

**PLANNING COMMITTEE – 24 JUNE 2021****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 - 20/503707/HYBRID</b>		
<b>APPLICATION PROPOSAL</b>		
Hybrid planning application consisting of - Outline planning permission (with all matters reserved except access) for commercial development, accesses and roads, parking, associated services, infrastructure, earthworks, and landscaping - Full planning permission for the erection of a manufacturing facility, associated parking, services, infrastructure, landscaping and earthworks.		
<b>ADDRESS</b> Kent Science Park Shimmin Road Sittingbourne Kent ME9 8BZ		
<b>RECOMMENDATION</b> - That delegated powers are given for planning permission to be GRANTED subject to the completion of a S106 Agreement based on the heads of terms in paragraph 8.67 of the April committee report and the conditions set out in the same report, as well as those in the tabled update to the April committee and the additional condition specified below.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL</b>		
The site is located to the south of the existing Kent Science Park. Policy Regen 4 of the Local Plan allows for extensions to the Kent Science Park if certain criteria are met and impacts mitigated. The proposal is for the same quantum of operational floorspace as a scheme previously approved, although only part of this is now considered to remain extant. The scale of the development would be mitigated by significant landscaping and is considered to be acceptable. Other impacts are considered acceptable.		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
This application was deferred by Members at the April Planning Committee for a Members site visit, which took place on 20 <sup>th</sup> May 2021.		
<b>WARD</b> West Downs	<b>PARISH/TOWN</b> Milstead	<b>COUNCIL</b> <b>APPLICANT</b> Trinity Investment Management <b>AGENT</b> Montagu Evans
<b>DECISION DUE DATE</b> 25/11/20		<b>PUBLICITY EXPIRY DATE</b> 22/06/21

**1 Background**

- 1.1 Members will recall that this application was reported to the Planning Committee on 29<sup>th</sup> April, and that the application was deferred for a Members site visit, which subsequently took place on the 20<sup>th</sup> May.
- 1.2 A copy of the report to the 29th April committee is attached as Appendix 1, and the tabled update is attached as Appendix 2.

- 1.3 There has also been an important background change to the way in which this application has been considered. Members will be aware from the April report that a planning permission granted under SW/13/0203 remained extant at the time of the April committee, and that the ability to implement this permission as a fallback position was a material consideration in my report and analysis.
- 1.4 This planning permission was approved in Hybrid form, with a detailed element consisting of a building containing 2,852 sqm of B1 floorspace, and outline permission for a further 9,148 sqm of B1 floorspace. The conditions attached to the planning permission require that the detailed element be commenced within 5 years of the permission (i.e., by 13<sup>th</sup> December 2022), and that a reserved matters submission for the outline element must be made no later than 3 years from the date of the permission (i.e. by 13<sup>th</sup> December 2020). Due to COVID, the Government passed legislation to automatically allow an extension of time to implement planning permissions (including submission of reserved matters) that would otherwise have expired – and which extended the ability to submit the reserved matters in this instance to the 1<sup>st</sup> May 2021.
- 1.5 The applicant did make a submission for approval of the reserved matters following the last committee. However, officers have taken the position that this submission was not received within the appropriate timescale and that as such this element of the previous planning permission is “spent”. In effect, that would leave only the detailed element of the previous permission (2,852 sqm) as being capable of implementation.
- 1.6 Officers have taken legal advice on this matter prior to making this decision. However, members should note that the applicant does not necessarily agree with this position and has reserved the right to take their own legal advice on this. Nonetheless, the applicant considers that even if this position is accepted, the current application remains acceptable without the fallback permission of the previous permission in its entirety. They have re-reviewed their current application against this new position and have provided an amended planning statement and an updated transport note. A copy of the applicant’s covering letter setting out their position is attached as Appendix 3.
- 1.7 It is important to note that the proposed development itself has not been changed or amended.
- 1.8 Officers have carried out a re-consultation exercise in respect of the material submitted. I have set out below the consultation responses received to date, which critically are from KCC Highways and Highways England in response to the one particular area of the submission where the change in circumstances has led to the need for specific review (as the original Transport Assessment did make specific comparisons of traffic generation between the approved scheme and the proposed scheme). Other consultation responses will be reported to members prior to the meeting.
- 1.9 I have also re-assessed the application below in light of the changed position in relation to the previous permission.

