

**Application No:** Y15/1154/SH

**Location of Site:** Land Adjoining 20 Encombe Sandgate Kent

**Development:** Erection of 36 apartments in three blocks together with access road, parking spaces and associated landscaping.

**Applicant:** Mr David Pownceby  
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**Agent:** Mr Alex Jackson  
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**Date Valid:** 26.11.15

**Expiry Date:** 25.02.16

**PEA Expiry Date:** 10.05.16

**Date of Committee:** 03.05.16

**Officer Contact:** Mrs Wendy Simpson

**RECOMMENDATION:** That, subject to the receipt of an acceptable heritage assessment that deals with the issues raised by Historic England, planning permission be granted subject to the conditions set out at the end of this report and the applicant entering into a S106 agreement to secure primary education, community services, open space/play space and affordable housing contributions and a wildlife habitat maintenance program; and that delegated authority be given to the Interim Head of Planning to add any further conditions required and negotiate the wording of the legal agreement.

## **1.0 THE PROPOSAL**

- 1.1 The application is for the erection of 36 apartments in three blocks on the site, together with an access road, 81 parking spaces and associated landscaping.
- 1.2 The proposed three blocks buildings are arranged in a gentle arc facing south on the upper part of the site. Gaps between the blocks are around 11m. The eastern most block [Block 1], closest to the site access off

Encombe, is proposed as 4 storeys high over a basement car park. This block would contain 8 units (7 x 3-bedroomed and 1 x 4-bedroomed with roof terrace.) The central and western blocks would each be 6 storeys in height, over basement car parks. Block 2 (central block) would contain 15 x 3-bedroomed units and Block 3 (western unit) would contain 13 units (12 x 3-bedroomed and 1 x 4 bedroomed with roof terrace). Each apartment would have access to either balcony or terrace outdoor space of varying amounts.

- 1.3 The proposal involves some excavation of the site to create a basement parking level, which will also incorporate measures to address inherent land stability issues in the area.
- 1.4 The design of the buildings is multifaceted and contemporary with the upper floors of each block having a reduced internal floor area compared to the lower levels. The design takes advantage of utilising flat roof areas as roof terraces and recessed balconies are also incorporated.
- 1.5 The external material palette details the use of smooth white render, hardwood timber cladding, aluminium grey copings, timber sliding louvres, frameless glass balustrades, grey aluminium doors and windows.
- 1.6 The site is laid out with the road access and visitors' parking to the rear of the three blocks. This area provides 20 parking spaces. Waste storage and collection will also take place from this area. The residents' parking spaces are all within the basement of the buildings. The basement parking is accessed via a ramp between blocks 2 and 3 and provides 61 parking spaces and 3 blocks of cycle parking.
- 1.7 The landscaping of the site involves gabion terraced steps and stepped retaining walls, block paved shared access roads, resin bound shingle paths and a resin bound private access road to the basement parking spaces. New soft landscaping is proposed with native planting overhanging the terrace steps and wildflower planting. The existing woodland to the rear and the west of the site is to be retained but 13 trees that are positioned slightly more into the central area of the site are to be removed.

## **2.0 LOCATION AND DESCRIPTION OF SITE**

- 2.1 The site lies at the northern end of the Encombe cul-de-sac, which is accessed from the A259 at Sandgate Esplanade. It covers an area of approximately 1.65 hectares, comprising an open plateau and trees to the west and wooded hillside (part of the Sandgate Escarpment) at the rear. The front part of the site slopes towards houses in Encombe and the rear adjoins Martello Tower No. 7 and Shorncliffe Barracks. There are public footpaths adjoining the northern, western and southwestern parts of the boundary. Access to the site is via a gate at the end of Encombe, on the southeastern side of the site.
- 2.2 The central/front part of the site formerly contained Encombe House, built in 1922. It was demolished in the late 1980's following structural damage

caused by subsidence. The site has been vacant since then but evidence of the former 'house' is visible in the form of hard surfaces and concrete retaining structures. This part of the site is regarded as derelict and generally overgrown. The area of Encombe, of which this site forms part, was originally a mature parkland landscape interspersed with footpaths.

- 2.3 As identified on the Proposals Map of the Local Plan Review the site falls within an area designated as an area of land instability, partially inside the urban boundary and partly outside of the urban boundary and in an Area of Archaeological Potential. The part of the site that is outside of the urban area falls within a wider Local Landscape Area designation in the Local Plan. The trees on the site are subject to a Tree Preservation Order.
- 2.4 The applicant states in the Design and Access Statement [DAS] that the previous outline planning permission granted for 36 apartments on this site (which included scale and layout) did not realistically account for matters of refuse collection and storage and had therefore placed the refuse storage in front of the buildings. The current proposal has moved this to the rear, adjacent to the road and allows for full on-site turning for refuse collection vehicles. The turning area also allows emergency vehicles to access and turn within the site. The DAS also advises that the current proposal provides more generous areas of outdoor ancillary space over the extant permission and ground floor level apartments are no longer looking at a car park but have a clear sight to the sea under this proposal.

### 3.0 RELEVANT PLANNING HISTORY

Y11/0122/SH	Extension to time limit of outline planning permission Y07/0999/SH for the erection of 36 two and three bedroom flats in three pavilions with 56 car parking spaces and access road. (Approved 4 May 2011)
Y07/0999/SH	Outline application for erection of three blocks comprising 36 flats, including detailed consideration of access, layout and scale (Refused – Appeal allowed)
Y06/0417/SH	- Outline application for a block of 28 flats including parking, means of access, siting and landscaping (re-submission of Y03/0392/SH). (Withdrawn 13.04.07.)
Y03/0392/SH	- Outline application for the erection of a block of 42 flats including parking, means of access, siting and landscaping. (Refused 24.03.05. Appeal dismissed 03.07.06.)
SH/88/905	- Outline application for construction of 5 detached houses. (Refused 04.11.88.)

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|------------|---|--|
| SH/88/172  | - | Outline application for erection of 22 No. 2 bed flats and 25 garages. (Refused 27.04.88.)   |
| SH/77/1163 |   | Change of use to residential and retreat centre for educational purposes. (Approved 15.03.78.)   |
| SH/76/1066 | - | Change of use from residential to guest house/or hotel. ( Approved 24.01.77.)  |
| SH/76/504  | - | Change of use from residential dwelling to care home. (Refused 05.11.76. )   |
| SH/75/96   | - | Conversion of existing dwelling into thirteen self-contained units and erection of 16 flats in three blocks with garaging and parking space. (Refused 04.06.75.) |

## **4.0 CONSULTATION RESPONSES**

### **4.1 Sandgate Parish Council**

Sandgate Parish Council – Object for reasons that land stability has not been resolved, the relocation of the blocks may increase land instability, the impact of surface water drainage on land instability has not been addressed, carriageway damage will occur to Encombe due to construction vehicles, architectural details such as entrance pillars have not been retained, the potential for negative impact on the adjacent Martello Tower.

### **4.2 KCC Growth, Environment and Transport**

We refer to the above planning application which concerns proposed residential development at land adjacent 20 Encombe, Sandgate and comprising: 36 households.

The County Council has assessed the implications of this proposal in terms of the delivery of its community services and is of the opinion that it will have an additional impact on the delivery of its services, which will require mitigation either through the direct provision of infrastructure or the payment of an appropriate financial contribution.

The Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) (Regulation 122) require that requests for development contributions of various kinds must comply with three specific legal tests:

1. Necessary,
2. Related to the development, and
3. Reasonably related in scale and kind

These tests have been duly applied in the context of this planning application and give rise to the following specific requirements (the

	Per 'applicable' flat (x36)	Total	Project
Primary Education (extension cost)	£590.24	£21,248.64	Towards expansion of Morehall Primary School
Secondary Education		No current requirement	

supporting these requirements is set out in the attached appendices).

### Request Summary

'Applicable' excludes 1 bed units of less than 56 sqm GIA

Libraries Bookstock (36 units)	£1728.57	Towards additional bookstock required to mitigate the impact
<i>Highways</i>	<i>Kent Highway Services will respond separately</i>	
Broadband Condition:	<p>Before development commences details shall be submitted (or as part of reserved matters) for the installation of fixed telecommunication infrastructure and High Speed Fibre Optic (minimal internal speed of 100mb) connections to multi point destinations and all buildings including residential, commercial and community. This shall provide sufficient capacity, including duct sizing to cater for all future phases of the development with sufficient flexibility to meet the needs of existing and future residents. The infrastructure shall be laid out in accordance with the approved details and at the same time as other services during the construction process.</p> <p>INFORMATIVE – The BT GPON system is currently being rolled out in Kent by BDUK. This is a laid fibre optical network offering a</p>	
<i>Highways</i>	<i>Kent Highway Services will respond separately</i>	

Please note that these figures are valid for 3 months from the date of this letter after which they may need to be recalculated due to changes in district council housing trajectories, ongoing planning applications, changes in capacities and forecast rolls, and build costs.

### Primary Education

The attached Education statistics (Appendix 1) identify that there is a deficit in Primary provision locally. The above development will add to that deficit. KCC, as the Local Education Authority, has to ensure provision of sufficient pupil spaces at an appropriate time and location to meet its statutory obligation under the Education Act 1996 and as the Strategic Commissioner of Education provision in the County under the Education Act 2011.

In accordance with the Planning Legislation, new development is to be sustainable and mitigate its impact upon local facilities. KCC have, in accordance with KCC policy, identified expansion of existing Primary Schools to provide capacity locally to accommodate the further pupils arising.

The proposal gives rise to additional primary school pupils during occupation of this development. This need, cumulatively with other new developments in the vicinity, can only be met through the expansion of Morehall Primary School, as the forecast primary pupil product in the locality results in the maximum capacity of local primary schools being exceeded.

A contribution of **£590.24 per 'applicable' flat** (x36) is required towards provision of additional places at Morehall Primary School to mitigate the impact of this development.

Please note this process will be kept under review and may be subject to change (including possible locational change).

### **Libraries and Archives**

This new development will generate new borrowers for the Library service. KCC are the statutory library authority. The library authority's statutory duty in the Public Libraries and Museums Act 1964 is to provide 'a comprehensive and efficient service'. The Local Government Act 1972 also requires KCC to take proper care of its libraries and archives.

Bookstock in Shepway at 1095 items per 1000 population is below the County average of 1134 and both the England and total UK figures of 1389 and 1492 respectively. The costed impact to meet the additional demand to borrow library books which will be generated by the people who reside in the Dwellings is set out in Appendix 2.

The County Council therefore requests **£1728.57** to address the direct impact of this development.

### **Superfast Fibre Optic Broadband**

KCC requests a Condition be included within any consent for this development to provide: 'fibre to the premise' (Superfast fibre optic broadband) to all buildings (residential, commercial, community etc) of

adequate capacity (internal min speed of 100mb to each building) for current and future use of the buildings, prior to any occupation.

### **Implementation**

The County Council is of the view that the above contributions comply with the provisions of regulation 122 of the CIL Regulations and are necessary to mitigate the impacts of the proposal on the provision of those services for which the County Council has a statutory obligation. Accordingly, it is requested that the Local Planning Authority seek a section 106 obligation with the developer/interested parties prior to the grant of planning permission. The obligation should also include provision for the reimbursement of the County Council's legal costs, surveyors' fees and expenses incurred in completing the Agreement.

Would you please confirm when this application will be considered and provide us with a draft copy of the Committee report prior to it being made publicly available. If you do not consider the contributions requested to be fair, reasonable and compliant with CIL Regulations, Regulation 122, it is requested that you notify us immediately and allow us at least 10 working days to provide such additional supplementary information as may be necessary to assist your decision making process in advance of the Committee report being prepared and the application being determined.

