

## Planning Committee

Wednesday the 20<sup>th</sup> July 2016 at 7.00pm



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### Update Report for the Committee

The following notes and attached papers will be referred to at the meeting and will provide updated information to the Committee to reflect changes in circumstances and officer advice since the reports on the agenda were prepared

3. **Minutes** – to approve the Minutes of the Meetings of this Committee held on the 18<sup>th</sup> May and 15<sup>th</sup> June 2016
4. Requests for Deferral/Withdrawal - None

### Part I – Monitoring/Information Items

None for this Meeting

### Part II – For Decision

5. Schedule of Applications
  - (a) **16/00303/AS - Land between Canterbury Road and Lees Road, Brabourne, Kent - Outline Planning Application for up to 125 residential dwellings at land east of Lees Road, Brabourne Lees (including up to 35% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from Lees Road and associated ancillary works. All matters to be reserved with the exception of main site access**

#### Important application status update & consequential change to the Recommendation

The Planning Inspectorate has confirmed that the applicant has recently lodged an appeal against the Council's failure to determine the application within the statutory time period (or an agreed extension of time beyond that period). The grounds in the appellants appeal documentation are as follows;-

- the proposal would make a valuable contribution to ABC's housing land supply
- ABC has a shortfall in housing land supply
- ABC is unable to demonstrate a 5-year housing land supply
- ABC's full claimed supply is not robust and is considerably lower than 5 years
- ABC's policies for housing land supply are not up-to-date
- The proposal should be considered in context of presumption of favour of sustainable development as per paragraph 49 of the NPPF
- The proposals would be sustainable development in all its dimensions (environmental/social/economic)

However, at the current time, the Inspectorate has not yet finished checking whether the appeal is complete (and thus 'valid'). As a consequence of the appeal, the Recommendation to Refuse on Page 1.57 of the Report is to be changed to the following;-

Refuse on the following grounds (or if a valid appeal has been lodged already the Committee resolve that it would have refused the application on the following grounds);-

Grounds of refusal 1 & 2 - pages 1.57 & 1.58

Insert 'significantly and demonstrably' after 'be' in Line 6 of each ground of refusal.

Representation from Brabourne Parish Council

A letter dated 18<sup>th</sup> July 2016 has been received from the Parish Council. The full text of the letter is appended to the Update Report. In summary, the points made are as follows;-

(i) The Parish Council is pleased with the Recommendation and support the conclusion that granting planning permission would be inappropriate.

(ii) The Parish Council has, however, taken advice from 'specialist counsel' and consider the report makes 'incorrect and unnecessary concessions in relation to the status and weight to be given to relevant Development Plan policies'. The Borough Council is urged to obtain advice / further advice and is invited to update the Committee Report before Members or defer the consideration of it to another meeting in order to make the Report 'as robust as possible'.

(iii) Detailed reference is made to case law and, as a result, the weighting to be afforded by decision-maker in respect of policies for the supply of housing.

Replace paragraphs 43 and 44 with the following and insert paragraph 44A:

43. The starting point for determining the application continues to be the development plan and the application is contrary to the policies considered in section (a). However, there are other material considerations which need to be taken into account. The inspector's finding that the Council did not have a 5 year land supply is one such material consideration as is the Government's view that the policies in section (a) should not be considered up-to-date as a result. Other material considerations are the other provisions of the NPPF above as well as the Government's strong wish to "boost significantly the supply of housing" (para 47 of the NPPF) and the Government's view that planning should make "every effort" to meet the housing needs of the area (para 17 of the NPPF).
44. As is set out below, the application is not sustainable development and is contrary to other policies of the development plan. Accordingly, there is no presumption in favour of sustainable development and paragraph 14 of the NPPF does not apply, as the development is not sustainable and is still contrary to other policies of the development which are not classed as being "out of date".

- 44A. The NPPF does not say how much weight should be given to “out of date” policies and that is a matter for the Planning Committee as decision maker. However, I advise that in all of the circumstances of this case that on balance the material considerations above are such that the policies in section (a) should not be given full weight.

Typos

Page 1.1 – delete ‘239R’ and replace with ‘249R’

Page 1.18 - objections from neighbours: delete ‘247’ and replace with ‘249’

Ward Member

Cllrs Mrs Martin, one of the Ward Members, has requested that a number of documents are circulated to the Committee. These are all appended.

Representation from Kent Highways & Transportation (KH&T)

Should Members wish to grant planning permission, KH & T suggest the following conditions be attached;-

1. Provision of construction vehicle loading/unloading and turning facilities prior to commencement of work on site and for the duration of construction.

**Reason:** In the interest of highway safety.

2. The works to facilitate the implementation of site access (to include footway connections) shall be implemented in accordance with the approved details shown on Drawing GA027-001-001A labelled ‘Proposed Access Strategy’ shall be constructed and opened to traffic prior to occupation of the first dwelling on the application site.

