Policies CP1 and CP24 of the Tonbridge and Malling Borough Core Strategy 2007 relate to high quality design. Paragraph 60 of the NPPF requires that planning policies and decisions “should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness.” Paragraph 61 of the NPPF seeks to secure high quality and inclusive design which goes beyond aesthetic considerations.
- 6.3 Policy CP6 of the TMBCS relates to the separate identity of settlements and states that “development will not be permitted... on the edge of a settlement where it might unduly erode the separate identity of settlements or harm the setting or character of a settlement when viewed from the countryside...”
- 6.4 It is worth noting that the refused scheme was considered against the second section of CP13 which allows for redevelopment of a site within the confines of a rural settlement if the overall trip generation is projected to be lower than that associated with the former use, or there is some significant improvement to the appearance, character and functioning of the settlement, or there is an exceptional

local need for affordable housing in terms of Policy CP19. There has, therefore, been a change in the applicable section of this Policy as a result of the demolition of the house and the site now being vacant.

- 6.5 Policy SQ1(2) of the Managing Development and the Environment DPD 2010 (MDE DPD) relates to preserving the character and local distinctiveness of the area including its historical and architectural interest and the prevailing level of tranquillity, and the distinctive setting of, and relationship between, the pattern of settlement, roads and the landscape, urban form and important views.
- 6.6 The previous application which was refused under delegated powers is currently at appeal. The objections to the scheme were, in summary:
- The detailed layout, scale and massing of the scheme, the extent of built development and associated hardstanding.
  - The siting, height and massing of Plot 3.
  - The cumulative impact of the near identical design of Plots 1 and 2, their forward position within the site, the parallel orientation of the two plots and the almost continuous 28m wide combined span of buildings.
  - The proposed new access, extent of hardstanding and proposed front boundary treatment.
  - Lack of a suitable Section 106 Legal Agreement to undertake to provide on site affordable housing or, where necessary, provide a commuted sum for off site provision.
- 6.7 The proposed scheme has aimed to overcome the reasons for refusal set out above by amending the access arrangements, frontage design, and including a Section 106 Agreement for a financial contribution in lieu of on site affordable housing. The siting and design of Plots 1 and 2 have been revised with the garages becoming attached and there has been an increase in the spacing between Plots 1 and 2. The scheme has also reduced the height and sought to improve the design of Plot 3.
- 6.8 The detailed layout of the proposal has been altered through the siting of Plots 1 and 2 further back within the site and Plot 3 has been moved slightly to the west. The overall scale of development has remained the same in floor space terms but the storey heights of these units has increased but with improved spacing between the two dwellings. The overall extent of hardstanding remains much the same. It is my view that the current proposal has made sufficient improvements to the layout, scale and massing of the development and the extent of built development, in terms of Plots 1 and 2, has been redesigned to be more in keeping with the

pattern and design of dwellings along Trottiscliffe Road. Whilst the extent of hardstanding has not been reduced, the overall impact of the hardstanding from public views has been improved and will be discussed further below.

- 6.9 The siting and height of Plot 3 has been altered, with the height being reduced by 1.5m, from 9.95m to 8.45m, through the introduction of a table top roof. The siting has been amended by the unit moving 5.3m to the west and 0.8m to the north. The reduction in height set out above would noticeably reduce the overall massing of Plot 3 compared to the refused scheme currently at appeal.
- 6.10 The current application has radically redesigned the two frontage plots 1 and 2, moving away from a contemporary design and near identical design for both plots. The proposals now show two separately designed dwellings with a vernacular appearance and materials. These two houses have also been moved further back within the site to lessen their impact on the streetscene and be more in keeping with the building line of Laurelle Lodge. Whilst Plots 1 and 2 retain a parallel alignment, they remain separate in their form and scale and the continuous span of development which was previously considered to be detrimental, has been broken up by moving the garage of Plot 1 to the front of the building as an attached garage. This 'L' shape layout provides a sense of completion to this end of the development, and in turn, to the end of the built confines of the village in my view.
- 6.11 The proposed treatment for the frontage of the site and the proposed formation of a new access have been fundamentally altered since the previous application. The previous scheme proposed brick walls, railings, gates and retaining walls. All of these proposals have been removed from the scheme that is now before Members. The frontage design is now to be comprised of landscaped and grassed gardens with gradually sloped banks. Some stone retaining features may be required in small sections, but these are likely to be stone with the grass banks sitting above, i.e. no retaining features projecting above the existing levels. Full details of landscaping and boundary treatment could be conditioned on any approval along with a separate condition to approve cross sections of retaining features through the access drives. It is my view that it would be reasonable and necessary to restrict permitted development rights for fences and walls etc forward of the building line of Plots 1 and 2 to ensure control over such features following initial occupation.
- 6.12 The applicant has indicated a commitment to sign a S106 Planning Obligation for contribution of £20,000 towards off-site Affordable Housing, being an increase of £4,000 compared to the offer made through the outstanding appeal. Accordingly, the fifth reason for refusal has been fully overcome in my view. This has been assessed by the Council's retained consultants who have supported the view that this is a reasonable sum, based on viability assessment.

- 6.13 In light of the above considerations, I consider the scheme overall has sufficiently overcome each reason for refusal, resulting in a scheme which would be in keeping with the settlement of Addington and would acceptably respect the site and its surroundings. The proposal would no longer represent overdevelopment, nor would it unduly erode the open character of the site sufficient to warrant refusal. The overall scale of development is now appropriate to the scale and character of the settlement in my view. For the same reasons, I consider the proposal would not give rise to undue harm when the site, and wider settlement of Addington is viewed from the open countryside and Green Belt. I, therefore, consider the current proposals can now be considered to accord with Policies CP1, CP6, CP13 and CP24 of the TMBCS and Policy SQ1 of the MDE DPD. The proposal would also accord with Paragraphs 57 and 58 of the NPPF.
- 6.14 Similarly, the proposal would no longer cause harm to the local area, thereby complying with the test within Paragraph 53 of the NPPF i.e. the proposal would no longer represent an inappropriate development of residential garden land.
- 6.15 The proposed new accesses have been considered by Kent Highways who have raised no objection. I note the various objections from neighbours in relation to access and parking, however, the site meets the Kent Design Guide Interim Guidance Note 3 criteria for parking and the access arrangements are not considered to result in a severe impact on highway safety. The proposal would, therefore, accord with Paragraph 32 of the NPPF.
- 6.16 I note the concerns raised by an objector regarding the potential overlooking of Newlands, East Street from the revised site of Plot 3. However, I am of the view that the rear windows serving Plot 3 would have no greater level of overlooking compared to the first floor rear windows of Brookland and Ty Coed. Moreover, it should be noted that the slab level of Plot 3 would be 2m lower than the ground level of Brookland and 3.8m lower than the top of the close-boarded fence along the flank boundary of Brookland. Therefore, the overall impact on privacy and loss of light must be assessed on the basis of the relative ground levels and not simply the siting of a unit on a site plan.
- 6.17 In light of the above considerations, and notwithstanding the current appeal in progress, I recommend permission be granted, subject to a Section 106 and subject to conditions.

**7. Recommendation:**

**7.1 Grant Planning Permission** in accordance with the following submitted details:

As detailed within: Design and Access Statement dated 23.01.2014, Planning Statement dated 23.01.2014, Site Survey dated 23.01.2014, Drawing 1128-CP-1000 A dated 23.01.2014, Location Plan dated 23.01.2014, Email dated 08.02.2014, Email dated 14.02.2014, Schedule MATERIALS dated 08.02.2014, Details 3D VIEWS dated 08.02.2014, Letter dated 20.03.2014, Tree Report

PLUS APPENDICES dated 21.03.2014, Planning Layout 1128-GA-100 D dated 20.03.2014, Section 1128-GA-200 D dated 20.03.2014, Proposed Elevations 1128-GA-300 B dated 20.03.2014, Proposed Floor Plans 1128-GA-400 B dated 20.03.2014, Proposed Elevations 1128-GA-500 A dated 20.03.2014, Proposed Floor Plans 1128-GA-600 B dated 20.03.2014, Floor Plans And Elevations 1128-GA-700 C dated 20.03.2014, Subject to:

- Satisfactory completion of a Section 106 Planning Obligation to secure a contribution of £20,000 towards off site provision for affordable housing.

- The following conditions:

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

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.

2. All materials used externally shall accord with the approved plans, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the development does not harm the character and appearance of the existing building or visual amenity of the locality.

3. The use shall not be commenced, nor the premises occupied, until the area shown on the submitted layout as vehicle parking space has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to hazardous on-street parking.

4. No building shall be occupied until the area shown on the submitted plan as turning area has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved turning area.

Reason: Development without provision of adequate turning facilities is likely to give rise to hazardous conditions in the public highway.



5. No building shall be occupied until that part of the service road which provides access to it has been constructed in accordance with the approved plans.

Reason: To ensure the safe and free flow of traffic.

6. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping and boundary treatment. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the Authority gives written consent to any variation. Any boundary fences or walls or similar structures as may be approved shall be erected before first occupation of the building to which they relate.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality.

7. The development hereby approved shall be carried out in such a manner as to avoid damage to the existing trees, including their root system, or other planting to be retained as part of the landscaping scheme by observing the following:

(a) All trees to be preserved shall be marked on site and protected during any operation on site by a fence erected at 0.5 metres beyond the canopy spread (or as otherwise agreed in writing by the Local Planning Authority).

(b) No fires shall be lit within the spread of the branches of the trees.

(c) No materials or equipment shall be stored within the spread of the branches of the trees.

(d) Any damage to trees shall be made good with a coating of fungicidal sealant.

(e) No roots over 50mm diameter shall be cut and unless expressly authorised by this permission no buildings, roads or other engineering operations shall be constructed or carried out within the spread of the branches of the trees.

(f) Ground levels within the spread of the branches of the trees shall not be raised or lowered in relation to the existing ground level, except as may be otherwise agreed in writing by the Local Planning Authority.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect the appearance and character of the site and locality.

8. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), no windows or similar openings shall be constructed

in the first floor flank elevations of Plot 1 (western elevation) and Plot 3 (north elevation) other than as hereby approved, without the prior written consent of the Local Planning Authority.

Reason: To enable the Local Planning Authority to regulate and control any such further development in the interests of amenity and privacy of adjoining properties.

- 9 No development shall take place until details of slab, eaves and ridge levels relative to existing ground levels have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.

Reason: To ensure that the development does not harm the character or amenities of the locality.

- 10 The access drive shall be constructed no steeper than 1 in 10 for the first 1.5 metres from the edge of the highway and no steeper than 1 in 8 on any other part.

Reason: To ensure the safe and free flow of traffic.

- 11 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Class A, of Part 2 of Schedule 2 of that Order within the area hatched on the plan attached to this decision, unless planning permission has been granted on an application relating thereto.

Reason: In the interests of the character and amenity of the locality.

- 12 No development shall take place until detailed longitudinal sections and cross sections through the two new accesses and driveways have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.

Reason: To ensure that the development does not harm the character and appearance of the existing building or visual amenity of the locality.

### **Informatives**

1. Planning permission does not convey any approval for construction of the required vehicular crossing, or any other works within the highway for which a statutory licence must be obtained. Applicants should contact Kent County Council - Highways and Transportation (web: [www.kent.gov.uk/roads\\_and\\_transport.aspx](http://www.kent.gov.uk/roads_and_transport.aspx) or telephone: 03000 418181) in order to obtain the necessary Application Pack.

