

West Malling
 East Malling West
 Malling and Offham

15 May 2023

TM/23/01006/FL

Proposal: Change of use of existing pub to form 2 x 3 bed dwellings including erection of a first floor South West rear extension, two storey South East rear extension and associated alterations

Location: The Scared Crow 79 Offham Road West Malling Kent ME19 6RB

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1. Description:

1.1 The application seeks full planning permission for the conversion of the pub to two three-bedroom dwellings. This would include the following elements:

- Erection of first floor extension above existing single storey southwest extension.
- Demolition of existing single-storey south section and replacement with a two-storey extension.
- Alterations to the two-storey northwest wing to form new roof with lower roof pitch (ridge height remains unchanged) and
- Alterations to fenestration and doors.



Figure 1 - Proposed elevations

2. Reason for reporting to Committee:

2.1 The application is referred to the Committee as the agent is a Borough Councillor.

3. The Site:

3.1 The site comprises a detached two storey building currently operating as a pub within the urban area of West Malling. It forms the northern portion of an “island” or parcel of land bounded to the north and west by Offham Road and to the south and east by Church Fields. It comprises a detached pub with ancillary residential accommodation above. The southwest portion of the island is made up of a small, attractive green space.

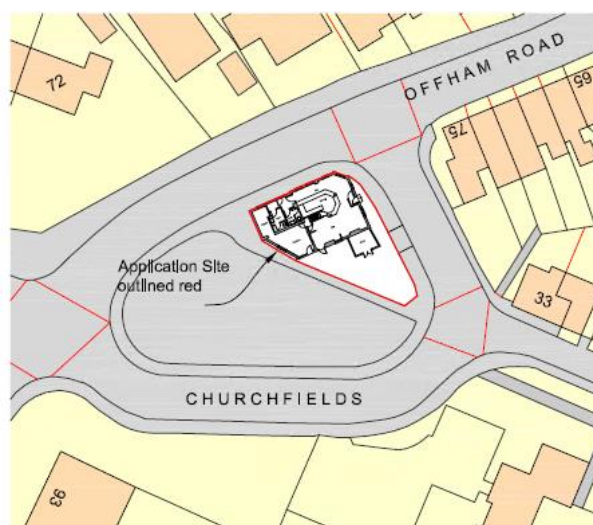


Figure 2 - Location plan

3.2 The site is within West Malling Conservation Area, and this western section is notable for its distinctive residential character featuring medium density development. There are a mix of dwelling types with dwellings to the west and south dating from the 20th Century whilst dwellings to the north are older. These are mostly two-storey in form and appearance.

3.3 The pub was designated an Asset of Community Value (ACV) in 2021.

4. Planning History (relevant):

TM/20/02539/FL Application Withdrawn 5 January 2021

Change of use from existing Public House, to form 2 no 2 storey dwellings with minor additions to rear elevations

5. Consultees:

5.1 Environmental Protection: Due to the longstanding use as a pub and the introduction of landscaped gardens, a watching brief condition is recommended.

5.2 Parish Council (West Malling): Objection for the following reasons (in summary):

- loss of a well-loved pub, which has been designated an Asset of Community Value (ACV).
- significant harm to the heritage value of the site and to historic internal features
- harm to privacy of future occupants and neighbouring residents
- poor quality accommodation for future occupants due to historic fabric
- loss of local employment
- negative effect on the character and appearance of the area
- The statement viability questioned given the success of other similar facilities in this West Malling.

5.3 Conservation Officer – The building scores reasonably as being a historic asset under group value, historic interest and landmark status. It is also reasonably considered a local rarity for West Malling although not rare in regional or national terms. The officer suggests that the building should be considered as a non-designated heritage asset for the purpose of planning . Furthermore, the building makes a positive contribution to the character of this part of the West Malling Conservation Area.

