

<b>2.4 REFERENCE NO 24/502378/FULL</b>		
<b>PROPOSAL</b> Section 73 - Application for Minor Material Amendment to approved plans condition 2 (to allow increase in the height of the building comprising plots 1, 2 and 3) pursuant to 21/501143/FULL		
<b>SITE LOCATION</b> 34 Key Street Sittingbourne Kent ME10 1YS		
<b>RECOMMENDATION</b> 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.		
<b>APPLICATION TYPE</b> Section 73 - Minor Material Amendment		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Councillor Baldock referred the application to Committee		
<b>CASE OFFICER</b> Guy Martin		
<b>WARD</b> Borden And Grove Park Ward	<b>PARISH/TOWN COUNCIL</b> Borden Parish Council	<b>APPLICANT</b> Mr S Hafeez  <b>AGENT</b> Blackburn Architects Limited
<b>DATE REGISTERED</b> 14.06.24	<b>TARGET DATE</b> 23.08.24	
<b>BACKGROUND PAPERS AND INFORMATION:</b>  Documents referenced in report are as follows: -  All drawings submitted: BA-2008-P-02 Proposed Site Location Plan (uploaded 03.03.21) BA-2008-P01 Existing and Proposed Block Plan (uploaded 03.03.21) BDS-1624-PO2A Existing Plans and Elevations (uploaded 03.02.20) BA-2008-P-20B Proposed Plans and Elevations (uploaded 13.06.24) BA-2008-P-40-B Typical Sections (uploaded 13.06.24) TRK01-(01)-A Vehicle Path Analysis 1 of 2 (uploaded 03.02.20) TRK01-(02)-A Vehicle Path Analysis 1 of 2 (uploaded 03.02.20)  The full suite of documents submitted pursuant to the above application are available via the link below: -  <a href="https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=SEPIY4TYK2K00">https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=SEPIY4TYK2K00</a>		

## 1. SITE LOCATION AND DESCRIPTION

- 1.1 The site is located to the rear of 34 Key Street, Sittingbourne and was previously used as a tool hire shop comprising of a yard with outbuildings to the rear.
- 1.2 The site is located within the built confines of Sittingbourne and to the east of the Key Street roundabout within a predominantly residential area. The site adjoins the Pine Lodge care home and is reached by an existing access off of the A2. Residential dwellings lie to the south of the application site.

- 1.3 The site is now comprised of the partially built residential development as originally approved under ref. 20/500367/FULL and amended via ref. 21/501143/FULL as set out in the Planning History section below.

## 2. PLANNING HISTORY

- 2.1 24/502460/FULL – Application under consideration for Section 73 - Application for Variation of Condition 5 (to allow change of the reduction in Dwelling Emission Rate from 50% to 25%) pursuant to 21/501143/FULL.
- 2.2 24/501304/SUB - Submission of details approved on 16.04.2024 to discharge condition 7.1 - Contaminated Land Assessment and 7.2 - Remediation Method Statement, Subject to 20/500367/FULL.
- 2.3 22/500723/FULL – Application withdrawn on 24.06.2024 for Section 73 - Application for removal of condition 5 (50% reduction in Dwelling Emission Rate) pursuant to 21/501143/FULL for - Section 73 - Application for Minor Material Amendment to approved plans condition 2 (addition of dormer windows to units 2 and 3) pursuant to 20/500367/FULL for - Demolition of existing storage buildings and erection of 1 no. two bed and 3 no. one bed dwelling units with associated parking turning and amenity space as amended by drawings BA-2008-P-20 Revision A and BA-2008-P-40 Revision A.
- 2.4 21/501143/FULL – Planning permission granted on 28.07.2021 for Section 73 - Application for Minor Material Amendment to approved plans condition 2 (addition of dormer windows to units 2 and 3) pursuant to 20/500367/FULL for - Demolition of existing storage buildings and erection of 1 no. two bed and 3 no. one bed dwelling units with associated parking turning and amenity space as amended by drawings BA-2008-P-20 Revision A and BA-2008-P-40 Revision A.
- 2.5 20/500367/FULL – Planning permission granted on 26.05.2020 for Demolition of existing storage buildings and erection of 1no. two bed and 3no. one bed dwelling units with associated parking turning and amenity space as amended by drawings BDS-1624-P04 Rev B, BDS-1624-P02 Rev B and BDS-1624-P03 Rev D.

