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Application No:	22/1719/FH
Location of Site:	Land adjoining Church and Dwight, Caesars Way, Folkestone
Development:	Section 73 application for the removal of condition 22 (retention of World War II Pillbox) of planning permission Y13/0024/SH (outline application matters relating to access only, for a mixed use development) to allow for the condition to be removed
Applicant:	Folkestone and Hythe District Council
Agent:	Lian Kaczykowski
Officer Contact:	Sue Head

SUMMARY

This report considers whether the condition relating to the Pillbox can be removed and whether the Section 73 application should be approved. It is considered that the archaeological evidence submitted explains that records relating to the existence of the Pillbox were incorrect and that the Pillbox does not exist. The response from Kent County Council Archaeology is considered to be sufficient to allow the condition to be removed.

RECOMMENDATION:

That the section 73 application be granted subject to the conditions set out at the end of the report and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and add any other conditions that he considers necessary.

1. INTRODUCTION

1.1. The application is reported to Committee because it is a Council development.

2. SITE AND SURROUNDINGS

2.1. The application site is located within the settlement boundary of Folkestone/Cheriton, approximately 3km to the northwest of Folkestone Town Centre. The site which is approximately 4.35ha in size is located to the west of Caesars Way and Shearway Business Park and to the south of the M20.

2.2. The site is accessed to the east via an unmade access off Caesars Way. Located immediately to the south are the residential areas of Elventon Close, Charles Crescent and Stockham Court which are predominantly two storey in height and to the west is the Harcourt Primary School and its associated playing fields.

2.3. The site is currently vacant scrub land with areas of hardstanding. Historically it has been used for industrial purposes, including a clay pit, brick works and a former concrete batching plant.

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- 2.4. The majority of the site is flat, however the land undulates and drops away towards the motorway in the north east corner. The site is also slightly elevated and rises above the residential area to the south by approximately 2m.
- 2.5. Forming part of the wider area of Shearway Business Park, this is the last area to be developed for employment land uses and is identified within the Local Plan as employment land.
- 2.6. A site location plan is attached to this report as **Appendix 1**.

3. PROPOSAL

- 3.1 The application is made under section 73 of the Town and Country Planning Act to remove condition 22 (retention of World War II Pillbox) of planning permission Y13/0024/SH, on the basis that the Pillbox does not exist.
- 3.2 The wording of the condition proposed to be removed is as follows:

The details referred to in condition 1 above shall show the retention of the World War II Pillbox upon the eastern boundary and prior to the commencement of development, details shall be submitted to and approved in writing by the Local Planning Authority for its restoration and long term management. The development shall be carried out in accordance with the approved details and management plan.

Reason: The Pillbox is considered to be a heritage asset which is worthy of retention, in accordance with the NPPF: 2012

- 3.3 The following report was submitted by the applicant in support of the proposals:

Archaeological Report

This states that whilst it was expected that the archaeological evaluation that has been carried out may produce evidence of archaeological activity, there was none. Most of the site has been quarried and backfilled. Only 5 of the trial trenches showed a typical sequence of topsoil, subsoil and natural geology. The other trenches followed generally the evidence in historic mapping of brickwork quarries, backfilling and pond. During this evaluation, the remains of a wall in the south-east corner of the site were found and further evaluation of this was carried out on the basis that it may be a military remain. This further assessment concluded that the wall was not of WWII date and is not an air raid shelter or pillbox but was built to stabilise the excavation of ground in connection with the historical development of the adjacent industrial estate post WWII. The conclusion is that the Pillbox the subject of the condition no longer exists.