## **2 Point of clarification**

- 2.1 Members may recall that a verbal update was given at the April Committee in relation to the height of the flues on the proposed building on plot 2. Paragraph 8.41 of the April report stated that the flues would be 3.3metres in height on the main roof (i.e., 19.6m above ground level). However, the flues are some 4.1 metres in height above the main roof (i.e. 20.4m above ground level)

### **3 Further Consultation Responses**

- 3.1 **Highways England** – The current email from Swale Borough Council has alerted us to a change in circumstances regarding the extant planning permission, in that the Council believes it expired on 1 May 2021.
- 3.2 To confirm our position, we have, since the outset, queried the current standing of the past supporting transport evidence, whether or not the permission was extant. It became apparent that the previous permission had been taken into account in the adopted Swale Local Plan modelling and hence the impacts of the past permission had been taken into account at a local plan level of modelling. However, since that time more detailed modelling has found that M2J5 and various A249 junctions (notably Key Street and Grovehurst) have reached capacity and require mitigation.
- 3.3 The Government's Roads Improvement Strategy (RIS) has promoted an M2J5 improvement, the inquiry in which was completed in 2020 and the decision is awaited. The Government's Housing Infrastructure Fund (HIF) is being used to promote improvements at A249 Key Street and Grovehurst. Phase 1 of the Key Street improvement has been completed. Until the M2J5 and Grovehurst improvements are open to traffic, it is necessary to control the occupation of developments, in order to manage traffic growth. Highways England and Kent Highways have therefore been using Grampian conditions to manage occupations since around 2019.
- 3.4 In assessing application 20/503707/HYBRID, we have taken account of both the adopted Local Plan modelling and current circumstances. As a result, and subject to the imposition of the recommended conditions, we are content that the proposed development, if permitted, would not have an unacceptable impact on the safety, reliability and/or operational efficiency of the SRN (the tests set out in DfT C2/13 and MHCLG NPPF2019).
- 3.5 Having reassessed all material considerations, including Swale decision regarding the old permission, the applicants submitted evidence and our own knowledge and experience, we remain content that the application can be suitably conditioned to avoid impacting unacceptably on the SRN.
- 3.6 **KCC Highways** - It is understood the Borough Council has confirmed that the deadline for submission of reserved matters of the extant planning permission has now passed, and so the outline element of the previous approval has expired. As the local Highway Authority had considered the current application against the fallback position of implementing the earlier hybrid planning approval, it is appropriate to review the assessment given the fallback position is no longer available. The Applicant's highway consultant has therefore provided me with a revised assessment of the traffic generation to reflect the new circumstances, and I would comment as follows:
- 3.7 The scope of the assessment was agreed in advance, and I am content that the appropriate methodology has been used to identify how the current application's traffic figures can be considered. As noted in the assessment, although the outline element of application SW/13/0203 has expired, the area of the site that was approved in detail can still be implemented, and this remains a valid approval for consideration. A table of trip generation figures has therefore been produced to just include the 2,852 m<sup>2</sup> of B1 use that does remain as an extant detailed approval, and compare this against the current application using the trip rates already agreed.

- 3.8 As you will recall from my earlier responses, the detailed element of the current application is specific and contains more plant area that restricts the amount of operational space available. The table shows that the latest proposals could be expected to generate 16 and 14 movements more than the now smaller extant permission during the AM and PM peak hour assessment periods respectively. It should be noted that the proposed GW Pharma proposals alone would generate 32 movements less than the extant permission during both the AM and PM peak hours. Although the outline element generates the additional trips over and above the extant permission, these are based on a worst-case scenario of B1 use, whereas the application does also seek B2 and B8 use here. If the reserved matters application details suit those uses instead, the trip generation may in fact be less than has been suggested.
- 3.9 Nonetheless, the small number of net additional movements suggested in the assessment table would not be considered to have a severe impact on the local highway network when gauged against the NPPF tests. I would therefore adhere to the recommendation made in my previous consultation response.

#### **4 Appraisal**

- 4.1 Members will note from my April report that the existence of the previous permission as a scheme capable of implementation represented a significant material consideration as a fallback position (Para. 8.05).
- 4.2 In light of the new circumstances, this position has changed. Clearly the fallback position is now limited to the ability to implement only part of the previous permission. However, it is important for members to note that the existence of a recent planning permission, even if expired, still represents a material consideration that carries weight, even if not to the extent that an extant permission would do.
- 4.3 Members will also note that the April report refers specifically to the fallback position in the sections on highways impacts (paragraphs 8.22-8.30), impacts on rural lanes (paras 8.31-8.33), the ability to accommodate the development within the existing KSP boundaries (paras 8.36-8.38) landscape impacts (paras 8.40-8.54), and heritage (paras 8.58-8.62)
- 4.4 In respect of highways impacts, members will note the further comments from both KCC Highways and Highways England which are set out in full above. The amended transport note provided by the applicant refers to the fallback position limited to the 2,852sqm floorspace that remains extant from the previous permission, and considers the proposed development against this. KCC Highways advise that the proposed development would generate 16 and 14 additional movements in the AM and PM peak hours respectively, and that such additional movements would not result in severe impacts upon the local highway network. This is based partially on the reduced traffic generation generally associated with manufacturing / distribution uses (B2 uses) compared with the remaining extant B1 use, but is also based upon information in the Transport Assessment that the GW Pharmaceutical facility would operate shift patterns that would not coincide with peak hours (8-9am and 5-6pm). Given the change in circumstances relating to the extent of development capable of being implemented under the previous planning permission, and the reliance on the operation of shift patterns in the Transport Assessment, I consider it would be reasonable and necessary to include an additional planning condition to require details of shift patterns to be controlled.
- 4.5 Highways England do not raise any objection to the development in light of the changed position regarding the previous permission.

