



TONBRIDGE & MALLING BOROUGH COUNCIL

EXECUTIVE SERVICES

Chief Executive

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NB - This agenda contains proposals, recommendations and options. These do not represent Council policy or decisions until they have received proper consideration through the full decision making process.

Contact: Committee Services
committee.services@tmbc.gov.uk

20 May 2019

To: MEMBERS OF THE AREA 2 PLANNING COMMITTEE
(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the Area 2 Planning Committee to be held in the Civic Suite, Gibson Building, Kings Hill, West Malling on Wednesday, 29th May, 2019 commencing at 7.30 pm

Yours faithfully

JULIE BEILBY

Chief Executive

A G E N D A

PART 1 - PUBLIC

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To confirm as a correct record the Minutes of the meeting of Area 2 Planning Committee held on 10 April 2019.

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8. Urgent Items

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

PART 2 - PRIVATE

10. Urgent Items

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

MEMBERSHIP

Chairman and Vice-Chairman to be appointed at Annual Council

Cllr Mrs J A Anderson
Cllr R P Betts
Cllr C Brown
Cllr M A Coffin
Cllr S A Hudson
Cllr Mrs F A Kemp
Cllr C B Langridge
Cllr B J Luker
Cllr P J Montague

Cllr L J O'Toole
Cllr W E Palmer
Cllr H S Rogers
Cllr Miss J L Sergison
Cllr T B Shaw
Cllr N G Stapleton
Cllr K B Tanner
Cllr M Taylor

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TONBRIDGE AND MALLING BOROUGH COUNCIL

AREA 2 PLANNING COMMITTEE

Wednesday, 10th April, 2019

Present: Cllr Mrs F A Kemp (Chairman), Cllr M A C Balfour,
Cllr Mrs S M Barker, Cllr Mrs S L Luck, Cllr P J Montague,
Cllr S C Perry, Cllr H S Rogers, Cllr Miss J L Sergison, Cllr T B Shaw,
Cllr Miss S O Shrubsole and Cllr M Taylor

Councillor Mrs T Dean was also present pursuant to Council Procedure Rule No 15.21.

Apologies for absence were received from Councillors B J Luker (Vice-Chairman), Mrs J A Anderson, R P Betts, M A Coffin and L J O'Toole

PART 1 - PUBLIC

AP2 19/14 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

AP2 19/15 MINUTES

RESOLVED: That the Minutes of the meeting of the Area 2 Planning Committee held on 27 February 2019 be approved as a correct record and signed by the Chairman.

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PART 3 OF THE CONSTITUTION (RESPONSIBILITY FOR COUNCIL FUNCTIONS)

AP2 19/16 DEVELOPMENT CONTROL

Decisions were taken on the following applications subject to the pre-requisites, informatives, conditions or reasons for refusal set out in the report of the Director of Planning, Housing and Environmental Health or in the variations indicated below. Any supplementary reports were tabled at the meeting.

Members of the public addressed the meeting where the required notice had been given and their comments were taken into account by the Committee when determining the application. Speakers are listed under the relevant planning application shown below.

AP2 19/17 TM/18/02642/FL - LAND WEST OF STATION ROAD NORTH, WEST MALLING

Use of land to provide station car parking and new access at land west of Station Road North, West Malling.

RESOLVED: That planning permission be GRANTED in accordance with the submitted details, conditions, reasons and informatives set out in the report of the Director of Planning, Housing and Environmental Health, subject to

(1) Additional Condition:

16. Any lighting scheme approved shall not be brought into operation until a scheme for the effective operation and ongoing maintenance of the lighting system has been submitted to and approved by the Local Planning Authority. The details should include, but not necessarily be limited to, information setting out how the system will be managed to ensure the lights are extinguished after the last train. The lighting scheme shall thereafter be operated and maintained in strict accordance with those approved details at all times thereafter.

Reason: In the interests of visual and residential amenity.

(2) Additional Informatives:

8. The applicant is advised that in seeking to discharge conditions 5 and 6 imposed on this permission, they consider the level and scale of any lighting proposed, keep this to a minimum and at low level and that the landscaping and boundary treatment scheme includes provision to enhance the boundaries to create an improved screen to the site.

9. The applicant is advised that any signage installed within the car park is appropriately and sensitively designed and sited to reflect and respect the particular amenities of the locality.

[Speakers: Richard Byatt – West Malling Parish Council and Steven Brooker – agent]

AP2 19/18 TM/18/01013/OA - LAND EAST OF KING HILL, WEST MALLING

Outline Application: Demolition of existing dwelling house (Sportsmans' Bungalow, 124 Teston Road) and outbuildings and erection of up to 120 dwellings including 40% affordable housing, with public open space, a community orchard, landscaping and sustainable drainage system (SuDS) and vehicular access point from King Hill at Land east of King Hill, West Malling.

All matters reserved except for means of access.

During the discussion of this item it was recognised that legal advice was required and the Chairman moved, it was seconded and:

RESOLVED: That as public discussion would disclose exempt information the legal advice be considered in private as per LGA 1972 Sch 12A Paragraph 5 – information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Following the receipt of legal advice the Committee discussed the item further in public.

RESOLVED: That outline planning permission be GRANTED in accordance with the submitted details, conditions, reasons and informatives set out in the report of the Director of Planning, Housing and Environmental Health, subject to:

(1) The applicant entering into legal agreements in respect of:

- 40% affordable housing provision
- Off-site open space provision
- Off-site highways improvements including to the bridleway
- Provision of a pedestrian/cycling path linking the A228/Tower view roundabout
- Community facilities and services (KCC Economic Development)
- General medical practice services (NHS CCG)
- Landscape and Ecological Management Plan detailing how the retained woodland area, hedgerows, habitats and new landscape plantings are to be managed in perpetuity to enhance the biodiversity value of the site

It is expected that the Section 106 agreement should be agreed in principle within 3 months and the legalities completed within 6 months of the committee resolution unless there are good reasons for the delay. Should the agreement under Section 106 of the Act not be completed and signed by all relevant parties by 10 September 2019, a report back to the Area 2 Planning Committee will be made either updating on progress and making a further recommendation or in the alternative the application will be refused under powers delegated to the Director of Planning, Housing and Environmental Health who will determine the specific reasons for refusal in consultation with the Chairman and Ward Members.

(2) Delete Condition 7 related to details of fencing around the King Hill milestone.

(3) Additional Informative:

14. The applicant should be aware of the location of the milestones within the near vicinity of the site and take all reasonable measures to

ensure their protection in liaison with nearby residents and the Parish Council where appropriate to do so.

[Speakers: Richard Byatt – West Malling Parish Council, Steve Rickett – Offham Parish Council; Sean Foley, David Laskow-Pooley; Patrick Bligh and Peter Jones – members of the public and Chris Still – agent]

AP2 19/19 TM/19/00199/FL - BRACKENHILL SERVICE STATION, 82-106 MAIDSTONE ROAD, BOROUGH GREEN

Section 73 application for the removal of condition 6 (opening hours) pursuant to planning permission TM/83/10931/FUL (Redevelopment of Petrol Filling Service Station, including erection of new sales building and canopy) at Brackenhill Service Station, 82 - 106 Maidstone Road, Borough Green.

RESOLVED: That planning permission be REFUSED for the following reasons:

- (1) The use of the service station on a permanent 24 hour basis will lead to unacceptable levels of noise and disturbance to the immediately adjacent residential properties which would cause significant harm to the residential amenities of the occupants. The degree and nature of the harm arising cannot be satisfactorily or acceptably mitigated through the imposition of planning conditions and therefore the use is contrary to the requirements of policies CP1 and CP24 of the Tonbridge and Malling Borough Core Strategy 2007, policy SQ1 of the Tonbridge and Malling Borough Managing Development and the Environment DPD 2010 and paragraph 180 of the National Planning Policy Framework 2019.

[Speakers: Duncan Cochrane-Dyett and Claire Cochrane-Dyett – members of the public and Michael Birch - agent]

AP2 19/20 EXCLUSION OF PRESS AND PUBLIC

There were no items considered in private.

The meeting ended at 10.20 pm

TONBRIDGE & MALLING BOROUGH COUNCIL

AREA PLANNING COMMITTEES

Report of the Director of Planning, Housing & Environmental Health

Part I – Public

Section A – For Decision

DEVELOPMENT CONTROL

In accordance with the Local Government Access to Information Act 1985 and the Local Government Act 1972 (as amended), copies of background papers, including representations in respect of applications to be determined at the meeting, are available for inspection at Planning Services, Gibson Building, Gibson Drive, Kings Hill from 08.30 hrs until 17.00 hrs on the five working days which precede the date of this meeting.

Members are invited to inspect the full text of representations received prior to the commencement of the meeting.

Local residents' consultations and responses are set out in an abbreviated format meaning: *(number of letters despatched/number raising no objection (X)/raising objection (R)/in support (S))*.

All applications may be determined by this Committee unless (a) the decision would be in fundamental conflict with the plans and strategies which together comprise the Development Plan; or (b) in order to comply with Rule 15.24 of the Council and Committee Procedure Rules.

GLOSSARY of Abbreviations and Application types

used in reports to Area Planning Committees as at 23 September 2015

AAP	Area of Archaeological Potential
AODN	Above Ordnance Datum, Newlyn
AONB	Area of Outstanding Natural Beauty
APC1	Area 1 Planning Committee
APC2	Area 2 Planning Committee
APC3	Area 3 Planning Committee
ASC	Area of Special Character
BPN	Building Preservation Notice
BRE	Building Research Establishment
CA	Conservation Area
CPRE	Council for the Protection of Rural England
DEFRA	Department for the Environment, Food and Rural Affairs

DETR	Department of the Environment, Transport & the Regions
DCLG	Department for Communities and Local Government
DCMS	Department for Culture, the Media and Sport
DLADPD	Development Land Allocations Development Plan Document
DMPO	Development Management Procedure Order
DPD	Development Plan Document
DPHEH	Director of Planning, Housing & Environmental Health
DSSL	Director of Street Scene & Leisure
EA	Environment Agency
EH	English Heritage
EMCG	East Malling Conservation Group
FRA	Flood Risk Assessment
GDPO	Town & Country Planning (General Development Procedure) Order 2015
GPDO	Town & Country Planning (General Permitted Development) Order 2015
HA	Highways Agency
HSE	Health and Safety Executive
HMU	Highways Management Unit
KCC	Kent County Council
KCCVPS	Kent County Council Vehicle Parking Standards
KDD	Kent Design (KCC) (a document dealing with housing/road design)
KWT	Kent Wildlife Trust
LB	Listed Building (Grade I, II* or II)
LDF	Local Development Framework
LLFA	Lead Local Flood Authority
LMIDB	Lower Medway Internal Drainage Board
LPA	Local Planning Authority
LWS	Local Wildlife Site
MAFF	Ministry of Agriculture, Fisheries and Food
MBC	Maidstone Borough Council
MC	Medway Council (Medway Towns Unitary Authority)
MCA	Mineral Consultation Area
MDEDPD	Managing Development and the Environment Development Plan Document
MGB	Metropolitan Green Belt
MKWC	Mid Kent Water Company
MWLP	Minerals & Waste Local Plan
NE	Natural England
NPPF	National Planning Policy Framework
PC	Parish Council
PD	Permitted Development
POS	Public Open Space
PPG	Planning Policy Guidance
PROW	Public Right Of Way

SDC	Sevenoaks District Council
SEW	South East Water
SFRA	Strategic Flood Risk Assessment (prepared as background to the LDF)
SNCI	Site of Nature Conservation Interest
SPAB	Society for the Protection of Ancient Buildings
SPD	Supplementary Planning Document (a statutory policy document supplementary to the LDF)
SPN	Form of Statutory Public Notice
SSSI	Site of Special Scientific Interest
SWS	Southern Water Services
TC	Town Council
TCAAP	Tonbridge Town Centre Area Action Plan
TCS	Tonbridge Civic Society
TMBC	Tonbridge & Malling Borough Council
TMBCS	Tonbridge & Malling Borough Core Strategy (part of the Local Development Framework)
TMBLP	Tonbridge & Malling Borough Local Plan
TWBC	Tunbridge Wells Borough Council
UCO	Town and Country Planning Use Classes Order 1987 (as amended)
UMIDB	Upper Medway Internal Drainage Board
WLP	Waste Local Plan (KCC)
AGPN/AGN	Prior Notification: Agriculture
AT	Advertisement
CA	Conservation Area Consent (determined by Secretary of State if made by KCC or TMBC)
CAX	Conservation Area Consent: Extension of Time
CNA	Consultation by Neighbouring Authority
CR3	County Regulation 3 (KCC determined)
CR4	County Regulation 4
DEPN	Prior Notification: Demolition
DR3	District Regulation 3
DR4	District Regulation 4
EL	Electricity
ELB	Ecclesiastical Exemption Consultation (Listed Building)
ELEX	Overhead Lines (Exemptions)
FC	Felling Licence
FL	Full Application
FLX	Full Application: Extension of Time
FLEA	Full Application with Environmental Assessment
FOPN	Prior Notification: Forestry
GOV	Consultation on Government Development
HN	Hedgerow Removal Notice
HSC	Hazardous Substances Consent

LB	Listed Building Consent (determined by Secretary of State if made by KCC or TMBC)
LBX	Listed Building Consent: Extension of Time
LCA	Land Compensation Act - Certificate of Appropriate Alternative Development
LDE	Lawful Development Certificate: Existing Use or Development
LDP	Lawful Development Certificate: Proposed Use or Development
LRD	Listed Building Consent Reserved Details
MIN	Mineral Planning Application (KCC determined)
NMA	Non Material Amendment
OA	Outline Application
OAEA	Outline Application with Environment Assessment
OAX	Outline Application: Extension of Time
RD	Reserved Details
RM	Reserved Matters (redefined by Regulation from August 2006)
TEPN56/TEN	Prior Notification: Telecoms
TNCA	Notification: Trees in Conservation Areas
TPOC	Trees subject to TPO
TRD	Tree Consent Reserved Details
TWA	Transport & Works Act 1992 (determined by Secretary of State)
WAS	Waste Disposal Planning Application (KCC determined)
WG	Woodland Grant Scheme Application

Kings Hill Kings Hill	21 December 2018	(A)TM/18/03030/OAEA (B)TM/18/03033/OAEA (C)TM/18/03034/OAEA
Proposal:	<p>(A) Outline Application: Redevelopment to provide up to 70 Class C3 residential units, together with landscaping, open space and other associated works. All matters reserved for future approval except for access (Site 5.1)</p> <p>(B) Outline Application: Redevelopment to provide up to 70 Class C3 residential units, together with landscaping, open space and other associated works. All matters reserved for future approval except for access (Site 5.6)</p> <p>(C) Outline Application: Redevelopment to provide up to 210 Class C3 residential units, together with landscaping, open space and other associated works. All matters reserved for future approval except for access (site 5.2-5.3)</p>	
Location:	Development Site Between 1 Tower View And 35 Kings Hill Avenue Kings Hill West Malling Kent	
Go to:	Recommendation	

1. Description:

- 1.1 Three planning applications have been submitted proposing residential development on parcels of safeguarded employment land within the Kings Hill estate, as set out above. Each application has been submitted in outline form with all matters reserved for future consideration except access arrangements. In each case, indicative layout plans have been provided setting out how the quantum of residential development might come forward on each of the sites. Each application proposes 40% affordable housing on each parcel (with no indication as to the exact type, tenure or nature provided within the submissions).
- 1.2 These applications are being reported as a single agenda item in order to provide Members with a comprehensive assessment of the determining issues relevant given they are predominately analogous and, in a number of instances consideration must be given to what cumulative impacts are to result from the proposed development of these parcels. Where diverging issues are present for any one of the sites, this will be made clear in the assessment that follows.
- 1.3 Application (A): this development of up to 70 residential units, is proposed to be accessed from an internal access road which runs to the immediate west of the application site. It currently already serves a number of commercial units. A secondary access onto Kings Hill Avenue for emergency vehicles is also proposed. A landscape buffer is shown on the indicative layout plan to the site

frontage with Kings Hill Avenue, with a total of four residential blocks located in roughly tandem formation, set around internal roads and areas laid to car parking.

- 1.4 Heights across this site are proposed to range from 4 storeys to the front of the site, with the blocks at the rear being 3 storeys. The Planning Statement sets out that whilst the precise configuration of the apartments proposed across the four blocks has not yet been finalised, an indicative breakdown is as follows:

Apartment Block	No. of 1-bed units	No. of 2-bed units	Total no. of units
Block A	6	20	26
Block B	12	0	12
Block C	0	20	20
Block D	4	8	12
Total	22	48	70

- 1.5 Application (B): this development, again for up to 70 residential units is proposed to be accessed directly via the A228, at the south-westerly corner of the site. A secondary access road is shown to be linking up with the internal Abbey Wood Road. The submitted illustrative master plan for this site suggests a buffer could be provided along the A228, with three residential blocks to be provided centrally within the site, surrounded by internal access roads and car parking.
- 1.6 Heights across this site are proposed to range between a maximum of 3 storeys fronting Malling Road and 2.5 storeys to the rear of the site.
- 1.7 A suggested breakdown of units (indicative only at this stage) is set out within the Planning Statement as follows:

Apartment Block	No. of 1-bed units	No. of 2-bed units	Total no. of units
Block A	6	6	12
Block B	12	8	20
Block C	14	24	38
Total	32	38	70

- 1.8 Application (C): proposed up to 210 residential units, with vehicular access shown to be taken via Jubilee Way.

- 1.9 Heights across this site are proposed to range from 3-storeys in the core area near to the office uses, wrapped by single-family dwellings up to a maximum of 2.5 storeys. This strategy intends to provide an area of higher density development close to the site entrance.
- 1.10 A suggested breakdown of house types (again, indicative only at this stage) is set out within the Planning Statement as follows:

Dwelling Type	Total no. of units
1-bed apartment	40
2-bed apartment	51
2-bed FOG	6
2-bed house	21
3-bed house	59
4-bed house	26
5-bed house	7
Total	210

- 1.11 The proposed development falls within Schedule 2 10 (b) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and therefore has been subject to Environmental Impact Assessment (EIA).
- 1.12 As such, an Environmental Statement (ES) has been submitted as part of the planning application. This is prepared to assess the environmental effects of the development in line with the statutory requirements contained within the Regulations. The purpose of the ES is to inform decision making by explaining the likely significant effects that the development may have on the environment during construction and once it is complete and how negative effects can be avoided or reduced. The EIA has been informed by a series of technical studies which form part of the ES. These studies include surveys, calculations and other forms of modelling as necessary.
- 1.13 An ES is intended to consider the likely effects of the development on its neighbours, local environment, local and regional economy, as well as the wider area. The environmental effects of the development are to be predicted in relation to sensitive receptors, including human beings, built resources and natural resources.

- 1.14 Each topic assessment is designed to attach a level of significance to the identified effects (both positive and negative), i.e. either major, moderate, minor or negligible. Short and long-term (temporary and permanent), direct and indirect effects have been assessed. The EIA Regulations require that 'cumulative' effects are also considered in the ES. 'Residual effects' are defined as those that remain after mitigation measures have been implemented.
- 1.15 The contents and conclusions contained within the ES are considered throughout the detailed assessment of the scheme which follows.
- 1.16 The ES considers the impact of the three sites discussed within this report but also another development site elsewhere on Kings Hill (land to the rear of Amber Lane), reported separately on this same agenda and for completeness another site submitted at the same time (also by Liberty) for residential development at Heath Farm, which is shortly to be reported to APC3 separately.
- 1.17 In addition, a number of other supporting plans and documents have been submitted throughout the course of the assessment of the application.

2. Reason for reporting to Committee:

- 2.1 Due to the fundamental conflict with the Development Plan and a requirement to balance between diverging and significant policy considerations.
- 2.2 Members should be aware that in the event that the recommendation by Officers to refuse to grant planning permission is not supported, full detailed reasons for this must be provided by APC2.
- 2.3 In the event of a resolution to grant planning permission, this would be subject to referral to the Secretary of State in accordance with the Town and Country Planning (Consultation) (England) Direction 2009.

3. The Sites:

- 3.1 All three sites are designated for employment use and are currently vacant.
- 3.2 Application (A): this site is described as site 5.1 and is located immediately adjacent to the Kimberly Clarke site along Kings Hill Avenue. Its eastern boundary is shared with the car park serving that office use, with the western boundary formed by an internal access road leading to further office units and their associated car parking spaces. Further commercial uses are located to the south of the site, on the opposite side of Kings Hill Avenue.
- 3.3 An area of ancient woodland lies to the north of the application site (partially surrounding Sportsmans Cottages).
- 3.4 Application (B): this site is described as site 5.6 and is located immediately behind commercial premises which front and/or have accesses provided off Kings Hill

Avenue, including KCC Commercial Services, Cripps and Charities Aid Foundation. The A228 Malling Road forms the westerly boundary of the site.