Kent County Council confirm in accordance with CIL Regulation 123 there are no more than 4 other obligations towards these projects.

#### **4.3 Building Control Officer**

Comments on the original submission - This is a very extensive project on a very high risk area of the landslip. The landslip condition should be applied. I would also recommend that the geotechnical investigation and outline ground works design is provided and checked by us before the application is approved.

Comments on the submitted Geotechnical investigation report and outline ground works design – The site investigation outlines the landslip issues relating to the site and gives a number of possible outline solutions. It provides the basis and information necessary to carry out a detailed design. It indicates that it should be possible for the proposed to be constructed on the plot. The report then outlines the additional information that will be needed to enable the Council's landslip condition to be discharged including: foundation design; piling methods; retaining walls design to the rear of the site; rain water drainage to building and hard standings; re levelling of the site; calculations to confirm the site will be stable during the works and on completion; temporary support during the works; sequence of works. (ensuring the site remains stable at all times during the works); details of the qualified engineer who would be responsible for supervising the works. It is noted that further site investigation might be needed depending on the final foundation design chosen.

#### 4.4 Landscape and Urban Design Officer

The escarpment extends down to the coast so the view is foreshortened. The site if developed will be largely screened from view. The scale of the area is large with extensive belts of woodland planting surrounding the site.

The surrounding buildings demonstrate a range of different architectural styles and there is not the homogeneity that exists in Hythe.

Historically the site was occupied by a single large building. The scale of the site means that it can accommodate a large building/s.

#### 4.5 Environmental Health

No objection subject to standard decontamination conditions.

#### 4.6 Arboricultural Manager

I can confirm that I have no objections to the proposals to construct 36 apartments over three blocks.

All tree protection measures as detailed in the accompanying arboricultural report dated November 2015 should be installed prior to any site occupancy and checked by the LPA tree officer.

All recommendations relating to protected species should be undertaken and mitigation put in place as recommended in the accompanying ecological report.

A full landscaping plan will need to be submitted for approval and include provision for the planting of large semi-mature trees to mitigate the loss of the TPO'd trees recommended for removal.

#### 4.7 Historic England

The application is for the construction of three apartment blocks below the escarpment at Encombe, Sandgate. The development site sits a short distance to the south of, but topographically lower than, the Martello Tower No. 7 which is a Grade II listed building and scheduled monument (National Heritage List No. 1017174). The monument includes the tower, set within a dry moat and an outer glacis, and situated above a steep, south facing slope overlooking Sandgate and the sea beyond. The tower, is one of a cliff top series of six moated towers, constructed in 1805-6 to defend the coastline between Hythe and Folkestone. The towers collectively illustrate strategic military planning and provide a valuable insight into the defence of Britain during the early 19th century.

In addition to the presence of the Martello Tower, we note the County Archaeological Officer has highlighted the potential for buried archaeological remains of interest within the development site.

The National Planning Policy Framework (NPPF) para 128 states that in determining applications, local authorities should require an applicant to



describe the significance of any heritage assets affected, including contribution made by their setting. As a minimum the relevant Historic Environment Record should be consulted and heritage assets assessed using appropriate expertise where necessary. Para 132 notes that significance can be harmed or lost through alteration or destruction of an asset, or through development within its setting.

We would therefore have expected a heritage assessment to have been produced to support the application, to examine the potential impacts of the development on heritage, both designated and undesignated. Whilst we think that the lower topographic location of the development is likely to lessen its impact upon the significance of the Martello Tower, it will be necessary for the applicant to demonstrate this clearly in their application. The appropriate means for this would be a heritage assessment that includes examination of views from and to the monument, which takes into consideration historic sight lines, and examines how setting issues could change should tree screening not be present at any time in the future.

### **Recommendation**

We would urge you to address the above issues, and recommend that the application should be determined in accordance with national and local policy guidance, and on the basis of your specialist conservation advice. It is not necessary for us to be consulted again. However, if you would like further advice, please contact us to explain your request.

#### **4.8 Housing Strategy Manager**

A monetary obligation of £1,716,000 is sought in lieu of the provision of 30% on site Affordable Housing units (11 units).

#### **4.9 Kent Highways and Transportation**

Thank you for your consultation in relation to the above planning application. I have no objections to the proposals given the previous consents. The following should be secured by condition:

- Provision of measures to prevent the discharge of surface water onto the highway with details to be submitted.
- Provision of construction vehicle loading/unloading and turning facilities prior to commencement of work on site and for the duration of construction.
- Provision of parking facilities for site personnel and visitors prior to commencement of work on site and for the duration of construction.
- Provision of wheel washing facilities prior to commencement of work on site and for the duration of construction.
- Provision and permanent retention of the vehicle parking spaces shown on the submitted plans prior to the occupation of any of the dwellings hereby permitted.

- Provision and permanent retention of the vehicle loading/unloading and turning facilities shown on the submitted plans prior to the occupation of any of the dwellings hereby permitted.
- Use of a bound surface for the first 5 metres of the access from the edge of the highway.
- Provision and permanent retention of the cycle parking facilities shown on the submitted plans prior to the occupation of any of the dwellings hereby permitted.
- Completion and maintenance of the access shown on the submitted plans prior to the use of the site commencing.
- Gradient of the access to be no steeper than 1 in 10 for the first 1.5 metres from the highway boundary and no steeper than 1 in 8 thereafter.

Please note: Planning permission does not convey any approval for construction of the required vehicular crossing, or any other works within the highway for which a statutory licence must be obtained. Applicants should contact Kent County Council - Highways and Transportation (web: [www.kent.gov.uk/roads\\_and\\_transport.aspx](http://www.kent.gov.uk/roads_and_transport.aspx) or telephone: 03000 418181) in order to obtain the necessary Application Pack.

INFORMATIVE: It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

#### 4.10 KCC Archaeology

Thank you for your letter consulting us on the above planning application. The site in question was previously occupied by Encombe House. This mansion formed part of the Encombe estate which lay towards the west end of Sandgate. Encombe was the one-time residence of James Morris, a Governor of the Bank of England. Morris was a great benefactor to Sandgate, funding the construction of a drinking fountain, school and the James Morris dwellings. A series of images of Encombe House show it to be a fine dwelling, set in well maintained landscaped grounds, with woodland walks, formal terraces, ponds, glasshouses and stables.

The original Encombe House was damaged in a great landslip in 1893 and the house was later pulled down. A replacement dwelling was erected in the early twentieth century. This replacement dwelling was subsequently extensively remodelled in the early 1920s for Ralph Hilton Philipson, when the architect Basil Ionides created a grand Mediterranean-style villa, decorated in an Italian renaissance cum art deco style, complete with loggias, and ornamental gardens. The remodelled house was featured in "Country Life" in 1924.

It is possible that archaeological remains of the now demolished Encombe residence may survive at the site, along with elements of the associated

managed landscape and landscape structures. There is also some potential for earlier archaeological remains from the prehistoric period onwards to be present. I would therefore recommend that provision is made in any forthcoming planning consent for a programme of archaeological work. The following planning condition covers what would be required:

***AR1*** *No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority.*

*Reason: To ensure that features of archaeological interest are properly examined and recorded.*

Additionally I note that the site lies a short distance to the south of Martello Tower No 7 which is a Grade II Listed Building and Scheduled Monument. The tower is one of a group of surviving Martello Towers along the ridge at Sandgate. They were built in 1806 as part of the coastal defences erected here in the Napoleonic period. The tower is upslope of the proposed development and is now heavily obscured by trees. This would not however have always been the case, with the gun tower originally having had a clear line of sight to the sea, as well as being inter-visible with its neighbours.

It is not clear from the submitted details whether the proposed block of flats will have any impact on the setting of the scheduled Martello tower, but it is possible that the new blocks may intrude into views from the tower. As such I would suggest that the views of Historic England are sought on the scheme in respect of the potential impact on the setting of the scheduled Martello Tower No. 7.

I hope that the above is helpful and would be pleased to discuss further if required. I would also be pleased to supply the applicant, on request, with a specification for the archaeology works

#### 4.11 Southern Water

Following initial investigations, Southern Water cannot accommodate the needs of this application without the development providing additional local infrastructure. The proposed development would increase flows into the wastewater sewerage system and as a result increase the risk of flooding in and around the existing area, contrary to paragraph 109 of the National Planning Policy Framework. Section 98 of the Water Industry Act 1991 provides a legal mechanism through which the appropriate infrastructure can be requested by the developer to accommodate the above mentioned proposal.

Should the Local Planning Authority be minded to approve the application. Southern Water would like the following condition to be attached to any permission. "Development shall not commence until a drainage strategy detailing the proposed means of foul and surface water disposal and a implementation timetable, has been submitted to and approved in writing by, the local planning authority in consultation with the sewerage undertaker. The development shall be carried out in accordance with the approved scheme and timetable."

We suggest the following informative: The applicant/developer should enter into a formal agreement with Southern Water to provide the necessary sewerage infrastructure required to service this development. Please contact Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire S021 2SW (Tel: 0330 303 0119) or [www.southcrnwatcr.co.uk](http://www.southcrnwatcr.co.uk)!

It is the responsibility of the developer to make suitable provision for the disposal of surface water. Part H3 of the Building Regulations prioritises the means of surface water disposal in the order

- A Adequate soakaway or infiltration system
- B Water course
- C Where neither of the above is practicable sewer

Southern Water supports this stance and seeks through appropriate Planning Conditions to ensure that appropriate means of surface water disposal are proposed for each development. It is important that discharge to sewer occurs only where this is necessary and where adequate capacity exists to serve the development. When it is proposed to connect to a public sewer the prior approval of Southern Water is required.

Our initial investigations indicate that Southern Water can provide surface water disposal to service the proposed development. Southern Water requires a formal application for a connection to the public sewer to be made by the applicant or developer.

We request that should this application receive planning approval, the following informative is attached to the consent:

"A formal application for connection to the public sewerage system is required in order to service this development, Please contact Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire 5021 2SW (Tel: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk)".

The drainage strategy drawing indicates the proposal to discharge the flow from the attenuation swale into public surface water network. Please note that this solution will not be acceptable as no groundwater or land drainage will be allowed to discharge to public sewer.

No new soakaways, swales, ponds, watercourses or any other surface water retaining or conveying features should be located within 5 metres of a public gravity sewer, rising main or water main.

We request that should this application receive planning approval, the following condition is attached to the consent: "Construction of the development shall not commence until details of the proposed means of foul and surface water sewerage disposal have been submitted to, and approved in writing by, the Local Planning Authority in consultation with Southern Water."

The detailed design for the proposed basement should take into account the possibility of the surcharging of the public sewers. We request that should this application receive planning approval, the following informative is attached to the consent:

"Detailed design of the proposed drainage system should take into account the possibility of surcharging within the public sewerage system in order to protect the development from potential flooding."

Due to changes in legislation that came in to force on 1st October 2011 regarding the future ownership of sewers it is possible that a sewer now deemed to be public could be crossing the above property. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its condition, the number of properties served, and potential means of access before any further works commence on site. The applicant is advised to discuss the matter further with Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire S021 2SW (Tel: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk)".

#### 4.12 KCC - Local Lead Flood Authority

Thank you for consulting Kent County Council in relation to the above referenced planning application. We have been able to review the information submitted for this application but would request if the Council could provide a higher resolution copy of the Drainage Strategy included within the Flood Risk Assessment (Drawing 616712/001) for our records.