4. RELEVANT PLANNING HISTORY

- 4.1 The relevant planning history for the site is as follows:

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Y13/0024/SH	Outline application (matters relating to access only) for a mixed-use development of commercial/office units (660 sqm) and industrial/storage units (5,142 sqm) (class B1, B8) as well as 77 residential dwellings together with associated car parking, open space, landscaping, pedestrian link and reconfiguration of vehicular access off Caesars Way.	Permitted
Y16/0403/SH	Reserved Matters application for the erection of 77 dwellinghouses, construction of estate road and provision of open space, landscaping and parking being details pursuant to outline planning permission Y13/0024/SH (details relating to appearance, layout and scale).	Reserved matters Approved
Y17/0888/SH	Reserved matters application for the erection of 49 industrial units (4562 sqm) and 2 office blocks (1240 sqm), together with the construction of the industrial estate road and parking and turning areas and landscaping throughout the site being details pursuant to outline planning permission Y13/0024/SH (details relating to appearance, layout, scale and landscaping).	Approved
21/0269/FH/CON	Extension of the implementation time until 1st May 2021 under section 93A of the Town & Country Planning Act 1990 (as amended) of outline planning permission Y13/0024/SH (Outline application (matters relating to access only) for a mixed use development of commercial/office units (660 sqm) and industrial/storage units (5,142 sqm) (class B1, B8) as well as 77 residential dwellings together with associated car parking, open space, landscaping, pedestrian link and reconfiguration of vehicular access off Caesars Way).	Permitted
21/1110/FH/NMA	Non material minor amendment to the wording of conditions 5, 7, 14, 18, 19, 20, 22, 23 and 28	Approved

5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

Consultees

Folkestone Town Council: No comments received.

KCC Archaeology: The report submitted with the application is helpful and clarifies that the Pillbox lay to the west of the concrete wall with which it appears to have been confused. I will ask that the Kent Historic Environment is updated accordingly with the data and can confirm that I would be happy to recommend that the archaeological condition is removed.

Local Residents Comments

5.2 50 neighbours directly consulted. 1 letter of objection from the New Folkestone Society raising the following concerns:

- There appears to be no evidence that the concrete structure is not the Pillbox.
- The information submitted is insufficient to assess what the concrete structure is, its significance and whether it is worthy of retention. We would favour retention as there are few WWII defensive structures left in Folkestone.

5.4 Ward Member

No comments have been received from the Ward Member. At the time of writing this report, none of the Ward Members are members of the Planning and Licencing Committee.

5.5 Responses are available in full on the planning file on the Council's website:

<https://searchplanapps.folkestone-hythe.gov.uk/online-applications/>

6. RELEVANT PLANNING POLICY

6.1 The Development Plan comprises the Places and Policies Local Plan 2020 and the Core Strategy Review Local Plan 2022.

6.2 The relevant development plan policies are as follows:

Places and Policies Local Plan 2020

HE1 – Heritage Assets

HE2 – Archaeology

6.3 The following are also material considerations to the determination of this application.

Government Advice

National Planning Policy Framework (NPPF) 2021

Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework (NPPF). In this case, the relevant section starts at paragraph 194 and relates to proposals affecting heritage assets.

National Planning Policy Guidance (NPPG) 2021

National Design Guide October 2019

7. APPRAISAL

7.1 In light of the above the main issues for consideration are:

- a) Suitability of a Section 73 application
- b) Heritage issues
- c) Conditions to be reimposed

a) Suitability of a Section 73 application

7.2 This application has been made under section 73 of the Town and Country Planning Act 1990, and is known as a Material Minor Amendment, which can be made to vary or remove conditions associated with a planning permission.

7.3 Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended. In this instance, a decision notice describing the new permission would be issued, setting out all of the conditions relating to it. To assist with clarity, a decision notice for the grant of planning permission pursuant to an application made under section 73 also repeats the relevant planning conditions from the original planning permission, unless they have already been discharged.

7.4 It should be noted that a section 73 application is not an opportunity to reconsider the planning merits of the original application. The local planning authority can only consider the question of the conditions subject to which planning permission should be granted. If it is considered that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, then planning permission should be granted accordingly. If it is decided that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, then the application should be refused.