- 3.5 Application (C): this site is described as sites 5.2 and 5.3 combined and forms the largest of the three submissions. It is bounded to the north-west by the By-Pass, to the south and west by the Rolex Headquarters building and associated car parking and open land to the east, which forms the area proposed for allocation in the draft local plan, known as Broadwater Farm.

4. Planning History (relevant):

TM/18/02335/EASP EIA opinion scoping 27 November 2018
 application
Request for Scoping Opinion under the Town and Country Planning
(Environmental Impact Assessment) Regulations 2017 for proposed residential
developments

5. Consultees:

DPHEH:

- 5.1 Summaries of consultation responses received during the course of each application have been annexed to this report for ease of information, as follows:
- Application (A) – Annex 1
 - Application (B) – Annex 2
 - Application (C) – Annex 3

6. Determining Issues:

- 6.1 The LPA is required to determine planning applications in accordance with the adopted Development Plan unless material planning considerations indicate otherwise. The Development Plan currently in force comprises the TMBCS (September 2007), the DLA DPD (April 2008), the MDE DPD (April 2010) and the saved policies of the TMBLP. The policies contained within the NPPF and the guidance contained within the associated NPPG are material considerations.

The five-year supply of housing and presumption in favour of sustainable development:

- 6.2 Policy CP15 of the TMBCS sets out a requirement for the provision of at least 6,375 dwellings in the plan period 2006 – 2021, equating to 450 units per year. Historically the Council has persistently over-delivered on that requirement due to a highly successful strategy of allocating sites through plan making right across the Borough including the Kings Hill airfield along with many that had historically

been used for a range of industrial and manufacturing activities but had reached a natural end of operational life. Those sites in some cases are continuing to be delivered but many have been in residential use for some time and inevitably there are fewer sites representing similar opportunities now.

- 6.3 At the time of writing this report, the Council cannot demonstrate a five year housing land supply. For decision making purposes this means that the presumption in favour of sustainable development as set out in paragraph 11 of the NPPF falls to be applied.
- 6.4 Paragraph 11 of the NPPF states that planning decisions should apply a presumption in favour of sustainable development. Under paragraph 11(d), the presumption means that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless:
- i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (footnote 6); or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 6.5 There are no areas or assets of particular importance across any of these three sites that trigger the application of policies as referenced at paragraph 11(d)(i) and as such, this means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. It is on this basis that the assessment takes place below.
- 6.6 Within this context, I therefore seek to firstly address the benefits that would be derived from residential development of these three sites in order that they may be balanced against any identified adverse impacts as the assessment takes place.

Benefits of the proposed developments:

- 6.7 Contribution to the supply of market housing land: The three schemes in total propose up to 320 units overall, which would contribute towards the housing land supply in the borough and this must be attributed weight in favour of the developments taking place. It is recognised that as the Council cannot demonstrate a five year supply of deliverable housing sites at this time the provision of new homes would be a significant benefit weighing in favour of the scheme.
- 6.8 Provision of affordable housing: The Council accepts there is a need for affordable housing in the borough. A policy compliant 40% provision is proposed in all three

instances, which would be considered as a further benefit weighing in favour of the developments taking place.

- 6.9 Provision of open space: Some, albeit relatively vague, indication is made within the submission regarding the provision of open space. Such provision would be expected from any development of this size, and whilst it would have some limited benefit, this is really no more than achieving compliance with policy directed to ensuring high quality, and well integrated developments ensue.
- 6.10 Associated economic benefits: It is recognised that the developments both during construction and following occupation of the dwellings would generate some economic benefit in broad terms. This should be attributed some weight but nothing more than would be expected in any development of a similar nature.
- 6.11 Taking into account the above, the proposals individually and cumulatively would offer benefits to which significant weight should be attached in the balance. Even so, it is noteworthy that these same benefits would be forthcoming from another, suitably located, housing scheme that provides policy compliant contributions to affordable housing, etc.
- 6.12 Following the requirement of the NPPF paragraph 11 (d) (ii), I now consider below the impacts of the proposals in turn.

Loss of employment land:

- 6.13 The sites lie within an area safeguarded for employment purposes as set out within policy E1 (r) of the DLA DPD. This allocates the site for high quality, campus style development suitable for offices, research and development and light industrial use (B1) including also hotel, conference, education and training and commercial leisure uses as part of a wider area of mixed-use development at Kings Hill.
- 6.14 Policy CP21 of the TMBCS requires new employment provision to be met on vacant sites within the main employment areas that are well located to the transport network, are physically and viably capable of redevelopment and can meet a range of employment uses. The policy specifically states that the redevelopment of such sites for housing or other non-employment uses will not be permitted. This means that the proposed development of the sites for residential purposes represents a clear and direct conflict with the development plan.
- 6.15 In this respect, I am however mindful that the application of the presumption in favour of sustainable development means that an assessment must take place within the context of the policies within the Framework (notwithstanding the prevailing statutory primacy of the development plan).
- 6.16 Paragraph 80 of the NPPF sets out that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt.

Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can be a global leader in driving innovation, and in areas with high levels of productivity, which should be able to capitalise on their performance and potential.

6.17 Equally paragraph 120 states that planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land availability. Where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:

a) they should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs (or, if appropriate, de-allocate a site which is undeveloped); and

b) in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.

6.18 Paragraph 121 goes on to state that local planning authorities should also take a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose in plans, where this would help to meet identified development needs. In particular, they should support proposals to:

a) use retail and employment land for homes in areas of high housing demand, provided this would not undermine key economic sectors or sites or the vitality and viability of town centres, and would be compatible with other policies in this Framework; and

b) make more effective use of sites that provide community services such as schools and hospitals, provided this maintains or improves the quality of service provision and access to open space.

6.19 TMBC has recently reviewed employment land supply within the Borough as part of preparing its Local Plan evidence. Within this review, the application sites have all been included as part of the existing stock of employment land. The update of the Borough's Employment Land Needs (November 2017) identifies a net need of 46.8 hectares of employment land to be provided through the emerging Local Plan even when taking into account the retention of the application sites for employment purposes. The Council's call for sites exercise identified approximately 32.8 hectares of additional employment land that could come forward but that still gives rise to a noticeable shortfall. The draft local plan recognises that some of the identified shortfall will be met through intensification

on existing sites. In these respects it should be noted that much of this shortfall relates to warehouse provision although in recent years there have been significant losses of office space within the Borough predominately as a result of conversions to residential provided for by “permitted development rights” and the reallocation of employment land in connection with the Phase 3 development.

- 6.20 The implication of losses since 2017 and any potential further losses (proposed developments) places further pressure on employment land supply and would need to be added to the Council’s net need figure and met either through the intensification of existing sites or the allocation of new sites as part of the local plan process.
- 6.21 The 2017 employment land evidence concludes that there is an adequate level of supply in Kings Hill, recommending that this be focused towards the supply of more flexible accommodation to reflect the needs of the local Small Medium Enterprises business base. This could include the sub-division of larger floorplates for multi-let occupation where feasible. Supply across the Functional Economic Market Area (FEMA) is however constrained due to a lack of available sites and ageing office stock, in neighbouring authority areas and elsewhere in Tonbridge and Malling.
- 6.22 The Socio-Economic chapter of the ES (Chapter 7) should seek to address this but focuses mainly on purported benefits arising from the creation of housing. Insofar as employment is referenced, the key areas of potential impact that have been considered as part of this assessment are (inter alia) job creation and expenditure effects within the local economy. Temporary effects are considered within this context as being those associated with the construction of the development and the long term effects are those associated within the development once completed and operational.
- 6.23 The ES sets out the potential significant effects arising from the development in this respect focusing on the employment opportunities, generated by the construction phase of the development (across the 5 sites total), which is concluded as having a moderate beneficial impact. Again, in terms of expenditure during the operational phase, this is concluded to have a minor to moderate beneficial impact.
- 6.24 The ES is, however, fundamentally lacking in any assessment of the impacts arising from the loss of employment land. There would, undoubtedly, be a negative impact arising from this even if mitigated to some degree by job creation but the ES should have sought to quantify and assess these overall impacts.
- 6.25 An Employment Land Study prepared by GVA was also submitted in support of the applications. This seeks to justify the proposed loss of employment land at Kings Hill. Council officers disagree with the assumptions in the study in a number of areas. The assessment is narrow in its scope upon traditional B class floorspace, does not robustly assess the variety of achievable options for the sites,

nor provide evidence relating to the marketing of the land in a manner that would be expected in putting forward the arguments outlined. The study also fails to consistently take account of the West Kent context. It primarily concludes that the sites are not attractive to potential occupiers for B1 use, and that a number of office units remain unoccupied which demonstrates a lack of demand.

- 6.26 The analysis provided begins by assessing the demand for large footplate office accommodation, and understandably comes to the conclusion that the level of demand for such accommodation has decreased in recent years based on an assessment of market trends. However, the analysis in Chapter 6 into the suitability of Kings Hill for the provision of smaller office floor space is predicated on the notion that there is a difference between the locational needs of small and large office developments, particularly in relation to access to town centres and public transport, and concludes that these sites in Kings Hill are therefore not suitable for smaller office development.
- 6.27 I disagree with this view and consider that Liberty must take a broader view of the employment and commercial floorspace requirements, which are present in the West Kent FEMA. Kings Hill remains a desirable business, service and residential location, which is still growing. West Kent is a predominantly small business based economy and the needs of many start-up, small and growing businesses remain unmet due to a lack of available workspace, especially in the established centres, due to competing development pressures. Capital Space have recently invested £3.6m in additional small office accommodation at Churchill Square, Kings Hill (completed May 2018); this site is now effectively fully occupied (apart from limited availability arising from business churn). This demonstrates that with the appropriate operational model, B1 accommodation can be brought forward that meets local needs.
- 6.28 Crucially, no other employment generating options are considered as part of this analysis, even though such options would be more policy compliant than residential development. Furthermore, whilst the GVA study highlights that the sites have been marketed since 1990, it is not clear:
- Whether that is just a generic marketing of Kings Hill rather than the specific sites themselves;
 - How they were marketed – what channels were used to get the information out and who was targeted;
 - What they were marketed for - just large floorplate offices for multinational and corporate occupiers or also other employment uses? Did this marketing reflect the breadth of potential uses that would in principle be supported by adopted and emerging planning policies
- 6.29 Notwithstanding the above conclusions, even in the event that it were accepted that the adopted policies which guide the acceptable range of uses on these sites

were no longer valid – and I do not believe that sufficient evidence has been forthcoming to satisfy this in any event – it should follow that full consideration of alternative, employment generating land uses should be made. There are conceivably numerous land uses that might not relate to a typical traditional-sense employment “B” type land use; they do nonetheless offer a significant degree of employment generating potential.

- 6.30 The DLA DPD adopted policy overtly recognises these broader uses would have a place on the Kings Hill “campus”, yet no evidence has been submitted to suggest that consideration of any such alternatives has been made and discounted on a commercial basis. As Kings Hill continues to grow as a consequence of phase 3 and the anticipated allocation at Broadwater Farm, the demand for additional services and potentially leisure operators will grow; such uses could be suitably occupied on the allocated employment sites.
- 6.31 Schedule 4 of the EIA Regulations states that an ES should include an outline of the main alternatives studied by the applicant and an indication of the main reasons for the choice made taking into account the environmental effect. Whilst the Regulations do not expressly require the applicant to study alternatives, the nature of certain developments and their locations (such as this) may make the consideration of alternatives a material consideration. Case law indicates that this does not go so far as to require those alternatives that have not been considered by the applicant to be covered or for the consideration of alternatives to be supported by full assessments. In this instance, the ES has sought to consider the “no development” alternative, alternative sites for the proposed development and alternative design options.
- 6.32 The chapter of the ES which seeks to address alternatives to the proposed development of these sites (in accordance with Schedule 4 of the Regulations) simply provides a brief discussion as to a “no development” option and effectively lifts the conclusions provided by the GVA report. The only other consideration of alternatives relates to relative design options for residential development, with no consideration being given to alternative land uses that could generate employment.
- 6.33 I therefore conclude that there is a fundamental conflict with the development plan, given that it can be clearly demonstrated that the Borough is not only in need of its existing employment land but ideally needs to allocate additional land for this purpose. The applications present no compelling evidence to suggest that the use of the sites for employment purposes in conformity with the Development Plan, could not come forward or is not viable for any reason and therefore this is a conflict with adopted policy, with no material considerations indicating there should be a divergence from the adopted policy in this respect. Furthermore, as a direct result, the development proposed by these applications fails to meet the express requirements of paragraphs 80, 120 and 121 of the Framework. The loss of employment land against an identified and evidenced need, and policies which

seek to support economic growth in appropriate areas should be given significant weight in the determination of these applications.

- 6.34 With these considerations in mind, I am of the view that there would be significant and demonstrable adverse impacts arising from the loss of employment land, that are not outweighed by the benefits that would arise through the grant of planning permission for residential development across these sites. The sites have significant potential to meet future employment needs, be these traditional B1 or other policy compliant uses.

Character and pattern of development and impact on visual and residential amenities:

- 6.35 Policy CP24 of the TMBCS requires development to be of a high quality and be well designed to respect the site and its surroundings in terms of its scale, layout, siting, character and appearance. Policy SQ1 of the MDE DPD advises that new development should protect, conserve and, where possible, enhance the character and local distinctiveness of the area including its setting in relation to the pattern of the settlement, roads and surrounding landscape. These policies broadly accord with the relevant policies of the Framework as follows.

- 6.36 Paragraph 127 of the NPPF sets out that planning policies and decisions should ensure that developments:

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

- 6.37 Paragraph 130 goes on to state that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development. Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).
- 6.38 The three sites in question are all seen directly in the context of existing employment uses and effectively would be positioned in between office buildings within the commercial part of the estate. On the ground, Kings Hill is distinctly and unmistakably “zoned” in terms of land use, with areas providing commercial floor space distinct in locational and functional terms as well as appearance when compared to the residential areas. This was overtly planned for at its inception and contributes significantly to the overall and particular character of the community now. This is demonstrably not reflective of the schemes proposed by these three planning applications and the proposed developments do nothing to seek to reinforce such character, quite the opposite in fact.
- 6.39 In making this observation, I do acknowledge that Phase 3 of Kings Hill currently under constructions is within the near vicinity of these parcels of land but that site is very much seen as a standalone entity which has enabled a form of comprehensive development to take place. This would also be the case for the Broadwater Farm allocation (as proposed by policy LP30 in the draft local plan) which would be subject of careful master planning and which is addressed in more detail later in this report.
- 6.40 In stark contrast, the development of these parcels of land for residential purposes intermixed with commercial land uses would, conversely, appear entirely at odds with the prevailing character of the commercial area in terms of both land use and physical appearance. In each instance, the developments would stand immediately adjacent to commercial uses, in particular their serving car parks and access roads, the uses of which are facilitated by buildings (albeit appropriately designed in their own right) demonstrably functional in appearance. Introducing suburban residential estates next to such existing built development would undoubtedly be incongruous in visual terms regardless of how much landscaping the indicative layout plans seek to incorporate.
- 6.41 In these respects, paragraph 180 of the NPPF sets out that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential

sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

- a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;
- b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and
- c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

6.42 It adds at paragraph 182 that planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development has been completed.

6.43 I accept that the nature of the surrounding land uses may not be particularly unneighbourly in terms of the nature of activity and associated levels noise generation, for example. Similarly, I accept that acceptable aural environments in technical terms could be suitably achieved through appropriate mitigation (as set out in Chapter 15 of the ES). However, this in no way diminishes the need for prospective development to relate and integrate well to the existing built environment, to ensure synergy and reinforcement of place. Quite simply, and far more fundamentally, proposing residential development within small pockets of vacant land on commercial estates is the antithesis of good place making.

6.44 For these reasons, the development proposed by these three applications demonstrably fails to meet the requirements of the NPPF (and the adopted development plan) which demand high quality places that have proper and careful regard to surrounding context. As such, the developments would result in significant adverse impacts on the built environment and the visual amenities of the locality.

Highway safety, capacity and parking provision:

6.45 Policy SQ8 of the MDE DPD sets out that before proposals for development are permitted, they will need to demonstrate that any necessary transport infrastructure, the need for which arises wholly or substantially from the development, is in place or is certain to be provided:

Development proposals will only be permitted where they would not significantly harm highway safety and where traffic generated by the development can adequately be served by the highway network.

Development will not be permitted which involves either the construction of a new access or the increased use of an existing access onto the primary or secondary road network (as defined by the Highway Authority) where a significantly increased risk of crashes or traffic delays would result. No new accesses onto the motorway or trunk road network will be permitted.

Development proposals should comply with parking standards which will be set out in a Supplementary Planning Document.

Where significant traffic effects on the highway network and/or the environment are identified, the development shall only be allowed with appropriate mitigation measures and these must be provided before the development is used or occupied.

6.46 Paragraph 109 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Paragraph 110 goes on to state that within this context, applications for development should:

- a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;
- b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;
- c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;
- d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and
- e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.

6.47 Paragraph 111 then sets out that all developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.

- 6.48 Given the scale, nature and location of the developments, it is necessary to establish impacts in terms of both the strategic highway and local highway networks. Highways England and KCC (H+T) have provided detailed, comprehensive representations on these respectively (reproduced in full at Annexes 1 – 3), the former being chiefly concerning with capacity at Junction 4 of the M20.
- 6.49 Chapter 13 of the submitted ES addresses transport and access effects arising from the development. It sets out the study area, particular junctions and roads tested and concludes on necessary mitigation to be embedded into the developments in order to ensure any significant effects are suitably mitigated. Crucially, the ES concludes that there is no need for any “significant” mitigation measures to highway junctions, stating that effective mitigation is already in place. Some small scale proposals such as changes to the A228/Kings Hill (Blaise Farm) roundabout are embedded in the TA. The submitted TA further expands on mitigation measures and these have been fully considered by KCC (H+T) in their latest representations on the applications. Annexes 1 – 3 set out in full the latest set of representations made by KHS. These provide statutory advice based on detailed technical assessments of the proposed development, including the purported mitigation measures to improve certain junctions. I have given full regard to those comments in making the assessment that follows.
- 6.50 It is clear that the evidence provided to date has allowed for some detailed analysis of potential impacts and mitigation measures to take place. However, it is equally clear that proposed mitigation in a number of circumstances has not been properly or comprehensively worked up to a point whereby it can be concluded the developments would not cause harm to highway safety and capacity. KHS continue to conclude that there remain some key junctions where the impact would be severe. Suggestions have been made by KCC (H+T) that contributions could be sought to allow for improvements to be made, linked to the Infrastructure Delivery Plan but these have not been worked up, tested or designed at this stage.
- 6.51 As such, there is a question as to whether such schemes are deliverable or any evidence to suggest that they would mitigate adequately the impacts arising from the developments here in any case.
- 6.52 A High Court judgement in this respect is key (*Gladman Developments Ltd v SSCLG & CPRE (Kent)* [2017] EWHC 2768 (Admin.)). This case centred on whether or not adverse impacts on two AQMAs could be satisfactorily overcome by the payment of a financial contribution to fund mitigation measures. Specifically, the planning inspector had concluded that there was no evidence of the likely effectiveness of such mitigation measures to reduce NO₂ emissions and the appeal was dismissed. It was this decision that was subject to the challenge by Gladmans through the Court but was ultimately unsuccessful, with the judge considering that the financial contributions to mitigate adverse impacts on air quality ‘had not been shown to translate into actual measures ...’.

- 6.53 The consequence of this judgement in connection with these applications (and the suggestion that schemes for junction improvements that have yet to be designed, quantified or evidenced could successfully overcoming highway impacts) is that until such time as the detailed design work was completed and costed, and evidenced as overcoming the adverse impacts and be ultimately deliverable, it should not be seen as acceptable mitigation.
- 6.54 With these factors in mind, it is clear that the proposed developments, even when taking into account the historic position concerning accepted land use, would cause severe impacts on the highway network that at this time cannot be adequately overcome through specific, evidenced and deliverable mitigation measures and is therefore contrary to adopted policy and the requirements of the NPPF in terms of the severity test.
- 6.55 Notwithstanding these conclusions concerning the local highway network, it is noted that HE have confirmed on the basis of their own analysis of potential cumulative impacts that the level of impact arising from the proposals can be accommodated on the strategic road network (i.e. at Junction 4) without resulting a severe impact to that junction. However, HE makes very clear that available spare capacity should these developments be forthcoming would be minimal.
- 6.56 In addition to matters related to capacity, KCC (H+T) have been unequivocal in their conclusions that in each of the three sites, access arrangements to serve each of the residential developments are inadequate and/or that at the very least, insufficient evidence has been forthcoming to support such arrangements. The applicant has already had an opportunity through the course of the application process to provide further information in this respect but KCC maintain an objection.
- 6.57 In light of these factors, the three schemes when taken both individually and cumulatively would cause significant adverse impacts in highway terms.