**Reason:** In order to ensure adequate access to the development site in accordance with the requirements of Kent Design.

3. A scheme of minor off-site work to complete the existing footway to Mountbatten Way shall be completed prior to occupation of the first residential unit.

The associated works are to be undertaken by the applicant under a S278 Agreement.

**Reason:** In order to ensure adequate access to the development site in accordance with the requirements of Kent Design

4. Prior to the commencement of development a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. This shall include details of the following:
  - wheel washing facilities/measures to prevent debris and spoil and the discharge of surface water onto the public highway
  - access point for HGV’s and site personnel
  - provision of parking facilities for site personnel and visitors prior to commencement of work on site and for the duration of construction
  - dust suppression methods

- plant and noise generated from operation of vehicles and machinery
- fencing/hoardings
- lighting
- HGV routing
- hours of operation
- any temporary traffic management/signage required

**Reason:** In the interests of highway safety.

5. All details of the approved construction management plan shall be adhered to during the construction period.

**Reason:** To ensure provision of adequate off-street parking for vehicles and in the interests of highway safety and to protect the local amenity.

Updates to Table 1 beginning on 1.41

The Parish Council has requested an obligation that I do not consider is necessary, directly related and fairly and reasonably related in scale and kind and so cannot be taken forward. This is;-

- £7,000 towards restoration of the war memorial and surrounding area

Other matters raised by the Parish Council fall within the scope of the proposed Heads of Terms set out in Table 1 in the report.

- (b) **16/00045/AS - Land between Smarden Charter Hall and Weathercock, Pluckley Road, Smarden, Kent - Outline planning application for up to 50 residential dwellings with all matters reserved except for access**

Representations

21 additional letters of objection received raising the following points:-

- The residents of Smarden have been mis-lead by Ashford Borough Council in that they were lead to understand that Ashford would refuse the planning application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the Development Plan unless other material planning considerations indicate that a different decision should be made. This plan-led approach is endorsed by the NPPF. Residents do not consider that any 'material planning considerations' have been evidenced requiring a different decision. No documentation has yet been provided by Ashford Borough Council to Smarden Parish Council detailing the reason for this u-turn. The Parish Council needs sufficient time to review and respond to Ashford Borough Council's decision, prior to a decision being finalised on this application.

- The land is of agricultural value and therefore the scheme is contrary to the NPPF which calls for developments to be considered on lower grade agricultural land only. Farm vehicles regularly access land beyond the planned development and there is no appropriate allowance for this within the scheme. **(Hof DSS&D**

**comment:** the track to the farmer's field beyond would be retained as part of the development.)

- The proposed removal of existing hedgerow would cause irreparable damage to protected species. Whilst noting that replacement planting is proposed, the access, kerbs, associated necessary pedestrian crossing, footways, lighting and signage would serve as urbanising influences on this rural approach to the village.
- It seems totally wrong for this application to be passed purely on the basis that Ashford does not have a five year housing land supply.
- Developers have a nasty habit of sitting on sites in urban areas but prefer to build in rural areas where they feel they will make the most money. Our countryside should not be used as a plaything for these developers who have no thought or consideration for our precious rural villages, the people living there, or whether the infrastructure will cope with the extra people and traffic that their over ambitious plans will inevitably bring.
- The one real benefit of further housing in Smarden is affordable housing for local people but this is not addressed in the officer report which simply states that 35 % affordable housing will be provided contributing to the general overall need in the borough. A condition is required giving priority to local people.
- Urges the committee to ask itself the right questions before deciding on this application, the key ones being: Does 50 more houses in Smarden represent sustainable development and do the adverse impacts of the proposals outweigh the benefits?

### **Conditions**

Wording change to condition 40:

The layout details required to be submitted pursuant to Condition 1 of this permission shall be accompanied by layout plans (together with other plans and sections as may be necessary ) to demonstrate:

- the provision of increased accessibility standard in accordance with Approved Document Part M4(2) of the Building Regulations 2010.
- water efficiency measures to achieve 110 litres per person per day in accordance with Regulation 36, Part G (2) of the Building Regulations 2010. A water calculation shall be provided in accordance with Regulation 37.

**Reason:** To ensure that dwellings will be accessible, able to accommodate varying mobility needs over time and are efficient in the use of water.

### **Gift of land to The Charter Hall**

Members of the Planning Committee are advised that the gifting of land to The Charter Hall should not be taken into account in their determination of this planning application.