It is recognised that given the site location there are limited options for surface water management. The applicant has provided information as to surface water storage requirements to achieve an appropriate greenfield runoff rate for the 1 in 100 year storm event + CC with discharge to a public surface water sewer. There are two outstanding issues:

- Firstly, It is recommended that the applicant have discussions with Southern Water as soon as possible to confirm acceptability of connection and discharge rates to the public surface water sewer. It is assumed that stage discharge controls may need to be included such that discharge from the site at 1 in 30 year storm is provided; on the other hand there is a possibility that Southern Water may relax the discharge rates given that this sewer may have direct discharge to the sea. If a direct outfall to the sea is available then attenuation requirements may be relaxed.

• Secondly, the FRA for the development includes a swale for additional surface water storage. This is not reflected in the Design and Access Statement or landscape proposal. It is recommended that the proposed storage volumes are confirmed once confirmation of connection acceptability is received from Southern Water. It may be worth noting that the lining of the swale with an impermeable membrane may need to be considered to ensure that ground wetting over a period does not impact upon slope stability.

Should your Authority be minded to grant permission to this development, we would recommend that the following Conditions are attached:

Condition:

i. Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority and connection to the public sewer agreed with Southern Water. The flood risk management measures given in the Flood Risk and Surface Water Drainage Strategy, MLM TC/616712/JRC, 28 October 2015, shall be confirmed against the detailed design values and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100yr storm) can be accommodated and disposed with no increase in on-site or off-site flood risk.

ii. No building hereby permitted shall be occupied until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:

a) a timetable for its implementation, and

b) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

Reason:

To ensure that the principles of sustainable drainage are incorporated into this proposal and to ensure ongoing efficacy of the drainage provisions.

#### Comments on additional drainage strategy documentation

The response to the applicant from Southern Water in relation to the capacity of the existing sewer for the site considers that it has been demonstrated that there is capacity within the receiving sewer and it is agreed that a discharge rate of 5l/s from the site is appropriate. The attenuation features have been sized for this discharge rate.

Detailed design will need to take into consideration recent changes in guidance for climate change. As of 19 February 2016, the EA published new guidance on how to use climate change allowances in flood risk assessments. As LLFA, KCC will require that the design accommodates the 1 in 100 year storm with a 20% allowance for climate change and an additional analysis undertaken to understand the flooding implications for a greater climate change allowance of 40%. This analysis must determine if the impacts of the greater allowance are significant and exacerbate any flood risk.

Should your authority be minded to grant permission to this development, we would recommend a condition for the provision of detailed design, supporting calculations and maintenance information as stated previously in our response of 14 December 2015 and specifically referencing the revised Flood Risk Assessment (MLM 11 March 2016).

#### 4.13 Kent County Constabulary

I have considered the planning application detailed above with regards to Crime Prevention.

Through Environmental Design (CPTED) matters, in accordance with the National Planning Policy Framework 2012 (Section 7 Para 58 & Section 8 Para 69) and the DCLG Planning Practice Guidance March 2014 (Design Section - Paras 10 & 11) — Crime Prevention, the Kent Design Initiative (KDI) - Design For Crime Prevention document dated April 2013.

DCLG circular 01/06) sets out what needs to be included in a design and access statement. Statements should consider design issues and how development can create accessible and safe environments, including addressing crime and disorder and fear of crime. (see below to assist applicants/agents with guidance on how to write and include crime prevention measures into their Design and Access Statement (D&AS)

[www.kent.police.uk/advice/design for security/design for security.html](http://www.kent.police.uk/advice/design%20for%20security/design%20for%20security.html)

I would like the following comments and recommendations to be taken into consideration to ensure that CPTED and the KDI protocol are fully addressed:

The applicant/agent has not included crime prevention nor have they demonstrated the seven attributes of CPTED in their Design and Access Statement (D&AS) to date we have had no communication from the applicant/agent and there are other issues that need to be discussed and addressed including a formal application for BREEAM and Secured By Design (SBD) if appropriate.

I would be grateful if you could draw the applicant's attention to the Kent Design Initiative (KDI), which will also assist them with Crime Prevention and Community Safety. I would welcome a meeting with the applicant/agent to discuss Crime Prevention in more detail and any notes from a

meeting/consultation will be passed back to the Planning Officer dealing with the application as part of my full response to this planning application.

If the applicant fails to contact us, this may have an effect the development with regards to Secure By Design (SBD) and BREEAM, as awarding these items retrospectively can prove difficult and costly. This could also have knock on effects for the future services and duties of the Community Safety Unit (CSU) and local policing

If this planning application is given approval and no contact has been made to the Crime Prevention Design Advisors (CPDAs) by the applicant/agent, then we would recommend that a condition be included as part of the planning approval to ensure that Crime Prevention is addressed effectively:

If an outline **condition** is to be used we suggest something similar to:

*The development hereby permitted shall incorporate measures to minimise the risk of crime. No development shall take place until details of such measures, according to the principles and physical security requirements of Crime Prevention through Environmental Design (CPTED) have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented before the development is occupied and thereafter retained.*

Reason for the condition: *In the interest of Security, Crime Prevention and Community Safety and in accordance with Policies of the Borough/District Council's Core Strategy Plan (dated, page, section) and the guidance within The Kent Design Initiative (KDI) and protocol dated April 2013.*

Alternatively if you have already undertaken pre-application discussions with the applicant/agent you might want to consider issuing a **letter** including the below statement:

*The applicant/agent is advised to seek the input of the Kent Police Crime Prevention Design Advisors (CPDAs) to ensure that all efforts are made to incorporate the principles of Designing out Crime (A Kent Design Guide for Developers Designers and Planners) into the high quality design of any proposal.*

*The contact details of the Kent Police CPDAs are ; John Grant & Adrian Fromm, Kent Police Headquarters, Sutton Road, Maidstone ME15 9BZ [pandcrOkent.pnn.police.uk](mailto:pandcrOkent.pnn.police.uk)  
Telno-01622653209/3234*

**[www.kent.police.uk/advice/design for security/design for security.html](http://www.kent.police.uk/advice/design%20for%20security/design%20for%20security.html)**

The use of a condition or letter will address both our statutory duties under Section 17 of the Crime and Disorder Act 1998 and will show a clear audit trail for Design for Crime Prevention and Community Safety.

Please be advised that the information contained within this response is provided by Kent Police Crime Prevention Design Advisors and refers to situational crime prevention. This advice focuses on Designing out Crime and improving Community Safety with regards to this specific development/planning application.



#### 4.14 Kent Wildlife Trust

I have no objection in principle to the development but, in line with national planning policy (NPPF, paragraph 118), urge the Council to impose appropriate conditions to secure:

- the submission for approval (and subsequent implementation) of an external illumination scheme that seeks to minimise the impact of lighting on the adjacent woodland edge (in the interests of protected species, including bats); and
- implementation of a range of ecological enhancements (indicated in the ecological assessment report) and the woodland management strategy (indicated in the design statement)

#### 4.15 KCC Ecologists

Thank you for the opportunity to advise on this application. We have the following response to make:

Under the Natural Environment and Rural Communities Act (2006), *"Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity"*. In order to comply with this Biodiversity Duty', planning decisions must ensure that they adequately consider the potential ecological impacts of a proposed development.

The National Planning Policy Framework states that *"the planning system should contribute to and enhance the natural and local environment by...minimising impacts on biodiversity and delivering net gains in biodiversity where possible."*

Paragraph 99 of Government Circular (ODPM 06/2005) Biodiversity and Geological Conservation - Statutory Obligations & Their Impact Within the Planning System states that *"It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted otherwise all relevant material considerations may not have been addressed in making the decision."*

Natural England has published Standing Advice on protected species and Ancient Woodland. When determining an application for development that is covered by the Standing Advice, Local Planning Authorities must take into account the Standing Advice. The Standing Advice is a material consideration in the determination of applications in the same way as a letter received from Natural England following consultation.

#### **Reptiles**

A Presence/Likely absence survey has been carried out and confirmed that slow worms and common lizards are present within the site. As only 7 visits were carried out during the survey it is difficult to assess the population size - 15-20 visits should be carried out to assess a population size.

As reptiles are present within the site, if planning permission is granted, there will be a need to carry out a reptile translocation prior to any works commencing on site. Although details of the translocation methodology has been provided no information has been provided on the location of the proposed receptor site.

In order for SDC to fully consider the impact on reptiles when determining the planning application details on the proposed receptor site must be provided prior to determination of the planning application.

### **Bats**

A bat activity survey has been carried out and recorded 4 species of bats foraging/commuting within the site. The submitted survey has detailed that low/moderate numbers of bats were foraging within the site - particularly around the SW corner of the site.

The site plan has confirmed that the vegetation around the SW corner of the site will be retained however it's likely that the development will have a negative impact on the foraging/commuting bats due to the development resulting in an increase in lighting.

Two emergence surveys were carried on trees within the site - however the emergence surveys were carried out outside of the optimal survey season which is May to August. One of the emergence surveys states it was carried out in August 2015 but as the original scoping survey was not carried out until September 2015 we presume this is a typo within the report.

The trees were assessed as low to moderate potential and the information submitted within the report details that trees which have medium potential to be used by roosting bats may require additional surveys to be carried out. (We are presuming that moderate and medium are the same).

Prior to determination we require additional information to be provided confirming why the ecologist is satisfied that additional emergence surveys - during the optimum survey season is not required.

### **Breeding Birds**

The proposed development will result in a loss of semi natural woodland and tall ruderals and as detailed within the ecological survey this habitat is suitable for breeding birds. As such we question why a specific breeding bird survey has not been carried out as part of this planning application.

We are aware that it is currently the wrong time of year for a breeding bird survey to be carried out. However as part of the adjacent to Shorncliffe Development a breeding bird survey was carried out we recommend that the ecologist reviews this survey data when considering the impact the proposed development will have on breeding birds.

The additional information will help the ecologist consider whether there is a need for a breeding survey to be carried out as part of this planning application.

If required the breeding bird survey must be submitted prior to determination of the planning application.

### **Enhancements**

One of the principles of the National Planning Policy Framework is that *"opportunities to incorporate biodiversity in and around developments should be encouraged"*.

There are areas of woodland present within the site which will be retained within the development site if planning permission is granted - we recommend that if planning permission is granted a simple management plan is produced and implemented to ensure that the woodland is managed for the lifetime of the development.

### Additional information submitted – further comments:

We have reviewed the ecological information which has been submitted and we have the following comments to make:

### **Reptiles**

A Presence/Likely absence survey has been carried out and confirmed that slow worms and common lizards are present within the site. As only 7 visits were carried out during the survey it is difficult to assess the population size – 15-20 visits should be carried out to assess a population size.

As reptiles are present within the site, if planning permission is granted, there will be a need to carry out a reptile translocation prior to any works commencing on site. Additional information has been provided detailing that the reptile receptor site is intended to be located within the wild flower meadow along the southern boundary of the site (this area also includes a swale). As this area is adjacent to the proposed development we do have concerns that there will be some conflict between the area being used by residents and being used as a reptile receptor site.

The submitted information has detailed that a management plan could be conditioned to ensure that it is managed appropriately. There is a need to ensure that prior to determination that the applicant is willing to manage this area properly in perpetuity to ensure the reptile interest of the site is retained.

### **Bats**

A bat activity survey has been carried out and recorded 4 species of bats foraging/commuting within the site. The submitted survey has detailed that low/moderate numbers of bats were foraging within the site – particularly around the SW corner of the site.

The site plan has confirmed that the vegetation around the SW corner of the site will be retained however it's likely that the development will have a negative impact on the foraging/commuting bats due to the development resulting in an increase in lighting.

As detailed within the submitted report there is a need for a lighting scheme to be designed to minimise impact on foraging bats. We advise that this is submitted as a condition of planning permission if granted.

