

Tonbridge

TM/23/00796/FL

Location: The Vicarage, Church Street, Tonbridge, TN9 1HD

Proposal: Erection of one dwelling with incidental ground works and access

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1. Description of Proposal:

- 1.1 Permission is sought for a new detached dwelling in the rear garden of 'The Vicarage'. This application is essentially the fourth renewal of a planning permission first granted in 2012 (TM/11/02395/FL). The three previous renewals are: (TM/14/01866/FL), (TM/16/03629/FL), and (TM/20/01147/FL). The latest permission granted in 2020 was still extant at the time of submission, however, was not implemented and has since expired during the course of this application.
- 1.2 The proposed dwelling house would be accessed from Church Street through an existing car park by removing part of a wall. The access drive would run parallel to an existing garage block to the south serving the block of flats and run adjacent to the garden of The Vicarage.
- 1.3 The dwelling is designed as a 1.5 storey pitched-roof barn running east to west with two single storey "outriggers" stretching out into the garden to the north and south. The living accommodation is on the ground floor with a guest bedroom, and three further bedrooms are proposed on the first floor. The exterior of the new house is proposed as timber weatherboarding over a brick base. The single storey elements have green roofs with a zinc horizontal cladding panel.
- 1.4 Parking is proposed for 4 cars; 2 surface spaces within the driveway area and 2 spaces within a detached car port building.
- 1.5 A revised site location plan was submitted during the course of the application which corrected the red boundary line of the site to accord with the actual ownership boundary of the land. This increased the width of the southern boundary of the site from 4m to 8m. At the same time, the location of the proposed access driveway was amended to enable the retention of the existing Copper Beech and Cherry Laurel trees situated adjacent to the southern boundary of the site. A reconsultation on the revised plan was undertaken in August 2024.

2. Reason for reporting to Committee:

- 2.1 The application has been called in by Councillor Anna Cope on the grounds of impact to the Tonbridge Conservation Area and impact on existing trees.

3. The Site:

- 3.1 The Vicarage is located off Church Street in the Tonbridge Conservation Area and adjacent to the Church of St Peter and St Paul. The property is set back from the road with the Church Parish Office located in the adjacent Coach House building to the west. Parking for the church is situated to the south west within a private car park.
- 3.2 The application site is located to the rear (east) of The Vicarage. To the north of the site is the Grade II listed boundary wall of the churchyard, with the Grade II* listed church beyond. To the south is a post-war flat development known as 'New Court' with a row of garages running along the boundary with the site.
- 3.3 To the east is the scheduled ancient monument (SAM) (the Fosse), a Medieval town wall. Then beyond, to the east, at a lower level to the site is Cedars; an 18th Century property set in a large plot with a mature vegetation screen along the boundary with the site.
- 3.4 Officers have carried out two separate site visits prior to reaching a recommendation on this application, given the level of public interest. Members of the Planning Committee have also carried out a site visit.

4. Planning History (relevant):

20/01147/FL

Approved - 05 August 2020

Erection of one dwelling with incidental ground works and access

16/03629/FL

Approved - 12 May 2017

Erection of new dwelling (resubmission of previous applications TM/11/02395/FL and TM/14/01866/FL)

14/01866/FL

Approved - 13 August 2014

Proposed new dwelling (resubmission of application TM/11/02395/FL)

11/02395/FL

Approved - 13 February 2012

Erection of new dwelling

5. Consultees:

- 5.1 TMBC Tree Officer:

The site is within the Tonbridge Conservation Area.

Trees at the site have been assessed for possible inclusion within a new TPO and it has been formally determined that it would be inappropriate to include those trees within a new Order.

The proposed scheme to allow for the retention of the Copper Beech tree and submitted an "Arboricultural Report, Tree Survey, Arboricultural Impact Assessment & Tree Protection Plan" by The Mayhew Consultancy Ltd dated June 2024 which demonstrates that provided appropriate precautions and methodologies are utilised it is possible to retain the Copper Beech as part of the amended scheme.

It would not be justifiable to refuse this application on tree grounds subject to pre-commencement conditions for the submission and approval of details of tree protection and method statement, hard and soft landscaping, levels and services in relation to trees.

I would also support restriction of Permitted Development rights.

