

2.2 REFERENCE NO - 24/500856/REM		
PROPOSAL Approval of reserved matters (Access, Appearance, Landscaping, Layout, and Scale sought) for levels and earthworks changes for Phase 2F and the Primary School Land pursuant to 17/505711/HYBRID.		
SITE LOCATION Land At Wises Lane Borden Kent ME10 1GD		
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.		
APPLICATION TYPE Reserved Matters		
REASON FOR REFERRAL TO COMMITTEE The number of representations received contrary to the recommendation; Called in at the request of Councillor Baldock; and Borden Parish Council object to the proposal. The main concerns of the Parish Council are: <ul style="list-style-type: none"> • The Impact upon the skylark mitigation land. • That the land be open natural space and not have pitches marked out. 		
Case Officer Joanna Russell		
WARD Borden And Grove Park	PARISH/TOWN COUNCIL Borden	APPLICANT Karen Dunn AGENT DHA Planning
DATE REGISTERED 19.03.2024	TARGET DATE 13.08.2024	
BACKGROUND PAPERS AND INFORMATION: Documents referenced in report are as follows: - All drawings submitted. All representations received. <ul style="list-style-type: none"> • Phase 2F enabling earthworks plan • Ecology technical note • Covering letter responding to KCC Highways comments • Arboricultural method statement <u>Other applications</u> Appeal Decision for 17/505711/HYBRID, dated 29 April 2021 (uploaded 29 April 2021) 17_505711_HYBRID--5237532.pdf (midkent.gov.uk) The full suite of documents submitted pursuant to the above application are available via the link below: - 24/500856/REM Approval of reserved matters (Access, Appearance, Landscaping, Layout, and Scale sought) for levels and earthworks changes for Phase 2F and the Primary School Land pursuant to 17/505711/HYBRID. Land At Wises Lane Borden Kent ME10 1GD (midkent.gov.uk)		

1. SITE LOCATION AND DESCRIPTION

- 1.1. The application site consists of a large area of land which extends from Chestnut Street to the west, to Wises Lane in the east. The site forms Phase 2F of the wider development which was granted planning permission following an Appeal against refusal of the hybrid proposal submitted under reference 17/505711/HYBRID as listed in the history section below.
- 1.2. The application site is currently formed of open agricultural land and is located adjacent to the Skylark Mitigation Land which was secured by legal agreement as part of the hybrid planning permission.
- 1.3. Borden-Chestnut Street Conservation Area is located to the south-west of the most north-westerly point of the application site. There are listed buildings located within the Borden-Chestnut Street Conservation Area. Two public rights of way (PRoWs) cross the application site ZR118 and ZR119.

2. RELEVANT PLANNING HISTORY

- 2.1. Following the grant of the hybrid planning permission, a number of reserved matters applications and applications to discharge conditions have been submitted. Only those relevant to this application are included in the list below.
- 2.2. **17/505711/HYBRID; PINS ref. APP/V2255/W/19/3233606:** Hybrid planning application with outline planning permission (all matters reserved except for access) sought for up to 595 dwellings including affordable housing; a two form entry primary school with associated outdoor space and vehicle parking; local facilities comprising a Class A1 retail store of up to 480 sq m GIA and up to 560sqm GIA of "flexible use" floorspace that can be used for one or more of the following uses - A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes), D1 (non-residential institutions); a rugby clubhouse / community building of up to 375 sq m GIA, three standard RFU sports pitches and associated vehicle parking; a link road between Borden Lane and Chestnut Street / A249; allotments; and formal and informal open space incorporating SuDS, new planting / landscaping and ecological enhancement works.

Full planning permission is sought for the erection of 80 dwellings including affordable housing, open space, associated access / roads, vehicle parking, associated services, infrastructure, landscaping and associated SuDS.

For clarity - the total number of dwellings proposed across the site is up to 675.

Granted at appeal 29.04.2021.

