

Location: GIBSON BUILDING GIBSON DRIVE KINGS HILL WEST MALLING
ME19 4LZ

Proposal: Refurbishment of Gibson East office building, comprising the removal of a corridor link to the grade II listed Gibson West building (and remedial works to the listed facade) minor changes to the external envelope of Gibson East (new external doors / windows and the addition of PV cells to the pitched roof), modifications to site parking and internal circulation, addition of a plant enclosure, single-storey external store, refuse store and cycle shelter

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1. Introduction:

- 1.1 Members will recall that this application was reported to Full Council on 22 October 2024 where it was resolved to approve planning permission subject to the Council, as applicant, entering into a Conservation Covenant to secure the required off-site Biodiversity Net Gain provision. The Council have since sought to enter directly into a Conservation Covenant to secure the required provision from a Responsible Body who would secure the appropriate off-site delivery mechanism. A "Responsible Body" for BNG delivery is an organization designated by the Department for Environment, Food and Rural Affairs (DEFRA) to create, manage, and monitor legally-binding conservation covenants. These bodies are the counterparty to a landowner, ensuring that long-term habitat improvement and conservation goals for Biodiversity Net Gain are met. Responsible bodies can be local authorities, public bodies, charities, or other organizations whose main activities relate to conservation. The Council have been seeking to enter into an agreement with a local conservation group, however the group has so far failed to gain the appropriate designation from DEFRA.
- 1.2 As a result of this there is now a need for the Council to seek an alternative means of securing the required BNG provision. Due to the wording of the Constitution this matter requires a new resolution from Council to seek an alternative delivery mechanism. For information the previous report is attached as Annex 1 to this report.

2. Determining Issues:

- 2.1 Paragraph E8.7, Part 5 (Codes) of the Tonbridge and Malling Borough Council Constitution sets out that:

‘Proposals for development submitted by the Council must be treated no differently to any other application.

To ensure that planning applications submitted by the Council are determined openly and transparently all applications for planning permission submitted by the Council will be determined by Full Council.’

- 2.2 As the application has been submitted by the Council's Property Service Team the application is required to be determined by Full Council in line with the adopted constitution.
- 2.3 As detailed in the original report, under section 40 of the NERC Act (2006) and paragraph 187 of the NPPF (2024), biodiversity must be maintained and enhanced through the planning system. Additionally, in alignment with paragraph 193 of the NPPF (2024), the implementation of measurable net gains for biodiversity (integrated as part of design) should be encouraged.
- 2.4 Under the Environment Act 2021, all planning applications (unless exempt) will have to deliver at least a 10% biodiversity net gain. The application is of a size that requires the provision of mandatory biodiversity net gain. A statutory BNG metric has been submitted that shows the proposals will result in an on-site net change of -.010 for habitat units and +0.15 hedgerow units. This equates to an on-site net % change of -2.99% for habitat units. The assessment has been reviewed by KCC Ecology and is considered correct.
- 2.5 Given the constrained nature of the site there is no scope to achieve BNG on the site. Following the principles of the national Biodiversity Net Gain Hierarchy set out in the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024, if it is not possible to achieve BNG on the site then registered offsite gains should be sought. This approach is followed through in the Councils published Interim Policy on BNG contained within Biodiversity Net Gain (BNG) Interim policy position statement. As detailed above the Council has encountered difficulties in seeking appropriate provision with a Responsible Body, that the Council, as applicant, would enter into a Conservation Covenant to secure the necessary levels of BNG.
- 2.6 The Council, as applicant, has therefore sought to find alternative means of securing the required amount of BNG and is now seeking, instead of entering into a Conservation Covenant, to purchase off-site BNG credits from a Habitat Site Owner in an adjacent Authority. This site is already subject to an agreed Conservation Covenant and is a registered site on the Governments Biodiversity Gain Site Register.
- 2.7 The Council, as Local Planning Authority, has sought legal advice regarding the change of provision. Whilst the arrangement proposed now does not require the Council to enter into a Conservation Covenant, it does mean that the offsite

biodiversity gain will be provided in another location. This approach is considered acceptable under the national Biodiversity Hierarchy as it is the next step below what was previously being proposed that has been found to be unavailable. The Council, as applicant, once credits are purchased, will be required by condition to submit these details for approval and therefore it is recommended that a further condition, no.15 is proposed to require submission of these details.

