

ITEM 2 REFERENCE NO - 20/501573/FULL			
PROPOSAL			
Minor material amendment to SW/01/0623 (Approval of Reserved Matters for Residential Development Pursuant to Outline Planning Permission SW/97/0623) to allow changes to approved site levels and landscaping.			
SITE LOCATION			
Nichols Transport Lydbrook Close Sittingbourne Kent ME10 1NW			
RECOMMENDATION Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions as set out in the report, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions as may be consequently necessary and appropriate.			
APPLICATION TYPE Major			
REASON FOR REFERRAL TO COMMITTEE			
The application was reported to the Planning Committee on 7 th December 2023 and was subject to a Planning Working Group site meeting on 19 th December 2023.			
CASE OFFICER Andrew Byrne			
WARD Homewood	PARISH/TOWN N/A	COUNCIL	APPLICANT Ms Rachael Miller AGENT Jefferson Sheard Architects
DATE REGISTERED 03/06/20		TARGET DATE	
BACKGROUND PAPERS AND INFORMATION:			
Documents referenced in report are as follows: -			
All drawings submitted.			
All representations received.			
Landscape Report dated 06/02/24.			
The full suite of documents submitted pursuant to the above application are available via the link below: -			
https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=Q87IXQTYHUC00			

1. BACKGROUND

- 1.1 This application was reported to the Planning Committee on 7th December 2023. It was deferred for a site meeting which took place on the 20th December 2023. Following comments and concerns raised by councillors and members of the public at the

committee meeting and site visit, amendments were made to the application and further consultation exercises have been undertaken. The additional comments received are set out in section 2 below.

- 1.2 The December committee report is attached as Appendix A and the Planning Working Group minutes are attached as Appendix B.
- 1.3 This update supplements the December committee report and provides a further appraisal of the amendments made to the scheme and comments received.
- 1.4 The amendments incorporate changes to the layout to introduce additional landscaping adjacent to plots 3-5, amendments to retaining structures to some areas of the bank around the boundaries of the site, an amendment to the boundary treatment by the site access, and further detail relating to access to areas around the site boundaries that do not fall within the residential gardens of the proposed dwellings. The revised plans also include updated drawings of the “as built” development on plots 3-5 and the relationship with existing neighbouring dwellings on Lydbrook Close. This has followed concerns raised that the dwellings as built do not conform with the drawings submitted.

2. REPRESENTATIONS

- 2.1 Two further rounds of consultation have been undertaken since the December Planning Committee. A further 17 representations have been received raising objection to the scheme. Some of these repeat objections listed in the December committee report and are not repeated again here. The new planning issues raised are as follows –

Comment	Report reference
The fencing installed on the site boundary near the site entrance causes visibility issues for vehicles using the access serving existing dwellings at 26-36 Lydbrook Close.	See paragraph 4.16 below
Plots 3-5 have not been built in the correct location and cause unacceptable impacts to existing dwellings on Lydbrook Close.	See amended plans and paragraphs 4.7-4.15 below
Lack of landscaping	See amended landscape drawing and paragraph 4.14 below
Overlooking of properties on Borden Lane, Hobart Gardens and Adelaide Drive	See paragraphs 7.15-7.19 of December Committee report
Stability of banks and maintenance of boundary walls and fences	See paragraphs 4.17-4.19 below
Lack of sufficient planting / loss of trees and fauna	See landscaping plans and paragraph 7.22 of December committee report. Additional planting also referred to in paragraph 4.14 below.

Lack of measures to deter persons climbing on the bank	See paragraph 4.20 below
That the development does not represent a minor material amendment	See paragraphs 4.2 and 4.3 below
The development is cramped and too much for the site. Impact of traffic on the A2	Permission has already been granted for 49 units, and the principle of the development is not a matter for this minor material amendment application – see paragraph 7.2 of December committee report
Flooding and drainage	See paragraph 7.23 of the December committee report and paragraph 4.22 below.
Lack of parking	See paragraph 7.2 of December committee report and paragraph 4.21 below.

3. FURTHER CONSULTATION RESPONSES

- 3.1 **Environment Agency** – Raise no objection to the Remediation Validation Report submitted but advise that validation of topsoil to be imported is required.
- 3.2 **Environmental Health** – Raise no objection to the remediation measures set out in the Ecological contamination report and advise that this report addresses the hotspot contamination areas identified in the original contaminated land report. Advise that the details of the material imported onto the site to deal with levels changes is acceptable, however further validation of topsoil yet to be imported will be required.

