

Planning Committee – Supplementary agenda

A meeting of the Planning Committee will be held on:

Date: 29 January 2014

Time: 7.00pm

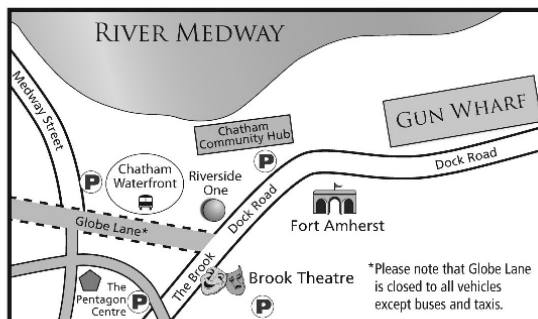
Venue: Meeting Room 2 - Level 3, Gun Wharf, Dock Road, Chatham ME4 4TR

Items

- 20 Additional Information - Supplementary agenda advice sheet (Pages 3 - 12)**

For further information please contact **Ellen Wright, Democratic Services Officer** on Telephone: 01634 332012 or Email: democratic.services@medway.gov.uk

Date: 31 January 2014



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If you have any questions about this meeting and you want to speak to someone in your own language please ring **01634 335577**

বাংলা	331780	ગુજરાતી	331782	ਪੰਜਾਬੀ	331784	کوردی	331841	ارو	331785	Русский	332374
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Medway Council

PLANNING COMMITTEE – 29 January 2014

Supplementary Agenda Advice

Minute 685 MC/13/2232 199/199c Gillingham Road, Gillingham

Reason for refusal agreed with Chairman and vice Chairman

The proposed later hours of opening will be prejudicial to the amenity of neighbouring residents in this primarily residential area due to late night noise and disturbance caused by the comings and goings of customers. The proposal is therefore contrary to the provisions of Policy BNE2 of the Medway Local Plan 2003.

Page 16 MC/13/1804 Site at Lower Upnor Depot, Lower Upnor,

Representations

The applicant's planning agent (the Agent) has written in regard to the recommendation to refuse this application on the grounds of the lack of ecological information. A copy of this letter is attached for Members information. In conclusion the applicant is requesting that the scheme is determined on the basis that there can be an alternative approach of approval subject to the further ecological survey work being completed to the Council's ecological advisors satisfaction and authority being delegated to the Director / Development Manager to issue the permission once the Council's ecological advisor is satisfied.

Officer Comment

It is possible for the Committee to agree that with the exception of ecology, all other aspects of the proposal are satisfactory. Members could therefore choose to resolve to approve the application subject to the ecological work being undertaken and, if found satisfactory, grant delegated powers to the Development Manager to issue the permission with appropriate conditions flowing out from the recommendations of the survey work. If the survey work highlights problems then the application be reported back to Planning Committee.

Page 74 MC/13/3153 National Grid, Isle of Grain

Representations.

The **County Archaeologist** has confirmed that no archaeological measures are required in this instance

One Local Resident has written commenting that the Council has failed to consult Local Residents affected by the development and pointing out that gas filled tankers will be on the Grain Road and this is an escape or evacuation route for Grain Village which would be affected.

Officer Comment

The LNG road tankers are regulated and controlled under the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009. Members will be aware that where there is other legislation which controls matters of potential concern, the Government has advised Local Planning Authorities that it should not duplicate these controls and that such concerns fall outside of the Local Planning Authorities remit. As such the carriage of dangerous goods clearly falls under the control of other legislation and as such no planning objection to the development can be raised in relation to the fact that LNG Road Tankers would be on the public highway.

Page 98 MC/13/2864 59-61 High Street, Rochester

Proposal

The description should be changed to read “ Change of use from Florist (Class A1) to a coffee shop (Class A3) with ancillary retail (class A1).”