- 2.8 On this basis, it is considered that the Council, as applicant, purchasing the required amount of offsite biodiversity gain units is an appropriate mechanism to meet its BNG requirements in planning terms and is therefore acceptable.

Public Sector Equality Duty – Equality Act 2010

- 2.9 Section 149 of the Equality Act 2010 introduced the Public Sector Equality Duty (PSED), which came into force in April 2011. This duty requires public authorities, including the Council, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment, and victimisation;
- Advance equality of opportunity between people who share a protected characteristic and those who do not; and
- Foster good relations between people who share a protected characteristic and those who do not.

- 2.10 In the context of planning, equalities considerations are embedded throughout the planning process. This begins with the formulation and adoption of planning policies at the national, strategic, and local levels, including any supplementary planning guidance. These policies are subject to statutory processes that include assessments of their impacts on protected groups.

- 2.11 For individual development proposals, further consideration is given to the potential equality impacts where relevant. In this case, all relevant policies from the Tonbridge and Malling Development Plan and the National Planning Policy Framework (NPPF) have been considered in the assessment of the application. These policies have been subject to equality impact assessments during their adoption, in accordance with the Equality Act 2010 and prior legislation and the Council's obligations under the PSED.

- 2.12 Accordingly, the adopted planning framework used in the assessment of this application is considered to reflect and support the needs of individuals with protected characteristics, as defined by the Equality Act 2010 and previous legislation. These characteristics include: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

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- 2.13 The Local Planning Authority can confirm that the application of local and national planning policies in the determination of this planning application has been carried out with due regard to the provisions of the Equality Act 2010.
- 2.14 In conclusion, it is considered that Tonbridge and Malling Borough Council has had due regard to its duties under Section 149 of the Equality Act 2010 in the assessment of this application and the recommendations set out in this report.

Conclusion

- 2.15 Overall, as stated in the original report, the proposal is considered an appropriate rationalisation of the site that accords with all relevant planning policies and guidance. The development would not have a detrimental impact on the surroundings or listed building and provides for appropriate off-site BNG provision. The development accords with all relevant local and national planning policies and guidance. It is therefore recommended that the application be approved subject to the conditions listed below.

3. Recommendation:

3.1 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 hereby permitted shall be carried out in accordance with the following approved plans:

02851 1000 S2 P07 Location Plan
02851 1030 P11 Proposed site plan
02851 2300 P04 Proposed elevations
02851 2301 P04 Proposed elevations
02851 2302 S2 P04 Proposed elevations
02851 2000 S2 P04 Site sections
02851 2305 P03 External store – elevations
02851 1300 S2 P08 floor plan
02851 1301 P08 floor plan
02851 1302 P06 floor plan
02851 1310 P08 floor plan
02851 1311 P05 roof plan
A9283 1500 P04 Drainage layout plan
PJC/6597/24/01 Arboricultural report
02851 1050 P05 Proposed BNG areas
2024/05/31 Ecological Appraisal

Reason: To clarify which plans are approved.

- 3 All materials used externally shall accord with the approved plans.

Reason: In the interests of visual amenity.

- 4 Prior to the use of any plant or machinery a scheme of sound insulation shall be submitted to, and approved by, the Local Planning Authority and retained and maintained at all times thereafter.

Reason: To protect the aural environment of nearby dwellings.

- 5 Prior the commencement of any part of the development hereby approved a Construction/Demolition Management Plan shall be submitted and approved in writing. The plan shall include the following:

- (a) Routing of construction and delivery vehicles to / from site.
- (b) Parking and turning areas for construction and delivery vehicles and site personnel, which may require supporting vehicle tracking/swept paths.
- (c) Timing of deliveries, avoiding network and school peaks where possible.
- (d) Provision of wheel washing facilities.
- (e) Measures to prevent the discharge of surface water onto the highway.
- (f) Temporary traffic management / signage.

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

- 6 Prior to works commencing (including preparatory works and site clearance), a badger survey will be carried out as detailed within section 4.7 of the Preliminary Ecology Appraisal (KB Ecology Ltd, 19 July 2024). If a badger sett is found, a detailed mitigation strategy shall be submitted to and approved in writing by the Local Planning Authority and the works undertaken in accordance with this strategy.