Non-material Amendment and Conditions Applications associated with the Hybrid

- 2.3. **22/503698/NMAMD:** Non-material amendment in relation to planning permission 17/505711/HYBRID and appeal reference V2255/W/19/3233606: To change the wording of condition 66 to 'Before the approval of reserved matters for any phase (excluding Phase 1A), the applicant (or their agents or successors in title) shall secure and have reported a programme of archaeological field evaluation works for that phase, in accordance with a specification and written timetable which has been submitted to and approved by the local planning authority'.

Granted 06.09.2022

- 2.4. **23/505421/NMAMD** - Approval of a non material amendment relating to the re-siting of primary school land.

Granted April 2024.

- 2.5. **22/500133/SUB**: Updated Baseline Ecological Report: Surveys for Breeding Birds, Bats, Reptiles and Dormouse (condition 58)

Granted 06.04.2022

- 2.6. **21/506820/SUB**: Revised Skylark Mitigation Strategy (condition 60)

Granted 11.04.2022 and legal agreement in place 15/09/2022.

- 2.7. **22/500640/SUB**: Phasing Plan (condition 2)

Granted 06.05.2022

- 2.8. **22/500639/SUB**: Construction Ecological Management Plan (CEMP) (condition 61)

Granted 06.05.2022

- 2.9. **22/500132/SUB**: Contaminated Land Assessment (condition 53)

Granted 23.05.2022

- 2.10. **22/502221/SUB**: Air Quality (condition 70)

Granted 06.02.2023

- 2.11. **22/501227/SUB**: Roads, Footways, Footpaths, Verges and Other Matters (condition 37)

Granted 06.02.2023

Reserved Matters

- 2.12. **22/504823/REM**: Approval of Reserved Matters (Layout, Scale, Appearance and Landscaping being sought) for the western spine road (Phases 2B & 2C) pursuant to 17/505711/HYBRID - Hybrid planning application with outline planning permission (all matters reserved except for access) sought for up to 595 dwellings including affordable housing; a two-form entry primary school with associated outdoor space and vehicle parking; local facilities comprising a Class A1 retail store of up to 480 sq m GIA and up to 560sqm GIA of "flexible use" floorspace that can be used for one or more of the following uses - A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes), D1 (non-residential institutions); a rugby clubhouse / community building of up to 375 sq m GIA, three standard RFU sports pitches and associated vehicle parking; a link road between Borden Lane and Chestnut Street / A249; allotments; and formal and informal open space incorporating SuDS, new planting / landscaping and ecological

enhancement works. Full planning permission is sought for the erection of 80 dwellings including affordable housing, open space, associated access / roads, vehicle parking, associated services, infrastructure, landscaping and associated SuDS.

Granted 16.08.2023

- 2.13. **22/504937/REM:** Approval of Reserved Matters (appearance, landscaping, layout and scale) for Phase 1B, 2A, 2B and 2C for the erection of 209no. dwellings including affordable, together with associated access, landscaping, equipped play, drainage, infrastructure and earthworks, pursuant to 17/505711/HYBRID - Hybrid planning application with outline planning permission (all matters reserved except for access) sought for up to 595 dwellings including affordable housing; a two-form entry primary school with associated outdoor space and vehicle parking; local facilities comprising a Class A1 retail store of up to 480 sq m GIA and up to 560sqm GIA of "flexible use" floorspace that can be used for one or more of the following uses - A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes), D1 (non-residential institutions); a rugby clubhouse / community building of up to 375 sq m GIA, three standard RFU sports pitches and associated vehicle parking; a link road between Borden Lane and Chestnut Street / A249; allotments; and formal and informal open space incorporating SuDS, new planting / landscaping and ecological enhancement works. Full planning permission is sought for the erection of 80 dwellings including affordable housing, open space, associated access / roads, vehicle parking, associated services, infrastructure, landscaping and associated SuDS.

Granted 06.11.2023

- 2.14. **23/500263/REM:** Approval of Reserved Matters for Scale, Appearance, Landscaping, Layout being sought for the Sittingbourne Rugby Club and Community Hub including, 2x RFU compliant rugby pitches and associated parking (Phase 2E), pursuant to application 17/505711/HYBRID.

