

## SUPPLEMENTARY REPORTS

AREA 3 PLANNING COMMITTEE

DATED 9 July 2020

---

### **East Malling And Larkfield TM/19/01814/OA East Malling**

**Outline Application: Erection of up to 250 new homes (40% affordable), new community building, areas of public open spaces, areas of play, upgrade of existing footpaths, together with new vehicular access onto London Road and associated parking and landscaping at Development Site Land West Of Winterfield Lane East Malling West Malling Kent**

Leybourne PC: Has raised detailed questions about the contributions that are being sought in order to mitigate the impacts of the development proposed (in accordance with statutory and policy tests), suggesting that the contributions should/could be attributed to other local schemes. These suggestions are summarised as follows:

- Leybourne Parish Council had drawn up plans (in conjunction with TMBC) to make Leybourne Castle Lakes a location of AONB, as a wildlife and educational facility for the local communities and would be working with partnership organisations to achieve this proposal.
- Local playing fields in the area including at Oxley Shaw Lane;
- New primary school at the site where ample land is available to accommodate such provision rather than in Aylesford;
- Support for youth work at the village hall rather than at Aylesford in order to fund activities and provide a dedicated Youth Worker which will provide immediate benefit for this community;
- Health contribution should be directed to Leybourne Surgery.

Private Reps: A further 331 objections and 7 supporting representations have been received since publication of the main agenda papers. The comments received do not raise any new material planning considerations beyond those addressed in the main report.

A petition with a total of 861 signatures has also been received by the Council. The objections raised in the petition are summarised as follows:

- Site is countryside and is proposed to be included within the Green Belt within the draft local plan;

- Site is good agricultural land, an important green space with rural public footpaths providing a recreational asset the character of which would be lost if incorporated into the development
- Important within the local landscape, adjoins the CA and helps retain the separate identities of East and West Malling

Officers are also aware of a separate petition (with 930 signatures) having been circulated to all Members of the Planning Committee by email on 08 July, stating “*Stop this development in East Malling that threatens our Green Belt and Open Spaces*”

The matters raised by the petitions have been fully addressed within the main agenda papers throughout the assessment.

#### **DPHEH:**

##### Planning obligations:

For the avoidance of any doubt, all planning obligations sought via the section 106 legal agreement in this (and indeed any) case must meet the statutory and policy tests which are cited at paragraph 6.72 of the main agenda. Projects have been specifically identified in all instances to meet these requirements and it is not possible to simply redirect any element of the contributions secured to an alternative scheme (should one come forward) simply out of preference. In terms of open space provision, adopted policy OS3 (2) of the MDE DPD clearly sets out that the form and level of the provision of open space will be determined in accordance with the sequential approach and methodology set out in Annex D of the MDE DPD. This was applied in this instance and it is a consequence of that exercise (which is a requirement of adopted policy) that has resulted in the form and level of provision that will be required in association with this development.

In brief response to the points raised by Leybourne PC, to assist Members, I can advise as follows:

- The parks and gardens contribution is aimed at Leybourne Lakes because there is an identified project at this site, which is required in order to meet the tests for securing contributions; policy OS3 sets out a hierarchy of types of open space with parks and gardens being the top layer of this provision with the primary purpose of providing accessible high quality open space that offers opportunities for informal recreation and community events.
- With regard to outdoor sports facilities, the contribution is worded to be used for facilities in the surrounding area, which includes Leybourne;
- Where contributions towards schools are required; KCC as the Education Authority sets out the specific projects to which these should be dedicated based on their own evidence and requirements. This is also the case for projects relating to youth

facilities in the vicinity. KCC will be a party to the s106 legal agreement on this basis;

- In making their representations, the CCG has considered the closest surgery; Leybourne Surgery is part of the West Malling Group practice which is one of the practice groups listed as a project to which the contribution would be directed.

Outwith the assessment and determination of this application, officers would strongly encourage the Parish Councils to discuss potential projects with Borough and County Council officers going forward.

Draft Local Plan:

Officers are aware that Members were contacted in writing on 08 July by a representative on behalf of the “Protect West Malling Action Group” concerning in particular matters related to the policies contained within both the adopted LDF and draft local plan as submitted for examination. The contents of the letter provided to Members is ultimately misleading and as such, the following detailed officer guidance is set out below:

Members will be aware that the local plan has been submitted for examination, and the dates for the initial phase of hearings have now been set. NPPF Paragraphs 48 - 50 set out the weight which can be given to policies in emerging plans and the circumstances where it could be argued that a proposal is “premature” and should be refused on that basis:

*“48. Local planning authorities may give weight to relevant policies in emerging plans according to: a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given); b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)”<sup>22</sup>.*

*49. However in the context of the Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both: a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.*

*50. Refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination; or – in the case of a neighbourhood plan – before the end of the local planning authority publicity period on the draft plan. Where planning permission is refused on grounds of prematurity, the local*