Two emergence surveys were carried on trees within the site – however the emergence surveys were carried out outside of the optimal survey season which is May to August. *(One of the emergence surveys states it was carried out in August 2015 but as the original scoping survey was not carried out until September 2015 we presume this is a typo within the report.)*

However as bats were active during the emergence/activity surveys we do accept that the survey findings do provide a good understanding of the bat usage of the site. However there is a need for a precautionary approach to be implemented prior to the removal of the trees (if planning permission is granted)

### **Breeding Birds**

The proposed development will result in a loss of semi natural woodland and tall ruderals and as detailed within the ecological survey this habitat is suitable for breeding birds. As such we did question why a specific breeding bird survey has not been carried out as part of this planning application.

Additional information has been provided detailing that due to the size of the site a specific breeding bird survey was not undertaken and instead it was concluded that due to the proposed long term management of the site the suitability of the site to be used by breeding birds would increase.

The proposed development will result in a loss of woodland and habitat for breeding birds however we accept that a long term management plan is likely to improve the suitability of the retained woodland for breeding birds.

The proposed development is adjacent to the Shorncliffe Development and we suggest that any management of the woodland is sympathetic to management being carried out on the adjacent site.

### **Enhancements**

One of the principles of the National Planning Policy Framework is that *“opportunities to incorporate biodiversity in and around developments should be encouraged”*.

There are areas of woodland present within the site which will be retained within the development site if planning permission is granted – the applicant has confirmed that the retained woodland will be managed and enhanced throughout the life time of the development. There is a need to ensure that the management is.

#### **4.16 Waste Management Services**

No response received.

#### **4.17 Ancient Monuments Society**

No response received

#### 4.18 Kent Fire & Rescue Service

No response received.

### **5.0 PUBLICITY**

5.1 Neighbours notified by letter. Expiry date 29.12.15

5.2 Site Notice. Expiry date 13.01.16

5.3 Press Notice. Expiry date 14.01.16

### **6.0 REPRESENTATIONS**

6.1 12 letters/emails have been received from 10 households objecting on the following grounds:

- Scale and density of the development does not reflect that of the area and surrounding dwellings;
- Additional traffic would impact on road safety;
- Land instability could be disastrous for the Encombe area;
- The development is outside of the urban boundary;
- The character and appearance of the development would be detrimental to the Local Landscape Area;
- Overspill parking within Encombe Road would result;
- Will exacerbate existing problems lower properties have of water runoff;
- Loss of mature trees means wildlife, birds, mammals, including badgers, will disappear;
- 'There is no guarantee that so called stabilisation measures will secure an area riddled with underground springs and streams';
- Additional residents traffic on the highway network will place a heavy strain on residents in the area;
- The addition traffic on the existing highway network will impact the free flow of traffic and the existing junctions are not able to accommodate the additional traffic;
- Overdevelopment of the site;
- The additional land stability information supplied does not overcome concerns over public safety with respect to land instability.

6.2 The Sandgate Society raise objection to the proposal and raise the following concerns :

- There is no mention with respect to the entrance pillars within the grounds;
- The weight of the development on such a fragile site is a cause for concern;
- The area has a history of land instability;
- Land movement connected to development, which may stall, blights existing properties in the area;
- More large trees are required, no less, to enhance the stability of the land and the uptake of water;
- Currently run-off from the site causes flooding along the Esplanade.
- Objection to the development's 'scale and weight';

- Objection to the impact the building would have on land stability;
- Objection to the prospect of increased water run-off which causes flooding on the Sandgate Esplanade.

## **7.0 RELEVANT POLICY GUIDANCE**

- 7.1 The full headings for the policies are attached to the schedule of planning matters at Appendix 1.
- 7.2 The following policies of the Shepway District Local Plan Review apply: SD1, BE1, BE17, BE19, HO1, U2, U10a, U15, TR5, TR11, TR12, CO1, CO4, CO11.
- 7.3 The following policies of the Shepway Core Strategy apply: DSD, SS1, SS2, SS3, SS5, CSD1, CSD2, CSD4, CSD5.
- 7.4 The following Supplementary Planning Documents and Government Guidance apply:

National Planning Policy Framework: 2012  
National Planning Policy Guidance

## **8.0 APPRAISAL**

### **Background –**

- 8.1 Outline planning application Y07/0999/SH for erection of three blocks comprising 36 flats, including detailed consideration of access, layout and scale was refused planning permission by the Local Planning Authority on the following grounds:
1. *The proposal is contrary to policies CO5, CO1 and SD1 of the Shepway District Local Plan which seek to protect the landscape character and functioning of the Local Landscape Areas and the countryside, in that it would have a detrimental impact, by virtue of its mass and location, on the character and appearance of the area. There is no economic or social well being associated with the development which would justify approval contrary to these policies.*
  2. *The proposed density and scale of development does not reflect the character of the surrounding area. As such it would be contrary to policy BE11 of the Shepway District Local Plan.*
  3. *The proposal does not include on site affordable housing. The applicant has not justified to the satisfaction of the Local Planning Authority why affordable housing should not be included in the scheme nor are there any satisfactory proposals for delivering the required affordable housing provision off-site. As such it would be contrary to policy HO4 of the*

*Shepway District Local Plan policy HP7 of the Kent and Medway Structure Plan and PPS 3 (Housing).*

8.2 It was subsequently allowed on in May 2008. In reaching the decision the Inspector reached the following conclusions:

- the three separate pavilions, sitting within the landscape and allowing views between them would allow the wooded hillside to be clearly visible above and between the buildings, both in close views and in the longer view from the English Channel. Thus it would be consistent with the character of the local landscape;
- the development could not be considered to stand-alone due to its proximity to existing development and that the smaller of the three pavilions would be *'located similarly close to existing development at numbers 19 and 20 Encombe and the recently permitted development which would lie between them'*. The location, scale and mass of the eastern pavilion, at four storeys high, would produce a relationship with the one and two storey properties in Encombe characteristic of Sandgate and therefore acceptable. The two 6 storey buildings would be more remotely located from existing development. The westernmost would be surrounded by trees on three sides so not seen in close proximity to any property in Encombe and the height of the central pavilion would be seen as a compatible progression from the four floors of the eastern pavilion. It would be set well back into the bowl of the hillside which surrounds the site so that only its upper floor would be visible from Encombe in the same views as numbers 18 or 19. It would thus be sufficiently separate from number 19 for the difference in height to cause no harm.
- affordable housing could be provided in line with a 30% provision but the details were unclear to the Inspector and he was minded that the details of the provision could be considered at reserved matters stage.
- an obligation towards the upgrading of footpaths within the surrounding woodland was not justified.
- the requests for Library, Adult Education and Adult Social Services contributions.
- in respect to the potential instability of the land the Inspector was minded that major engineering works undertaken by the public authority has remedied the matter of unstable land. Further engineering controls can be required by planning condition to control future effects.
- in respect to 'the encroachment beyond the defined settlement boundary' the Inspector was minded that *'there are very good reasons why some development beyond the settlement boundary should be considered and would not be unacceptable in itself'*.
- in respect to effects of traffic arising from the proposal (both in terms of its effect on neighbours' living conditions and its effect on highway safety at

the junction between Encombe and Sandgate Esplanade, (the A259) the Inspector was minded that the effects of a larger scheme would not result in unacceptable harm to living conditions of the existing residents through noise and disturbance generated by traffic and the general character of the quiet cul-de-sac would be maintained. The inspector was minded that the proposal would not be unacceptable in relation to highway safety.

The Planning Inspector allowed the appeal with planning permission granted subject to conditions related to: Conditions 1 to 3 – relevant timings for the submission of reserved matters and the grant of planning permission; Condition 4 – related to Code for Sustainable Homes; Condition 5 – related to the height limit of the buildings as per the scale shown on the submitted drawings; Condition 6 – related to the provision of 36 cycle spaces and parking spaces be provided and the layout must allow for vehicles to exit the site in a forward gear; Condition 7 – relates to the need for an archaeological watching brief; Condition 8 – relates to the need for a soil survey in respect to decontamination of the site; Condition 9 – relates to sewer disposal; Condition 10 –relates to required drainage details; Condition 11 – relates to reports to be written by soil consultants in respect to the stabilising of the land; Condition 12 – relates to the provision of facilities for adult education, adult social services and libraries; Condition 12 – relates to the provision of Affordable Housing.

This outline planning permission was then extended under planning application Y11/0122/SH (Extension to time limit of outline planning permission Y07/0999/SH for the erection of 36 two and three bedroom flats in three pavilions with 56 car parking spaces and access road) and is therefore currently extant. This outline permission is due to expire at midnight of 3 May 2016 and is a material consideration in determining the current application.

- 8.3 Under the extant planning permission the building heights are shown on the illustrative drawings as being 4 storey and 6 storey from a ground level of 38.00m AOD.
- 8.4 The current proposal is for buildings of 4 storeys and 6 storeys but also each block has a basement parking level that is accessed by a slope down from the upper terrace level of the site. The submitted drawings show the height of the residential accommodation being from a level of 38.0m AOD and the basement parking is below that level. As such the overall height of the blocks accords with the outline planning permission previously granted.
- 8.5 However the application varies from the previous planning permission in terms of the size of the buildings, with each block having a larger footprint than those previously approved. (The forward projection part of the footprint of the previous buildings' footprints was a veranda with cycle and bin store and not part of the residential floorspace.) Therefore the front elevation of all of the blocks have been significantly brought forward within this development when compared to the previously approved scheme. The overall bulk and mass of the buildings have therefore increased and the gap between the blocks has reduced. Furthermore the location of the central block [Block 2]



has been bought forward within the development when compared to the previously approved location of the central block.

- 8.6 Under the current scheme therefore the gap between blocks 1 and 2 has reduced from about 16m to 11.5m, and the gap between blocks 2 and 3 has reduced from about 17.5m to 11m.
- 8.7 In terms of parking provision the forward movement of the blocks within the site means that the access road, visitor parking and bin storage has been relocated from in front of the buildings to the rear of the buildings, with only a lower level relatively narrow access road being in front of the buildings giving access to resident's basement parking and cycle parking.
- 8.8 In terms of material changes to policy, since the Y07/0999/SH planning permission was granted, there has been the introduction of the National Planning Policy Framework [NPPF] and Planning Practice Guidance [PPG], the Shepway Core Strategy has been adopted and relevant policies within the Shepway District Local Plan Review have been saved.
- 8.9 In this case, although the previous planning permission has expired, the previous grant of planning permission and the Planning Inspector's assessment of application Y07/0999/SH are material considerations in the current appraisal. The site and area remains unchanged, other than the construction of an additional dwelling adjacent to the entrance to the site, and although new policy documents have come into force, none are materially changed with respect to matters of design, impact on the character of the area or matters of neighbours' amenities.

### **Relevant Material Planning Considerations**

8.10 The main matters for consideration are:

- Principle
- Sustainable Development
- Design/Layout
- Amenities
- Open Space/Play Space
- Highways/Parking
- Flooding/Drainage
- Land Instability
- Archaeology/Heritage
- Protected Trees
- Ecology
- Contamination
- Planning Obligations
- Affordable Housing
- Human rights

### **Principle**

8.11 The NPPF 'core principles' at paragraph 17 encourage the effective reuse of brownfield sites (previously developed land) that are not of high

environmental value. Policy SS1 of the Shepway Core Strategy identifies the strategic priorities for future development being on urban, brownfield sites. Saved policy HO1 of the Shepway Local Plan Review permits housing on previously developed sites or infill within urban areas. Policy SS3 of the Core Strategy requires development within Shepway to be directed towards previously developed land within the urban area.

