

Section 73 application to vary condition 15 of planning permission TW/12/1442 relating to traffic calming measures for the new Benenden Primary School, Land south of Rolvenden Road, Benenden, TN17 4DN – TW/17/3344 (KCC/TW/0271/2017)

A report by Head of Planning Applications Group to Planning Applications Committee on 8 November 2017.

Section 73 application by KCC Property & Infrastructure Support to vary condition 15 of planning permission TW/12/1442 to ensure that the offsite traffic calming measures are approved and implemented prior to first occupation of the new primary school, Land south of Rolvenden Road, Benenden, Kent, TN17 4DN – TW/17/3344 (KCC/TW/0271/2017).

Recommendation: Subject to any further views received by the Committee Meeting permission be granted subject to conditions.

Local Member: Mr. Sean Holden

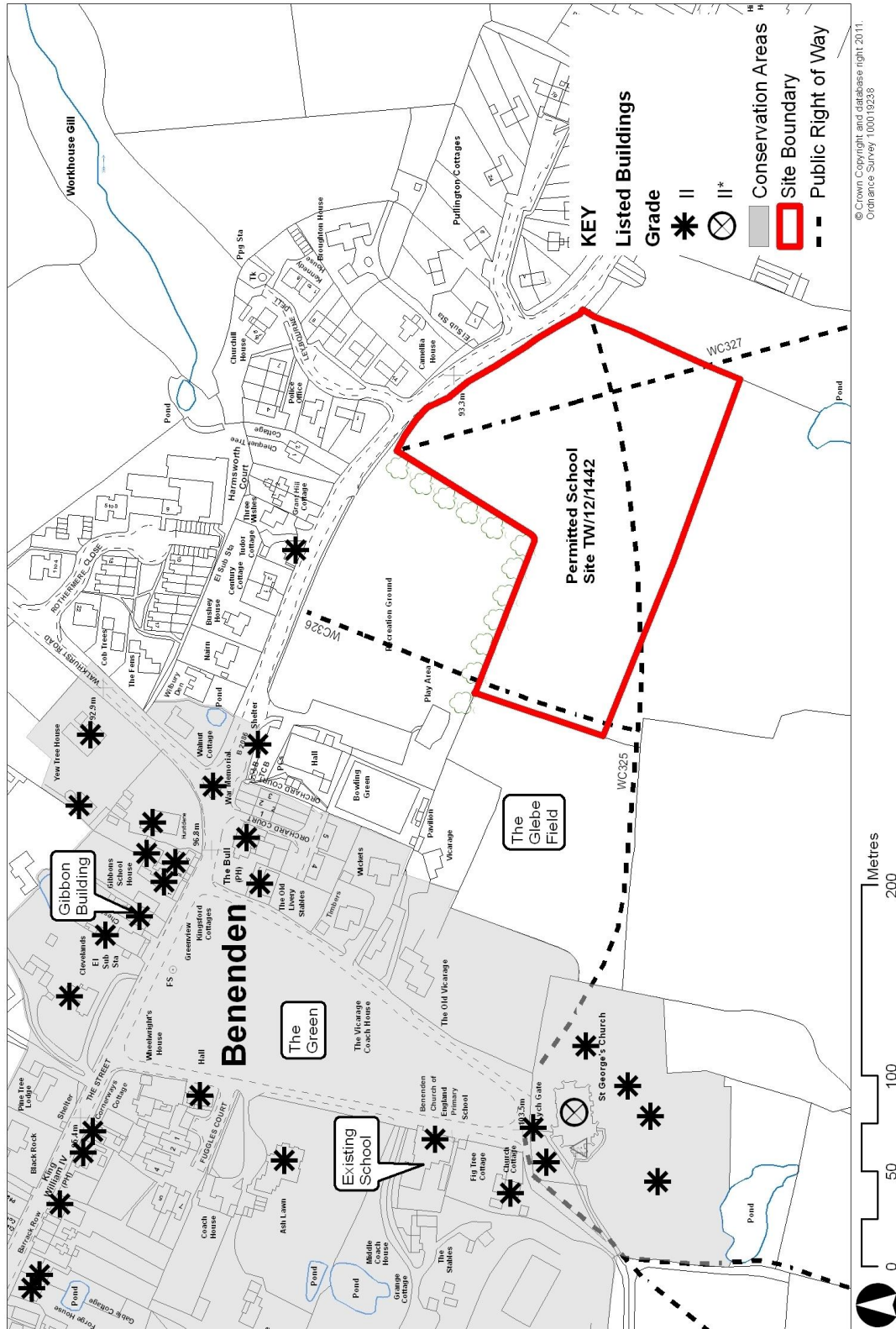
Classification: Unrestricted

Site and background

1. This application relates to the planning permission which was granted in January 2013 for the construction of a new primary school on land south of Rolvenden Road to replace the existing outdated accommodation and facilities that are no longer fit for purpose located elsewhere in the village. The new school site comprises pasture land of 2.12 hectares (5.24 acres) in area. It lies to the east of the village church and adjacent to the Glebe Field. Land to the south is in open agricultural use, whilst the village sports field is situated directly to the north. The site is bordered by native hedgerow, with trees along the western boundary with the Glebe Field and surrounding the sports field to the north. The site has sloping topography, rising southwards from the Rolvenden Road. A location plan is attached.
2. An alternative proposal, which was subsequently granted planning permission in October 2014, involved reducing the amount of car parking on the proposed school site with a revised access position and use of an extended and resurfaced village hall car park. However, I understand that a mutually acceptable agreement was not reached between the applicant and the Harmsworth Memorial Trust (i.e. the trustees of the village hall and recreation ground) for it to be possible to proceed with that proposal. The particular planning permissions relating to this alternative proposal have recently lapsed. The applicant's intention is therefore to implement the planning permission for the new school with the car parking and access arrangements as originally proposed and permitted under reference TW/12/1442.