While the applicant has described the proposal as a change of use from Class A1 to a mixed use of Class A1 and A3, the proposal is to all intents and purposes a change of use from a florist to a coffee shop. The submitted plans are very clear in that by bringing back into use the basement there will be provided a sit down area covering two levels. The primary use of the premises is therefore very clearly A3. There is however an ancillary A1 retail use which is that customers can take away beverages and cold food (like a sandwich bar) and this is classed as an A1 use. However, it is clear from the plans that the A1 use is ancillary to the A3 use and not a mixed use of the premises. The food to be consumed on the premises is either cold food or heated pre packaged food. There will be no food preparation and cooking on the premises.

Representations

The Agent has written to make the following points:

- The change of use could occur for 2 years without Planning Permission.
- There will be no loss of retail as this will be mixed A1/A3 use.
- It will not be Costa equity store, but will be run by local person with local employees and its use will support local businesses in the High Street.
- Is a meeting place as well as a café.

- Will facilitate the restoration of the basement which has previously been neglected.
- The use will support the vitality and viability of the High Street.

Planning Appraisal

Under the terms of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013, class D of the order has been amended to allow for a change of use from A1 to a flexible use including A1, A2 and A3 for a period of 2 years, provided that the new use is a single use.

On the basis that the proposal is for a change of use to A3 rather than a mixed use, it can benefit from this flexible temporary permission and could be converted to the proposed use for a period of 2 years without requiring planning permission.

Page 118 MC/13/2829 2 Trevale Road, Rochester

Representations

3 letters have been received advising that the revised plans do not alter their objections.

Page 170 MC/13/1469 Greatfield Lodge, Darnley Road

Recommendation

Condition 2 be **amended** as follows:

2. The development hereby permitted shall be carried out in accordance with the following approved plans: HSP/FR1, HSP/FP2, HSP/FP3, 227/07 rev A, 227/08 rev B, 227/09 rev A, 227/10 rev A, 227/11 rev B, 227/12 rev A, 227/13 rev A, 227/14 rev A, 227/15 rev A and 227/18 received 19 June 2013; 3033, 227/02 rev A, 227/17 rev A, 227/19 received 22 November 2013; 227/01 rev D received on 9 January 2014 and 227/03 rev C, 227/04 rev B, 227/05 rev C, 227/06 rev B received 21 January 2014.

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

Representations

The applicant has submitted revised drawings and written an e-mail to address concerns raised by Members at the previous Planning Committee.

Parking

In relation to parking, a revised drawing has been submitted to show that 35 spaces are to be provided (an increase from 27). This meets the Councils Interim Residential Parking Standards.

Medway Housing Design Standards (Interim)

The applicant has submitted revised layout drawings together with a schedule to demonstrate that the room sizes now comply with the good practice standards of the document rather than just meeting the baseline standards. Prior to the revision, the layout showed some of the individual rooms within some of the flats being disproportionately larger than other rooms due to the proposal largely being a conversion. The applicant has achieved the good practice standards within the scheme by reducing the size of these larger individual rooms to allow for the increase of other rooms.

Section 106

The applicant submitted the financial statement with the current application having liaised with the original case officer and an officer from the property team of Medway Council. When the Council considered the original application, there was difference of opinion between the Council and the applicant with regard to values of the units. This current application was submitted with the financial statement and further evidence regarding values. The financial statement was accepted by the Council as demonstrating why the lower s106 contributions are justified.

MC/13/1804

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28 January 2014

Chris Butler
Principal Planner
Development Economy and Transport
Medway Council
Gun Wharf
Dock Road
Chatham
Kent
ME14 4TR

Dear Mr Butler,

Re Lower Upnor Depot, Lower Upnor
LPA Ref MC/13/1804

As you know the scheme to be presented to members tomorrow at the Lower Upnor Depot relates to a prominent site in a sensitive location where there are a great number of constraints. The final scheme has benefitted from extensive consultation and has been the subject of pre-application presentations to officers/members, the South East Regional Design Panel and has closely involved the heritage team and English Heritage. Complex heritage, access, flood risk and viability issues have shaped the final proposals. In all these aspects of the scheme the proposal has the support of officers.