Reason: To ensure the works do not harm protected species

- 7 Prior to occupation, a lighting plan which has been designed to minimise impacts on biodiversity shall be submitted to and approved in writing by the local planning authority. The plan will show how and where external lighting will be installed and provide commentary regarding how the Bat Conservation Trust/Institute of Lighting Professional's 'Guidance Note 08/23: Bats and Artificial Lighting at Night' has been considered in the lighting design. It will be clearly demonstrated that areas to be lit will not impact protected species. All external lighting shall be installed in accordance with the specifications and locations set out in the plan and be maintained thereafter.

Reason: To limit the impact of light pollution from artificial light on nature conservation.

- 8 Prior to works commencing, a Construction and Environmental Management Plan (CEMP) will be submitted to and approved in writing by the Local Planning Authority. The content of the plan will include:

- how the development will protect the adjacent Ancient Woodland and nearby ancient woodland of Mereworth Wood during the demolition and construction of the buildings, as well as during the operational phase. This shall include how the development plans to reduce dust and light pollution.

The plan shall also include appropriate measures to satisfy the following sections of the of the Preliminary Ecology Appraisal (KB Ecology Ltd, 19 July 2024).

- Section 4.6 Dormice precautionary strategy for tree clearance
- Section 4.9 Other species (including hedgehogs) precautionary measures

Reason: To safeguard the existing natural environment.

- 9 Within three months of works commencing, detailed plans showing how the development will enhance and maintain biodiversity will be submitted to, and approved in writing by, the local planning authority. This will include details of bat and bird durable boxes, log piles, hibernacula, hedgehog homes, and the development of a full Biodiversity Management Plan for the wood. The approved measures will be implemented and retained thereafter.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to enhance the Biodiversity of the area in accordance with Paragraph 170 of the NPPF 2023 and Policies NE3 and NE4 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document.

- 10 a) Notwithstanding details on the submitted Drainage Layout plan (Drawing No. A9283-1500 Rev – P04) 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 tree(s) which represent an important amenity feature.

- 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 submitted tree protection plan and arboricultural method statement shall be based on and expand upon the principles set out in the Arboricultural Impact Assessment, Preliminary Method Statement and Preliminary Tree Protection Plan by PJC Consultancy Ltd dated 27th June 2024 (document ref. PJC/6597/24/01 Rev-), and, as indicated in that document, include details relating to (but not limited to) the detailed construction management/logistics plan/all aspects of demolition and construction site management and logistics, details of the methodologies and precautions to minimise/prevent damage to trees during installation of services, fences and works to hard standing.

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 site works (including temporary enabling works, site clearance and demolition) or development shall commence on site until a detailed tree felling/pruning specification (including details confirming which of the existing trees are to be retained) has been submitted to and approved in writing by the Local Planning Authority.

b) All tree felling and pruning works shall be carried out in full accordance with the approved specifications under this condition and in accordance with British Standard BS3998 (Tree work – Recommendations).

c) Any existing tree identified to be retained in the details submitted for the discharge of this condition which are removed, die, become severely damaged or diseased within five 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 safeguard the health of existing trees which represent an important amenity feature and ensure a satisfactory appearance to the development.

- 13 If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in

writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.

Reason: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution from previously unidentified contamination sources at the development site in line with paragraph 176 of the National Planning Policy Framework.

- 14 No development shall take place until the details of a surface water drainage strategy that demonstrates that requirements for surface water drainage for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm can be accommodated within the proposed development has been submitted to and approved in writing by the Local Planning Authority. The drainage shall be implemented as approved.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and that they are incorporated into the proposed layouts.

- 15 The development may not be begun unless—

(a) a biodiversity gain plan has been submitted to the planning authority, and

(b) the planning authority has approved the plan.

Reason: To ensure the development complies with Schedule 7A of Section 90 of the Town and Country Planning Act 1990.

Informatives

- 1 The applicant is reminded that, under the Wildlife and Countryside Act 1981 (as amended), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this Act.
- 2 Habitats are present on and around the site that provide opportunities for breeding birds. Any work to vegetation/structures that may provide suitable nesting habitats should be carried out outside of the bird breeding season (1st March to 31st August inclusive) to avoid destroying or damaging bird nests in use or being built. If vegetation/structures need to be removed during the breeding season, mitigation measures need to be implemented. This includes examination by a suitably qualified and experienced ecologist immediately prior to starting work. If any nesting birds are found, works must cease until after the birds have finished nesting.