4. ASSESSMENT

- 4.1 This report deals specifically with the impact of the amendments made to the scheme and further comments received, and to specific points raised by Members of the Planning Committee in December The wider overarching assessment of the development is set out in the December Committee report.

Whether the development can be considered under an application for a minor material amendment

- 4.2 This question was raised by some Members at the December planning committee meeting, at the subsequent site meeting, and in some of the representations subsequently received. Planning officers have taken the view that the development falls to be considered as a minor material amendment, primarily because the changes do not take the proposal outside of the definition of the development as approved under the 1997 and 2001 permissions – and which remains as an extant permission for the reasons set out in the December committee report.

- 4.3 Legal advice has now been received on this matter which reaffirms that the application can be considered as a minor material amendment under S73 of the Town and Country Planning Act. Relevant caselaw on this subject includes *Armstrong v Secretary of State for Levelling-Up, Housing and Communities & Anor [2023]*, and which sets out that the scope of amendments made under a S73 application can be wide, provided that the “operative part” of a planning permission (i.e where the development permitted is described) does not change.

Measures to deal with Contamination

- 4.4 Concern has been raised that as the development has not been carried out in accordance with the original approved plans, the risks from contamination originally identified have not been appropriately dealt with.
- 4.5 A Remediation Validation report has been submitted, detailing the measures undertaken to address risks from contamination. This includes investigation and remediation of previously identified hot spot areas in the historic contamination report submitted under the original planning permission, ground gas monitoring, and management / remediation / monitoring of on-site re-used material and material imported to the site.
- 4.6 The Mid Kent Environmental Health team and the Environment Agency are both satisfied with the report. It is therefore considered that risks from contamination have been properly addressed.

That plots 3-5 have not been built in the correct location and landscaping previously approved on the boundary of these plots has been removed.

- 4.7 At the site meeting concern was raised that plots 3-5 had not been constructed in the correct position. Officers subsequently took site measurements between these plots and the closest neighbouring dwellings at 23 and 25 Lydbrook Close, and identified that the distance between the new and existing houses was less than shown on the submitted and previously approved plans. For example, the distance between the main rear corner of plot 5 and the closest existing dwelling at 25 Lydbrook Close measures 18.2m on the last approved plans (under 18/505356/NMAMD), but as built this distance is 16.8m. Likewise, the distance between the main rear corner of plot 3 and the corner of the dwelling at 23 Lydbrook Close is 20.3m as built, compared to 20.8m on the last approved plans.
- 4.8 The applicant has surveyed the position of plots 3-5 and has confirmed that these plots are in the correct approved position on the site. However they have also advised that the position of the properties on Lydbrook Close as shown on previous drawings would have been taken from OS data, which is not always accurate. The applicant has now provided a detailed survey drawing and has updated the application drawings to provide an accurate representation of the siting of plots 3-5 in relation to the nearby dwellings at Lydbrook Close, and which conforms with the dimensions taken on site by officers in December.
- 4.9 This therefore raises an unusual scenario whereby the siting and construction of the

development within the site accords with the approved plans, but not with the way in which the same plans depict the relationship with neighbouring buildings. There is competing caselaw on the extent to which this may or may not represent a breach of planning control capable of enforcement proceedings.

