

submission of the non-determination appeal. Planning grounds for the Call in include possible overdevelopment of the site, proximity to the recreation ground and impact on streetscene.

3. The Site:

- 3.1 The site lies on the south side of Maidstone Road within the village of Borough Green. The site lies within the built confines of the village, with the land directly to the east being Green Belt.
- 3.2 The Parish Council car park and tennis courts lie directly east of the site with the recreation ground lying further to the south east. 32 Maidstone Road lies to the west with its garden also lying to the south of the site. A Group Tree Preservation Order (being 1 Yew and 1 Ash) lie to the front of No.34 Maidstone Road, outside of the application site.
- 3.3 The main site lies in Flood Zone 1 with the Parish Council car park, tennis courts and recreation ground lying within Flood Zone 3.
- 3.4 The application site lies on land to the side of No.34 Maidstone Road which is untended open lawn set at a lower level and provides extended parking area to No.34.

4. Planning History (relevant):

TM/83/10179/FUL grant with conditions 23 June 1983

Single storey rear extension to provide additional storage space.

TM/86/11462/FUL grant with conditions 20 June 1986

Portacabin for use as a doctors surgery.

TM/86/11703/OLD planning application 27 March 1986
required

The stationing of a portacabin for a temporary period of 2 years.

TM/87/10138/FUL grant with conditions 28 September 1987

Retention of portacabin for a further period (renewal of TM/86/539).

TM/90/10554/FUL grant with conditions 22 November 1990

Retention of portacabin for further period of two to three years.

- There should be no loss of public parking spaces as a result of this application.

5.2 Private Reps (17/1X/0S/0R + Site Notice) One letter receiving raising no objection.

5.3 KCC Highways: Subject to cross section details being submitted for approval prior to commencement regarding support of the A25 highway (in order to achieve car park widening), I write to confirm that I have no objection to this application.

5.3.1 I note that the Inspector included that level data (a topographical survey) should be included and that 'garages, car parking and turning areas shall be permanently retained' for that use. Should this application be approved it is considered that amongst the other conditions imposed these should notably be included from a highway authority perspective.

6. **Determining Issues:**

6.1 The application is a resubmission of a lapsed planning permission granted at appeal. The 2004 application was heard at APC2 on several occasions and ultimately resolved to Grant Planning Permission on 26 October 2006 subject to the completion of a S106 Agreement between the applicants, the PC and any third parties, within six months of the date of the meeting, to ensure:

- The provision and retention in perpetuity of passing bays in accordance with details to be first submitted to and approved by the LPA.
- The provision and retention in perpetuity of a signed and ramped pedestrian access in accordance with details to be first submitted to and approved by the LPA.
- The provision and retention in perpetuity of lined parking bays, of a marked direct pedestrian route and measures to prevent parking within the passing bays or proximal to the junction with the A25 in accordance with details first submitted to and approved by the LPA.
- All building materials to be stored only within the garden of the application site and not the Borough Green Recreation Ground Car Park.
- All construction traffic to be parked only within the garden of the application site and not the Borough Green Recreation Ground Car Park.
- In the event that an appropriate S106 Agreement is not completed within six months of the date of the meeting, APC2 resolved to refuse planning permission for the following reasons:

1. The development would be likely to create unacceptable additional hazards to traffic using the A25 by virtue of the increased possibility

for the conflict between vehicles accessing the site and those using the car park within which the access is situated. Such conflicts could give rise to reversing manoeuvres onto the A25 or the stopping and queuing of vehicles on the A25. Accordingly, the proposals are contrary to the provision of Policy T19 of the KSP 1996.

2. The development would be likely to create unacceptable additional hazards to pedestrians by virtue of the increased possibility for the conflict between vehicles accessing the new dwellings and the use of the access by pedestrians to access the adjacent recreation ground.

- 6.2 The 2004 application was subsequently heard again at A2PC on 12 April 2006 initially to allow a further three months to progress the S106; however the appeal against non-determination was submitted prior to the meeting itself and, as such, a formal resolution was agreed to refuse planning permission as outlined above.
- 6.3 The Inspector held an Informal Hearing on 17 October 2006 where the issues of the 'effect of the proposed development on pedestrian and vehicular safety with particular regard to traffic from the A25 accessing the car park and pedestrians accessing the new dwellings and adjacent recreation ground,' were discussed. The Inspector allowed the appeal and granted planning permission on the basis that she was confident of the PC's cooperation in respect of such matters in their role as adjacent landowner and that a Grampian style condition would be adequate to require additional works to the car park area including a passing bay in the car park and a ramped access for pedestrians, which would override the highway and safety objections to the proposal. The condition required these works to be completed first.
- 6.4 It should be noted that the principle of the development, its siting, design, appearance, materials, impacts on amenity including the streetscene and residential amenity were all considered acceptable at that time and did not form part of the Council's reasons to refuse permission. As such, these matters did not form main issues by the Inspector in her appeal decision.
- 6.5 The appeal was determined on 3 January 2007 prior to the adoption of the Council's Core Strategy (TMBCS) (Sept 2007). However, the adoption of the TMBCS simply carries forward the principle of development of this site through Policy CP12 which supports housing development within the confines of Borough Green. The Government's publication of the NPPF in 2012 further reinforces sustainable development within built up areas where access to services are readily available. I therefore consider the principle of housing development in this location remains acceptable.
- 6.6 Although the drawings have been re-drawn since 2007 they do represent an identical resubmission of the appeal scheme. It is my view that, subject to additional details to be required by condition, such a eaves, verges, joinery, garage doors and chimney design, the appearance and visual impact of the

proposal will be no different to the appeal scheme. I therefore consider the proposal, in terms of siting, design, scale, bulk and mass, would not give rise to harm to visual amenity thereby complying with Policies CP1 and CP24 of the TMBCS and paragraphs 57 and 58 of the NPPF 2012.