The one area of the scheme that it has not been possible to resolve is the principle of whether further bat surveys should be undertaken "upfront" before the determination of the application or later as a condition of planning. This gives rise to a problem in this case because the recommended surveys cannot be carried out from September until May.

The applicant fully understands and has agreed to undertake the additional surveys (which in any event are essential for required bat licenses from Natural England) so the primary issue is solely one of timing.

It is accepted that in most cases surveys should be carried out in advance of determination of applications. The purpose of carrying out such surveys first is that this allows mitigation to be

offered and assessed. This recommended procedure for the timing of surveys is to ensure that a planning authority does not grant planning permission for development where later mitigation (following survey findings) cannot be "retro-fitted" to the approved layout. Such examples might include where housing occupies 100% of the site, or on a greenfield site where the earlier approved layout showed hedgerows or trees being lost. In these cases, it is recognised that "front loading" the surveys is essential. However these circumstances do not apply to the application site and this in my view allows greater flexibility for the decision maker in this case.

The principle of allowing an application to be determined in advance of survey work is available to the LPA. The e mail response of Helen Foster (dated 18th December 2013) confirms this and states;

"As I've said previously, as no emergence surveys have been carried out, it is currently unknown what mitigation is required and if it can be incorporated in to the site plans. We are aware that Government Guidance states that in exceptional circumstances, surveys can be conditioned (if planning permission is granted) but on the occasions we advise Medway Council that it is acceptable the ecologists have usually provided details of what mitigation they expect to be required."

Since this statement by KCC, a mitigation report (attached) was prepared by a specialist ecological practice Arbtech which concluded that the proposals not only mitigate the impact but in fact represent an opportunity for enhancement given the unique characteristics of the site:

The full mitigation is set out in the attached report by the specialist consultants which includes a number of exceptional factors –

- The proposed new development is restricted to the existing brownfield site and will not involve the loss of important tree lines or hedgerows that could be used for bat navigation;
- The development proposals are restricted to the existing brownfield area and 43% of the site is an undeveloped bank totalling 1.5hectares in area that is offered as a wildlife/ecological area. In the past military use has precluded any control of the management of biodiversity at the site and the undeveloped areas of the site were periodically cleared by the MOD. The proposals include the management of the 1.5ha portion of the site which will enhance biodiversity.
- There are also 4 air raid shelters within the bank area some of which currently cannot be physically be accessed by bats. These underground shelters would be "opened up" and can provide excellent new roosting opportunities for bats. In addition a number of new trees will be planted and "bat lofts" created with low level lighting and timing controls proposed for construction activity.

- This site is a particularly important heritage asset containing a number of Grade II* listed buildings that have been vacant for some time and delay to the determination of the application for ecological reasons must be weighed against the desirability for heritage and economic reasons of accelerating a new chapter in the use of the site (and particularly the torpedo buildings).

Summary

It is accepted that in most cases, ecological best practice should ensure that survey assessment is undertaken first and then a satisfactory mitigation strategy formulated. In this case the applicant has not completed the full surveys (although a Preliminary Bat Survey and later Bat Roost Survey has been undertaken) but what is offered is a robust mitigation strategy that would be sufficient to satisfy a worst case survey. Whilst this approach would not be possible for most sites this is a credible option in this case given a) the unique site circumstances and b) the nature of the development proposals vis a vis past MOD usage of the site.

Advice from the applicant's ecology consultants Arbtech is that we are sufficiently informed to have confidence that whatever the findings of the further survey work these would not alter the proposed planning layout and proposals in any way. The requirement of the need for further surveys and the approval of the final details of the mitigation strategy and its implementation are matters that can be dealt with by the suggested planning conditions attached to this letter.

As you are aware there are further safeguards for the protection of bats because of the need for a Bat License (prior to construction) which cannot be secured until permission is in place. By granting permission earlier, the licensing process with Natural England could also start earlier.

