

**Kings Hill
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TM/13/01535/OAEA

Outline Application (with all matters reserved except for means of access) for the demolition of existing buildings including the KCC Supplies depot and removal of a section of Kings Hill Avenue; the erection of up to 635 residential dwellings; a two form entry primary school with associated playing fields and land safeguarded for an extension to create a three form entry primary school; a multi-functional extension to the community hall; -a skate park; formalisation of car parking areas at the Community Centre and adjacent to Crispin Way; indicative improvements to the highway network at Alexander Grove, Gibson Drive and Queen Street; and trim trails, woodland paths and green spaces at Kings Hill Phase 3 Kings Hill West Malling Kent ME19 4QG for Liberty Property Trust UK Limited

- 1 Applicant:** Their agent has responded to the committee report as follows:
 - 1.1 Has clarified that in terms of the housing proposed in Phase 3 Paragraph 7.62 accurately reflects the level of car parking to be provided at an average of 2.36 car parking spaces per dwelling, which would equate to circa 1,500 spaces.
 - 1.2 Paragraph 7.75 states that the applicants have agreed to decontaminate the site, which it appears is an obligation on the school procurement body that it will have to meet – through the planning application that KCC is considering. This issue is not a determining factor in the Phase 3 application.
 - 1.3 The applicant has also made specific comments with regard to some of the conditions set out in draft and has also commented on the s.106 Heads of Terms: in the latter case, in terms of items 2, 3 and 4 listed under the s.106 heads of terms relating to highways works, bus strategy and bus services it is pointed-out, quite rightly, that these are not new contributions but are a reallocation of the Phase 2 outstanding s.106 monies. They are supportive of the reallocation of the Phase 2 monies on the basis that there is a proven need for these monies to be spent as a result of the Phase 3 development.
 - 1.4 The points raised require detailed assessment in the process for finalising conditions and s.106 obligations in my revised recommendation at the end of this Supplementary Report. This is a practice that is often required in the case of large complex decisions.

2. Private Reps

- 2.1 No additional private representations have been received since the main report was published.

3. Consultees:

- 3.1 Sport England have made a further comment that applicant should provide the proposed dimensions of the community centre, in order to understand if the extended community hall will meet Sport England's Sports Halls design guidance and adequately accommodate the proposed badminton court.

- 3.2 KCC comments reported in my main report were limited to Highways, Archaeology and Education/Community which responded to the amended scheme. KCC as a corporate body made comments in July 2013 on the original 975 unit scheme. Those comments which could be considered as still relevant to the revised 635 unit scheme. Although KCC has no formal role in strategic planning, those comments are summarised as follows:

- KCC considers that the loss of employment land at this site will not be a problem for the Borough as there is sufficient floorspace both at Kings Hill and elsewhere in the Borough.
- 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 opportunities to ensure that the proposal results in ecological benefits and KCC advise that these should be incorporated into the design process at the earliest stages
- KCC also advise that to ensure that ecological enhancement measures provide real benefits, it will be necessary to secure appropriate long-term management of any habitats and features created.

KCC consider that in general the Landscape and Visual Impact Assessment is comprehensive, and its findings are supported. KCC would like to see all the actions in the Landscape Character section included as a condition to the planning permission.

- KCC are concerned with the loss of ancient woodland, it is one of the last characteristic features in Kings Hill and performs a connectivity function. Due to the irreplaceable nature of ancient woodland, and its size and isolation and the historic, biodiversity and landscape benefits it delivers, means greater weight should be given to it.
- This development will lead to both a visual and landscape impact. The key aim of LVIA is that the impacts must be transparently identified.

- Many measures presented in the LVIA are design statements rather than mitigation in relation to an identified need.
- All planting should ideally be locally sourced (seed to tree) and native species. No ash should be planted.

3.3 KCC Highways have been engaged in the consideration of the application from the earliest point.

4. DPHEH:

4.1 Erratum: The conclusion of the main report was subject to a minor typographical error and reads:

“CONCLUSION: This application is a material departure from the Development Plan that will result in the loss of allocated employment land. Whilst the application proposals conflicts with DLADPD Policies E1 and E3, as explained above there are a number of significant material considerations that can be judged to justify setting aside these policy considerations. Most importantly the release of the land to housing would support the significant NPPF identified national aim of improving housing land supply both as an end in itself and also to tool in supporting the national economic growth agenda. That is supported by the identified assessed need for housing in the Borough.”