Biodiversity and nature conservation:

- 6.58 Local authorities have a statutory duty to have regard to conserving biodiversity as part of policy or decision making (section 40 of the Natural Environment and Rural Communities Act 2006). Policy NE2 of the MDE DPD requires that the biodiversity of the Borough and in particular priority habitats, species and features, will be protected, conserved and enhanced.
- 6.59 Policy NE3 states that development which would adversely affect biodiversity or the value of wildlife habitats across the Borough will only be permitted if appropriate mitigation and/or compensation measures are provided which would result in overall enhancement. It goes on to state that proposals for development must make provision for the retention of the habitat and protection of its wildlife links. Opportunities to maximise the creation of new corridors and improve permeability and ecological conservation value will be sought.

- 6.60 Policy NE4 further sets out that the extent of tree cover and the hedgerow network should be maintained and enhanced. Provision should be made for the creation of new woodland and hedgerows, especially indigenous broad-leaved species, at appropriate locations to support and enhance the Green Infrastructure Network.
- 6.61 These policies broadly accord with the policies of the NPPF. In particular, paragraph 170 states that planning policies and decisions should contribute to and enhance the natural and local environment by (inter alia) protecting and enhancing sites of biodiversity value and minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- 6.62 I am satisfied that, on the basis of the submissions and the suggested mitigation put forward within the ES, impacts on biodiversity and ecology could be adequately addressed so as to accord with the requirements of these policies.

Ground conditions and land contamination:

- 6.63 Paragraph 178 of the NPPF states that planning policies and decisions should ensure that:
- a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);
 - b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and
 - c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.
- 6.64 Paragraph 179 makes clear that where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner
- 6.65 Ground conditions are addressed in Chapter 11 of the ES and this confirms that in most cases there would be a negligible environmental impact arising and that in the case of soil contamination a minor beneficial effect in the long term at local level as a result of necessary remediation measures. The conclusions in these respects appear to be sound and, as such, the applications accord with paragraph 178 of the NPPF.

Flooding and drainage:

- 6.66 Policy CP10 of the TMBCS states that within the floodplain development should first seek to make use of areas at no or low risk to flooding before areas at higher risk, where this is possible and compatible with other policies aimed at achieving a sustainable pattern of development. Similarly, paragraph 155 of the NPPF sets out that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future).
- 6.67 Chapter 12 of the ES addresses drainage and flood risk across the sites in question. It sets out that the proposed development in all three cases would lie within Flood Zone 1, where residential development is considered to be a compatible land use. A drainage strategy report (Appendix 12.2 to the ES) outlines the embedded mitigation in respect of surface water during the operational phase of the development and this has been the subject of consultation with KCC as LLFA who have confirmed that this is acceptable. Overall, during both the construction and operational phases of the development, the likely effects on watercourses, flood risk and groundwater quality are found to be of negligible significance. There are no further mitigation or enhancement measures put forward as a result.
- 6.68 In these respects, I am therefore satisfied that the proposed development would accord with local adopted and national policy.

The draft local plan:

- 6.69 Members will be aware that the draft local plan has been submitted to the Secretary of State but that no date has been set as yet for the examination to take place. These sites do not feature as proposed allocations for housing development within the overall strategy. Instead, all are proposed to continue to be safeguarded for employment purposes. The impacts of losing these employment sites has already been discussed in some detail in the preceding assessment as have the highways impacts of the proposed developments when assessed individually and cumulatively.
- 6.70 It should be noted in addition that Application (C) is located immediately adjacent to the proposed Broadwater Farm housing allocation (LP30 refers). This policy sets out that, subject to a number of specified criteria, Broadwater Farm could accommodate 900 residential units along with associated infrastructure.
- 6.71 As required by the Framework, officers have been involved in ongoing communications with the promoters (not Liberty) of this housing allocation site with a view to securing an appropriate strategy for master planning in anticipation for the examination in public of the local plan. This is necessary in order to demonstrate to the examining inspector that the sites as allocated are deliverable and these discussions are ongoing. Members will be aware that one of the criteria set out within the policy as drafted is for the masterplan, to be informed by a

detailed Transport Assessment, to make provision for key pieces of infrastructure necessary to support the development including (inter alia) a link road to the A228 opposite the station approach and any other appropriate access arrangements identified. Given the quantum of development proposed by the allocation overall, discussions are ongoing concerning whether a secondary access linking Broadwater Farm to the wider Kings Hill estate to the south could be provided. The site promoters have been seeking to engage with surrounding land owners with a view to achieving this but to date there has been no progression. Land within Application site (C) could represent a potential opportunity for such an access to be realised should it be deemed necessary going forward but this is not recognised by the indicative layout accompanying the planning application. There is the possibility of this opportunity therefore being sterilised in the event that planning permission for residential development at Application (C) were granted at this time.

6.72 Under paragraph 48 of the NPPF, a local planning authority can give weight to relevant policies in an emerging plan according to (1) the stage of preparation of the plan, (2) whether there are unresolved objections to the relevant policies and (3) the degree of consistency of the relevant policies with the NPPF.

6.73 Paragraph 49 then advises that this, when taken in the context of the NPPF 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.”

6.74 Paragraph 50 goes on to make clear that 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.

6.75 In this respect, the High Court has recently issued a decision (*Leeds City Council v SoS & Taylor Wimpey*, 13 March 2019), concerning a challenge made by the Council against an Inspector's decision to allow an appeal for the development of a site for 55 houses. The stage of an emerging plan, and arguments as to prematurity, were live issues and therefore regard must be had to the conclusions drawn in that case. In terms of whether or not the plan in that case was at an advanced stage for the purposes of applying the necessary policies of the Framework, the judge found no criticism of the Inspector's discussion in his decision, which stated as follows:

“... 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”.

- 6.76 The same case also provides guidance on the application of paragraph 50 of the NPPF. The judge there equates the test “seldom justified... [unless] the LPA indicate[s] clearly how granting permission would prejudice the outcome of the plan-making process” to a “tilted balance” exercise as follows:

“As I have noted, that guidance advises, in paraphrase, that a prematurity argument would be unlikely to succeed, unless applying a test in language similar to the “tilted balance” comes down on the side of “adverse impacts” demonstrably outweighing the benefits; which would be probably so only where the development is substantial enough to undermine future plan making and the emerging plan is at an advanced stage.”

- 6.77 With these conclusions in mind, given the current stage of the Local Plan process, whilst I have no doubt that the developments proposed by these applications in real terms could have wider implications for plan making, they cannot at this particular point in time be said to be premature within the meaning of the NPPF (which is the correct test to be applied, within the context of the case law discussed above) in a manner that provides a reasonable and justifiable ground of refusal in its own right.

- 6.78 Notwithstanding this, weight to be afforded to the relevant emerging policies as set out above remains a matter for the decision maker to take into account. Therefore although it is not possible to mount a reasonable justifiable ground of refusal based on prematurity, it is not to say that (albeit limited) weight should not be afforded to the policies contained within the draft plan given that there is a clear dynamic between these applications and the development strategy in the Local Plan. In the event that an appeal is lodged against refusal of planning permission, this is a matter the inspector will have due regard to, based on the particular timing of the appeal relative to the examination of the local plan. This is a fluid issue at present and in the event that the stage of the local plan preparation has sufficiently moved on by the time any such appeal takes place, the Council would of course provide the determining inspector with the necessary information to assist the decision making process in this regard.

Planning obligations:

- 6.79 The NPPF requires the Council to consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. It states that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to

the development. Similarly paragraph 55 states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

6.80 Regulation 122 of the CIL Regulations also sets out that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development.

6.81 Policy CP17 of the TMBCS states that in urban areas affordable housing provision will be sought on all sites of 15 dwellings or above at a level of 40% of the number of dwellings within that scheme (70%, affordable rent, 30% shared ownership). Only in exceptional circumstances should off-site provision be secured or a commuted sum provided in lieu of on-site provision. In this respect, the submission indicates that a policy compliant level of affordable housing would be provided for across each of the sites although the precise details of that provision has not been set out at this stage. Had the proposals been acceptable in all other respects, this would have been the subject of detailed negotiations between the parties to ensure local need was being appropriately met on this sites culminating in an agreed legal agreement to secure the necessary provision in the event that outline planning permission was granted.

6.82 Policy OS3 of the MDE DPD required all developments of 5 units or more (net) to provide an open space provision in line with Policy Annex OS3. The policy sets out that, where possible to do so, open space should be provided on-site. The indicative plans show that the development would incorporate a level of on-site provision across the three sites. This, along with any necessary off-site contributions, could suitably be secured by legal agreement in the event that the developments were deemed to be acceptable in planning terms.

6.83 Local planning authorities should work with other authorities and providers to assess the quality and capacity of infrastructure for transport, water supply, wastewater and its treatment, energy (including heat), telecommunications, utilities, waste, health, social care, education, flood risk and coastal change management, and its ability to meet forecast demands.

6.84 The representations received from various providers in connection with these applications have been reproduced within the associated annexes to this report and in all instances mitigation required could be appropriately secured via legal agreement had the development proposals been acceptable in all other respects.

6.85 However, the significant harms identified as arising through the proposed development within the preceding assessment cannot be suitably overcome in a manner that would meet the requisite tests, for the reasons set out in the detailed assessment.

Planning balance and overall conclusions:

- 6.86 The introduction of residential use onto the sites would be in conflict with adopted policy in terms of the overarching principles and would significantly diminish the amount of available employment land which would be available, of which there is an evidenced need across the Borough. There is no justification for allowing this to happen particularly in light of the fact that no analysis has been provided setting out that consideration has been given to the scope of the sites to provide for alternative uses that might still generate employment. Furthermore, the submission itself notes that the increase in population arising from the provision of 320 dwellings (when taken cumulative across the three sites) would not have any particular economic benefit in terms of increased localised spending.
- 6.87 In addition to the overriding principle objection to residential use on these sites, such developments would undoubtedly be obtrusive and at odds with the prevailing character of the locality both in terms of land use and physical appearance, to the overall detriment of the quality of the local environment.
- 6.88 Detailed technical assessments undertaken by KCC (H+T) indicate that there would be significant adverse impacts on highway safety and capacity as the applications currently stand that have not been adequately mitigated.
- 6.89 In addition to the various substantial harms arising, some (albeit limited) weight must also be given to the policies contained within the emerging local plan particularly given that there is a clear interrelationship between how these applications sites would be developed and the wider strategy contained within the draft plan.
- 6.90 These various substantial adverse impacts when taken individually and cumulatively would not be outweighed by the acknowledged benefits of granting planning permission for these development of these sites.
- 6.91 Whilst it is recognised that the Council does not have a 5 year housing land supply at this time, it certainly does not follow under national policy that *ad hoc* and ill-conceived residential development of this nature, especially that which has ostensibly not been well-considered or planned for and that demonstrably would cause unacceptable levels of harm, should be approved. It is clear that in all instances the presumption in favour of sustainable development as set out in paragraph 11 (d) (ii) must be applied but the assessment that has taken place leads me to conclude that there would be significant and demonstrable adverse impacts arising in the event that planning permission were to be granted in each case that would not be outweighed by the identified benefits.
- 6.92 I therefore recommend accordingly.

7. Recommendation:

Application (A)

7.1 Refuse outline planning permission for the following reasons:

- 1 The development of the site for residential purposes and associated infrastructure, would result in a loss of designed employment land, for which there is no justification particularly in light of the identified need for such land across the Borough. The proposed development fails to safeguard the site for employment purposes and is therefore contrary to policy CP21 of the Tonbridge and Malling Borough Core Strategy 2007 and policy E1 of the Development Land Allocations DPD 2008 and paragraphs 80, 120 and 121 of the National Planning Policy Framework (2019).
- 2 The introduction of new residential development in this location would be completely at odds with the prevailing and established built environment both in terms of prevalent land uses and visual appearance. The development would, therefore, appear as an entirely incongruous feature within the immediate locality which would be harmful to the amenities of the locality and demonstrably would not respect the site and its surroundings, protect, conserve or enhance local distinctiveness, be sympathetic to local character and history, or take any opportunities for improving the character and quality of the area and the way it functions. The development proposed is therefore contrary to the requirements of policy CP24 of the Tonbridge and Malling Borough Core Strategy (2007), policy SQ1 of the Tonbridge and Malling Borough Managing Development and the Environment DPD (2010) and paragraphs 127(c), 130, 180 and 182 of the National Planning Policy Framework (2019).
- 3 The traffic movements that would be generated by the proposed development would have a severe impact on the wider local highway network within the locality and in the absence of a comprehensive scheme of evidenced, specific and deliverable mitigation measures to overcome the identified impact in totality the development is contrary to the requirements of policy SQ8 of the Managing Development and paragraphs 109, 110 and 111 of the National Planning Policy Framework (2019).
- 4 The Local Planning Authority is not satisfied that, on the evidence submitted, the proposed access strategy to serve the development can be delivered in a safe and acceptable manner. As such, the development is considered to be contrary to the requirements of policy SQ8 of the Managing Development and paragraph 110 of the National Planning Policy Framework (2019).

Application (B)

7.2 Refuse outline planning permission for the following reasons:

- 1 The development of the site for residential purposes and associated infrastructure, would result in a loss of designed employment land, for which there is no

justification particularly in light of the identified need for such land across the Borough. The proposed development fails to safeguard the site for employment purposes and is therefore contrary to policy CP21 of the Tonbridge and Malling Borough Core Strategy 2007 and policy E1 of the Development Land Allocations DPD 2008 and paragraphs 80, 120 and 121 of the National Planning Policy Framework (2019).

- 2 The introduction of new residential development in this location would be completely at odds with the prevailing and established built environment both in terms of prevalent land uses and visual appearance. The development would, therefore, appear as an entirely incongruous feature within the immediate locality which would be harmful to the amenities of the locality and demonstrably would not respect the site and its surroundings, protect, conserve or enhance local distinctiveness, be sympathetic to local character and history, or take any opportunities for improving the character and quality of the area and the way it functions. The development proposed is therefore contrary to the requirements of policy CP24 of the Tonbridge and Malling Borough Core Strategy (2007), policy SQ1 of the Tonbridge and Malling Borough Managing Development and the Environment DPD (2010) and paragraphs 127(c), 130, 180 and 182 of the National Planning Policy Framework (2019).
- 3 The traffic movements that would be generated by the proposed development would have a severe impact on the wider local highway network within the locality and in the absence of a comprehensive scheme of evidenced, specific and deliverable mitigation measures to overcome the identified impact in totality the development is contrary to the requirements of policy SQ8 of the Managing Development and paragraphs 109, 110 and 111 of the National Planning Policy Framework (2019).
- 4 The Local Planning Authority is not satisfied that, on the evidence submitted, the proposed access strategy to serve the development can be delivered in a safe and acceptable manner. As such, the development is considered to be contrary to the requirements of policy SQ8 of the Managing Development and paragraph 110 of the National Planning Policy Framework (2019).

Application (C)

7.3 Refuse outline planning permission for the following reasons:

- 1 The development of the site for residential purposes and associated infrastructure, would result in a loss of designed employment land, for which there is no justification particularly in light of the identified need for such land across the Borough. The proposed development fails to safeguard the site for employment purposes and is therefore contrary to policy CP21 of the Tonbridge and Malling Borough Core Strategy 2007 and policy E1 of the Development Land Allocations DPD 2008 and paragraphs 80, 120 and 121 of the National Planning Policy Framework (2019).

- 2 The introduction of new residential development in this location would be completely at odds with the prevailing and established built environment both in terms of prevalent land uses and visual appearance. The development would, therefore, appear as an entirely incongruous feature within the immediate locality which would be harmful to the amenities of the locality and demonstrably would not respect the site and its surroundings, protect, conserve or enhance local distinctiveness, be sympathetic to local character and history, or take any opportunities for improving the character and quality of the area and the way it functions. The development proposed is therefore contrary to the requirements of policy CP24 of the Tonbridge and Malling Borough Core Strategy (2007), policy SQ1 of the Tonbridge and Malling Borough Managing Development and the Environment DPD (2010) and paragraphs 127(c), 130, 180 and 182 of the National Planning Policy Framework (2019).
- 3 The traffic movements that would be generated by the proposed development would have a severe impact on the wider local highway network within the locality and in the absence of a comprehensive scheme of evidenced, specific and deliverable mitigation measures to overcome the identified impact in totality the development is contrary to the requirements of policy SQ8 of the Managing Development and paragraphs 109, 110 and 111 of the National Planning Policy Framework (2019).
- 4 The Local Planning Authority is not satisfied that, on the evidence submitted, the proposed access strategy to serve the development can be delivered in a safe and acceptable manner. As such, the development is considered to be contrary to the requirements of policy SQ8 of the Managing Development and paragraph 110 of the National Planning Policy Framework (2019).

Contact: Emma Keefe

Application (A): Consultation Responses

1.1 Kings Hill PC: Objects for the following reasons (reproduced in full):

1.1.1 Concerns are maintained over the further loss of land allocated for employment. Whilst the marketing of this site is noted, this appears to be only of very large office spaces, even if the building is subdivided for more than one occupier. We are aware of the popularity of Churchill Square and the new building (Building 80) constructed in 2017 which we understand is fully let. This provides small suites for small and/or start-up businesses for which there appears to be significant demand. With today's business practise typically requiring smaller office spaces on shorter leases for flexibility, we therefore question whether the marketing of such large units sufficiently demonstrates that there is no demand for commercial use of this land, or just no demand for the large units that were marketed.

1.1.2 There are significant concerns over the additional traffic that this site together with the other applications cumulatively will generate where accessed through Kings Hill. Even as phase three now begins to be built out and these proposed new sites, there are of course still only two means of access and egress for the ever increasing number of residents. Whilst the A228 is dual carriageway between the main entrance/exit Tower View and either the A20 or M20 which is where the majority of traffic travels to and from, there are quite often significant difficulties in residents trying to leave Kings Hill in the mornings. The single carriageway A228 south towards Mereworth and Tonbridge and beyond is heavily used but often backs up. The traffic frequently blocks the exit out of Kings Hill, giving rise to prolonged traffic queues and all the cumulative wasted time as people seek to leave Kings Hill on a daily basis for employment off Kings Hill, or pursuit of leisure activities. We attach photos for the mornings of 12th September 2018, 18th October 2018, 19th December 2018 and 6th March 2019. Such is the issue the Parish Council have for some time been seeking amelioration arrangements through contact with our county councillor and KCC highways. These issues currently exist and were highlighted to us by residents at our recent public meeting as well as being referred to in some of their objections; phase 3 is already expected to add to the problems and we raise concerns over any further development eventually leading to further gridlock.

1.1.3 Paragraph 109 of the National Planning Policy Framework 2018 states

“Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road networks would be severe”.

1.1.4 It is felt, and the attached pictures show, that the cumulative impact of more houses will have a severe impact on the surrounding road network. The

existing number of houses already creates gridlock. This is a material planning consideration that will create major highway issues due to increased traffic generation and vehicular access. Kings Hill Parish Council and Mereworth Parish Council have employed a consultant to undertake a highway appraisal in respect of the local plan. The comments within the report are pertinent to this application in respect of any further housing numbers and their effect on the road network. [DPHEH: the full report is not appended to this annex]

- The Local Plan's assessment fails to recognise that the width of A228 Malling Road in the vicinity of its junction with Kent Street is unable to cope with the existing traffic flows on the route and the additional traffic that will be generated by the proposals for additional housing will exacerbate congestion and poor highway safety
- There is no feasible or realistic solution to widen or improve A228 Malling Road to accommodate the additional traffic that will be generated.
- The significant impact from the proposed developments in terms of capacity and congestion and highway safety cannot be cost effectively mitigated to an acceptable degree.
- The proposals have therefore been prepared by a strategy. The proposals have therefore been prepared by a strategy that fails to meet the infrastructure requirements and cannot therefore satisfy the National Planning Policy Framework (NPPF) requirement for soundness, as required by the Ministry of Housing, Communities and Local Government. The NPPF states that "Transport issues should be considered from the earliest stages of plan-making and development proposals, so that the potential impacts of development on transport networks can be addressed", there appears to be minimal if any mitigation for transport. We note the proposal to provide further traffic lights to the Tower View/Ashton Road roundabout, however these are shown as being installed on the Tower View exit arm. Rather than assisting residents leaving Kings Hill, this is likely to further restrict egress. What is required instead is a means of leaving the exit clear so that exit off of Kings Hill is as unhindered as possible
- Similar queuing occurs at the Tower View/Kings Hill Avenue roundabout in the mornings where the incoming business traffic has priority. There are often a number of cars queuing on the Tower View arm heading north to exit Kings Hill and on the exit arm of the new unnamed road through phase 3, similarly queuing to exit Kings Hill. Phase three has yet to be built out and occupied and hence this situation can only get worse, without calculating the additional effect of these latest proposals. The parish council feel there already a need for traffic light signalling to balance priorities and improve traffic flow in and out of Kings Hill.