5.4 Private Reps: 0+site notice and press notice/1X/4S/3R. There were eight representations in total and comments are summarised as follows:

5.4.1 Three representations **object** on the following grounds:

- Loss of the pub, which is an asset of community value, to provide private housing
- Increased pressure for on-street parking and impact upon privacy
- Harm to heritage value of the site.
- Overdevelopment of the site.
- Lack of parking.
- Concerns expressed about the statements in the viability assessment as follows:

- 1 The business could be profitable with suitable management.
- 2 Customer base is increasing. There are a number of new developments being constructed in the area and
- 3 West Malling can sustain a number of successful hospitality venues in the village as people come from neighbouring villages/towns.

5.4.2 Four representations **support** the proposal on following grounds:

- The business owner should be allowed to sell the business in the face of difficult trading circumstances.
- There are other facilities in the area to support local users.
- The proposal will reduce pressure for on-street parking.

5.4.3 A further **general** comment has been received stating that whilst the business would be missed, this shouldn't result in objections to the change of use.

6. Determining Issues:

6.1 Under the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the Local Planning Authority is required to determine planning applications and other similar submissions in accordance with the Development Plan in force unless material considerations indicate otherwise. The Development Plan currently in force for this area comprises the Tonbridge and Malling Local Development Framework Core Strategy (TMBCS) adopted in September 2007, the saved policies of the Tonbridge and Malling Borough Local Plan 1998 (TMBLP), Development Land Allocations DPD (DLA DPD) adopted in April 2008 and the Managing Development and the Environment DPD (MDE DPD) adopted April 2010. The National Planning Policy Framework ("NPPF") and the associated National Planning Practice Guidance ("NPPG") and National Design Guide are important material considerations.

Principle

6.2 As Members are aware, the Council cannot currently demonstrate an up-to-date five-year supply of housing when measured against its objectively assessed need (OAN). This means that the presumption in favour of sustainable development as set out at paragraph 11 of the NPPF (2023) must be applied. For decision taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

6.3 In this case, the proposal is within a Conservation Area, which is a designated heritage asset and therefore one of the protected assets to which paragraph 11(d)i. would apply. As such, if the proposal results in harm to the Conservation

Area, the presumption in favour of residential development would not apply. Similarly, the presumption would be disengaged if the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

- 6.4 Policy CP12 of the Tonbridge and Malling Borough Core Strategy (“TMBCS”) sets out that residential development and proposals for conversions or changes of use will be permitted in Rural Service Centres. This policy accords with the aims of the NPPF to maximise opportunities for the supply of housing in appropriate locations that can contribute towards the supply and maintain and enhance the vitality of existing communities. The policy is up-to-date, and the proposed development broadly accords with these aims and the requirements of this policy. Thus, there is no objection in principle to the development.

Design and character

- 6.5 Paragraph 130 of the NPPF sets out that planning policies and decisions should ensure that developments:
- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
 - b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
 - c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
 - d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
 - e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
 - e) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 6.6 Development of poor design that fails to reflect local design policies and government guidance on design should be refused as set out in paragraph 134 of the NPPF.
- 6.7 Policy CP24 of the TMBCS seeks to ensure that all development is well designed and respects the site and its surroundings. This aim is echoed in paragraph 58 of the NPPF which seeks to ensure that development will function well, create attractive, safe places in which to live and work, optimise the potential of the site, respond to the local character of the surroundings and be

visually attractive. In addition, policy SQ1 of the MDE DPD requires development to reflect the local distinctiveness, condition and sensitivity to change of the local character areas. These policies are broadly in conformity with those contained within the Framework which relate to quality of new developments.

