

**PLANNING COMMITTEE – 11 FEBRUARY 2016**

**PART 2**

Report of the Head of Planning

**PART 2**

Applications for which **PERMISSION** is recommended

<b>REFERENCE NO - 15/509905/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
Non compliance with condition (2) of planning permission SW/14/0109 (Variation of condition (2) of planning permission SW/12/1103 to allow a further 1 year to construct retail units (until 1st January 2016)) to permit further time.			
<b>ADDRESS</b> Parcel 4 Thistle Hill Development Site Thistle Hill Way Minster-on-sea Kent			
<b>RECOMMENDATION - Approve</b>			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>			
Construction of the required retail units on this site has not progressed in accordance with conditions on previous planning permissions, and is unlikely to do so in the short-term due to uncertainty over neighbouring retail applications.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Parish Council objection and previous Member involvement.			
<b>WARD</b> Sheppey Central	<b>PARISH/TOWN COUNCIL</b> Minster On Sea	<b>APPLICANT</b> Bovis Homes Ltd <b>AGENT</b> Bovis Homes Limited	
<b>DECISION DUE DATE</b> 18/01/16	<b>PUBLICITY EXPIRY DATE</b> 15/01/16	<b>OFFICER SITE VISIT DATE</b> Various	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
15/504250/FULL	The erection of 1 No. Class A1 retail unit of 551 sqm (gross internal) and 1 No. unit of 95 sqm (gross internal) for use as A1/A2/A3/A4 or A5, 34 car parking spaces, associated landscaping, service area and plant compound.	Approved	25.08.2015
SW/14/0109	Variation of condition (2) of SW/12/1103 to allow an additional year for completion of retail element, until 1 <sup>st</sup> January 2016.	Approved	11.04.2014
Condition (2) extended the period for completion of the retail units until 1 January 2016.			
SW/12/1103	Variation of condition (3) of planning permission SW/10/0240 to allow a further 2 years to construct retail units.	Approved	12.11.2012

Condition (2) extended the period for completion of the retail units until 1 January 2015. (The community hall was under construction by this stage, in accordance with SW/10/0240.)			
SW10/0240	Variation of conditions to permit further time to complete the community hall and retail elements of village centre (minor amendment to approval application SW/09/0812).	Approved	10.05.2010
Conditions (2) and (3) required the community hall and retail units to be provided by 1 July 2011 and 1 January 2013, respectively.			
SW/09/0812	Variation of conditions to permit further time to complete the community hall and retail element of village centre.	Approved	17.12.2009
Conditions (3) and (4) required the community hall and retail units to be provided prior to occupation of 1000 units, or 1 January 2013, whichever came sooner.			
SW/02/0646	Variation of condition (2) of SW/95/102 to extend the time for the submission of reserved matters.	Approved	22.07.2002
This approval extended the deadline for submission of reserved matters applications to 10 years from the date of the outline approval (i.e. until 12 September 2005).			
SW/95/0102	Outline permission for housing, retail, primary school, hotel and supporting development.	Approved	12.09.1997
Outline permission for the wider Thistle Hill, Kingsborough manor and Norwood Manor developments, including provision of a retail element on the current application site. Condition (viii) required reserved matters applications to bring forward <i>“a total retail provision not exceeding 1858 square metres nett retail floorspace to be provided in at least two units of varying size.”</i>			
Condition (ii) required submission of reserved matters within 6 years from the date of approval.			

## MAIN REPORT

### 1.0 DESCRIPTION OF SITE

- 1.01 The application site is a parcel of vacant land situated in the centre of the Thistle Hill development, within the built up area of Minster. The land is irregularly shaped and measures approximately 55m x 50m. To the north is an area of open ground (football pitch); northwest is Minster village hall; and to the south west, south and east are residential properties on Dahlia Walk and Aspen Drive.
- 1.02 The land is currently surrounded by Heras fencing and part is being used for storage of materials in association with local construction works on land to the south (part of the general Thistle Hill development).
- 1.03 Dahlia Walk is currently open to traffic but is due to be pedestrianised as per the S52 highway works agreed under SW/95/0102, which granted outline permission for the Thistle Hill development.
- 1.04 There are numerous subsequent applications for reserved matters and compliance with conditions for Thistle Hill (as above), the most relevant of which is SW/07/0602 which granted permission for erection of dwellings, two separate retail units (on the current site), a community hall (recently completed) and health centre on the land forming the current application site and surrounding streets. The committee report for that application notes:

“Within the Design and Access Statement under Concept Design Principles it states:

*“The centre will be focused around a strong pedestrian boulevard running east-west. The purpose of this axis is both to ensure good pedestrian connectivity between the east and west parts of the site and create a focal central area well fronted by the public buildings and facilities creating a distinct “sense of place”. The western entrance to the boulevard will be well defined by landmark buildings – creating a clear entrance to the village centre. To the east the opportunity exists for a focal space fronted by key shops and/or services – with landmark buildings/elements which again clearly distinguish the start of the village centre.*

*The proposed accommodation for the Village Centre is dispersed along the central boulevard with frontage features onto the boulevard. The Village Hall is located adjacent both to the boulevard and football pitch – its hall and associated activities therefore clearly part of the main village spine, its changing rooms servicing the football pitch. The Hall is accessed just off the boulevard whilst the changing facilities have a separate entrance to the north for direct access from the football pitch.*

*The retail outlets are proposed between the boulevard and the football pitch allowing the rear retail servicing area to be located away from the public pedestrian realm.”*

- 1.05 In August last year application 15/504250/FULL granted permission for the erection of 1 No. Class A1 retail unit of 551 sqm (gross internal) and 1 No. unit of 95 sqm (gross internal) for use as A1/A2/A3/A4 or A5, 34 car parking spaces, associated landscaping, service area and plant compound.

## 2.0 PROPOSAL

- 2.01 This application seeks to vary condition (2) of planning permission SW/14/0109 to allow an additional two years in which to construct the required retail units.
- 2.02 The application is accompanied by a covering letter which notes that construction has not yet commenced due to previous market circumstances leading to a lack of interest from retailers, and the developer not wishing to construct the buildings only for them to remain empty. There was interest in the site from a national retailer last year however, leading to submission (and approval) of 15/504250, but the matter has been complicated by submission of the Asda application in respect of land at Plover Road (see 8.02 below) which has caused the interested retailer to hold-off from completing the sale.
- 2.03 The covering letter is attached as an appendix to this report, and further explains the background and reasons for this application.

## 3.0 SUMMARY INFORMATION

	<b>Proposed</b>
Site Area (ha)	0.28ha
Number of jobs	Approx. 20FTE (based on 15/504250)

## 4.0 PLANNING CONSTRAINTS

- 4.01 The site is within an area of potential archaeological importance, but it is noted that archaeological works have taken place under the subsequent discharge of conditions applications for SW/95/0102 and substantial groundworks have been carried out on the site and within the surrounding area as part of recent development.

- 4.02 The site is also subject to S106 and S52 legal agreements under SW/95/0102, but these do not impact the current application other than with regard to vehicle movements / access on Dahlia Walk.

## **5.0 POLICY AND OTHER CONSIDERATIONS**

- 5.01 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) both encourage sustainable economic development provided that it would not give rise to serious amenity concerns.
- 5.02 Policies E1 (development criteria), E19 (high-quality design), B2 (new employment), B4 (new retail development), T3 (vehicle parking) and T4 (cyclists and pedestrians) of the adopted Swale Borough Local Plan 2008 are relevant, and considered to be in accordance with the NPPF.
- 5.03 Policy A7 in the emerging Local Plan, Bearing Fruits 2031, allocates the undeveloped parts of Thistle Hill for further housing “bringing the total to around 1700” dwellings.

## **6.0 LOCAL REPRESENTATIONS**

- 6.01 None.

## **7.0 CONSULTATIONS**

- 7.01 Minster Parish council objects, commenting:

*“In view of the discussion with the Developer about the complexity and uncertainty of the (retail) environment and current / ongoing application for a second retail site (the Asda proposal) supporting the latest extension of time by Bovis would serve no useful purpose with no clear benefit for the community other than further complicating the situation. On this basis, Minster-on-Sea Parish Council would like Swale Borough Council to consider recommending refusal of the variation of condition”. A Member described this as a 'Catch 22' (a dilemma / difficult circumstance from which there is no escape because of mutually conflicting / dependent conditions). Two councillors abstained from the vote being Cllr. Jayes and Cllr. Ingleton.”*

## **8.0 BACKGROUND PAPERS AND PLANS**

- 8.01 The application is supported by a covering letter (attached as appendix), and the above-noted historic applications are relevant.
- 8.02 Also of relevance is application reference 15/505670/FULL, which seeks permission for erection of a 1366 sq.m (GIA) foodstore (A1) and four small retail units within Class A1, A2, A3, A5, and D1 (186 sq.m GIA in total) together with associated access, car parking, service yard and plant, click and collect facility, trolley bays and landscaping on land at Plover Road, approximately 400m to the northwest of the current application site. (Known as the Asda application.) The application is currently being considered by officers.