- 1.1.5 We note from the traffic assessment that it is deemed from data collection and software modelling that there will be minimal queuing as a result of this new application. This appears incongruous with residents current experience and we raise concerns that there appear to be little, if any proposals for mitigation. The parish council is aware that this roundabout is to be the subject of a traffic assessment review during the build out of phase three, but already raises concerns that this may conclude a similar result that no mitigation is required, despite residents existing concerns and issues.
- 1.1.6 Residents have raised concerns regarding the fact that there is no pedestrian crossing on Kings Hill Avenue. If TMBC are minded to allow residential use then a suitable pedestrian crossing should be provided for safety of school pupils and pedestrians who need to access the school site and the centre of Kings Hill
- 1.1.7 One of the greatest concerns is the lack of accessibility of GP doctor appointments. Kings Hill parish council have been working with the West Malling Group Practise to try to improve accessibility and availability for residents, following concerns raised. The situation is already considered to be seriously oversubscribed; indeed the practise is no longer accepting direct applications for new patients. As stated above, this situation is already occurring, before the 635 homes from phase three are built and occupied. The documents highlight that there are only 10 FTE GP's for the 20,616 residents registered with West Malling Group Practice, although West Malling Group Practice have informed us that the current number is actually 6 FTE. It states Watlingtonbury have 11 doctors for 7,716 people and 9 doctors at Thornhill Medical practise for 14,113 patients. Despite such limited provision already for the residents of Kings Hill, the documents suggest there will only be a moderate adverse impact on the medical service and make no clear offer of mitigation. The West Kent Clinical Commissioning Group have stated the mitigation required which the parish council wholeheartedly support, if TMBC are minded to grant consent. The parish council are keen to see the majority of this contribution being for the West Malling Group Practice to improve the current poor ratio and also allow residents from the new areas to register and therefore have a doctors surgery within walking distance.
- 1.1.8 Paragraph 8(b) of the National Planning Policy Framework 2018 refers to “to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support health, social and cultural wellbeing”
- 1.1.9 This application is not socially sustainable for the low number of doctors per resident as detailed above. This is before the number of houses proposed for the local plan and this application.

- 1.1.10 The parish council and residents alike are concerned over the impact on the local infrastructure. Kings Hill has been designed to be attractive to young families and has proved very successful and popular in this respect. However, although there is reference to pre-school provision within the documents, the parish council is aware of the severe oversubscription of pre-schools and the pre-school attached to the community centre is full and has a waiting list of 95 for 2019. The parish council seeks a contribution be provided for pre-school, if TMBC are minded to grant consent.
- 1.1.11 Although there is a large number of secondary schools within an hour's travel radius of Kings Hill most are oversubscribed and all require bus or private travel. The implication of this is increased traffic movements and expensive travel costs. This is a deficiency in a social facility and a contribution should be made towards a new local secondary school which would allow for sustainable travel and to meet the future needs of ongoing developments.
- 1.1.12 This site is accessed off a private commercial road which is closed at least once a year but could be more often. Even if only closed once a year (typically Christmas Day), this does leave residents unable to leave Kings Hill on a day when there is no public transport. The effect is that these residents need to forward plan and park their vehicle elsewhere, if they are not to be prevented from travelling on a typical family celebration day and national bank holiday. Due to the extent of private roads, not only would this mean residents having to park some impractical distance away from their home to safeguard their accessibility and freedom, the impact on other areas would be significant and displace other residents. The cumulative effect is likely to be significant harm to highway safety, which is the test in Paragraph 109 of the National Planning Policy Framework 2018.
- 1.1.13 There is reference within the submission that the emerging local plan should be disregarded on the basis it is not yet adopted. However, the creation and submission of the local plan has engaged with the local population who have been able to comment and provide their views with a view to shaping the plan for the future. Whilst the plan is now for review with the allocated planning inspectors, it is deemed to be a material planning consideration now as it is a proposal for how the future should be shaped; to pay no regard at this interim stage would be contrary to the intentions of the local plan.
- 1.1.14 The parish council remains concerned that the applicant's advisers suggest expired consents for the previously consented business uses should be a material consideration. Kings Hill is significantly more developed than it was at the time such consents were granted and it is requested that the conditions of today afford greater weight than expired consents of the past.
- 1.1.15 There are several references to sustainable transport and good links to public transport however this site is considerable walking distance from the railway station. Whilst there are some frequent bus services this does not typically

apply off peak or evenings and weekends when there are considerably less or no services. The implication of this is that car ownership is virtually essential for residents of Kings Hill which gives rise to increased car travel and need for sufficient parking.

1.1.16 The documents advise that parking provision in developments over the last ten years has typically been underprovided, which is clearly evident when looking at any of the areas of phase two at evenings and weekend when most of the roads are full of parked cars along one or both sides, including inconsiderate and often dangerous parking. However, the parking provision proposed in this application is based on providing at or just above the level of minimum parking required, based on the Kent Design Guide IGN3. This publication is dated 2006 and hence is the very document that has led to under provision over the last ten years.

1.1.17 The parish council has challenged the travel plan for phase 3 due to the stated low numbers of traffic movement and low threshold of improvement target. We are concerned this low bench mark is not applied to this current application

1.2 West Malling PC: No objection but would like to see some assessment of the impact from the additional housing on the road network and other infrastructure.

1.3 KCC (H&T):

Initial comments provided on 01 March 2019; seeking further information and clarification

Further representation received on 07 May 2019 as follows:

1.3.1 Access: Whilst it is acknowledged that this is an outline application it is important that evidence is provided to show that the access strategy is deliverable, and this is why plans to show the footway/cycle connection have been requested. These are not included in the perimeter plan which is in the Transport Assessment or Technical Note.

Committed Development

1.3.2 The draft TMBC Local Plan has been submitted, therefore the allocations are a material consideration to be included in the assessment.

Trip Rates

1.3.3 The trip rates used in the assessment for the residential use are based on old data. Please provide details of when the surveys were completed and what areas they covered. This should be cross checked against TRICs. This is also the case for non-car trips. Secondary school trips – para 6.3.3 of the TA suggests that 50% of the secondary education trips would be travelling to

Maidstone and 25% to Tonbridge and Tonbridge Wells – please clarify where the remaining 25% would be travelling to?

Traffic Generation

1.3.4 The Transport Assessment states that Sites 5.1, 5.2/5.3 and 5.6 have lapsed permissions for employment which have previously funded highway improvements. The employment trips have therefore been discounted from the proposed residential trips in the Transport Assessment. Advice was sought from TMBC on the status of the sites in order to check whether this methodology is appropriate. Advice received stated: “having undertaken a detailed assessment of our planning history records the baseline position adopted for the purposes of the TA is correct and I will be asking Kent Highways to proceed to providing their further detailed comments accordingly. In providing this confirmation, I must make clear that this only confirms the Council’s agreement to the status of the relevant planning permissions at this time in connection with these sites and should not be construed as any position having been reached on the proposed loss of allocated employment sites. That matter continues to be assessed in detail.”

1.3.5 The TA indicates that the employment uses on sites 5.1, 5.2/5.3 and 5.6 was in the order of 15,000 sq. ft per acre and a trip rates has been derived per sq.m. using phase 2 trip rates for the employment use. The use of the maximum employment density is questioned, and evidence is required. The methodology for the calculation of the employment trips per m2 is also required. The results below show the traffic generation for the different uses and the residual trips:

	AM Peak			PM Peak		
	In	Out	Total	In	Out	Total
Residential	88	186	274	174	100	274
Employment	434	23	457	53	326	379
Residual	-346	+163	-183	+121	-226	-105

1.3.6 The use of the land for residential purposes reduces the overall number of vehicle trips when compared to the employment use, however there is a significant increase in vehicles leaving Kings Hill during the morning peak and arrivals during the evening peak hour.

Impact

1.3.7 The arrival and departure profile will change significantly for the different use of the sites and the effect of this, including the Local Plan development allocations, should be shown in a capacity assessment. The recent Visum modelling and Forecast Junction Capacity Assessments which were prepared as evidence for the Local Plan includes for 24,217m2 of previously permitted

unbuilt development at Kings Hill; please clarify whether the current applications form part of this land or a larger unbuilt employment parcel.

- 1.3.8 Capacity assessment have been completed for key junctions for 2018, 2028 and 2031 peak hours to compare the commercial development impact with residential development impact along the local highway network.

Tower View/Kings Hill Avenue

- 1.3.9 The Transport Assessment indicates that the Kings Hill phase 3 development is required to monitor and mitigate this junction. This being the case any permission for the current application sites should include a condition for no occupation until the works have been completed and the mitigating measures will be required to accommodate the traffic generated by the current applications. An improvement scheme which also allows for the increased traffic arising from the development of the Broadwater Farm site will be required and appropriate contributions will be sought through the Infrastructure Delivery Plan.

Tower View/A228 Ashton Way

- 1.3.10 The junction is over capacity in the PM peak. The Kings Hill phase 3 development is required to improve this junction. This being the case any permission for the current application sites should include a condition for no occupation until the works have been completed. The mitigation measures should be sufficient to accommodate the additional traffic generated by the current application and the Local Plan Development Allocations. It may be appropriate for proportionate contributions to be pooled from the development parcels through the Infrastructure Delivery Plan.

King Hill/A228/Malling Road – Blaise Farm

- 1.3.11 A small adjustment to the flare length on Malling Road approach is proposed. The request to extend this flare length was made as the flare length proposed allows for 2 lanes of queueing for a distance of 21m which will accommodate approximately 7 pcu's. The Arcady assessment indicates that the mean maximum queue lengths predicted on A228 south are 23 pcu's in the AM peak and 29 in the PM peak. Clearly this queue will extend well beyond the flare proposed and consideration of further widening is recommended.

Malling Road/Gibson Drive

- 1.3.12 The junction has been identified for improvements in the Local Plan TA. An assessment of the junction with the proposed improvement and the proportionate contribution is required towards the improvements.

M20 Junction 4

1.3.13 The impact of the proposals at M20 Junction 4 has not been assessed.

Crashes

1.3.14 The crash plot indicates that there have been a significant number of crashes at both the A228/Tower View roundabout and the Tower View/ Kings Hill Avenue roundabouts, but the period of time is not specified. Additionally, Blaise Farm roundabout is not included. The details of the crashes should be examined in order to identify whether there are any particular patterns which would be exacerbated by the additional trips generated by the current applications.

Conclusion

1.3.15 Additional information is required as identified above. Without this information I am not currently satisfied that safe and satisfactory access can be achieved or that the cumulative residual impact of the development will not be prejudicial to the submitted draft Tonbridge & Malling Local Plan. I would therefore wish to raise a holding objection until such time as the concerns and issues raised have been adequately addressed.

1.4 HE:

Initial comments provided on 14 February 2019, seeking further time to comment

Further comments provided on 05 March 2019 as follows:

1.4.1 Highways England has been appointed by the Secretary of State for Transport as strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the strategic road network (SRN). The SRN is a critical national asset and as such Highways England works to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity.

1.4.2 Highways England will be concerned with proposals that have the potential to impact on the safe and efficient operation of the SRN, in this case the M20 (and particularly in the vicinity of Junction 4).

1.4.3 Highways England responded on 14 February 2019, indicating that we need more time to review the Transport Assessment (TA) and Transport Statement (TS) which had only just been uploaded to the planning portal. We have since received additional correspondence on the 01 March 2019 indicating that the TA appendices had now been uploaded – these documents have not been reviewed at this time and further communication relating to this new information will be provided in due course.

- 1.4.4 By way of background, Highways England has been liaising with Tonbridge and Malling Borough Council and Kent County Council over the traffic impacts of the Regulation 19 Local Plan on the SRN, which covers the M20 Junctions 3 to 5, M26 Junction 2a and the A21 at Tonbridge. This has involved the consideration of the traffic modelling that underpins the transport assessment work to be found within the evidence base and which included the M20 Junction 4 Revised Capacity Assessment Report (October 2018). We are generally content that the Local Plan transport impacts to 2031 can be accommodated on the SRN along the M20 and A21 without the need for any physical improvements to the associated junctions including merges and diverges.
- 1.4.5 In this context, having now considered the application in the context of the TA and TS (without appendices) it is apparent that the proposed development covered by these applications fall outside of the recent Local Plan Regulation 19 consultation and therefore are unlikely to have been included in the modelling assessment of 2031 impacts. Further evidence is required to justify the proposed offset of existing use status.
- 1.4.6 In summary we have the following comments regarding the TA and TS associated with these developments:
- 1.4.7 The TA section 3.2 does not directly relate the site boundaries to the sites to Phase 2 committed development i.e. the direct comparison of the sites and their relevance to Phase 2 (TM/02/03429) is not evidenced.
- 1.4.8 The TA section 6.1 and table 6.1 and TS section 7.1 indicate that the trip rates are *“derived from the Phase 3 TA”*. This reference should be clarified however, it appears that these rates refer to planning application 13/01535 King Hill Phase 3. The associated Kings Hill Phase 3 TA states that trip generation *“has been agreed through the scoping exercise that trip generation rates by mode of travel will be based upon those rates that were previously agreed through the 2002 SoCG”* and were agreed with HA. A sensitivity test is required using TRICS to demonstrate that these rates are still appropriate.
- 1.4.9 The TA section 6.2 ‘offset’ section does not clarify what of Phase 2’s 92,900 m² of commercial and 750 houses has been built out / is available for use. Section 6.2.1 states that *“The commercial land parcels of Phase 2 that are the subject of this new residential planning application have not been built out, and it is noted that the planning permissions for unimplemented Phase 2 plots has recently elapsed”*.
- 1.4.10 The justification for offsetting the residential element of the development with the commercial is not evidenced – the status of the consent associated with TM/02/03429 appears uncertain in terms of if all consents were actually exercised before elapsing. Furthermore the traffic baseline has changed since 2002 and since the infrastructure at the M20 J4 was built in 2006/2007 which

was presumably for the purpose of accommodating the Phase 2 development as it was intended at the time. It is not clear how much of the commercial / residential elements were built out as part of the Phase 2 permission and any future amendments to the application – this needs to be further clarified.

- 1.4.11 The TA section 6.2.2 states “The Planning permission for Phase 2 allowed for a maximum commercial development density on any one plot at a rate of *15,000 sq ft per acre.*” – a TA from the TM/02/03429 planning application does not appear to be on line and has not been directly evidenced within the TA associated with these developments.
- 1.4.12 The TA section 6.2.3 and table 6.3 indicates that the “*table below sets out* the trip rates and the proposed trip generation for the phase 2 commercial units on the following sites within this proposed development” as above this is not referenced as to how the site descriptions and sizes associated with these developments, relate to the 2002 application trip rates and calculations indicated in the tables.
- 1.4.13 The TA table 6.2.4 and table 6.4 summarises how sites 5.1, 5.2, 5.3 and 5.6 are offset by commercial, however does not account for site 5.4 which has no planning history. Similarly the cumulative impact of all sites including 5.5 in the TS should be considered.
- 1.4.14 The TA section 6.2.5 acknowledges that a tidal flow direction from the change in development type. However the ability of the forward funded M20 J4 to accommodate a tidal change in flow and any associated change in trip distribution is not considered.
- 1.4.15 There is no overall acknowledgement of the cumulative impact of vehicles associated with all of these developments at the M20 Junction 4 – the TA section 6.3 and section 7 “impact assessments” or the TS section 7 and 8 do not consider trip distribution as far as the SRN. Trip generation as far as the M20 J4 should be included in the spreadsheet model referenced in the TA section 6.3.4 (to be provided).
- 1.4.16 In summary the traffic associated with these developments at the M20 Junction 4 is not clarified. We are concerned that the additional (and redistributed) traffic generated by the sites in combination could result in capacity issues in 2031. This impact has not been assessed and we are currently unable to determine if the proposal would result in a ‘severe’ impact on the SRN and therefore will not materially affect the safety, reliability and / or operation of the SRN (the tests set out in DfT C2/13 para 10 and DCLG NPPF para 109).
- 1.4.17 We will provide a formal recommendation when we have assessed the modelling work and can therefore be confident that the application is in its final form. In the meantime, we would ask that the authority does not determine the

application (other than a refusal), ahead of us providing a further update. In the event that the authority wishes to permit the application before this point, we would ask the authority to inform us so that we can provide substantive response based on the position at that known time.

Final comments provided on 15 May 2019 as follows:

- 1.5 Highways England has been appointed by the Secretary of State for Transport as strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the strategic road network (SRN). The SRN is a critical national asset and as such Highways England works to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity. Highways England will be concerned with proposals that have the potential to impact on the safe and efficient operation of the SRN, in this case the M20 (and particularly in the vicinity of Junction 4).

Highways England responded initially on 14 February 2019, indicating that we need more time to review the Transport Assessment (TA) and Transport Statement (TS) which had only just been uploaded to the planning portal. We have since received additional correspondence on the 01 March 2019 indicating that the TA appendices had been uploaded. We responded most recently on 05 March 2019 (see attached e-mail) which reviewed the Transport Assessment (TA) dated November 2018 that indicating that further information and evidence was required. An updated PBA Technical Note (TN) dated 8 April 2019 directly responded to the 05 March Highways England comments has been received. We have now reviewed this TN and have the following comments.

It is notable that a number of issues raised in our 05 March response have not been directly addressed and information requested has not all been provided to our satisfaction. Therefore Highways England has undertaken its own analysis on the cumulative impacts of these developments on the M20 Junction 4. Accordingly, we have now satisfied ourselves that the level of impact likely to result from the proposals, as outlined in the TN (i.e. 107 AM peak hour trips and 89 PM peak hour trips) can be accommodated on the SRN without resulting in a 'severe' impact on the SRN and therefore will not materially affect the safety, reliability and / or operation of the SRN (the tests set out in DfT C2/13 para's 9 & 10 and DCLG NPPF para 109). Therefore we do not offer any objections or requirements relating to the proposals and I attach our HEPR form to this effect.

However, it should be clarified that, once these and other recent developments that have been assessed and approved in the vicinity have been constructed and occupied, then the available spare capacity at the M20 Junction 4 is likely to be minimal and accordingly further additional trips are likely to severely affect

the safety, reliability and / or operation of the junction to the extent that substantial mitigation will be required. It is therefore unlikely that Highways England will accept any further development that will impact M20 Junction 4 without accompanying improvements to the junction.

1.6 EA: No objections but planning conditions recommended if permission to be granted.

1.7 KCC (LLFA):

1.7.1 We are aware from the Environmental Statement (GVA Grimley Ltd, December 2018) that deep bore soakaways are proposed on site. Since ground conditions (Hythe Bed Formation) are generally acceptable for deep bore soakaways in the Kings Hill area and a primary drainage solution for most developments here, in principle we are satisfied with the drainage proposal. However, as part of a detailed surface water drainage scheme, we would recommend that additional ground investigation will be required to support the use of infiltration. It is recommended that soakage tests and falling head tests be compliant with BS5930, notably the requirement to fill the test pit several times. Detailed design should utilise a modified infiltrate rate and demonstrate that any soakaway will have an appropriate half drain time. We would recommend that results sheets are provided and a location plan of infiltration testing.

1.7.2 The final infiltration zone selected for the deep bored soakaways will need to balance the need to reach permeable strata with maintaining sufficient unsaturated zone. The Environment Agency would typically promote a minimum 10m unsaturated zone above the highest recorded groundwater level at the site.

1.7.3 Should your local authority be minded to grant permission for this development, we would recommend planning conditions be imposed.

1.8 SWS: Our initial investigations indicate that Southern Water can provide foul sewage disposal to service the proposed development. Southern Water requires a formal application for a connection to the public sewer to be made by the applicant or developer. We request that should this application receive planning approval, an informative be attached explaining this process.

1.9 KCC (Heritage): Planning condition requested securing archaeological watching brief in the event that planning permission is granted.

1.10 Historic England: No comments to make

1.11 NE: No comments to make

1.12 KFRS: Means of access is considered satisfactory

1.13 Kent Police: General comments provided in respect of crime prevention through environmental design.

1.14 CCG: Contributions sought as follows:

- £45,648 towards refurbishment, reconfiguration or extension at West Malling Group Practice and/or Watlington Surgery or towards new general practice premises

1.15 KCC (Economic Development): Contributions sought as follows:

- Primary Education - £54,432 (towards Valley Invicta Primary School)
- Secondary Education - £49,232 (towards Phase 2 Judd School expansion)
- Community Learning - £2,279.86 (Commissioning of community learning classes, arts and culture events at Kings Hill)
- Youth - £942.91 (towards providing sports and IT equipment and storage for KCC commissioned youth services at Kings Hill)
- Libraries - £12,281.39 (Towards community outreach library services at Kings Hill)
- Social Care - £3,913.00 (Towards providing new or adopted facilities for those with physical or learning disabilities at Kings Hill or West Malling and for the installation of assistive technology in housing units within the development)

1.16 Private Reps: 5 + site + press notice/0R/15X/0S. Objections raised on the following grounds:

- Impact on infrastructure and local services;
- Pollution and congestion impacts;
- Lack of adequate train services already;
- Erosion of green spaces;
- Roads already at capacity;
- Business park, not a residential area;
- Inadequate parking provision;
- Harm to ecology and biodiversity;
- Lack of landscaping, serious overdevelopment of land;

- Lack of community involvement in proposals;
- Scale of surrounding buildings would dwarf a residential development;
- Should remain for commercial space as originally planned

Application (B): Consultation Responses

1.1 Kings Hill PC: Objects for the following reasons (reproduced in full):

1.1.1 Concerns are maintained over the further loss of land allocated for employment. Whilst the marketing of this site is noted, this appears to be only of very large office spaces, even if the building is subdivided for more than one occupier. We are aware of the popularity of Churchill Square and the new building (Building 80) constructed in 2017 which we understand is fully let. This provides small suites for small and/or start-up businesses for which there appears to be significant demand. With today's business practise typically requiring smaller office spaces on shorter leases for flexibility, we therefore question whether the marketing of such large units sufficiently demonstrates that there is no demand for commercial use of this land, or just no demand for the large units that were marketed.