## 3. PROPOSED DEVELOPMENT

- 3.1 This application seeks planning permission to vary condition 2 (approved drawings) pursuant to approved application 21/501143/FULL. The previous approvals have granted planning permission for four dwellings on this site in two separate buildings.
- 3.2 This application is a consequence of an enforcement case where it was identified that the two-storey building had not been constructed as per the approved details. As a result, set out below are the ‘as approved’ building heights under 21/501143/FULL and those now to be considered as part of this application.

	Application 21/501143/FULL (m)	As built Height (m)
Plot 1 roof height	5.9	6.2
Plot 1 Eaves Height	4.3	5.0
Plot 2 and 3 roof height	5.7	6.1
Plot 2 and 3 eaves height	3.2	4.0

#### 4. CONSULTATION

4.1 One round of consultation has been undertaken, during which letters were sent to neighbouring occupiers and a notice was displayed at the application site. Full details of representations are available online.

4.2 One objection was received from a neighbouring occupier on the following grounds:

<b>Comment</b>	<b>Report reference/</b>
- The bungalow should be clad as per the approved details to improve the efficiency of the property;	See paragraph 7.10
- Concerned that through the removal of the wall of the original building that it has left a wall unstable and unsafe.	See paragraph 7.22
- The correct neighbour consultation has not been carried out.	See paragraph 7.21

4.3 **Borden Parish Council** did not respond.

4.4 **Cllr Mike Baldock** (one of the Ward Councillors) requested that the application be reported to Planning Committee due to the deviations in height from those approved.

#### 5.0 REPRESENTATIONS

5.1 **KCC Archaeology** - No comment.

5.2 **KCC Minerals and Waste** – The County Council has no land-won minerals or waste management capacity safeguarding objections or comments to make regarding this proposal.

5.3 **KCC Rights of Way** - No comments received.

5.4 **Natural England** - No comments received.

5.5 **SBC Climate Change Officer** - No comment to make.

5.6 **Mid-Kent Environmental Health** - No objection.

#### 6.0 DEVELOPMENT PLAN POLICIES

6.1 **Bearing Fruits 2031: The Swale Borough Council Local Plan 2017**

- ST3** Swale settlement strategy
- CP4** Requiring good design
- DM14** General development criteria
- DM16** Alterations and extensions

#### 7.0 ASSESSMENT

7.1 This application is reported to the Committee at the request of Councillor Baldock due to the deviations in height from those previously approved. Considering these comments

and the scheme that has been submitted the Committee is recommended to consider the following points:

- Principle of development
- Character and Appearance
- Living Conditions

### **Principle**

- 7.2 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 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.
- 7.4 This application seeks a variation to condition 2 (approved drawings) of the planning permission granted under ref. 21/501143/FULL. This application has been submitted under Section 73 of the Town and Country Planning Act 1990 which allows for conditions to be varied, including the condition that specifies the plans which the development should be undertaken in accordance with. Although not appearing in current legislation or guidance, when made in respect of such a condition, this type of application is sometimes referred to as a Minor Material Amendment. Planning Practice Guidance sets out that “there is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission.” This is supported by the guidance setting out that the only limits on the use of this approach are that it cannot amend the time limit for commencing development and cannot amend the description of the development. In this case, noting that the amendments relate to the scale and fenestration of one of the approved buildings only, it is considered that the scope of the changes sit comfortably within the scope of an application of this type.
- 7.5 The relevant section of the Act (Section 73) that this application has been submitted under is very clear in that “On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted.” As a result, the only consideration as part of this application is whether the variations, as set out in the proposal section above are acceptable. Therefore, the principle of developing dwellings on this site has been accepted and is not able to be considered further.