7.5 There is no statutory definition of a 'minor material amendment', but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved. In this instance, the application is seeking to remove condition 22 (retention of World War II Pillbox) of

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permission Y13/0024/SH, which granted permission for a mixed use development of commercial/office units (660 sqm), and industrial/storage units (5,142 sqm) (Class B1, B8) as well as 77 residential dwellings together with associated car parking, open space, landscaping, pedestrian link and reconfiguration of vehicular access off Caesars Way. The current application seeks the same number of dwellings and the same uses as per the approved application. There have been no material changes in circumstance in terms of planning policies since the earlier planning permission was granted.

- 7.6 As such, the overarching nature of the application is not considered to have significantly changed, what is under consideration is the change made to the proposal via the removal of the condition. It is Officers' view that this can be assessed as a minor material amendment under section 73 of the Act. However, any proposal submitted under section 73 is seeking a new planning permission and is therefore subject to full consultation.

b) Heritage Issues

- 7.7 At the time the outline application was determined, Kent Historic Environment Records showed there to be evidence of a WWII Pillbox close to the south-eastern boundary of the site. Subsequent archaeological investigations carried out by consultants on behalf of the applicants have found no evidence of the existence of the Pillbox. Trial trenching was carried out on the site and this showed that there was very little evidence of typical soils and natural geology and most of the site had been quarried and backfilled.
- 7.8 During the excavations to find the Pillbox, a concrete wall in the south-east corner of the site was found and on the advice of Kent County Council Archaeology, further investigations were carried out in order to establish if the wall was part of any military remains. Subsequent exposure of the wall and studies of historic aerial photography have indicated that the concrete wall is not of WWII date and is not an air raid shelter or pillbox but was built to stabilise the excavation of ground in connection with the historical development of the adjacent industrial estate post WWII.
- 7.9 This information has been assessed by Kent County Council Archaeology, and they have confirmed that the Pillbox appears to have been confused with the concrete wall, which is why it showed up on their records. They accept the results of the archaeological investigations carried out by the applicants and will ensure that the Kent Historic Environment Record is updated accordingly. They therefore confirm that they are happy to recommend that the archaeological condition is removed.
- 7.10 Given the investigations that have been carried out and the response from KCC Archaeology, it is considered appropriate that the condition is removed.

c) Conditions to be re-imposed

- 7.10 There are two other reports on this Committee Schedule that refers to condition discharge applications on this site (22/1767/FH/CON and 23/0125/FH/CON). As stated in paragraph 7.3 above, a decision notice for the grant of planning permission pursuant to an application made under section 73 also repeats the relevant planning conditions from the original planning permission, unless they have already been discharged. The conditions that are recommended in this report therefore repeat the relevant planning conditions of the original permission as well as the conditions that are recommended to be discharged.

Environmental Impact Assessment

- 7.11 In accordance with the EIA Regulations 2017, this development has been considered in light of Schedules 1& 2 of the Regulations and it is not considered to fall within either category and as such does not require screening for likely significant environmental effects.

Local Finance Considerations

- 7.7 Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the Act defines a local finance consideration as a grant or other financial assistance that has been, that will, or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy. There is no CIL requirement for this development.

Human Rights

- 7.8 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.

Public Sector Equality Duty

- 7.9 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
 - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

Working with the applicant

- 7.10 In accordance with paragraphs 38 of the NPPF, Folkestone and Hythe District Council (F&HDC) takes a positive and creative approach to development proposals focused on solutions. F&HDC works with applicants/agents in a positive and creative manner.

8. CONCLUSION

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- 8.1 Archaeological evaluation reports have been submitted with the application and have been assessed by the Kent County Council Archaeologist. The conclusion is that the historic records that previously identified the Pillbox were incorrect and it does not exist. It is therefore recommended that the condition can be removed.

9. BACKGROUND DOCUMENTS

- 9.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

10. RECOMMENDATIONS

That planning permission under section 73 of the Town and Country Planning Act 1990 be granted subject to the following conditions and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and add any other conditions that he considers necessary.