1.1.2 There are significant concerns over the additional traffic that this site together with the other applications cumulatively will generate where accessed through Kings Hill. Even as phase three now begins to be built out and these proposed new sites, there are of course still only two means of access and egress for the ever increasing number of residents. Whilst the A228 is dual carriageway between the main entrance/exit Tower View and either the A20 or M20 which is where the majority of traffic travels to and from, there are quite often significant difficulties in residents trying to leave Kings Hill in the mornings. The single carriageway A228 south towards Mereworth and Tonbridge and beyond is heavily used but often backs up. The traffic frequently blocks the exit out of Kings Hill, giving rise to prolonged traffic queues and all the cumulative wasted time as people seek to leave Kings Hill on a daily basis for employment off Kings Hill, or pursuit of leisure activities. We attach photos for the mornings of 12th September 2018, 18th October 2018, 19th December 2018 and 6th March 2019. Such is the issue the Parish Council have for some time been seeking amelioration arrangements through contact with our county councillor and KCC highways. These issues currently exist and were highlighted to us by residents at our recent public meeting as well as being referred to in some of their objections; phase 3 is already expected to add to the problems and we raise concerns over any further development eventually leading to further gridlock.

1.1.3 Paragraph 109 of the National Planning Policy Framework 2018 states

“Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road networks would be severe”.

1.1.4 It is felt, and the attached pictures show, that the cumulative impact of more houses will have a severe impact on the surrounding road network. The existing number of houses already creates gridlock. This is a material planning consideration that will create major highway issues due to increased traffic

generation and vehicular access. Kings Hill Parish Council and Mereworth Parish Council have employed a consultant to undertake a highway appraisal in respect of the local plan. The comments within the report are pertinent to this application in respect of any further housing numbers and their effect on the road network. [DPHEH: the full report is not appended to this annex]

- The Local Plan's assessment fails to recognise that the width of A228 Malling Road in the vicinity of its junction with Kent Street is unable to cope with the existing traffic flows on the route and the additional traffic that will be generated by the proposals for additional housing will exacerbate congestion and poor highway safety
- There is no feasible or realistic solution to widen or improve A228 Malling Road to accommodate the additional traffic that will be generated.
- The significant impact from the proposed developments in terms of capacity and congestion and highway safety cannot be cost effectively mitigated to an acceptable degree.
- The proposals have therefore been prepared by a strategy. The proposals have therefore been prepared by a strategy that fails to meet the infrastructure requirements and cannot therefore satisfy the National Planning Policy Framework (NPPF) requirement for soundness, as required by the Ministry of Housing, Communities and Local Government. The NPPF states that "Transport issues should be considered from the earliest stages of plan-making and development proposals, so that the potential impacts of development on transport networks can be addressed", there appears to be minimal if any mitigation for transport. We note the proposal to provide further traffic lights to the Tower View/Ashton Road roundabout, however these are shown as being installed on the Tower View exit arm. Rather than assisting residents leaving Kings Hill, this is likely to further restrict egress. What is required instead is a means of leaving the exit clear so that exit off of Kings Hill is as unhindered as possible
- Similar queuing occurs at the Tower View/Kings Hill Avenue roundabout in the mornings where the incoming business traffic has priority. There are often a number of cars queuing on the Tower View arm heading north to exit Kings Hill and on the exit arm of the new unnamed road through phase 3, similarly queuing to exit Kings Hill. Phase three has yet to be built out and occupied and hence this situation can only get worse, without calculating the additional effect of these latest proposals. The parish council feel there already a need for traffic light signalling to balance priorities and improve traffic flow in and out of Kings Hill.

1.1.5 We note from the traffic assessment that it is deemed from data collection and software modelling that there will be minimal queuing as a result of this new application. This appears incongruous with residents current experience and

we raise concerns that there appear to be little, if any proposals for mitigation. The parish council is aware that this roundabout is to be the subject of a traffic assessment review during the build out of phase three, but already raises concerns that this may conclude a similar result that no mitigation is required, despite residents existing concerns and issues.

- 1.1.6 Residents have raised concerns regarding the fact that there is no pedestrian crossing on Kings Hill Avenue. If TMBC are minded to allow residential use then a suitable pedestrian crossing should be provided for safety of school pupils and pedestrians who need to access the school site and the centre of Kings Hill
- 1.1.7 One of the greatest concerns is the lack of accessibility of GP doctor appointments. Kings Hill parish council have been working with the West Malling Group Practise to try to improve accessibility and availability for residents, following concerns raised. The situation is already considered to be seriously oversubscribed; indeed the practise is no longer accepting direct applications for new patients. As stated above, this situation is already occurring, before the 635 homes from phase three are built and occupied. The documents highlight that there are only 10 FTE GP's for the 20,616 residents registered with West Malling Group Practice, although West Malling Group Practice have informed us that the current number is actually 6 FTE. It states Watlingbury have 11 doctors for 7,716 people and 9 doctors at Thornhill Medical practise for 14,113 patients. Despite such limited provision already for the residents of Kings Hill, the documents suggest there will only be a moderate adverse impact on the medical service and make no clear offer of mitigation. The West Kent Clinical Commissioning Group have stated the mitigation required which the parish council wholeheartedly support, if TMBC are minded to grant consent. The parish council are keen to see the majority of this contribution being for the West Malling Group Practice to improve the current poor ratio and also allow residents from the new areas to register and therefore have a doctors surgery within walking distance.
- 1.1.8 Paragraph 8(b) of the National Planning Policy Framework 2018 refers to "to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support health, social and cultural wellbeing"
- 1.1.9 This application is not socially sustainable for the low number of doctors per resident as detailed above. This is before the number of houses proposed for the local plan and this application.
- 1.1.10 The parish council and residents alike are concerned over the impact on the local infrastructure. Kings Hill has been designed to be attractive to young families and has proved very successful and popular in this respect. However,

although there is reference to pre-school provision within the documents, the parish council is aware of the severe over subscription of pre-schools and the pre-school attached to the community centre is full and has a waiting list of 95 for 2019. The parish council seeks a contribution be provided for pre-school, if TMBC are minded to grant consent.

1.1.11 Although there is a large number of secondary schools within an hour's travel radius of Kings Hill most are oversubscribed and all require bus or private travel. The implication of this is increased traffic movements and expensive travel costs. This is a deficiency in a social facility and a contribution should be made towards a new local secondary school which would allow for sustainable travel and to meet the future needs of ongoing developments.

1.1.12 This site is accessed off a private commercial road which is closed at least once a year but could be more often. Even if only closed once a year (typically Christmas Day), this does leave residents unable to leave Kings Hill on a day when there is no public transport. The effect is that these residents need to forward plan and park their vehicle elsewhere, if they are not to be prevented from travelling on a typical family celebration day and national bank holiday. Due to the extent of private roads, not only would this mean residents having to park some impractical distance away from their home to safeguard their accessibility and freedom, the impact on other areas would be significant and displace other residents. The cumulative effect is likely to be significant harm to highway safety, which is the test in Paragraph 109 of the National Planning Policy Framework 2018.

1.1.13 There is reference within the submission that the emerging local plan should be disregarded on the basis it is not yet adopted. However, the creation and submission of the local plan has engaged with the local population who have been able to comment and provide their views with a view to shaping the plan for the future. Whilst the plan is now for review with the allocated planning inspectors, it is deemed to be a material planning consideration now as it is a proposal for how the future should be shaped; to pay no regard at this interim stage would be contrary to the intentions of the local plan.

1.1.14 The parish council remains concerned that the applicant's advisers suggest expired consents for the previously consented business uses should be a material consideration. Kings Hill is significantly more developed than it was at the time such consents were granted and it is requested that the conditions of today afford greater weight than expired consents of the past.

1.1.15 There are several references to sustainable transport and good links to public transport however this site is considerable walking distance from the railway station. Whilst there are some frequent bus services this does not typically apply off peak or evenings and weekends when there are considerably less or no services. The implication of this is that car ownership is virtually essential for

residents of Kings Hill which gives rise to increased car travel and need for sufficient parking.

- 1.1.16 The documents advise that parking provision in developments over the last ten years has typically been underprovided, which is clearly evident when looking at any of the areas of phase two at evenings and weekend when most of the roads are full of parked cars along one or both sides, including inconsiderate and often dangerous parking. However, the parking provision proposed in this application is based on providing at or just above the level of minimum parking required, based on the Kent Design Guide IGN3. This publication is dated 2006 and hence is the very document that has led to under provision over the last ten years.
- 1.1.17 The parish council has challenged the travel plan for phase 3 due to the stated low numbers of traffic movement and low threshold of improvement target. We are concerned this low bench mark is not applied to this current application
- 1.2 West Malling PC: No objection but would like to see some assessment of the impact from the additional housing on the road network and other infrastructure.
- 1.3 KCC (H&T):

Initial comments provided on 01 March 2019; seeking further information and clarification

Final representations received 07 May 2019 as follows:

Access:

- 1.3.1 Access is proposed from the A228 Malling Road by means of a left in left out junction. The concerns previously raised regarding access to the site from the A228 remain. The Technical Note states at paragraph 7.2 that to access the site via Abbey Wood Road would be a traffic route through a significant commercial footprint that would not be attractive for residential access, however the application proposes pedestrian and cycle access via Abbey Wood Road to link with the Kings Hill network. It is considered that the route is also suitable for vehicular use. Whilst there is an access in place onto the A228 it is not in use and as far as I am aware it has never been used, except possibly for temporary construction traffic; therefore, the proposed access is in effect a new permanent access for vehicular traffic. Visibility splays should be related to the speed measurements rather than the speed limit. Please provide the speed survey data and safety audit.

Committed Development

- 1.3.2 The draft TMBC Local Plan has been submitted, therefore the allocations are a material consideration to be included in the assessment.

Trip Rates

- 1.3.3 The trip rates used in the assessment for the residential use are based on old data. Please provide details of the when the surveys were completed and what areas they covered. This should be cross checked against TRICs. This is also the case for non-car trips. Secondary school trips – para 6.3.3 of the TA suggests that 50% of the secondary education trips would be travelling to Maidstone and 25% to Tonbridge and Tonbridge Wells – please clarify where the remaining 25% would be travelling to?

Traffic Generation

- 1.3.4 The Transport Assessment states that Sites 5.1, 5.2/5.3 and 5.6 have lapsed permissions for employment which have previously funded highway improvements. The employment trips have therefore been discounted from the proposed residential trips in the Transport Assessment. Advice was sought from TMBC on the status of the sites in order to check whether this methodology is appropriate. Advice received stated: “having undertaken a detailed assessment of our planning history records the baseline position adopted for the purposes of the TA is correct and I will be asking Kent Highways to proceed to providing their further detailed comments accordingly. In providing this confirmation, I must make clear that this only confirms the Council’s agreement to the status of the relevant planning permissions at this time in connection with these sites and should not be construed as any position having been reached on the proposed loss of allocated employment sites. That matter continues to be assessed in detail.” The TA indicates that the employment uses on sites 5.1, 5.2/5.3 and 5.6 was in the order of 15,000 sq. ft per acre and a trip rates has been derived per sq.m. using phase 2 trip rates for the employment use. The use of the maximum employment density is questioned, and evidence is required. The methodology for the calculation of the employment trips per m2 is also required. The results below show the traffic generation for the different uses and the residual trips:

	AM Peak			PM Peak		
	In	Out	Total	In	Out	Total
Residential	88	186	274	174	100	274
Employment	434	23	457	53	326	379
Residual	-346	+163	-183	+121	-226	-105

- 1.3.5 The use of the land for residential purposes reduces the overall number of vehicle trips when compared to the employment use, however there is a

significant increase in vehicles leaving Kings Hill during the morning peak and arrivals during the evening peak hour.

Impact

- 1.3.6 The arrival and departure profile will change significantly for the different use of the sites and the effect of this, including the Local Plan development allocations, should be shown in a capacity assessment. The recent Visum modelling and Forecast Junction Capacity Assessments which were prepared as evidence for the Local Plan includes for 24,217m² of previously permitted unbuilt development at Kings Hill; please clarify whether the current applications form part of this land or a larger unbuilt employment parcel.
- 1.3.7 Capacity assessment have been completed for key junctions for 2018, 2028 and 2031 peak hours to compare the commercial development impact with residential development impact along the local highway network.

Tower View/Kings Hill Avenue

- 1.3.8 The Transport Assessment indicates that the Kings Hill phase 3 development is required to monitor and mitigate this junction. This being the case any permission for the current application sites should include a condition for no occupation until the works have been completed and the mitigating measures will be required to accommodate the traffic generated by the current applications. An improvement scheme which also allows for the increased traffic arising from the development of the Broadwater Farm site will be required and appropriate contributions will be sought through the Infrastructure Delivery Plan.

Tower View/A228 Ashton Way

- 1.3.9 The junction is over capacity in the PM peak. The Kings Hill phase 3 development is required to improve this junction. This being the case any permission for the current application sites should include a condition for no occupation until the works have been completed. The mitigation measures should be sufficient to accommodate the additional traffic generated by the current application and the Local Plan Development Allocations. It may be appropriate for proportionate contributions to be pooled from the development parcels through the Infrastructure Delivery Plan.

King Hill/A228/Malling Road – Blaise Farm

- 1.3.10 A small adjustment to the flare length on Malling Road approach is proposed. The request to extend this flare length was made as the flare length proposed allows for 2 lanes of queueing for a distance of 21m which will accommodate approximately 7 pcu's. The Arcady assessment indicates that the mean maximum queue lengths predicted on A228 south are 23 pcu's in the AM peak

and 29 in the PM peak. Clearly this queue will extend well beyond the flare proposed and consideration of further widening is recommended.

Malling Road/Gibson Drive

- 1.3.11 The junction has been identified for improvements in the Local Plan TA. An assessment of the junction with the proposed improvement and the proportionate contribution is required towards the improvements.

M20 Junction 4

- 1.3.12 The impact of the proposals at M20 Junction 4 has not been assessed.

Crashes

- 1.3.13 The crash plot indicates that there have been a significant number of crashes at both the A228/Tower View roundabout and the Tower View/ Kings Hill Avenue roundabouts, but the period of time is not specified. Additionally, Blaise Farm roundabout is not included. The details of the crashes should be examined in order to identify whether there are any particular patterns which would be exacerbated by the additional trips generated by the current applications.

Conclusion

- 1.3.14 Additional information is required as identified above. Without this information I am not currently satisfied that safe and satisfactory access can be achieved or that the cumulative residual impact of the development will not be prejudicial to the submitted draft Tonbridge & Malling Local Plan. I would therefore wish to raise a holding objection until such time as the concerns and issues raised have been adequately addressed.

1.4 HE:

Initial comments provided on 14 February 2019, seeking further time to comment

Further comments provided on 05 March 2019 as follows:

- 1.4.1 Highways England has been appointed by the Secretary of State for Transport as strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the strategic road network (SRN). The SRN is a critical national asset and as such Highways England works to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity.

- 1.4.2 Highways England will be concerned with proposals that have the potential to impact on the safe and efficient operation of the SRN, in this case the M20 (and particularly in the vicinity of Junction 4).
- 1.4.3 Highways England responded on 14 February 2019, indicating that we need more time to review the Transport Assessment (TA) and Transport Statement (TS) which had only just been uploaded to the planning portal. We have since received additional correspondence on the 01 March 2019 indicating that the TA appendices had now been uploaded – these documents have not been reviewed at this time and further communication relating to this new information will be provided in due course.
- 1.4.4 By way of background, Highways England has been liaising with Tonbridge and Malling Borough Council and Kent County Council over the traffic impacts of the Regulation 19 Local Plan on the SRN, which covers the M20 Junctions 3 to 5, M26 Junction 2a and the A21 at Tonbridge. This has involved the consideration of the traffic modelling that underpins the transport assessment work to be found within the evidence base and which included the M20 Junction 4 Revised Capacity Assessment Report (October 2018). We are generally content that the Local Plan transport impacts to 2031 can be accommodated on the SRN along the M20 and A21 without the need for any physical improvements to the associated junctions including merges and diverges.
- 1.4.5 In this context, having now considered the application in the context of the TA and TS (without appendices) it is apparent that the proposed development covered by these applications fall outside of the recent Local Plan Regulation 19 consultation and therefore are unlikely to have been included in the modelling assessment of 2031 impacts. Further evidence is required to justify the proposed offset of existing use status.
- 1.4.6 In summary we have the following comments regarding the TA and TS associated with these developments:
- 1.4.7 The TA section 3.2 does not directly relate the site boundaries to the sites to Phase 2 committed development i.e. the direct comparison of the sites and their relevance to Phase 2 (TM/02/03429) is not evidenced.
- 1.4.8 The TA section 6.1 and table 6.1 and TS section 7.1 indicate that the trip rates are “*derived from the Phase 3 TA*”. This reference should be clarified however, it appears that these rates refer to planning application 13/01535 King Hill Phase 3. The associated Kings Hill Phase 3 TA states that trip generation “*has been agreed through the scoping exercise that trip generation rates by mode of travel will be based upon those rates that were previously agreed through the 2002 SoCG*” and were agreed with HA. A sensitivity test is required using TRICS to demonstrate that these rates are still appropriate.

- 1.4.9 The TA section 6.2 'offset' section does not clarify what of Phase 2's 92,900 m² of commercial and 750 houses has been built out / is available for use. Section 6.2.1 states that "*The commercial land parcels of Phase 2 that are the subject of this new residential planning application have not been built out, and it is noted that the planning permissions for unimplemented Phase 2 plots has recently elapsed*".
- 1.4.10 The justification for offsetting the residential element of the development with the commercial is not evidenced – the status of the consent associated with TM/02/03429 appears uncertain in terms of if all consents were actually exercised before elapsing. Furthermore the traffic baseline has changed since 2002 and since the infrastructure at the M20 J4 was built in 2006/2007 which was presumably for the purpose of accommodating the Phase 2 development as it was intended at the time. It is not clear how much of the commercial / residential elements were built out as part of the Phase 2 permission and any future amendments to the application – this needs to be further clarified.
- 1.4.11 The TA section 6.2.2 states "The Planning permission for Phase 2 allowed for a maximum commercial development density on any one plot at a rate of *15,000 sq ft per acre.*" – a TA from the TM/02/03429 planning application does not appear to be on line and has not been directly evidenced within the TA associated with these developments.
- 1.4.12 The TA section 6.2.3 and table 6.3 indicates that the "*table below sets out the trip rates and the proposed trip generation for the phase 2 commercial units on the following sites within this proposed development*" as above this is not referenced as to how the site descriptions and sizes associated with these developments, relate to the 2002 application trip rates and calculations indicated in the tables.
- 1.4.13 The TA table 6.2.4 and table 6.4 summarises how sites 5.1, 5.2, 5.3 and 5.6 are offset by commercial, however does not account for site 5.4 which has no planning history. Similarly the cumulative impact of all sites including 5.5 in the TS should be considered.
- 1.4.14 The TA section 6.2.5 acknowledges that a tidal flow direction from the change in development type. However the ability of the forward funded M20 J4 to accommodate a tidal change in flow and any associated change in trip distribution is not considered.
- 1.4.15 There is no overall acknowledgement of the cumulative impact of vehicles associated with all of these developments at the M20 Junction 4 – the TA section 6.3 and section 7 "impact assessments" or the TS section 7 and 8 do not consider trip distribution as far as the SRN. Trip generation as far as the M20 J4 should be included in the spreadsheet model referenced in the TA section 6.3.4 (to be provided).

- 1.4.16 In summary the traffic associated with these developments at the M20 Junction 4 is not clarified. We are concerned that the additional (and redistributed) traffic generated by the sites in combination could result in capacity issues in 2031. This impact has not been assessed and we are currently unable to determine if the proposal would result in a 'severe' impact on the SRN and therefore will not materially affect the safety, reliability and / or operation of the SRN (the tests set out in DfT C2/13 para 10 and DCLG NPPF para 109).
- 1.4.17 We will provide a formal recommendation when we have assessed the modelling work and can therefore be confident that the application is in its final form. In the meantime, we would ask that the authority does not determine the application (other than a refusal), ahead of us providing a further update. In the event that the authority wishes to permit the application before this point, we would ask the authority to inform us so that we can provide substantive response based on the position at that known time.