Replace paragraphs 56 and 57 with the following and insert paragraph 57A:

56. The starting point for determining the application continues to be the development plan and the application is contrary to the policies considered in section (a). However, there are other material considerations which need to be taken into account. The inspector's finding that the Council did not have a 5 year land supply is one such material consideration as is the Government's view that the policies in section (a) should not be considered up-to-date as a result. Other material considerations are the other provisions of the NPPF above as well as the Government's strong wish to "boost significantly the supply of housing" (para 47 of the NPPF) and the Government's view that planning should make "every effort" to meet the housing needs of the area (para 17 of the NPPF).
57. As is set out below, the application is not sustainable development and is contrary to other policies of the development plan. Accordingly, there is no presumption in favour of sustainable development in paragraph 14 of the NPPF does not apply, as the development is not sustainable and is still contrary to other policies of the development which are not classed as being "out of date".
- 57A. The NPPF does not say how much weight should be given to "out of date" policies and that is a matter for the Planning Committee as decision maker. However, I advise that in all of the circumstances of this case that on balance the material considerations above are such that the policies in section (a) should not be given full weight.

## Typos

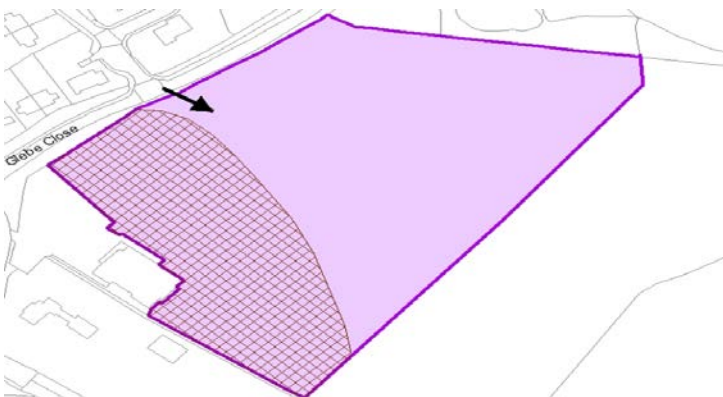
Para 48 - para 17 (not 12) of NPPF

Para 48 - replace final three words with "in respect of not being plan lead".

Para 89 – "except" not "accepting"

Para 49 – insert plan:

S37 Smarden – Land adjacent to Village Hall



- (c) **15/01032/AS - New Chimneys Bar And Restaurant, Loudon Way, Ashford, Kent, TN23 3JJ - Erection of a new A1 Retail Foodstore adjacent to the New Chimneys Public House**

### Representations

6 Further representations received. 2 General Comments, 3 objections and 1 letter of support.

Additional matters not already referred to in the main report are summarised below:

### **General Comments**

1. The following matters should be secured to ensure that the proposal does not adversely affect residential amenity.
  - a) Store opening hours from the start
  - b) Vehicles onsite after closing I.e. Staff & general parking
  - c) Deliveries most important make these crystal clear with penalties for violations, either onsite or on approach roads.
  - d) Lighting of the site after hours this will cause residents issue if off have it confirmed and if timed make sure it happens.
  - e) Store rubbish have a plan in place and paid for by store for clear up site and surrounding areas that's another issue for us in general and bad weather.
  - f) Trolleys method of preventing these from leaving site must be formulated.
  - g) During the building obtain agreement for noise, working times and vehicle movements including road cleaning or damage to infrastructure being repaired. This not exhaustive and I'm hoping the local Councillors will view the store from a residence point of view and obtain the best outcome for them. I cannot say this enough get everything in Writing for restrictions and be able to get these in forced by ABC departments.
  
2. Impact on the residents and request the following:
  - 1) Construction traffic should not access or leave the site at high activity times of the local primary school, i.e. 08:30-09:30 and 14:45-15:45 Monday to Friday.
  - 2) Improvements to the entrance landscaping to currently flanked by large bushes making it very difficult to see oncoming traffic when pulling out.
  - 3) That the developers respect the wishes of the immediate residents regarding noise and stay within conditions of work as listed in the recent document.

### **Object**

1. Previous comments remain and amendments have not addressed them.
2. The car park is constantly in use
3. Loudon Way is dangerous enough with the speed in which cars travel
4. There is a Waitrose supermarket store within 1 mile of this proposal.
5. Repton Park Development Consortium: Object

On the basis that the site plan (dwg 103 Rev F) see Planning Committee Report see Figure 1 which shows parking spaces positioned in the way of the potential route, specifically on the northern boundary adjacent to Repton Park.

Proposed [indicative] site layout dwg 007 Rev A must be supported by the Borough Council as this shows the full route for the potential Loudon Way Link without parking spaces in the way.