5.2 TMBC Environmental Health:

Contaminated Land

No comment

Environmental Protection

No objection. Informatives recommended regarding hours of working during demolition and construction and to recommend that bonfires not be had at the site.

5.3 TMBC Waste Services:

Guidance provided on the bins required to serve the development.

5.4 KCC Archaeology:

The site lies very close to the Scheduled Monument of part of The Fosse or medieval town walls (Kent SAM 136). I recommend Historic England is consulted with regard to the implications of this development on nearby archaeology and the setting of The Fosse.

Although some evaluation works on the site did not reveal extensive significant archaeology, and I note the proposed groundworks are reduced, there is still potential for remains to survive on this site. In view of the proximity of the church and medieval Fosse wall, I suggest there is still potential for archaeological remains to be impacted by this development.

In terms of buried archaeology, I suggest there is still a need to fully assess the potential for archaeological remains and recommend pre-commencement conditions for the submission and approval of a programme of archaeological work in

accordance with a written specification and timetable, and details of foundations designs and any other proposals involving below ground excavation.

5.5 KCC Ecology:

We have reviewed the information submitted by the applicant and advise that sufficient ecological information has been provided.

We note the possible presence of badgers on-site. Mitigation measures for badgers and nesting birds should be implemented as recommended by the ecology report, and secured by condition should planning permission be granted.

We also note that the ecology report indicates that all trees are to be retained within proposals. We do however note that the new access road and parking may impact upon the root protection areas of the nearby trees, but that no arboricultural report has been uploaded to the planning portal. We recommend consultation with the tree officer in order to establish if potential impacts to trees are a concern, and to ensure that trees are not adversely affected by proposals.

Under section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 and paragraphs 174 and 180 of the National Planning Policy Framework (NPPF) 2023, biodiversity should be maintained and enhanced through the planning system. As such, if planning permission is granted, we advise the conditions relating to ecological mitigation and ecological enhancement are included.

5.6 Neighbours:

Objections were received from 114 separate properties on the following grounds (as summarised):

- Loss of parking spaces to existing church car park in order to provide access to the development
- Loss of community space for church events in the garden of The Vicarage
- Amended boundary of site is not accurate and encroaches onto ownership of The Vicarage
- Current proposal has increased the size of the new dwelling's garden compared to original planning permission granted in 2012
- Earlier applications were granted in part to fund the repairs to the Vicarage but this has never happened
- Removal of trees including the Copper Beech tree to provide the access
(Officer comment: the Copper Beech tree is now proposed to be retained)

- Potential harm to retained Copper Beech tree by use of access driveway for construction traffic and installation of services and utilities
- Application cannot comply with Condition 9 (tree protection) of previously approved application
- There is a watercourse within 20m of the development
- No details have been provided in relation to utilities and drainage
- Impact on surface water drainage through reduction in green space
- Proposal does not provide an enhancement for biodiversity
- Potential impact on an existing badger sett
- An archaeological survey should be required
- Potential impact on Scheduled Ancient Monument – The Fosse
- Proposal is not in keeping with the conservation area
- New development such as a cul-de-sac will undermine historic value of the area
- Proposal not in keeping with the pattern of development
- Increased noise and disturbance from an increase in population
- Increased noise and disturbance to residents during construction
- Overlooking and loss of light to properties in Church Street
- Overlooking of The Vicarage
- Overlooking of new dwelling from surrounding properties
- Overprovision of parking for new dwelling would be provided
- Proposed new dwelling would not be affordable
- One new dwelling is not sufficient to overcome harm
- Proposal is too high density
- Overdevelopment of the site

6. Determining Issues:

Principle of Development

- 6.1 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.

- 6.2 It has been established that, in the absence of a 5-year housing land supply, the Development Plan is out of date when considering housing developments. For the avoidance of doubt, the Council's latest position statement (December 2023) indicates 4.36 years supply.
- 6.3 With regard to the application of the presumption in favour of sustainable development, regard must first be had as to whether any restrictive policies within the Framework as stated under paragraph 11 d i., (footnote 7), provide a clear reason to refuse the proposed development.
- 6.4 The footnote to paragraph 11 defines 'the policies' as mentioned above to include those relating to a number of protections and constraints. Included in this list are designated heritage assets.
- 6.5 The site lies within the Tonbridge Conservation Area and has potential to affect the setting of listed buildings, not least the Church of St Peter and St Paul which is Grade II* listed and The Cedars to the east which is Grade II listed. The wall running along the northern boundary of the site where it adjoins the church grounds is also recorded Grade II listed and the Fosse, the remains of the Medieval Town Wall, along the eastern boundary separating The Cedars from the application site is a Scheduled Ancient Monument (SAM).
- 6.6 Consideration of the potential impacts of the scheme in relation to heritage assets should therefore be considered in the first instance.