- 8.12 In this case the part of the site on which the buildings are proposed is almost entirely within the urban boundary on the Local Plan maps, whilst the rear access road and visitor parking would straddle the urban/rural boundary and the woodland in the rear part of the site falls outside of the urban boundary. The part of the site outside of the urban area falls within a Local Landscape Area as designated within the Local Plan.
- 8.13 Therefore, it has to be taken into account that the majority of the developed part of the scheme falls within the urban boundary and that the Planning Inspector's view on this matter, in allowing the previous appeal, was that *'there are very good reasons why some development beyond the settlement boundary should be considered and would not be unacceptable in itself'*.
- 8.14 Therefore no objection is raised to the principle of the development under the above mentioned policies.

### **Sustainable Development**

- 8.15 At a national level the National Planning Policy Framework [NPPF] presumes in favour of sustainable development (unless harm will result from the proposal) as does policy DSD of the Shepway Core Strategy and policy SD1 of the Shepway Local Plan Review. The NPPF defines 'Sustainable development' as having three dimensions: economic, social and environmental.
- 8.16 Being located on previously developed land, primarily within the urban boundary of Sandgate and close to main bus routes and local amenities, it is considered that the proposal is in a sustainable location.
- 8.17 In term of water sustainability, policy CSD5 of the Shepway Core Strategy in part requires that all developments should incorporate water efficiency measures. The policy states development for new dwellings should include specific design features and demonstrate a maximum level of usage should be of 105 litres per person per day or less. This usage level figure is adjusted to 110 litres per person per day under the guidance of Building Regulations Approved Document G (which came into effect in October 2015). This can be controlled by planning condition and no objection is raised in respect of this element of policy CDS5 of the core strategy.
- 8.18 In terms of Sustainable Drainage Systems (SUDs), from 6 April 2015 the Department for Communities and Local Government (DCLG) required that planning authorities will ensure that SUDS systems are put in place via decisions on all planning applications for major development received after that date. In this case Kent County Council, as the Local Lead Flood

Authority (LLFA) for the area, advises that, given the site location, there are limited options for surface water management. The applicant needs to co-ordinate with Southern Water and the LLFA with respect to an acceptable drainage strategy for the site. Following initial comments from both the LLFA and Southern Water the applicant has submitted a detailed drainage strategy for the site which is discussed in more detail in the 'Flooding/Drainage' section of this report.

## **Design/Layout**

- 8.19 The NPPF and saved local plan policy BE1 requires new residential development to deliver high quality housing in term of the appearance of the development, ensuring that the development density is appropriate for its location, the impact on the street scene and character of the area and also the functionality and layout of the development design.
- 8.20 As already noted new policy and guidance has been introduced since the previous planning permission Y07/0999/SH expired. However that policy and guidance does not fundamentally change policy approach to matters of the design of new development and as such the Inspector's assessment and appraisal of the Y07/0999/SH scheme is a material consideration in the assessment of the layout and design of the current application.
- 8.21 The applicant has maintained the same number of units as the previous planning permission and the number of storeys and the heights of the three blocks are in accordance with the Planning Inspector's directive condition in the Y07/0999/SH planning permission (condition 5 – height of blocks). The submitted drawings for this proposal show the height of the residential accommodation being from a level of 38.0m AOD and the basement parking is below that level. As such the overall height of the blocks accords with the outline planning permission previously granted. (The reasons for the Inspector considering these matters has been set out in the 'Background' section of this report.)
- 8.22 In terms of the functionality of the development the layout in the current proposal is considered to be a significant improvement on that previously approved in terms of waste storage and collection, emergency services access, cycle parking and car parking. There are pedestrian filtration routes through the site with more than one exit from each block, steps and footpaths through the site to allow pedestrians easy access on and off the site and down to the local amenities in Sandgate. The basement parking has resulted in a significant increase in parking opportunities being made available on the site to serve the 36 flats and none of the car parking is now in front of the ground floor level units, as it was under the previous permission.
- 8.23 The key differences between the current proposal and the previously approved scheme are the increased size of the building footprint/floor sizes; the increase in the size of the units; and the adjustment of the blocks' location within the site. External appearance was a reserved matter under the previous outline planning permission and therefore was not a matter for consideration by the Planning Inspector. In terms of the size of the units, the

previous scheme was for two and three bedroom flats whereas the current proposal is for 34 x 3-bedroomed units and 2 x 4 bedroom units.

- 8.24 Although the three blocks have been repositioned somewhat within the site from that previously approved, Block 1 (closest to the entrance of the site) has not been moved any closer to 19 and 20 Encombe than in the previously approved scheme. When considering the previous scheme the Inspector was minded that the development could not be considered to stand-alone due to its proximity to existing development and that the smaller of the three pavilions would be *'located similarly close to existing development at numbers 19 and 20 Encombe and the recently permitted development which would lie between them'*. This 'recently permitted development', a detached house, is currently under construction just outside the entrance to the application site – 19a Encombe.
- 8.25 However, the increase in the footprint of all three blocks and their repositioning within the site has resulted in the gaps between the blocks reducing from about 16-17.5m down to about 11m. In his assessment the Inspector had considered the aspects of gaps between the blocks and positioning and commented in his report as follows: *'the three separate pavilions, sitting within the landscape and allowing views between them would allow the wooded hillside to be clearly visible above and between the buildings, both in close views and in the longer view from the English Channel. Thus it would be consistent with the character of the local landscape'* and that *'The two 6 storey buildings would be more remotely located from existing development. The western most would be surrounded by trees on three sides so not seen in close proximity to any property in Encombe and the height of the central pavilion would be seen as a compatible progression from the four floors of the eastern pavilion. It would be set well back into the bowl of the hillside which surrounds the site so that only its upper floor would be visible from Encombe in the same views as numbers 18 or 19. It would thus be sufficiently separate from number 19 for the difference in height to cause no harm.'*
- 8.26 Firstly then, with respect of the reduced gap, the Inspector's assessment related to the ability to see the wooded hillside above and between the buildings in both close and longer views from the Channel. Certainly from most vantage points outside the site this criteria would still be met. The CGI drawing in the DAS is useful to understand a more oblique view of the development, perhaps from at the top of Encombe, and whilst the gaps between the blocks will be reduced the buildings do not appear as a single elongated block in most views - breaks between the built form are appreciable and the value of the tree covered landscape on the embankment is also still significant. It is also considered that the very 'broken up' form of the proposed blocks themselves prevent the buildings appearing as a single monolithic block in very oblique views where the gaps are not seen.
- 8.27 The external appearance of the buildings is clearly contemporary and of high quality. Within the surrounding streets there are seen to be a mixture of architectural styles with dwellings of a more contemporary design as well as

more traditional property design. The proposal is not considered to be out of character with the area therefore by pursuing a contemporary design approach.

- 8.28 The form of the blocks are very broken up with steps in the width and depth of the blocks at the various levels, the reduction in the floor area at upper levels (particularly on the outer blocks), together with flat roof areas being used to create recessed balconies and roof terraces. In doing so the blocks avoid appearing regimented and monolithic but have articulation, interest, depth and shadow. A high quality palette of materials is proposed for use in both the buildings and the landscaping and overall the development is considered to be a high quality in terms of its architecture and appearance.
- 8.29 With respect to design, it should also be noted that save policy BE1 seeks that proposals must demonstrate that the design has taken account of opportunities to reduce opportunities for crime and the fear of crime of both property and persons. The Kent Police Liaison Officer states his disappointment that the DAS does not specifically cover matters of 'Secure by Design'. The applicant has confirmed that the development would be built to 'Secured By Design' standards and would also have a CCTV security system which will be monitored 24hrs.
- 8.30 The aspect of 'design' related to 'layout' considers both the function of the site overall, which is considered to work well and is a significant improvement over the previously approved layout, and also the internal layout of the block. This aspect will be considered within the 'Amenities' section of the report.
- 8.31 Policy CSD2 also requires that all development of 10 dwellings or more shall provide 20% of all market dwellings shall meet Lifetimes homes standards. The applicant has confirmed that 20% of the dwellings on the site (all market housing) will be designed to meet lifetime homes standards. The government has recently changed Building Regulations to incorporate the equivalent of Lifetime Homes and as such a planning condition will need to require that 20% of all dwellings to be built to Part M(4)(2) standards within the development – these units are accessible and adaptable, which is the essence of Lifetime homes. Subject to a suitably worded planning condition no objection is raised under policy CSD2 of the Core Strategy with respect to Lifetime Homes provision.

### **Amenities**

- 8.32 Policy SD1 of the Shepway Local Plan Review and the NPPF require that consideration should be given to the residential amenities of both neighbouring properties and future occupiers of a development.
- 8.33 For future occupiers the units are all considered to be well proportioned and each has private outside space on large balconies or terraces. The living conditions in the proposed flats are considered to be acceptable.

- 8.34 For neighbours it has already been noted that the blocks have moved no closer to 19 and 20 Encombe than the Planning Inspector considered acceptable under the previous permission. The Inspector made no particular comments with respect to matters of privacy, overshadowing, daylight or outlook but in terms of additional traffic movements was minded that the development would not result in unacceptable harm to living conditions of the existing residents through noise and disturbance generated by traffic.
- 8.35 It would seem that the Inspector considered the blocks to be set far enough away from surrounding residential development that impacts from overlooking, shadowing and loss of daylight and dominance within the outlook from surrounding dwellings would not occur. Whilst that application was only for outline permission it did approve matters of the location of the blocks within the site and the height of those blocks.
- 8.36 Under the current proposal all of the main front facades of the blocks have been moved forward from the relative locations considered under the previous permission. The applicant therefore has provided cross sections through the site to the dwellings at the lower levels. It should be noted that between numbers 13 to 16 Encombe and the development site is the sweep around of protected woodland, which is to remain. No. 17 Encombe is also in part separated from the development site by trees.
- 8.37 The adjacent dwellings on the lower part of Encombe that have no woodland between them and the application site are 17 (in part), 18, 19 and 19a. Number 19a is currently under construction and is the closest dwelling to the entrance to the application site. There have been many planning permissions for a dwelling on the 19a site, from the 1980s forward, that have never been implemented and as such the Planning Inspector had taken account of the location of a dwelling on that site in his consideration. The submitted section drawings show that for dwellings 17, 18 and 19 Encombe the relationship between them and the proposed development, by virtue of distance and differing land levels, is such that the privacy of those dwellings will not be unacceptably harmed.
- 8.38 In terms of 19a, the distance from the proposed buildings is much less than for others in Encombe, at about 25m or so between the dwellings. Such a distance is greater than would warrant the refusal of the application in terms of loss of privacy between sites. Generally dwellings on the southern side of Encombe have been designed to maximise the outlook from the properties towards the sea to the south and in a similar way the design of the 19a therefore does not rely on the outlook to the rear as being its primary outlook. The dwelling does however have some windows and a part of its garden area to the rear of the building and abutting the application site. The construction of this dwelling is not yet complete and as such a landscaping scheme could be undertaken to filter views into the rear garden area and create some more secluded areas if wished but overall the separation between 19a and the proposed development blocks is considered to be acceptable with respect to overlooking.

- 8.39 Overall the proposal is not considered to result in harm to the amenities of neighbouring dwellings and the proposed units would provide the future occupiers of the units with a good standard accommodation.
- 8.40 Therefore no objection is raised to the proposal with respect to design, impact on the Local Landscape Area or amenity matters under the relevant parts of policies SD1, BE1 or CO5 of the Shepway Local Plan Review, policies DSD of the Shepway Core Strategy or the relevant sections of paragraphs 17, 56 and 57 of the NPPF.