Final comments provided on 15 May 2019 as follows:

- 1.5 Highways England has been appointed by the Secretary of State for Transport as strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the strategic road network (SRN). The SRN is a critical national asset and as such Highways England works to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity. Highways England will be concerned with proposals that have the potential to impact on the safe and efficient operation of the SRN, in this case the M20 (and particularly in the vicinity of Junction 4).

Highways England responded initially on 14 February 2019, indicating that we need more time to review the Transport Assessment (TA) and Transport Statement (TS) which had only just been uploaded to the planning portal. We have since received additional correspondence on the 01 March 2019 indicating that the TA appendices had been uploaded. We responded most recently on 05 March 2019 (see attached e-mail) which reviewed the Transport Assessment (TA) dated November 2018 that indicating that further information and evidence was required. An updated PBA Technical Note (TN) dated 8 April 2019 directly responded to the 05 March Highways England comments has been received. We have now reviewed this TN and have the following comments.

It is notable that a number of issues raised in our 05 March response have not been directly addressed and information requested has not all been provided to our satisfaction. Therefore Highways England has undertaken its own analysis on the cumulative impacts of these developments on the M20 Junction 4. Accordingly, we have now satisfied ourselves that the level of impact likely

to result from the proposals, as outlined in the TN (i.e. 107 AM peak hour trips and 89 PM peak hour trips) can be accommodated on the SRN without resulting in a 'severe' impact on the SRN and therefore will not materially affect the safety, reliability and / or operation of the SRN (the tests set out in DfT C2/13 para's 9 & 10 and DCLG NPPF para 109). Therefore we do not offer any objections or requirements relating to the proposals and I attach our HEPR form to this effect.

However, it should be clarified that, once these and other recent developments that have been assessed and approved in the vicinity have been constructed and occupied, then the available spare capacity at the M20 Junction 4 is likely to be minimal and accordingly further additional trips are likely to severely affect the safety, reliability and / or operation of the junction to the extent that substantial mitigation will be required. It is therefore unlikely that Highways England will accept any further development that will impact M20 Junction 4 without accompanying improvements to the junction.

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 - 1.7.1 We are aware from the Environmental Statement (GVA Grimley Ltd, December 2018) that deep bore soakaways are proposed on site. Since ground conditions (Hythe Bed Formation) are generally acceptable for deep bore soakaways in the Kings Hill area and a primary drainage solution for most developments here, in principle we are satisfied with the drainage proposal. However, as part of a detailed surface water drainage scheme, we would recommend that additional ground investigation will be required to support the use of infiltration. It is recommended that soakage tests and falling head tests be compliant with BS5930, notably the requirement to fill the test pit several times. Detailed design should utilise a modified infiltrate rate and demonstrate that any soakaway will have an appropriate half drain time. We would recommend that results sheets are provided and a location plan of infiltration testing.
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 - Lack of adequate train services already;
 - Erosion of green spaces;
 - Roads already at capacity;

- Business park, not a residential area;
- Inadequate parking provision;
- Harm to ecology and biodiversity;
- Lack of landscaping, serious overdevelopment of land;
- Lack of community involvement in proposals;
- Scale of surrounding buildings would dwarf a residential development;
- Should remain for commercial space as originally planned;
- Need for employment land and premature given stage of local plan making

Application (C): Consultation Responses

1.1 Kings Hill PC: Objects for the following reasons (reproduced in full):

1.1.1 Concerns are maintained over the further loss of land allocated for employment. Whilst the marketing of this site is noted, this appears to be only of very large office spaces, even if the building is subdivided for more than one occupier. We are aware of the popularity of Churchill Square and the new building (Building 80) constructed in 2017 which we understand is fully let. This provides small suites for small and/or start-up businesses for which there appears to be significant demand. With today's business practise typically requiring smaller office spaces on shorter leases for flexibility, we therefore question whether the marketing of such large units sufficiently demonstrates that there is no demand for commercial use of this land, or just no demand for the large units that were marketed.

1.1.2 There are significant concerns over the additional traffic that this site together with the other applications cumulatively will generate where accessed through Kings Hill. Even as phase three now begins to be built out and these proposed new sites, there are of course still only two means of access and egress for the ever increasing number of residents. Whilst the A228 is dual carriageway between the main entrance/exit Tower View and either the A20 or M20 which is where the majority of traffic travels to and from, there are quite often significant difficulties in residents trying to leave Kings Hill in the mornings. The single carriageway A228 south towards Mereworth and Tonbridge and beyond is heavily used but often backs up. The traffic frequently blocks the exit out of Kings Hill, giving rise to prolonged traffic queues and all the cumulative wasted time as people seek to leave Kings Hill on a daily basis for employment off Kings Hill, or pursuit of leisure activities. We attach photos for the mornings of 12th September 2018, 18th October 2018, 19th December 2018 and 6th March 2019. Such is the issue the Parish Council have for some time been seeking amelioration arrangements through contact with our county councillor and KCC highways. These issues currently exist and were highlighted to us by residents at our recent public meeting as well as being referred to in some of their objections; phase 3 is already expected to add to the problems and we raise concerns over any further development eventually leading to further gridlock.

1.1.3 Paragraph 109 of the National Planning Policy Framework 2018 states

“Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road networks would be severe”.

1.1.4 It is felt, and the attached pictures show, that the cumulative impact of more houses will have a severe impact on the surrounding road network. The existing number of houses already creates gridlock. This is a material planning consideration that will create major highway issues due to increased traffic

generation and vehicular access. Kings Hill Parish Council and Mereworth Parish Council have employed a consultant to undertake a highway appraisal in respect of the local plan. The comments within the report are pertinent to this application in respect of any further housing numbers and their effect on the road network. [DPHEH: the full report is not appended to this annex]

- The Local Plan's assessment fails to recognise that the width of A228 Malling Road in the vicinity of its junction with Kent Street is unable to cope with the existing traffic flows on the route and the additional traffic that will be generated by the proposals for additional housing will exacerbate congestion and poor highway safety
- There is no feasible or realistic solution to widen or improve A228 Malling Road to accommodate the additional traffic that will be generated.
- The significant impact from the proposed developments in terms of capacity and congestion and highway safety cannot be cost effectively mitigated to an acceptable degree.
- The proposals have therefore been prepared by a strategy. The proposals have therefore been prepared by a strategy that fails to meet the infrastructure requirements and cannot therefore satisfy the National Planning Policy Framework (NPPF) requirement for soundness, as required by the Ministry of Housing, Communities and Local Government. The NPPF states that "Transport issues should be considered from the earliest stages of plan-making and development proposals, so that the potential impacts of development on transport networks can be addressed", there appears to be minimal if any mitigation for transport. We note the proposal to provide further traffic lights to the Tower View/Ashton Road roundabout, however these are shown as being installed on the Tower View exit arm. Rather than assisting residents leaving Kings Hill, this is likely to further restrict egress. What is required instead is a means of leaving the exit clear so that exit off of Kings Hill is as unhindered as possible
- Similar queuing occurs at the Tower View/Kings Hill Avenue roundabout in the mornings where the incoming business traffic has priority. There are often a number of cars queuing on the Tower View arm heading north to exit Kings Hill and on the exit arm of the new unnamed road through phase 3, similarly queuing to exit Kings Hill. Phase three has yet to be built out and occupied and hence this situation can only get worse, without calculating the additional effect of these latest proposals. The parish council feel there already a need for traffic light signalling to balance priorities and improve traffic flow in and out of Kings Hill.

1.1.5 We note from the traffic assessment that it is deemed from data collection and software modelling that there will be minimal queuing as a result of this new application. This appears incongruous with residents current experience and

we raise concerns that there appear to be little, if any proposals for mitigation. The parish council is aware that this roundabout is to be the subject of a traffic assessment review during the build out of phase three, but already raises concerns that this may conclude a similar result that no mitigation is required, despite residents existing concerns and issues.

- 1.1.6 Residents have raised concerns regarding the fact that there is no pedestrian crossing on Kings Hill Avenue. If TMBC are minded to allow residential use then a suitable pedestrian crossing should be provided for safety of school pupils and pedestrians who need to access the school site and the centre of Kings Hill
- 1.1.7 One of the greatest concerns is the lack of accessibility of GP doctor appointments. Kings Hill parish council have been working with the West Malling Group Practise to try to improve accessibility and availability for residents, following concerns raised. The situation is already considered to be seriously oversubscribed; indeed the practise is no longer accepting direct applications for new patients. As stated above, this situation is already occurring, before the 635 homes from phase three are built and occupied. The documents highlight that there are only 10 FTE GP's for the 20,616 residents registered with West Malling Group Practice, although West Malling Group Practice have informed us that the current number is actually 6 FTE. It states Watlingbury have 11 doctors for 7,716 people and 9 doctors at Thornhill Medical practise for 14,113 patients. Despite such limited provision already for the residents of Kings Hill, the documents suggest there will only be a moderate adverse impact on the medical service and make no clear offer of mitigation. The West Kent Clinical Commissioning Group have stated the mitigation required which the parish council wholeheartedly support, if TMBC are minded to grant consent. The parish council are keen to see the majority of this contribution being for the West Malling Group Practice to improve the current poor ratio and also allow residents from the new areas to register and therefore have a doctors surgery within walking distance.
- 1.1.8 Paragraph 8(b) of the National Planning Policy Framework 2018 refers to "to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support health, social and cultural wellbeing"
- 1.1.9 This application is not socially sustainable for the low number of doctors per resident as detailed above. This is before the number of houses proposed for the local plan and this application.
- 1.1.10 The parish council and residents alike are concerned over the impact on the local infrastructure. Kings Hill has been designed to be attractive to young families and has proved very successful and popular in this respect. However,

although there is reference to pre-school provision within the documents, the parish council is aware of the severe over subscription of pre-schools and the pre-school attached to the community centre is full and has a waiting list of 95 for 2019. The parish council seeks a contribution be provided for pre-school, if TMBC are minded to grant consent.

1.1.11 Although there is a large number of secondary schools within an hour's travel radius of Kings Hill most are oversubscribed and all require bus or private travel. The implication of this is increased traffic movements and expensive travel costs. This is a deficiency in a social facility and a contribution should be made towards a new local secondary school which would allow for sustainable travel and to meet the future needs of ongoing developments.

1.1.12 This site is accessed off a private commercial road which is closed at least once a year but could be more often. Even if only closed once a year (typically Christmas Day), this does leave residents unable to leave Kings Hill on a day when there is no public transport. The effect is that these residents need to forward plan and park their vehicle elsewhere, if they are not to be prevented from travelling on a typical family celebration day and national bank holiday. Due to the extent of private roads, not only would this mean residents having to park some impractical distance away from their home to safeguard their accessibility and freedom, the impact on other areas would be significant and displace other residents. The cumulative effect is likely to be significant harm to highway safety, which is the test in Paragraph 109 of the National Planning Policy Framework 2018.

1.1.13 There is reference within the submission that the emerging local plan should be disregarded on the basis it is not yet adopted. However, the creation and submission of the local plan has engaged with the local population who have been able to comment and provide their views with a view to shaping the plan for the future. Whilst the plan is now for review with the allocated planning inspectors, it is deemed to be a material planning consideration now as it is a proposal for how the future should be shaped; to pay no regard at this interim stage would be contrary to the intentions of the local plan.

1.1.14 The parish council remains concerned that the applicant's advisers suggest expired consents for the previously consented business uses should be a material consideration. Kings Hill is significantly more developed than it was at the time such consents were granted and it is requested that the conditions of today afford greater weight than expired consents of the past.

1.1.15 There are several references to sustainable transport and good links to public transport however this site is considerable walking distance from the railway station. Whilst there are some frequent bus services this does not typically apply off peak or evenings and weekends when there are considerably less or no services. The implication of this is that car ownership is virtually essential for

residents of Kings Hill which gives rise to increased car travel and need for sufficient parking.

- 1.1.16 The documents advise that parking provision in developments over the last ten years has typically been underprovided, which is clearly evident when looking at any of the areas of phase two at evenings and weekend when most of the roads are full of parked cars along one or both sides, including inconsiderate and often dangerous parking. However, the parking provision proposed in this application is based on providing at or just above the level of minimum parking required, based on the Kent Design Guide IGN3. This publication is dated 2006 and hence is the very document that has led to under provision over the last ten years.
- 1.1.17 The parish council has challenged the travel plan for phase 3 due to the stated low numbers of traffic movement and low threshold of improvement target. We are concerned this low bench mark is not applied to this current application
- 1.2 West Malling PC: No objection but would like to see some assessment of the impact from the additional housing on the road network and other infrastructure.
- 1.3 KCC (H&T):

Initial comments provided on 01 March 2019; seeking further information and clarification

Further representations received on 07 May 2019 as follows:

Access:

- 1.3.1 The masterplan which is included on the TMBC website shows a single access serving two areas of development which are separated by landscaping. There is no looped arrangement from the main access and the emergency access serves only the southern part of the development. Kent Design requires that developments of between 50 to 300 dwellings have two points of access or a loop with a short connection to a single point of access and a secondary emergency access link. The comments provided in the Technical Note do not address this issue.

Committed Development

- 1.3.2 The draft TMBC Local Plan has been submitted, therefore the allocations are a material consideration to be included in the assessment.

Trip Rates

- 1.3.3 The trip rates used in the assessment for the residential use are based on old data. Please provide details of the when the surveys were completed and what areas they covered. This should be cross checked against TRICs. This is also the case for non-car trips. Secondary school trips – para 6.3.3 of the TA suggests that 50% of the secondary education trips would be travelling to Maidstone and 25% to Tonbridge and Tonbridge Wells – please clarify where the remaining 25% would be travelling to?

Traffic Generation

- 1.3.4 The Transport Assessment states that Sites 5.1, 5.2/5.3 and 5.6 have lapsed permissions for employment which have previously funded highway improvements. The employment trips have therefore been discounted from the proposed residential trips in the Transport Assessment. Advice was sought from TMBC on the status of the sites in order to check whether this methodology is appropriate. Advice received stated: “having undertaken a detailed assessment of our planning history records the baseline position adopted for the purposes of the TA is correct and I will be asking Kent Highways to proceed to providing their further detailed comments accordingly. In providing this confirmation, I must make clear that this only confirms the Council’s agreement to the status of the relevant planning permissions at this time in connection with these sites and should not be construed as any position having been reached on the proposed loss of allocated employment sites. That matter continues to be assessed in detail.” The TA indicates that the employment uses on sites 5.1, 5.2/5.3 and 5.6 was in the order of 15,000 sq. ft per acre and a trip rates has been derived per sq.m. using phase 2 trip rates for the employment use. The use of the maximum employment density is questioned, and evidence is required. The methodology for the calculation of the employment trips per m2 is also required. The results below show the traffic generation for the different uses and the residual trips:

	AM Peak			PM Peak		
	In	Out	Total	In	Out	Total
Residential	88	186	274	174	100	274
Employment	434	23	457	53	326	379
Residual	-346	+163	-183	+121	-226	-105

- 1.3.5 The use of the land for residential purposes reduces the overall number of vehicle trips when compared to the employment use, however there is a significant increase in vehicles leaving Kings Hill during the morning peak and arrivals during the evening peak hour.

Impact

- 1.3.6 The arrival and departure profile will change significantly for the different use of the sites and the effect of this, including the Local Plan development allocations, should be shown in a capacity assessment. The recent Visum modelling and Forecast Junction Capacity Assessments which were prepared as evidence for the Local Plan includes for 24,217m² of previously permitted unbuilt development at Kings Hill; please clarify whether the current applications form part of this land or a larger unbuilt employment parcel. Capacity assessment have been completed for key junctions for 2018, 2028 and 2031 peak hours to compare the commercial development impact with residential development impact along the local highway network.

Tower View/Kings Hill Avenue

- 1.3.7 The Transport Assessment indicates that the Kings Hill phase 3 development is required to monitor and mitigate this junction. This being the case any permission for the current application sites should include a condition for no occupation until the works have been completed and the mitigating measures will be required to accommodate the traffic generated by the current applications. An improvement scheme which also allows for the increased traffic arising from the development of the Broadwater Farm site will be required and appropriate contributions will be sought through the Infrastructure Delivery Plan.

Tower View/A228 Ashton Way

- 1.3.8 The junction is over capacity in the PM peak. The Kings Hill phase 3 development is required to improve this junction. This being the case any permission for the current application sites should include a condition for no occupation until the works have been completed. The mitigation measures should be sufficient to accommodate the additional traffic generated by the current application and the Local Plan Development Allocations. It may be appropriate for proportionate contributions to be pooled from the development parcels through the Infrastructure Delivery Plan.

King Hill/A228/Malling Road – Blaise Farm

- 1.3.9 A small adjustment to the flare length on Malling Road approach is proposed. The request to extend this flare length was made as the flare length proposed allows for 2 lanes of queueing for a distance of 21m which will accommodate approximately 7 pcu's. The Arcady assessment indicates that the mean maximum queue lengths predicted on A228 south are 23 pcu's in the AM peak and 29 in the PM peak. Clearly this queue will extend well beyond the flare proposed and consideration of further widening is recommended.

Malling Road/Gibson Drive

- 1.3.10 The junction has been identified for improvements in the Local Plan TA. An assessment of the junction with the proposed improvement and the proportionate contribution is required towards the improvements.

M20 Junction 4

- 1.3.11 The impact of the proposals at M20 Junction 4 has not been assessed.

Crashes

- 1.3.12 The crash plot indicates that there have been a significant number of crashes at both the A228/Tower View roundabout and the Tower View/ Kings Hill Avenue roundabouts, but the period of time is not specified. Additionally, Blaise Farm roundabout is not included. The details of the crashes should be examined in order to identify whether there are any particular patterns which would be exacerbated by the additional trips generated by the current applications.

Conclusion

- 1.3.13 Additional information is required as identified above. Without this information I am not currently satisfied that safe and satisfactory access can be achieved or that the cumulative residual impact of the development will not be prejudicial to the submitted draft Tonbridge & Malling Local Plan. I would therefore wish to raise a holding objection until such time as the concerns and issues raised have been adequately addressed.

1.4 HE:

Initial comments provided on 14 February 2019, seeking further time to comment

Further comments provided on 05 March 2019 as follows:

- 1.4.1 Highways England has been appointed by the Secretary of State for Transport as strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the strategic road network (SRN). The SRN is a critical national asset and as such Highways England works to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity.
- 1.4.2 Highways England will be concerned with proposals that have the potential to impact on the safe and efficient operation of the SRN, in this case the M20 (and particularly in the vicinity of Junction 4).

- 1.4.3 Highways England responded on 14 February 2019, indicating that we need more time to review the Transport Assessment (TA) and Transport Statement (TS) which had only just been uploaded to the planning portal. We have since received additional correspondence on the 01 March 2019 indicating that the TA appendices had now been uploaded – these documents have not been reviewed at this time and further communication relating to this new information will be provided in due course.
- 1.4.4 By way of background, Highways England has been liaising with Tonbridge and Malling Borough Council and Kent County Council over the traffic impacts of the Regulation 19 Local Plan on the SRN, which covers the M20 Junctions 3 to 5, M26 Junction 2a and the A21 at Tonbridge. This has involved the consideration of the traffic modelling that underpins the transport assessment work to be found within the evidence base and which included the M20 Junction 4 Revised Capacity Assessment Report (October 2018). We are generally content that the Local Plan transport impacts to 2031 can be accommodated on the SRN along the M20 and A21 without the need for any physical improvements to the associated junctions including merges and diverges.
- 1.4.5 In this context, having now considered the application in the context of the TA and TS (without appendices) it is apparent that the proposed development covered by these applications fall outside of the recent Local Plan Regulation 19 consultation and therefore are unlikely to have been included in the modelling assessment of 2031 impacts. Further evidence is required to justify the proposed offset of existing use status.
- 1.4.6 In summary we have the following comments regarding the TA and TS associated with these developments:
- 1.4.7 The TA section 3.2 does not directly relate the site boundaries to the sites to Phase 2 committed development i.e. the direct comparison of the sites and their relevance to Phase 2 (TM/02/03429) is not evidenced.
- 1.4.8 The TA section 6.1 and table 6.1 and TS section 7.1 indicate that the trip rates are “*derived from the Phase 3 TA*”. This reference should be clarified however, it appears that these rates refer to planning application 13/01535 King Hill Phase 3. The associated Kings Hill Phase 3 TA states that trip generation “*has been agreed through the scoping exercise that trip generation rates by mode of travel will be based upon those rates that were previously agreed through the 2002 SoCG*” and were agreed with HA. A sensitivity test is required using TRICS to demonstrate that these rates are still appropriate.
- 1.4.9 The TA section 6.2 ‘offset’ section does not clarify what of Phase 2’s 92,900 m2 of commercial and 750 houses has been built out / is available for use. Section 6.2.1 states that “*The commercial land parcels of Phase 2 that are the subject of this new residential planning application have not been built out, and it is*

noted that the planning permissions for unimplemented Phase 2 plots has recently elapsed”.