Impact on heritage assets under Paragraph 11 d i.

- 6.7 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires LPAs to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which it possesses, whilst Section 72 of the Act requires LPAs to pay special attention to the desirability of preserving and enhancing the character of conservation areas.

- 6.8 Paragraph 200 of the NPPF states that LPAs should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance.
- 6.9 Paragraph 203 requires LPAs to take account of, amongst other things, c) the desirability of new development making a positive contribution to local character and distinctiveness. Paragraph 205 meanwhile states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
- 6.10 Lastly, Paragraph 208 of the NPPF states that, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
- 6.11 As has already been set out above in this report, this proposal is for a fourth renewal (fifth application) for a new dwelling on land to the east of The Vicarage. All of the previous applications were approved and impact on designated heritage assets was not a reason to refuse the applications.
- 6.12 The previous Officer Report from 2020 acknowledged the Conservation Officer's concerns. In particular, it was considered that the application site contributes positively to "an oasis of green space in contrast to the dense High Street". The Conservation Officer considered that the proposal would result in less than substantial harm (in NPPF terms) and took further issue with the design. Officers disagreed with these assertions, considering the proposal to be appropriate in spatial terms and considering the design to be of a high quality contemporary design that incorporates traditional materials. It was therefore asserted that the proposal would not cause harm to the character and appearance of the Tonbridge Conservation Area and that it would not harm the setting of any nearby listed buildings.
- 6.13 Notwithstanding that some 3 and a half years have passed, nothing has materially changed in terms of the potential impacts on heritage assets. As set out in the previous report, The Fosse SAM is located around 5.5m from the proposed dwelling at the nearest point and around 1m from the proposed car port. No concerns were raised by Historic England and KCC Archaeology have not objected as part of this current application. They have however suggested two 'standard' archaeology pre-commencement conditions (conditions 4 and 5) for the submission and approval of a programme of archaeological works and details of the foundation design and any other below ground excavation, to ensure that any archaeological remains on site are preserved and properly examined and recorded. A further condition (condition 13)

would be imposed to remove all permitted development rights relating to extending the footprint of the proposed new property and outbuildings, to ensure that works close to the Fosse could be controlled in the future.

- 6.14 In light of the fact that nothing has materially changed, and that significant weight should be given to the fact permission has been granted four times previously, officers find no new grounds to oppose this application on heritage grounds.
- 6.15 The proposal is therefore considered acceptable when assessed against the NPPF taken as a whole. The proposals would preserve the character and appearance of the conservation area and would preserve the setting of the nearby listed buildings. As such, the LPA has discharged its statutory duty under Section 66 & 72 of the Planning (LB & CA) Act 1990.

Conclusion on Paragraph 11 (d) i. and principle of development

- 6.16 The proposal would preserve the character and appearance of the Tonbridge Conservation Area and would preserve the setting of nearby listed buildings. After carrying out the Paragraph 11(d) i. exercise and subsequently concluding that there are no “restrictive policies” in the NPPF which provide a clear reason for refusal, the application must therefore be considered against paragraph 11 (d) ii. of the NPPF and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. The remainder of this report therefore considers the remaining detailed matters.
- 6.17 With regard to the principle of development, Policy CP1 of the Core Strategy states, amongst other things, that development will be concentrated at the highest density compatible with the local built and natural environment mainly on previously developed land and at those urban and rural settlements where a reasonable range of services is available and where there is the potential to be well served by sustainable modes of transport. Best use will be made of the existing housing stock.
- 6.18 Policy CP11 of the Core Strategy adds that development will be concentrated within the confines of urban areas, which includes Tonbridge. Tonbridge is itself considered to be one of the most sustainable locations in the Borough for new development given the access to services and facilities available within the town. The proposal within the built-up part of Tonbridge is therefore acceptable in principle.

