

<b>2.7 REFERENCE NO - 18/500973/FULL</b>			
<b>APPLICATION PROPOSAL</b> Demolition of former residential care home building and erection of 21 dwellings with associated new access, car parking and amenity areas (Resubmission to 16/507706/FULL) (Part Retrospective).			
<b>ADDRESS</b> Doubleday Lodge Glebe Lane Sittingbourne Kent ME10 4JW			
<b>RECOMMENDATION</b> Refuse			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> Although the viability of the scheme is threatened, the failure to provide developer contributions and the resultant harmful impact upon local infrastructure would in my view outweigh the benefits of the proposal. The scheme, because of this, would not represent sustainable development.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Called in by Councillors Sarah Aldridge and Paul Fleming			
<b>WARD</b> Roman	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Stonechart Property Ltd <b>AGENT</b> Ubique Architects	
<b>DECISION DUE DATE</b> 01/06/18	<b>PUBLICITY EXPIRY DATE</b> 13/04/18		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
16/507706/FULL	Demolition of former residential care home building and erection of 21 new dwellings, associated new access road, car parking and amenity areas	Approved	30.06.2017

**MAIN REPORT**

**1.0 DESCRIPTION OF SITE**

- 1.01 The application site totals 0.41 ha and lies within a residential area, bounded to the north, south and west by existing dwellings, predominantly terraced, and flats. The front of the site faces onto Glebe Lane and there are currently two vehicular accesses onto this road. Rectory Playing Field (6.04ha) lies a walking distance of 130 m to the west of the application site. There is a difference in ground levels of approximately 3m from the northwest corner to the southeast corner which represents a gradual fall across the site from west to east. The site is currently being constructed in accordance with planning permission 16/507706/FULL and as such the frames of a number of the dwellings are currently visible.
- 1.02 The front of the site is roughly the same ground level as the adjacent property - 40 Glebe Lane and the houses opposite. The application site is though at a lower level than the properties to the rear at Wadham Place by 2m. There are a number of mature Larch, Birch and Ash trees within the site, along its boundaries as well as Beech hedges.

## 2.0 PROPOSAL

- 2.01 As set out above, the proposal is retrospective on the basis that the previous permission has been implemented. The development proposed in terms of its physical form is identical to that approved under 16/507706/FULL, which for clarity is as follows:
- 2.02 Demolition of the existing derelict care home (which has already taken place) and erection of 21 no. 2.5 storey 3 bedroom dwellings (the construction of which has begun).
- 2.03 Each dwelling would have a reasonably sized rear garden and there would be 38 parking spaces in total (1.8 spaces per dwelling). The layout would consist of five separate blocks of terraced properties, blocks A-E. Blocks A and B would front onto Glebe Lane, either side of the new central access into the site.
- 2.04 Fourteen parking spaces would be provided to the front of these blocks in groups of 2 and 3 interspersed with hedges and trees. Block C, a row of three terraced properties, is to the rear of block B, orientated northeast-southwest, at right-angles to block B. Blocks D and E are to the rear of block A and are orientated east-west, to match the orientation of blocks A and B. The parking for blocks C-E is provided off-plot in groups/parking courts. All properties are similarly designed with simple architecture, brick work, cladding and rendering and modestly sized flat roof rear dormers to the rear roof slopes.
- 2.05 The application is however seeking a reduction in the Developer Contributions that the developer is able to provide. For clarity the scheme approved under 16/507706/FULL was subject to a signed Section 106 Agreement which secured the following:
- 2 Affordable Rented Units;
  - SAMM SPA recreational disturbance - £4,695.18
  - NHS - £18,144
  - KCC Libraries - £1,008.33
  - Off Site Open Space - £18,081
  - Primary Education Contribution - £49,580.16
  - Secondary Education Contribution - £49,555.80
  - Bins - £1,932
  - Admin and Monitoring Fee - £7,104.79
  - Total - £150,101.26
- 2.06 The applicant has confirmed that due to viability issues they are only able to provide the following:
- 2 Affordable Rented Units;
  - SAMM SPA recreational disturbance - £6,323.94
  - KCC Libraries - £1,008.33
  - Bins - £1,932
- 2.07 The remaining 19 units will be delivered as Shared Ownership units in partnership with Moat Housing.