4.2 At the time of writing this supplementary report, the school application with KCC was still pending determination.

4.3 For the avoidance of doubt, the application site, where the housing is proposed to be located, is entirely within the Parish of Kings Hill. The off-site community leisure and sports facilities are on land under the control of the applicant at Heath Farm, which is in the Parish of East Malling and Larkfield. The acceptability of the use of that land for off-site open space and associated facilities to serve the Kings Hill area was established by the Secretary of State’s decision in October 2004. This application intends to establish the *principle* of more such uses and associated works at Heath Farm on an indicative basis but the facilities there will need to have stand-alone full planning applications (with the exception of the use of land as allotments).

4.4 The indicative suggested conditions will need to be finalised in detail and I would wish to have this process delegated to me as Director subject to the finalised wording being agreed with the Director of Central Services. This would allow officers to make sure that the legal and policy tests of conditions are met and that they are flexible in allowing for phasing where necessary. The National Planning Practice Guidance (NPPG) states that in imposing conditions that require further details to be submitted, where it is practicable to do so, such conditions should be discussed with the applicant before permission is granted to ensure that unreasonable burdens are not being imposed e.g., that the timing of submission of any further details meets with the

planned sequence for developing the site. The NPPG advises that conditions should not be used if they unnecessarily affect an applicant's ability to bring a development into use, do not reasonably allow a development to be occupied or otherwise impact on the proper implementation of the planning permission.

- 4.5 It is considered that the July 2013 representations of KCC on Ecology and Landscape matters are adequately dealt with by the conditions suggested in the main report.
- 4.6 I have identified a number of matters now raised by the applicant in relation to the original report that require further comment at this stage – but much of what is said will be dealt with in the finalisation of the conditions and S106. Those factors requiring a little more comment are set out below.
- 4.7 In response to the comments of the applicant's agents: the car parking figures in paragraph 1.9 includes for retained employment, over the total application site. **The figures for parking for dwellings will be approx. 1500 which excludes garages and equates to approx. 2.36 per dwelling.**
- 4.8 The applicant has queried the timing of the provision of the controlled crossing near the new school. The suggested timing of the pelican crossing delivery has been selected because the first dwellings on Phase 3 are likely to produce children that may need to have the option of a safe foot journey to school, even if they are attending Kings Hill School should the new academy school not be ready for whatever reason. I consider that dwelling occupation is an element more relevant than the opening of the new school as the need for safe walking routes will arise from the first occupation of the Phase 3 houses.
- 4.9 While the affordable housing provision has been broadly specified there will be a need for the S106 to finalise the detailed unit types, space standards, phasing of delivery and possibly allocations processes.
- 4.10 Officers consider that the intended relocation of the tennis courts to Heath Farm could well sensibly form part of a mixed use facility of a MUGA i.e. to include netball or basketball. Formal netball and basketball games are totally different activities to what is envisaged in a "skate park"- like youth recreational facility, but in view of the previous difficulty in resolving the "skate park provision" in the past it cannot reasonably be assumed that such a facility will ultimately be desired by the local community.
- 4.11 The precise arrangement of the Community Hall extension will be considered at a later stage when such details are submitted for approval.
- 4.12 The part of the report on Memorial ground/Burial ground (para 7.101) is intended to indicate that there *may* be scope for the Burial ground facility at Heath Farm. That would be expected to be pursued by KHPC which has the role as Burial Authority –

such provision is not the responsibility of the applicant. A Memorial Garden (possibly including provision for cremated remains) could more feasibly be provided.