Provision of housing

- 6.19 Paragraph 60 of the NPPF sets out that, to support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.

- 6.20 Paragraph 70 of the NPPF acknowledges that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built out relatively quickly. It adds that LPAs should support the development of windfall sites through policies and decisions, giving great weight to the benefits of using suitable sites within existing settlements for homes.
- 6.21 With regard to the above, it is acknowledged that the provision of one new dwelling would be considered a small site and, together with other windfall sites in the Borough, does make an important contribution to housing supply. As already mentioned above, it is a material consideration in this case that permission for a single dwelling has been granted four times previously. This in itself is a matter to be attributed significant weight.
- 6.22 The provision of a new dwelling given the shortage of house building in the Borough is a matter that attracts significant positive weight in the overall planning balance, but this weight is scaled to the fact that only one dwelling is proposed in the context of the overall housing need in the Borough.

Impact on the character and appearance of the site, streetscene and local area

- 6.23 Policy CP1 of the Core Strategy (2007) states that all proposals for new development must result in a high-quality sustainable environment. This is expanded upon in subparagraph 6.1.5 and includes matters such as making efficient use of land and making a positive contribution to local distinctiveness, character, townscape and the setting of settlements.
- 6.24 Policy CP24 of the Core Strategy is also applicable and states, inter alia –
1. All development must 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.
 2. All development should accord with the detailed advice contained in Kent Design, By Design and Secured by Design and other Supplementary Planning Documents such as Village Design and Planning Briefs and, wherever possible, should make a positive contribution towards the enhancement of the appearance and safety of the area.
 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.
- 6.25 Policy SQ1 of the Managing Development and the Environment DPD (2010) is concerned with the Borough's Landscape and Townscape Protection and Enhancement. It has the following to say of relevance with respect to new development -

1. Proposals for development will be required to reflect the local distinctiveness, condition, and sensitivity to change of the local character areas as defined in the Character Area Appraisals SPD.
 2. All new development should protect, conserve and, where possible, enhance:
 - (a) the character and local distinctiveness of the area including its historical and architectural interest and the prevailing level of tranquillity;
 - (b) the distinctive setting of, and relationship between, the pattern of settlement, roads and the landscape, urban form and important views.
- 6.26 Again, as already explained in the previous report, the proposal would sit comfortably within its setting and is therefore acceptable in spatial terms. Dwellings here are set within spatial plots and the proposal would respect that layout. The design and materials have been considered acceptable previously, subject to conditions for the submission and approval of details and samples of external materials and finished floor levels (conditions 3 and 10), and this remains the case. Whilst the threshold for high-quality design has increased in recent years, the proposal would still comply with the intentions of the NPPF and good design generally.
- 6.27 It is not considered that the proposal would be harmful in design terms, nor would it harm the character and appearance of the site, streetscene or local area. As such, the application accords with Policies CP1 and CP24 of the Core Strategy, Policy SQ1 of the MDE DPD and complies with the NPPF in this regard. This absence of harm attracts neutral weight in the overall planning balance.

Impact on residential amenity

- 6.28 Paragraph 135 (f) of the NPPF states that planning policies and decisions should ensure that developments 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. Policy CP1 of the Core Strategy also requires proposals to have regard to impacts on residential amenity.
- 6.29 As set out above, some concerns have been raised with regard to a loss of privacy. The dwelling has been designed so that the only windows facing The Vicarage would be high-level in the gable ends of the dwelling. The concerns relating to the loss of trees and vegetation and therefore a change in the relationship between The Vicarage and the block of flats to the south has been considered previously. Nothing has materially changed which would lead to the LPA now considering there to be substantial harm, such that it would warrant refusal of the application. A significant change in stance in this regard would be considered unreasonable behaviour by the LPA.
- 6.30 The design, positioning, orientation and separation distances involved means that there would not be undue harm on neighbouring properties in this case. The

concerns regarding an increase in noise as a result of an increase in population attract very limited weight. There is no guarantee that a family with young children would end up occupying the dwelling and the LPA has no reasonable grounds to control this via a planning condition. In any case, the proposal is within a built up area where some background noise is to be reasonably expected in this case.