The form of a potential Loudon Way Link is unknown, plans 007 Rev A and dwg 106 Rev B do not allow for a separate cycle/pedestrian path and the application should be amended to allow for all potential options, if it remains an aspiration of the Borough Council for the link to be delivered, it must also be a requirement that the road and its associated footpath, from the site entrance at Loudon Way through to the boundary adjacent to Repton Park is delivered to an adoptable standard and adopted by KHT.

**[HoDSS&D Manager Comment:** The Figure 1 of the committee report (dwg 103 Rev F) is the plan which members are being asked to approve.

Dwg 007 Rev A has been supplied by the applicant to demonstrate that the new shop building does not prejudice the ability to deliver the potential Loudon Way Link to Repton Park. The presence or otherwise of parking spaces on this route as shown on Figure 1 of the report maintains the current status quo and thus does not preclude the delivery of the desired connection.

The design of the eventual route is a matter for a later planning application and its delivery is not a requirement of this application.]

## **Support**

1. Permission should be granted for the growing estate.
2. There is a need for a shop that can facilitate the whole neighbourhood.
3. The current local shop isn't sufficient for local need



4. Not convinced that the new development would cause too much traffic that there is insufficient parking.
5. The current car park is practically always empty and there is ample space to facilitate a shop and still leave more than enough parking spaces,
6. The proposal would provide access to a cash point

### **Conditions**

Minor wording changes to conditions 05, 10, 13, 19, and 20.

#### **New condition 21 – Acoustic protection**

No development shall take place until an acoustic assessment to show the rating level of any plant & equipment, as part of this development, has been submitted to and been approved in writing by the Local Planning Authority. The assessment must be carried out by a suitably qualified acoustic consultant/engineer and be in accordance with BS4142: 2014. Any recommended mitigation details shall be agreed in writing prior to the start of work and subsequently incorporated and implemented in accordance with the approved details.

**Reason:** In order to safeguard the amenities of adjoining residential occupiers.

#### **New Condition 22 – Trolley management**

No development shall commence until details of trolley management arrangements have been submitted to and approved by the Local Planning Authority in writing. The arrangements shall include but not be limited to measures to ensure trolleys are contained within the site, means of storing trolleys. The approved measures shall be implemented before the store is first used and subsequently retained thereafter.

**Reason:** In the interests of visual amenity and to safeguard the amenities of neighbours.

- (d) **15/01160/AS - Danemore, Beachy Path, Tenterden - Demolition of existing Sheltered Housing Scheme, four bungalows and former St. John's Ambulance (vacant). Erection of Sheltered Housing Scheme consisting of 34 apartments, four chalet bungalows and associated landscaping and car parking**

One additional representation received re-emphasising concerns that the chalet bungalow will cause overlooking and ask that the window should not directly overlook them.

- (e) **16/00554/AS - Dover Place Car Park, Dover Place, Ashford - Full application for a building (with a total floor space of 7,477 m<sup>2</sup> plus 166m<sup>2</sup> rooftop plant enclosure ) to include a flexible mix of B1, A1, A2 and A3 uses at ground floor level with B1 office accommodation above plus 220 car parking spaces.**

Additional Comments

Comments were received from **Susan Henderson, Access Contracts Manager from Southeastern** on 18/7/16 regarding further Highways Statement and can be summarised as follows;

1. Loss of car parking utilised by Southeastern passengers with no alternative being offered.
2. Concern over the issue of traffic turning out of Station Approach, especially when a Highspeed Service enters the station resulting in traffic queues. This causes problems for in excess of 660 buses coming in and out of the station each day. Traffic delays will impact on our passengers and also bus passengers at this busy transport interchange.
3. Station Approach is not a public highway and is owned by Network Rail and leased to Southeastern. The development should contribute to the maintenance of this road or bring the road up to highway standard so that it can perhaps be adopted.
4. It would be preferable if construction traffic gained access via Tannery Lane not via Station Approach.

Points 1-3 were also made previously and have been dealt with in the report. The fourth point about construction traffic only using Tannery Lane can be covered by conditions 19 and 20.

Comments were received from **Jerry Crossley, Kent County Council Development Team Leader** in the Planning Applications Group on 14/7/2016 which can be summarised as follows;

- The proposed development is very important to the regeneration of Ashford and its local economy, being a catalyst for the further development of the Commercial Quarter,
- it is also important in restoring some fabric to the currently discordant townscape in Elwick Road, long characterised by fragmented buildings with ill-defined spaces in between.
- Whilst the proposed new building is not in itself that dramatic in appearance, it occupies a key position in the streetscape and reflects the form and detailing of the earlier industrial buildings that once characterised this part of the town.

**John Grant** from Kent Police commented again on 13/7/2016 stating he was happy with the response of the applicants as they are pursuing Secured By Design (SBD) for crime prevention measures.