## 3.0 PLANNING CONSTRAINTS

3.01 There are no planning constraints for this site.

#### 4.0 POLICY AND OTHER CONSIDERATIONS

4.01 The National Planning Policy Framework (NPPF): paras 7 (three dimensions of sustainable development), 8, 11 (presumption in favour of sustainable development), 12, 14, 17 (core planning principles), 32 (sustainable transport), 34, 47 (delivering a wide choice of high quality homes), 49, 50, 55, 56 (good design), 58, 69 (healthy communities), 131, 159 (housing), 162 (infrastructure), 186 (decision taking), 187, 196 (determining applications); 197, 204 (planning obligations) & 216 (weight to emerging policies).

4.02 National Planning Practice Guidance (NPPG): National Planning Policy Guidance (NPPG): Design; Natural environment; Housing and Economic Development needs assessment; Planning Obligations; Use of planning conditions; Water supply, waste water and water quality land affected by contamination.

4.03 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017: ST1 (Delivering sustainable development in Swale), ST2 (Development targets for jobs and homes 2014-2031), ST3 (The Swale settlement strategy), ST4 (Meeting the Local Plan development targets), ST5 (The Sittingbourne area strategy), CP3 (Delivering a wide choice of high quality homes), CP4 (Requiring good design), CP6 (Community facilities and services to meet local needs), DM7 (Vehicle parking), DM8 (Affordable housing), DM14 (General development criteria), DM17 (Open space, sports and recreation provision), DM21 (Water, flooding and drainage), DM28 (Biodiversity and geological conservation) & IMP1 (Implementation and delivery plan).

4.04 Supplementary Planning Documents: Developer Contributions (2009)

#### 5.0 LOCAL REPRESENTATIONS

5.01 Two letters of objection have been received from local residents. Their comments are summarised as follows:

- The dwellings will overlook existing properties and lead to a loss of privacy;
- The development will be overbearing on surrounding properties, cause overshadowing and lead to a loss of sunlight;
- The proposal will lead to an increase in traffic;
- Building work has already begun;
- There should have been an offer of compensation.

5.02 Cllr Sarah Aldridge has commented *“My recommendation is for the above application to be reported to the planning committee please.”*

5.03 Cllr Paul Fleming stated *“Yes I agree report back to planning committee.”*

#### 6.0 CONSULTATIONS

6.01 **Environment Agency** made no comment.

6.02 **KCC Highways & Transportation** have commented that the scheme is identical and as such they remain of the view, as they did for the application submitted under

16/507706/FULL, that as there have not been any material changes in highway conditions since this time that the access, layout and parking levels are considered acceptable. Raised the issue of the cycle storage which required confirmation.

- 6.03 The Council's **Strategic Housing and Health Manager** states that *“My understanding is that Moat were due to provide two Affordable Rent Tenure homes (as per the s106), with the remaining dwellings delivered as shared ownership, providing 19 additional affordable (low cost home ownership) units in Sittingbourne which would not have been provided if a private developer had completed the scheme. Therefore, Moats delivery on this site can be seen as positive for local residents who will have an opportunity to purchase these SO homes in the first instance.”*
- 6.04 **UK Power Networks** raise no objection.
- 6.05 **KCC Lead Local Flood Authority** raise no objection to the development from being implemented in accordance with the approved details in relation to drainage.
- 6.06 **Natural England** set out that subject to the appropriate financial contribution being secured, Natural England is satisfied that the proposal will mitigate against potential effects of the development on the SPA.
- 6.07 **The NHS Strategic Estates Advisor** states that *“Swale Borough Council has already agreed a S106 Contribution of £19,008 for the benefit of Chestnuts Practice for this development. We note that the applicant is submitting a new application to reduce the quantum of S106 contributions. It is the CCG's strongly held view that S106 contributions must be awarded for health to recognise the significant impact on health resources this development will have.”*
- 6.08 **Kent Police** state that they have not had contact from the applicant in regards to crime prevention.
- 6.09 **Southern Water** set out that the exact position of public sewers must be determined on site and that initial investigations indicate that Southern Water can provide foul sewerage disposal to service the proposed development. An Informative is requested regarding a formal application for connection to the public sewerage system.
- 6.10 **KCC Development Contributions Team** seek contributions as £69,804 for Primary Education (towards the enhancement of Borden Primary School); £86,415 for Secondary Education, towards the Phase 3 expansion of Westlands Secondary School; £1008.33 for libraries. They also recommend that Broadband is provided for the site and recommend an informative to encourage this.
- 6.11 **The Environmental Services Manager** has no objection to the proposal subject to conditions to restrict hours of construction, to minimise the risks from asbestos and, to require the submission of a code of construction practice.
- 6.12 **KCC Ecology** confirm that sufficient information has been submitted in order to determine the planning application. A number of ecological conditions which were attached to the previous consent and have been discharged and as such recommended that the details agreed shall be incorporated into this development. They also refer to the recent decision from the Court of Justice which means that an Appropriate Assessment in relation to recreational impacts on designated sites will need to be carried out.