3. Following protracted negotiations, the new school is mainly being funded through the Education Funding and Skills Agency's (EFSA) Priority Schools Building Programme 2. Works are due to commence on site before the end of the year given that the planning permission will expire on the 21 January 2018. The intention is to let the contract in two parts. The first has been let to form the proposed vehicular access and car park and a second will be let for the main contract for the construction of the school building. In view of this, the applicant has been seeking to discharge the various pre-commencement conditions imposed on the planning permission. Some of the details

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Location of New Benenden Primary School Site



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required have already been approved under delegated powers and others are still being considered, including the Code of Construction Practice which is reported under item D3 of these Committee papers. An application for a Non Material Amendment has also been approved for minor changes required to meet EFSA guidelines and funding requirements, including minor changes to the floor plan, minor alterations to the elevations and changing the courtyard paving.

Proposed variation of condition

4. Pre-commencement condition (15) requires the implementation of traffic calming measures in Rolvenden Road on the basis of the scheme which was put forward with the original application. The scheme included continuous white edge lining of the carriageway, school keep clear markings, 30 mph carriageway markings and signage, coloured surface treatment at either end and a gateway feature together with a vehicle activated sign (with school warning and 30 mph slow down displays) at the eastern end. (A drawing showing this is attached below.) When the school application was considered by the former Planning Applications Committee in December 2012 Members requested that such a scheme be implemented prior to construction commencing on site in accordance with details that first had to be submitted to and approved by the County Planning Authority in consultation with the Highway Authority. Accordingly the following condition (15) was imposed:

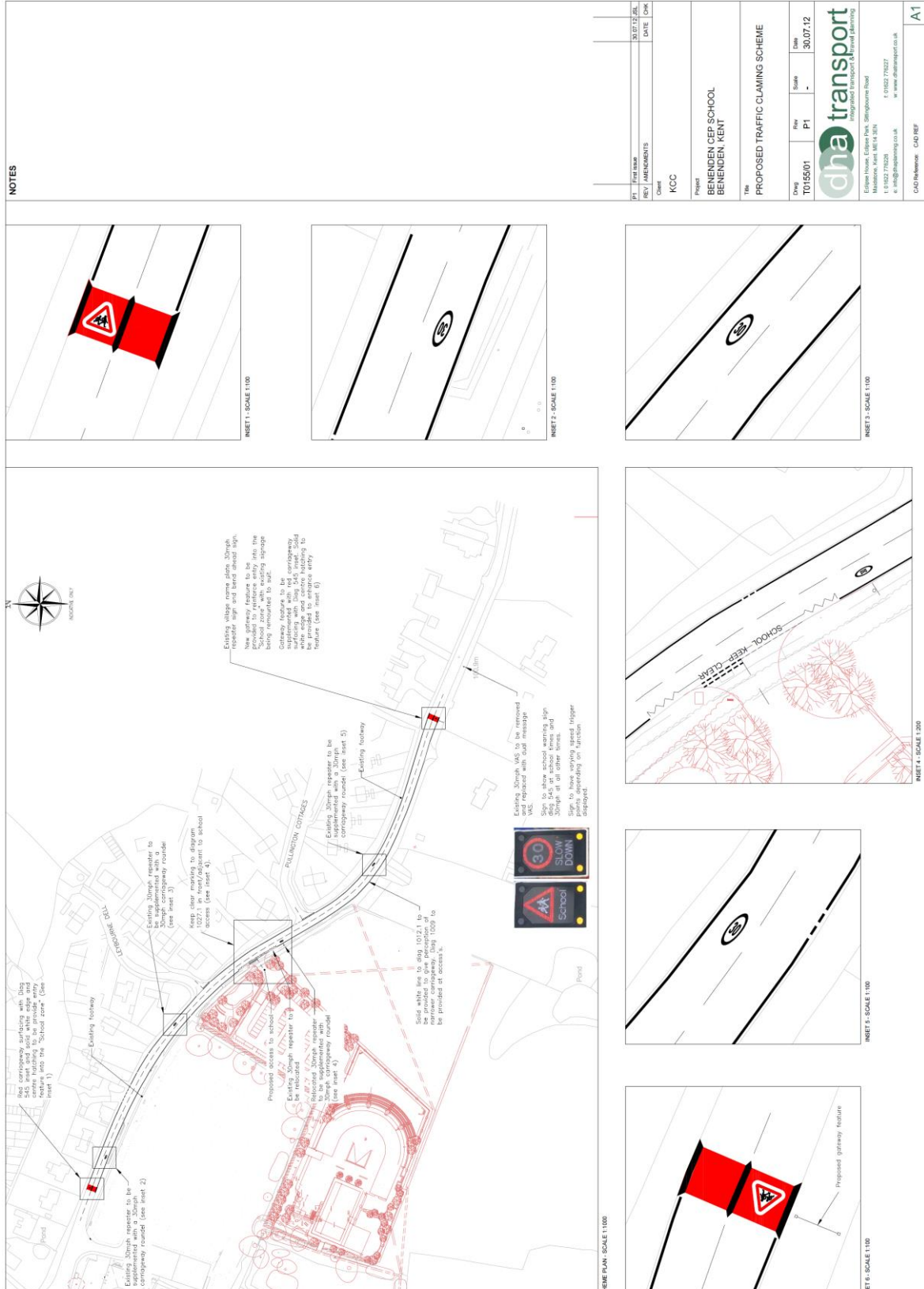
Before the development hereby permitted is commenced, a scheme of off-site traffic calming measures (as outlined in "Supplementary Transport Report" dated July 2012 reference JSL/T0155 and on "proposed Traffic Calming Scheme" drawing number T0155/01 Revision P1, or other such scheme of works substantially to the same effect which has first been approved in writing by the Highway Authority) shall be implemented, subject [as necessary] to a Traffic Regulation Order, Safety Audit, and the prior approval of a scheme which shall first be submitted to and approved by the County Planning Authority in consultation with the Highway Authority. Thereafter the approved off-site traffic calming measures shall be maintained in perpetuity for the life of the development hereby permitted.