### **Open Space/Play Space**

- 8.41 Saved policy LR9 of the Shepway Local Plan Review requires that, in areas where open space deficiency exists that sites of 25 dwellings or more should provide open space on the site or by the payment of a commuted sum payment toward the provision or improvement of open space off site. Saved policy LR10 requires that developments containing 20 or more child bed spaces should provide children's play space or make a commuted sum payment towards off site provision.
- 8.42 In this case the proposal is for thirty-six 3 and 4 bedroom units, which are classified as providing family accommodation.
- 8.43 The applicant has provided a plan illustrating the division of the land on site into private and shared areas. It is seen that the majority of the site is covered by protected woodland, buildings and infrastructure, or the wildlife/reptile translocation area. There is very limited opportunity within the site for the provision of a significant area of either communal open-space or on-site play space. Furthermore due to the site layout and topography the layout of the site does not afford any obvious area for the provision of such areas that would not have the potential for noise and disturbance to neighbouring properties.
- 8.44 Therefore in this case a commuted sum payment is sought towards the provision/improvement of off-site open-space and play-space. (See 'Planning Obligations' section of this report.)
- 8.45 With such an obligation in place with the S106 no objection is raised under saved policies LR9 and LR10 of the Shepway District Local Plan Review.

### **Parking/Highways**

- 8.46 Policy TR12 of the Shepway Local Plan Review relates to car parking levels to serve new development. Policy TR11 relates to the impact of new development on the highway network. Policy TR5 relates to the provision of cycle parking. Paragraph 32 of the National Planning Policy Framework states that *'Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.'*
- 8.47 This proposal allows for the provision of 81 car parking spaces for 36

residential units and their visitors. (The extant planning permission includes 56 parking spaces.)

- 8.48 Some residents have raised concern with respect to the impact of the additional traffic generated from the development on the existing road network, especially at the road junction onto the A259.
- 8.49 (Similar concerns were raised under the consideration of the extant planning permission and the Planning Inspector at that time was minded that the proposal would not be unacceptable in relation to highway safety. The local highway network has not significantly changed in the interim period.)
- 8.50 However the Kent County Council Highway and Transportation Officer does not consider that the proposal will result in severe cumulative impacts to the road network and does not raise any objection with respect to the parking and highways aspects of the proposal, subject to planning conditions that would prevent the flow of surface water onto the highway, provide adequately for construction related vehicles, secure the retention of the 81 parking spaces for residents and their visitors, suitably surface and drain the vehicle areas; provide and retain the cycle parking facilities and restrict the access road slopes to acceptable gradients.
- 8.51 Therefore, subject to the use of suitably worded planning conditions, no objection is raised under policies TR11, TR12 or TR5 of the Shepway Local Plan Review.

### **Flooding/Drainage**

- 8.52 Policy U2 of the Shepway Local Plan Review requires new development of 5 dwellings or more be connected to the main drains system or an alternative method of waste disposal is agreed.
- 8.53 Southern Water originally advised that the existing infrastructure in the area cannot accommodate the needs of the proposed development without the development providing additional local infrastructure. They advised that the development would increase flows into the waste water sewerage system and result in an increase in flood risk in and around the area (contrary to para 109 of the NPPF). (The site is not located itself located within a flood risk area but overloading of the public drainage system could cause flooding in other areas during periods of prolonged rainfall.)
- 8.54 However, subsequent to the initial comment supplied by both Southern Water and the LLFA an additional FRA and drainage strategy has been submitted for the site in accordance with sustainable drainage principles. The drainage design includes a swale in the southeastern part of the site.
- 8.55 This further submission had apparently been negotiated with Southern Water prior to submission to the Council. The submission includes a copy of a letter to the applicant from Southern Water, in relation to the capacity of the existing sewer for the site. The LLFA was therefore reconsulted in the light of this additional FRA and drainage strategy and they now advise that



they consider that it has been demonstrated that there is capacity within the receiving sewer from the site at a discharge rate of 5l/s and that the attenuation features within the drainage strategy have been sized to allow for this discharge rate.

- 8.56 Therefore the original objection from Southern Water is considered to have been overcome and the development will be able to connect to the mains drains system, in accordance with the requirement of policy U2 of the SDLPR.
- 8.57 However, following recent changes in guidance for climate change the LLFA the advise that they will require that the final drainage design accommodates the 1 in 100 year storm with a 20% allowance for climate change and an additional analysis needs to be undertaken to understand the flooding implications for a greater climate change allowance of 40% - to determine if the impacts of the greater allowance are significant and exacerbate any flood risk. This may mean that further rainwater holding crates or similar flow reducing technology may be required in the final drainage design to ensure agreed discharge rate to the mains sewer is not exceeded.
- 8.58 Therefore, subject to the use of a suitably worded planning condition, with respect to drainage design, no objection is raised with respect to flood risk under policy/drainage under policy U2 of the SDLPR and the NPPF paragraphs with respect to flood risk, subject to conditions for the provision of detailed drainage design, supporting calculations and maintenance information, and specifically referencing the revised Flood Risk Assessment (MLM 11 March 2016).

### **Land Instability**

- 8.59 Saved policy BE19 of the Shepway Local Plan Review requires that development in areas of land instability will not be granted unless investigation and analysis has been undertaken which clearly demonstrates that the site can be safely developed and the proposed development will not have an adverse effect on the slip area as a whole.
- 8.60 The matter of land instability was taken into account by the Planning Inspector in his consideration of the previous planning application that was allowed at appeal. At that time the Inspector was minded that major engineering works undertaken by the public authority had remedied the matter of unstable land and that further engineering controls can be required by planning condition to control future effects.
- 8.61 In this case the applicant initially submitted ground investigation reports from 2010 and, during the course of the application assessment, has further undertaken a full geotechnical investigation with respect to the matter of land stability and also details of preliminary groundworks design. This report has been submitted to the Council in support of the proposed development.
- 8.62 The Council's Building Control Officer advises that the site investigation outlines the landslip issues relating to the site and gives a number of

possible outline solutions. It provides the basis and information necessary to carry out a detailed design. It indicates that it should be possible for the proposed to be constructed on the plot. The report then outlines the additional information that will be needed to enable the Council's landslip condition to be discharged including: foundation design; piling methods; retaining walls design to the rear of the site; rain water drainage to building and hard standings; re levelling of the site; calculations to confirm the site will be stable during the works and on completion; temporary support during the works; sequence of works. (ensuring the site remains stable at all times during the works); details of the qualified engineer who would be responsible for supervising the works. It is noted that further site investigation might be needed depending on the final foundation design chosen.

8.63 With respect to the matter of land stability the NPPF advises in paragraphs 120, 121 that 'responsibility for securing a safe site rests with the developer and/or landowner' and that planning decisions should ensure that the site is suitable for its new use taking account of various matter including ground conditions and land stability.

8.64 There are design/engineering solutions to the matter of land instability and the Council's Building Control Officer is minded that the work that the applicant has undertaken to date to investigate this matter indicates that it should be possible for the proposed development to be constructed on the site. The use of a planning condition is considered therefore to be acceptable for the final details with respect to matters of land stability works and foundation design (both needing to account for drainage infrastructure) and this was the approach used when the Planning Inspector previously considered these matters for the extant planning permission. Given that the Planning Inspector considered the matters of land stability could be adequately dealt with by condition it would be unreasonable for the Council to now take a different approach.

8.65 Therefore, subject to the use of a suitably worded planning conditions with respect to foundation design and matters of land stability, advised by the submitted geotechnical investigation report submitted, no objection is raised to the matter of land instability under saved policy BE19 of the Shepway Local Plan Review and paragraphs 109, 120 and 121 of the NPPF and NPPG 'Land Stability'.

### **Archaeology/Heritage**

8.66 Saved policy SD1 of the Shepway Local Plan Review requires the protection of local heritage, including archaeology.

8.67 In this case, as well as the site being located in an Area of Archaeological Potential, it is also located adjacent to a Martello Tower (No. 7), which is listed as an Scheduled Ancient Monument. As such both the KCC Archaeologist and Heritage England have been consulted with respect to the proposal.

8.68 The KCC Archaeologist has provided details of the historical importance of the site (see consultation responses section of the report) and considers that

it is possible that archaeological remains of the now demolished Encombe residence, along with elements of the associated managed landscape and landscape structures, may be present on the site. There is also some potential for earlier archaeological remains from the prehistoric period onwards to be present.

- 8.69 The archaeologist therefore recommends that a planning condition is used to secure a programme of archaeological work to ensure any historically important finds are properly examined and recorded.
- 8.70 With respect to the impact of the proposal on the adjacent Martello Tower, which is a Scheduled Ancient Monument, the developer has provided a Heritage Statement that seeks demonstrate the 'worst case' impact of the development to the setting of the Martello Tower and on views from the Martello Tower towards the coast.
- 8.71 Having reviewed the report the Heritage England officer has asked that the Heritage Statement be expanded to cover all impacts of the development and not just the 'worst case'. The applicant is currently undertaking this revision to be submitted to Heritage England for their consideration.
- 8.72 It is noted that the Heritage England officer has not expressed any concern with respect to what the applicant considers to be the 'worst case' impact of the development, as detailed in the original Heritage Statement. Therefore, subject to the use of a suitably worded planning condition, with respect to an archaeological watching brief, and the submission of an expanded Heritage Statement that raises no new issues to those already considered, no objection is raised with respect of archaeology and heritage under saved policy SD1 of the Shepway Local Plan Review.

### **Protected Trees**

- 8.73 The site is subject to a woodland Tree Preservation Order. Saved policy BE17 of the Shepway Local Plan Review does not permit development if it would damage or destroy any protected tree unless it is in the interests of good arboricultural practice or the desirability of the proposal outweighs the amenity value of the protected tree(s). If trees are removed the planting of replacement trees should be accommodated within the development or near the site, of at least equivalent number to those removed.
- 8.74 In this case an Arboricultural Survey has been submitted in support of the application which details the removal of 13 trees which stand further into the site and would conflict with the proposed development. The majority of trees on this site would remain.
- 8.75 The Council's Arboriculture Manager confirms he has no objection to the proposal subject to a condition requiring all tree protection measures detailed in the report to be provided prior to any site occupancy and the landscaping of the site to include provision for the planting of large semi-mature trees to mitigate the loss of the protected trees to be removed. Therefore, subject

to suitably worded planning conditions no objection is raised under saved policy BE17 of the Shepway Local Plan Review.

## **Ecology**

- 8.76 The matter of ecology falls under the 'environmental' aspect of sustainable development and the NPPF seeks to minimise impacts on biodiversity and provide net gains in biodiversity where possible. Saved policy CO11 of the Shepway Local Plan Review states that permission will not be given for development which would endanger plant or animal life to habitat protected under law or if it causes the loss or damage to habitat and landscape features of importance to nature conservation. This is unless the need for the development outweighs the nature conservation considerations and mitigation measures are undertaken to fully compensate for remaining adverse effects. In this case the applicant has undertaken ecological surveys and submitted these with the application submission. In summary these surveys show the presence of slow worms and common lizards, bats and breeding birds on the site.
- 8.77 With respect to the slow worms and common lizards, if planning permission is granted, there will be a need to carry out a reptile translocation prior to any works commencing on site. The applicant has provided additional information detailing that the reptile receptor site is intended to be located within the wild flower meadow along the southern boundary of the site (this area also includes a swale).
- 8.78 The KCC Ecologist, and planning officers have concerns that there would be significant pressure on the wildlife space for use by residents as communal garden space (exercising of walking of dogs, playing with children, etc) and as such the wildlife area would need to be clearly separated from the communal soft landscaped part of the site and be inaccessible to residents. This needs to be reflected in the final landscape drawings and with the S106 legal agreement a maintenance program for this wildlife area needs to be agreed to be undertaken in perpetuity to ensure the reptile interest of the site is retained. The applicant is in agreement with this approach.
- 8.79 With respect to bats, a bat activity survey has been carried out and 4 species of bats were recorded as foraging/commuting within the site. The submitted survey has detailed that low/moderate numbers of bats were foraging within the site – particularly around the SW corner of the site. The site plan has confirmed that the vegetation around the SW corner of the site will be retained. However, the Council's consultant ecologist's advises that it is likely that the development will have a negative impact on the foraging/commuting bats due to the resultant in an increase in lighting. Therefore there is a need for a lighting scheme to be designed to minimise impact on foraging bats, which can be required by condition if planning permission is granted.
- 8.80 With respect to breeding birds, whilst the proposed development will result in a loss of woodland and habitat for breeding birds it is accepted that the implementation of a range of ecological enhancements and a long term woodland management strategy, as referred to in the ecological assessment

report and DAS, is likely to improve the suitability of the retained woodland for breeding birds.