- 1.4.10 The justification for offsetting the residential element of the development with the commercial is not evidenced – the status of the consent associated with TM/02/03429 appears uncertain in terms of if all consents were actually exercised before elapsing. Furthermore the traffic baseline has changed since 2002 and since the infrastructure at the M20 J4 was built in 2006/2007 which was presumably for the purpose of accommodating the Phase 2 development as it was intended at the time. It is not clear how much of the commercial / residential elements were built out as part of the Phase 2 permission and any future amendments to the application – this needs to be further clarified.
- 1.4.11 The TA section 6.2.2 states “The Planning permission for Phase 2 allowed for a maximum commercial development density on any one plot at a rate of *15,000 sq ft per acre.*” – a TA from the TM/02/03429 planning application does not appear to be on line and has not been directly evidenced within the TA associated with these developments.
- 1.4.12 The TA section 6.2.3 and table 6.3 indicates that the “*table below sets out* the trip rates and the proposed trip generation for the phase 2 commercial units on the following sites within this proposed development” as above this is not referenced as to how the site descriptions and sizes associated with these developments, relate to the 2002 application trip rates and calculations indicated in the tables.
- 1.4.13 The TA table 6.2.4 and table 6.4 summarises how sites 5.1, 5.2, 5.3 and 5.6 are offset by commercial, however does not account for site 5.4 which has no planning history. Similarly the cumulative impact of all sites including 5.5 in the TS should be considered.
- 1.4.14 The TA section 6.2.5 acknowledges that a tidal flow direction from the change in development type. However the ability of the forward funded M20 J4 to accommodate a tidal change in flow and any associated change in trip distribution is not considered.
- 1.4.15 There is no overall acknowledgement of the cumulative impact of vehicles associated with all of these developments at the M20 Junction 4 – the TA section 6.3 and section 7 “impact assessments” or the TS section 7 and 8 do not consider trip distribution as far as the SRN. Trip generation as far as the M20 J4 should be included in the spreadsheet model referenced in the TA section 6.3.4 (to be provided).
- 1.4.16 In summary the traffic associated with these developments at the M20 Junction 4 is not clarified. We are concerned that the additional (and redistributed) traffic generated by the sites in combination could result in capacity issues in 2031. This impact has not been assessed and we are

currently unable to determine if the proposal would result in a 'severe' impact on the SRN and therefore will not materially affect the safety, reliability and / or operation of the SRN (the tests set out in DfT C2/13 para 10 and DCLG NPPF para 109).

- 1.4.17 We will provide a formal recommendation when we have assessed the modelling work and can therefore be confident that the application is in its final form. In the meantime, we would ask that the authority does not determine the application (other than a refusal), ahead of us providing a further update. In the event that the authority wishes to permit the application before this point, we would ask the authority to inform us so that we can provide substantive response based on the position at that known time.

Final comments provided 15 May 2019 as follows:

- 1.5 Highways England has been appointed by the Secretary of State for Transport as strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the strategic road network (SRN). The SRN is a critical national asset and as such Highways England works to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity. Highways England will be concerned with proposals that have the potential to impact on the safe and efficient operation of the SRN, in this case the M20 (and particularly in the vicinity of Junction 4).

Highways England responded initially on 14 February 2019, indicating that we need more time to review the Transport Assessment (TA) and Transport Statement (TS) which had only just been uploaded to the planning portal. We have since received additional correspondence on the 01 March 2019 indicating that the TA appendices had been uploaded. We responded most recently on 05 March 2019 (see attached e-mail) which reviewed the Transport Assessment (TA) dated November 2018 that indicating that further information and evidence was required. An updated PBA Technical Note (TN) dated 8 April 2019 directly responded to the 05 March Highways England comments has been received. We have now reviewed this TN and have the following comments.

It is notable that a number of issues raised in our 05 March response have not been directly addressed and information requested has not all been provided to our satisfaction. Therefore Highways England has undertaken its own analysis on the cumulative impacts of these developments on the M20 Junction 4. Accordingly, we have now satisfied ourselves that the level of impact likely to result from the proposals, as outlined in the TN (i.e. 107 AM peak hour trips and 89 PM peak hour trips) can be accommodated on the SRN without resulting in a 'severe' impact on the SRN and therefore will not materially affect the safety, reliability and / or operation of the SRN (the tests set out in DfT

C2/13 para's 9 & 10 and DCLG NPPF para 109). Therefore we do not offer any objections or requirements relating to the proposals and I attach our HEPR form to this effect.

However, it should be clarified that, once these and other recent developments that have been assessed and approved in the vicinity have been constructed and occupied, then the available spare capacity at the M20 Junction 4 is likely to be minimal and accordingly further additional trips are likely to severely affect the safety, reliability and / or operation of the junction to the extent that substantial mitigation will be required. It is therefore unlikely that Highways England will accept any further development that will impact M20 Junction 4 without accompanying improvements to the junction

- 1.6 KCC (PROW): Public footpath runs through the site and should be accommodated in situ as part of the master plan.
- 1.7 BHS: Requests that in the event planning permission is granted, the footpath be upgraded to a bridleway.
- 1.8 EA: No objections but planning conditions recommended if permission to be granted.
- 1.9 KCC (LLFA):
 - 1.9.1 We are aware from the Environmental Statement (GVA Grimley Ltd, December 2018) that deep bore soakaways are proposed on site. Since ground conditions (Hythe Bed Formation) are generally acceptable for deep bore soakaways in the Kings Hill area and a primary drainage solution for most developments here, in principle we are satisfied with the drainage proposal. However, as part of a detailed surface water drainage scheme, we would recommend that additional ground investigation will be required to support the use of infiltration. It is recommended that soakage tests and falling head tests be compliant with BS5930, notably the requirement to fill the test pit several times. Detailed design should utilise a modified infiltrate rate and demonstrate that any soakaway will have an appropriate half drain time. We would recommend that results sheets are provided and a location plan of infiltration testing.
 - 1.9.2 The final infiltration zone selected for the deep bored soakaways will need to balance the need to reach permeable strata with maintaining sufficient unsaturated zone. The Environment Agency would typically promote a minimum 10m unsaturated zone above the highest recorded groundwater level at the site.
 - 1.9.3 Should your local authority be minded to grant permission for this development, we would recommend planning conditions be imposed.

- 1.10 SWS: Our initial investigations indicate that Southern Water can provide foul sewage disposal to service the proposed development. Southern Water requires a formal application for a connection to the public sewer to be made by the applicant or developer. We request that should this application receive planning approval, an informative be attached explaining this process.
- 1.11 KCC (Heritage): Planning condition requested securing archaeological watching brief in the event that planning permission is granted.
- 1.12 NE: No objection
- 1.13 Historic England: No comments to make
- 1.14 KFRS: Means of access is considered satisfactory
- 1.15 Kent Police: General comments provided in respect of crime prevention through environmental design.
- 1.16 CCG: Contributions sought as follows:
- £180,648 towards refurbishment, reconfiguration or extension at West Malling Group Practice and/or Watlingbury Surgery or towards new general practice premises
- 1.17 KCC (Economic Development): Contributions sought as follows:
- Primary Education - £43,092 (towards Valley Invicta Primary School)
 - Secondary Education - £39,102 (towards Phase 2 Judd School expansion)
 - Community Learning - £2,279.86 (Commissioning of community learning classes, arts and culture events at Kings Hill)
 - Youth - £942.91 (towards providing sports and IT equipment and storage for KCC commissioned youth services at Kings Hill)
 - Libraries - £12,281.39 (Towards community outreach library services at Kings Hill)
 - Social Care - £3,913.00 (Towards providing new or adopted facilities for those with physical or learning disabilities at Kings Hill or West Malling and for the installation of assistive technology in housing units within the development)
- 1.18 Private Reps: 1 + site + press notice/0R/24X/0S. Objections raised on the following grounds:
- Impact on infrastructure and local services;

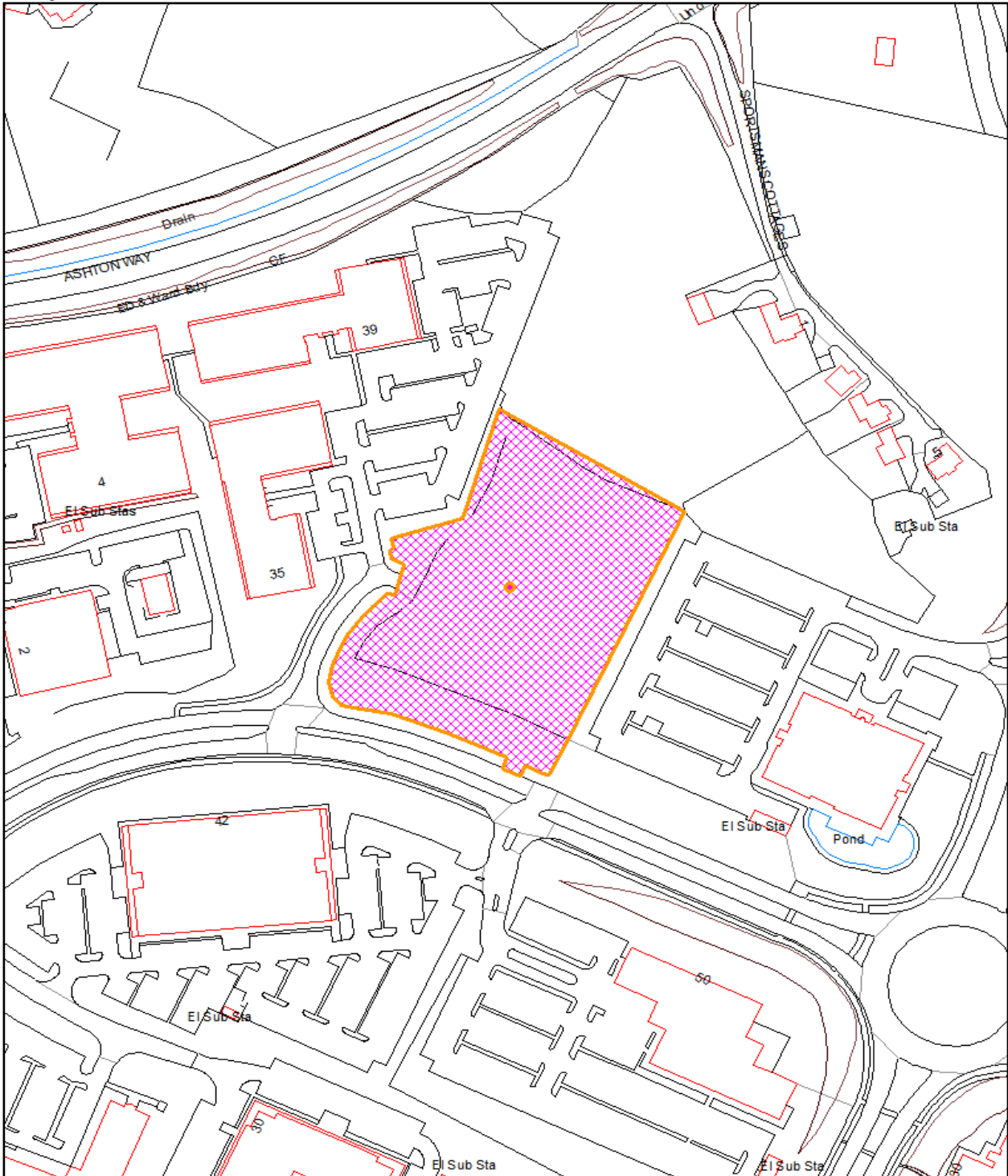
- Pollution and congestion impacts;
- Lack of adequate train services already;
- Erosion of green spaces;
- Roads already at capacity;
- Business park, not a residential area;
- Inadequate parking provision;
- Harm to ecology and biodiversity;
- Lack of landscaping, serious overdevelopment of land;
- Lack of community involvement in proposals;
- Scale of surrounding buildings would dwarf a residential development;
- Should remain for commercial space as originally planned;
- Need for employment land and premature given stage of local plan making;
- Exceeds the extent and scale of the potential hotel site on Liberty's master plan;
- Will narrow the gap between Kings Hill and West Malling

(A) TM/18/03030/OAEA (B) TM/18/03033/OAEA (C) TM/18/03034/OAEA

Development Site Between 1 Tower View And 35 Kings Hill Avenue Kings Hill West Malling Kent

Outline Application: Redevelopment to provide up to 70 Class C3 residential units, together with landscaping, open space and other associated works. All matters reserved for future approval except for access (Site 5.1)

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West Malling West Malling And Leybourne	12 September 2018	TM/18/02093/OA
Proposal:	Outline Application: Development comprising up to 80 residential dwellings (including 40% affordable housing), open space, drainage, access and associated works, with all matters reserved except for access which is to be considered in detail at this stage	
Location:	Field At Corner Of Lavenders Road And Swan Street West Malling Kent	
Go to:	Recommendation	

1. Description:

- 1.1 This item relates to an appeal against non-determination within the requisite target date. The appeal will be dealt with by way of public inquiry but as yet no date or duration has been set by the Inspectorate. Accordingly, this report seeks a resolution from Members to establish what the Council's decision would have been had they remained in a position to determine the application. This resolution will be taken forward and used as the basis for the Council's case in connection with the appeal.
- 1.2 A recommendation concerning the outcome of the application could not have come forward at an earlier juncture (thus avoiding an appeal against non-determination) because until very recently a number of substantive matters remained outstanding including a need to test evidence related to potential cumulative impacts on the strategic highway network with Highways England, re-consultation on amendments as submitted by the applicant themselves, and the need to await the outcome of an appeal where similar issues were under consideration by the Planning Inspectorate, the decision of which is an important material consideration (site known as Aylesford Lakes, the decision for which is provided at Annex 4 of this report). This was, in my view, an entirely reasonable approach on the part of the Council and one that would be expected by any Inspector.
- 1.3 The grounds of appeal made by the applicant effectively centre on the absence of a demonstrable five year supply of deliverable housing sites and a need for affordable housing within the Borough. Reference is also made within the supporting appeal documentation to a purported need on the part of the developer to lodge an appeal given the proposed expansion of the Green Belt around West Malling. These are discussed later in the report where necessary and relevant to do so.
- 1.4 Dealing firstly with matters of procedure, I must make it clear that in making my recommendations, Members should be aware that this report only seeks to

address the matters in dispute with the developer that will effectively inform our case on appeal.

- 1.5 There are matters that – notwithstanding the issues raised in the assessment that follows – will inevitably be capable of being “common ground” between the parties. I would take the opportunity to assure Members that matters concerning infrastructure and associated planning obligations in connection with schools and healthcare provision for example will not be overlooked in defending our position but rather would likely form part of the broader case put forward for the Inspector to consider. This will not prejudice the Council’s position in any way but rather ensure that in the event the Inspector allows an appeal other matters are suitably secured.
- 1.6 Turning to the scheme as proposed and now subject to appeal, I summarise as follows:
- 1.7 The application sought outline planning permission for the erection of up to 80 dwellings of which 40% would be affordable housing, the creation of a new vehicular access point from Swan Street and the provision of public open space. All matters except access were reserved for future consideration but an Indicative Site Layout Plan shows the general built form of the residential development arranged diagonally across the site from southwest to northeast. An open space area is shown to be provided within the northwest section of the site and green buffer areas provided from Eden House, Lavenders Residential Care Home and to Swan Street and Station Approach.
- 1.8 A Parameter Plan indicates the position of the new vehicular access, buffer areas, new landscaping and proposed residential areas. The residential areas are to comprise development of a maximum height of 8m, as well as associated roads, open space and play area.
- 1.9 A plan showing the Access Design has also been provided. The access is to be 5.5m wide with 2m wide footways tied in and visibility splays have been shown.
- 1.10 A Planning Statement, Design and Access Statement, Heritage Statement, Archaeological Desk Based Assessment, Arboricultural Implications Report, Ecological Appraisal, Landscape and Visual Impact Appraisal, Transport Statement, Utilities and Servicing Statement, Flood Risk and Drainage Strategy, Noise Assessment, Phase 1 Desk Study, Preliminary Risk Assessment, Air Quality Assessment, Technical Briefing Note: Reptile Survey Results and Request for Screening Opinion were all submitted with the application and will form part of the evidence base before the Inspector at Inquiry.
- 1.11 In addition, Members should be aware that just prior to lodging the appeal against non-determination, the applicant submitted a revised parameter plan in an attempt to overcome various objections raised which effectively saw a reduction in the

number of units provided for on the indicative layout plan. However, the applicant has not overtly revised the proposal description to reflect this.

2. Reason for reporting to Committee:

- 2.1 To seek a resolution from Members to determine what the Council's decision would have been had they remained in a position to determine the application.

3. The Site:

- 3.1 The application site is a large parcel of land (about 4.51ha in area) located on the east side of Lavenders Road, south side of Swan Street and west side of Station Approach and Eden Farm Lane, to the east of the Settlement confines of West Malling. It predominantly comprises fields/meadows but a small equestrian sand school and associated stables building are situated within the section of the site within the northwest corner. The land is relatively flat. The Swan Street and Lavenders Road frontages are aligned with mature trees atop raised landscaped banks.
- 3.2 St Marys Abbey lies on the west side of Lavenders Road immediately opposite the application site which is enclosed by high stone walls. The Abbey and its grounds are designated as a scheduled Ancient Monument and an Historic Park and Garden. It also contains a number of listed buildings that are Grade I, II and II Star listed.
- 3.3 Other listed buildings are located adjacent or nearby to the site including the dwelling, rails, gates and wall of West House (Grade II Star) and No.77 and 79 Swan Street (Grade II). The West Malling Railway Station building, which is also Grade II listed, lies further to the east.
- 3.4 Lavenders Residential Care Home and Eden House lie adjacent to the southern boundary of the site (one building Grade II listed). A small cluster of residential properties situated at the end of Eden Farm Lane lie adjacent to the southeast.
- 3.5 The site is located outside of the settlement confines of West Malling and therefore in the countryside. It is noted that the settlement adjoins the western boundary of the Abbey complex but extends eastwards along the north side of Swan Street to a position about 40m to the northwest of the application site. A large part of the site is also within an Area of Archaeological Potential (AAP). The West Malling Conservation Area (CA) takes in a small section of the northwest corner of the site and also extends from the northern side of Swan Street and western side of Lavenders Road opposite the site. Public Right of Way footpath MR116 runs along the southern boundary of the site from Lavenders Road before diverting to the southeast. The site also lies upon Principal and Secondary Aquifers. Zone 2 and 3 Flood Zones touch the northwest corner of the site. Swan Street is a Classified Road.

4. Planning History (relevant):

TM/03/01785/FL Grant With Conditions 5 August 2003

Removal of derelict tennis court and replacement with dressage arena

5. Consultees:

DPHEH:

In the interests of completeness, and for ease of information, full representations received by Historic England, KCC Heritage and the Council's own retained Conservation Officer are reproduced in full at Annexes 1, 2 and 3 respectively. As such, these are not reproduced or summarised within the report itself. All other representations received are summarised below as follows:

5.1 West Malling PC: Objections raised, summarised below:

- The development of the greenfield site will damage the rural character of West Malling; harm the setting of the ancient Abbey; disturb the peace of Lavenders Road; and considerably increase traffic congestion on Swan Street
- The development would undermine the new Local Plan
- It would lead to a loss of distinct character and sense of place
- The removal of trees to form the access would destroy the eastern approach to the town
- The sylvan setting would be replaced with a suburban one
- The local plan is at an advanced stage and the proposal would therefore undermine the plan
- The proposal would be suburban in character and therefore inappropriate for the location
- The regrading of the land, creation of a new access and removal of trees along Swan Street would seriously harm the setting of the listed buildings and character of the West Malling Conservation Area
- The history of the site is demonstrably sensitive with high potential for future archaeology and heritage studies
- The proposal would damage the local landscape, wildlife habitats and biodiversity
- There is considerable evidence of the activity of small mammals on the site

- The proposed access is impractical and will contribute to the urbanisation of the area
- The additional traffic from the development would worsen local congestion and deterioration of air quality in the area
- The proposal would result in significant detrimental transport impacts

5.2 East Malling & Larkfield PC: Objections raised, summarised below:

- The site is outside the confines of the village of West Malling and is not allocated for development in the current Local Plan.
- It would be detrimental to the setting and character of West Malling with its Conservation Area designation. It would also harm the setting of historic West Malling Abbey.
- It would spoil the approach into West Malling from East Malling which is a rural road with overhanging trees. The plans for this site show the roadside trees removed and set back so losing this special quality and “tree corridor”.
- Lavenders Road itself is designated as a Quiet Lane and would have a detrimental impact upon this status.
- The development of this site would add to the existing traffic problems in Swan Street with its narrow and restrictive character. In the other direction towards East Malling there is also the parking at school times outside More Park and would add to the congestion that occurs at school opening and closing times.
- It is also relevant that the site is not allocated on the emerging Local Plan currently out to final consultation and indeed is within the proposed Green Belt area as a result of the boundary being moved eastwards, partly to protect the setting of West Malling.