Reason: In order to secure the provision of off-site traffic calming measures ahead of the first opening of the new Primary School.

5. The applicant has now submitted this Section 73 application to vary the timing of when the traffic calming scheme is required to be implemented on the basis that the main reason for the imposition of the condition was to protect the highway safety of children, staff and parents visiting the school when it is operational and was not necessary to ensure the safety of operatives associated with the construction process. In that respect it is stated in the application that the construction works would be accompanied by their own Code of Construction Practice (CCP) required by condition 14. The details of the CCP which is reported under item D3 includes signage to ensure public vehicles approaching the site on Rolvenden Road are made fully aware of the construction activities taking place and the likelihood of construction vehicles turning into and out of the site. It is also stated in the application that 'yellow signage' is typical on the approach to construction works, and this if necessary can include repeater speed limit signs and warning signs. In addition it is pointed out that parts of the traffic calming

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Traffic calming measures - drawing T0155/01



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scheme associated with the operation of the school, such as the interactive school warning sign (proposed to the east of the school site), would give the incorrect and potentially misleading information to approaching drivers during the construction period, potentially resulting in driver confusion.

6. The applicant is therefore requesting that the condition be reworded as follows:

Before the first occupation of the new Primary School, a scheme of off-site traffic calming measures (as outlined in "Supplementary Transport Report" dated July 2012 reference JSL/T0155 and on "proposed Traffic Calming Scheme" drawing number T0155/01 Revision P1, or other such scheme of works substantially to the same effect which has first been approved in writing by the Highway Authority) shall be implemented, subject [as necessary] to a Traffic Regulation Order, Safety Audit, and the prior approval of a scheme which shall first be submitted to and approved by the County Planning Authority in consultation with the Highway Authority. Thereafter the approved off-site traffic calming measures shall be maintained in perpetuity for the life of the development hereby permitted.

Reason: In order to secure the provision of off-site traffic calming measures ahead of the first opening of the new Primary School.

Planning policy

7. (i) **National Planning Policy**

National Planning Policy Framework (March 2012), and the National Planning Policy Guidance (March 2014).

The NPPF states that, in determining applications, local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible.

The following NPPF guidance and objectives are of relevance to this particular application:

- safe and suitable access to the site can be achieved for all people; and
- improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development.

In addition, Paragraph 72 states that: The Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. Local Planning Authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should give great weight to the need to create, expand or alter schools, and works with schools promoters to identify and resolve key planning issues before applications are submitted.

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Policy Statement - Planning for Schools Development (15 August 2011) sets out the Government's commitment to support the development of state-funded schools and their delivery through the planning system.

(ii) Tunbridge Wells Borough Local Plan (2006) Saved Policies:

Policy TP4 Proposals will be permitted provided certain criteria are satisfied including, amongst others, that the traffic generated by the proposal does not compromise the safe and free flow of traffic or the safe use of the road by others. Where a proposal necessitates highway improvements, the developer will be required to meet the cost of the improvements where these are fairly and reasonably related to the development.

(iii) Tunbridge Wells Borough Core Strategy (June 2010)

Core Policy 3 In order to address transport issues and encourage sustainable modes of transport, amongst other things, seeks to conserve and enhance the rural lanes network to ensure that they are convenient and safe for users.

Core Policy 5 The Borough Council will apply and encourage sustainable design and construction principles and best practice. Developments should also be of high quality design, creating safe, accessible, and adaptable environments, whilst conserving and enhancing the public realm.

Core Policy 8 Supports the provision of community facilities.

Consultations

8. **Tunbridge Wells Borough Council** has no major concerns with the proposal and has no comments to make.

Benenden Parish Council - at the time of writing views have been requested by 3 November 2017.