Granted 13.11.2023

- 2.15. **23/505420/REM:** Approval of Reserved Matters (Appearance, Landscaping, Layout and Scale sought) for creation of the eastern spine road (Phase 2D), pursuant to 17/505711/HYBRID.

Currently under consideration

3. PROPOSED DEVELOPMENT

- 3.1. Permission is sought for the approval of levels and earthworks changes to Phase 2F (open space area/sports fields) and the Primary School Land. This area is shown on the approved phasing plan (with the position of the school land amended by 23/505421/NMAMD).
- 3.2. The submission advises that there are existing significant differences in levels within this phase of the wider site with the land sloping steadily towards the south. To tie the levels in with the remainder of the development area and achieve suitable gradients to allow for future recreational uses within this phase, the levels across the combined area needs to be reprofiled.

4. CONSULTATION

4.1. Two rounds of consultation have been undertaken, during which letters were sent to neighbouring occupiers; a notice was displayed at the application site and the application was advertised in the local newspaper. Full details of representations are available online.

4.2. 11 letters of representation were received in relation to the consultation. Concerns/ comments were raised in relation to the following matters:

Comment	Report reference
The application fails to take into account the skylark nesting plots that were supposed to have been implemented as mitigation. The mitigation area is located on the land now identified for a third rugby pitch and kick about area.	7.6.6, 7.6.13, 7.6.15 – 7.6.17
There are badgers on the land designated as a rugby pitch.	7.6.6 – 7.6.14
Parking provision should be made.	7.12.1
It has not been made clear who will be responsible for maintaining the pitches.	7.12.1
Public right of ways ZR117 and ZR118 are not shown on the submitted plans.	7.7.7
Is there a need for kick about space?	7.12.1
Sports England have severe reservations owing to lack of parking and run off requirements.	7.12.1
There should be more hedgerows, shrubs and trees on the site.	7.5.3 – 7.5.5, 7.6.10, 7.6.12
It is difficult to understand what is being applied for.	7.12.1

4.3. **Borden Parish Council** objected to the application on the following grounds:

Comment	Report reference/ clarification
The area should be a recreation area with natural habitat but not designated as a rugby training pitch and kickabout area.	7.12.1
The noise and disturbance caused by sports pitches would be detrimental to the skylark mitigation site immediately adjacent to the land.	7.6.6, 7.6.13, 7.6.15 – 7.6.17

- 4.4. No further letters of representation were received in relation to the second consultation.
- 4.5. **Borden Parish Council** made the following comment:

Comment	Report reference/ clarification
Wish to ensure that the site will be a public open natural habitat space for wildlife which also ensures the protection of the neighbouring skylark mitigation sector	7.6.6, 7.6.13, 7.6.15 – 7.6.17, 7.12.1

5. REPRESENTATIONS

- 5.1. Set out below is a summary of matters raised in representations, with the comments reflecting the final position of the consultee. There have been two rounds of consultation for most consultees. For those individual consultees that have been consulted more than twice, it is stated under their heading below.

- 5.2. **SBC Heritage:** – No objection.

- 5.3. **SBC Tree officer:** – Proposal is acceptable from an arboricultural perspective. Provided these are conditioned, no objection.

- 5.4. **Mid Kent Environmental Health:** - Generally no further comment or recommendations to make to those contained in our response during the consultation for the outline approval. Given the potential to remove or import soil, it is important to ensure any recommendation for remediation of this area in terms of land contamination are followed.

Given that earthworks could cause issues in terms of noise and dust, it is recommended a revision to the Construction Management Plan is submitted to address the impact from this work. A condition is recommended.

- 5.5. **KCC Ecology:** – Understand the intention to retain the tree lines and hedgerows on the site boundaries. There is a need to ensure that measures are in place to ensure that badgers are not impacted by the proposal which can be addressed within the construction management plan.

- 5.6. **KCC Flood and Water Management:** - Raise no objections. Advise that following the earthworks, the resulting planting (including grasses) is hastily seeded and maintained through to establishment to prevent against runoff from bare soils.

