

<b>2.4 REFERENCE NO - 19/501564/EIFUL</b>		
<b>APPLICATION PROPOSAL</b>		
Variation of condition 37 of 15/504264/OUT (Outline application (with all matters reserved other than access into the site) for a mixed use development comprising: up to 310 dwellings; 11,875sqm of B1a floorspace; 3,800sqm of B1b floorspace; 2,850sqm of B1c floorspace; a hotel (use class C1)(up to 3,250sqm) of up to 100 bedrooms including an ancillary restaurant; a care home (use class C2)(up to of 3,800sqm) of up to 60 rooms including all associated ancillary floorspace; a local convenience store (use class A1) of 200sqm; 3 gypsy pitches: internal accesses; associated landscaping and open space; areas of play; a noise attenuation bund north of the M2; vehicular and pedestrian accesses from Ashford Road and Brogdale Road; and all other associated infrastructure.) to allow occupation of residential dwellings prior to completion of the off site highways works d) (Brogdale Road Footpath and e) (Brogdale Road/A2 junction).		
<b>ADDRESS</b> Land At Perry Court London Road Faversham Kent ME13 8YA		
<b>RECOMMENDATION</b> – That delegated powers are given to Grant permission for the application under S73 to vary condition 37, subject to completion of a S106 Agreement.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL</b>		
The variation to the trigger point in condition 37 to delay delivery of the Brogdale Road highway improvements would not cause any unacceptable highways impacts or any wider significant environmental effects beyond those approved under outline permission 15/504264/OUT.		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
The application is contrary to the views of Faversham Town Council and Ospringe Parish Council.		
<b>WARD</b> Watling	<b>PARISH/TOWN COUNCIL</b> Faversham Town	<b>APPLICANT</b> BDW Kent <b>AGENT</b>
<b>DECISION DUE DATE</b> 27/06/19	<b>PUBLICITY EXPIRY DATE</b> 29/07/19	

**Planning History**

15/504264/OUT - Outline application (with all matters reserved other than access into the site) for a mixed use development comprising: up to 310 dwellings; 11,875sqm of B1a floorspace; 3,800sqm of B1b floorspace; 2,850sqm of B1c floorspace; a hotel (use class C1)(up to 3,250sqm) of up to 100 bedrooms including an ancillary restaurant; a care home (use class C2)(up to of 3,800sqm) of up to 60 rooms including all associated ancillary floorspace; a local convenience store (use class A1) of 200sqm; 3 gypsy pitches: internal accesses; associated landscaping and open space; areas of play; a noise attenuation bund north of the M2; vehicular and pedestrian accesses from Ashford Road and Brogdale Road; and all other associated infrastructure. Approved.  
Decision Date: 27.03.2017

17/506603/REM - Approval of reserved matters relating to scale, layout, appearance and landscaping for the erection of 310 dwellings, pursuant to conditions 1, 4, 10 and

24 of outline planning permission 15/504264/OUT. Approval sought for residential part of outline scheme only. Approved. Decision Date: 01.03.2019

18/502735/FULL- Erection of a new supermarket (Use Class A1) and a hotel (Use Class C1) along with associated accesses, car and cycling parking, lighting, drainage, hard and soft landscaping and associated infrastructure – Resolution for planning permission to be granted subject to completion of a S106 Agreement

18/503057/FULL - Erection of a 3 storey, 66 bed care home for older people with associated access, car park and landscaping – Approved 18<sup>th</sup> October 2019

## 1. DESCRIPTION OF SITE

- 1.01 The application site measures 33.1 hectares in size, and comprises former agricultural fields, now under construction for development. The site is allocated in the adopted local plan for a mixed use development and benefits from outline planning permission for such development granted under 15/504264 (see planning history). Reserved matters approval has been granted under 17/506603/REM for the residential part of the development, and this is currently under construction. The applicant has recently confirmed that 7 dwellings are now occupied, with contracts exchanged on a further 2 units.
- 1.02 To the north of the application site lies The Abbey School, Perry Court Farm and varying residential properties. To the east, lies Ashford Road and residential dwellings which form a linear pattern along this road from north to south. The southern boundary of the site is defined by the M2 motorway. The site is bound to the west by Brogdale Road and the two residential dwellings, known as ‘Ash Tree Cottages’.
- 1.03 A Grade II listed Oasthouse, which forms part of Perry Court Farm, is located directly north-west of the Site and was built in 1904. Additionally, Orchard Cottages, which are also Grade II listed, are located beyond Ashford Road to the north-east, and a Grade II listed Gazebo located adjacent to the A2 and Ashford Road junction, are within fairly close proximity of the application site. It is also noted that a listed windmill is located to the south of the M2.
- 1.04 The topography of the site falls away from two local highpoints in the south-east and the south-west corners of the site, to a shallow vegetated valley running from the M2 motorway to the centre of the site. The lowest point within the site lies in the north-west corner. The surrounding landform is gently sloping and in general falls slowly through Faversham where it meets and drains into Faversham Creek.
- 1.05 An area of land lying to the south of the site, beyond the M2, is defined as an Area of High Landscape Value. The Kent Downs Area of Outstanding Natural Beauty is located less than half a mile to the south-west of the application site – beyond the M2.