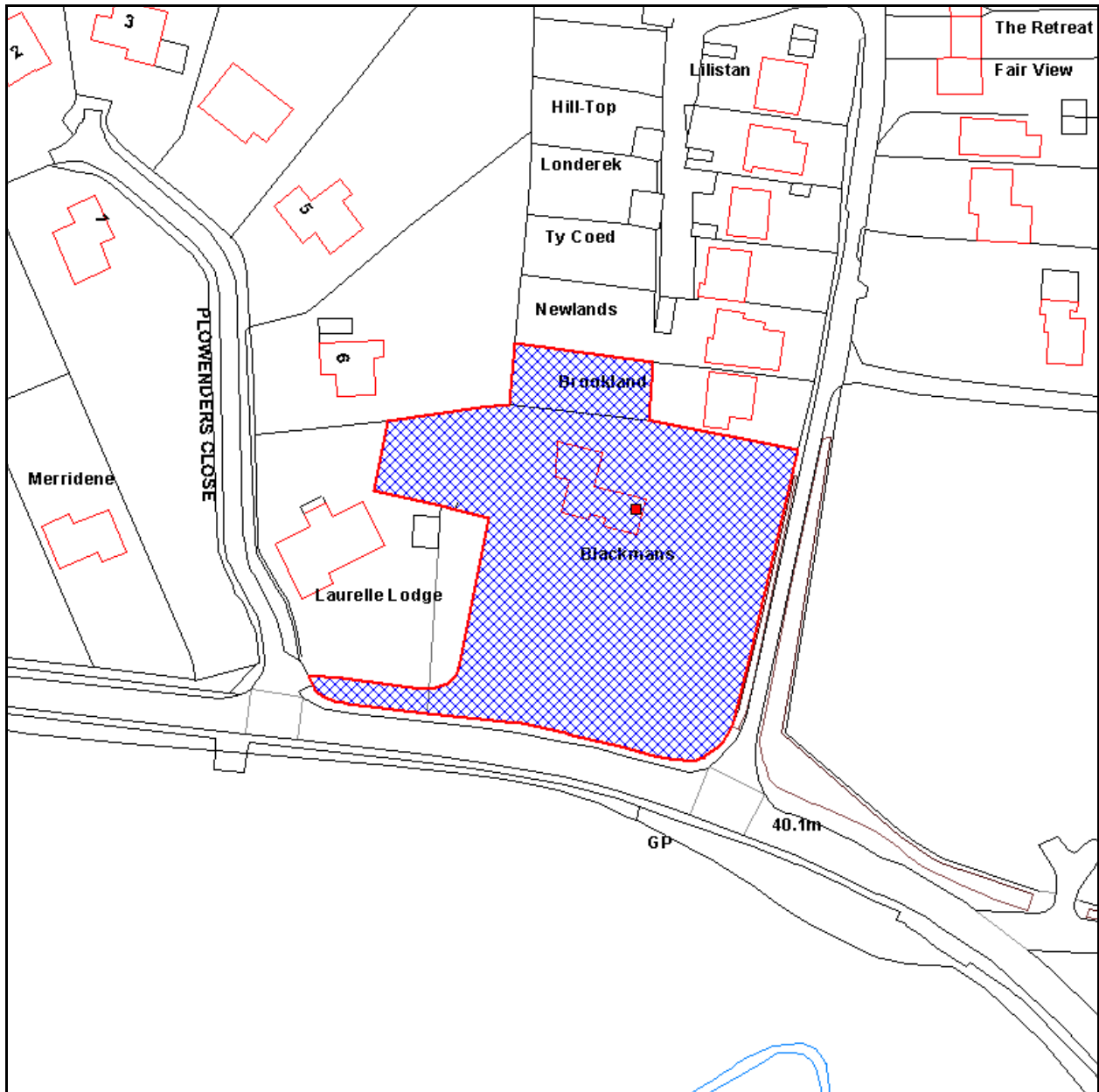
Contact: Lucy Harvey

**TM/14/00234/FL**

Blackmans Trottiscliffe Road Addington West Malling Kent ME19 5AZ

Erection of 3 no. detached dwellings with provision of new associated new access and parking facilities

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**Trottscliffe**                      **564061 160224**    **22 November 2013**    **TM/13/03625/FL**  
Downs

Proposal:                      Demolition of Cedar Bungalow and outbuildings and erection of  
3 terraced dwellings, landscaping and car park  
Location:                      Cedar Bungalow Church Lane Trottscliffe West Malling Kent  
ME19 5EB  
Applicant:                      Valley Homes (Kent) Ltd

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## **1. Description:**

- 1.1 It is proposed to demolish the now dilapidated existing small bungalow at the site and to erect a terrace of three no. 3 bedroom dwellings towards the frontage of the site, behind a new parking and turning area.
- 1.2 Since the application was originally submitted in November 2013, the proposals have been amended twice to alter the positioning of the row of terraced properties within the application site. The proposals, as being considered in this report, relate to the latest amendment to the application which was subject to consultations and neighbour notifications in March 2014.
- 1.3 The proposed terrace of three dwellings would have a stepped façade, with the western most dwelling, referred to as 'House 1' (adjacent to 2 Trosley House Cottages) set back approximately 1.5m behind the front building line of the garage of this adjoining dwelling. The remaining two new dwellings ('House 2' and 'House 3') within the terrace are set back some 3 metres from the front of 'House 1'. Overall, House 1 would be located some 9 metres north of the main frontage of the application site with Church Lane, whilst Houses 2 and 3 would range between some 16 – 21 metres from the Church Lane frontage.
- 1.4 Each of the dwellings would comprise of an entrance hallway, sitting room, utility/cloak room and open plan kitchen/dining/family area at ground floor, two bedrooms and a bathroom at first floor and a further bedroom and en-suite within the roof space. The dwellings would have north facing rear gardens, mainly laid to lawn and separated by close boarded fencing. House 1 would have the largest garden at 17 metres in length, House 2 would be 14 metres in length and House 3 would have the shortest garden (owing to two rear parking spaces) at 9 metres in length.
- 1.5 The proposed terrace would be of traditional appearance with brickwork at ground floor level above a ragstone plinth, plain clay tile hanging to the first floor elevation and plain clay tiles/fittings to the roof. Each dwelling would have a brick chimney and there would be three hipped roof dormers on the front (south) and rear (north) elevations, providing a single front and rear dormer to each of the three dwellings. It is proposed that white aluminium windows and timber doors are used

throughout, although all external materials proposed at this stage are indicative and would be subject to future approval as part of an appropriately worded planning condition.

- 1.6 As mentioned above, the application site sits on an elevated position, ranging approximately 1 – 1.5 metres above the level of Church Lane. Although exact finished floor levels of the proposed dwellings have not been indicated on the submitted plans, it is indicated that the overall ridge height of the terrace will sit at a level just below that of the ridge height of the main roofs of the pair of semi detached dwellings immediately to the west (1 & 2 Trosley House Cottages).
- 1.7 Vehicular access would be provided to the site via the existing access to the site. Six car parking spaces and a turning area would be provided in front of the proposed terrace, between the new dwellings and the boundary with Church Lane. A further two spaces would be provided to the rear of 'House 3' (the eastern most house within the terrace), accessed by an informal access track leading to land within the applicant's ownership behind the application site. Pedestrian access would be from Church Lane.
- 1.8 Owing to the level change on the frontage of the application site with Church Lane, it is proposed that a landscaped bank is created, planted with a number of native and specimen trees, low level shrubs and hedging. The final specification for this bank, which potentially could include a low level section of retaining ragstone walling, is yet to be determined, and would be the subject of further approval as part of a planning condition requirement.
- 1.9 The application is accompanied by an Ecological Appraisal, a Topographical Survey and a Desk Study in respect of potential contamination.

## **2. Reason for reporting to Committee:**

- 2.1 Called in by Cllr Kemp owing to the history of the site and the local concerns raised during the application determination.

## **3. The Site:**

- 3.1 The application site is located within the confines of Trottiscliffe and within the Trottiscliffe Conservation Area (CA). The eastern boundary of the application site also comprises the boundary of the settlement with the Metropolitan Green Belt as well as defining the extent of the CA. The site and surrounding area lies within the Kent Downs Area of Outstanding Natural Beauty (AONB) and a water gathering area.
- 3.2 The application site comprises a broadly rectangular site located on the northern side of Church Lane. It is presently occupied by a relatively small and dilapidated single storey wooden bungalow, located within the southern part of the site, in relatively close proximity to the western boundary of the site. It is surrounded by a

small curtilage, broadly denoted by existing mature coniferous trees. Immediately to the north of the curtilage are located dwarf walls of what appears to be the remnants of horticultural glasshouses. To the north of this is positioned a low metal clad building seemingly used for the storage of agricultural equipment.

- 3.3 The application site together with the small area of land located to the west and the sizeable area of land located to the east were formerly part of a horticultural small holding. Vehicular access is available from Church Lane to the site (and adjacent land) along the eastern boundary of the site. The frontage of the application site is located approximately 1 – 1.5m higher than Church Lane.
- 3.4 The curtilage of the more easterly of a pair of semi-detached houses which front Church Lane (2 Trosley House Cottages) is located immediately to the west of the southern part of the site. The eastern elevation of this dwelling abuts the application site, there are no windows within the flank of this property.
- 3.5 Immediately to the north of the curtilages of 1 and 2 Trosley House Cottages is a square parcel of land which seemingly formed part of the horticultural smallholding; this land does not form part of the application site but is within the applicant's ownership. Access to this area of land is only available through the application site and immediately behind its northernmost extent.
- 3.6 To the east of the application site is open land (which seemingly formed part of the aforementioned smallholding) and the curtilage of Cheviots, a detached dwelling which has been extended considerably in the past.
- 3.7 A terrace of 4 dwellings (1 – 4 Pine Cottages) is located immediately to the south of the site, on the opposite side of Church Lane. These are at approximately the same level as Church Lane, which as detailed previously, is approximately 1m – 1.5m lower than the application site.
- 3.8 The dwellings located on either side of Church Lane within the vicinity of the application site are of varying age, design, form and position within their plots relative to the frontage of the site.

#### 4. Planning History:

TM/63/10388/OLD	Refuse	30 July 1963
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Outline Application for demolition of bungalow and erection of dwellings with garages and vehicular access for C.W.F. Longhurst.

TM/12/00296/FL	Refuse	4 December 2012
	Appeal Dismissed	4 September 2013

Demolition of Cedar Bungalow and outbuildings and erection of 4 detached dwellings, landscaping and car parking

TM/12/00297/CA      Refuse                              4 December 2012  
   Appeal Dismissed                      4 September 2013  
Conservation Area Consent: Demolition of Cedar Bungalow and outbuildings and erection of 4 detached dwellings, landscaping and car parking

TM/13/00075/FL      Refuse                              16 April 2013  
  
Demolition of detached dwelling and outbuildings and erection of 3 detached dwellings and associated works

TM/13/00076/CA      Refuse                              16 April 2013  
  
Conservation Area Consent: Demolition of detached dwelling and outbuildings

TM/13/00077/FL      Refuse                              16 April 2013  
  
Demolition of detached dwelling and outbuildings and erection of 2 detached dwellings and associated works

TM/13/00078/CA      Refuse                              16 April 2013  
  
Conservation Area Consent: Demolition of detached dwelling and outbuildings

**5. Consultees:**

- 5.1 Trottiscliffe PC: The PC is pleased to see that the concerns regarding shadowing of the garden of the adjacent property [2 Trosley House Cottages] have been acknowledged, but still have some concerns over this. Although it is felt that this is an improvement on previous applications, it is regrettable that the new configuration leads to a considerably smaller garden to one of the properties ['House 3']. The PC still has concerns over the external materials and landscaping and requests that they be separately conditioned on any permission granted.
- 5.2 KCC (Highways): Subject to the provision and permanent retention of vehicle parking spaces shown on the submitted plans prior to the use of the site commencing, has no objections to the revised proposals.
- 5.3 KCC (Archaeology): Has no comments to make on these proposals.
- 5.4 Environment Agency: Has assessed this application as having a low environmental risk and, therefore, has no comments to make.
- 5.5 Private Reps: 18/0X/17R/0S + site and press notice. The following concerns have been expressed to the initial and amended proposals:
- The proposed terrace would be constructed right up to the boundary of an existing house [2 Trosley House Cottages]. The proposed building would start near the front corner of the adjoining property, continuing past the garage and



would result in a large flank wall towering over the adjoining property. No other house in the village would be so adversely affected;

- The development would be completely out of scale in this ancient village environment where no neighbouring property is three storeys high;
- The application site is on an elevated position, above the ground level of Church Lane. Any building on this site will therefore appear more dominant in the street-scene;
- The proposed terraced houses, at a higher level than Church Lane will directly overlook the front rooms of no's 1 – 4 Pine Cottages;
- Inadequate parking provisions proposed – there is no overspill capacity in Church Lane;
- Increased traffic on Church Lane, an already narrow rural street;
- If the existing Cedar Bungalow is to be replaced, it should be on the basis of a “one for one” replacement, not a three for one ratio;
- The size of the dwellings and the rear north-facing gardens are too small – this will result in occupiers of the new homes who will not want to stay in the village because of the lack of space/storage room;
- The development is largely located on land which currently is used for agricultural purposes, very little of it is on the area used by the original house. This would seem to contradict the protection afforded by the area's status as an AONB;
- The application site is within a Conservation Area – conservation implies retaining the status quo, something not being proposed in this case;
- Concerns with site drainage arising from increased built development within a currently green site;
- Requests that a ragstone wall be created at the front of the site where there is a change in level down to Church Lane – this would help reduce the impact of car headlights shining on properties on the opposite side of the road [1 – 4 Pine Cottages]; and
- The proposed hipped dormer windows are out of keeping with the area.