- 6.13 **Greenspaces Manager** has confirmed that *“we would continue to seek a contribution toward an increase in capacity of the play facilities at Rectory Playing Field, however this would now be in alignment with the Council’s new and recently adopted Open Spaces & Play Strategy that identifies contributions at a level of £446 per dwelling - £9,366.00.”*

## 7.0 BACKGROUND PAPERS AND PLANS

- 7.01 Proposed plans and elevations; Tree Constraints Plan; Tree Protection Plan; Proposed Drainage; Contaminated Land Report; Planning, Design and Access Statement; Ecology Survey.
- 7.02 In addition to the above a Financial Viability Report was submitted.
- 7.03 A supporting statement has also been submitted which sets out national policy and guidance in relation to viability and undertakes a balancing exercise in respect of whether the proposal represents sustainable development. The conclusion drawn is that the delivery of much needed affordable housing, in the context of the viability of the development, which has been assessed by the Council’s consultants, would outweigh the harm that would be caused by failure to provide requested developer contributions. An appeal decision is also attached to this correspondence which relates to a scheme involving a number of the same issues.

## 8.0 APPRAISAL

- 8.01 As set out in the ‘Proposals Section’ above this application in terms of its physical elements is identical to the scheme which was approved under reference number 16/507706/FULL. As a result of this, I reach the same conclusions as I did in the previous report that the scheme is acceptable in respect of the principle of development, impact upon visual and residential amenities, highway amenity and safety, surface water drainage and ecology. I have appended this report for ease of reference. In my view, this assessment of the proposal also deals with the comments raised by neighbours in relation to the impact upon residential amenity.
- 8.02 As detailed in the proposal section above, the application approved under 16/507706/FULL was subject to a signed Section 106 Agreement which secured financial contributions totalling £150,101.26. This application, due to viability issues, is now seeking to reduce the contributions that can be paid to the following:
- Libraries - £1,008.33;
  - SAMM SPA recreational disturbance - £6,323.94;
  - Bins - £1,932;
  - 2 affordable rented units.
- 8.03 In support of the application a financial viability report has been submitted by the applicant which has been independently assessed by the Council’s consultants. A copy of this report is attached under Part 6, as Members will appreciate that it includes sensitive financial information.
- 8.04 In summary, the applicant’s appraisal concludes that the development would result in a deficit against the Benchmark Land Value (BLV). BLV (or what is sometimes referred to as Threshold Land Value) should represent the value at which a typical willing landowner is likely to release land for development. It is worth noting at this point that the application approved under 16/507706/FULL was only ‘marginally

viable'. Since this time, the demolition costs have increased significantly and base build costs have risen and the deficit is now more substantial than when it was previously assessed under 16/507706/FULL. The Council's consultants have assessed the applicant's appraisal and carried out their own calculation. Members will note from the viability assessment carried out by the Council's consultant that this shows an even greater negative value against the Benchmark Land Value. The sums that have been calculated have been done so on the basis that the scheme provides the above contributions, and therefore, if the full range of developer contributions were required it logically follows that the negative value would be even greater.