1. Condition not reimposed - all reserved matters have already been submitted.
2. Condition not reimposed - all reserved matters have already been submitted.
3. Condition not reimposed - development has commenced.
4. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbered 11.134-51, 11.134-65.

Reason: for the avoidance of doubt and in order to ensure the satisfactory implementation of the development in accordance with the aims of the Places and Policies Local Plan.

5. The development shall not proceed beyond the construction of foundations and slab level of any building hereby permitted until written documentary evidence has been submitted to and approved in writing by the LPA proving that 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: To ensure the development contributes to the principles of sustainable development.

6. The development hereby permitted shall be carried out in accordance with the details submitted in respect of condition 6 of Y13/0024/SH relating to lifetime home standards.

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Reason: In accordance with Core Strategy policy CSD2.

7. The development shall not proceed beyond the construction of foundations and slab level of any building hereby permitted until samples of the materials to be used in the construction of the external surfaces of the development 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: In the interest of visual amenity and high quality design.

8. The landscaping shall be carried out in accordance with the details approved under the reserved matters submission Y17/0888/SH. The works shall be carried out prior to the occupation/ first use of any part of the development or in accordance with the programme agreed with the Local Planning Authority. The soft landscape works shall be maintained in accordance with the agreed maintenance schedule.

Reason: In order to protect and enhance the appearance of the area.

9. The strategic landscaping areas shall be carried out in accordance with the details approved under the reserved matters submission Y17/0888/SH and the areas shall be maintained in accordance with the agreed details and management plan.

Reason: In order to protect and enhance the appearance of the area.

10. The boundary treatments shall be carried out in accordance with the details approved under reserved matters submission Y17/0888/SH and shall be completed before the first occupation of the dwellings and first use of the commercial/ industrial units or in accordance with a timetable agreed in writing with the Local Planning Authority.

Reason: In the interests of visual amenity of residents.

11. The use of the commercial/industrial units shall be limited to uses contained within Classes B1 and B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any Statutory Instrument revoking, amending or re-enacting that Order.

Reason: In the interests of visual and residential amenity.

12. Prior to the first use of the commercial/industrial units hereby permitted, details of proposed operating times and goods delivery/dispatch times shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the occupiers of the units shall operate, deliver and despatch goods within the approved time periods only.

Reason: In the interests of the amenities of the area and to reduce disturbance.

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13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (or any Order revoking or re-enacting those Orders) no development falling within Class F of Part 1 of Schedule 2 to the said Order shall be carried out without the prior consent in writing of the Local Planning Authority.

Reason: In the interests of reducing surface water flooding

14. Desk Top Study

14.1. Works to be carried out in accordance with details approved under 22/1767/FH/CON.

14.2. Works to be carried out in accordance with details approved under 22/1767/FH/CON.

14.3. 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. As this condition is applicable to both the remediation and development stage, partial discharge must be facilitated

Reason:

The works will be undertaken in two separate phases by two different contractors. Phase 1- Remediation and Enabling works (Pre-development measures). Phase 2- the construction works on the Residential and Commercial plots (development measures).

The Remedial Method Statement covers both Phases of work to ensure the scheme will not qualify as contaminated under Part 2 A of the Environmental Protection Act. Phase 1 works (Pre-development measures) will be signed off by an Interim Verification report.

Phase 2 works (Development works) require production of Gas protection measures for the development (gas design report cannot be produced by the development contractor until the remediation works package is complete). The Gas protection design report will be produced and submitted to the Local Authority for Approval prior to commencement of the development phase.

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The two documents above will provide the complete verification programme to facilitate the full discharge of condition 14.3.

14.4. Prior to the commencement of the development phase relating to the residential or commercial aspects of the 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.