- 6.8 The existing building makes a positive contribution to the character and appearance of the area due to its current architectural design and its isolated position arising from its setting within the island. The proposal would replace an existing rear extension with a larger extension which is more in keeping with the overall character and design of the existing building. Similarly, extensions and alterations to the southwest range of the building would be generally sympathetic in form and appearance to the existing building. Although the proposal would lead to a more domestic appearance to the building, this would not appear out of character within this residential area which features a degree of variation in the design, character and form of the area.
- 6.9 The proposal would leave a relatively small space around the building within the site which would not appear, in this instance, unduly cramped given the existing density of building within the site and the open space around the site within this “island” setting. This setting would ensure a degree of openness around the building whilst retaining its prominent position within the site.
- 6.10 For the above reasons, no objection is raised in relation to the impact upon the street scene or character of the surrounding area.

Conservation Area and Heritage

- 6.11 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
- 6.12 Paragraph 199 of the NPPF requires that great weight should be given to the conservation of a designated heritage asset, the weight given should be proportionate to the importance of the asset. Paragraphs 200-202 set out that heritage assets are irreplaceable, and any harm or loss should require clear and convincing justification.” Less than substantial harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use as set out in paragraph 202 of the NPPF.
- 6.13 The site is situated at the western side of the West Malling Conservation Area, a designated heritage asset. The Conservation Area Appraisal noted the residential character of this area with dwellings of varied form and comprising a diverse range of traditional building materials. Generally, “[t]he unity comes from the siting of the dwellings rather than their appearance” and the enclosure of front garden spaces. The Scared Crow is identified as an interesting element at the entrance to the Conservation Area from along Offham Road.

- 6.14 The contribution of the pub to the conservation area arises from its architectural interest and prominence from the street scene. Although the external appearance of the building would be altered, this would not adversely impact its contribution to the appearance of the conservation area. The extensions and alterations would be in keeping with the general character and design of the existing building, and the more domestic appearance would not appear incongruous with the residential character of the surrounding area in general. The resulting development would remain an interesting architectural feature at this gateway to the conservation area. Thus, the proposal would conserve the historically significant contribution of the building to the designated heritage asset.
- 6.15 The Parish Council has noted the heritage significance of the building in architectural and cultural terms. Having assessed the site against the criteria detailed in guidance from Historic England on identifying non designated heritage assets¹, the Conservation Officer has suggested that the building meets the criteria for the following reasons:
- Group value: Although of earlier origin than most neighbouring development, the building forms part of a gradual westward expansion of the village in the 20C, and it makes a positive architectural contribution within this group.
 - Historic interest: The building has some historic interest in its connection to the national increase of public houses at the time of its construction and its association with the expansion of the village, including its social/communal use in this context.
 - Landmark status: The building is prominent in the street scene as it is set at a bend in the road, isolated within its own space and close to the edge of the village. This lends some landmark status, but it is not considered particularly high.
- 6.16 A non-designated heritage asset is not subject to statutory protection which applies to listed buildings and conservation areas. Nevertheless, paragraph 203 of the NPPF states that the effect of development upon non-designated heritage assets should be taken into account and a balanced judgement will be required with regard to the scale of any harm or loss and the significance of the heritage asset.
- 6.17 As noted, the proposal would not harm the overall character of the building or its contribution to the surrounding conservation area. Therefore, the proposal would not affect the group value or landmark status of the building referenced by the Conservation Officer. However, the proposed change of use would result in some diminution of its historic interest as a pub and its visible link to the

¹ Historic England 2021 Local Heritage Listing: Identifying and Conserving Local Heritage: Historic England Advice Note 7 (Second Edition)

development of these facilities within communities. Having regard to the assessment regarding the viability of and need for the pub within the next section of this report, it is not considered on balance that this minor harm would give rise to an objection on the grounds of the impact upon the non-designated heritage asset. The change of use would ensure that there remains a continued viable use for the building, which would ensure that its positive contribution to in relation to the group value and landmark status of the building is preserved.