- 5.7. **National Highways:** – Raise no objection.

- 5.8. **KCC Highways:** - Following clarification that that there is no intention for there to be either the import or export of material in connection with the submission, they consider that there are no highway implications associated with the proposals.

- 5.9. **Kent Minerals and Waste:-** No land-won minerals or waste management capacity safeguarding objections or comments to make.

- 5.10. **KCC PROW:** – Have raised objection for the following reasons:

Initially commented to say submission shows Public Footpath ZR119 but omits Public Footpath ZR117.

Comments relate to the no specific timescales for development to within the later development that is mentioned (the school).

Reference in the covering letter to works prior to the RM application, but no further timescale is given, or a timescale of the duration of the works.

Other comments remind the applicant of the process and consents required for temporary diversions and closures.

- 5.11. **Kent Police:** – The application falls outside the scope of what Kent Police would comment on.
- 5.12. **Natural England:** - Considers that the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites or landscapes.
- 5.13. **Environment Agency:** - The EA is not a statutory consultee for reserved matters applications so no longer provide comments on these consultations. Take account of any planning conditions, informatives or advice and comments provided in our response to the outline application.
- 5.14. **Southern Water:** – No objection.
- 5.15. **Sport England:** – Initially questions were raised with regard to the pitches. However, following receipt of revised plans showing the removal of the pitches, Sport England raise no objection to the proposal.
- 5.16. **Swale Footpath Group:** - Advised that the site is crossed by two footpaths ZR117 and ZR119.
- 5.17. **Lower Medway Internal Drainage Board:** – The site is outside the drainage district of the Lower Medway Internal Drainage Board. No comment to make at this time.

6. DEVELOPMENT PLAN POLICIES

Bearing Fruits 2031: The Swale Borough Council Local Plan 2017

- ST1** Delivering sustainable development in Swale)
- ST5** Sittingbourne Area Strategy
- CP4** Requiring Good Design
- CP7** Conserving and Enhancing the Natural Environment: Providing for Green Infrastructure
- CP8** Conserving and Enhancing the Historic Environment
- MU3** Land at South-West Sittingbourne
- DM6** Transport Demand and Impact
- DM14** General Development Criteria
- DM17** (open space, sports and recreation provision)
- DM21** Water, Flooding and Drainage
- DM24** Conserving and Enhancing Valued Landscapes

- DM28** Biodiversity and Geological Conservation
- DM29** Woodlands, Trees and Hedges
- DM31** Agricultural Land
- DM32** Development Involving Listed Buildings
- DM33** Development Affecting a Conservation Area
- DM34** Scheduled Monuments and Archaeological Sites

7. ASSESSMENT

7.1. This application is reported to the Committee at the request of Cllr Baldock and because Borden Parish Council has objected to the proposal. Considering these comments, the committee is recommended to carefully consider the following points:

- The Impact upon the skylark mitigation land.
- That the land be open natural space and not have pitches marked out.

7.2. The main considerations involved in the assessment of the application are:

- The Principle of Development
- Landscape and Visual
- Landscaping and Trees
- Ecology
- Highways and Public Right of Way
- Heritage
- Contamination
- Flooding, Drainage and Surface Water
- Living Conditions
- Other Matters

7.3. Principle

7.3.1. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 sets out that the starting point for decision making is the development plan unless material considerations indicate otherwise.

7.3.2. The National Planning Policy Framework provides the national policy context for the proposed development and is a material consideration of considerable weight in the determination of the application. The NPPF states that any proposed development that accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan.

7.3.3. The principle of the development is established by the appeal decision dated 29 April 2021 granting hybrid planning permission listed above under reference 17/505711/HYBRID which included a primary school shown on the masterplan to be located to the south of a spine road that is to run east-west through the overall development connecting through from Borden Lane to Chestnut Street. In terms of construction, the Phasing Plan approved on 06/05/2022 under reference 22/500640/SUB shows the school to come forward as phase of its own. This application relates to land within this Primary School Phase, Phase 2F – woodland and landscape

buffer, grassed area and recreational land and a small section of Phase 1A (granted permission as the detailed element of the Hybrid application).