## **6. Determining Issues:**

- 6.1 Policy CP1 of the Tonbridge and Malling Borough Core Strategy 2007 (TMBCS) sets out the Council's overarching policy for creating sustainable communities. This policy requires, inter alia, (1) all proposals must result in a high quality

sustainable environment; (3) the need for development will be balanced against the need to protect and enhance the natural and built environment, and preserve, or where possible enhance, the quality of the countryside, residential amenity and land, air and water quality; (5) where practicable, new housing development should include a mix of house types and tenure and must meet identified needs in terms of affordability; and (6) development will be concentrated at the highest density compatible with the local built and natural environment mainly on Previously Developed Land.

- 6.2 Policy CP13 of the TMBCS allows for the redevelopment of a site within the confines of an 'Other Rural Settlement' such as Trottiscliffe. This policy states that new development will be restricted to minor development appropriate to the scale and character of the settlement. In the case of redevelopment, development will only be permitted if: (a) the overall trip generation is projected to be lower than that associated with the former use; (b) if there is some significant improvement to the appearance, character and functioning of the settlement; or (c) there is an exceptional local need for affordable housing in terms of TMBCS Policy CP19.
- 6.3 Policy CP24 of the TMBCS relates to achieving a high quality environment. This policy requires that development must, inter alia, (1) be well designed and of a high quality in terms of detailing and use of appropriate materials, and must through its scale, density, layout, siting, character and appearance be designed to respect the site and its surroundings; and (3) development which by virtue of its design would be detrimental to the built environment, amenity or functioning and character of a settlement or the countryside will not be permitted.
- 6.4 The site is within the confines of the Trottiscliffe Conservation Area (CA) and the Kent Downs AONB (AONB). Policy CP7 of the TMBCS requires development to not be detrimental to the natural beauty of the AONB, whilst Policies CP1 and CP24 of the TMBCS, Policy SQ1 of the MDE DPD and paragraphs 17 and 56 to 66 in the NPPF require development to be of a high standard of design and to reflect the character of the area.
- 6.5 In terms of the impact on the CA it is also necessary to refer to paragraphs 131, 132, 133 and 137 of the NPPF; these outline the importance of heritage assets that includes conservation areas. It is outlined that development that leads to substantial harm to a heritage asset should be refused unless it can be justified that the harm is necessary to achieve substantial public benefits that would outweigh the harm. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the heritage asset should be treated favourably. The statutory requirement to give special consideration as to whether a development proposal will preserve or enhance the character and appearance of a Conservation Area is furthermore set down in Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

- 6.6 MDE DPD Policy SQ8 states that, inter alia, (2) development proposals will only be permitted where they would not significantly harm highway safety and where traffic generated by the development can adequately be served by the highway network and (4) development proposals should comply with parking standards which will be set out in a Supplementary Planning Document. In this instance, the adopted parking standards are set out in Kent Design Guide Review: Interim Guidance Note 3 Residential Parking (IGN3).
- 6.7 Paragraph 17 of the National Planning Policy Framework 2012 (NPPF) seeks to encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value. The site of the existing dwellinghouse (Cedar Bungalow) is considered to be Previously Developed Land (PDL), however, residential garden land is specifically excluded from the definition of PDL within the NPPF. Accordingly, the grounds of Cedar Bungalow (i.e. its immediate curtilage) is not considered to constitute PDL. The definition of PDL in the NPPF states that "*it should not be assumed that the whole curtilage should be developed*". Whilst the majority of the site is not classed as PDL that, in itself, does not mean it is not capable of being developed as there are specific policies in the Local Development Framework against which to consider the principle of the development and its detailed merits.
- 6.8 Paragraph 53 of the NPPF states that Local Planning Authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area. Whilst there are no directly related adopted Development Plan Policies in place resisting inappropriate development of residential gardens, the general character tests set out in TMBCS Policies CP13 and CP24 and MDE DPD Policy SQ1 are the most directly relevant policies to consider in this respect.
- 6.9 The application site is formed of the dilapidated wooden structure which formed Cedar Bungalow, a shed/outbuilding to the rear of the bungalow and low level remains of walls of what is thought to be previous vegetable gardens. The majority of the application site, however, forms part of the former garden of Cedar Bungalow and is laid to grass, with a band of large coniferous trees along the eastern and southern boundaries and other low level overgrown vegetation. The proposals would result in the demolition of the Cedar Bungalow and any associated outbuildings/structures and the construction of a terrace of 3 no. three bedroom dwellings with associated vehicle parking; representing a net gain of 2 new dwellings.
- 6.10 Whilst I accept that, at least in principle, the previously developed part of Cedar Bungalow (i.e. the built development footprint) is capable of being redeveloped, there is no presumption in favour of the development of the garden areas of this dwelling in this instance. The key test here, however, is whether the proposals are

acceptable in terms of their appearance, character and impact on the functioning of this rural settlement, as required by all relevant adopted policies, including TMBCS Policy CP13.

- 6.11 As the site lies within the defined rural settlement of Trottiscliffe, the proposals must be considered in relation to the requirements of TMBCS Policy CP13. As the proposals represent the overall redevelopment of the application site, it can only be considered to accord with Policy CP13 where specific tests would be met (as outlined in paragraph 6.2 above).
- 6.12 In respect of highway matters, as discussed in more detail below (see paragraphs 6.27 to 6.28), I have concluded that in highway capacity, safety and vehicle parking terms the development proposals are acceptable. I therefore conclude that the redevelopment scheme would not result in an unacceptable highway impact, amounting to a detrimental impact on the character and functioning of the village, and, therefore, find the scheme compliant with the first key test of TMBCS Policy CP13.
- 6.13 As discussed in further detail below (see paragraphs 6.16 to 6.21), I have concluded that the current, now dilapidated, Cedar Bungalow adds little to the overall character or appearance of the surrounding Conservation Area. I have also formed the view that the new terrace is of a design, scale and layout that preserves the character and appearance of the Conservation Area, would not be detrimental to the natural beauty of the AONB. On this basis, I conclude that the redevelopment scheme would not harm the appearance and character of this part of Trottiscliffe to warrant refusal.
- 6.14 The proposals have not been submitted to meet an exceptional local need for affordable housing and, therefore, the latter policy test of TMBCS Policy CP13 is not relevant in this instance.
- 6.15 Taking the three strands of TMBCS Policy CP13 into consideration (i.e. trip generation, improvement to the settlement and affordable housing), for the reasons discussed above I consider the proposals to generally accord with these overarching policy objectives.
- 6.16 In terms of the loss of the existing dwelling, Paragraph 136 of the NPPF requires LPAs to not permit the loss of a heritage assets without taking all reasonable steps to ensure the new development will proceed after the loss has occurred. I am of the opinion that the existing bungalow has limited heritage merit, but relates to the rural character of the Trottiscliffe Conservation Area. However, in the event that a suitable scheme were proposed for the site, I do consider that the loss of the existing building could be justified.
- 6.17 I am aware that there is not a consistent design or form of dwellings within this part of Trottiscliffe. The wider Conservation Area takes in both the historic core of the village and adjoining areas which contribute to its character. The designated area

as a whole, therefore, includes a mix of building types and ages as well as a variety of materials. In the vicinity of the application site, building types comprise detached houses, which tend to be fairly substantial in scale and individual in design, together with more modestly scaled cottages in pairs or short terraces. I note that there is no consistent building line along Church Lane and the layout and spacing of buildings is varied. Architectural styles also vary and most properties have more than one external wall finish which gives a richness of colour and texture.

- 6.18 The application proposal would create a terrace of three modestly proportioned 3 bedroom houses (Houses 1 – 3) set back from the Church Lane frontage behind a car parking area and a landscaped bank. The ground levels of houses 1 – 3 would be raised above Church Lane which, together with their siting, would make the houses fairly prominent in the street scene. That said, the new terrace would not appear dissimilar in overall height terms to that of the adjoining pair of semi detached dwellings to the west (1 – 2 Trosley House Cottages), owing to the proposed roof ridge height of the new dwellings sitting slightly below that of the main roof ridge of 2 Trosley House Cottages.
- 6.19 The terrace would be of a traditional appearance, with a mix of brickwork, plain clay tile hanging and plain clay roof tiles. Other traditional detailing would include brick chimneys, a variety of front porches and a low level ragstone plinth. The use of a staggered frontage between House 1 and House 2 is proposed to reduce the overall bulk and visual impact on the adjoining dwelling (2 Trosley House Cottages), an approach which I consider acceptable in design and street scene terms in this instance. Overall, I consider that the design approach and traditional detailing to be acceptable for this Conservation Area setting. The use of a planning condition could sufficiently control external materials of the dwellings, including appropriate window and door joinery details and to control the eaves and dormer construction details to ensure it is in keeping with the rural character.
- 6.20 The proposals involve a car parking area in front of the new terrace which would provide six vehicle spaces. A further two vehicle parking spaces are proposed to the rear of House 3, accessed off an informal access track leading between the eastern end of the new terrace to further land owned by the applicant behind the application site. Given the level change of some 1 – 1.5 metres between the application site and Church Lane, the application proposes a landscaped bank at the front of the site, planted with a mix of trees, hedging and low level shrubs. I consider that the detailing of this bank will form an important part of ensuring that the proposed development fits in well with the street scene. On the basis that full details of this bank have not been provided at this stage, I consider that the use of a planning condition could sufficiently control the exact details of this important bank feature for later consideration.

- 6.21 For the reasons outlined above, I am of the opinion that the proposals would comply with TMBCS Policies CP1, CP13 and CP24, together with MDE DPD Policy SQ1 which require proposals to protect or enhance the historic environment and, through their scale, layout and materials, respect their surroundings. I am also of the opinion that the scheme would accord with paragraph 131 of the NPPF which requires proposals in Conservation Areas to preserve or enhance the character of the area.
- 6.22 Members will be aware that the proposals have generated objections from the local community, primarily based on the number of dwellings proposed, the specific design and layout approach taken and impact on surrounding residential amenity. The proposals as now amended have been subject to much scrutiny from Officers, resulting in a number of design and layout changes to reduce, as far as possible, the potential impact of the scheme on surrounding residential dwellings. A number of site visits have been taken to the application site and surrounding area, including a visit in the house and rear garden area of the closest dwelling which borders the application site to the west (2 Trosley House Cottages).
- 6.23 House 1 (the westerly most dwelling) is proposed to be located approximately 1 metre from the boundary between the application site and 2 Trosley House Cottages. The front building line of House 1 is proposed to be sited approximately 1.5m further back than the front wall of the attached garage to 2 Trosley House Cottages. House 1 would then extend some 12.5m in depth. The west flank elevation of House 1 will be visible (in part) from 2 Trosley House Cottages since the new flank elevation will extend approximately 7m from the rear façade of the attached garage to 2 Trosley House Cottages. The extent of the flank elevation which would be visible from the adjoining property would be approximately half the depth of the proposed dwelling, broadly speaking from the new ridge height backwards. Of this 7m, approximately 5.5m would be two storey height, with the remaining 1.5m comprising of a single storey 'lean to' style extension. A further projection on the rear of House 1, extending to the line of the proposed rear façade of Houses 2 and 3, would be some 6m from the boundary of the application site with 2 Trosley House Cottages.
- 6.24 Whilst I am sympathetic to the concerns expressed by the owners of 2 Trosley House Cottages owing to the change of outlook and overall increase built form which will undoubtedly arise from these proposals, having considered the proposals in light of the orientation, scale, layout and overall bulk of the proposed dwellings, I do not consider that such impact is a sufficient ground to refuse the proposals in this instance.
- 6.25 I note that the west flank elevation of House 1 would not include any windows at first or second floor level which could give rise to overlooking of either the main dwelling or the private rear garden of 2 Trosley House Cottages. It is noted that there would be a window inserted in this elevation at ground floor level to provide

light into the kitchen, but owing to a levels and existing boundary wall along the dividing boundary, I am satisfied that there would not be any overlooking issues arising in this instance.