Loss of community facility

- 6.18 The Scared Crow is designated as an Asset of Community Value (ACV) as set out in the Localism Act 2011, which seeks to assist local communities to preserve buildings or land of importance to community social well-being by giving the community the chance to bid to buy the asset. Whilst this does not require that the landowner must retain the use or sell the property to the community, the Council has determined the facility to have contributed to the social well-being and interests of the local community and could continue in this function. In this case, the Council considered the pub to be of “community value” serving as a “locals pub”, bringing together various members of the local community and furthering “social wellbeing.” Moreover, the assessment of the ACV nomination noted that the Parish Council had indicated that it would be interested in running the property as a community-run pub, thereby suggesting that a continued community use could be a realistic prospect.
- 6.19 The ACV designation requires that notice of intended disposal must be served to the Council upon which there is a moratorium period to allow community interest groups to be treated as a potential bidder. In this case, notice of disposal was served on 18 January 2022. No community interest was received, and the moratorium on disposal has ended.
- 6.20 Notwithstanding the completion of the moratorium period, policy CP26 of the TMBCS sets out that proposals which would result in the loss of sites and premises currently or last used for the provision of community services or recreation, leisure or cultural facilities should only be permitted under certain circumstances. Of these only c) may be applicable, and this requires that the applicant “proves, to the satisfaction of the Council, that for the foreseeable future there is likely to be an absence of need or adequate support for the facility.”
- 6.21 A viability assessment (VA) has been submitted in support of the application for the change of use to a residential use. This sets out the market context for the pub operation and the trading conditions for the current business operation and the sector generally. In addition, information has been submitted to detail the valuation and marketing of this site. This information has been considered by a consultant engaged by the Council.

- 6.22 The VA states that The Scared Crow has traded as an owner operator business and free house offering food and drink since 2004. Under the current management, attempts have been made to improve trade, but the business is marginally viable. The VA details local competition and notes that there are five other pubs serving West Malling in addition to a local club (Malling Town Club) and licensed restaurants. The decline in trade for this pub is likely to have been caused by the changing needs and requirements of the local population and significant increases in competition from other outlets for the same business.
- 6.23 The letter prepared by Christies provides details of the marketing of the pub in 2022 and states that the value was based on other comparable sales within the region and was founded on their experience within the pub sector. There has been little interest from prospective buyers who wish to continue the pub operation. Although one offer was received (and rejected as too low by the applicant), this offer did not come from a party seeking to continue the pub operation.
- 6.24 The Council's consultant has reviewed the pub operation and the trading context. The review generally agrees with the findings of the VA and concludes that it is difficult for the pub to compete given the size of the building and the lack of parking. It is marginally viable. In terms of the marketing exercise, the consultant has suggested a market value 17% lower than the marketing price sought in 2022. Whilst this variance is not insubstantial, it is noted that the Council's valuation is more recent and therefore reflective of the impact of continuing challenges faced by the sector and the difficulties with commercial finance in the intervening period.
- 6.25 For these reasons, it is considered that the application has satisfactorily established a lack of need and support for its continuance on site. The loss of the pub and community facility would meet exception criteria c) of Policy CP26, and the proposal would therefore result in an alternative viable use for the building.

Neighbour amenity

- 6.26 The proposed development would extend the building and form two residential dwellings. The proposed dwellings would be 12-18m from the nearest dwellings along Offham Road (nos. 68, 70 and 75). Given the position of the dwellings within this central island, the proposal would not result in a loss of light, outlook or privacy which would warrant an objection on the grounds of the impact to neighbouring amenity.
- 6.27 Furthermore, there would be no greater noise or nuisance impact arising from the proposed residential use when compared to the existing commercial use. However, the construction activity could result in some temporary disturbance

given the setting of the site. A construction management plan would be required by condition to ensure that this is adequately considered and mitigated.