- 4.10 The latest amended drawings now show the accurate location of plots 3-5 in relation to the existing dwellings at Lydbrook Close. The rear corner of plot 3 (excluding the small single storey rear projection) is sited between 16.8m and 20.3m from the rear of the dwellings at 23-25 Lydbrook Close. Plots 3-5 do not directly face the existing dwellings at Lydbrook Close, but are sited at an angle to these properties.
- 4.11 The Council would normally apply distances in the region of 21m between dwellings in a “back to back” relationship, i.e. where the rear elevations directly face each other. A minimum distance in the region of 11 metres is normally applied when dwellings are sited at a 90 degree angle to each other, i.e when the rear elevation of a dwelling faces the side elevation of another dwelling. The development as built does not directly face the dwellings at 23-25 Lydbrook Close in a “back to back” relationship, but is at an angle to it. Although there are angled views from the first floor windows of plot 3 towards the dwelling at No 23, this is at a distance of between 19 and 21 metres. The angle from the window of plot 3 towards No 25 is more acute and is considered acceptable for this reason. Any overlooking towards dwellings to the west of No 23 would be in excess of 21 metres.
- 4.12 Although the as-built relationship between plots 3-5 and the existing dwellings is 1.4m closer than depicted on the approved plans, it is considered that the difference in terms of overlooking is relatively minor. Given the minimum distance of 16.8 metres between plots 3-5 and the dwellings at 23-25 Lydbrook Close, no significant loss of light or outlook would occur.
- 4.13 Overall, given the orientation of the buildings and distance involved, the development is not considered to be in conflict with Policy DM14 of the Local Plan
- 4.14 Concern has also been raised that soft landscaping proposed on the boundary as previously approved has been removed. The amended plans now include two areas for soft landscaping on the boundary with No.s 23-25 Lydbrook Close. These areas would be provided outside of any private garden and would incorporate trees to help soften the development.
- 4.15 The relationship between the remainder of the development and neighbouring boundaries is set out in the December report.

Visibility at site access

- 4.16 Concerns have been raised that vehicles exiting the access road immediately adjacent to the site entrance are hampered by lack of visibility due to boundary fencing installed on the boundary with plot 49. The amended landscape drawing identifies that the fence will be reduced to 900mm in height, and this is subject to recommended condition 8 below.

Bank stability

- 4.17 Concerns have been raised that previous works to stabilize the banks have been altered and removed, that new retaining structures are now proposed, and that the gradient of the banks will undermine the rear gardens of adjacent properties and cause problems maintaining boundaries.
- 4.18 The applicant previously submitted a slope assessment report which provided details of measures to stabilize the banks around the site. However it was evident from the site meeting that some of the measures proposed have subsequently been altered or removed, and the assessment was based on the condition of the banks in 2018 and not on the current condition of the banks. The application includes further details of retaining walls to be added / strengthened in parts of the site, and cross sections of the banks. However, in light of subsequent changes to the banks, it is considered that a further assessment is necessary to ensure that the slopes as constructed are stable, or whether further mitigation is necessary. Planning condition (9) is recommended to deal with this, and is worded to prevent occupation of the development until the stability of the banks is demonstrated.
- 4.19 The maintenance of buildings and structures from third party land is not a matter for planning control.

Access to areas around the banks

- 4.20 Concern has been raised about the potential for unauthorised access from within the site onto the banks around the perimeter of the site. These banks are not incorporated within individual garden areas. An access way has been incorporated between the dwellings and the banks for maintenance purposes. Access to this area is secured by 1.8m high fencing and gates to deter access. This will be maintained by Moat Homes who will remain in control of the site.

Highways / Parking

- 4.21 Concern has been raised that there is insufficient parking within the site, that there is a lack of visitor parking and that garages will not be used for parking. Each property would be provided with a minimum of two parking spaces. Some are contained within garages, however the 2001 extant permission included much more garaging than is now the case, and as such the parking spaces now shown (and previously approved as an amendment to the scheme in 2018) are considered more likely to be used for parking. The original layout for the 2001 extant permission did not incorporate any visitor parking, as such the provision of 2 spaces is considered to be an improvement to the parking layout.

Drainage

- 4.22 Concerns have been raised that the site has exacerbated flooding and caused drainage issues on Lydbrook Close. The drainage scheme installed for the site is set out in paragraph 7.24 of the December report. The applicant states that the drainage problems on Lydbrook Close by the site entrance were caused by a defective gully that has since

been resolved and approved by KCC Highways.

5. CONCLUSION

- 5.1 For the reasons set out in the reports associated with this application, officers are satisfied that the proposed revisions constitute a minor material amendment. Taking this into account it is recommended that the application be granted subject to the conditions set out below.