- 6.31 Officers have visited the site and the boundary with The Cedars adjacent to the SAM appears to be much denser and well established than is shown in the applicant's photos. It is not considered that any undue harm would occur to The Cedars.
- 6.32 As such, it is not considered that the proposal would result in any such significant harm that the application could reasonably be refused in relation to neighbour impacts. This absence of harm attracts neutral weight in the overall planning balance.

Living conditions of future occupiers

- 6.33 The plans suggest that the habitable rooms within the dwelling would have an adequate outlook and access to natural light. There would be no concerns with overlooking from neighbouring properties given the orientation of the dwelling and positioning of the proposed windows. The proposed garden would also appear adequate for a dwelling of this size. Again, concerns have not previously been raised in this regard.
- 6.34 It is acknowledged that the garden of The Vicarage would appear to be made smaller as a result of this proposal, however, it is understood that the application site is no longer within the ownership of The Vicarage, as has been demonstrated by the applicant's agent. This is discussed in more detail below.

Impact on highway safety and parking provision

- 6.35 Paragraph 114 of the NPPF states that, in assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that, inter alia, safe and suitable access to the site can be achieved for all users. Paragraph 115 adds that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 6.36 Neighbours have objected to the loss of car parking within the existing car park serving the church to facilitate the access driveway to the proposed dwelling. The applicant's agent has stated that the existing car park. The majority of the carpark falls outside the red line but remains within the ownership of the site. The access driveway would result in the loss of two parking spaces within the car park. Whilst this may be considered significant to local residents this is a private car park and the number of spaces provided with the car park falls outside planning remit. It is not therefore considered that a reason for refusal could be substantiated in this regard.

- 6.37 The proposal would not pose an unacceptable risk to highway safety and would not meet the high threshold set out in the NPPF for refusing an application on highway grounds.
- 6.38 It is acknowledged that the provision of 4 parking spaces would be an overprovision. The Council's Parking Standards only require two parking spaces. However, given the concerns set out by neighbours, any insistence on lesser parking would mean additional cars and visitors to the site would need to park on the street. This is counter-productive to the concerns raised by local residents. An overprovision is considered acceptable in this instance as the site would still comprise a substantial amount of soft landscaping in any case. Again, this did not form a reason to refuse the previous applications. The provision of the vehicle parking spaces prior to occupation of the dwelling would be secured by condition (condition 8), as would the provision of the service road which provides access to the dwelling (condition 14).

Impact on ecology

- 6.39 Policy NE2 of the MDE DPD outlines that the biodiversity of the Borough and in particular priority habitats, species and features, will be protected, conserved and enhanced. Policy NE3 of the MDE DPD also states development that would adversely affect biodiversity or the value of wildlife habitats across the Borough will only be permitted if appropriate mitigation and/or compensation measures are provided which would result in an overall enhancement. Proposals for development must make provision for the retention of the habitat and protection of its wildlife links. The Council will impose conditions, where necessary and appropriate, to minimise disturbance, protect and enhance a site's ecological conservation value, to ensure appropriate management and monitoring and creating new or replacement habitats of enhanced ecological value.
- 6.40 Paragraph 180 of the NPPF advises planning decisions should contribute to and enhance the natural environment, including protecting and enhancing sites of biodiversity and minimising impacts on and providing net gains for biodiversity. Paragraph 186 of the NPPF states if significant harm to biodiversity resulting from a development cannot be avoided through relocation, mitigation or compensated for, then planning permission should be refused, whilst opportunities to improve biodiversity in and around developments should be integrated as part of their design.
- 6.41 Following concerns raised by neighbours, the applicant was asked to carry out an ecological survey with particular regard to badgers. The site visit confirmed what appeared to be a sett and the occupant of The Vicarage was advised not to cut the grass or vegetation around this sett. Following receipt of the survey, KCC Ecology were consulted. They noted that the survey indicated it was not an active sett but that it could not be confirmed with any certainty because the tunnels extend into the grounds of The Cedars, of which they could not gain access. KCC Ecology raise no objections to the proposal, subject to conditions. One of these conditions is that the sett must be re-surveyed within 3 months prior to commencement and some form of

assurance provided (condition 6). The outcome of this further survey will then influence the mitigation that is required, if necessary.