15. If during development, contamination not previously identified is found to be present then no further development shall be carried out until the developer has submitted to and agreed a remediation strategy with the Local Planning Authority detailing how this unsuspected contamination shall be dealt with. Thereafter, the development shall be carried out in accordance with the approved details.

Reason: To protect the surrounding environment and prevent contamination.

16. The development shall be carried out in accordance with the details approved 04/07/2016 pursuant to condition 16 under application reference Y13/0024/SH.

17. The development shall be carried out in accordance with the details approved 04/07/2016 pursuant to condition 17 under application reference Y13/0024/SH.

18. Condition discharged - works to be carried out in accordance with details approved under application reference 23/0125/FH/CON.

19. Development shall not proceed beyond the construction of the approved main site access from Caesar's Way (for a maximum distance of 15m back from the edge of the adopted highway) until full details of the proposed means of foul drainage and surface water disposal for the development have been submitted to and approved in writing by the Local Planning Authority. In the event that a Sustainable Urban Drainage System is to be used the details submitted shall include a scheme and timetable for implementation of the system, a management and maintenance plan for the lifetime of the development, including the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

Reason: To ensure proper drainage and avoid pollution of the area surrounding the site

20. Development shall not proceed beyond the construction of the approved main site access from Caesar's Way (for a maximum distance of 15m back from the edge of the adopted highway) until details of existing and proposed ground levels and finished slab levels, together with full details of roof ridge lines and eaves levels of

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the proposed dwellings in relation to those of the neighbouring residential properties to the site shall be submitted to and approved in writing by the Local Planning Authority and the work shall be undertaken in accordance with the approved details.

Reason: To ensure control over the height of the dwellings when constructed given the changes in land levels in the interests of the visual amenity of the area.

21. Condition discharged. Works to be carried out in accordance with details approved 18/07/2016 under application reference Y13/0024/SH.

22. Condition proposed to be removed under this application.

23. Condition discharged - Works shall be carried out in accordance with details approved under 23/0125/FH/CON. The protection measures as approved shall be retained in position at all times until the completion of the development, and the land so enclosed shall be kept clear of all contractors materials and machinery. The existing soil levels around the boles of the trees shall not be altered.

Reason: To ensure that the trees are not damaged during the period of construction.

24. No dwelling or building hereby permitted shall be occupied or first used until the means of vehicular access has been constructed in accordance with the approved plans as set out in condition 4.

Reason: In order to ensure the provision of a suitably constructed access to the site.

25. Construction vehicle loading, unloading and turning areas, together with parking for site personnel and visitors shall be carried out in accordance with the detail approved pursuant to application reference 21/1105/FH/CON on the 21/05/2021. The approved details shall be maintained in a useable state for the duration of the construction period.

Reason: To ensure the retention of loading, unloading, turning and car parking areas within the site to prevent interference with the flow of traffic along the highway and to safeguard the amenities of adjoining areas.

26. All details of the approved construction management plan approved 21/05/2021 under application reference 21/1105/FH/CON shall be adhered to during the construction period.

Reason: In the interests of highway safety and the amenity of the area.

27. Prior to the first occupation of or use of the buildings hereby permitted, a travel plan shall be submitted to and approved in writing by the Local planning Authority, which shall include details of implementation and monitoring and shall be implemented in accordance with these details. The results of the implementation and monitoring shall be made available to the Local Planning Authority on request, together with

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any changes to the plan arising from those results. The measures as set out in the travel plan shall be provided within 6 months of the occupation of the dwelling and first use of a commercial building unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of sustainability and providing alternative means of transport to the site.

28. Prior to the construction of development beyond the slab level of any building hereby permitted, details of the proposed new position for the relocation of the existing Stoddart Road bus stop in Ashley Avenue further north and closer to the development site, together with details of the provision of a raised kerb and bus stop clearway road markings shall be submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and the bus stop shall be made available for use prior to the first occupation of the dwellings or use of the commercial buildings.

Reason: In the interests of highway safety and promoting sustainable transport.