- 4.6 In respect of the effect on rural lanes, I do not consider that the additional movements identified above by KCC Highways would be likely to result in any significant increase in the use of such lanes, and that traffic movements outside of peak hours (such as the shift patterns proposed by GW Pharmaceuticals) would be less likely to rat run through rural lanes – as such rat running is often a consequence of traffic congestion.
- 4.7 In respect of the ability to accommodate the development within the existing KSP boundaries, the April report sets out the reasons why this is not considered to be possible, including the high occupancy rates of existing buildings, the lack of space to accommodate the development – in particular the GW Pharmaceutical facility, and the effect this would have on the low-density campus style layout of KSP which forms part of its attraction. In my opinion these remain as valid reasons even without the fallback position of the full extent of the previous permission.
- 4.8 In respect of landscape and visual impacts, the Council's landscape consultant has advised that the reduced fallback position of the 2,852sqm building would clearly have both less landscape and visual impact than if the previous permission was capable of implementation in full, and in this respect the current application would have greater landscape and visual impacts than the approved scheme, and take longer to mitigate due to the additional height of the building proposed by GW Pharmaceuticals. Nonetheless, he advises that the landscape mitigation as currently illustratively designed should, once fully established, be sufficient to avoid significant adverse landscape and visual impacts arising from the development.
- 4.9 In terms of heritage impacts, my Conservation Manager does not consider that the change in circumstances relating to the fallback position would materially affect his position on the application. He has requested a condition to prevent an amalgamation of the permitted scheme and this proposal, if approved – although Members should note that this is already a recommended condition as per the tabled update in Appendix 2.
- 4.10 Taking the above factors into account, the loss of much of the previous permission as a fallback position has altered the weight that can be given to this as a material consideration. Nonetheless, the detailed element of this previous permission amounting to 2,852 sqm would still carry strong weight as a fallback position as this is still capable of implementation, albeit that this fallback is clearly much less in scale than the current application. It is also the case that some weight should be given to the Council's decision to grant the previous planning permission, given that this was granted in December 2017 and is a relatively recent decision, albeit now lapsed other than for the detailed element of 2,852 sqm.
- 4.11 However and notwithstanding this change in the fallback position, I have re-considered the sections of the April report that referred to the previous permission and I have concluded that the scheme remains acceptable for the reasons as set out above.

#### **Other matters**

- 4.12 Bus Service – Following points raised by Members at the April committee and at the Committee site meeting, the applicant has provided further clarification on the bus service proposals to the KSP. This is attached as Appendix 4.
- 4.13 Members will note that the proposed service for now remains as a private service, and that the applicant is willing to open up the service for the public if route testing and registry / agreement from the Traffic Commissioner would allow. They also specify their commitment to working with SBC and KCC to assist in providing a public service in the future.

- 4.14 Members will appreciate that whilst this may be well meaning, little weight can be given to the potential for a public service to be secured based on this note. Whilst some Members have given a negative response to the private service proposed rather than a public service, it does nonetheless provide a means to mitigate traffic impacts from the development – and members should note that the key planning test is whether adverse impacts arising from the development in question can be sufficiently mitigated. It is my opinion and that of KCC Highways that a private service would assist in mitigating impacts arising from the development.

## **5 CONCLUSION**

- 5.1 Despite the change in background circumstances relating to the ability to implement the previous permission in full, my recommendation remains that planning permission should be granted subject to completion of a S106 agreement based on the terms of paragraph 8.67 of the April report, and in accordance with the conditions as set out in the April report and tabled update attached as Appendix 1 and 2. In addition, I recommend that the following further condition is added -

47) The building on plot 2 shall not be occupied until a scheme for the timing and operation of employee shift working patterns, which shall be designed to minimise traffic generation during peak times on the highway network of 8-9am and 5-6pm weekdays, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented upon first occupation / use of the building and operated in accordance with the scheme thereafter.

Reason: To avoid unacceptable impacts upon the highway and to accord with the basis of the transport assessment and modelling submitted with the application.