## 2. PROPOSAL

- 2.01 This application has been made under S73 of the Town and Country Planning Act to vary condition 37 of the existing outline planning permission. As the development is now occupied, the application is retrospective.
- 2.02 The current wording of condition 37 states as follows –

*The off-site highway works associated with the development are indicated on the*

*following drawings:*

- a) 10182/HL/02 Rev C - Proposed Roundabout Ashford Road
- b) 10182/HL/03 Rev A - Proposed new Junction onto Brogdale Road
- c) 10182/HL/02 Rev C - footpath provision to the site frontage along Ashford Road, and provision of a pedestrian crossing
- d) 10182/HL/06 Rev A - improvement of the Brogdale Road footpath
- e) 10182/HL/06 Rev A - improvement of the Brogdale Road/A2 junction

*No work shall commence on the development site until off site highway works (a) above have been carried out in accordance with a design and specification that shall first have been approved in writing with the Local Planning Authority, and been fully implemented to the satisfaction of the Local Planning Authority. Off site highway works (b) above shall be constructed in accordance with the phasing plan to be approved pursuant to the Section 106 agreement dated 23 March 2017.*

*No occupation of the development site shall take place until the off site highway works c), d) and e) above have been carried out in accordance with a design and specification that shall first have been approved in writing with the Local Planning Authority, and been fully implemented to the satisfaction of the Local Planning Authority.*

*Reason: In the interests of highway safety and convenience.*

- 2.03 The application seeks specifically to vary the trigger points and delivery of items d) and e), which relate to improvements to Brogdale Road, and to allow some occupation of dwellings prior to such works taking place.

### **3 PLANNING CONSTRAINTS**

The site is allocated for a mixed use development in the Local Plan.

The site is located within the built confines of Faversham.

The oast building to the north is Grade II listed.

The land to the south of the M2 motorway is within an Area of High Landscape Value

Public Right of Way ZF18 crosses through the site

High Pressure and Medium Pressure gas pipelines cross the site

### **4 POLICY AND CONSIDERATIONS**

- 4.01 **The National Planning Policy Framework** – For the purpose of this application, the key paragraphs are 108-111 which relate to highway impacts.

- 4.02 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 – The key policies relating to this application are DM6 (managing transport demand) and MU7 (allocation policy for Perry Court)

### **5 LOCAL REPRESENTATIONS**

- 5.01 13 letters of objection received ( Including multiple representations from the same person)

- All highways works should be financed by the developer and completed prior to occupation of any properties
- Excessive traffic on the A2 which will be exacerbated by the Perry Court development
- Impact upon air quality
- A relief road is required, and which should involve re-examination and re-design of Perry Court to facilitate such a road, to reduce congestion / air quality impacts on the A2.
- This will result in an extra 50 vehicle movements in peak hours.
- Impacts arising on traffic congestion and air quality from cumulative developments
- The traffic survey does not provide data on impacts arising to the A2 / Mall junction, the A2 / A251 junction, or junctions 6 and 7 of the M2.
- Footpath provision on Brogdale Road is inadequate, and crossing the A2 is dangerous, and must be improved prior to occupation.
- This would result in a significant increase in traffic on Brogdale Road with resultant congestion, fumes, pollution and dangerous conditions for pedestrians.
- A separate development of 63 dwellings on Brogdale Road will add to congestion and must be considered.
- The developer is seeking to circumvent existing planning conditions
- This will set a precedent for other developers / applications to delay works
- The junction works to Brogdale Road / A2 would not provide any real benefits
- Brogdale Road is not suitable for additional traffic
- Air quality impacts have significantly increased

5.02 The Faversham Society Planning Committee – state that the condition should not be varied as it would set a precedent for development on sites without complying with conditions when the reason for this condition is to ensure that traffic generated by the development does not compromise the amenity of existing residents, in this case those of Brogdale Road. Additional pressure is already likely to arise in the near future from the development of the site on the opposite side of Brogdale Road.

## **6 CONSULTATIONS**

### Faversham Town Council

6.01 Strongly object -

- 1) This development has been subject to a lengthy planning process. The condition of completing the offsite highway works before occupation is the outcome of the planning process and the Town Council wishes that condition to be upheld.
- 2) The proposed diversion if the Brogdale Road is closed is not suitable for HGVs or coaches.
- 3) Brogdale Road/A2 junction is presently congested, causing inconvenience for existing residents. The junction could not cope with increased traffic movements from the 75 dwellings without the off site highway works.

### Ospringle Parish Council

- 6.02 Object. The parish council has had long standing concerns about the accuracy of the traffic assessments/predictions especially in relation to the A2/Brogdale Road junction. Empirical evidence clearly shows more traffic movements at the junction than the reports suggest. It would be detrimental to both pedestrian and vehicular safety due to traffic movements likely to be generated by 75 dwellings to be allowed before highways works covered by the condition are carried out.

#### KCC Highways

- 6.03 Advise that the application to vary condition 37 of the outline planning approval granted by 15/504264/OUT has been necessitated following lengthy discussions between the applicant and the Highway Authority, Kent County Council. The outline planning approval secured highway improvement works to Brogdale Road, and this includes the widening of both the carriageway and footways along its length, as well as changes to its junction with the A2. The design and technical specification of the proposed works have been approved by Kent County Council, and the associated S278 Agreement signed in order to allow the developer to carry out these changes to the existing public highway.
- 6.04 In order to physically construct these highway improvements, it will be necessary to implement a road closure for Brogdale Road during the construction period, and implement a lengthy diversion route to maintain access for affected residents and businesses. Following concerns raised locally to our Roadworks Coordination team who issue the permits for temporary road closures and diversions, it was decided that this should not be done until the permanent vehicular route through the Perry Court development to the A251 is available for use.
- 6.05 Consequently, it is necessary to allow some of the approved development to be built out prior to the delivery of the off-site highway works to Brogdale Road, and therefore condition 37 must be varied to facilitate this. To be clear, the application does not remove the developer's obligation to provide the highway improvements, as it merely delays the timing of when they should be constructed. Ultimately, the highway works will still be delivered through the S278 Agreement process, but in a manner that will have less of an impact on the initially considered diversion route and local residents/businesses.
- 6.06 The Transport Note that has been produced to assess the proposed variation of condition demonstrates through junction modelling that the A2/Brogdale Road junction will still operate within capacity with the predicted traffic flows generated by 75 residential units prior to the link through to the A251 being available. It is generally accepted that an RFC of 0.85 is the desirable limit for the capacity of a junction arm before it becomes unstable, and the modelling suggests that an RFC of 0.75 would be reached as a result of this application, which is acceptably below the recognised threshold.
- 6.07 KCC Highways raise no objections to the proposals in respect of highway matters.

