

**PLANNING COMMITTEE – 20 JUNE 2019****DEFERRED ITEM**

Report of the Head of Planning

**DEFERRED ITEMS**

Reports shown in previous Minutes as being deferred from that Meeting

<b>Def Item 1 REFERENCE NO - 17/505711/HYBRID</b>		
<b>APPLICATION PROPOSAL</b>		
<p>Hybrid planning application with outline planning permission (all matters reserved except for access) sought for up to 595 dwellings including affordable housing; a two-form entry primary school with associated outdoor space and vehicle parking; local facilities comprising a Class A1 retail store of up to 480 sq m GIA and up to 560sqm GIA of "flexible use" floorspace that can be used for one or more of the following uses - A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes), D1 (non-residential institutions); a rugby clubhouse / community building of up to 375 sq m GIA, three standard RFU sports pitches and associated vehicle parking; a link road between Borden Lane and Chestnut Street / A249; allotments; and formal and informal open space incorporating SuDS, new planting / landscaping and ecological enhancement works.</p> <p>Full planning permission is sought for the erection of 80 dwellings including affordable housing, open space, associated access / roads, vehicle parking, associated services, infrastructure, landscaping and associated SuDS.</p> <p>For clarity - the total number of dwellings proposed across the site is up to 675.</p>		
<b>ADDRESS</b> Land At Wises Lane Borden Kent ME10 1GD		
<b>RECOMMENDATION</b>		
That delegated authority is given to officers to proceed with agreeing a S.106 planning obligations agreement based on the contributions, triggers and details included in appendix A.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>		
The S.106 obligations sought would comply with the CIL regulations and reflect the requirements of key service and infrastructure providers		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
Following the resolution to grant planning permission at its extraordinary meeting on 30 January 2019, the Committee requested that the details of the S.106 agreement be presented to the Committee for approval		
<b>WARD</b> Borden And Grove Park	<b>PARISH/TOWN</b> Borden	<b>COUNCIL</b> & Mulberry Estates (Sittingbourne) Ltd <b>AGENT</b> Montagu Evans
<b>DECISION DUE DATE</b> 07/03/18	<b>PUBLICITY EXPIRY DATE</b> 03/03/19	<b>OFFICER SITE VISIT DATE</b>

## MAIN REPORT

### 1.0 Background

- 1.01 At its meeting on 30 January 2019 the Planning Committee resolved to grant planning permission for the above planning application subject to:
- conditions (1) to (58) in the report;
  - additional conditions as outlined in the tabled papers - conditions (59) to (70);
  - amendments to conditions (53) and (54);
  - the resolution of outstanding matters relating to existing public rights of way;
  - no objections being received from Historic England;
  - the wording in paragraph 38 [should be condition (38)] changed from 'indigenous' species, to 'native' species;
  - confirmation from KCC of projects or management/maintenance proposals for the Borden Nature Reserve that would be affected by the increase in use to justify a financial contribution to such works – and agreement with the developer to contribute to this;
  - the expiry of the consultation/publicity period relating to the ecology addendum and badger survey, and subject to no objections being raised by KCC Ecology or Natural England; and
  - the completion of a S106 Agreement for the terms as set out in the report, and the Agreement to come back to the Planning Committee for the final decision.
- 1.02 This report deals exclusively with the details of the S106 Agreement, being the one item that was not delegated to officers by the Planning Committee. A table is attached (Appendix A) with the S106 items and triggers set out.
- 1.03 This report will focus on the heads of terms for the S.106 obligations, and the section of the report to the 30<sup>th</sup> January 2019 Committee report that dealt with these is appended (Appendix B).
- 1.04 Members should note that the original committee report referred to a Kent Police contribution of £27,470. I have since determined that this request does not meet the CIL tests and have removed it from the S106 Agreement.
- 1.05 I have also appended the draft set of planning conditions for Members' information (Appendix C).

### 2.0 CONSULTATIONS

- 2.01 I have received the following list of proposed improvement works to the Borden nature reserve, which has been provided by Kent County Council (the landowner) in conjunction with Borden Parish Council (the leaseholder).
- A Land Management Plan to look at in detail the potential management opportunities of the site going forward
  - Improving the hardstanding inside the new entrance gate and fencing this area so that 4/5 cars could park off road,
  - Picnic benches were also discussed for the open area.
  - It was noted that the open area would need maintenance by the Parish Council if this was made into a 'picnic' type area.
  - Ideas for attracting or introducing more biodiversity and habitat management to promote new species development including a volunteer group could be formed to litter pick and look after the area.