Page 45 of your report states Members will be aware under the Natural Environment and Rural Communities Act 2006 that "Every public authority must, in exercising its functions have regard, so far as is consistent with the proper exercise of those functions to the purpose of conserving biodiversity." It is contended that the mitigation strategy proposed goes beyond simply conserving and through the measures outlined in the mitigation strategy will achieve a net gain in biodiversity which is the aspirational NPPF target "where possible."

Whilst the process for safeguarding ecological interest is fully appreciated by my clients it is considered that the unique aspects of this proposal and opportunities for enhancement represent exceptional circumstances. Therefore in this instance applying the usual approach of "upfront survey work" is not essential prior to determination for the reasons outlined above.

My client has made you separately aware of how this delay to the determination of the application will have very serious operational and contractual implications. However, given the time and effort already expended by the applicant team up to this point I would request that the recommendation is substituted for approval with authority delegated to the Director/Development Manager to issue the decision upon receipt of the completed ecological survey work findings. Although frustrating the applicant has no appetite to pursue this via the

appeal route which would be the only alternative way of testing the justification of the timing of the ecological survey request. This is because even if successful such an approach would lead to greater delay in this scheme coming forward.

I would be grateful if you could make this letter available to members.

Yours sincerely

A handwritten signature in cursive script that reads "A J Hume".

A J Hume

harris, dave

From: Colin @OY Developments [colin@oydevelopments.co.uk]
Sent: 29 January 2014 14:13
To: avey, john; baker, ted; bowler, nick; carr, david; chambers, diane; colman, david; gilry, dorte; griffin, sylvia; griffiths, glyn; gulvin, adrian; hubbard, stephen; mackness, andrew; purdy, wendy; royle, david; smith, diana (external); watson, tony
Cc: harris, dave; 'Colin @ The Chatham Rope Company'
Subject: UPNOR DEPOT Planning Application: MC/13/1804

Dear Member

With your indulgence we are writing to explain/express our thoughts re the perceived status of our application.

Ordnance Yard Developments (OYD) over the past two years has worked closely, tirelessly and constructively with Council and other bodies to deliver an outcome for this site that meets the aspirations of all parties - it has been a difficult journey at times but worthwhile in that until a few days ago , the outcome was to be an application which was to be recommended for approval.

It is our understanding that the last minute change to the recommendation from approval to refusal is influenced by concern that Council may be open to a legal challenge on grounds of ecology – we have to assume that internal legal opinion has informed.

As you will see from the application we have conducted significant ecological surveys to which we have responded by including the most severe mitigation strategy - it has always been acknowledged that some further surveys would be necessary but that our mitigation strategy would cope with any outcome; this situation has existed since the application was lodged in July last year, all parties accepting that conditions would be drafted to accommodate and ensure the completion of the further work.

Whilst in no way wishing to put Council at risk, we do believe that with the survey work already undertaken, the mitigation outlined and the further work acknowledged by condition, there would be a minimal risk of any challenge as there would be no point - by the time a challenge became any threat the additional work would have been completed. We are fortunate in this development that almost 50% of the site will remain as is (development only occurs on the existing built and previously developed area) affording bio- diversity to continue and be enhanced. In many ways this site could be argued to evidence exceptional circumstances within Government Guidance.

The ability to deliver this sensitive mixed use development scheme, encompassing so much of historical interest, is much dependent upon our ability to bring together in a timely fashion the investors and potential occupiers of the site, including our own operating businesses - the timing and commitment of these have been geared to a programme informed by the expected approval of this application.

To enable us to have the best chance to continue to be able to deliver this scheme we would respectfully ask that you be minded to approve our application subject to conditions as this outcome minimises the time delay and minimises the risk of our losing key investors and occupiers vital to this project.

We thank you for taking time to read this e- mail .

From the Directors of Ordnance Yard Developments Limited

Colin Parr on behalf of the above.