#### Highways England

##### Original comments

- 6.08 Originally commented that the analysis focuses on the performance of the A2 / and Brogdale Road, that the proposal will not generate any additional trips and whilst distribution of trips may occur this is unlikely to impact upon Brenley Corner. However further information was sought to clarify the potential redistribution of trips caused by the road closure and associated impacts upon the strategic road network.

- 6.09 Following the submission of further information relating to the Brogdale Road closure, Highways England raise no objection to the proposal.
- 6.10 Health and Safety Executive – do not advise on safety grounds against the grant of planning permission.
- 6.11 Natural England – Do not wish to make any comments
- 6.12 KCC Drainage – Do not make any comments on the basis that the variation would not impact upon surface water management.
- 6.13 SBC Environmental Protection Team Leader advises that the proposal would not have any significant effect on air pollution, as the basis facts (regarding the scale of the development and predicted traffic generation) remain as they always have done. Some concern is raised regarding the need to deal with contamination prior to occupation and the effects of construction work on new residents.

## 7 BACKGROUND PAPERS AND PLANS

- 7.01 The application includes a covering letter to explain the reasons for the application, a Transport Technical Note, the Environmental Statement submitted with application 15/504264, and a letter setting out conformity with the Environmental Impact Assessment Regulations.

## 8 APPRAISAL

### Legal Background

- 8.01 This application is made under S73 of the Town and Country Planning Act to develop land without compliance with a planning condition. S73 states as follows –

*“On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—*

*(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and*

*(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.”*

- 8.02 Members should note that the determination of a S73 application should only consider the changes to the condition in question, and should not be a complete re-consideration of the application. However to assist with clarity, decision notices for the grant of planning permission under S73 should also repeat relevant conditions from the original planning permission. Members should note that the original outline permission will continue to exist whatever the outcome of this S73 application.

### Background

- 8.03 In this instance, the application seeks to vary condition 37 of outline permission 185/504264/OUT which relates to the delivery of off-site highways works. As currently worded, the condition requires off-site works to Brogdale Road prior to the occupation of any part of the development. Members will note that the development is currently in

breach of this condition with up to 9 units in occupation, the implications of which are discussed later in this report.

- 8.04 The works on Ashford Road (parts (a) and (c) of condition 37), consisting of the construction of the new roundabout at the site entrance, and installation of a footpath and pedestrian crossing, have been completed.
- 8.05 The works to Brogdale Road consist of improvements at the A2 junction to create a right turn lane from Brogdale Road, and improvements to the width of the road and pedestrian footpath along the road from the application site to this junction. KCC Highways have confirmed that the design and technical specification for the highways works has been formally agreed.
- 8.06 An application under the Highways Acts was made by the applicant to KCC to close Brogdale Road in early 2019 to carry out these improvement works. However following concerns raised locally regarding the closure and lack of a suitable diversion route, the KCC Roadworks Co-ordination team did not issue a permit for this work. It was subsequently decided that such works should not be carried out until the permanent vehicle route through the Perry Court development to the A251 is available for use, to provide a suitable diversion route.
- 8.07 The application was originally submitted on this basis, i.e that the delivery of the spine road through the site was necessary to meet requirements from the KCC Roadworks co-ordination team, and placed additional constraints on the applicant. However during the course of this application, this position has changed. It is understood that the temporary closure of Brogdale Road is not now dependant on the spine road through the development site being opened, although the spine road is still anticipated to be completed in the summer of 2020.

#### Highways Impacts

- 8.08 As the Council should only consider the matter of the condition in question, the key issue is whether the occupation of some dwellings within the development would cause any unacceptable highways impacts on Brogdale Road. Policy DM6 of the adopted Local Plan states that significant developments should be accompanied by a Transport Assessment, and include measures to mitigate unacceptable impacts. Policy MU7 (specific to the Perry Court site) states that development proposals should include a Transport Assessment to determine the need and timings for any improvements to the transport network, and that mitigation should include improvements to the A2 / Brogdale Road junction, and pedestrian routes.
- 8.09 The application includes a Transport Technical note which has modelled the effects of the traffic generation from 75 dwellings on Brogdale Road prior to the proposed road improvement works taking place. The technical note concludes that the junction would continue to operate within capacity. KCC Highways accept the modelling work and that the junction would remain below capacity notwithstanding the predicted traffic flows generated by the 75 dwellings. On this basis KCC Highways raise no objection to a variation of the condition to allow some limited occupations. For the avoidance of doubt, members should note that the modelling draws on the Transport assessment submitted with the original application, and which included traffic data arising from other committed developments in the area, including the development of 63 dwellings to the west of Brogdale Road. I also note that Highways England do not raise objection to the scheme in terms of impact upon the strategic road network.
- 8.10 In terms of pedestrian use, a footway would still be available for use on Brogdale Road - albeit of a smaller width than would be the case with the improvements. In addition, alternative pedestrian access via a public footpath exists to the north of the

development site, notably adjacent to the Abbey School, to the A2. As such I do not consider the impact on pedestrians, resulting from the proposal to allow a limited number of occupations prior to completion of the Brogdale Road works, would be unacceptable. Nor do KCC Highways object on such basis.