## **9.0 APPRAISAL**

- 9.01 This is a difficult application to judge, in my opinion. On one hand it is clear that the Council has been waiting many years for the retail element of the Thistle Hill development to come forward and further delays to its provision would not be in the

interest of local residents, who currently have to commute some distance (to Minster, Neatscourt or Sheerness) for their shopping. Furthermore the recent interest in the site from a national retailer, and the submission and approval of 15/504250/FULL, indicates that the market is improving and lends some weight to the argument for not extending the period for compliance.

- 9.02 On the other hand I can see the developer's logic in not pushing ahead with construction while there is no definite end-user in sight. While not a certainty, it could result in the building lying empty for an indeterminate period which would be a poor outcome for residents in terms of appearance and local amenity, and also the potential for anti-social behaviour.
- 9.03 Similarly: the submission of the Asda application (ref. 15/505670) will, it could be argued, impede the progress of development here for the moment. Somewhat understandably, in my opinion, the previously-interested retailer is concerned in regards to competition from a larger retail floorspace offering in very close proximity to this site. Whilst planning can't take competition into account it clearly has a tangible impact on the likelihood of this site coming forward in the short term (if the Asda scheme were to be refused it could realistically be over a year before any subsequent appeal was concluded). This lends further credibility to the notion that, if built, a unit might remain empty for some time – at least until a decision over the Asda application had been reached.
- 9.04 With this in mind, I consider that it would be appropriate to approve this application and allow a further two years for compliance with the conditions / erection of the retail unit. In a worst case scenario this would allow for determination of the Asda application and, if it was subsequently determined that the current site could no longer attract a retail occupant, enable officers to engage the developer in discussions as to alternative uses for this site.
- 9.05 This would, in my opinion, be preferable to taking enforcement action to force the developer to build the units (and it should be noted that the deadline for completion has already passed, being 1 January this year) and facing the – very real, in my opinion – likelihood of those units being empty for a prolonged period. In this regard I do not agree with the Parish Council's comments that the developer should be held to the current schedule.

## **10.0 CONCLUSION**

- 10.01 Construction of the required retail units on this site has not progressed in accordance with conditions on previous planning permissions, and is unlikely to do so in the short-term due to uncertainty over neighbouring retail applications.
- 10.02 I consider that extending the deadline for provision of the units would allow some flexibility in terms of the site's future, and avoid the erection of units that may remain unoccupied for some considerable period of time.
- 10.03 Taking the above into account I recommend that planning permission should be granted, and the period for erecting the retail units extended until 1 January 2018.

## **11.0 RECOMMENDATION – GRANT Subject to the following conditions:**

- (1) The development pursuant to this permission shall be in accordance with the approved development brief for the site, and shall include total retail provision not

exceeding 1858 square metres net retail floor space to be provided in at least two units of varying size.

Reasons: To ensure the development delivers appropriate retail facilities.

- (2) The retail development identified in condition (1) above and in condition (6) of planning permission SW/04/1058 shall be completed by 1 January 2018.

Reasons: To ensure the development delivers the retail facility within a reasonable timescale, and in accordance with outline application SW/04/1058 and the approved development brief of December 2009.

- (3) The development carried out pursuant to this permission and the details approved under reserved matters application SW/07/0602 shall include the submission of an Energy Performance Certificate which sets out the energy performance of the building(s) to be constructed. Development shall be carried out in accordance with the approved details and retained in such a form unless otherwise agreed in writing by the Local Planning Authority.

Reasons: In the interests of promoting energy efficiency and sustainable development.