- 6.26 Owing to the layout of the terrace within the application site, the front façade of House 1 would be situated some 20m from the façade of 1 Pine Cottages which is located on the opposite side of Church Lane. Owing to the stepped arrangement of the proposed terrace properties, this façade to façade distance would increase to between 26 – 29m for Houses 2 and 3 across to no's 3 & 4 Pine Cottages. Whilst I accept that the new terraced properties will be higher than 1 – 4 Pine Cottages, owing to the existing change in levels, the distances proposed in this instance are considered to be acceptable within the built confines and would not result in an unacceptable or overriding residential amenity objection.
- 6.27 The development proposals put forward make use of the existing highway access from Church Lane to the existing Cedar Bungalow dwelling and land owned by the applicant further beyond (to the north). As outlined above, it is proposed that a car parking area of 6 spaces is proposed to the frontage of the site, together with a further 2 car parking spaces directly behind House 3. The adopted car parking standards (Kent Design Guide Review: Interim Guidance Note 3 – Residential Parking) state that within a village environment three bedroom houses should be served by 2 independently accessible spaces per unit. Additional visitors parking should also be provided at the ratio of 0.2 spaces per unit. On the basis of the proposed three no 3 bedroom dwellings and the need for visitors' parking spaces, there is a requirement to provide 7 off-street parking spaces.
- 6.28 The proposed layout incorporates an overall 8 off-street parking spaces within the application site. This level meets, and indeed exceeds, the required level of parking provision. I note that KCC Highways and Transportation have raised no objections to the proposals, subject to the provision of car parking spaces prior to first occupation of the dwellings and their retention thereafter. Whilst I accept that there are wider parking challenges within the local area, based on the proposals put forward, I consider the development to be acceptable in highway terms.
- 6.29 The application site is not of such a size that would trigger the requirement for affordable housing as required by Policy CP17 of the TMBCS. Owing to the size of the site and the requirements of Policy CP17 it would be unreasonable to request an affordable housing contribution in this instance.
- 6.30 The application is accompanied by a Preliminary Ecological Appraisal for the site which concludes that subject to the implementation of recommendations in respect of protecting slow worms and nesting birds during the construction phase, together with recommendations regarding lighting (for bats) and habitat enhancements, the proposal should not materially harm protected species. Having regard to the

standing advice for protected species, I consider that any ecological matters could be reasonably secured by condition which would comply with Policy NE3 of the MDE DPD and paragraphs 117 and 118 of the NPPF.

6.31 A number of other important technical matters such as soft landscaping, contamination, refuse facilities, boundary fencing, external lighting, site drainage and finished floor levels can all be dealt with by appropriately worded planning conditions.

6.32 Having considered the application in light of Development Plan Policy, planning policy guidance and in respect of other material planning objections received, I consider the proposed scheme of three terraced dwellings, the access and the proposed parking arrangements to be acceptable in this location within the built village confines of Trottiscliffe. Whilst I acknowledge the concerns received in respect of overdevelopment and amenity impacts, having considered the proposals as a whole, I am satisfied that the scheme is acceptable and would result in no unacceptable or overriding harm to the historic fabric of the area. I, therefore, recommend that subject to the detailed planning conditions, as set out below, planning permission is granted for this redevelopment scheme.

## **7. Recommendation:**

7.1 **Grant Planning Permission** in accordance with the following submitted details: Letter dated 28.11.2013, Notice dated 22.11.2013, Letter dated 22.11.2013, Design and Access Statement dated 22.11.2013, Ecological Assessment dated 22.11.2013, Desk Study Assessment G/121108/001 dated 22.11.2013, Topographical Survey ZET/CEDAR/001 dated 22.11.2013, Email dated 03.03.2014, Proposed Floor Plans 2916 4 dated 03.03.2014 and Proposed Elevations 2916 5 dated 03.03.2014, subject to the following:

### **Conditions / Reasons**

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

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.

2. No development shall take place until details and samples of materials to be used externally have been submitted to and approved by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not harm the character and appearance of the existing building or the visual amenity of the locality.

3. No development shall take place until details of any joinery, eaves and dormer construction to be used have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.



Reason: To ensure that the development does not harm the character and appearance of the existing building or visual amenity of the locality.

4. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping and boundary treatment. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the Authority gives written consent to any variation. Any boundary fences or walls or similar structures as may be approved shall be erected before first occupation of the building to which they relate.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality.

5. The use shall not be commenced, nor the premises occupied, until the area shown on the submitted layout as vehicle parking and turning space has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to hazardous on-street parking.

6. No development shall commence until details of a scheme for the storage and screening of refuse has been submitted to and approved by the Local Planning Authority. The approved scheme shall be implemented before the development is occupied and shall be retained at all times thereafter.

Reason: To facilitate the collection of refuse and preserve visual amenity.

7. No building shall be occupied until the gardens between the plots have been fenced in accordance with details to be submitted to and approved in writing by the Local Planning Authority. Such fencing shall be retained thereafter.

Reason: To retain and enhance the character of the locality.

8. There shall be no external lighting except in accordance with a scheme of external lighting submitted to and approved by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved scheme.

Reason: In the interests of visual and residential amenity.

9. No building shall be occupied until works for the disposal of foul and surface water drainage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved by the Local Planning Authority.

Reason: In the interests of pollution prevention.

10. No development shall take place until details of proposed finished floor, ridge and eaves levels of buildings and ground levels within the application site have been submitted to and approved by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved level details.

Reason: In order to control the development and to ensure that the development does not harm the character and appearance of existing buildings or the visual amenity of the locality.

11. No development shall take place until details the construction and appearance, including the external materials to be used, of the proposed bank fronting onto Church Lane have been submitted to and approved by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved bank details.

Reason: In order to control the development and to ensure that the development does not harm the character, appearance or the visual amenity of the locality.

### **Informatives**

1. Tonbridge and Malling Borough Council operates a two wheeled bin and green box recycling refuse collection service from the boundary of the property. In addition, the Council also operates a fortnightly recycling box/bin service. This would require an area approximately twice the size of a wheeled bin per property. Bins/boxes should be stored within the boundary of the property and placed at the nearest point to the public highway on the relevant collection day.
2. During the demolition and construction phases, the hours of working (including deliveries) should be restricted to the following times; Monday to Friday 08:00 hours – 18:00 hours; Saturday 08:00 hours – 13:00 hours; and no work on Sundays, Bank or Public Holidays.

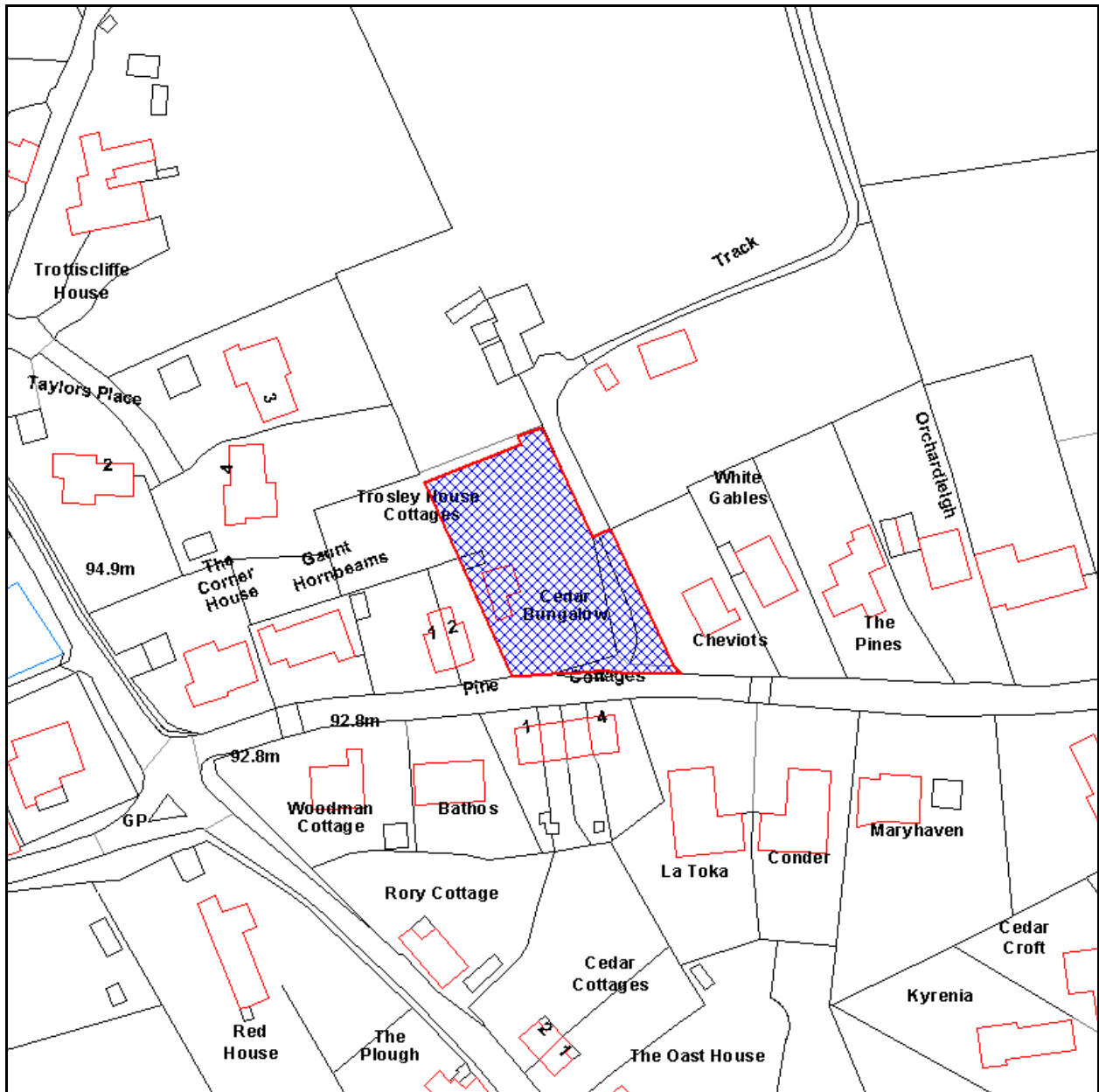
Contact: Julian Moat

**TM/13/03625/FL**

Cedar Bungalow Church Lane Trottscliffe West Malling Kent ME19 5EB

Demolition of Cedar Bungalow and outbuildings and erection of 3 terraced dwellings, landscaping and car park

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<b>West Malling</b> West Malling And Leybourne	<b>568093 157783</b>	<b>11 July 2013</b>	<b>TM/13/01952/FL</b>
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Proposal:	Development comprising 4 no. two bedroom town houses and one retail unit plus associated parking and external works
Location:	Mill Yard 26 Swan Street West Malling Kent ME19 6LP
Applicant:	Bedlars Holdings (UK) LLP

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## **1. Description:**

- 1.1 The application was originally reported to A2PC on 5 March 2014 and was deferred to allow for Officers to investigate the strategy for management of construction traffic. The committee report and supplementary report for 5 March 2014 are attached as an annex.

## **2. Reason for reporting to Committee:**

- 2.1 The application is reported to Committee following its deferral from A2PC in March as set out above. The application was originally reported to A2PC at the request of Cllrs Luker, Shrubsole and Luck due to its location within the centre of West Malling and concerns regarding car parking.

## **3. Consultees:**

- 3.1 None received since the last Committee.

## **4. Determining Issues:**

- 4.1 Before discussing the issue of construction management, I consider it worthwhile to reaffirm the current planning status of the application site. There is currently an extant planning permission for redevelopment of this section of Mill Yard for the erection of a mixed use development comprising 7 no. ground floor retail units and 5 no. 2 bed apartments with associated car parking and public space under TM/10/00991/FL.
- 4.2 The applicant could apply to discharge the associated conditions attached to TM/10/00991/FL and, subject to those conditions be formally discharged, that permission may still be implemented lawfully.
- 4.3 Condition 18 of the extant permission relates to providing a management plan to address the physical practicalities of carrying out the demolition and construction work on this tightly constrained site. This condition, which was approved by A2PC on 28 May 2011 is identical to the condition (also condition 18) proposed for the current application.