### Points of Clarification

On page 5.2 paragraph 4 report states that ground floor use will be office. This is incorrect and it should instead state that ground floor uses will be a flexible mix of A1, A2 and A3 uses to encourage retail or café/restaurant. The proposed ground floor uses are made clear elsewhere in description and in rest of report.

On Page 5.48 paragraph 89. Southeastern are not the land owner of the majority of Station Approach. Network Rail are landowners and they grant a lease to Southeastern. It is already made clear elsewhere in report that Network Rail are landowners.

### Other Matters

**Saturn House - Privacy of Bathroom Windows** - With regard to condition 3, the wording needs to be amended to make clear that if the owners of the flats do not agree to a mitigation scheme to ensure privacy then the scheme does not have to be carried out. I have recommended amending this condition as set out in conditions amendments section below.

**Highways Works & Contributions** - Following discussions regarding the s106 contributions, it is now recommended that the totality of the s106 contributions is a combined total of £250,000 including the bus stop due to viability considerations. It will be broken down as follows;

- £200,000 for highways works
- £30,000 for Public Realm improvements close to the highway junction which will be agreed with the Local Planning Authority
- £20K for the bus stop in Station Approach

In terms of the timing of the works and payment of the highway junction improvement work contributions and the restriction on occupation contained in condition 4, this will be discussed with the highway authority but payment to be made no earlier than within 3 months of the commencement of development.

### Amended Conditions

**Condition 3** to be amended to read as follows;

Within 3 months of the start of construction a mitigation scheme which seeks to retain the privacy of the 10 second floor south facing bathroom windows of the flats in Saturn House shall be agreed and approved in writing by the Local Planning Authority. This shall include evidence that the owner of the building and the occupiers agree to the mitigation scheme. If the approved scheme is agreed with the owners and occupiers of Saturn House flats, the scheme shall be implemented and completed prior to the occupation of the offices.

**Condition 9 (Architecture, Fine Detailing & Materials)**. Instead of 'Within 1 month of commencement' I recommended amending the wording to read 'Within 3 months of commencement of construction....' This is recommended to give a

degree of flexibility to the developers and time to agree quality detailing for the building.

**Condition 32(a)** (sustainable construction). Rather than SAP calculations the condition should make reference to the requirement for an SBEM assessment to be submitted. A Simplified Building Energy Model is the recognised energy assessment for a commercial building not SAP.

**Condition 39** (Ecology) to be amended to read;

Prior to the commencement of the South Park car park extension hereby approved, details of an ecology mitigation and biodiversity enhancement strategy in accordance with the Ecological Appraisal for this car park extension shall be submitted to and approved by the Local Planning Authority in writing and thereafter implemented in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority. The details shall include:

- Measures to safeguard retained habitats including boundary trees and watercourses;
  - Mitigation strategies in respect of protected species including reptiles and Water Vole;
  - Details of habitat provision and enhancement measures to be incorporated under the proposals including native and wildlife friendly planting, grassland seeding and faunal habitat features (including bat and bird box provision);
  - Sensitive lighting design to minimise impacts to bats;
- Reason: To ensure that wildlife is adequately provided for as part of the proposed development mitigation and in the interests of biodiversity and habitat protection and enhancement.

(f) **16/00562/AS - Site of former Rimmel International Ltd, Cobbswood Industrial Estate, Carlton Road, Ashford, Kent, TN23 1ED - Hybrid application comprising the following:**

- 1. Outline planning permission for 12 industrial units (B1c/B2/B8) on 1.3ha with all matters except access reserved.**
- 2. Full planning permission for a grounds maintenance depot and a ready mix concrete and satellite aggregate depot, internal spine road and improved access points off Carlton Road and Brunswick Road**

**Update 1: Add HS1 conditions and informatives to recommendations. These have been requested and agreed with HS1**

#### HS1 Conditions

1. The developer shall enter into discussions with HS1 and their Engineer, Network Rail (High Speed), as soon as practicable to assist in identifying the likely effect of the development on HighSpeed1 or HS1 Property.

Contact: HS1 Ltd, 12th floor, One Euston Square, 40 Melton Street, London, NW1 2FD ([safeguarding@highspeed1.co.uk](mailto:safeguarding@highspeed1.co.uk))

**Reason:** The nature of the proposed development is such that detailed discussion is required concerning the design, construction, future maintenance and demolition of the development to ensure that it does not compromise the integrity, safety, security, operation, maintenance and liabilities of HS1.

2. Prior to the commencement of any development on plot 3, the further details bulleted below shall be submitted in writing for approval by the Local Planning Authority in consultation with HS1. The development shall then be carried out only in compliance with the approval unless previously agreed in writing by the Local Planning Authority in consultation with HS1:
  - Hard and Soft landscaping arrangements for HS1 maintenance strip
  - Adjustments to errant vehicle protection barrier and access gates to be compliant to standards and approved by KCC highways and evidence provided.
  - Impact assessment for loads on tunnels.