- 7.3.4. The submission advises that there are existing significant level changes on this part of the site with the land sloping steadily towards the south. To tie the levels in with the remainder of the development area and to achieve suitable gradients to allow for future recreational uses on these phases, the levels across the combined area need to be reprofiled.
- 7.3.5. It is proposed that the earthworks are undertaken ahead of the detailed Reserved Matters submission for each of the abovementioned phases, to establish the development platform and ready the land for the delivery of the open space and primary school. It is intended that further information on the design and layout of the phases will be dealt with following determination of this submission either by way of conditions or the submission or further reserved matters applications.
- 7.3.6. The proposed levelling works would enable the implementation of the development of the site in accordance with the hybrid planning permission.
- 7.3.7. The need for the required works is acknowledged and the proposal is a rational approach to the preparation of the site ahead of securing reserved matters for the relevant phases. There is no objection to the principle of the levelling of the land.

7.4. Landscape and Visual

- 7.4.1. The NPPF requires decisions to ensure that development is '*sympathetic to... landscape setting*'. The landscape and visual impacts of the overall development scheme was considered at the appeal stage to be acceptable.
- 7.4.2. The proposed levelling works shown on the submitted plan would cut and fill various parts of the parcel of land to level it out sufficiently that it can be developed for the school and to provide a more user-friendly space for the purposes of recreation.
- 7.4.3. The larger areas of cut and fill are generally located within the centre of the site with smaller levels of fill located to the edges.
- 7.4.4. Given the wider context of the site and that the works enable the general levelling of the land, rather than significant rising, or lowering of the entire plot, its visual impact is unlikely to be perceptible within the wider locality. There would be a negligible landscape impact given that the result of the works would be to tie the levels of the site into those of the surrounding land more appropriately. The land and its backdrop is identified for development which would change the appearance of the site more significantly than the minor site levelling proposed.
- 7.4.5. Given the above, the visual and landscape impact of the levelling works are acceptable and would accord with Policy DM24 of the Local Plan and the NPPF.

7.5. Trees

- 7.5.1. The NPPF recognises the contribution of trees to the intrinsic character and beauty of the countryside. The Local Plan requirement is recognised through Policy DM29 of the Local Plan.

- 7.5.2. The application is accompanied by an Arboricultural Method Statement which confirms that it will not be necessary to remove or prune any trees to undertake the proposed earthworks.
- 7.5.3. There will be a minor increase in levels (c.0-0.6m in depth), within the root protection areas (RPAs) of the five retained trees. This is illustrated in the Tree Protection Plan that is attached to the Arboricultural Method Statement. It concludes that the shallow build-up of levels within the RPAs is achievable without impacting on the physiological or structural condition of the trees but must be sensitively installed to prevent root disturbance. The soil must be deposited by machine operating from outside the RPAs and must be spread/shaped to the required depth using hand tools only. It additionally advises that tree protection barriers are required to safeguard retained trees from damage.
- 7.5.4. The Council Tree Officer has assessed the submission and agrees with the conclusions reached in the submitted method statement and has no objection to the proposal.
- 7.5.5. Condition 44 of the hybrid planning permission requires the submission of full details of trees and hedges to be retained and removed for each phase along with protection measures. The information submitted as part of this application will need to be incorporated into the details for applications to be submitted seeking to discharge condition 44 for each phase. Condition 44 requires implementation of the details approved pursuant to that condition. As such a separate condition is not required for this application.
- 7.5.6. The proposal is considered acceptable and in accordance with Policy DM14 and DM29 of the Local Plan and the NPPF.