- 4.4 Whilst I understand Members' concerns surrounding the practical implementation of this latest scheme, development has already been approved with the same condition attached. As there has been no change in access arrangements since the previous consent, I commend to Members the condition on the same terms as previously. It must be remembered that redevelopment in a location such as this tight urban environment is always fraught with some difficulty on a day to day basis, but has successfully occurred all around West Malling in the past, not least on sites accessed from Mill Yard.
- 4.5 Bearing in mind Members' concerns having heard the debate at Committee, the applicant's agent has positively responded to the Member concerns regarding the demolition and construction management for the development by providing a draft management plan. The plan acknowledges the limitations of the public car park and sets out how the scheme can be implemented via the Swan Street access. The draft submitted by the applicant's agent still requires further work as it currently also relates to general site health and safety management which are not required by the condition. I expect the information, once it has been finalised, will be sufficient to discharge condition 18 in the normal manner. Accordingly, I do not consider it justified to deal with this matter as part of the main application and the same approach should be taken as the committee approved in the earlier application.
- 4.6 I also consider it is worth reminding the Committee that the current scheme is very similar in layout, form, scale and massing compared to the previously approved scheme. The current scheme proposes a lesser number of units and, in turn, less parking spaces and therefore reduces the overall impact of vehicular traffic along the private Mill Yard access and the wider road network of West Malling.

**5. Recommendation:**

- 5.1 **Grant Planning Permission**, in accordance with the following submitted details:

Proposed Floor Plans 12397F/200 dated 09.12.2013, Proposed Floor Plans 12397F/201 dated 09.12.2013, Proposed Floor Plans 12397F/202 dated 09.12.2013, Proposed Roof Plan 12397F/203 dated 09.12.2013, Proposed Elevations 12397F/204 dated 09.12.2013, Proposed Elevations 12397F/205 dated 09.12.2013, Proposed Elevations 12397F/206 dated 09.12.2013, Proposed Elevations 12397F/207 dated 09.12.2013, Proposed Elevations 12397F/208 dated 09.12.2013, Proposed Elevations 12397F/209 dated 09.12.2013, Proposed Elevations 12397F/210 dated 09.12.2013, Proposed Elevations 12397F/211 dated 09.12.2013, Proposed Elevations 12397F/212 dated 09.12.2013, Proposed Elevations 12397F/213 dated 09.12.2013, Letter dated 09.12.2013, Design and Access Statement ADDENDUM dated 09.12.2013, Letter dated 11.07.2013, Letter dated 02.07.2013, Design and Access Statement dated 11.07.2013, Details of current tenants dated 02.07.2013, Existing Elevations 12397F/002 dated 02.07.2013, Location Plan 12397F/001 dated 11.07.2013, subject to:

## Conditions

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

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.

2. No development shall take place until details and samples of materials to be used externally have been submitted to and approved in writing by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not harm the character and appearance of the existing building or the visual amenity of the locality.

3. No development shall take place until details of any joinery to be used have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not harm the character and appearance of the existing building or visual amenity of the locality.

4. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), no windows or similar openings shall be constructed in the north and eastern elevations of the eastern buildings or the roof slopes of any of the buildings other than as hereby approved, without the prior written consent of the Local Planning Authority.

Reason: To enable the Local Planning Authority to regulate and control any such further development in the interests of amenity and privacy of adjoining property.

5. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of hard and soft landscaping and boundary treatment. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the Authority gives written consent to any variation. Any boundary fences or walls or similar structures as may be approved shall be erected before first occupation of the building to which they relate.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality.

6. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of

(i) archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved by the Local Planning Authority; and

(ii) following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority.

Reason: To ensure appropriate assessment of the archaeological Implications of any development proposals and the subsequent mitigation of adverse impacts through preservation in situ or by record.

7. No development shall take place until details of the access gate to the public space have been submitted to and approved in writing by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.

Reason: To ensure that the development does not harm the character and appearance of the existing building or visual amenity of the locality.

8. No development shall take place until details of the bin collection area to include its designation and if necessary screening have been submitted to and approved in writing by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.

Reason: To ensure that the development does not harm the character

9. The existing trees and shrubs shown on the approved plan, other than any specifically shown to be removed, shall not be lopped, topped, felled, uprooted or wilfully destroyed without the prior written consent of the Local Planning Authority, and any planting removed with or without such consent shall be replaced within 12 months with suitable stock, adequately staked and tied and shall thereafter be maintained for a period of ten years.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect the appearance and character of the site and locality.

10. All work shall be carried out to the standards set in BS 3998 (or EU equivalent).

Reason: In the interests of good forestry practice and the amenity of the locality.



11. The noise attenuation measures to protect the residential properties from noise from the public car park and recycling centre set out within MRL Acoustics Noise Impact Assessment dated October 2013 shall be completed before any of the permitted buildings are occupied and shall be retained at all times unless otherwise approved by the Local Planning Authority.

Reason: In the interests of the residential amenity of the new development.

12. The retail business hereby approved shall not be carried on outside the hours of 08.30 to 18.00 hours Mondays to Saturdays with no working on Sundays or Public and Bank Holidays unless otherwise agreed in writing by the Local Planning Authority.

Reason: To avoid unreasonable disturbance outside normal working hours to nearby and adjoining residential properties.

13. The use shall not be commenced, nor the premises occupied, until the area shown on the submitted layout as vehicle parking space has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to hazardous on-street parking.

14. No building shall be occupied until the area shown on the submitted plan as turning area has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved turning area.

Reason: Development without provision of adequate turning facilities is likely to give rise to hazardous conditions in the public highway.

15. The proposed retail unit shall be used for purposes within Use Class A1 and for no other purpose of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument amending, revoking and re-enacting that Order).

Reason: The protection of the retail core of the proposed development.

16. (a) If during development work, significant deposits of made ground or indicators of potential contamination are discovered, the work shall cease until an investigation/remediation strategy has been agreed with the Local Planning Authority and it shall thereafter be implemented by the developer.

(b) Any soils and other materials taken for disposal should be in accordance with the requirements of the Waste Management, Duty of Care Regulations. Any soil brought onsite should be clean and a soil chemical analysis shall be provided to verify imported soils are suitable for the proposed end use.

(c) A closure report shall be submitted for approval by the Local Planning Authority relating to (a) and (b) above and other relevant issues and responses such as any pollution incident during the development prior to first occupation of the building hereby approved.

Reason: In the interests of amenity and public safety.

17. No development shall take place until details of foundations designs and any other proposals involving below ground excavation have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: To ensure that due regard is had to the preservation in situ of important archaeological remains.

18. No development (including demolition of the existing building) shall take place until details of a management plan to address the physical practicalities of carrying out the demolition and construction work on this tightly constrained site have been submitted to and approved in writing by the Local Planning Authority. The plan shall specify access routes into the site for construction traffic and contractors' vehicles, areas to be set aside for materials storage and maximise vehicle parking within the site and measures to protect adjoining properties whilst the development is under way. In addition, the plan shall specify pedestrian safety measures across and adjoining the site. The development shall be carried out in strict accordance with the details approved.

Reason: In the interests of the historic environment.

19. Notwithstanding the provisions of Section 55 of the Town and Country Planning Act 1990 or the Town and Country (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), the layout of the development shall not be varied by means of sub-division or amalgamation of any units, nor by the insertion of additional floors, without the prior permission in writing by the Local Planning Authority.

Reason: To enable the Local Planning Authority to assess the impact of such variation in the interests of the safe and free flow of traffic and the protection of residential amenities.

20. Prior to the commencement of the development, a scheme shall be submitted to the Local Planning Authority for approval to demonstrate that the development hereby approved will adopt and incorporate practicable and appropriate sustainable construction standards and techniques. The scheme shall take account of the need to minimise: waste generation; water and energy

consumption; and the depletion of non-renewable resources. The approved scheme shall be implemented prior to the first occupation of the building hereby approved, and retained thereafter.

Reason: To comply with the sustainable design and construction requirements identified under policy CC1 of the Managing Development and the Environment Development Plan Document.

21. Means of vehicular access to the designated residential parking within the site shall be derived solely from Swan Street. The access from Swan Street shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to the reserved parking spaces.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to hazardous on-street parking.

22. No development shall take place until details of a pedestrian link strategy have been submitted to and approved by the Local Planning Authority, and the pedestrian access shall be retained in accordance with those details.

Reason: To accord with the terms of the Design and Access Statement.

23. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) no antenna development shall be carried out within Class A of Part 25 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: In the interests of visual amenity

24. No development shall be commenced until details of a scheme setting out all the alterations to the layout of the adjoining car park and recycling centre, required as a consequence of the development hereby approved, have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timescale for the carrying out of the necessary works and any other related measures. The approved scheme shall be fully implemented in accordance with the timescale set out.

Reason: To ensure that the development access to the south hereby approved minimises any consequential impacts on the capacity of the adjoining public car park and on the facilities and operation of the recycling centre in the interests of safeguarding community facilities.

25. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Classes A, B, C, D, E and G of Part 1 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: In the interests of the character and amenity of the locality and to protect the site from overdevelopment.

26. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Classes A-F of Part 40 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: In the interests of the character and amenity of the locality.

27. No development shall take place until details of a scheme for an acoustic barrier for the construction of the party wall between the retail unit and Unit 1 have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.

Reason: To ensure that the development does not harm the residential amenities of the adjoining property.

28. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Class D of Part 4 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: In the interests of preserving the limited retail floorspace incorporated within the proposal and to respect the vitality and viability of the retail area.

29. The retail unit hereby approved shall not install any air conditioning system or extraction/ventilation system without the prior approval of the Local Planning Authority. Any approved scheme shall be installed in strict accordance with the approved details and, if replacement is required a further detailed approval will be required to be approved and implemented in the same way.

Reason: In the interests of the residential amenity of the adjoining property.

30. No development shall take place until details of external lighting have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.

Reason: To ensure that the development does not harm the character or amenities of the locality and in the interests of limiting light pollution.

31. No development shall take place until details of any street furniture, including all bollards and the gate to the private houses, have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.

Reason: To ensure that the development does not harm the character or amenities of the locality and in the interests of limiting light pollution.

### **Informatives**

1. The proposed development is within a road which has a formal street numbering scheme and it will be necessary for the Council to allocate postal address(es) to the new property/ies. To discuss the arrangements, you are invited to write to Street Naming & Numbering, Tonbridge and Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ or to e-mail to [addresses@tmbc.gov.uk](mailto:addresses@tmbc.gov.uk). To avoid difficulties for first occupiers, you are advised to do this as soon as possible and, in any event, not less than one month before the new properties are ready for occupation.
2. Tonbridge and Malling Borough Council operates a wheeled bin, kerbside refuse collection service. In addition the Council also operates a fortnightly recycling box/bin service. This would require an area approximately twice the size of a wheeled bin per property. On the day of collection, the wheeled bin from each property should be placed on the shared entrance at the bin collection area adjacent to the adopted KCC highway. The Council reserves the right to designate the type of bin/container. The design of the development must have regard to the type of bin/container needed and the collection method.
3. The applicant must liaise with KCC Highways prior to and during the construction phase to ensure that safety of all users of the public highway is maintained at all times.