- 6.42 The applicant will also be required to deliver biodiversity enhancements which is standard practice. KCC have set out in their comments examples of typical enhancements that are supported. This is again, to be conditioned (condition 7).

Impact on Trees

- 6.43 Policy NE4 of the Managing Development and the Environment DPD states, amongst other things, that the extent of tree cover and the hedgerow network should be maintained and enhanced. Provision should be made for the creation of new woodland and hedgerows, especially indigenous broad-leaved species, at appropriate locations to support and enhance the Green Infrastructure Network as illustrated on the Diagram. This includes provision of new habitats as part of development proposals.

- 6.44 Paragraph 136 of the NPPF (2023) recognises the importance of trees and states:

“Trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change. Planning policies and decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible.”

- 6.45 The submission proposes to retain the Copper Beech tree. This approach is different from the previous consents in which the tree was proposed to be removed. The retention of the tree has been supported by Officers. It however should be emphasised that given the planning history, it would not be reasonable or justifiable to refuse the application on removal of this tree, or any others within the site.

- 6.46 The Council has also given formal consideration as to whether to include the Copper Beech and Walnut trees within a new Tree Preservation Order and it was formally determined that the trees are not appropriate for inclusion within an Order. The Tree Officer highlighted that if the Council considered that the Copper Beech and Walnut trees were appropriate for inclusion within a TPO (i.e. it was expedient in the interests of public amenity), then an Order should have been made prior to granting any planning consent – bearing in mind the duty under Section 197 of The Act which state:

- 6.47 *“It shall be the duty of the local planning authority—*

(a) to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees; and

(b) to make such orders under section 198 [Power to make tree preservation orders] as appear to the authority to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.”

6.48 Pre-commencement conditions would be attached to require the submission and approval of details of tree protection and a method statement for the entire site (condition 11), an appropriate and detailed scheme of landscaping and boundary treatment (condition 9), details of levels including those relating to the no dig construction of the access driveway (condition 10), and details of services in relation to trees (condition 12), to ensure that the trees to be retained are protected during the construction of the proposed development.

Climate Change

6.49 Paragraph 158 of the NPPF requires Development Plans to take a proactive approach to mitigating and adapting to climate change. Paragraph 154 encourages new development to avoid increase vulnerability to the range of impacts associated with climate change. Where new development is proposed in vulnerable areas, care should 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.

6.50 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.

6.51 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.

6.52 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.

Land contamination

6.53 Given the location of the site next to a historic graveyard, there is the potential for land contamination at the site. A contamination condition (condition 15) is therefore recommended to ensure that if significant deposits of made ground or indicators of potential contamination are discovered, the works cease until an investigation/remediation strategy has been approved by the Council.

Other matters

6.54 Local residents have also raised concerns with the loss of the site for garden parties and other events hosted by the church. The applicant has demonstrated that they own the land, albeit there are no fences erected to show that the site has been separated from The Vicarage. It appeared from the site visit that the occupant of The Vicarage was maintaining the land such as mowing the lawn etc.

6.55 It is not clear whether the applicant and the occupant of The Vicarage have an informal agreement in place, but in any case the land is privately owned and the church does not therefore have an automatic right to use the land for its purposes without the landowners consent. Officers cannot therefore attribute any weight to this argument and the evidence suggests that there is no loss of a local community asset in this case, as the land is privately owned.

Planning balance

6.56 The LPA acknowledges that it cannot currently demonstrate a 5-year housing land supply. Furthermore, the policies in the emerging Local Plan cannot currently be attributed weight, given the early stage of the Plan. Paragraph 11 of the NPPF states that, where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, planning permission should be granted 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.

6.57 As set out above in this report, the proposal would not result in harm to any protected areas or assets and there is no clear reason to refuse the application in accordance with Paragraph 11 (d) i. above.