- Boundary fencing and Styles need to be upgraded.
- 2.02 Officers have recently met with representatives from Borden Parish Council and the local ward members to discuss the obligations to be secured under the S106 Agreement. A number of requests for additions / amendments to the Agreement have been made, and I have assessed whether such requests would meet the relevant CIL tests (as set out in section 3 below). The terms of the S106 agreement are now being adjusted to take this into account. Those areas where amendments have been agreed with the applicant following the above discussions are as follows –
- 1) An obligation for the developer to fund an extension to public footpath ZR121, which would improve pedestrian access between the site and Borden Village.
  - 2) An amendment to the open space provisions which would enable Borden Parish Council to take on some of the space. Specifically Borden Parish Council has shown an interest in the land between the nature reserve and Borden Lane, and the proposed allotments.
  - 3) An increase in the financial contribution towards improvements to the nature reserve (as set out above) to £40,000.
  - 4) The ability to use the NHS contribution on other facilities within a catchment area of the site (including the potential to use this on-site if the NHS considered taking on the “flexible use” unit).
  - 5) The delivery of the rugby club facility at an earlier stage in the process. Currently this is proposed prior to occupation of 549 units. The applicant is willing to bring this forward and is presently assessing the construction timetable to establish when services / connections can be provided to enable this. I will update Members with a more precise trigger at Committee.
  - 6) That the requirement for a reserved matters application for the retail / commercial floorspace is brought forward to be submitted prior to occupation of the 80<sup>th</sup> dwelling on site (currently proposed at 100 dwellings).
  - 7) That any surplus from the footpath ZR118 contribution can be used to improve other footpaths immediately adjacent to the site.
  - 8) Use of KCC funding for community learning and social care services to be potentially invested in more local projects, although KCC have stated that the current mobile library service to Borden (2 stops) is not under threat.
- 2.03 Following a request by Borden Parish Council to request an earlier timescale for bringing forward the transfer of the primary school land, KCC Education have responded stating that an ‘over early delivery could destabilise other local schools and place an onerous obligation upon KCC for construction of the school and/or maintenance or management of the site prior to construction. In these circumstances, the original obligation trigger for the transfer to take place prior to occupation of no more than 150 dwellings or after a period of 36 months from the date of commencement of development of Phase 1A whichever is the sooner – should be retained as the trigger.’
- 2.04 Further matters were raised by the local Ward Members regarding highways and transportation:
- 1) To pay the contribution towards the southbound on slip road before the occupation of the 150<sup>th</sup> dwelling (in advance of phase 2) rather than the 300<sup>th</sup> dwelling;
  - 2) Request that two bus stops are provided on Wises Lane - Provision of this would be through the section 106 requiring a s.278 agreement with the Highway

Authority at a point soon after the Chestnut Street to the Wises Lane link is available.

- 3) Request that no more than 120 dwellings (rather than 199 dwellings) should be occupied until the entire length of the internal spine road between Wises Lane and Chestnut Street has been constructed to an adoptable standard and made available for public use (this would need amendment to corresponding conditions 21 and 22 of the item agreed by Planning Committee) – to ensure delivery prior to the completion of Phase 2 of the development and reduce the predicted impact on the A2/Wises Lane junction.
- 4) To assist with the ability to deliver the above Spine Road/On slip requests Members are offering a relaxation of the need for a condition requiring that the section 278 agreement need not be required until 100 occupations and that the Highway Authority would not serve notice for delivery prior to the 150<sup>th</sup> occupation and not later than the 500<sup>th</sup> dwelling occupation - This is felt to assist the housebuilder in commencing and occupying at an earlier stage and allows the Highway Authority to ascertain whether traffic lights at the A2/Wises Lane junction are indeed necessary at all once the spine road is completed to Borden Lane allowing additional time before having to finance what is likely to be a significant outlay for junction improvements at wises Lane and the A2 London Road;
- 5) Request that commuter parking is provided on the Spine Road at close proximity to the Chestnut Street roundabout. This would be instead of the parking currently shown on Chestnut Street North of the proposed Chestnut Street roundabout. A 6" 6"HGV restriction would be required for the Spine Road to prevent HGV parking however this could be picked up by Section 38 agreements. The Section 106 would be amended to state that it will be provided on the spine road in close proximity to the Tudor Rose PH instead of that on Chestnut Street.
- 6) Concerned that the retention of the link between Wises Lane and Cryalls Lane is retained through the delivery of the development. This is to ensure that existing residents of Wises Lane and Maylam Gardens have the ability to head towards Borden and Sittingbourne without having to use the Wises Lane/A2 junction. It is suggested that the Cryalls Lane South and North section of the road remain open until the point that the Spine Road is in place.
- 7) Request that the currently agreed 160m distance between the proposed spine road bus stop layby and the school be reduced to a comparable distance to the current A2 bus stops and the Westland School buildings Bus Drop offs.

2.05 The outcome of negotiations with the applicant on these particular requests had not been finalised by the time of drafting this report. The outcome of those negotiations will be reported to the Committee through a tabled update.

2.06 Some matters have been raised by the Parish Council representatives and ward members that I consider cannot be pursued. These are as follows:

- 1) Gifting of land off Cryalls Lane to Borden Parish Council – this relates to an open area of grassland / scrubland of approximately 4 Hectares in size, located between the application site and Westlands school. This land is designated as Local Green Space under policy DM18 of the Local Plan. The land is owned by Ward Homes (which in turn is owned by the same group as BDW Homes – the housing developer involved with this application). They do not intend to transfer this land to the parish council, and I cannot require this as it does not meet the necessary tests in paragraph 3.01 below.