8.81 The ecological assessment report and DAS refer to the implementation of a range of ecological enhancements and the woodland management strategy, which will improve the biodiversity value of the site and can be secured by planning condition. The management of both the woodland and the wildlife areas on the site, including a range of ecological enhancements, needs to be secured through a legal agreement (S106) to ensure that it is maintained in perpetuity. An external lighting scheme needs to be secured by planning condition. Subject to these items no objection is raised to the proposal under saved policy CO11 of the Shepway Local Plan Review or paragraph 118 of the NPPF.

### **Contamination**

8.82 Saved policy U10a relates to contamination with respect to the health and safety of occupiers of residential development and the contamination of land and watercourses by the development. The requirement for a phase 1 investigation (desk top study) with respect to contamination can be adequately required by the use of the standard contamination conditions in this instance. As such, subject to a suitably worded planning condition, no objection is raised to the proposal under saved policy U10a of the Shepway Local Plan Review.

### **Planning Obligations**

8.83 Planning obligations are used to mitigate the impact of unacceptable development to make it acceptable in planning terms. Obligations are enshrined within the NPPF and are also the subject of policies DSD and SS5 of the Shepway Core Strategy. Planning obligations should meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.

#### **8.84 Primary Education**

Kent County Council has advised that the proposal gives rise to additional primary school pupils during occupation of this development. This need, cumulatively with other new developments in the vicinity, can only be met through the expansion of Morehall Primary School, as the forecast primary pupil product in the locality results in the maximum capacity of local primary schools being exceeded.

8.85 Therefore a contribution of £21,248.64 (£590.24 per 'applicable' flat) is required towards provision of additional places at Morehall Primary School to mitigate the impact of this development. The applicant has confirmed agreement to pay this obligation

#### **8.86 Community Services**

Kent County Council has assessed the implications of the proposal in terms of the delivery of its community services and advises that it will have an

additional impact on the delivery of its services, which will require mitigation through the payment of the following financial contribution of £1728.75 towards libraries. The applicant has confirmed agreement to pay this obligation.

8.87 Open space/Play space

The proposal is for thirty-six 3 and 4 bedroom units, which are classified as providing family accommodation. Saved policy LR9 of the Shepway Local Plan Review requires that, in areas where open space deficiency exists that sites of 25 dwellings or more should provide open space on the site or by the payment of a commuted sum payment toward the provision or improvement of open space off site. Saved policy LR10 requires that developments containing 20 or more child bed spaces should provide childrens' play space or make a commuted sum payment towards off site provision.

8.88 For the reasons set out above the proposal does not include the provision of either a significant area of open space or childrens' play space commuted sum payments of £15,660.00 and £35,163.30 have been requested and agreed by the applicant. The applicant has confirmed agreement to pay this obligation.

8.89 Woodland and wildlife area management plan

As discussed in the 'Ecology' section above it is required that a legal agreement secures a management programme for both the woodland and the wildlife area on the site, following the translocation of reptiles on the site and the completion of an ecological enhancement program of works. The applicant has confirmed agreement to this S106 obligation.

8.90 Affordable housing

Policy CSD1 of the Shepway Core Strategy requires that new housing developments of 15 or more units should provide 30% affordable dwellings on-site or through a financial contribution of broadly equivalent value off-site, subject to viability.

8.91 The National Planning Policy Framework states that the burden of planning obligations should be understood in the context of local economic conditions and market realities. The NPPF goes on to say that this should not undermine ambition for high quality design and wider social and environmental benefit but such ambition should be tested against the realistic likelihood of delivery. The NPPF continues that where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible.

8.92 In his consideration of the extant planning permission the Inspector was minded that one of the three blocks should be provided as affordable housing to address the policy in place, at that time, to supply 30% of the units as affordable housing.

8.93 Under current policy the proposal would still require the provision of 30% affordable housing on the site but policy and supplementary planning guidance does give an opening for the developer to provide an alternative off-site provision if the Council is agreeable to this and a betterment of the affordable housing obligation would result.

- 8.94 In this case the applicant has had some discussion with officers with respect to a site that they have acquired in Tram Road, Folkestone. This site has planning permission for the construction of 14 flats. [Y13/0858/SH - Outline application (with all matters reserved) for the redevelopment of the site for 14 residential units, with associated parking, following demolition of existing building - Approved with conditions and S106 agreement 11 March 2014.]
- 8.95 The applicant is minded that they would like to bring forward this Folkestone site for 14 flats, build the development and transfer it to a Housing Association in lieu of the 11 affordable housing unit obligation for the Sandgate development under consideration, together with the Tram Road development's own requirement for the delivery of 2 affordable housing units. This scenario would provide the Council with an increase of one additional affordable housing unit over the number of units that would be delivered if affordable housing units were built on the application site.
- 8.96 Whilst officers are minded that the Tram Road development would be acceptable in lieu of an on-site affordable housing provision, that development cannot be tied at this time within the S106 obligation for the Sandgate development. (The reserved matters planning permission needs to be granted but has been submitted and is currently under consideration.) Furthermore the legal agreement would also always need to cover a situation where the Tram Road development does not come forward for whatever, as yet unknown and unexpected, eventuality. Therefore a monetary obligation for affordable housing, based on a broadly equivalent value to the units on the Encombe site, needs also to be secured in accordance with planning policy.
- 8.97 The outcome of this matter is that officers have requested that an obligation of £1,716,000 be agreed in the S106, in lieu of onsite affordable, but are minded that the S106 agreement include a caveat to allow for an alternative provision to be agreed later subject to a further Deed of Variation. This will then cover the option for the delivery of the Tram Road development in lieu of the on-site provision, which is the developer's desire and is supported in principle by officer's as the delivery of that development will result in an additional affordable housing unit being provided overall.
- 8.98 On this basis therefore the applicant has agreed to the payment of the financial figure above subject to the amount being paid in three amounts tied to triggers of 50% occupation of each of the three blocks and the S106 caveat for alternate off-site delivery of units, subject to the LPA agreement.
- 8.99 Therefore it is recommended that it is resolved to grant planning permission subject to the applicant entering into a legal agreement covering all the matters raised above.

## **Human Rights**

- 8.100 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual

against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

8.101 This application is reported to Committee as the Parish Council object to the proposal.

## **9.0 SUMMARY**

9.1 This proposal for 36 apartments, arranged in three blocks with associated parking and landscaping, is considered to constitute sustainable development consistent with paragraphs 15 and 17 of the NPPF.

9.2 The proposal will provide high quality accommodation, with adequate parking provision, that is not out of keeping with the character of the area and is acceptable with respect to its impact on the amenities of existing dwellings in the area.

9.3 Matters of land stability, contamination, drainage, ecology, protected trees, archaeology and heritage have either been addressed through the application or can be suitably controlled or mitigated through the use of planning conditions and a legal agreement.

9.4 The impacts of the development with respect to matters of primary education, community services, open space/play space and affordable housing can be mitigated through a legal agreement,.

9.5 The proposal therefore is recommended for approval as being consistent with current planning policies and guidance.

## **10.0 BACKGROUND DOCUMENTS**

10.1 The consultation responses set out at Section 4.0 and any representations at Section 6.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

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**RECOMMENDATION – That, subject to the receipt of an acceptable heritage assessment that deals with the issues raised by Historic England, planning permission be granted subject to the conditions set out at the end of this report and the applicant entering into a S106 agreement to secure primary education, community services, open space/play space and affordable housing contributions and a wildlife habitat maintenance program; and that delegated authority be given to the Interim Head of Planning to negotiate wording of the legal agreement.**



1. The development must be begun within three years of the date of this permission.

Reason:

As required by Section 91 of the Town and Country Planning Act 1990 (as amended).

2. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans:

- 1245-000 (Site Location Plan);
- 1245-001-B (Existing Site Plan) - topographical;
- 1245-002 (Proposed Basement Plan) - all basement parking;
- 1245-002-B (Proposed Basement Plan) - with section lines;
- 1245-003-B (Proposed Ground Floor and Site Plan) - with section lines;
- 1245-004 (Proposed footprint comparison);
- 1245-006-B (Block 2 and Site Section);
- 1245-100-A (Block 1 Ground Floor Plan, Blocks 1,2,3 Basement Plans);
- 1245-101 (Block 1 Floor Plans) - 1st and 2nd floors;
- 1245-102-A (Block 1 - Floor Plans) - basement and 3rd floor;
- 1245-102 (Block 1 Floor Plans) - basement Blocks 1, 2, 3 and 3rd floor Block 1;
- 1245-103 (Block 1 Elevations);
- 1245 - 200 (Block 2 Floor Plans) - ground and first floor;
- 1245-201 (Block 2 Plans) - 2nd and 3rd floors;
- 1245-201 (Block 2 Floor Plans) - 4th and 5th floors;
- 1245-203 (Block 2 Elevations);
- 1245 -300 (Block 3 Floor Plans) - ground and first floor;
- 1245-301 (Block 3 Floor Plans) - 2nd and 3rd floors;
- 1245-302 (Block 3 Floor Plans) - 4th and 5th floor plans;
- 1245-303 (Block 3 Elevations);
- 1245-009-P1 (Site Designations - Private and Shared);
- 1245-010-P1 (Comparative Sections - Blocks 1-3);

Reason:

For the avoidance of doubt and in order to ensure the satisfactory implementation of the development.

3. (a) Prior to commencement of the development the applicant shall obtain, from a suitably qualified engineer, a written slope stability report advising on the effect the development will have on the stability of the site and all adjoining land and properties. The report is to include, but need not be limited to, the types of proposed foundations, the effect that any excavations into sloping ground will have, types of retaining structures necessary, surface and foul drainage, the effect of any increase/decrease of site loadings, the possible effect to the stability of any adjoining properties, and any other factors needed to ensure the stability of the site and all adjoining land, properties and associated services.

The report should also include a method statement which indicates measures to be adopted during the construction phase to ensure that development does not cause instability to adjoining retaining walls, land

and buildings. No development shall take place until this report has been submitted to and approved in writing by the Local Planning Authority.

(b) No works other than those approved shall be carried out unless details of these have first been submitted to and approved by the Local Planning Authority.

(c) All works recommended in the approved slope stability report and method statement (and any alternative works approved) shall be carried out as set out in the approved documents and upon completion confirmation from a suitably qualified engineer that the approved works have been carried out in full shall be submitted to the Local Planning Authority prior to the building being occupied.

Reason:

The site lies within, or within the influence of an area identified as being subject to soil instability as detailed on the Ordnance Survey Geological Survey and it is necessary to ensure that appropriate works are carried out in order to ensure the stability of the site and the development and the adjoining land and buildings in accordance with policy BE19 of the Shepway District Local Plan Review.