**Reason:** The planning application does not contain the detail needed to identify potential effects upon the integrity, safety, security, operation, maintenance and liabilities of HS1 and HS1 Property.

3. Prior to the commencement of any development on plot 3, details of the design of the foundations and other works proposed below existing ground level shall be submitted in writing and approved by the Local Planning Authority in consultation with HS1. Construction activity shall then be carried out in compliance with the approved details unless previously agreed in writing by the Local Planning Authority in consultation with HS1.

**Reason:** To ensure that loads on, and settlement of, HighSpeed1 tunnels, structures, track and other infrastructure do not prejudice the safety or operation of HighSpeed1.

4. Prior to the commencement of any development on plot 3, details of the special measures, to identify and protect HighSpeed1 or UK Power Networks buried services shall be submitted in writing to and approved by the Local Planning Authority in consultation with HS1. Construction shall only take place in compliance with approved measures unless the Local Planning Authority in consultation with HS1 has previously agreed in writing to any change

**Reason:** No such details have been provided. These services are crucial to the operation of HighSpeed1.

5. Prior to the commencement of any development on plot 3,, details of the size, loading and proximity to HighSpeed1 of additional ground

loads such as stockpiles shall be submitted in writing and approved by the Local Planning Authority in consultation with HS1. Works shall be carried out in conformity with the approved details unless the Local Planning Authority in consultation with HS1 has previously agreed in writing to any change. Note: If the stockpile is within the zone of influence of HighSpeed1 infrastructure an engineering design will be required from the developer for approval in advance of excavation.

**Reason:** To ensure that the stability of HighSpeed1 tunnels, structures, track and other infrastructure is not prejudiced.

Prior to the commencement of any development on plot 3, details of the plant and equipment proposed which are likely to give rise to vibration (such as pile driving, demolition and vibro-compaction of the ground) together with predicted vibration levels, shall be submitted in writing and approved by the Local Planning Authority in consultation with HS1. Activities likely to cause vibration in the vicinity of HighSpeed1 infrastructure such that a peak particle velocity (PPV) of 5mm/s may be exceeded at the railway boundary will be subject to agreement in advance.

Where activities could give rise to PPV of 5mm/s or greater, a vibration and settlement monitoring regime shall be submitted in writing to for approval by the Local Planning Authority in consultation with HS1. It shall be put in place prior to the start of works. HS1 shall be provided reasonable access to the results of monitoring

**Reason:** No details of vibration have been provided. To ensure that vibration does not prejudice safety, operation and structural integrity of HighSpeed1.

## HS1 Informatives

### **Protective Provisions Agreement (PPA)**

The developer is expected to enter into a PPA with HS1. This is a legal agreement between HS1 and the developer covering safeguards, processes, responsibilities and cost recovery.

Reason: The nature and scale of the proposed development is such that detailed discussions, agreements and indemnities are required in respect of the design, construction and future maintenance of the development in order to protect HighSpeed1.

### **Noise**

The developer is reminded of his obligation to ensure appropriate mitigations are adopted to protect the development from noise from HighSpeed1.

Reason: The developer is responsible for ensuring that the development meets statutory requirements.

## **Covenants**

The applicant is reminded that covenant(s) apply to the site covering the following issues:

- land/property use
- construction on the maintenance strip

Reason: The covenant has been entered into with the owner or previous owner of the land in order to protect HS1.

## **Rights of access**

The applicant is reminded that HS1 has the right to access the maintenance strip.

Reason: HS1 requires access to operate and maintain the HighSpeed1 railway, including in emergency. This right is normally contained in the sale/transfer of land agreement.

## **Costs incurred**

The developer shall agree to pay the costs incurred by HS1 and Network Rail (High Speed) in reviewing and approving the development.

Reason: Costs to be incurred from a development reside with the developer.

**Update 2:** Add Ecology condition requiring the applicant to ensure they comply with the mitigation set out within the submitted ecological report.

Development shall be carried out in accordance with the recommendations of the Reptile Survey Report carried out by Ecology Solutions dated September 2015 unless otherwise approved in writing by the Local Planning Authority.

**Reason:** To protect and enhance existing species and habitat on the site in the future.

**Update 3:** Amendment to drainage condition in light of the receipt of additional information relating to the proposed drainage of plot 1 (Grounds Maintenance Depot). The amended condition has been agreed with KCC SUD's and the Council's own drainage consultant.

Surface water generated during the construction phase of the works will not be increased. Any existing drainage infrastructure should remain in place, as far as reasonably practical, until such a time as the approved proposed drainage system is fully installed and approved in writing by the Local Planning Authority. The existing drainage system should only be disconnected once the proposed system is fully operational and installed as per the agreed design.