7.6. Ecology

- 7.6.1. The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') affords protection to certain species or species groups, commonly known as European Protected Species (EPS), which are also protected by the Wildlife and Countryside Act 1981. This is endorsed by Policies CP7 and DM28 of the Local Plan.
- 7.6.2. Under the Natural Environment and Rural Communities Act (2006), the authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions for the purpose of conserving biodiversity. Furthermore, the National Planning Policy Framework states that 'the planning system should contribute to and enhance the natural environment by minimising impacts on biodiversity and delivering net gains in biodiversity where possible'. The National Planning Policy Framework states that 'if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or as a last resort, compensated for then planning permission should be refused.'
- 7.6.3. National planning policy aims to conserve and enhance biodiversity, and encourages opportunities to incorporate biodiversity in and around developments. Under the Natural Environment and Rural Communities Act (2006), "every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of these function, to the purpose of conserving biodiversity".
- 7.6.4. In terms of the Local Plan, Policy DM28 sets out that development proposals will conserve, enhance, and extend biodiversity, provide for net gains where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated.

- 7.6.5. There are no statutory nature conservation designations identified within or adjacent to the site.
- 7.6.6. Pre-commencement conditions in the hybrid planning permission relating to various aspects of ecology required the following details which are shown below with status:
- - Condition 58 – Updated baseline surveys for breeding birds, bats, reptiles and dormouse; (approved on 06/04/2022 – ref 22/500133/SUB).
 - Condition 59 – Updated Badger Survey; (approved on 19/07/2024 for Western Link Road (Phases 2B & 2C), Eastern Link Road (Phase 2D) and Phase 2 Residential Phase (Phases 2A & 2C) – ref: 24/501002/SUB).
 - Condition 60 – Revised Skylark Mitigation Strategy; (approved on 11/04/2022 – ref: 21/506820/SUB – Legal Agreement in Place dated 15/09/2022).
 - Condition 61 - Construction Ecological Management Plan (CEMP); (approved on 06/05/2022 – ref: 22/500639/SUB); and
 - Condition 62 – Landscape and Ecological Management Plan (LEMP) to be submitted within 6 months of the commencement of development of any phase.
- 7.6.7. The application is accompanied by an Ecological Technical Note which provides an overview of the ecological survey work undertaken to date. This is extensive and is managed through conditions attached to the hybrid planning permission which would also apply to the earthworks.
- 7.6.8. The submitted Technical Note advises that the proposal is not considered to result in any additional effects further to those identified in Chapter 11 of the Environmental Statement accompanying the hybrid planning application (with the exception of Fieri Clearwing moth, only recorded in August 2023). No particular changes have been recorded to habitats or likely faunal constraints.
- 7.6.9. In accordance with condition 61 of the hybrid planning permission, safeguarding measures will be implemented in relation to faunal species including bats, badger, dormouse, nesting birds and reptiles.
- 7.6.10. If the application is approved, further details relating to Condition 62 require the submission of a LEMP for approval within 6 months of commencement of works on a phase and an updated badger survey will be required pursuant to condition 59 of the hybrid planning permission.
- 7.6.11. Given the above, it is concluded that no amendments or additions to the mitigation approach set out under the CEMP are required.
- 7.6.12. Discharge of the full reserved matters and conditions attached to the hybrid planning permission will deal with delivery of landscaping and other ecological features.
- 7.6.13. KCC Ecology have assessed the proposal and have concluded that the proposed earthworks will only be affecting habitat which would be impacted/lost as a result of the future forthcoming reserved matters application.
- 7.6.14. They state that the site to be impacted is used by foraging/commuting badgers and therefore there is a need to ensure that measures in place to ensure that badgers are not impacted by the proposal. They advise that this can be addressed within the

construction management plan which is managed by condition on the hybrid planning permission as set out above.