- 6.7 Access arrangements have been objected to by the PC as adjacent landowner over which access would be provided. Access is provided over the PC's car park for the existing dwelling at No.34; however in 2006/7 it was resolved by the Borough Council that the additional vehicular and pedestrian movements over the car park, added to the narrow width of the car park, would result in harm. As such, improvements were sought via a S106 agreement. As explained earlier within the report, in considering the appeal, the Inspector concluded that a condition was sufficient to ensure improvements to the car park were provided before construction of the new dwellings, being the creation of a turning head, widening the car park to provide an access point and provide a pedestrian ramp. As such, whilst I note the PC's concerns, the Inspector's decision is an important material consideration and, as such, a condition would remain an appropriate mechanism for providing the necessary car park improvements. I therefore consider the proposal would not, subject to the condition outlined above, give rise to harm to highway or pedestrian safety thereby complying with Policy SQ8 of the MDE DPD and Paragraph 32 of the NPPF 2012.
- 6.8 Since the appeal decision in 2007, the PC has painted lines within the recreation ground car park. The PC has raised objection on the grounds of loss of parking spaces. The spaces as laid out on site are not standard sized and are merely indicative. The car park lacks width and results in the spaces being very difficult to manoeuvre in to/out of. Any increase in width to provide a passing bay would also improve the accessibility of the spaces on site, especially for larger cars. I do not therefore agree that a loss of public spaces would be harmful as it would result in fewer, more useable spaces in this much used parking area.
- 6.9 In light of the above considerations I recommend planning permission be granted subject to conditions. The wording of condition 6 allows for the PC as landowner of the access to effectively prevent this development if no agreement is reached with the applicants. The grant of a planning permission does not override that right. I appreciate that whilst the Inspector was confident that a private agreement could be reached in relation to the works to the PC's car park, this did not happen. However, in terms of the forthcoming likelihood of an agreement, it is understood that discussion between the parties has resumed and there is therefore a reasonable prospect of the development going forward within the three years allowed for within condition 1.

7. Recommendation:

- 7.1 Grant Planning Permission** in accordance with the following submitted details: Certificate B additional dated 14.09.2015, Noise Assessment dated 22.06.2015, Site Layout dated 30.07.2015, Proposed Plans and Elevations dated 30.07.2015, Planning Statement addendum dated 06.08.2015, Planning Statement dated 24.07.2015, Certificate B dated 03.08.2015, Email works to highway dated 24.07.2015, Historic Decision Notice Appeal dated 24.07.2015, Notice to serve dated 03.08.2015, Details Quote for Highway works dated 24.07.2015, Proposed Plans and Elevations Coloured version dated 11.10.2015, Site Plan dated 20.11.2015, subject to the following conditions:

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 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 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.

4. The dwellings hereby approved shall not be occupied, until the area shown on the submitted layout as vehicle parking space for each residential unit 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 2015 (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.

5. 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 2015 (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.

6. No development shall take place until the access road from the A25, associated passing bays and pedestrian access have been constructed in accordance with details that have been first submitted to and approved in writing by the Local Planning Authority. The approved access road, associated passing bays and pedestrian access shall be retained for such use in perpetuity.

Reason: In the interests of highway and pedestrian safety.

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. Prior to development of any sheds, outbuildings or refuse stores, details of such outbuildings shall be submitted to and approved by the Local Planning Authority. The development of such structures shall be carried out in strict accordance with the approved details.

Reason: In the interests of visual amenity and safeguarding the site from overdevelopment.

9. No development shall take place until details of the existing ground levels and proposed slab 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 and appearance of the existing building or visual amenity of the locality.

10. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order), no windows or similar openings shall be constructed in the roof or western flank or front elevations the dwellings 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.

11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Classes A-E, 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 visual amenity and safeguarding the site from overdevelopment.

12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Order with or without modification) no fences, gates or walls shall be erected to the accessway or driveways to the new dwellings.

Reason: In the interests of visual amenity.

13. No development shall take place until details of the means of disposal of foul and surface water 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: In the interests of environmental protection and ground water.

14. Prior to occupation, acoustic mitigation measures shall be implemented to all dwellings in accordance with a scheme to be submitted and approved by the Local Planning Authority. The scheme shall detail how adequate ventilation shall be provided whilst still achieving acceptable internal noise levels.

Reason: In the interests of aural amenity.

15. No development shall take place until details of all external joinery, eaves, verges, garage doors and chimney design 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. The applicant is reminded that the parking space shown on the approved site plan to serve No.34 lies outside of the application site area and is therefore considered to be indicative. The parking area for No.34 as shown falls partly in an area covered by a Tree Preservation Order. As such, if the owners of No.34 wanted to provide a parking area under domestic permitted development rights this may not be possible if the works affected the protected trees as separate Consent would be required. It is for the owner of No.34 to ensure that any works within the limits of their land is lawful and they are advised to contact the Planning team for advice well in advance of any works.
2. The granting of this permission does not purport to convey any legal right to block or impede any private right of way which may cross the application site without any consent which may be required from the beneficiaries of that right of way.
3. This permission does not purport to convey any legal right to undertake works or development on land outside the ownership of the applicant without the consent of the relevant landowners.
4. It is the responsibility of the applicant to ensure , before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

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