Living conditions

- 6.28 The National Design Guide (2021) sets out that high quality design includes the provision of satisfactory living conditions for future occupiers. The proposed internal habitable accommodation would be suitable for family sized dwellings, and the external amenity space would be suitable.
- 6.29 These three bedroom five person dwellings would measure 85.3m² and 105m². Dwelling 1 would be slightly smaller than the minimum size recommended in the Technical guide – Nationally described space standards. Although it is a useful reference guide when evaluating the quality of habitable accommodation, the Local Plan does not require compliance with the standard. As such, a shortfall of less than 8m² relative would not be sufficient to warrant an objection.
- 6.30 With respect to outdoor amenity space, the dwellings would include small gardens which would be small relative to the family sized accommodation. Nonetheless, the space shown would offer outdoor space for amenity and domestic activities. Moreover, the dwellings would be directly adjacent to an open space to the side. For these reasons, it is not considered that an objection is warranted in this instance.

Highways and parking

- 6.31 The application site does not include any access from the highway. However, it is considered that construction activity could result in a temporary safety and capacity issue given the lack of on-site parking and the urban context. As such, a construction management plan should be required to ensure that this activity is conducted without adverse impact upon the local highway network.
- 6.32 The proposal does not include any on-site parking contrary to the adopted parking standards to residential dwellings. Although it is noted that there is pressure for on-street parking, the pressuring associated with the existing use as a pub would generate a higher parking requirement than the proposed residential use. Furthermore, the site is within an established settlement area less than 400m from the centre of West Malling and its High Street with access to services and public transport. As such, no objection is raised in this instance to the lack of on-site parking provision.
- 6.33 In order to promote sustainable transport, cycle storage should be required and secured by condition.

Biodiversity

- 6.34 Policy NE2 of the MDE DPD seeks to protect, conserve and enhance the biodiversity of the borough, in particular priority habitats, species and features. The restoration and creation of new habitats will be pursued. Policy NE3 of the MDE DPD further states that development that would adversely affect the biodiversity will only be permitted if appropriate mitigation and/or compensation measures are provided within the site. Proposals must make provision for the retention of the habitat and protection of its wildlife links. Opportunities to maximise the creation of new corridors and improve permeability and ecological conservation value will be sought.
- 6.35 The site is largely occupied by the building itself, with limited external ground. Nevertheless, the proposal provides the opportunity to secure some ecological enhancements and biodiversity net gain, for example with the inclusion of bird boxes and adequate soft landscaping. This would be secured by condition. On this basis, no objection is raised in relation to Policy NE3 of the MDE DPD or paragraphs 174 and 180 of the NPPF.

Climate change

- 6.36 Paragraph 153 of the NPPF requires Development Plans to take a proactive approach to mitigating and adapting to climate change. It encourages new development to avoid increase vulnerability to the range of impacts associated with climate change. Where there are proposals in vulnerable areas care is to be taken to mitigate and consider green infrastructure. In addition, proposals should help to reduce greenhouse gas emissions and increase the use of renewable and low carbon energy.
- 6.37 The Government has adopted the Future Homes and Building Standards in line with its commitment to achieve net zero emissions by 2050. This seeks to reduce CO₂ emissions from new homes by 75-80% from 2021 standards, and new homes will need to be “zero carbon ready”, meaning that no further retrofit work will be necessary to enable them to become zero-carbon homes. The first stage of this transition towards the decarbonisation of buildings came into force on 15 June 2022 via a suite of revised Building Regulations, which require that CO₂ emissions from new build homes must be 30% lower than under previous standards. The Building Regulations relevant sections are:
- Part L (Conservation of Fuel and Power) Volume 1 Dwellings;
 - Part F Ventilation;
 - Part O Overheating;
 - Part S Electric Charging points.

- 6.38 The efficiency levels now required encourage the installation of zero-carbon technology through Building Regulations. Thus, no conditions or informatives are recommended in relation to the incorporation of zero carbon technologies.
- 6.39 The amended Building Regulations under Approved Document S also require that new developments must include spaces with access to electric vehicle charging points equal to the number of new dwellings and that cable routes/infrastructure should be provided to other parking spaces. Where charging points would have previously been secured by condition, this is no longer reasonably required.