- 2) Provision of a pond feature within the main area of open space to the south of the proposed spine road. I am advised by the developer that this land is on a “high point” within the development and as such this is not feasible. I would also advise that a series of open drainage features have been secured around the junction of the spine road and Wises Lane, which I consider would create a feature point.
- 3) Allocation of some of the affordable housing for local persons within Borden Parish. I have discussed this with the Council’s Strategic Housing and Health Manager. Such allocation would require the housing to be defined as rural exceptions housing, and would remove it from the general needs affordable housing stock, for which there is considerable demand. The two forms of housing operate under entirely different needs criteria, and the last Borden village needs survey (2012) is now out of date. There is no basis under Policy MU3 to require this type of housing to be secured for this strategic housing development, and the evidence base for local need is out of date. Whilst the applicant has not objected in principle to further consideration of this as part of the S106 negotiations, I do not consider the provision of local needs housing to be necessary to make this development acceptable in planning terms, and I share the Housing Officer’s concerns that this would not be based on any up-to-date local needs. As such, I do not consider it passes the relevant CIL tests.
- 4) That the obligation should include air quality monitoring at various phases in the development. I cannot include this as the air quality impacts have been assessed as part of the application, and determined to be acceptable. Members may seek for the Council’s Environmental Protection Team to carry out such monitoring (as the responsible authority for this), but this cannot be an obligation placed on the developer under the S106 agreement.
- 5) That a community hall should be provided / that the rugby facility should instead provide a multi-use facility – A new community hall was not identified as part of the development criteria under policy MU3 of the Local Plan, nor has a deficiency in such provision been identified. The inclusion of a rugby facility has been considered acceptable on its planning merits. The rugby facility will be subject to a community use agreement (to form part of the Section 106 Agreement) which will enable use by other groups outside of use for rugby purposes – and it is part of the “business plan” that this forms a means for income generation. The design of the rugby facility will be subject to reserved matters, and officers / Members will be able to review the extent to which the building has been designed to accommodate other groups / uses at that stage.

### **3.0 S.106 OBLIGATIONS**

3.01 Section 106 Agreements are legal agreements between Local Authorities and the planning applicant or landowners. These are linked to planning permissions and also known as planning obligations. Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the CIL Regulation tests, namely that they are:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind.

3.02 Section 106 agreements can provide a flexible tool for delivering a broad range of site-specific infrastructure and community facilities necessary to get schemes off the ground. Given this important role in unlocking development, it is vital that the process of finalising S106 agreements is as swift and efficient as possible. The obligations

have been drafted taking into account the representations from the key service and infrastructure providers. The obligations have also been amended following discussions with Borden Parish Council, Local ward members and the applicant, where they meet the tests as set out above.

- 3.03 Table 1 sets out the planning obligation items, the contributions involved (including specific contributions for phase 1, where applicable) and a detailed commentary on the triggers and mechanisms for the payment of contributions or the carrying out of actions as necessary.

#### **4.0 CONCLUSION**

- 4.01 The contributions and items included within the table have been agreed with the infrastructure and service providers involved. The contributions have been agreed in accordance with demographic based formulae and /or the needs generated by the development proposed. Accordingly, the draft list of items is considered to accord with the CIL regulations set by the Government. Members will be updated at the meeting on any further comments from KCC or arising from discussions with ward members re highways obligations.

#### **5.0 OTHER MATTERS**

- 5.01 Members should note that I propose a minor change to condition 20, to more accurately reflect requirements from KCC Highways and Transportation. The condition requires widening works on the existing part of Wises Lane to take place prior to commencement of any other development – to facilitate construction traffic. I would propose a change in the wording to be as follows –

*20) No development shall be commenced in any phase until the highway works north of No 35 Wises Lane, as shown on the Wises Lane – Site Access drawing 13-042-038C (or as otherwise agreed) have been completed.*

*Reason: In the interests of Highways safety*

- 5.02 This limits the extent of work required under this condition to within the boundaries of the existing highway and enables such work to be carried out without the need for the developer to discharge other pre-commencement conditions to be attached to the permission. I also propose to amend the wording of these pre-commencement conditions (originally numbered 7, 9, 12, 13, 18, 38, 42, 43, 47, 52, and 57 in the January report and numbered 53, 54, 62, 64 in the tabled updates) to provide clarity that they do not apply to the works required under condition 20. (Members should note that the attached list does not follow precisely the same numbering)
- 5.03 Minor alterations have also been made to the wording of conditions 7, 8 and 13, and condition 50 has been removed as it repeats requirements already set out under condition 48 (now condition 55 on the attached updated list).

- 6.0 RECOMMENDATION** – That delegated authority is given to officers to proceed with finalising a S.106 planning obligations agreement based on the contributions, triggers and details included within Appendix A.