- 7.6.15. A large number of consultation responses express concern regarding the impact on Skylark mitigation. Condition 60 of the hybrid planning permission required the submission of a revised Skylark Mitigation Strategy and a legal agreement secured to deliver any off-site mitigation. As set out above a mitigation strategy was approved under application ref 21/506820/SUB and off-site mitigation land secured by way of a unilateral undertaking under s106.
- 7.6.16. The strategy provides for mitigation areas that are not impacted by the current proposal and are located outside of the site. Swale's Planning Investigation Team have previously investigated the provision of the mitigation land and concluded that it had been provided in accordance with the provisions of the Unilateral Undertaking.
- 7.6.17. The current proposal would not impact upon the Skylark Mitigation land and would not interfere with the requirements of the mitigation strategy. This has been illustrated on the skylark mitigation x earthworks plan which shows that the earthworks relate to a separate parcel of land to the mitigation areas. The plan also shows the landscape buffer which is required to be delivered under the planning permission, further reinforcing the boundary and separation from the adjacent Skylark Mitigation land.
- 7.6.18. Taking account of the existing conditional safeguards attached to the hybrid planning permission, the application is considered acceptable and the proposal is in accordance with Policy DM28 of the Local Plan and the NPPF.

7.7. Highways and Public Rights of Way

- 7.7.1. The NPPF promotes sustainable patterns of development and expects land use and transport planning to work in parallel in order to deliver such. A core principle of the NPPF is that development should:

“Actively manage patterns of growth to make the fullest use of public transport, walking and cycling and to focus development in locations which are sustainable.”

- 7.7.2. KCC Highways initially raised a question about the import or export of waste material from the site in connection with the cut and fill works, and the impact that this would potentially have on the surrounding highways network beyond the consented scheme.
- 7.7.3. A soil management strategy for the development was approved through condition 69 of the hybrid planning permission, under ref. 23/503581/SUB. The applicant confirmed there is no intention for there to be either the import or export of material from the site. Material will instead be redistributed on the wider site where necessary.
- 7.7.4. On this basis, there would be no wider highway impacts from the levelling works that is not already managed through the existing conditions. KCC Highways have therefore raised no objection.
- 7.7.5. Public footpath ZR119 runs from west to east through the area of earthworks and ZR117 cuts across a corner to the far west.
- 7.7.6. The Public Right of Way (PROW) Officer has raised objection to the proposal on the basis that both footpaths are not clearly shown on the plans; that no timescale has

been provided for the works; and that no PROW strategy has been submitted regarding closures or management and states that the surface of the PROW must not be disturbed without agreement from the Highways Authority.

- 7.7.7. An amended plan has been submitted that shows both footpaths clearly labelled and that the route of the PROWs remain unchanged. This concern has therefore been addressed.
- 7.7.8. In relation to the timing of the works, as this is a reserved matter application, implementation and therefore timing is secured by condition 6 of the hybrid planning permission which is 2 years from the date of approval of the reserved matter.
- 7.7.9. In relation to the absence of PROW strategy regarding closures or management and statement that the surface of the PROW route must not be disturbed without agreement from the Highways Authority, these are both matters that are controlled through Highways/ PROW legislation.
- 7.7.10. An informative would be placed on the permission advising of the need to engage with KCC PROW Officers. There is no planning objection to the proposal on highways grounds and the proposal is considered to be in accordance with Policy DM6 of the Local Plan and the NPPF.

7.8. Heritage

- 7.8.1. Any planning application for development which will affect a listed building or its setting must be assessed in accordance with the requirements of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This requires a local planning authority to have special regard to the desirability of preserving the building or its setting or any feature of special architectural or historic interest which it possesses.
- 7.8.2. A similar duty exists where the proposed development will be within a conservation area where section 72 of the same Act requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
- 7.8.3. The NPPF states that Local Planning Authorities should identify and assess the particular significance of any heritage asset and consider the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits that may arise and this is endorsed by the Local Plan.
- 7.8.4. The impact of the wider development on listed buildings and conservation areas was considered at the hybrid application stage. The Inspector considered that given the degree of separation from the development and for other reasons such as the scale of the proposed boundary screening, the development would not affect the setting and significance of the listed buildings and conservation areas within the locality.
- 7.8.5. Given the nature of the proposal which is to only alter levels to tie in with levels across the wider site, this proposal would not alter the conclusion of the Inspector and the Secretary of State when issuing the decision and granting planning permission for

the hybrid application in that the wider development proposal would result in less than substantial harm. This proposal on its own would not result in harm to the Conservation Area or the Grade II* and Grade II listed buildings located within it.