---

*planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process.*

*<sup>22</sup> During the transitional period for emerging plans submitted for examination (set out in paragraph 214), consistency should be tested against the previous Framework published in March 2012.”*

When the emerging plan is at an “advanced” stage is not a defined position. However, in ***Leeds City Council v The Secretary of State for Housing, Communities and Local Government & Taylor Wimpey (UK) Limited [2019] EWHC 682 (Admin)***, the approach of the Inspector to this was challenged. At Inquiry, the Inspector had found that “*I understand Guidance to mean that the emerging plan should be sufficiently advanced to be not yet formally part of the development plan, i.e. that the examining Inspector’s Main Modifications have been published, so that it is **reasonably clear what final form the plan would take**, even though it has not been finalised or formally adopted.*” (my emphasis). The judge found no fault with this reasoning, which he found to be in line with PPG guidance, now enshrined in paragraphs 48-50 NPPF.

Turning to each of the relevant paragraphs, paragraph 48 deals with the weight to be attached to emerging policies (in this case the Green Belt extension encompassing the application site) and sets out 3 tests.

Test (a) is the degree of advancement of the plan. The approach of the Inspector in Leeds (above) is a reasonable approach to take. One must be satisfied that it is reasonably clear what final form the plan would take. At this point in time, in particular where the Inspector’s Matters, Issues and Questions have made clear there are questions over how the revised Green Belt boundaries have been set, it cannot be said with any certainty whether this site would remain unaffected in the emerging plan or subject to main modifications which might take all or part of the site out of the proposed Green Belt extension.

Under (b) there are unresolved objections to this site being included in the Green Belt, not least from the applicant. These will not be resolved until the examination of these issues has taken place.

As to (c), the policies are, in our view, consistent with the NPPF 2012. However, given the conclusions above regarding “advanced stage” and the outstanding objections, only limited weight can be afforded to the emerging policy at the present time.

On to prematurity, paragraph 49 sets out two tests which must be satisfied if prematurity is to justify a refusal of planning permission. Firstly, that the development would predetermine “decisions about the scale, location and phasing of new development that are central to the emerging plan.” This, primarily, would seem to mean that the effect of the proposal would have to predetermine decisions about *allocated development sites* within the emerging plan. The site is not allocated within the emerging plan for development. It could be said that the provision of 250 additional homes here could have an effect on the

objectively assessed need/ five year housing supply which might have a knock-on effect on the numbers of houses needing to be provided through the local plan. However, given the relatively small scale of this development, considered against the housing need over the emerging plan period, this effect is likely to be small. Secondly, how advanced the plan is. For the reasons set out above, it is considered that the plan is not at an advanced stage; therefore, *even if* the first test in paragraph 49 is met, the second is not.

*New Homes Bonus:*

Officers are aware that the developer has recently highlighted the fact that the Council would be in receipt of New Homes Bonus in the event that planning permission for this development is granted; the intention being to highlight purported benefits of the development coming forward in view of the test the Council is required to undertake in respect of the presumption in favour of sustainable development (paragraph 11(d) (ii) of the NPPF).

The Planning Practice Guidance (the “PPG”) sets out that section 70 (2) of the Town and Country Planning Act 1990 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 1990 Act (as amended) 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. It goes on to state as follows:

*“Whether or not a ‘local finance consideration’ is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. It would not be appropriate to make a decision based on the potential for the development to raise money for a local authority or other government body*

*In deciding an application for planning permission or appeal where a local financial consideration is material, decision takers need to ensure that the reasons supporting the decision clearly state how the consideration has been taken into account and its connection to the development.*

*New Homes Bonus payments recognise the efforts made by authorities to bring residential development forward. Even where anticipated Bonus payments are not a material consideration in making planning decisions, they can be noted for information in committee reports on applications for housing. Where this is done, care will be required not to imply that Bonus payments are relevant to the decision before the committee.”*

In straightforward terms, officers consider that receipt of New Homes Bonus (NHB) is not a material planning consideration. Whilst it would have an economic benefit to the community as a whole, there are no identified measures necessary to offset the impacts of the development to which NHB funding has been allocated and no policy basis upon which to do so.

Even if the NHB were to be a material consideration it would carry little weight because

(i) the Council has already received its allocation for the financial year 2020/21;

(ii) there is no certainty over the actual level of NHB which the scheme might generate (given that the application is in outline) and

(iii) there is some uncertainty as to whether NHB funding will continue to be given by central government next year or in future years at all.

**RECOMMENDATION REMAINS UNCHANGED**

---

**East Malling & Larkfield TM/18/01106/FL  
East Malling**

**Proposed new entrance to No.165 Wateringbury Road at Belvidere Oast 165  
Wateringbury Road East Malling West Malling Kent ME19 6JE**

No supplementary matters to report

---