Contact: Lucy Harvey

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**Report of 5 March 2014**

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**West Malling**                      **568093 157783**    **11 July 2013**                      **TM/13/01952/FL**  
West Malling And  
Leybourne

Proposal:                      Development comprising 4 no. two bedroom town houses and one retail unit plus associated parking and external works  
Location:                      Mill Yard 26 Swan Street West Malling Kent ME19 6LP  
Applicant:                      Bedlars Holdings (UK) LLP

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**1. Description:**

- 1.1 Planning permission is sought for redevelopment of existing vacant land to the rear (south and south east) of Mill Yard Craft Centre, to the rear (south) of the Post Office and 30a, 30b and 32 Swan Street, to the north of the shared Tesco and TMBC public car park, to the east of Listed properties on the High Street and to the west of the grounds of St Mary's Abbey.
- 1.2 The proposal represents four, two bedroom, town houses and a single retail unit with associated parking and external works to form a private shared courtyard, amenity space and separate pedestrian route from the public car park and Swan Street.
- 1.3 The proposal would utilise existing changes in ground level and would appear as slightly above two storeys from the car park view; however the maximum storey height is proposed at three storeys (as viewed from the internal courtyard). Along the boundary with the Abbey the buildings are reduced to two storeys with the first floor being entirely within the roofspace with no windows proposed within the eastern roof slope (i.e. in to the Abbey grounds).
- 1.4 Materials are proposed to be Kent Peg tiles, stained timber boarding, rendered panels, painted timber joinery with aluminium rainwater goods. Granite setts with concrete tegular paving is proposed for the hard surfacing, with some areas being bonded gravel to tie in with the existing accessible areas within the Mill Yard. Balustrading is proposed to be stainless steel wiring with stainless steel upstands.
- 1.5 The proposal would affect the parking layout on the public car park to the South (owned and managed by TMBC). The number of car parking spaces is not proposed to change; they would, however, require slight amendment to their siting i.e. they would need to be re-painted.
- 1.6 The single storey retail unit (with vaulted roof space) is proposed on the western end of the development measuring 35sqm in floor area.
- 1.7 4no. parking spaces are proposed, one to serve each two bedroom unit which would be accessed via Swan Street and Mill Yard.

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- 1.8 The private courtyard amenity space will be enclosed by a gate, details and location of which are to be determined at a later date.
- 1.9 The application has been submitted with an Acoustic report in relation to noise from the adjacent public car park and recycling facilities. The report measured LAeq levels during the daytime and nighttime and LAm<sub>ax</sub> levels measured at nighttime. The report concludes that an acceptable noise climate can be achieved within the proposed residential properties with a 2.5m high acoustic barrier in place for a 6.5m run on the boundary line. This climate would be achieved with standard 4-16-4 double glazing. The highest recorded LAm<sub>ax</sub> during the Friday monitoring was 83.8dB. However, with the combined attenuation from a partially opened window and the acoustic fence, this would give a level of approximately 62dB L<sub>max</sub> inside, which would equate to conversation speech, being an acceptable level.

## **2. Reason for reporting to Committee:**

- 2.1 The application was called-in by Cllrs Luker, Shrubsole and Luck due to its location within the centre of West Malling and concerns regarding car parking.

## **3. The Site:**

- 3.1 The application site is situated at the southern end of Mill Yard, off Swan Street in West Malling. The site is within the central area of West Malling which is a district centre as defined by Policy CP22 of the Tonbridge and Malling Borough Core Strategy 2007. The site also lies within a retail policy area as defined by Policy R1 of the DLADPD 2008. The site lies within the West Malling Conservation Area. The site is also situated within the historic core of West Malling and in an Area of Archaeological Potential.
- 3.2 Mill Yard is currently a small collection of commercial units with a variety of different occupiers. The buildings comprise traditional single and two storey weatherboarded buildings that are stained black. Adjoining Mill Yard and the northern boundary of the application site is the West Malling Post Office.
- 3.3 The site currently comprises unused land around the existing Mill Yard building, that are largely unkempt and overgrown, This land is either hardsurfaced and used as informal private car parking or forms the footpath route through the site between the public car park and Swan Street. The site is also edged to the south by a band of trees and shrubs, these trees are covered by a Tree Preservation Order.
- 3.4 Directly to the west of the site are the rear yards of properties in the High Street. These buildings are between two and three storeys in height and most of them are Grade II listed or of local interest. Most of these buildings have also been



significantly extended with small rear yards serving the commercial uses that occupy the ground floor. There is some residential accommodation on the upper floors.

- 3.5 To the south of the site and forming the southern boundary of the proposed development is a public car park (managed by TMBC); this car park is heavily used and also forms the main car parking serving the nearby Tesco store on the High Street. There is also a local recycling centre adjacent to the south eastern corner of the proposed development. A pedestrian route used by the public also runs across the site and links the car park to Mill Yard and Swan Street; this is closed by a gate overnight.
- 3.6 To the east of the site are the gardens of residential properties on Swan Street. These also adjoin the northern boundary of the application site. There are five residential properties adjoining the site (3 dwellings and 2 flats). Further east and within close proximity are the grounds of St Mary's Abbey, which is a Scheduled Ancient Monument, and also a Grade I listed wall that adjoins the south eastern corner of the application site.
- 3.7 The levels on the site vary, resulting in a steep drop behind the existing car park wall on the southern boundary of the site. The drop in level can be appreciated by the relatively steep ramped section of pathway.

#### **4. Planning History (most relevant):**

TM/10/00991/FL      Approved      14 June 2011

Erection of a mixed use development comprising 7 no. ground floor retail units, 5 no. 2 bed apartments with associated car parking and public space

#### **5. Consultees:**

- 5.1 PC: Members had no objections but expressed concerns about the possible impact of deliveries: they suggested that the start and finish time for deliveries should be set so as to minimise disruption and inconvenience to residents. Comments on amended information: No objections.
- 5.2 KCC Highways: I have no objection to the application. The car parking numbers proposed are within standard for this central location and egress onto Swan Street is not materially intensified. Some new car parking, deliveries and construction is proposed to be undertaken via the Borough Council's car park. It is anticipated that these elements will require some co-ordination and management input from the Borough Council (such as control of the height barrier at the entrance to the car park) and that the applicant will not be able to undertake this work in isolation or independently. A formal agreement or agreements may therefore be required. The formation of a permanent sustainable link to integrate parts of West Malling is welcomed.

- 5.3 KCC Heritage: The site lies within the historic core of West Malling which is considered to have been an early medieval community focused around the abbey of St Marys. During the Medieval Period the settlement thrived as an important local market town and trading centre. Remains associated with this activity may survive on site. It should be noted that the Scheduled Monument boundary of St Mary's Abbey adjoins the site on the south east corner. I recommend a timetable of archaeological works and safeguarding measures are required by condition.
- 5.4 English Heritage: We do not wish to comment in detail, but offer the following general observations.
- 5.4.1 West Malling conservation area is characterised by a pattern of linear road-fronting shops lining the High Street. Mill Yard lies behind the West Malling High Street within a rear service area and is adjacent to St Mary's Abbey. The Abbey complex is recognised as being of exceptional interest by virtue of holding designations as scheduled ancient monument and listed at grade I. The proposed development at Mill Yard seeks to create four two bedroom houses and one retail unit.
- 5.4.2 Whilst we do not object to development within an area to the rear of the High Street, we do have concerns about the height and form of the proposals. We feel that a three storey building would conflict with surrounding buildings and not respond to the existing grain of the rear of the High Street. This is contrary to NPPF guidance where Local Planning Authorities should look for opportunities for new development within conservation areas to enhance or better reveal their significance (NPPF paragraph 137). Similarly, in our view, the proposed height and gabled roof design will impact on the significance of St Mary's Abbey by the way in which the proposed modern roof line will be visible from within the enclosed complex of the Benedictine Abbey and alter the way in which the purposely secluded Abbey grounds are experienced. NPPF paragraph 132 stresses that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. We also feel the current application fails to assess the impact on the setting and significance of St Mary's Abbey as outlined in NPPF paragraph 128.
- 5.4.3 In determining this application we draw your Council's attention to English Heritage guidance, The Setting of Heritage Assets (2011), and suggest consideration should be given to the way in which the new proposals will impact on the significance and alter the setting of West Malling conservation area and in particular St Mary's Abbey.
- 5.4.4 Although English Heritage does not have a locus for possible impact on archaeology as there is no nationally designated archaeology on the site, this does not necessarily imply that there are no archaeological impacts to consider. We therefore advise you to contact your archaeological advisors at Kent County Council for further advice particularly as the site is adjacent to the scheduled ancient monument of St Mary's Abbey.

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### **English Heritage Recommendation**

5.4.5 We would urge you to address the above issues, and recommend that the application should be determined in accordance with national and local policy guidance, and on the basis of your specialist conservation advice.

5.4.6 Following this, the applicant submitted a further photographic study in relation to the impact on St Mary's Abbey and English Heritage now concludes that there will be minimal impact on the setting and significance of the Abbey.

5.5 Private Reps: 42/0X/1R/0S + site and press notices (DEPART/LB/CA). One letter of representation has been received and objections have been raised on the following grounds (in summary):

- Swan Street is very narrow and is frequently blocked by traffic, particularly since the buses have been rerouted down this street.
- There is not enough room for a bus and a lorry to pass. Buses have knocked down scaffolding on two occasions because there is insufficient room to pass.
- Lorries carrying building materials will add to the situation. If lorries use the public car park this will further reduce spaces.
- The occupants of the units may have two cars per dwelling which will add to traffic congestion. Lack of turning.
- There is not sufficient room for these buildings in the space proposed.
- The proposal will result in overlooking.
- West Malling is a small medieval village/town and modern housing in this Conservation Area is not in keeping with the general surroundings.
- The buildings are not an appropriate use of the land.
- Concerns raised over fire engine access.

### **6. Determining Issues:**

6.1 Members will recall the previously approved scheme for redevelopment of part of the Mill Yard, under reference number TM/10/00991/FL, which was heard at APC2 on 25 May 2011. The application was subsequently approved by decision notice dated 14 June 2011. The previously approved scheme was for a mixed use development of 7no. ground floor retail units, 5no. 2 bedroom apartments and associated car parking and public space.

6.2 The 2011 decision established the principle of a mixed use retail and residential development on this site: access, parking, contemporary design approach and impact on the character and appearance of the Conservation Area.

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- 6.3 The current application is very similar to the approved scheme in terms of access, parking, scale and massing, and overall aesthetic approach. The main difference is the mix of retail to residential as there is only one retail unit proposed under the current application, compared to seven small units previously (280sqm). The residential scheme is now proposed as 4 two bedroom town houses and a single retail unit (35sqm).
- 6.4 In terms of the privately operated pedestrian route, this would be maintained via a new route through the site. The existing car parking numbers on the public car park side of the site would be slightly reconfigured and no loss of spaces would occur. Within the site, 4 car parking spaces are proposed, one to serve each two bedroom house. As stated above, the principle of one space per 2 bedroom unit was established in the approval of the 2011 decision, and conforms with current Kent Design Standards and IGN3.
- 6.5 Since the previous approval in 2011 the NPPF has been published by Government (March 2012). The NPPF consolidated the previous set of PPG's and PPS's in to a single compact document. The overall thrust of policy relating to residential and retail development, impact on heritage assets, parking and design has not materially changed.
- 6.6 Paragraphs 23 to 27 of the NPPF relate to the viability of town centres. At paragraph 23 it is stated that Local Authorities should recognise that residential development can play an important role in ensuring the vitality of centres and set out policies to encourage residential development on appropriate sites. Paragraph 69 of the NPPF is concerned with promoting healthy communities and states that decisions should aim to achieve places which, *inter alia*, promote mixed-use developments, strong neighbourhood centres and active street frontages which bring together those who work, live and play in the vicinity. Paragraph 17 of the NPPF which sets out the core policies of the Framework also promotes mixed use development.
- 6.7 Paragraph 131 of the NPPF requires Local Authorities to take account of the desirability of sustaining and enhancing the significance of heritage assets and, *inter alia*, the desirability of new development making a positive contribution to local character and distinctiveness.
- 6.8 At a local level, the Council's Core Strategy (TMBCS), MDEDPD and DLADPD all remain in force. The relevant policies are CP1, CP12, CP22 and CP24 of the TMBCS and policies CC1, NE4 and SQ1 of the MDEDPD. Policy R1 of the DLADPD defines the retail area within the wider confines of West Malling. Under the terms of Policy R1 West Malling is defined as a District Centre in respect of retail hierarchy.