- 7.8.6. The proposal is in accordance with Policy DM32 and DM33 of the Local Plan and the NPPF.

7.9. Contamination

- 7.9.1. The NPPF states that local planning authorities should ensure that the site is suitable for its new use taking account of various matters, including pollution arising from previous uses.

- 7.9.2. Condition 53 of the hybrid permission required the submission of a contaminated land assessment for the whole site. Details have been submitted and approved under condition 53 on 23/05/2022 (ref: 22/500132/SUB). The Environmental Protection Team have highlighted that if there was removal or importation of soils, that remediation recommendations are followed. A soil management strategy for the development was approved through condition 69 of the hybrid planning permission, under ref. 23/503581/SUB and the applicant has confirmed there is no removal or importation of soils involved.

- 7.9.3. Stockpiling of soil is covered by other legislation and the construction work is already addressed through the details approved pursuant to condition 20 of the hybrid planning permission (Construction Management Plan). The proposal is considered compliant with Policy MU3 (10) and the NPPF.

7.10. Flood Risk, Drainage and Surface Water

- 7.10.1. The NPPF states that Local Planning Authorities should ensure that flood risk is not increased elsewhere and that any residual risk can be safely managed. This is reflected in Policy DM21 of the Local Plan.

- 7.10.2. Each phase within the overall development site is subject to a detailed drainage strategy to be submitted and approved before works commence (Condition 49) and ongoing maintenance prior to use/occupation (Condition 50). This will be submitted should the reserved matters be approved.

- 7.10.3. Given there has been no objection from KCC Flood and Water Management and that details are required to be submitted under condition 49, it is considered the proposal is in accordance with Policy DM21 of the Local Plan and the NPPF.

7.11. Living Conditions

Existing residents

- 7.11.1. The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers.

- 7.11.2. The impact of the wider development of the hybrid proposal has already been considered at the appeal in terms of the impact on residents with regard to issues such as the traffic generation, noise and air quality.
- 7.11.3. The impact on surrounding residents as a result of the construction activity will be controlled through conditions 20 (construction management plan) and 21 of the hybrid planning permission which restricts the hours of construction activity.

7.12. Other Matters

- 7.12.1. A number of consultation responses have made reference to rugby pitches. This has arisen due to the initial drawings submitted showing the outline of pitches within the open space. The applicant had drawn these outlines to ensure that should anyone want to use the space informally for sports, that there would be space. There was not an intention to white line the space with pitches on site. It is unfortunate that the applicant neglected to remove the outline and the labelling of the pitches prior to the submission of the application resulting in misunderstanding.
- 7.12.2. Formal provision for sport is to be provided at the Rugby Club site further to the east beyond Wises Lane and to the south of Cryalls Lane as approved under application reference 23/500263/REM.

7.13. Conclusion

- 7.13.1. The starting point for determining the application is the Development Plan, Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 are clear that planning applications must be determined in accordance with the Statutory Development Plan unless material considerations indicate otherwise.
- 7.13.2. The earthworks would tie the level of the site in with the remainder of the development area and achieve suitable gradients to enable the implementation of the development, the acceptability of which has already been established through grant of planning permission for 17/505711/HYBRID.
- 7.13.3. The earthworks would not have any impact beyond that of the hybrid planning permission. These impacts are controlled through the conditions placed on the overriding hybrid planning permission for the site.
- 7.13.4. This reserved matters application is in accordance with the terms of the hybrid planning permission and the policies in the Local Plan and NPPF.

7.14. Recommendation

Grant subject to conditions.

CONDITIONS

1. The development hereby approved shall be carried out in accordance with the following drawings:

17-051-147 Site Location Plan
17-051-144-D Phase 2F Enabling Earthworks

17-051-145-D Phase 2F Enabling Earthworks Sections

Ecology Technical Note dated March 2024

Cover Letter responding to KCC Highways, reference OK/15742 dated 09 May 2024

Arboricultural Method Statement, reference 10172_AMS.005 and dated February 2024

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