8.11 Taking the modelling work into account and the lack of objection from KCC Highways, I am content that a variation to condition 37 to allow up to 75 occupations prior to delivery of the Brogdale Road improvements would not cause unacceptable highways impacts or be in conflict with policies DM6 of MU7 of the Local Plan.

8.12 National Planning Policy Guidance provides advice on the use of planning conditions. This makes clear that planning conditions should only be used when they meet specific tests, those being –

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

8.13 In this respect, it is evident that improvements to Brogdale Road are necessary to mitigate against the highways impacts arising from the development as a whole – as evidenced in the original outline application. However the subsequent modelling work submitted with this current application, and the advice from KCC Highways demonstrates that Brogdale Road and the junction with the A2 has capacity to absorb the traffic generated by up to 75 dwellings within the development before the Brogdale Road improvement works are required. On this basis, I consider that the necessity for these works to be completed arises after the occupation of 75 dwellings, and that an amendment to condition 37 to reflect this would meet the above tests.

8.14 I would therefore recommend that that condition 37 is varied to the following –

*(37) The off-site highway works associated with the development are indicated on the following drawings:*

- a) 10182/HL/02 Rev C - Proposed Roundabout Ashford Road*
- b) 10182/HL/03 Rev A - Proposed new Junction onto Brogdale Road*
- c) 10182/HL/02 Rev C - footpath provision to the site frontage along Ashford Road, and provision of a pedestrian crossing*
- d) 10182/HL/06 Rev A - improvement of the Brogdale Road footpath*
- e) 10182/HL/06 Rev A - improvement of the Brogdale Road/A2 junction*

*No work shall commence on the development site until off site highway works (a) above have been carried out in accordance with a design and specification that shall first have been approved in writing with the Local Planning Authority, and been fully implemented to the satisfaction of the Local Planning Authority. Off site highway works (b) above shall*

*be constructed in accordance with the phasing plan to be approved pursuant to the Section 106 agreement dated 23 March 2017.*

*No more than 75 dwellings within the development shall be occupied until the off site highway works d) and e) above have been carried out in accordance with a design and specification that shall first have been approved in writing with the Local Planning Authority, and been fully implemented to the satisfaction of the Local Planning Authority.*



*Reason: In the interests of highway safety and convenience.*

The existing breach of planning permission

- 8.15 Recent investigations by my officers and subsequent discussions with the developer have revealed that up to 9 dwellings have already been occupied, in breach of the existing planning permission. The developer is aware that they are in breach of the existing permission and has since undertaken not to agree to any further occupations until this current application is resolved. As a result of this undertaking, and because neither KCC or Highways England object to this application (which centres on highways impacts) no formal enforcement action has been taken to date. My recommendation is that a variation to the condition should be approved, and this would “regularise” the existing situation. However if the Planning Committee was to refuse this application, it would need to consider whether formal enforcement action should then be taken – which may involve action against both the developer and occupants of the dwellings.

Other matters

- 8.16 Air Quality – Some third parties have raised concern regarding air quality impacts. The Council’s Environmental Protection Team Leader advises that air quality impacts would not significantly change as a result of the proposal to vary condition 37.
- 8.17 Contamination / Amenity - The Council’s Environmental Protection Team Leader has raised some concerns regarding the effect of contamination and construction activities on occupants. This is already controlled under existing conditions relating to contamination and construction and is not, in my opinion, relevant to this application to vary condition 37.
- 8.18 The need for a relief road – some objectors have referred to such need in their representations. The approved scheme does not include a relief road, and this application should only consider the specific impacts arising from the variation of condition 37, and should not re-consider design / layout matters.

Environmental Impact Assessment (EIA)

- 8.19 The original outline application was subject to an EIA, and the significant effects arising from the development were considered as part of this decision making process. As this is a S73 application, it also technically falls to be considered under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The Environmental Statement submitted with the original outline application has been included with this application, and the applicant has provided a letter setting out the likely significance of effects arising from the changes sought to condition 37.
- 8.20 As such changes are related to triggers for localised highways works, it is concluded that this application would not give rise to likely significant effects on the environment above those already identified as part of the consented outline planning permission. I agree with this conclusion and that that the environmental information submitted with this application provides the basis for the Council to reach a reasoned conclusion on the significant effects of the proposed development.

S106 Agreement

- 8.21 As the effect of granting permission is to issue a new decision notice for the development, it will be necessary to ensure that a S106 Agreement is secured to tie the obligations secured under the outline permission (15/504264/OUT) to this new permission.

## 9. CONCLUSION

- 9.01 I would conclude that the variation to condition 37 in highways terms is acceptable, and that a variation to the condition should be granted, subject to completion of a S106 Agreement to tie the obligations secured under application 15/504264/OUT to the new permission.