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- 6.9 Policy CP1 relates to sustainable development and promotes mixed use developments, where appropriate, in town and rural service centres. Policy CP12 allows for the principle of housing and employment development in rural service centres, and CP24 is the general policy in relation to the design of new buildings.
- 6.10 The principle of the mixed use redevelopment of the land to the rear of the Mill Yard site is supported by Policy CP12 of the TMBCS and paragraphs 17, 23 and 68 of the NPPF.
- 6.11 The level of retail development proposed is relatively small, being 35sqm, and, as the site lies within a defined retail area, the appropriateness of the mix of retail to residential within the scheme needs to be considered. The retail policy boundary extends out to the east of the main bulk of High Street properties to include the Mill Yard site. The site is therefore on the extremities of the retail boundary and is bounded by residential properties to the north and east. As Members are aware, the purpose of defining a retail area through Policy R1 of the DLA DPD is to protect existing retail uses from changes of use, it does not prescribe that only retail development can be promoted. The "parent" policy in the Core Strategy (CP22) seeks to resist development proposals that might harm the vitality or viability of an existing centre or undermine the balance of uses, harming their amenity. Looking at the wider retail offering, along with other services provided within the District Centre, the overall vitality and viability of West Malling would not be harmed by the proposed development in the sense that no retail uses or other key services would be lost as the site is currently vacant. The inclusion of an element of retail floor space will ensure that the retail offer in West Malling is improved overall by the proposal. Accordingly, in my view, a development with a low proportion of retail is in fact more appropriate for this location on the edge of the retail area. The use of the site for a predominantly residential development would complement the other residential dwellings on Swan Street, as well as the first floor residential accommodation within the High Street. The proposal can be considered to accord with Policies CP1, CP12 and CP22 of the TMBCS and paragraphs 17, 23 and 68 of the NPPF.
- 6.12 The design of the proposed development is broadly the same, in aesthetic terms, as the previous scheme and has been designed to reflect the character of West Malling, the character of the Conservation Area and to respect the amenity and historic value of adjoining buildings and structures. It is of a scale, form and materials that are in keeping and appropriate for this form of development, although it has a contemporary appearance/edge to the fenestrations. It is considered that this proposal is an example of thought out design on a very restricted site.
- 6.13 The application site is situated in West Malling Conservation Area, as identified above. It is considered that this design is appropriate for the context of the site and the Conservation Area. The key test in terms of the impact on a conservation area is whether it preserves or enhances the character and appearance of the

Conservation Area. In my opinion this development will enhance the character of the Conservation Area as it is bringing largely underused land into use and enhancing the built form of the locality. Some concern has been raised over the loss of the trees along the south western side of the site. However a tree survey has identified that these trees are all of poor quality and have not been appropriately maintained over the last 15 years. Consequently the trees' quality and amenity value is limited. Therefore, although there will some loss of a green aspect to this part of the Conservation Area and the public car park, the overall impact on amenity and value within the wider Conservation Area is limited. The proposed development therefore complies with Paragraph 131 of the NPPF.

- 6.14 There are a number of Listed Buildings adjoining and within close proximity to the application site, as well as the Scheduled Ancient Monument of the Abbey. The nearby buildings are both Grade I and Grade II listed. There is also a Grade I listed wall abutting the south east corner of the proposed development. The proposed development has been assessed in respect of its impact on these buildings.
- 6.15 In terms of the impact on the Listed Buildings in the High Street, the impact of the development is considered to be limited due to the distance between the existing and proposed buildings. Also most of the Listed Buildings on the High Street are commercial properties with commercial uses extending to the rear, consequently the impact on residential amenity is minimised. It is considered that the form of the proposed buildings is similar in scale to the properties in the High Street and therefore of a scale that is in keeping with those buildings. It is not, therefore, considered that there is a detrimental impact on these listed buildings, thereby complying with Paragraph 131 of the NPPF.
- 6.16 The Conservation Officer has been involved in the design, siting and assessment of the proposed development throughout the application process and is satisfied that the proposed development will not affect the setting of the listed buildings due to the context of the site. In addition, English Heritage has been consulted on the application and is now satisfied with the scheme as proposed. Consequently all measures have been taken to ensure any impact on Listed Buildings or structures and their setting has been fully assessed. I am therefore satisfied that the proposed development complies with national guidance within the NPPF.
- 6.17 In terms of the impact on the Scheduled Ancient Monument of the Abbey, this is sited a significant distance away from the application site. The grounds and setting that contribute to its significance are unaffected by the proposed development and therefore the relationship with the proposed development is acceptable. EH is satisfied that the scheme will not adversely affect the Abbey.
- 6.18 The final street scene issue that will have an impact on the locality is the loss of trees along the southern boundary, adjoining the public car park. These trees are also covered by a Tree Preservation Order. The impact of their loss on the

Conservation Area has already been discussed above. However, their condition has been fully and appropriately assessed and it is clear these trees have not been maintained appropriately and are therefore of poor quality. Consequently they do not contribute as much to the locality as mature native trees would and, on balance, their loss is considered acceptable in the circumstances of this particular site. Some minor landscaping adjoining the 24 hour public access point through the site is proposed to soften this boundary and will be discussed later. The loss of the trees however has been addressed as required under policy NE4 of the MDE DPD.

- 6.19 The site is situated within an Area of Archaeological Potential and therefore there is the potential for significant archaeological remains. It is recommended by KCC Heritage that the required archaeological investigations are secured by way of conditions. I am satisfied that, with the imposition of appropriate planning conditions, the potential for any significant archaeological finds can be dealt with appropriately and on this basis I am happy to recommend approval without a further investigative survey prior to determination.
- 6.20 In terms of potential overlooking or loss of privacy to neighbouring properties, most of which are residential with residential gardens adjoining the application site, there is considered to be a limited impact. This is because all elevations proposed within the current scheme which adjoin existing residential properties will either have high level windows only or none at all. This ensures there will be no overlooking or loss of privacy to the adjoining residential properties and their gardens. Moreover the catslide roof to the eastern building minimises the impact further as no openings are proposed within the roof slope. The north eastern building (Unit 4) also has no windows on the elevation facing towards Swan Street (north) to reduce the impact on those properties in Swan Street. Notwithstanding the above, a condition is required to ensure no additional windows are inserted in the elevations or roof slope of the development which adjoin residential properties. Therefore I find the relationships between the existing and proposed buildings acceptable and the development complies with polices CP1 and CP24 of the TMBCS and policy SQ1 of the MDEDPD and paragraphs 57 and 58 of the NPPF.
- 6.21 In line with Policy CC1 of the MDEDPD, a comprehensive assessment of the ability to incorporate sustainable design and construction elements within the buildings is required. Notwithstanding this, the applicants have stated that the design and location of the buildings does not lend itself to the incorporation of such features. I agree with this view and consider that renewable energy generation measures are not appropriate for this development. Normally renewable energy is in the form of solar panels, a wind turbine or a ground source heat pump. In some cases biomass generators are proposed. However the design of the buildings does not lend itself to solar panels or a wind turbine, due to the sensitive location of the proposed development and also the specific design of the proposed buildings. A ground source heat pump is not possible due to the potential archaeology and the development is not large enough for a biomass generator to

be viable. For these reasons I am of the view that, on this occasion, it would not be appropriate to request the provision of renewable energy requirements within the scheme. I do, however, see no reason why all other sustainable construction and design measures cannot be incorporated and these can be dealt with by planning condition. On this basis the development will comply with most of the requirements identified in policy CC1 of the MDE DPD.

- 6.22 In terms of highway issues, a number of matters need to be considered that all interrelate: these include access to the site, car parking provision, refuse and bin collection, servicing and also the matter of construction traffic. Clearly this is a restricted site in a busy location and adjacent to a heavily used public car park. These aspects have all been considered acceptable and approved previously through TM/10/00991/FL which is still live.
- 6.23 KCC Highways has assessed the traffic and car parking issues in relation to the proposed development and, due to the adjoining public car park and traffic control measures along surrounding streets, KHS is satisfied with the approach taken and considers it is acceptable in highway terms. The car parking provision proposed, although at the minimum, is also acceptable for this site under current Kent Design standards.
- 6.24 Refuse collection has also been addressed with a proposed bin collection area sited in close proximity to the Swan Street entrance, that would serve all the residential and commercial units and this removes any need for a refuse vehicle to enter the site. Consequently the issue of refuse and recycling bin storage and collection has been adequately addressed. Notwithstanding, a condition has been imposed to provide further details in respect of the bin collection area and its management, to ensure this matter is fully addressed in all respects.
- 6.25 In terms of pedestrian access to and across the site, this will be improved overall as a result of the proposed development as the route would become available 24 hours a day. The proposal represents an improvement to pedestrian access in terms of its availability which should be encouraged.
- 6.26 The control of construction and construction traffic is also necessary due to the restricted nature of the site and access to and from the locality. Therefore, although not normally controlled by condition, it is considered that due to the sensitive nature of the site, the existing uses and the potential for serious disruption to be caused to the locality, a condition also needs to be imposed in this regard. Therefore a comprehensive condition is proposed that deals with all matters in relation to construction traffic and the management of the site whilst construction work and clearance of the site is taking place. Although informatives would normally be imposed in this regard, on this occasion I feel a condition is appropriate to safeguard adjoining uses and access to and from the site.



- 6.27 In respect of the control of the different uses within the site and the protection of existing and proposed residential amenities, a number of conditions have been suggested to ensure the mix of uses is appropriately safeguarded. The retail element can be controlled by the imposition of a condition to restrict the use to Use Class A1. This is largely to ensure that cafes or office uses do not take over the proposed retail element of the development. For similar reasons a condition has been suggested to ensure the units are not amalgamated, subdivided or a new floor inserted. Finally, an hours of use condition for the commercial unit is also required to protect residential amenities. It is considered that 08.30-18.00 Monday to Saturdays and no opening on Sundays and Public/Bank Holidays would be sensible hours of opening within this location, however Members may wish to further consider the hours of opening.
- 6.28 A number of other conditions have also been suggested to further control the use and development of the site. In particular, a contamination condition is necessary as there is some potential for contamination to be present on the site and this needs to be adequately controlled. Tree and landscaping conditions have been imposed to ensure the protection of trees within close proximity to the site and to provide details of the small landscaped private amenity space proposed within the courtyard to serve the residential units.
- 6.29 In light of the above considerations, I recommend that planning permission is approved.

## **7. Recommendation:**

- 7.1 **Grant Planning Permission**, in accordance with the following submitted details:

To be confirmed in a Supplementary Report.

### **Conditions**

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

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.

- 2 No development shall take place until details and samples of materials to be used externally have been submitted to and approved in writing by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not harm the character and appearance of the existing building or the visual amenity of the locality.

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- 3 No development shall take place until details of any joinery to be used have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not harm the character and appearance of the existing building or visual amenity of the locality.

- 4 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), no windows or similar openings shall be constructed in the north and eastern elevations of the eastern buildings or the roof slopes of any of the buildings other than as hereby approved, without the prior written consent of the Local Planning Authority.

Reason: To enable the Local Planning Authority to regulate and control any such further development in the interests of amenity and privacy of adjoining property.

- 5 No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of hard and soft landscaping and boundary treatment. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the Authority gives written consent to any variation. Any boundary fences or walls or similar structures as may be approved shall be erected before first occupation of the building to which they relate.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality.

- 6 No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of

(i) archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved by the Local Planning Authority; and

(ii) following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority

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Reason: To ensure appropriate assessment of the archaeological Implications of any development proposals and the subsequent mitigation of adverse impacts through preservation in situ or by record.

- 7 No development shall take place until details of the access gate to the public space have been submitted to and approved in writing by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.

Reason: To ensure that the development does not harm the character and appearance of the existing building or visual amenity of the locality.

- 8 No development shall take place until details of the bin collection area to include its designation and if necessary screening have been submitted to and approved in writing by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.

Reason: To ensure that the development does not harm the character and appearance of the existing building or visual amenity of the locality.

- 9 The existing trees and shrubs shown on the approved plan, other than any specifically shown to be removed, shall not be lopped, topped, felled, uprooted or wilfully destroyed without the prior written consent of the Local Planning Authority, and any planting removed with or without such consent shall be replaced within 12 months with suitable stock, adequately staked and tied and shall thereafter be maintained for a period of ten years.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect the appearance and character of the site and locality.

- 10 All work shall be carried out to the standards set in BS 3998 (or EU equivalent).

Reason: In the interests of good forestry practice and the amenity of the locality.

- 11 The noise attenuation measures to protect the residential properties from noise from the public car park and recycling centre set out within MRL Acoustics Noise Impact Assessment dated October 2013 shall be completed before any of the permitted buildings are occupied and shall be retained at all times unless otherwise approved by the Local Planning Authority.

Reason: In the interests of the residential amenity of the new development.

- 12 The retail business hereby approved shall not be carried on outside the hours of 08.30 to 18.00 hours Mondays to Saturdays with no working on Sundays or Public and Bank Holidays unless otherwise agreed in writing by the Local Planning Authority.