4. a. Prior to commencement of the development a desk top study shall be undertaken and submitted to and approved in writing by the Local Planning Authority. The study shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and any other relevant information. Using this information, a diagrammatical representation (Conceptual Model) for the site of all potential contaminant sources, pathways and receptors shall also be included.
- b. If a desk top study shows that further investigation is necessary, an investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. It shall include an assessment of the nature and extent of any contamination on the site, whether or not it originates on the site. The report of the findings shall include
  - A survey of the extent, scale and nature of contamination
  - An assessment of the potential risks to
  - Human health
  - Property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
  - Adjoining land,
  - Ground waters and surface waters,

- Ecological systems,
- Archaeological sites and ancient monuments and
- An appraisal of remedial options and identification of the preferred option(s).

All work pursuant to this Condition shall be conducted in accordance with the DEFRA and Environment Agency document Model Procedures for the Management of Land Contamination (Contamination Report 11).

c. If investigation and risk assessment shows that remediation is necessary, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. The scheme shall include details of all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works, site management procedures and a verification plan. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme shall be carried out in accordance with the approved terms including the timetable, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works.

d. Prior to commencement of development, a verification report demonstrating completion of the works set out in the approved remediation scheme and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include details of longer-term monitoring of pollutant linkages and maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.

e. In the event that, at any time while the development is being carried out, contamination is found that was not previously identified, it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be undertaken and where remediation is necessary a remediation scheme shall be prepared. The results shall be submitted to the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report shall be prepared and submitted to the Local Planning Authority.

Reason:

To protect the environment and human health against contamination and pollution, in accordance with saved Local Plan Review policies SD1 and U10a and the NPPF: 2012.

5.
  - i. No development shall commence until details of surface water drainage and sewage disposal scheme for the site, based on sustainable drainage principles and supported by the relevant calculations, have been submitted to and agreed in writing with the local planning authority. The flood risk management measures given in the Flood Risk and Surface Water Drainage Strategy, (MLM 11 March 2016), shall be confirmed against the detailed design values and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100yr storm) can be accommodated and disposed with no increase in on-site or off-site flood risk. The development shall be carried out in accordance with the agreed surface water drainage and sewage disposal scheme.
  - ii. No building hereby permitted shall be occupied until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:
    - a) a timetable for its implementation, and
    - b) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

Reason:

To ensure proper drainage and in order to maintain the residential amenities of the area, in accordance with saved policies U2, U4 and SD1 of the Shepway District Local Plan Review.

6. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded to accord with policy SD1 of the Shepway Local Plan Review.

7. No development shall take place until a comprehensive scheme for ecological protection, enhancement and management of the site has been submitted to and agreed in writing with the Local Planning Authority. The scheme shall include details of the provision and enhancement of the wildlife/reptile translocation area within the site, including details of enclosure to prevent residential access together with details of the provision of bird and bat boxes within the site and the provision of bat tiles within the building structures. (The management and maintenance of the wildlife and wooded

areas within the site are to be undertaken in accordance with the management and maintenance schedule within the associated Section 106 legal agreement.)

Reason:

In order to ensure that the ecological and biodiversity interests of the site are safeguarded in accordance with saved policies SD1 and CO11 of the Shepway District Local Plan Review.

8. No development shall commence until all tree protection measures as detailed in the accompanying arboricultural report ('Tree Survey', Draft Issue 1, Nov 2015, LaDellWood) have been installed and checked and agreed by the Local Planning Authority Arboricultural Manager. The tree protection measures shall be retained in accordance with the agreed installation until all works on the site to fulfil the planning permission have been completed.

Reason:

In order to protect and enhance the appearance of the area and for reasons of ecological protection and enhancement.

9. If clearance of vegetation or removal of trees is to take place during bird breeding season (between March and August in any one year) a suitably qualified ecologist must visit the site and he/she must check all areas to be affected for nesting birds. This shall be done within 24 hours prior to any vegetation/tree clearance commencing. If a nest is found the ecologist will erect a buffer zone of a minimum of 5m around the nest and no works may occur in that within that buffer until the ecologist confirms that the chicks have fledged at which point the buffer zone can be removed and works can continue in that area. Works during the bird breeding season shall be completed using hand tools only.

Reason:

In order to ensure that the ecological and biodiversity interests of the site are safeguarded in accordance with saved policies SD1 and CO11 of the Shepway District Local Plan Review.

10. Clearance works on the site shall take place in accordance with the requirements of condition 9 and in respect of the protection of reptiles, by their capture, relocation to a suitable alternative habitat and follow up surveying. These mitigation works shall take place in accordance with points 5.3 to 5.5 of the LaDellWood 'Reptile Presence/Absence Survey and Bat Activity Surveys (Draft Issue 1 November 2015). Should works not have commenced, other than clearance, within two years from the date of this permission then a further survey in relation to the presence of reptiles on the site shall be undertaken and the resultant survey reports, together with any mitigation measures that may be required to address matters arising from these surveys, shall be submitted to and approved in writing by the Local Planning Authority before any development (including the re-clearing of the site) takes place. Development (including site clearance) shall be carried out in accordance with the approved measures and their timescales.

Reason:

In order to ensure that the ecological and biodiversity interests of the site are safeguarded in accordance with saved policies SD1 and CO11 of the Shepway District Local Plan Review.

11. No development shall commence until details of a construction management plan addressing construction vehicle loading/unloading and turning facilities and practices, parking facilities for site personnel and visitors, hours of working and other relevant issues shall be submitted to the local planning authority for approval, with such details as approved, implemented for the duration of construction at the application site.

Reason:

In the interests of public amenity and highway safety.

12. No development shall take place until measures to prevent debris and spoil being deposited on the public highway have been installed and shall be in use and maintained in a functioning condition at all times during the clearance, excavation and construction works. In the event that the measures installed do not satisfactorily prevent debris and spoil being deposited on the public highway alternative measures to be agreed by the Local Planning Authority shall be installed and shall be in use as soon as reasonably practicable and maintained in a functioning condition at all times. Any spoil or debris deposited on the public highway shall be cleared by the applicants or their contractors as soon as reasonably practicable.

Reason:

In the interests of public amenity and highway safety.

13. No development shall commence until details have been submitted to the Local Planning Authority for approval in conjunction with KCC Economic Development, for the installation of fixed telecommunication infrastructure and High Speed Fibre Optic (minimal internal speed of 100mb) connections to multi point destinations and all buildings including residential, commercial and community. This shall provide sufficient capacity, including duct sizing to cater for all future phases of the development with sufficient flexibility to meet the needs of existing and future residents. The infrastructure shall be laid out in accordance with the approved details and at the same time as other services during the construction process.

Reason:

In order to ensure the future provision of superfast fibre optic broadband for occupants to accord with policy SS5 of the Shepway Core Strategy.

14. No development shall take above foundation level until details of measures to minimise the risk of crime, according to the principles and physical security requirements of Crime Prevention through Environmental Design (CPTED), have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented before the development is occupied and thereafter retained.

Reason:

To reduce incidents of crime and the fear of crime against both property and person.

15. No work on the construction of the development above foundation level shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason:

To ensure the satisfactory appearance of the completed development and in the interests of visual amenity.

16. No development shall take place above foundation level until full details of both hard and soft landscape works, other than those areas that are the subject of condition 7, including details of walls and fencing and the provision for the planting of large semi-mature trees (to mitigate the loss of the protected trees as part of this development) have been submitted to the local planning authority including an implementation programme – which may be in phases if relevant. No building shall be occupied until an approved landscaping scheme has been carried out in accordance with the approved implementation programme, unless an alternative timescale has been agreed with the local planning authority.

Reason:

In order to protect and enhance the appearance of the area and for reasons of ecological protection and enhancement.

17. No development shall commence above basement level until written documentary evidence has been submitted to, and approved in writing by, the local planning authority proving the development will achieve a maximum water use of 110 litres per person per day as defined in paragraph 36(2)(b) of the Building Regulations 2010 (as amended). Such evidence shall be in the form of a design stage water efficiency calculator.

The development hereby permitted shall not be occupied until written documentary evidence has been submitted to, and approved by, the local planning authority, proving that the development has achieved a maximum water use of 110 litres per person per day as defined in paragraph 36(2)(b) of the Building Regulations 2010 (as amended). Such evidence shall be in the form of a post-construction stage water efficiency calculator.

Reason:

In accordance with the requirements of policies CSD5 and SS3 of the Shepway Core Strategy Local Plan 2013 which identify Shepway as a water scarcity area and require all new dwellings to incorporate water efficiency measures.

Water efficiency calculations should be carried out using 'the water efficiency calculator for new dwellings' <https://www.gov.uk/government/publications/the-water-efficiency-calculator-for-new-dwellings>

18. No development shall commence above basement level until details evidencing that 20% of all dwellings are to be built to the standard of Part M(4)(2) Category 2 of The Building Regulations 2010(as amended) have been submitted to and agreed in writing with the Local Planning Authority and the development shall be carried out in accordance with the agreed details.

Reason:

In accordance with the Lifetime Homes requirements of policies CSD2 of the Shepway Core Strategy Local Plan 2013 as subsequently incorporated into Part M(4)(2)'Category 2 : Accessible and Adaptable Dwellings' at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/506503/BR\\_PDF\\_AD\\_M1\\_2015\\_with\\_2016\\_amendments\\_V3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/506503/BR_PDF_AD_M1_2015_with_2016_amendments_V3.pdf)

19. No part of the development shall be occupied until the access to the site hereby approved has been finally surfaced, with the agreed drainage installed.

Reason:

To prevent obstruction of the highway and to safeguard the amenities of adjoining areas.

20. No block of apartments hereby approved shall be first occupied until the pedestrian and vehicle access to that block, together with the parking provision related to that block (with an allowance for visitor parking) has been finally surfaced, with the agreed drainage installed.

Reason:

To prevent obstruction of the highway and to safeguard the amenities of adjoining areas.

21. No block of apartments hereby approved shall be first occupied until the first 5m of the access from the back edge of the highway has been surfaced in a bound permeable material.

Reason:

In order to prevent the transfer of loose debris onto the highway, thereby safeguarding the amenities of local residents and the safety of other highway users.

22. The gradient of the vehicle access shall be no steeper than 1 in 10 for the first 1.5 metres from the highway boundary and no steeper than 1 in 8 thereafter.

Reason:

In order to prevent allow safe access into and from the site.

23. Prior to The vehicular parking and cycle storage facilities shown on the approved plans shall be kept available for domestic parking purposes in connection with the approved development at all times.



Reason:

To ensure the permanent retention of the space for parking and cycle storage purposes within the curtilage of the site in order to avoid obstruction of the highway, safeguard the amenities of adjacent properties and encourage sustainable modes of transport.

24. No block of apartments hereby approved shall be first occupied until the facilities for storage and collection of refuse and recyclables associated with that block has been completed in full and made available for domestic purposes. Details of external refuse/recycling stores must be first submitted to and agreed in writing with the Local Planning Authority and shall be constructed in accordance with the agreed details. Thereafter the approved facilities shall be kept available for use by the occupants of the development.

Reason:

To ensure adequate means of refuse and recycling collection in the interests of the amenities of residents and sustainability.

25. Prior to any external lighting scheme being installed on the site details of the scheme shall be submitted to and agreed in writing with the Local Planning Authority. Details of the lighting scheme shall include the position and location of lights, details of lighting strength, details of any light guards or shields and light spill. The lighting scheme shall be installed in accordance with the agreed and maintained as such thereafter.

Reason:

In order to reduce light pollution and protect adjacent sensitive habitat areas.

Y15/1154/SH  
Land adjoining 20 Encombe  
Sandgate