Before the existing on site drainage is disconnected the following shall be met;

No development shall commence on plots 1 and 2 until plans and particulars of a sustainable drainage system (including the details below) for the disposal of the site's surface water, based on the principles set out in the following application documents, have been submitted to and approved in writing by the Local Planning Authority;

- *Proposed Trade Units, Council Depot and Ready Mix Plant, Carlton Road, Ashford – FRA by PCS Consulting Engineers Ltd dated 19<sup>th</sup> March 2016.*
- *Drawing 15-016-900-REV A.*

This will include final calculations for plots 1 & 2 operating as a standalone system (In isolation of any other potential future drainage works). A reduction in surface water discharge rates from plots 1 & 2, compared to the existing site discharge rates for these plots, is required.

The final drainage plan for the scheme will be approved by Ashford Borough Council to ensure that surface water runoff from the site is being dealt with appropriately and in line with Ashford Borough Council's Sustainable Drainage SPD. This will include a modified surface water drainage strategy which satisfies the requirements of the SPD.

The submitted system shall comprise retention or storage of the surface water on-site or within the immediate area in a way which is appropriate to the site's location, topography, hydrogeology and hydrology.

Surface water runoff should be dealt with within the application boundary via suitable methods approved by Ashford Borough Council where possible. Proposals should identify any overland flow paths, channelling of flows, or piped flows along with the final point of discharge of the water from the site should be identified.

The submitted system shall be designed to (i) avoid any increase in flood risk, (ii) avoid any adverse impact on water quality, (iii) achieve a reduction in the run-off rate in accordance with the Ashford Borough Council Sustainable Drainage SPD document, adopted October 2010. (iv) promote biodiversity, (v) enhance the landscape, (vi) improve public amenities, (vii) return the water to the natural drainage system as near to the source as possible and (viii) operate both during construction of the development and post-completion.

The submitted details shall include identification of the proposed discharge points from the system, a timetable for provision of the system and arrangements for future maintenance (in particular the type and frequency of maintenance and responsibility for maintenance) and shall be retained in working order until such time as the development ceases to be in use.

Permission for discharging of any surface water to the existing public sewer must be obtained by the applicant via written confirmation from Southern Water of their agreement to the proposals.



The approved system shall be provided in accordance with the approved timetable. The approved system shall be maintained in accordance with the approved details and shall be retained in working order until such time as the development ceases to be in use.

A plan indicating the routes flood waters will take should the site experience a rainfall event that exceeds the design capacity of the surface water drainage system or in light of systems failure (Designing for exceedance) including appropriate mitigation measures and emergency response procedures.

**Reason:** In order to reduce the impact of the development on flooding, manage run-off flow rates, protect water quality and improve biodiversity and the appearance of the development pursuant to Core Strategy Policy CS20 Sustainable Drainage.

**Update 4 – (Contamination)** Additional information has been received in the form of a remediation strategy and watching brief. As such this detail is no longer required by condition. The Council's EHM has been consulted on this additional information and has concluded the detail is acceptable.

Recommend that condition 05 (contamination) which originally requested this information is therefore deleted and if planning permission is granted the remediation strategy and watching brief are added to the list of approved documents.

- (g) **16/00669/AS - 11 to 25 (Odds only) Oak Tree Road, Ashford, Kent TN23 4QR - Proposed repair and reinstatement of 8 fire damaged flats**

None

- (h) **16/00674/AS - 11 to 25 (Odds only) Oak Tree Road, Ashford, Kent TN23 4QR - Proposed demolition and rebuilding of 8 fire damaged flats**

None

## **Appendix 1 – Further letter from Barbourne Parish Council**

**BRABOURNE PARISH COUNCIL**  
**14 Sandyhurst Lane**  
**Ashford**  
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**01233 623902**  
[clerk@brabournepc.kentparishes.gov.uk](mailto:clerk@brabournepc.kentparishes.gov.uk)

Mr R Alderton  
Head of Planning and Development  
Ashford Borough Council  
Civic Centre  
Tannery Lane  
Ashford  
TN23 1PL

18<sup>th</sup> July 2016

Dear Mr Alderton

**PLANNING COMMITTEE 20<sup>TH</sup> JULY 2016**  
**APPLICATION 16/00303/AS**  
**LAND BETWEEN CANTERBURY ROAD AND LEES ROAD, BRABOURNE LEES**