- 6.58 In weighing the proposal in the overall planning balance, required by Paragraph 11 (d) ii., the LPA recognises that there is a housing need and as such significant positive weight should be attributed to housing schemes. This weight is scaled to the fact that only one dwelling is proposed in the context of the Borough's overall housing need. It is acknowledged that there would be some modest additional benefits to the economy through the construction of the development itself and the subsequent occupation of the dwelling, whose occupants would contribute to the local economy through using local services and facilities. Some of these benefits are temporary and only during the construction works themselves.
- 6.59 Officers consider it appropriate to attribute significant weight to the fact that planning permission has been granted at the site for a single dwelling four times previously. This must be considered in reaching a decision on the application otherwise the LPA would be at risk of challenge for unreasonable behaviour.
- 6.60 It is recognised that there would be no significant impact on neighbouring properties, heritage assets, ecology, highway safety or parking provision and the proposal would be acceptable in terms of design and living conditions. However, absence of harm in relation to these matters is not a benefit of the scheme, but rather, weighs neutrally in the planning balance.
- 6.61 Therefore, having regard to the above, in applying paragraph 11 of the NPPF, it is considered that the adverse harm arising from the proposals would not significantly and demonstrably outweigh the potential benefits of the scheme and so the application should be approved.

7. Recommendation:

7.1 **Approve** 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 hereby permitted shall be carried out in accordance with the following approved plans and documents:

Proposed Elevations 0116_PLN_01; Proposed Floor Plans 0116_PLN_00 Rev. E; Arboricultural Report (prepared by The Mayhew Consultancy Ltd, dated June 2024); Design and Access Statement (prepared by Niche Architects LLP, dated May 2020); Ecological Appraisal (prepared by FPCR Environment and Design Ltd, dated October 2023); Letter from Howard Sharp and Partners, dated 20/05/2020; Letter from Howard Sharp and Partners, dated 11/09/2024.

Reason: To ensure that the development is carried out in accordance with the plans and documents hereby approved.

3. No development, other than the demolition of any buildings, removal of hard standing, ground investigations or site survey work, 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. No development, other than the demolition of any buildings, removal of hard standing, ground investigations or site survey work, shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded.

5. No development, other than the demolition of any buildings, removal of hard standing, ground investigations or site survey work, shall take place until details of foundation designs and any other proposals involving below ground excavation have been submitted to and approved in writing by the Local Planning Authority. Development shall thereafter 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.

6. Within 3 months prior to commencement, a pre-works update walkover will be undertaken by a suitably qualified ecologist to re-assess the status of the on-site badger sett. Following the updated walkover and any necessary badger activity monitoring surveys, details of the results, any necessary mitigation, licensing, and compensation requirements will be submitted to and approved in writing by the Local Planning Authority prior to the onset of works. Mitigation measures will include necessary precautionary working methods for the protection of all retained habitats and protected species that could be affected by site clearance and construction works. The works shall be carried out in accordance with the approved details for the full duration of the construction period.

Reason: To ensure the protection of protected wildlife species.

7. Prior to completion, details of how the development will enhance biodiversity will be submitted to, and approved in writing by, the local planning authority. These details will be based on the Ecological Appraisal by FPCR Environment and Design Ltd

dated October 2023. The approved measures will be implemented and retained thereafter.

Reason: To ensure the protection of wildlife species.

8. The use shall not be commenced, nor the premises occupied, until the area shown on drawing 0116_PLN_00 Rev. E 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 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.

9. a) A scheme of hard and soft landscaping, including details of existing trees to be retained and size, species/cultivar, planting heights, densities and positions of any soft landscaping, shall be submitted to and agreed in writing by the Local Planning Authority before the development hereby permitted is commenced.
- b) All work comprised in the approved scheme of landscaping shall be carried out before the end of the first planting and seeding season following occupation of any part of the buildings or completion of the development, whichever is sooner, or commencement of the use.
- c) Any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within ten years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season.

Reason: To ensure a satisfactory appearance to the development.

10. a) No development shall take place until details of the levels of the building(s), road(s) and footpath(s) in relation to the adjoining land and highway(s) and any other changes proposed in the levels of the site have been submitted to and approved in writing by the Local Planning Authority.
- b) The development shall thereafter be implemented in accordance with the details as approved under this condition and retained as such thereafter.

Reason: To ensure that the development is carried out at suitable levels in relation to the highway and adjoining land having regard to drainage, gradient of access, the safety and amenities of users of the site, the amenities of the area and the health of any trees or vegetation.