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Reason: To avoid unreasonable disturbance outside normal working hours to nearby and adjoining residential properties.

- 13 The use shall not be commenced, nor the premises occupied, until the area shown on the submitted layout as vehicle parking space has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to hazardous on-street parking.

- 14 No building shall be occupied until the area shown on the submitted plan as turning area has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved turning area.

Reason: Development without provision of adequate turning facilities is likely to give rise to hazardous conditions in the public highway.

- 15 The proposed retail unit shall be used for purposes within Use Class A1 and for no other purpose of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument amending, revoking and re-enacting that Order).

Reason: The protection of the retail core of the proposed development.

- 16 (a) If during development work, significant deposits of made ground or indicators of potential contamination are discovered, the work shall cease until an investigation/remediation strategy has been agreed with the Local Planning Authority and it shall thereafter be implemented by the developer.

(b) Any soils and other materials taken for disposal should be in accordance with the requirements of the Waste Management, Duty of Care Regulations. Any soil brought onsite should be clean and a soil chemical analysis shall be provided to verify imported soils are suitable for the proposed end use.

(c) A closure report shall be submitted for approval by the Local Planning Authority relating to (a) and (b) above and other relevant issues and responses such as any pollution incident during the development prior to first occupation of the building hereby approved.

Reason: In the interests of amenity and public safety.

- 17 No development shall take place until details of foundations designs and any other proposals involving below ground excavation have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: To ensure that due regard is had to the preservation *in situ* of important archaeological remains.

- 18 No development (including demolition of the existing building) shall take place until details of a management plan to address the physical practicalities of carrying out the demolition and construction work on this tightly constrained site have been submitted to and approved in writing by the Local Planning Authority. The plan shall specify access routes into the site for construction traffic and contractors' vehicles, areas to be set aside for materials storage and maximise vehicle parking within the site and measures to protect adjoining properties whilst the development is under way. In addition, the plan shall specify pedestrian safety measures across and adjoining the site. The development shall be carried out in strict accordance with the details approved.

Reason: In the interests of the historic environment.

- 19 Notwithstanding the provisions of Section 55 of the Town and Country Planning Act 1990 or the Town and Country (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), the layout of the development shall not be varied by means of sub-division or amalgamation of any units, nor by the insertion of additional floors, without the prior permission in writing by the Local Planning Authority.

Reason: To enable the Local Planning Authority to assess the impact of such variation in the interests of the safe and free flow of traffic and the protection of residential amenities.

- 20 Prior to the commencement of the development, a scheme shall be submitted to the Local Planning Authority for approval to demonstrate that the development hereby approved will adopt and incorporate practicable and appropriate sustainable construction standards and techniques. The scheme shall take account of the need to minimise: waste generation; water and energy consumption; and the depletion of non-renewable resources. The approved scheme shall be implemented prior to the first occupation of the building hereby approved, and retained thereafter.

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Reason: To comply with the sustainable design and construction requirements identified under policy CC1 of the Managing Development and the Environment Development Plan Document.

- 21 Means of vehicular access to the designated residential parking within the site shall be derived solely from Swan Street. The access from Swan Street shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to the reserved parking spaces.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to hazardous on-street parking.

- 22 No development shall take place until details of a pedestrian link strategy have been submitted to and approved by the Local Planning Authority, and the pedestrian access shall be retained in accordance with those details.

Reason: To accord with the terms of the Design and Access Statement.

- 23 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) no antenna development shall be carried out within Class A of Part 25 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: In the interests of visual amenity

- 24 No development shall be commenced until details of a scheme setting out all the alterations to the layout of the adjoining car park and recycling centre, required as a consequence of the development hereby approved, have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timescale for the carrying out of the necessary works and any other related measures. The approved scheme shall be fully implemented in accordance with the timescale set out.

Reason: To ensure that the development access to the south hereby approved minimises any consequential impacts on the capacity of the adjoining public car park and on the facilities and operation of the recycling centre in the interests of safeguarding community facilities.

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- 25 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Classes A, B, C, D, E and G of Part 1 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: In the interests of the character and amenity of the locality and to protect the site from overdevelopment.

- 26 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Classes A-F of Part 40 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: In the interests of the character and amenity of the locality.

- 27 No development shall take place until details of a scheme for an acoustic barrier for the construction of the party wall between the retail unit and Unit 1 have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.

Reason: To ensure that the development does not harm the residential amenities of the adjoining property.

- 28 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Class D of Part 4 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: In the interests of preserving the limited retail floorspace incorporated within the proposal and to respect the vitality and viability of the retail area.

- 29 The retail unit hereby approved shall not install any air conditioning system or extraction/ventilation system without the prior approval of the Local Planning Authority. Any approved scheme shall be installed in strict accordance with the approved details and, if replacement is required a further detailed approval will be required to be approved and implemented in the same way.

Reason: In the interests of the residential amenity of the adjoining property.

- 30 No development shall take place until details of external lighting have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.

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Reason: To ensure that the development does not harm the character or amenities of the locality and in the interests of limiting light pollution.

- 31 No development shall take place until details of any street furniture, including all bollards and the gate to the private houses, have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.

Reason: To ensure that the development does not harm the character or amenities of the locality and in the interests of limiting light pollution.

**Informatives:**

- 1 The proposed development is within a road which has a formal street numbering scheme and it will be necessary for the Council to allocate postal address(es) to the new property/ies. To discuss the arrangements, you are invited to write to Street Naming & Numbering, Tonbridge and Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ or to e-mail to [addresses@tmbc.gov.uk](mailto:addresses@tmbc.gov.uk). To avoid difficulties for first occupiers, you are advised to do this as soon as possible and, in any event, not less than one month before the new properties are ready for occupation.
2. Tonbridge and Malling Borough Council operates a wheeled bin, kerbside refuse collection service. In addition the Council also operates a fortnightly recycling box/bin service. This would require an area approximately twice the size of a wheeled bin per property. On the day of collection, the wheeled bin from each property should be placed on the shared entrance at the bin collection area adjacent to the adopted KCC highway. The Council reserves the right to designate the type of bin/container. The design of the development must have regard to the type of bin/container needed and the collection method.
3. The applicant must liaise with KCC Highways prior to and during the construction phase to ensure that safety of all users of the public highway is maintained at all times.

Contact: Lucy Harvey



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**SUPPLEMENTARY REPORTS**

AREA 2 PLANNING COMMITTEE

DATED 5 March 2014

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**West Malling                      TM/13/01952/FL  
West Malling And  
Leybourne****Development comprising 4 no. two bedroom town houses and one retail unit plus associated parking and external works at Mill Yard 26 Swan Street West Malling Kent ME19 6LP for Bedlars Holdings (UK) LLP**

DPHEH: Additional information has been received, being swept paths for spaces 1 and 2 within the parking court, and the Design and Access Statement has been revised to take account of a few discrepancies. The Archaeological Report received as part of the 2010 application has been resubmitted on this application.

The swept paths provided provide the necessary assurance that the parking spaces can be accessed and that manoeuvrability is achievable. The revisions to the Design and Access Statement are sufficient to take account of the previous inaccuracies. The full Archaeological report was required to be resubmitted to ensure consistency with the previous application and the recommended archaeological conditions set out in the main report.

Following the publication of the main report, the methodology for the acoustic measurement and assessment to do with the collections from the recycling bins adjacent to the site has been questioned. The original approval for the site, which had a very similar relationship to the approved scheme in terms of proximity of habitable rooms to the recycling facility, required a noise report and appropriate mitigation measures to be submitted by condition. It is my view that the acoustic condition attached to the 2011 permission should be reinstated to allow for minor revisions to the currently submitted acoustic report and its recommendations to take place.

**AMENDED RECOMMENDATION:****Amend Condition 11:**

- 11. Development shall not begin until a scheme for protecting the proposed buildings from noise, that includes noise attenuation measures to protect the residential properties from noise from the public car park and recycling centre, in line with NPPF paragraph 123 and Noise Policy Statement for England 2010, has been submitted to and approved by the Local Planning Authority, and all works which form part of the scheme shall be completed before any of the permitted buildings are occupied and shall not be altered without the prior written approval of the Local Planning Authority.**

**Reason: In the interests of the residential amenity of the new development.**

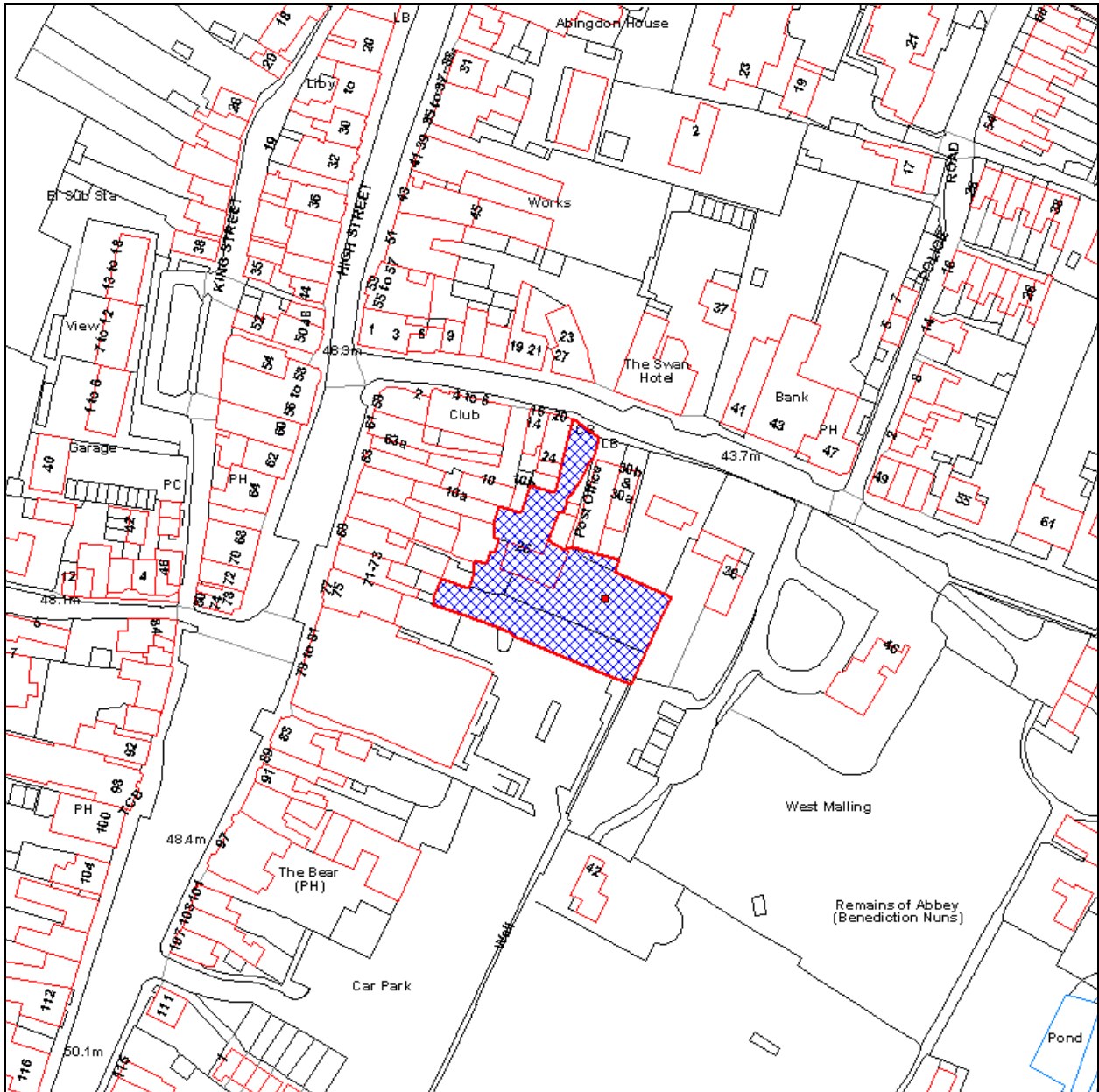
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**TM/13/01952/FL**

**Mill Yard 26 Swan Street West Malling Kent ME19 6LP**

Development comprising 4 no. two bedroom town houses and one retail unit plus associated parking and external works

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