#### **The Council's approach to this application:**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance the application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

- NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

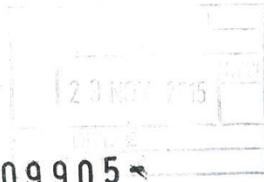
**APPENDIX**



Bovis Homes Limited  
Eastern Region  
The Manor House  
North Ash Road  
New Ash Green  
Longfield, Kent DA3 8HQ  
Telephone: 01474 876200  
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Director of Development Services  
Swale Borough Council  
Swale House  
East Street  
Sittingbourne  
ME10 3HT

19th November 2015



15/509905 -

15/509905

Dear Sir

**Retail Site, Parcel 4, Thistle Hill, Minster, Sheppey, Kent.**

Please find enclosed a planning application seeking to address non-compliance with a condition of the extant consent for the construction of the retail units within the Village Centre at Thistle Hill. The extant permission requires the retail development to be completed by 1<sup>st</sup> January 2016.

For clarification, this application is seeking to extend the time limit for the construction of the retail units permitted as reserved matters approval (SW/145/0109) as part of the original outline planning permission which was been subsequently renewed under reference SW/04/1059.

The retail site, which is owned by Bovis Homes (acquired in 2013), now has the benefit of a detailed planning permission granted earlier this year (15/504250/FULL). This scheme was designed specifically to meet the requirements of the proposed end user, a national supermarket and convenience store operator. This was a speculative application by the prospective developer and purchaser of the site, following an agreement for the sale, for which both parties had instructed solicitors. Unfortunately this sale agreement has not yet been concluded.

You will be aware that the extant reserved matters permission has been extended in the past and on each occasion, with the exception of the last extension, the application was supported by a report highlighting the lack of interest in retail floor space in this location. However, in 2014 the commercial climate had changed and a developer expressed interest in the site with the backing of a national retailer. Bovis Homes believed that this interest would lead to contracts being exchanged and a planning application for retail development being submitted during 2014. Whilst terms were agreed, solicitors were instructed and a detailed speculative application (to the end users specification) was approved, contracts have not yet been exchanged.



Registered Office: The Manor House, North Ash Road,  
New Ash Green, Longfield, Kent DA3 8HQ  
Registration Number: 397634 Registered in England

The reason why matters have not progressed beyond this point is the submission of a planning application for an alternative retail proposal, yet to be determined, on a site which is allocated for housing, in Plover Road only some 400 metres from the Village Centre. It is unlikely that the future of the Thistle Hill Village Centre Retail Site will be resolved until the competitor application is determined, the timescale within which an appeal can be lodged has lapsed and the time period for Judicial Review has expired. This being the case, it is unlikely that the Village Centre Retail Units will be constructed before the end of 2017. Consent is therefore being sought to extend the time period for the construction of the Village Centre Retail Units. This application is therefore seeking an extension of time of two years beyond the current date of 1<sup>st</sup> January 2016.

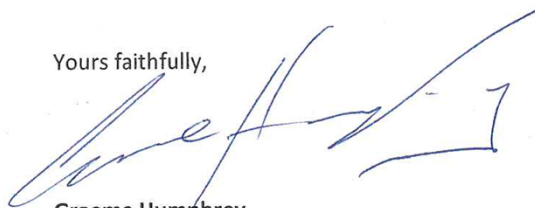
Whilst the planning system is unable take commercial matters fully into account, the present position is that the existence of an alternative retail proposal (the planning application on the Plover Road site), is affecting the full commitment of a national convenience store operator to the Village Centre.

The Village Centre retail building with the benefit of Bovis Homes Reserved Matters approval was obtained without the involvement of an end user due to the lack of commercial interest. Whilst it is far better for a retail building to be designed specifically with the end user in mind this was not an option at the time. This building could be progressed to the construction stage in order to satisfy the conditions of the planning permission, but without retail interest the building would be vacant and boarded up until an end user is found. This is clearly an illogical and counterproductive action to take. It is essential that an end user or users are known prior to the final details being progressed, submitted and a construction programme agreed.

With the submission of, the now approved detailed stand-alone retail planning permission, which was progressed speculatively, but with a specific end user in mind, it was hoped that construction of a convenience store in the Village Centre could have commenced and that there would be no need for this S.73 extension of time application. However, Bovis Homes finds itself in a position where an alternative proposal on an allocated housing site (Plover Road) is affecting the full commitment of a retailer to the Village Centre Retail Site.

I trust the submitted information is adequate to allow this application to be determined. Should you require any additional information please do not hesitate to contact me.

Yours faithfully,



**Graeme Humphrey**  
Area Project Director

15/509905-

Encs;  
Application Fee  
4 No. copies of  
    Planning Application Forms  
    Ownership Certificate  
    Site Plan SHEP VC RS  
    Planning Permission SW/14/0109