### **Character and Appearance**

- 7.6 The National Planning Policy Framework attaches great importance to the design of the built environment and that design should contribute positively to making places better for people. The Local Plan reinforces this requirement.
- 7.7 Policy CP4 of the Swale Local Plan 2017 requires development proposals to be of high-quality design and to be in keeping with the character of the area. It states that particular regard should be paid to the scale, height, materials, detailing, mass, bulk, articulation and site coverage of any future proposals.

- 7.8 The alterations to the height of the roof and the eaves height would incorporate an appropriate design. The building is set to the rear of existing built form fronting Key Street (the A2) and to the rear of existing residential properties in Cherryfields. As such, the amendments would be hidden from many public vantage points. From those places where the development would be viewed, it would not appear to be of scale or form that would be inappropriate in the context of the surrounding area. Albeit taller, the overall form of the building and its roof, comprising of pitched roofs, rooflights and a discreetly positioned dormer, would remain similar and, as such, it is considered that the development would remain acceptable in terms of the proportions and form of the development.
- 7.9 In respect to the fenestration, the proposed amendments do not change the location of the windows and doors, however, through raising the eaves height the proposal results in an increase in the height of the first-floor windows. In comparison to the extant permission at the site, the appearance of the development would not change to a degree that the development would now be in conflict with the policies of the development plan.
- 7.10 The materials will remain unchanged. In respect to the point made by a neighbouring occupier relating to the cladding on the bungalow, the application and drawings show that this building will be clad in black weatherboarding. It is important to note that no amendments to this building are proposed. Works on site have currently stopped until the current application is determined however once works start the applicant will be able to proceed with works to, amongst other matters, clad the rear of this building.
- 7.11 On the basis of the above the development would ensure that the character and appearance of the area is preserved meeting the requirements of policy CP4 of the Swale Local Plan.

### **Living Conditions**

- 7.12 Policy DM14 states that any new proposed developments should not cause significant harm to the amenities of surrounding uses or areas and due consideration should be given to the impact of the proposed development upon neighbouring properties. Any new proposed schemes should not result in significant overshadowing through a loss of daylight or sunlight, give rise to an unreasonable loss of privacy, or result in an unreasonable loss of outlook or in excessive noise or odour pollution. Policy DM 16 also requires that alterations or extensions to existing buildings protect residential amenity.
- 7.13 In terms of the surrounding uses, the building subject to this application lies immediately adjacent to the Pine Lodge Care Home which abuts the site to the west and nos. 48, 50 and 52 Cherryfields to the south. To the east / north east of the site lie a terrace of properties (nos 34-50) fronting Key Street.
- 7.14 There are no windows on the southern facing elevation of the property and roof lights along the western elevation of the building. Due to the increase in eaves and roof heights the roof lights are raised above their previous level ensuring that they would not provide any more harm in terms of overlooking of the adjacent nursing home compared to the scheme already approved.

- 7.15 The western wall of the proposed building lies adjacent to the boundary with Pine Lodge Care Home. This adjacent property incorporates a first-floor window located adjacent to the proposed development. There are no records to confirm the use of this room however the proposal would not fail the two tests for light ensuring that the room would not result in an unacceptable loss of light. It is not considered that the proposal would result in a harmful additional loss of outlook above that previously granted.
- 7.16 To the south, the rear boundaries of nos. 50 and 52 Cherryfields abut the building in question, however, whilst the proposal would result in a larger flank wall lying adjacent to their rear boundaries, the increase in height would be by a limited amount compared to what has already been approved and the proposal would lie predominately to the rear of detached garages which serve these residential properties in Cherryfields.
- 7.17 Therefore, in respect to the properties to the rear of the site within Cherryfields, whilst the amendment results in a higher building, as it is sited adjacent to existing outbuildings located to the rear of the neighbouring properties the proposal would not give rise to additional harmful impacts to an extent that would be unacceptable.
- 7.18 In terms of the terrace of properties fronting Key Street to the east / north east, it is considered that due to the separation distance between the building and these properties that the increase in height would not give rise to any harm to the living conditions of the occupants of these properties.
- 7.19 In reviewing the proposal it is not considered that it would have an adverse impact upon the amenities of the proposed bungalow on site due to the limited increase in height.
- 7.20 In consequence it is not considered that the proposal would have an adverse impact upon the living conditions of neighbouring occupiers meeting the requirements of policy DM14 of the Local Plan.