- 4.13 Improvements to the Tower View roundabout is a long standing requirement that has been waived to date in light of limited Phase 2 office development coming on-stream. This scheme is already designed in consultation with KCC and was integral to the Phase 3 TA appraisal of that roundabout. There may need to be minor refinement ,of the completion trigger only, to reflect the timing issues that may arise from involvement of third parties or other procedures.
- 4.14 The requirement for the traffic calming and/or re-alignment of Gibson Drive is timed to reflect the expectation that there will be a 1FE school from Sept 2015 which will affect traffic flows on Gibson Drive. There may, subsequently be the need for minor refinement to the triggers to reflect the timing issues that may arise from involvement of third parties or other procedures.
- 4.15 The applicant's suggestion regarding the scheme for the monitoring of Tower View/Kings Hill Avenue roundabout to be triggered by the occupation of the 320th house is too late in the implantation timetable. A more appropriate trigger will be the subject of discussion between the applicant, TMBC and KCC.
- 4.16 The timing of the biodiversity method statement to be submitted at or before the time of the first submission of reserved matters was based on representations made from wildlife groups about the introduction of an enlarged residential population into the area (and their dogs) and the resultant pressure. It was not only related to new buildings close to the woods themselves. However, timings can be refined on further discussion.
- 4.17 There has been some concern from Parish Council the Kings Hill Residents Group and a Mereworth resident concerning the accuracy of the Transport Assessment submitted by the applicant.
- 4.18 The consultants used were the Ashford office of Peter Brett Associates which is an experienced firm both in Transport Assessment and with knowledge of the Kings Hill Area having satisfied the SoS on highways matters at the 2004 Inquiry. Their methodology was agreed with KCC H&T beforehand and is standardised practice.
- 4.19 The dates of the surveys are detailed in chapter of the TA as follows: Turning movement surveys and 5 minute queue counts were made for the 3 main roundabouts (Tower View and the A228) on 4 July 2012 (weather dry). The 4th roundabout (Silver ball) was assessed on 13 February 2013 (weather dry).
- 4.20 Automatic Traffic Count data was collected for most of the key roads during the week commencing 2nd July 2012 and for Gibson Drive and Teston Road during the week commencing 15 October 2012.

4.21 The Resident's Survey as submitted by the Residents Group of Kings Hill was taken on 10 June 2014. A comparison of the 2 sets of data for the morning (0800-0900) and evening (1700-1800) peaks are as in the table below.

	Gibson Drive am	Gibson Drive pm	Tower View am	Tower View pm	TOTALS
KH/Mereworth RESIDENTS GROUP	1229	984	2701	1466	6380
PBA (FOR APPLICANT)	1094	1111	2358	2137	6700

4.22 The Residents counted fewer vehicles overall but generally had higher counts for the mornings and lower for the evenings. Taking into account of the normal variations that can be expected from surveying a year apart, KCC H&T advise that they consider the PBA data to be sufficiently robust.

4.23 Members will be aware that the key factor to be born in mind is that it is not traffic numbers *per se* but the impact of them, in the light of the NPPF requirement that highways impacts must be *severe* if a refusal is to be contemplated on highways grounds. In any event, that test of severity must be made against the traffic that could arise if currently unused development rights for the office/commercial elements of the Phase 2 permission were to take place. The assessment of severity is not against traffic levels with the Phase 3 land undeveloped. The capacity of the A228 and the capacity analysis that followed on 4 main roundabouts (ie. at either end of the A228 and either end of Kings Hill Avenue) indicates that there is not a worsening of the situation compared to the alternative development scenario that has planning permission granted by the Secretary of State in 2004, and indeed the proposed development mix might prove to be a betterment against the Phase 2 scheme.

4.24 The suggested conditions require the Bus Lane and associated traffic lights at the A228/Tower View Roundabout to be carried-out and to monitor and subsequently improve (if necessary and practicable) the Tower View/ Kings Hill Avenue roundabout.

4.25 The main report advised that suggested contamination and drainage conditions and informatives would be included in this supplementary report and they are as below.

AMENDED RECOMMENDATION:

Grant planning permission as detailed by:

(a) An up to date plans list at the time of the decision being issued.

(b) Subject to S106 heads of terms and conditions 1-33 as in main report with additional conditions on contamination and drainage as follows. All suggested conditions to be subject to refinement of detailed wording broadly as described above to be delegated to the Director of Planning Transportation and Environmental Health in liaison with the Director of Central Services (and taking into account the submissions made by the applicant in respect of the draft conditions/Heads of Terms as set out in the main report and the further updates set out below).

Contamination

34. No development of any phase other than the removal of hardstanding, ground investigations or site survey works shall be commenced until the following have been submitted to and approved by the Local Planning Authority for that phase:

(a) a contaminated land desktop study, identifying all previous site uses, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors and any potentially unacceptable risks arising from contamination at the site;

(b) Proposals for a site investigation scheme that will provide information for an assessment of the risk to all receptors that may be affected including those off site;

(c) the results of the investigation including any necessary intrusive investigations, and a risk assessment assessing the degree and nature of any contamination on site and the risks posed by contamination to human health, controlled waters and the wider environment;

The scheme submitted pursuant to (b) shall include details of arrangements for responding to any discovery of unforeseen contamination during the undertaking of the development hereby permitted. Such arrangements shall include a requirement to notify the Local Planning Authority in writing of the presence of any such unforeseen contamination.

Reason: In the interests of amenity, public safety and human health.