11. a) No site works (including any temporary enabling works, site clearance and demolition) or development shall take place until a dimensioned tree protection plan in accordance with Section 5.5 and a site specific arboricultural method statement detailing precautions to minimise damage to trees in accordance with Section 6.1 of British Standard BS5837: 2012 (Trees in relation to design, demolition and construction - Recommendations) have been submitted to and approved in writing by the Local Planning Authority. The tree protection plan and arboricultural method statement shall be based on and expand upon the principles contained within the "Arboricultural Report, Tree Survey, Arboricultural Impact Assessment & Tree Protection Plan" by The Mayhew Consultancy Ltd dated June 2024, and include finalised details relating to the whole site/development (including, but not limited to, full details of proposed treeworks and protection measures and techniques to prevent/minimise damage to retained trees during installation of the services).

b) No site works (including any temporary enabling works, site clearance and demolition) or development shall take place until the temporary tree protection shown on the tree protection plan approved under this condition has been erected around existing trees on site. This protection shall remain in position until after the development works are completed and no material or soil shall be stored within these fenced areas at any time. The development shall be implemented in accordance with the protection plan and method statement as approved under this condition.

Reason: To safeguard the health of existing trees which represent an important amenity feature.

12. a) No development shall take place until details of the location, extent and depth of all excavations for services (including but not limited to electricity, gas, water, drainage and telecommunications) in relation to trees on and adjacent to the site have been submitted to and approved in writing by the Local Planning Authority.

b) The development shall thereafter be implemented in accordance with details approved under this condition.

Reason: To safeguard the health of existing trees which represent an important amenity feature.

13. 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 Class A, D, E, and F of Part 1 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: In order to control all works that are in close proximity to the adjoining Scheduled Ancient Monument ['The Fosse'].

14. The dwelling hereby permitted shall not be first occupied until 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 to/from the new dwelling house.

15. (a) If during development, 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 by the developer relating to (a) and (b) above and other relevant issues and responses such as any pollution incident during the development.

Reason: In the interests of amenity and public safety.

Informatives:

1. The applicant is advised to contact Historic England with regard to any permission that maybe required for work in close proximity to the Ancient Monument ['The Fosse'].
2. 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@tmhc.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.
3. The Local Planning Authority supports the Kent Fire Brigade's wish to reduce the severity of property fires and the number of resulting injuries by the use of sprinkler systems in all new buildings and extensions.
4. The applicant is advised that the Local Authority operates a back edge of public highway refuse collection service. Bins should therefore be moved to the boundary of the site close to the public highway for use on collection day.
5. The applicant is reminded that land contamination risk assessment is a step by step process. During the course of the risk assessment process set out in the above

condition(s) it may become clear that no further work is necessary to address land contamination risks. Where this is agreed to be the case the condition(s) may be discharged by the Local Planning Authority without all the steps specified having been completed or submitted for formal approval. In all cases, written confirmation should be obtained from the Local Planning Authority confirming that the requirements of the condition(s) have been met. The Local Planning Authority would like to take the opportunity to remind the applicant that it is their responsibility to ensure the site is safe and suitable for its end use.

6. The Local Planning Authority will not accept any liability for remediation works.
7. To avoid undue disturbance to neighbours, during the demolition and construction phase, the hours of working (including deliveries) shall be restricted to Monday to Friday 07:30 hours - 18:30 hours. On Saturday 08:00 to 13:00 hours, with no work on Sundays or Public Holidays.
8. Although it would not be possible at this stage under Environmental Health legislation to prohibit the disposal of waste by incineration, the use of bonfires could lead to justified complaints from local residents. The disposal of demolition waste by incineration is also contrary to Waste Management Legislation. The applicant is therefore advised to prohibit fires on site during the development stage of this project.
9. Appendix 1 of the Ecology Officer's comments provides some generic (non-exhaustive) information regarding the most common enhancements we see proposed. To provide a view regarding the potential ecological benefits of any project, in line with relevant legislation and planning policy, we require sufficient detail to be submitted. Without sufficient detail we are unable to provide an opinion regarding the suitability of any proposed measures. Suitable detail may include the provision of information such as:
 - The proposed target species;
 - Make and model of any boxes;
 - Location information such as height, aspect, surrounding habitat;
 - Detailed planting schedules; and
 - Relevant basic management necessary to ensure the habitat is suitable for the target species.

Contact: Charlotte Meynell