Kent County Council Highways and Transportation has commented as follows:

'I can advise that in general off site works in connection with development are provided prior to first occupation to ensure that the required works are in place before the use of the development commences. This is reflected in the reason for the condition. Also as any new measures can be damaged during the course of construction it is usually considered prudent to implement the required measures, following major construction works on the site.

Although the measure here may be predominantly signing and lining, they may require refreshing following the construction phase and the measures relating

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particularly to the school would be inappropriate in advance of its opening.

In keeping with the initial recommendation on the main application, the highway authority would have no objections to the implementation of the works prior to first occupation.'

Local Member

9. The local County Member, Mr Sean Holden, was notified of the application on 6th October 2017.

Publicity

10. The application was publicised by the posting of three site notices along the stretch of road affected by the traffic calming measures.

Representations

11. One online representation has been received from a nearby local resident objecting to the application. He considers that it must be refused because it seeks to remove the responsibility for the traffic calming measures during the construction period on this site without making any mandatory conditions or guarantee that someone else would replace them. The following points are also made:
 - In TW/12/1442, the reasons for granting approval of the new School entrance states that having taken account of the various highway concerns received, together with the professional and technical advice from KCC Highways and Transportation, the committee was satisfied that subject to the imposition of conditions, which included the provision of offsite traffic calming measures the proposed new school access would be safe for users of the new facility and for other Highway users including those residential driveways which would be located opposite the new school access point.
 - Great issue was made of this at the planning meeting where it was discussed at length and we were assured that with these Traffic Calming Measures in place we would be perfectly safe from the traffic speeding through the dangerous S bends where the new school was located.
 - The Building Contractors in the condition 14 Code of Construction Practice have not been instructed to provide Traffic Calming Measures as one of the key aspects of this code because the KCC believed that they are already covered by the Condition 15 which has to be approved and in place before the development is hereby permitted.
 - The DHA [the applicant's transport consultant] Section 73 Transport Statement totally ignores the safety of the other road users and the local residents during construction of the school and concentrates solely on the users of the new school after it has been built. It goes against the safety ethos for the whole scheme; DHA

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cannot just seek to change for one section without considering how the whole Scheme will be affected and then addressing those changes.

- It is not safe or in the public interest for DHA to rely on the Building Contractors maybe putting these measures in place at their own expense, when they already believe them to be covered by condition 15 and that the Traffic Calming Measures are not a part of their construction contract.
- TW/12/1442 was granted with condition 15 so that the Traffic Calming Measures would be in place before any work was started on the construction of the school to protect the safety of the other road users, local residents including residents who live opposite the school entrance during the construction phase, and then the school users as well when the school is occupied.

Discussion

12. This application seeks to vary the timing for the implementation of the traffic calming measures so that they do not have to be in place before the applicant is able to commence any works on the permitted school site itself. The key determining issues are highway and access considerations and the need for the development. The traffic calming measures per se do not require planning permission as they are allowed under permitted development rights. However, planning permission for the new school was conditional on these measures being carried out to make the access arrangements acceptable and safe for all users of the highway in accordance with the planning policies referred to in paragraph (7) above.
13. Although the applicant is seeking to vary the condition to change the timing of the works the traffic calming measures include the signing and road markings as originally required by the former Planning Applications Committee. I understand discussions are taking place with the highway authority in respect of the detailed design of the traffic calming scheme. In addition consultations are already being carried in respect of those elements of the scheme which need to be subject to a Traffic Regulation Order. They include the school keep clear markings and the continuous white edge lining of the carriageway. Once that process is concluded and the Highway Authority is satisfied with the detailed design of the traffic calming measures as a whole, the applicant will be able to submit the finalised scheme for the approval of the County Planning Authority as required by the condition. However, given the impending expiry date of the main planning permission and the applicant's urgent need to deliver a replacement primary school for Benenden, it may not be possible to do so before the end of the year. In the light of this and the grounds for the imposition of the original condition (as set out in paragraph (4) above), some flexibility is being sought as a contingency so as not to delay the project.
14. Notwithstanding the objection raised by the local resident, it will be noted that the Highway Authority has not raised objection to the variation of the condition and implementation of the works prior to first occupation of the school, for the reasons as set out in paragraph (8) above. Attention is particularly drawn to the reason for the imposition of the original condition and that the Highway Authority has provided further clarification in the consideration of this application, in that general practice requires

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works to be in place for the occupation of the new school.