1. Brabourne Parish Council is very pleased that the officer recommendation on the above application is to refuse and we fully support the conclusion that it is inappropriate to grant planning permission.
2. However, the Parish Council has taken advice on the report from specialist counsel and we are seriously concerned that the report makes incorrect and unnecessary concessions in relation to the status of and weight to be given to relevant Development Plan policies. We consider this will significantly hinder the Borough Council's case at any inquiry. We set out our reasons below and request that the Borough Council takes urgent advice (or further advice) on the matter with a view to producing an update report for members on Wednesday evening or deferring the matter to enable a revised report to be prepared for a subsequent meeting. The applicant has now appealed so there is no urgency to proceed immediately and plainly it is more important to ensure that the Borough Council's case is as robust as possible.
3. As you know, nothing in the NPPF displaces the statutory test in s38(6) of the 2004 Act which requires applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The NPPF (and in particular paragraphs 14 and 49 referred to in the officer report) is but one such 'other material consideration'. Case-law is absolutely clear that the weight to be given to the NPPF in any particular case, and the weight to be given to relevant housing policies in any particular case, is legally a matter for the decision-maker, in this case Ashford Borough Council. The weight to be given to policies, even if deemed 'out of date' by the NPPF is not prescribed or dictated by the NPPF. The position is made very clear in a very recent case in the Court of Appeal: 'The weight to be given to such policies....will vary according to the circumstances....There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up to date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF.'  
(Lindblom LJ in Suffolk Coastal case paragraph 47 – March 2016.)  
Further clarification is to be found in another recent case in the High Court:

'The NPPF does not go on to prescribe that no weight or little weight should be given to those [out of date] housing supply policies. That is a matter for the judgment of the decision-maker...'

'Thus paragraphs 14 and 49 do not prevent a decision-maker from identifying sound evidence and reasons as to why the justification for and objectives of (for example) a housing distribution policy are of continuing importance and therefore weight.'

(Mr Justice Holgate, Edward Ware Homes case paragraphs 7 and 28, January 2016.)

4. An analysis of the above kind is not attempted in the officer report. On the contrary, the report contains incorrect and unnecessary concessions asserting, in effect, that Development Plan policy automatically carries 'little weight' (paragraph 43) and conceding that it is not open to the Borough Council to refuse 'simply because the site lies outside.....' (paragraph 45). Similarly, it is wrong to concede in paragraph 87 that 'in the light of [Tilden Gill appeal] the Council is unable to refuse...as a matter of principle due to the 5 year supply issues'. These concessions play into Gladman's hands and do not need to be made.
5. In relation to Tilden Gill itself, although the Inspector in that particular case gave little weight to 'out of date' policies, this was expressly in the context of a 'Tier 2 settlement' (next most sustainable after Ashford itself) and it is entirely proper for the Borough Council to take a different view on weight to be given to the policies in the context of a lower tier settlement. There is a good argument for giving spatial distribution policies significantly more weight here, but the report does not seek to do so.
6. The two leading court cases referred to earlier provide further helpful guidance on factors that can be relevant to the weight to be given to policies for the supply of housing. These include:
  - The particular or specific purpose of a restrictive policy (Suffolk Coastal, paragraphs 37,47,70).
  - The extent of the shortfall (paragraph 47).
  - Action being taken by the Local Planning Authority to address the shortfall (paragraph 47). In the present case this would include, for example, the grant of any permissions and the publication of a consultation draft local plan. Whilst the draft plan itself carries very little weight its publication is relevant to the issue of what is being done about the shortfall and demonstrating it is a temporary phenomenon which the Council is addressing in the right way.
  - The nature of the shortfall (Edward Ware Homes, paragraph 26).
  - Reasons for or causes of the shortfall (paragraph 26).
  - How the shortfall is likely to be overcome (paragraph 26).
  - Rationale for a policy and its evidence base (paragraph 27).
  - Whether the objectives of the policy continue to be soundly justified (paragraph 27). The fact that the new consultation draft plan includes a similar spatial distribution strategy to the Core Strategy is relevant in this respect.
  - Whether a failure to provide a 5-year supply in the district is attributable to problems with delivering sites in a discrete part of the district (paragraph 27 and paragraphs 36-38).
  - Whether the development proposed to address the shortfall would breach the objectives of a distribution policy which continues to be soundly justified (paragraph 27). These last two factors are, of course, relevant in the present case where there would be stark conflict with a justifiable distribution policy in circumstances where delivery in a discrete part of the area – namely the urban area of Ashford, not the rural villages – has been an issue.
  - Whether the shortfall will be addressed within an appropriate timescale by other means (paragraph 27).
7. I am sure you will appreciate that the Parish Council's only objective is to assist the Borough Council in presenting the best possible case in the event that permission is refused, as recommended. We therefore urge the Borough Council to seek urgent advice in order to update or revise the published officer report and withdraw the inappropriate concessions in the report regarding the weight to be given to relevant Development Plan policy. Perhaps you could let me know by return what action you intend to take.

Yours sincerely



Susan Wood  
Clerk to Brabourne Parish Council