6. CONDITIONS

- (1) The development hereby permitted shall be carried out in accordance with the following approved plans: 04, 05, 06, 07, 08, 09, 10, 11, 12 Rev A, 13, 19, 1292-JSA-XX-XX-DR-A-03201 Rev P1, 1292-JSA-XX-XX-DR-A-91201 Rev C2, 1292-JSA-XX-XX-DR-A-02004 Rev C18, 1292-JSA-XX-XX-DR-A-02005 Rev C6, 1292-JSA-XX-XX-DR-A-02501 Rev C13, 1292-JSA-XX-XX-DR-A-02502 Rev C10, 1292-JSA-XX-XX-DR-A-02503 Rev C10, 1292-JSA-XX-XX-DR-A-02504 Rev C11, S16-SFL-EX-00-DR-L-0501 P12 S16-SFL-EX-00-DR-L-0502 P02, 5366-D1 Rev A, 5366-D10 Rev A, 5366-D11 Rev A, 5366-D4 Rev A.

Reason: For the avoidance of doubt and in the interests of proper planning.

- (2) The external finishing materials to be used on the dwellings hereby permitted shall be as approved by the local planning authority under 18/506405/SUB.

Reason: In the interests of visual amenity.

- (3) The hard and soft landscape works shall be carried out in accordance with the approved details as shown on drawings 1292-JSA-XX-XX-DR-A-02004 Rev C18, 1292-JSA-XX-XX-DR-A-02005 Rev C6, 1292-JSA-XX-XX-DR-A-02501 Rev C13, 1292-JSA-XX-XX-DR-A-02502 Rev C11, 1292-JSA-XX-XX-DR-A-02503 Rev C10, 1292-JSA-XX-XX-DR-A-02504 Rev C10, S16-SFL-EX-00-DR-L-0501 P12, S16-SFL-EX-00-DR-L-0502 P02, 21276-DR-S-200-C1 and 21726-DR-S-201-C1. Hard landscaping shall be completed in accordance with the approved details prior to first occupation of the development. Soft landscaping shall be completed in accordance with the approved details within 6 months following the completion of the development or occupation of the first dwelling (whichever is sooner). Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within ten 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.

- (4) The proposed estate road, footways, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, access, carriage gradients as appropriate, shall be constructed and laid out in accordance with the details approved by the Local Planning Authority under 18/505321/SUB and 18/505486/SUB.

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

- (5) The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling, before it is occupied, shall be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.

Reason: To ensure the development is served by an adequate means of access.

- (6) The development hereby approved shall not be brought into use until that part of the service road which provides access to it has been constructed in accordance with the approved plans.

Reason: To ensure that the development is served by an adequate means of access.

- (7) Unless specifically shown on the approved plans, no walls or fences shall be erected fronting onto any road, square, footway or other open area without the express consent of the local planning authority.

Reason: In the interests of visual amenity

- (8) No dwelling shall be occupied until the fence adjacent to plot 49 and identified as F3A and by the dotted line on the soft landscaping plan has been reduced to a height of 900mm. The fence shall thereafter be maintained at or below such height.

Reason: To provide intervisibility between vehicles exiting the development and vehicles using the existing access serving 26-36 Lydbrook Close, in the interests of highways safety

- (9) No dwelling shall be occupied until a slope stability assessment prepared by a suitably qualified person has been submitted to and approved in writing by the Local Planning Authority. The assessment shall identify the slope gradients and measures undertaken to manage the slopes surrounding the perimeter of the site to prevent destabilization and erosion, including measures to prevent erosion of the bank at the boundary with surrounding neighbouring dwellings. The assessment shall identify any further mitigation required to stabilize the banks. The development shall be carried out in accordance with the approved details and mitigation prior to the first occupation of any dwelling.

Reason: To ensure the stability of the slopes surrounding the site, in the interests of safety and amenity.

- (10) No dwelling shall be occupied until a validation report for any topsoil imported to the site has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that any imported material is appropriate for the use of the site, in the interests of pollution protection and human health.

The Council's approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), September 2023 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.

Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.

This Appropriate Assessment (AA) has been undertaken without information provided by the applicant.

The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

The proposal therefore has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites.

The recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, "*it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.*" The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group.

NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG), and that such strategic mitigation must be in place before the dwellings are occupied.

However, this application has been made under S73 of the Planning Act to make minor material amendments to an existing permitted scheme for 49 dwellings. Whilst the permitted scheme does not make any contributions to mitigate impacts upon the SPA, the nature of the amendments sought under the S73 application would not be likely to increase any impacts or pressure on the SPA over and above those that would occur from the existing permission. Based on this and the correspondence with Natural England in relation to this application, it is concluded that off-site mitigation is not required.