Conclusion

- 6.40 The proposal would contribute a net gain of one additional dwelling (taking into account the owner occupation of the upper floor). Whilst not a substantial contribution, the windfall gain comes at a time when the Council cannot demonstrate a five-year housing land supply. As such, this is a positive benefit to which moderate weight must be attached.
- 6.41 The proposal would conserve the Conservation Area and would not lead to harm in relation to the other policy considerations within local and national policy. The loss of the community facility is regrettable, but the continued operation as a pub has been shown to be non-viable, the proposal would secure a viable use for the building, and no bids were received under the AVC process from the community to take over the running of the pub.

7. Recommendation:

7.1 Grant planning permission subject to 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 The development shall be carried out in accordance with the following approved plans/documents:

Proposed Elevations SK 02C dated 21.07.2023, Email ADDL INFO RE ACCOUNTS & OFFERS dated 18.08.2023, Planning Statement dated 12.05.2023, Existing Plans and Elevations S 01B dated 12.05.2023, Proposed Elevations SK 02C dated 21.07.2023, Other Marketing letter dated 12.05.2023, Viability Assessment dated 12.05.2023, Proposed Floor Plans SK 01E dated 15.05.2023,

Reason: To ensure the development is carried out in accordance with the approval and to ensure the quality of development indicated on the approved plans is achieved in practice.

- 3 No above ground development, excluding demolition works, 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.

- 4 Prior to the commencement of the development hereby approved, a Construction Management Plan shall be submitted to and approved by the Local Planning Authority. The Plan should set out arrangements for the management of any and all demolition and/or construction works and shall include (but not necessarily be limited to) the following:

- (a) The days of the week and hours of the day when the construction works will be limited to and measures to ensure these are adhered to;
- (b) Procedures for managing all traffic movements associated with the construction works including (but not limited to) the delivery of building materials to the site (including the times of the day when those deliveries will be permitted to take place and how/where materials will be offloaded into the site) and for the management of all other construction related traffic and measures to ensure these are adhered to;
- (c) The specific arrangements for the routing and parking of contractor's vehicles around the site during construction and any external storage of materials or plant throughout the construction phase.
- (d) Temporary traffic management/signage
- (e) Provision of measures to prevent the discharge of surface water onto the highway
- (f) Procedures for notifying neighbouring properties as to the ongoing timetabling of works, the nature of the works and likely their duration, with particular reference to any such works which may give rise to noise and disturbance and any other regular liaison or information dissemination; and
- (g) The controls on noise and dust arising from the site with reference to current guidance.

The development shall be undertaken in full compliance with the approved details.

Reason: In the interests of general amenity and highway safety.

- 5 Prior to the first occupation of the development hereby approved, details of the secure cycle storage facilities shall be submitted to and approved in writing by the Local Planning Authority. The approved cycle storage shall be completed prior to the first occupation of the development, and thereafter maintained and retained in accordance with the approved details.

Reason: To ensure that cycle storage is provided and maintained in accordance with the Council's adopted standards.

- 6 Prior to the first occupation of the development permitted, an ecological strategy shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented prior to first occupation and retained thereafter.

Reason: To conserve and enhance the natural environment.

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. 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 In the interests of good neighbourliness the hours of construction, including deliveries, should be restricted to Monday to Friday 07.30 - 18.30 hours, Saturday 08.00 - 13.00 with no work undertaken on Sundays or Public/Bank Holidays. This should be reflected in the Construction Management Plan required by condition 4.
- 3 In the interests of good neighbourliness all vehicles and machinery associated with construction should be parked within the site and not on the public highway in such a manner as to create an obstruction.
- 4 The disposal of waste by incineration is contrary to Waste Management Legislation and could lead to justified complaints from local residents. It is thus recommended that no bonfires are lit at the site.
- 5 Tonbridge and Malling Borough Council operate a two wheeled bin and green box recycling refuse collection service from the boundary of the 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.

Contact: Alda Song