- 8.05 The practical impact of this is that the negative value would be required to be absorbed within the developer's profit margin, which is already lower than what would generally be accepted (typically 20%) as this is an affordable housing scheme. This under normal circumstances creates significant risk that the development would not proceed. However, in this case I note that the development has begun under the terms of the permission that has been granted under 16/507706/FULL and has continued to what is now a fairly advanced stage. Further to this, I have not received any notification that development will be required to cease.
- 8.06 Government advice is contained within the National Planning Practice Guidance on Viability. This sets out that a site is viable if the value generated by its development exceeds the costs of developing it and also provides sufficient incentive for the land to come forward and the development to be undertaken. It states that where an applicant is able to demonstrate that S106 requirements would cause the development to be unviable, then the Local Planning Authority should be flexible in seeking such agreements.
- 8.07 In addition to the above, the National Planning Policy Framework states at paragraph 173 that *"To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable."* In addition to this, paragraph 205 sets out that *"Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled."*
- 8.08 Policy CP6 of the adopted Local Plan sets out that development proposals will deliver timely infrastructure, especially those forming part of the Local Plan implementation and delivery schedule. It also sets out that where the viability of development may be threatened as a result of requirements of the Local Plan that if this financial position is demonstrated via an open book assessment then contributions should be prioritised in accordance with the Local Plan implementation and delivery plan.
- 8.09 I also note in the supporting text to Policy CP6, it is stated at paragraph 5.5.17 that *"In cases where developer contributions may need to be reduced for viability reasons, the Council will only agree to this where the advantages of proceeding with the development would significantly outweigh the disadvantages."*
- 8.10 As such, although both local and national policies recognise that a degree of flexibility should be applied when the viability of a scheme is threatened, the proposal in respect of the above quoted paragraph contained within the Local Plan and the requirements of paragraph 14 of the NPPF will need to be assessed in order to

conclude whether the benefits of the proposal would outweigh the harm and whether the proposal would represent sustainable development.

- 8.11 Paragraph 14 of the NPPF sets out that *“At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.”* Paragraph 7 of the NPPF sets out that there are three dimensions to sustainable development which are an economic role, a social role and an environmental role. I will run through each of these three dimensions as follows in order to reach to view as to whether the harm would outweigh the benefits.
- 8.12 In terms of the economic role, the proposal would lead to benefits, albeit limited in my view during the construction phase by virtue of the creation of construction jobs. In addition to this, the future residents of the scheme would contribute to the local economy. However, this would be the case with any residential development and therefore I do not believe that this should be given significant weight.
- 8.13 In relation to the social role, the application would provide 21 dwellings and as such gives rise to benefits in terms of boosting the Council’s housing supply. However, I also take into consideration that the Council is currently able to demonstrate a five year supply of housing site. As such, I am of the view that the weight given to this proposal, simply in terms of boosting housing supply should not be considerable.
- 8.14 I also take into account that the proposal will provide 2 affordable rented units, secured by the Section 106 Agreement, which will benefit those in need of affordable housing and as such should be given weight in the decision making process. However, this figure of 10% is compliant with policy DM8, therefore, this level of affordable housing would be expected in Sittingbourne and as such although I give this weight this has to be balanced against the fact that this is not over and above what other sites in similar location are likely to provide.
- 8.15 Notwithstanding the above, it should also be considered that the scheme, in partnership with Moat Housing will deliver the remainder of the 19 units on a shared ownership basis. I have enquired with the applicant as to whether it would be possible to secure these dwellings in the Section 106 Agreement to which I have received the following response:
- “I am writing to confirm that our application is offering 2 affordable rented units, being included in the section 106 agreement. The remaining 19 units will also provide affordable housing via shared ownership, but will not be included in the section 106 agreement as including the 19 units in the section 106 would result in the units not be applicable for grant funding, therefore further effecting the viability of the application.”*
- 8.16 As such, although I take the details as set out above into account, ultimately the Council will have no control over the way in which the 19 units are delivered as these will fall outside of the Section 106 Agreement. Therefore, although the scheme will potentially be 100% affordable and accordingly weight should be given to the affordable housing being provided, this in my opinion should be considered by Members in light of the above circumstances, namely that the Council will not be able to control the delivery of 19 of the units as affordable housing.
- 8.17 The NPPF in terms of the social role that the planning system should perform also sets out the need for *“accessible local services that reflect the community’s needs and support its health, social and cultural well-being.”* In this respect, although the site, by virtue of its location in the built up area boundary is well connected to local

services, I note that the application is seeking to remove contributions to primary and secondary education, the NHS and the Council's request for open space improvements. In terms of these requests, KCC have specifically identified the primary and secondary schools and projects which the contributions will be put towards, the NHS has specifically identified the healthcare facility that the contribution will be put towards and the Council has specifically identified the open space requirements.