## 10 RECOMMENDATION

That delegated powers are given to GRANT planning permission, subject to completion of a S106 Agreement to tie the obligations secured under 15/504264/OUT to this new permission, and subject to the following conditions

### CONDITIONS

- (1) Details relating to the layout, scale and appearance of the proposed building(s) within a relevant phase, and the landscaping of that phase shall be submitted to and approved by the Local Planning Authority before any development within that phase is commenced.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) Application for approval of reserved matters referred to in Condition (1) above must be

made not later than the expiration of three years from the date of the grant of outline planning permission under application 15/504264/OUT on 27<sup>th</sup> March 2017.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (3) The development to which this permission relates must be begun not later than the expiration of five years from the date of the grant of the outline planning permission under 15/504264; or two years from the final approval of reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (4) The details submitted pursuant to condition (1) above shall show the residential development restricted to the residential areas as identified indicatively on the 'Illustrative Site Layout' Drawing Number: 5187-PL2-02 Revision B.

Reason: In order to secure a satisfactory form of development having regard to the nature of the site.

- (5) For each phase of the development hereby approved, no development shall take place

within a relevant phase until details have been submitted to the Local Planning Authority and approved in writing, which set out what measures will be taken to ensure that the development in that phase incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. Upon approval, the details shall be incorporated into the development of

the phase of development in question as approved, and retained as such in perpetuity.

Reason: In the interest of promoting energy efficiency and sustainable development.

- (6) No development shall take place until details of a scheme for the long-term monitoring of breeding birds using the site has been submitted to, and approved in writing by, the Local Planning Authority.

Reason: In the interests of monitoring breeding bird populations within the site.

- (7) The proposed estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture shall be constructed and laid out in accordance with details to be submitted and approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.

Reason: To ensure that the roads are laid out and constructed in a satisfactory manner.

- (8) Before the first occupation of a dwelling / premises the following works between that dwelling / premises and any adopted highway shall be completed as follows:  
 (A) Footways and/or footpaths shall be completed, with the exception of the wearing course;  
 (B) Carriageways completed, with the exception of the wearing course, including the provision of a turning facility beyond the dwelling together with related:  
 (1) highway drainage, including off-site works,  
 (2) junction visibility splays,  
 (3) street lighting, street nameplates and highway structures if any.

Reason: In the interests of highway safety.

- (9) None of the dwellings in a relevant phase hereby approved shall be first occupied until details of measures to ensure that the emergency vehicular access to the approved housing is used only in the event of an emergency have been submitted to and approved in writing by the Local Planning Authority. The agreed measures shall then be implemented in accordance with a programme that shall also have been agreed in writing by the Local Planning Authority. Following implementation, the approved measures shall then be retained in perpetuity.

Reason: In the interests of highway safety and convenience.

- (10) The details submitted pursuant to condition (1) above shall show adequate land reserved for the parking or garaging of cars and such land shall be kept available for this purpose at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order) or not shall be carried out on such land or in a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.

Reason: Development without adequate provision for the parking or garaging of cars is

likely to lead to car parking inconvenient to other road users and detrimental to amenity.

- (11) The details submitted pursuant to condition (1) above shall show adequate land reserved for the parking of vehicles and for the loading and off-loading of commercial vehicles, and upon approval of the details no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved space; such land and access thereto shall be provided prior to the occupation of the building hereby permitted and shall be used for or be available for use for the parking, loading and off-loading of vehicles at all times when the premises are in use.

Reason: The development, without the provision of parking, loading and off-loading space, would be detrimental to amenity and likely to lead to inconvenience and danger to road users by virtue of vehicles parked on the public highway amenity

- (12) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:- Monday to Friday 0730 - 1900 hours, Saturdays 0730 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- (13) The access details shown on the approved plans shall be completed prior to the occupation of any buildings hereby approved, and the accesses shall thereafter be maintained and shall make use of bound surface materials for the first 5 metres of the access from the edge of the adopted highway

Reason: In the interests of highway safety.

- (14) Full details of the bunding (include plans and cross section of the bund) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any residential development and implemented subject to an implementation plan approved in writing by the Local Planning Authority.

Reason: In the interests of visual amenity

- (15) The development hereby approved shall be carried out in accordance with the following approved drawings:

5187-PL-01 Rev B Redline Plan

10182/HL/02 Rev C Proposed Roundabout Ashford Road

10182/HL/03 Rev A Proposed Junction Brogdale Road

Reason: In the interests of proper planning and for the avoidance of doubt.

- (16) No impact pile driving in connection with the construction of the development shall take

place on the site on any Saturday, Sunday or Bank Holiday, nor any other day except between the following times:- Monday to Friday 0900-1700hours unless in association with an emergency or with the written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- (17) No development shall take place until a detailed mitigation strategy for all protected

species has been submitted to, and approved in writing by, the Local Planning Authority. The development shall then be implemented in accordance with the agreed arrangements.

Reason: In the interests of protecting and encouraging biodiversity.

- (18) No development shall take place until a strategy for updating ecological surveys, where development is not implemented within two years of the date of the surveys, has been submitted to and approved in writing by the Local Planning Authority. The development shall then be implemented in accordance with the agreed strategy.

Reason: In the interests of protecting and encouraging biodiversity.