### **Other Matters**

- 7.21 In respect to the remaining points raised by the neighbouring occupant, surrounding properties were consulted and a site notice was displayed adjacent to the site ensuring that the Council's statutory publicity requirements were complied with.
- 7.22 The potential impact of stability of a wall is a building control matter outside of the control of the planning process.

### **Conclusion**

- 7.23 On the basis of the above assessment, it is recommended that planning permission is granted and condition 2 of 21/501143/FULL be varied to incorporate the amendments as submitted under this current application.
- 7.24 As this is a S.73 application, the other conditions imposed on 21/501143/FULL have been repeated below with the following updates. Firstly, the time limit condition is no longer necessary as the development has commenced. As a result, what was condition 2 on 21/501143/FULL becomes condition 1 as below with the necessary drawing numbers updated. In addition to this, a separate application appearing on this agenda, submitted under ref. 24/502460/FULL seeks to amend the energy efficiency condition. As this has been recommended for approval this has also been amended as below (see condition 4). However, in the event of that separate application being refused and this application approved, then this condition would be required to be altered back to that as originally imposed on 21/501143/FULL. Finally, condition 7 below related to

contamination has been altered to reflect the details which have subsequently been submitted and approved.

### **CONDITIONS**

- (1) The development hereby permitted shall not be carried out otherwise than in complete accordance with drawings BA-2008-P02, BA-2008-P20 Revision B & BA-2008-P40 Revision B.

Reason: In the interests of residential amenity.

- (2) The facing materials used on the development hereby approved shall accord with the specification set out on approved drawing BA-2008-P20 Revision B.

Reason: In the interests of the amenities of the area.

- (3) Notwithstanding the approved drawings the rooflights to Units 2 and 3 shall have a cill height of at least 1.7m above finished floor level.

Reason: In the interests of residential amenity.

- (4) The dwelling units hereby approved shall be constructed and tested to achieve at least a 25% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 as set out within the details submitted for permission ref: 24/502460/FULL.

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

- (5) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwelling units shall not be occupied unless the notice for that dwelling unit of the potential consumption of water per person per day required by the Building Regulations has been given to the Building Control Inspector.

Reason: In the interests of water conservation and sustainability.

- (6) Prior to first occupation of any dwelling unit hereby approved, at least one electric vehicle charging point shall be installed and made ready for use close to the parking areas within the site as shown on drawing BA-2008-P02 for use of residents of the dwelling units hereby approved.

Reason: In the interests of promoting sustainable development.

- (7) The development hereby permitted shall deal with the risks associated with contamination as set out within the remediation method strategy as submitted and approved under ref: 24/501304/SUB.

(i) A Closure Report shall be submitted upon completion of the remediation works. The closure report shall include full verification details. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean.

Any changes to these components will require the written consent of the Local Planning Authority. The scheme shall thereafter be implemented as approved.

Reason: To ensure any land contamination is adequately dealt with.

- (8) The areas shown on drawing BA-2008-P02 for car parking and cycle storage space shall be made available prior to first occupation of any dwelling unit hereby approved, and these facilities shall be kept available for such use at all times. No permanent development, whether permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (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 the car parking spaces referred to above.

Reason: Development without adequate provision for the parking or garaging of cars is likely to lead to car parking inconvenient to other road users.

- (9) Upon completion, no further alterations or extension of the approved dwelling units, whether permitted by Classes A, B, C or D of Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order) or not, shall be carried out.

Reason: In the interests of the amenities of the area.

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

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