35. No development above pre-existing ground level shall take place until all required remediation works have been fully completed insofar as they relate to that part of the development and a validation report to verify these works has been submitted to, and approved in writing by, the Local Planning Authority unless specific authorisation for such works has been given by the Local Planning Authority

Reason: In the interests of amenity, public safety and human health.

36. Prior to the first occupation of the development or any part of the development hereby permitted, a Certificate (final validation report) shall be provided to the Local

Planning Authority by a responsible (competent) person stating that remediation has been completed and the site is suitable for the permitted end use

Reason: In the interests of amenity, public safety and human health.

Drainage

- 36 No dwelling shall be occupied until it has been demonstrated that surface water and foul drainage has been adopted by the appropriate drainage body.

No such details have been submitted.

Informatives:

1. Any public right of way which crosses the application site should be retained on its existing line or on such other line as may be legally established and be kept free from physical obstruction.
2. You are advised that the protection afforded to species under UK and EU legislation is irrespective of the planning system and the developer should ensure that any activity they undertake on the application site must comply with the appropriate wildlife legislation. Failure to do so may result in fines and potentially a custodial sentence.
3. The Borough Council believes that there is an opportunity to create areas of native planting in this development. Plants for such areas should not only be of native species but also of local provenance. The use of plants of non-local provenance could harm the environment by introducing genetically alien material and reducing the variety and viability of other wildlife that the particular plant supports. No ash should be planted nor species susceptible to fireblight.
4. The Borough Council will need to create new street name(s) for this development together with a new street numbering scheme. To discuss the arrangements for the allocation of new street names and numbers you are asked to write to the Chief Solicitor, Tonbridge and Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ or contact Trevor Bowen, Principal Legal Officer, on 01732 876039 or by e-mail to trevor.bowen@tmbc.gov.uk. To avoid difficulties, for first occupiers, you are advised to do this as soon as possible and, in any event, not less than one month before the new properties are ready for occupation.
5. The Local Planning Authority supports the Kent Fire Brigade's wish to reduce the severity of property fires and the number of resulting injuries by the use of sprinkler systems in all new buildings and extensions.
6. The CLAIRE Definition of Waste: Development Industry Code of Practice (version 2) provides operators with a framework for determining whether or not excavated

material arising from site during remediation and/or land development works are waste or have ceased to be waste. Under the Code of Practice:

- excavated materials that are recovered via a treatment operation can be re-used on-site providing they are treated to a standard such that they fit for purpose and unlikely to cause pollution
- treated materials can be transferred between sites as part of a hub and cluster project
- some naturally occurring clean material can be transferred directly between sites.

7. Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, and that the permitting status of any proposed on site operations are clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays. We recommend that developers should refer to:

Position statement on the Definition of Waste: Development Industry Code of Practice and website at www.environment-agency.gov.uk for further guidance.

8. Contaminated soil that is, or must be disposed of, is waste. Therefore, its handling, transport, treatment and disposal is subject to waste management legislation, which includes:

- Duty of Care Regulations 1991
- Hazardous Waste (England and Wales) Regulations 2005
- Environmental Permitting (England and Wales) Regulations 2010
- The Waste (England and Wales) Regulations 2011

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically in line with British Standard BS EN 14899:2005 'Characterization of Waste - Sampling of Waste Materials - Framework for the Preparation and Application of a Sampling Plan' and that the permitting status of any proposed treatment or disposal activity is clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays.

If the total quantity of waste material to be produced at or taken off site is hazardous waste and is 500kg or greater in any 12 month period the developer will need to register with us as a hazardous waste producer. Refer to our website at www.environment-agency.gov.uk for more information

9. Any facilities for the storage of oils, fuels or chemicals shall be provided with secondary containment that is impermeable to both the oil, fuel or chemical and

water, for example a bund, details of which shall be submitted to the local planning authority for approval. The minimum volume of the secondary containment should be at least equivalent to the capacity of the tank plus 10%. If there is more than one tank in the secondary containment the capacity of the containment should be at least the capacity of the largest tank plus 10% or 25% of the total tank capacity, whichever is greatest. All fill points, vents, gauges and sight gauge must be located within the secondary containment. The secondary containment shall have no opening used to drain the system. Associated above ground pipe work should be protected from accidental damage. Below ground pipe work should have no mechanical joints, except at inspection hatches and either leak detection equipment installed or regular leak checks. All fill points and tank vent pipe outlets should be detailed to discharge downwards into the bund.