- 8.18 In respect of the above contributions, the development proposes 21, 3 bedroom dwellings and as such, the likelihood of these dwellings being occupied by families would be extremely high. Therefore, it is extremely likely in my view that the development would give rise to demand upon local schools, as well as healthcare facilities and the increased use of open space. The failure to provide contributions for these facilities and the harm that this would cause should in my view be given very significant weight in the decision making process.
- 8.19 In terms of the environmental role, I give some weight to the potential for the scheme to enhance biodiversity through the landscaping scheme which has been approved. However, the weight I give is limited as I do not believe these benefits would be in addition to what would be expected upon alternative developments.

#### The Conservation of Habitats and Species Regulations 2017

- 8.20 The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) and the Swale Special Protection Area which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.
- 8.21 Residential development within 6km of any access point to the SPAs has the potential for negative impacts upon those protected areas by virtue of increased public access and degradation of special features therein. The HRA carried out by the Council as part of the Local Plan process (at the publication stage in April 2015 and one at the Main Mods stage in June 2016) considered the imposition of a tariff system to mitigate impacts upon the SPA (£301.14 per dwelling on developments of 10 or more units, as ultimately agreed by the North Kent Environmental Planning Group and Natural England) – these mitigation measures are considered to be ecologically sound.
- 8.22 However, the recent (April 2018) judgement (People Over Wind v Coillte Teoranta, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, "it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site." The development therefore cannot be screened out of the need to provide an Appropriate Assessment (AA) solely on the basis of the agreed mitigation measures (SAMMS), and needs to progress to consideration under an AA.
- 8.23 In this regard, whilst there are likely to be impacts upon the SPAs arising from this development, the scale of development (21 houses on a previously developed site



within the built up area, with access to other recreation areas) and the mitigation measures to be implemented within the SPAs from collection of the standard SAMMS tariff will ensure that these impacts will not be significant or long-term. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPAs.

- 8.24 It can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others. (<https://birdwise.org.uk/>).

## 9.0 CONCLUSION

- 9.01 In reaching a decision on this application, Members should give consideration to both sides of what in my view is a balanced case. In the first instance, the viability of the development, which was shown to be marginal when assessed under the previous application, is now showing a bigger deficit. This conclusion has been agreed by the Council's consultants and as such, on the basis of local and national policies in relation to viability I give this weight in the decision making process.

- 9.02 Further to the above, the proposal would boost the Council's housing supply whilst providing affordable housing. Although the scheme will provide 2 units as affordable rented housing to be secured under the Section 106, there is a reasonable possibility that the proposal would also provide a further 19 units as shared ownership. However, the weight to be given to this must be considered in light of the inability to secure this under the Section 106. In addition to this, the scheme will provide some limited economic benefits in terms of job creation during the construction and future residents would contribute to the local economy.

- 9.03 However, these benefits have to be weighed against the failure of the proposal to provide contributions to primary and secondary education, healthcare and open space facilities. In my view, despite the above benefits, the harm that would be caused in this case would be substantial and the resultant impact of the development upon specifically identified local services and infrastructure significant and unacceptable. It is for Members to decide whether they, in this balanced case, give more weight to the lack of viability and boosting the Council's housing supply, including the provision for affordable housing or whether they believe that the lack of contributions to key infrastructure would outweigh these benefits. Based upon the above appraisal, I am of the view that the harm identified would outweigh the benefits and as result the proposal does not represent sustainable development and should be refused.

## 10.0 RECOMMENDATION – REFUSE for the following reasons:

- 1) Despite the lack of viability that has been demonstrated, the proposal, in failing to provide developer contributions to specifically identified local infrastructure would give rise to unacceptable harm which would outweigh the benefits of the scheme. The proposal would be contrary to policy CP6 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 and would fail to represent sustainable development as set out in paragraph 7 of the National Planning Policy Framework.

### The Council's approach to this application:

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

- Offering pre-application advice.
- Where possible, suggesting solutions to secure a successful outcome.
- As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