15. In addition, as part of the Code of Construction Practice (CCP) required by condition (14) appropriate temporary warning signage and any other measures required by the Highway Authority would be provided at the commencement of the enabling works contract. Notwithstanding the above, subject to approval, it is the applicant's intention that the traffic calming measures would be carried out as part of the enabling works contract, the main elements of which are the proposed vehicular access and car park. Consequently, the traffic calming measures should be in place in advance of the main contract for the construction of the school building. In light of the foregoing, including the views of the highway authority, I would not raise a planning objection to variation of the condition as proposed and am satisfied that it would accord with development plan policies and guidance.
16. There is strong policy support for the delivery of new school facilities set out in the National Planning Policy Framework and in the 2011 Policy Statement - Planning for Schools Development. In delivering proposals for new school facilities the Government advises that planning authorities should take a proactive, positive and collaborative approach to meeting the objective of ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. Local Authorities are therefore advised that they should give great weight to the need to create, expand or alter schools. In addition, in this instance given the significantly advanced negotiations with the Government's Education Funding and Skills Agency (EFSA), then Section 143 of the Localism Act which amends Section 70 of the Town and Country Planning Act 1990 to include local finance considerations as a material consideration, is also relevant to the determination of this application. It states:

(2) In dealing with an application for planning permission [...] the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations to—

- (a) the provisions of the development plan, so far as material to the application, [...]*
- (b) any local finance considerations, so far as material to the application, and*
- (c) any other material considerations."*

The meaning of 'local finance consideration' relevant in this case: means 'a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown.'

Should works not commence before expiry of the main permission TW/12/1142 then a further planning application will be required. This would result in significant delay to the delivery of the new primary school and importantly risks the loss of secured Government EFSA funding to the project which is essential to the delivery of the project. I am therefore satisfied that the delivery of the revised timescale for traffic calming measures represents sustainable development and see no overriding reason to withholding planning permission for the variation of the condition.

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Conclusion

17. This application seeks permission to vary the timing for the implementation of the required traffic calming measures for the new Benenden Primary School. Permission is sought to ensure that they are in place for the first occupation of the school rather than prior to development commencing. This will afford an enabling contract for the access and car park to be delivered and secure the delivery of the new primary school in Benenden. Temporary measures warning of construction traffic are proposed for the duration of construction. In light of the above, and subject to any further views received by the Committee Meeting, I am satisfied that the development accords with planning policy and guidance and is sustainable. I therefore recommend accordingly.

Recommendation

18. SUBJECT TO any further views received by the Committee Meeting, I RECOMMEND that PERMISSION BE GRANTED for the variation of condition (15) of planning permission TW/12/1442, as follows:

Before the first occupation of the new Primary School, a scheme of off-site traffic calming measures (as outlined in "Supplementary Transport Report" dated July 2012 reference JSL/T0155 and on "proposed Traffic Calming Scheme" drawing number T0155/01 Revision P1, or other such scheme of works substantially to the same effect which has first been approved in writing by the Highway Authority) shall be implemented, subject [as necessary] to a Traffic Regulation Order, Safety Audit, and the prior approval of a scheme which shall first be submitted to and approved by the County Planning Authority in consultation with the Highway Authority. Thereafter the approved off-site traffic calming measures shall be maintained in perpetuity for the life of the development hereby permitted.

Reason: In order to secure the provision of off-site traffic calming measures ahead of the first opening of the new Primary School.

19. I FURTHER RECOMMEND that all other relevant conditions on planning permission TW/12/1442 BE restated except in so far as the wording of certain conditions takes account of the details that have already been submitted and approved.

Case Officer: Mary Green

Tel. no: 03000 413359

Background Documents: see section heading