- (19) No development of the residential phase of the scheme, nor of the commercial phase, hereby approved shall take place until a Construction and Environmental Method Statement for that phase has been submitted to and approved in writing by the Local Planning Authority. The approved Statements for both the residential and commercial elements of the scheme shall be adhered to throughout the construction period for those phases. These shall include details relating to:
- (i) The control of noise and vibration emissions from construction activities including groundwork and the formation of infrastructure, along with arrangements to monitor noise emissions from the development site during the construction phase;
  - (ii) The loading and unloading and storage of plant and materials on site;
  - (iii) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - (iv) The control and suppression of dust and noise including arrangements to monitor dust emissions from the development site during the construction phase;
  - (v) Measures for controlling pollution/sedimentation and responding to any spillages/incidents during the construction phase;
  - (vi) Measures to control mud deposition off-site from vehicles leaving the site;
  - (vii) The control of surface water drainage from parking and hard-standing areas including the design and construction of oil interceptors (including during the operational phase);
  - (viii) The use if any of impervious bases and impervious bund walls for the storage of oils, fuels or chemicals on-site;
  - (ix) The location and size of temporary parking and details of operatives and construction vehicle loading, off-loading and turning and personal, operatives and visitor parking;
  - (x) Lighting strategy for the construction phase, designed to minimise light spillage from the application site; and
  - (xi) Phasing of the development in accordance with the phasing plan in the S.106.
  - (xii) Arrangements to limit the hours when construction vehicles can use the A2/A251 junction until such time as the Junction Improvement Works have been delivered.

Reason: To ensure the development does not prejudice conditions of residential amenity, highway safety and convenience, and local ecology, through adverse levels of noise and disturbance during construction.

- (20) No development of a relevant phase shall take place until the applicant, or their agents or successors in title, has secured the implementation of:
- (i) archaeological field evaluation works for that phase in accordance with a specification and written timetable which has been submitted to and approved in writing by the Local Planning Authority; and
  - (ii) following on from the evaluation, any safeguarding measures for that phase to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and

timetable which has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure appropriate assessment of the archaeological implications of any development proposals and the subsequent mitigation of adverse impacts through preservation in situ or by record.

- (21) Construction of any phase of the development hereby approved shall not commence until details of the proposed means of foul drainage for that phase have been submitted to and approved in writing by the Local Planning Authority, in consultation with Southern Water, Natural England and the Environment Agency.

Reason: In the interests of achieving an acceptable scheme of foul drainage and in the interests of minimising flood risk and ground water contamination.

- (22) No development shall take place until a Green Infrastructure and Biodiversity Management Plan (GIBMP), has been submitted to and approved in writing by the Local Planning Authority, and the development shall be implemented in accordance with the agreed details.

Reason: In the interests of protecting and encouraging biodiversity

- (23) The details submitted in pursuance of condition (1) above shall be in accordance with a

Development Brief that shall first have been agreed in writing by the Local Planning Authority and which shall include the following:

- (a) Details of the road layout for the site;
- (b) A comprehensive network of segregated pedestrian and cycle routes;
- (c) An overall landscape strategy for the application site;
- (d) An overall sustainable surface water drainage strategy for the application site (based on a network of open ditches and ponds);
- (e) A strategy for the architectural treatment of the buildings on the site, including elevational treatment, roof design and the palette of colours;
- (f) A strategy to maximise opportunities for biodiversity across all parts of the application site, including within the residential parcels;
- (g) A lighting plan for the site, to include details of the lighting columns, the type and luminance of the lighting units with glare shields and details of lux levels, both inside and outside the site;
- (h) A strategy for dwelling storey heights;
- (i) A strategy for ensuring the sympathetic development of part of the site close to Brogdale Road and Ashford Road;
- (j) A strategy for cycle parking; and
- (k) A strategy to ensure that development is set back by an appropriate distance from the high-pressure gas pipeline that crosses the site.

Reason: In the interests of promoting a consistent quality of development, sustainable development, ecological protection and enhancement, and of visual and landscape amenity.

- (24) The details submitted pursuant to condition (1) above shall include cross-sectional drawings through a relevant phase, of the existing and proposed site levels within that phase and the immediately adjacent land. The development of that phase shall then be completed strictly in accordance with the approved levels.

Reason: In order to secure a satisfactory form of development having regard to the nature of the site.

- (25) Prior to each phase of development approved by this planning permission being commenced a remediation strategy that includes the following components to deal with the risks associated with contamination of that phase shall be submitted to and approved, in writing, by the local planning authority
1. A preliminary risk assessment which has identified:
    - all previous uses
    - potential contaminants associated with those uses
    - a conceptual model of the site indicating sources, pathways and receptors
    - potentially unacceptable risks arising from contamination at the site.
  2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- Any changes to these components require the express written consent of the local planning authority. The scheme shall be implemented as approved.  
Sufficient information has been provided to satisfy part 1 of the above condition.

Reason: To ensure any possible land contamination related to historic site activities is addressed in line with current planning guidance on sustainable development. To protect controlled waters and comply with the NPPF: Paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution.

- (26) No occupation of each phase of development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

Reason: To protect controlled waters and comply with the NPPF.

- (27) If, during development of a relevant phase, contamination not previously identified is found to be present in that phase then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out in that phase until the developer has submitted a remediation strategy to the Local Planning Authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the Local Planning Authority. The remediation strategy shall be implemented as approved.

Reason: To protect controlled waters and comply with the NPPF.

- (28) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written prior consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reason: To protect controlled water and comply with the NPPF.

- (29) Adequate precautions, to be previously agreed in writing by the Local Planning Authority, shall be taken during the period of demolition and construction to prevent the deposit of mud and/or other debris on the public highway.

Reason: In the interests of highway safety and convenience.

- (30) During construction provision shall be made on the site, to the satisfaction of the Local Planning Authority and in accordance with details that shall first have been agreed in writing with them, to accommodate operatives' and construction vehicles parking, loading, off-loading or turning on the site.

Reason: To ensure that vehicles can be parked or manoeuvred off the highway in the interests of highway safety.

- (31) No development within a relevant phase shall take place until a full tree survey, tree impact assessment, tree protection plan and arboricultural method statement in accordance with the recommendations of BS 5837:2012 for that phase have been submitted to and approved in writing by the local planning authority. The method statement shall detail implementation of any aspect of the development that has the potential to result in the loss of or damage to trees and hedges, including their roots, and shall take account of site access, demolition and construction activities, foundations, service runs and level changes. It shall also detail any tree works necessary to implement the approved scheme.

Reason: No such details have been provide and to safeguard existing trees to be retained and to ensure a satisfactory setting and external appearance to the development.

- (32) No development shall take place until a detailed strategic landscape scheme (which shall be native species and of a type that will encourage wildlife and biodiversity) designed in accordance with the principles of the 'Swale Landscape Character and Biodiversity Appraisal' (2011) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall show all existing trees, hedges and

blocks

of landscaping on - and immediately adjacent to - the site and indicate whether they are to be retained or removed. It shall detail measures for protection of species to be retained, provide details of on-site replacement planting to mitigate any loss of

amenity

and biodiversity value together with the location of any habitat piles and include a planting specification, a programme of implementation and a minimum five year management programme.

Reason: No such details have been submitted and to ensure a satisfactory setting

and

external appearance to the development

- (33) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five



years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (34) (i) Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the Local Planning Authority. The detailed drainage scheme shall be based on the preliminary strategy prepared by Brookbank Consulting Ltd (May 2015) and shall demonstrate that

the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100yr storm) can be

accommodated and disposed of through open infiltration features located within the curtilage of the site.

(ii) No building hereby permitted shall be occupied until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:

i) a timetable for its implementation, and

ii) a management and maintenance plan for the lifetime of the development which

shall

include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and to ensure ongoing efficacy of the drainage provisions.

- (35) No infiltration of surface water drainage into the ground is permitted other than with the

express written consent of the Local Planning Authority (in consultation with the Environment Agency); this may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

Reason: To protect controlled water and comply with the NPPF

- (36) Before development commences within a relevant phase details shall be submitted (or

as part of reserved matters) for the installation of fixed telecommunication infrastructure and High Speed Fibre Optic (minimal internal speed of 100mb) connections to multi point destinations and all buildings including residential, commercial and community within that phase. This shall provide sufficient capacity, including duct sizing to cater for all future phases of the development with sufficient flexibility to meet the needs of existing and future residents. The infrastructure shall be laid out in accordance with the approved details and at the same time as other services during the construction process.

Reason: In the interests of residential amenity.

- (37) The off-site highway works associated with the development are indicated on the following drawings:

- a) 10182/HL/02 Rev C - Proposed Roundabout Ashford Road
- b) 10182/HL/03 Rev A - Proposed new Junction onto Brogdale Road
- c) 10182/HL/02 Rev C - footpath provision to the site frontage along Ashford Road, and provision of a pedestrian crossing
- d) 10182/HL/06 Rev A - improvement of the Brogdale Road footpath
- e) 10182/HL/06 Rev A - improvement of the Brogdale Road/A2 junction

No work shall commence on the development site until off site highway works (a) above have been carried out in accordance with a design and specification that shall first have been approved in writing with the Local Planning Authority, and been fully implemented to the satisfaction of the Local Planning Authority. Off site highway works (b) above shall be constructed in accordance with the phasing plan to be approved pursuant to the Section 106 agreement dated 23 March 2017.

No more than 75 dwellings within the development shall be occupied until the off site highway works d) and e) above have been carried out in accordance with a design and specification that shall first have been approved in writing with the Local Planning Authority, and been fully implemented to the satisfaction of the Local Planning Authority.

Reason: In the interests of highway safety and convenience.

- (38) Details relating to the upgrade of the existing public footpath (known as ZF18) to a public bridleway within the site shall be submitted to, and approved in writing by, the Local Planning Authority before the development is commenced and shall be implemented in accordance with the agreed details and a timetable that shall have been agreed in writing with the Local Planning Authority before the development is commenced.

Reason: In the interests of highway and pedestrian safety and convenience.

- (39) All land allocated for development as employment land, Use Class B1 and shown on the submitted 'Illustrative Layout' Drawing Number: 5187-PL2-02 Revision B shall be retained for such uses and for no other purpose.

Reason: In order to secure a satisfactory form of development having regard to the nature of the site.

Informative(s):

- (1) You are advised that the approval of any details relating to conditions of planning permission 15/504264/OUT that have already been permitted by the Local Planning Authority, will apply equally to this decision notice and do not need to be re-submitted.
- (2) It is the responsibility of the applicant to ensure before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.
- (3) Environment Agency informatives

Waste on site

The CLAIRE Definition of Waste: Development Industry Code of Practice (version 2) provides operators with a framework for determining whether or not excavated material arising from site during remediation and/or land development works are waste or have ceased to be waste. Under the Code of Practice: excavated materials that are recovered via a treatment operation can be re-used on-site providing they are treated to a standard such that they fit for purpose and unlikely to cause pollution treated materials can be transferred between sites as part of a hub and cluster project some naturally occurring clean material can be transferred directly between sites. Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, and that the permitting status of any proposed on site operations are clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays.

The Environment Agency recommends that developers should refer to our: Position statement on the Definition of Waste: Development Industry Code of Practice and; website at [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk) for further guidance.

#### Fuel, Oil and Chemical Storage

Any facilities for the storage of oils, fuels or chemicals shall be provided with secondary

containment that is impermeable to both the oil, fuel or chemical and water, for example a bund, details of which shall be submitted to the local planning authority for approval. The minimum volume of the secondary containment should be at least equivalent to the capacity of the tank plus 10%. If there is more than one tank in the secondary containment the capacity of the containment should be at least the capacity of the largest tank plus 10% or 25% of the total tank capacity, whichever is greatest. All fill points, vents, gauges and sight gauge must be located within the secondary containment.

The secondary containment shall have no opening used to drain the system. Associated above ground pipework should be protected from accidental damage. Below ground pipework should have no mechanical joints, except at inspection hatches and either leak detection equipment installed or regular leak checks. All fill points and tank vent pipe outlets should be detailed to discharge downwards into the bund.

#### Advice for developers

We have produced advice with Natural England and the Forestry Commission on how new development can help improve the environment. This is in line with the national planning policy framework (NPPF) "the planning system should contribute to and enhance the natural and local environment" (Para 109).

<https://www.gov.uk/government/publications/planning-a-guide-for-developers>

#### (4) Scotia Gas Networks Informatives:

The high pressure gas pipeline in the vicinity of the proposed development has a Building Proximity Distance (BPD). The building proximity distance (zone 1) is 3 metres either side of the pipeline. This should not however be confused with the HSE consultation zones 2 & 3 which will be considerably greater. Zone 1 is a safety factor with reference to habitable buildings as recommended by IGE/TD/1. It is calculated from the diameter, material, wall thickness and pressure of the particular pipeline. Under Pipeline Safety Regulations 1996 this distance is declared to the HSE. Any intrusion within this safety zone should not be taken lightly and any intention to proceed should be accompanied by a risk assessment or provision of other supporting evidence especially in the event of any legal proceedings at a later date. I have attached a copy of our plans showing the pipeline in relation to this site. Pipelines laid in private land are protected by a Deed of grant, which prohibits certain activities within the easement strip like no addition to or removal of surface levels, no structures over or within the specified distance of the pipeline. Further details are

available if you require them. A request to us for any copies could incur a small fee, payable in advance. The easement strip is 8 metres in width. 4 metres either side from the centre-line of the pipeline. Any vehicle crossings over the pipeline will require: calculations to prove that no additional stresses will be incurred; a design showing the roadway in relation to the pipeline; and method statements to be agreed with SGN before it goes ahead. Road crossings need to be kept to a minimum.

This pipeline is of prime importance to the gas supplies of this area. Should any work be contemplated it is essential that you comply with the restrictions detailed below and in the document SGN/SP/SSW22 in order to protect our plant and equipment and for the safety of your own operatives

- 1) No mechanical excavation is allowed within 3 metres either side of pipeline.
- 2) No plant or storage of equipment shall be made within any easement strip.
- 3) If any metallic pipes or cables are being laid in proximity to gas pipelines then interference testing will be required, the cost of which to be borne by the promoter of the works. A minimum clearance of 600mm is required.
- 4) All precautions stated in publication SGN/SP/SSW22 (Safe Working in the Vicinity of High Pressure Gas Pipelines) shall be fully complied with in all respects. Acceptance of SSW22 shall be acknowledged by the responsible site person signing and returning the form Appendix A (back page) to the SGN representative contacted in (7).
- 5) No thrust boring shall take place within three metres of the pipeline.
- 6) All planting within the easement strip should comply with Notes for Guidance on Tree Proximity.
- 7) Before commencing work on site you must contact our Pipeline Maintenance Section on 0141 4184093 at least three days before work commences. A Southern Gas Networks representative will then contact you to arrange to visit site. Details of working near to high-pressure gas pipelines can then be discussed.
- 8) Pipeline sections that are planned and agreed by SGN to be permanently covered (i.e. by road surface) will require a coating survey. SGN will repair any indicated coating defects free of charge. The survey costs will be borne by the promoter of the works. Prior to any surface cover cathodic protection coupons and reference cells will require installation at no cost to SGN.
- 9) This pipeline is cathodically protected and as such has test cables located in surface boxes, were these to be lost through this work we would look to you for remedial action at no cost to SGN.
- 10) Intrusive construction methods will require an agreed method statement prior to work starting.
- 11) The minimum proximity between the high pressure gas pipeline and any wind turbine should be 1.5 times the fixed mast height excluding the turbine of the wind turbine. If you are planning to construct a wind turbine closer than this, then you must contact SGN immediately.
- 12) Any extended period of SGN site supervision may incur charges to you. These will be charged based on visiting times, materials and occurrences. You will be informed when these come into effect and be invoiced direct.
- 13) Any piling or boreholes within 15 metres of the pipeline may require vibration monitoring. No piling or boreholing must take place within 3 metres of the pipeline.

(5) Broadband Provision  
The BT GPON system is currently being rolled out in Kent by BDUK. This is a laid fibre optical network offering a single optical fibre to multi point destinations i.e. fibre direct to premises.

(6) Southern Water

- The applicant should enter into a formal agreement with Southern Water to provide the necessary sewerage infrastructure required to service this development. Please contact Atkins Limited at Anglo St James House, 39A Southgate Street, Winchester, SO23 9EH, or 'southernwater.co.uk'
- (7) This development is also subject to an agreement under Section 106 of the Town and Country Planning Act 1990 as amended.
- (8) Please note you must comply with all the conditions attached to this permission. Otherwise the permission may not be valid and any development may be unauthorised.

### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

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.