5.3 EA:

Initial response dated 04 October 2018:

5.3.1 We object to the proposed development, as submitted, because the application has failed to provide assurance that the risks of pollution to controlled waters are acceptable, or can be appropriately managed. We recommend that planning permission is refused on this basis.

5.3.2 The proposed development is to comprise of 80 dwellings therefore a large area is likely to be redeveloped which may be contaminated. It has also been proposed that surface water will be discharged via SuDs. Surface water infiltration from the proposed SuDs drainage could mobilise contamination that may be present at the

site and pollute controlled waters. Controlled waters are sensitive in this location as the proposed development is located upon a Principal aquifer.

5.3.3 At present the planning application is not supported by an appropriate assessment of risk so does not meet the requirements of national planning policy set out in paragraphs 170 and 178-180 of the NPPF.

5.3.4 Overcoming our objection: The applicant should provide a preliminary risk assessment which includes a desk study, conceptual model and initial assessment of risk. This information must satisfactorily demonstrate to the local planning authority that the risk to controlled waters has been fully understood and can be addressed through appropriate measures.

Subsequent response received 09 November 2018:

5.3.5 We have reviewed the Phase 1 Desk Study by Lustre Consulting (ref: 2403_FP01.0-2018) dated October 2018. We consider that the report has been carried out in line with relevant guidance and has addressed issues of concern to us. We can therefore remove our initial objection. The Desk Study has shown that there is a low risk from contamination present at the site. The risk to controlled waters from contamination is low. The recommendations for further work at the site are therefore to address risks to human health rather than to controlled waters.

5.3.6 There is always the possibility that unsuspected contamination may be encountered during construction. Controlled water are sensitive in this location as the proposed development is located upon a Principal aquifer. To mitigate risk to the Principal aquifer we feel a condition should be requested by the LPA.

5.3.7 As stated above controlled waters are sensitive in this location. The surface water drainage strategy found in appendix D of the Flood Risk Assessment report indicates that deep infiltration boreholes are the most feasible option for surface water disposal at this site. This is due to low permeability strata at the surface of the site meaning that our preferred method of shallow infiltration systems are unfeasible. Although we do not object to the use of deep infiltration systems, we do feel that they should be no deeper than is necessary to provide sufficient soakage. The report by Leap Environmental Ltd (ref: TH/18/LP001672/ST2) dated 31/07/2018 indicates that this low permeability strata is found to a max depth of 2m below ground level. We therefore feel that the design of the deep infiltration systems should be as shallow as possible whilst still providing sufficient soakage i.e. in this case around 2m deep.

5.3.8 The disposal of clean uncontaminated roof water via deep infiltration systems is allowed providing that all roof water down-pipes are sealed against pollutants entering the system from surface run-off, effluent disposal or other forms of discharge. Disposal of surface water draining areas such as roads and car parks may be allowed providing suitable pollution prevention measures are in place.

Disposal of surface water draining from car parks would depend on the size of the car park i.e. the amount of cars it accommodates.

5.3.9 We do not regard the use of boreholes or other deep structures routinely appropriate disposal options because they concentrate the flow of effluent at one location and bypass the soil layers. This limits the ability of the ground to attenuate pollutants and presents a greater risk of groundwater pollution.

5.3.10 Planning conditions are requested.

5.4 KCC (Flood & Water Management): We note from the infiltration test results in Appendix H of the Flood Risk Assessment (Ardent Consulting Engineers, August 2018) that both shallow and deep bore tests were undertaken. We agree that deep bore soakaways are a viable infiltration option at this site due to the shallow trial pit logs showing poor infiltration rates.

5.4.1 Conditions are recommended if the local authority is minded to grant permission for the development.

5.5 Highways England: No objections raised

5.6 KCC (H&T):

Initial response dated 03 October 2018:

5.6.1 I am pleased to read that sustainable connections/integration is to be provided both at Lavenders Road (an existing footpath connection serving as an alternative route into West Malling, and to recreation) and at the eastern side of the site to enable access to West Malling Station without having to repeatedly cross Swan Street.

5.6.2 Car parking will need to be provided for a suburban edge/village/rural environment (a minimum standard).

5.6.3 As indicated on the illustrative site layout and within responses to the safety audit it is anticipated that the frontage of this site will alter significantly in order to achieve the necessary visibility sight lines.

5.6.4 I note the traffic generation calculations and traffic distribution assessment undertaken and consider that this work is a fair representation of what might be expected from the composition of accommodation proposed. I also agree with the transport consultant that it is not considered that the traffic generated constitutes a severe impact. It is not considered that a highway reason for refusal could be sustained.

5.6.5 Turning to road safety I note the injury crash analysis undertaken for a 3-year period. Whilst it is acknowledged that there are no significant (common themed) clusters of crashes, visibility from Station Approach past the railway bridge abutment (to the right on emerging) is notoriously poor. For a development of 80 units it is considered that construction of a feature similar to that built just west of

Cottenham Close on Mill Street, East Malling, would be a helpful road safety improvement, commensurate with the scale and location of the development proposed. It is noted that there have been no injury crashes on the Mill Street section for at least 19 years (source: www.crashmap.co.uk).

5.6.6 Subject to provision of this element undertaken via a S278 agreement with this authority (a S278 agreement is necessary to undertake works for the required access), I write to confirm I have no objection to this proposal. The sustainable connections described in paragraph one are assumed as given. Should this application be approved a reserved matters application is expected which will need to cover other details within the site, such as parking, turning, adoption, yellow lining etc. At that stage other conditions regarding a travel plan, construction plan, drainage etc. can be incorporated.

Further response received dated 31 January 2019:

5.6.7 I understand that Highways England have been consulted regarding these proposals. Subject to their response I write to confirm on behalf of this authority that I have no further comment to add to my response of 3 October.

5.7 KCC (Economic Development): The County Council has assessed the implications of this proposal in terms of the delivery of its community services and is of the opinion that it will have an additional impact on the delivery of its services, which will require mitigation either through the direct provision of infrastructure or the payment of an appropriate financial contribution. A summary of the requested contributions are as follows:

- Primary Education - £4535 (towards Phase 2 Kings Hill Primary School 3 – Valley Invicta)
- Secondary Education - £4115 (towards Phase 1 The Malling School expansion)
- Community Learning - £2,605.54 (Tonbridge Adult Education Centre additional equipment for new learners)
- Youth - £1,077.61 (towards West Malling Community Activity Team mobile youth service additional equipment for new attendees)
- Library book stock - £18,160 (Towards extra book stock and display shelving at West Malling Library)
- Social Care - £4,472 (Towards Angel Centre Changing Place facility); and 1 wheelchair adaptable home as part of the on-site affordable housing delivery

5.8 NHS West Kent (CCG): The CCG has assessed the implications of this proposal on the delivery of general practice services and is of the opinion that it will have a direct impact which will require mitigation through the payment of an appropriate

financial contribution (£67,392 towards refurbishment and/or reconfiguration of West Malling Group Practice).

5.8.1 This proposal will generate approximately 187 new patient registrations based on an average of 2.34 per dwelling.

5.8.2 The proposed development falls within the catchment area of West Malling Group Practice. This need, along with other new developments in the area, can only be met through the refurbishment and reconfiguration of the existing premises or development of new premises to ensure sustainable general practice premises.

5.8.3 West Malling Group Practice is in the early stages of strategically assessing the premises development requirements and potential options for the longer term delivery of services; this will include new site options.

5.9 KCC PRoW: Public Right of Way MR116 runs along the southern boundary of the application site and will be affected by application. I would not object to the application itself, however I have some requests I feel would be crucial. MR116 creates a good link from the development site to either the train station or to the A228 Bypass and Kings Hill.

5.9.1 The first section of MR116 from Lavenders Road runs within the boundary of the site. The entrance from Lavenders Road currently has a wooden kissing gate with a gap next to it. I would request that the kissing gate be removed to make the path more user friendly.

5.9.2 The development would create an increase in foot traffic on the path. For this reason, I would like the applicant to either do some work to the path to make it more user friendly and sustainable for the increase or provide Public Rights of Way with section 106 money. Assuming a cost of £25 per square metre, an estimated £26,000 would be required.

5.9.3 I note that the documents mention 'existing trodden footpath link'. Whilst this is not a recorded Public Right of Way, people who use or have used this path may have acquired rights over time if this has been used for more than 20 years. I would like to make you aware that a claim may be submitted to have the path added to the definitive map because of this application.

5.10 Natural England: No objection. Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected sites.

5.11 Southern Water: No objection raised. It might be possible to divert the public sewer, so long as this would result in no unacceptable loss of hydraulic capacity, and the work was carried out at the developer's expense to the satisfaction of Southern Water.

5.11.1 Should the applicant wish to divert apparatus: (1) the foul sewer requires a clearance of 3m either side of the sewer to protect it from construction works and

allow for future access for maintenance; (2) no development or new tree planting should be located within 3m either side of the external edge of the public sewer; (3) no soakaways, swales, ponds, watercourses or any surface water retaining or conveying features should be located within 5m of a public sewer; and (4) all other existing infrastructure should be protected during the course of construction works.

5.12 Kent Police: Whilst we appreciate this is an outline planning application and the plans are largely illustrative and indicative at this stage, to date we have had no communication from the applicant/agent although we note the intention to do so. There are issues to be discussed and addressed, these include amongst others:

1. CPTED
2. Boundary treatments
3. Securing garden access service paths
4. Parking, parking courts, potential commuter parking
5. Permeability – including public footpaths and pedestrian access to the railway station

5.13 Kent Gardens Trust: Having studied the detailed responses from West Malling Parish Council, Historic England, KCC Heritage and numerous replies from local residents it would appear that all aspects of this application have been considered. We wish to support the Parish Council in its objection and echo the concerns raised by Historic England and KCC Heritage Conservation.

5.14 Kent Wildlife Trust: We are aware that an ecological scoping survey was undertaken for this application. The report recommends a reptile survey. As stated in the report 'All six reptile species are also S41 Priority Species. As such, all reptile species should be assessed as important ecological features'. Therefore, I believe a reptile survey should be a material consideration in providing information on the impacts of the development, in this case loss of specific reptile habitat, before any decision is made.

5.15 Kent Fire Brigade: No comments received.

5.16 Network Rail: No comments received.

5.17 Private Reps: 12 + site + press notices/0X/141R/2S. Objections (received during the entirety of the application process) summarised as follows:

- Additional traffic would exacerbate congestion, highway safety concerns, road noise and pollution;
- The existing local infrastructure and services are insufficient to accommodate the development;
- The development would result in urban sprawl that would urbanise the countryside / edge of town/semi-rural location and have a detrimental visual impact on the area;

- The meadow provides green space that conserves the historic setting of the area;
- The Abbey (ancient monument) as a place for prayer, quiet and peaceful contemplation and reflection would be detrimentally affected;
- The abbey walls define the edge of the settlement which will be destroyed by the development;
- The development would damage the picturesque/historic approach to West Malling which would harm the distinctive character of the town;
- The development would harm the historical setting of the Abbey and overlook its grounds;
- Noise disturbance and light pollution would impact on the peace and privacy of the Abbey;
- Surface water drainage and flooding concerns;
- The development overall (and due to removal of trees, noise and light pollution) would impact on nesting birds, bats and owls in the area as well as local biodiversity and protected species and other wildlife;
- The development would affect the quiet lane setting of Lavenders Road, which includes the Pilsdon Community and Lavenders Residential Care Home;
- The scale and density of the development and the type of buildings would not be in keeping with the adjacent historic buildings and character of West Malling;
- The development would undermine the Council's Green Belt extension in the emerging local plan;
- The new access would require removal of trees and reshape the roadside bank that would visually impact on the area;
- Archaeological concerns;
- The access would be dangerous;
- The development would affect the separate identities of settlements in the area;
- The public footpath through the land would be ruined;
- Outlook from the Abbey would be affected.

6. Determining Issues:

Preliminary matters:

- 6.1 The Planning Inspector will be required to determine the planning appeal in accordance with the adopted Development Plan unless material planning considerations indicate otherwise. The Development Plan currently in force

comprises the TMBCS (September 2007), the DLA DPD (April 2008), the MDE DPD (April 2010) and the saved policies of the TMBLP. The policies contained within the NPPF and the guidance contained within the associated NPPG are important material considerations.

- 6.2 Members will be aware that the draft local plan has been submitted to the Secretary of State but that no date has been set as yet for the examination to take place. This site does not feature as a proposed allocation for housing development within the overall strategy. Moreover, the site is proposed to form part of an extended Green Belt. In all likelihood, the determination of this appeal will happen prior to the outcome of the local plan process.
- 6.3 Under paragraph 48 of the NPPF, a local planning authority can give weight to relevant policies in an emerging plan according to (1) the stage of preparation of the plan, (2) whether there are unresolved objections to the relevant policies and (3) the degree of consistency of the relevant policies with the NPPF.
- 6.4 Paragraph 49 then advises that this, when taken in the context of the NPPF 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.”*
- 6.5 Paragraph 50 goes on to make clear that 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.
- 6.6 In relation to these provisions, whilst the draft local plan has been submitted to the Secretary of State for examination, this has yet to be taken forward and therefore the inclusion of the site within the Green Belt (Policy LP11) has not been tested at examination. Equally, the site in question would represent a very small proportion of the proposed Green Belt extension in terms of site area and would be seen directly in the context of West Malling itself, on the very edge of that existing settlement.
- 6.7 I can therefore conclude that limited weight can be afforded to the draft plan at this stage in respect of this site and the proposal to include the land as part of the Green Belt extension cannot at this time represent a reasonable or justifiable putative ground of refusal. My conclusion being that the specific development

proposed in relation to this specific site is not so substantial, or its cumulative effect so significant, that to grant permission would undermine the plan-making process in these respects

6.8 Furthermore, confirmation by Highways England that this development coming forward at this time would not severely affect the strategic road network when viewed in connection with proposed strategic allocations and other committed development. This means that there would be no prejudice to any of the specific housing allocations within local plan arising from this scheme coming forward at this time.

6.9 These conclusions relate only to the consideration of the policies contained within the draft local plan in respect of the Green Belt extension and highway related matters. All other matters of assessed impact are addressed below in the usual way within the context of the adopted development plan and national policy as required.

The five-year supply of housing and presumption in favour of sustainable development:

6.10 Policy CP15 of the TMBCS sets out a requirement for the provision of at least 6,375 dwellings in the plan period 2006 – 2021, equating to 450 units per year. Historically the Council has persistently over-delivered on that requirement due to a highly successful strategy of allocating sites through plan making right across the Borough including the Kings Hill airfield along with many sites that had historically been used for a range of industrial and manufacturing activities but had reached a natural end of operational life. Those sites in some cases are continuing to be delivered but many have been in residential use for some time and inevitably there are fewer sites representing similar opportunities now.

6.11 For the purposes of this scheme and appeal, the Council cannot demonstrate a 5 year supply of housing land. For decision making purposes, this means that the presumption in favour of sustainable development as set out in paragraph 11 of the NPPF falls to be applied.

6.12 Paragraph 11 of the NPPF states that planning decisions should apply a presumption in favour of sustainable development. Under paragraph 11(d), where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless:

- i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (footnote 6); or

- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

6.13 Firstly, and for the avoidance of any doubt, Members should be aware that policy CP14 of the TMBCS which sought to restrict development on sites outside settlement confines such as this, has been determined as being out of date in the absence of a five year supply, thus limiting the weight that can now be afforded to it.

6.14 In this case, the policies that protect areas or assets of particular importance specified in footnote 6 include those in the NPPF relating to Designated Heritage Assets (in this case: a scheduled monument, various listed buildings, a registered park and garden and Conservation Area). These are therefore addressed first in order to establish how the presumption falls to be applied in this case.

Designated heritage assets:

6.15 There is a statutory duty on decision-makers to have special regard to the desirability of preserving listed buildings and their settings. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

6.16 Paragraph 192 of the NPPF also states that in determining applications, local planning authorities should take account of:

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c) the desirability of new development making a positive contribution to local character and distinctiveness.

6.17 Paragraph 193 requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

6.18 Paragraph 194 sets out that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development

within its setting), should require clear and convincing justification. Substantial harm to or loss of:

- a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;
- b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.

6.19 Paragraph 195 states that where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- a) the nature of the heritage asset prevents all reasonable uses of the site; and
- b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and
- d) the harm or loss is outweighed by the benefit of bringing the site back into use.

6.20 Paragraph 196 requires that when a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

6.21 For the purposes of applying these policies, Annexe 2 of the NPPF sets out the following definitions:

6.22 Designated heritage asset: A World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area designated under the relevant legislation.

6.23 Heritage asset: A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including local listing)

6.24 Historic environment: All aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and landscaped and planted or managed flora.

- 6.25 Setting of a heritage asset: The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.
- 6.26 Significance (for heritage policy): The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. For World Heritage Sites, the cultural value described within each site's Statement of Outstanding Universal Value forms part of its significance.
- 6.27 The expert technical advice provided by Historic England, KCC Heritage and the Council's retained Conservation Officer annexed to this report in full are adopted for the purposes of this assessment. As these have been annexed to the report, I do not intend to reiterate in full, instead these should be read as the Council's formal position in such matters.
- 6.28 In these respects, experts making representations have found as follows (summarised only and to be read in conjunction with the referenced annexes to this report):
- Site is located adjacent to the complex of highly graded buildings forming part of the St. Mary's Abbey complex, which is a Scheduled Ancient Monument;
 - The setting of this site is not exclusively about views but also about the way in which the asset is experienced;
 - Other listed buildings are located nearby;
 - Site is adjacent to the Conservation Area and a small part is located within the Conservation Area because of its former use as part of the classically laid out gardens to the Grade II* listed Went House
 - Less than substantial harm on the higher end of the scale to the Conservation Area and the individual and grouping of listed buildings at the Abbey;
 - Less than substantial harm (to a lesser degree) to non-designated heritage assets (oast kilns to the East) and some other nearby listed buildings;
 - The Heritage Statement as submitted is considered to be incomplete/inadequate for purposes of applying the NPPF tests and utilises a questionable methodology

- 6.29 As such, in accordance with the NPPF, these conclusions necessitate an assessment as to whether the benefits of the scheme outweigh the identified harm. I discuss the benefits as they stand in turn below:
- 6.30 Contribution to the supply of market housing land: The scheme proposes up to 80 units overall, which would contribute to the housing land supply in the borough and to this would be attached significant weight in favour of the development. It is recognised that as the Council cannot demonstrate a five year supply of deliverable housing sites at this time the provision of new homes would be a benefit weighing in favour of the scheme.
- 6.31 Provision of affordable housing: The Council accepts there is a need for affordable housing in the borough. A policy compliant 40% provision is proposed in this instance, which would be considered as a further benefit weighing in favour of the development.
- 6.32 Provision of open space: Some, albeit relatively vague, indication is made within the submission regarding the provision of open space. Such provision would be expected from any development of this size and, whilst it would have some limited benefit, this is really no more than achieving compliance with policy directed to ensuring high quality, and well integrated developments ensue.
- 6.33 Associated economic benefits: It is recognised that the development both during construction and following occupation of the dwellings would generate some economic benefit in broad terms. This should be attributed some weight but nothing more than would be expected in any development of a similar nature.
- 6.34 Taking into account the above, the appeal proposals would offer some benefits to which some weight should be attached in the balance. Even so, it is noteworthy that these same benefits would be forthcoming from another, suitably located, housing scheme that provides policy compliant contributions to affordable housing, etc.
- 6.35 I am therefore firmly of the view that the various harms that would arise to designated heritage assets as identified would not be outweighed by the benefits of granting permission for this scheme and as such, the application of the relevant policies in the Framework provide a clear reason for refusing planning permission. As a result, there is no reason for the tilted balance (under paragraph 11(d)(ii)) to be engaged in this case.
- 6.36 At this juncture, Members should be aware of the Council's most recent appeal decision concerning a proposed housing development of 146 units in Aylesford where similar issues were considered by the Planning Inspectorate in dismissing the appeal. A copy of the decision letter in that case is reproduced at Annexe 4 for ease of information. Members will see that, in that case, the Inspector concluded less than substantial harm to a number of listed buildings and that the public benefits derived from provision of housing, including affordable housing (to which

he gave substantial weight), and other limited benefits did not outweigh that “great harm”.

Other planning harm identified:

- 6.37 With the above in mind, it is now necessary to establish whether any further harms are identified that result in the development proposed conflicting with the policies contained within the Framework and adopted planning policy.
- 6.38 Policy CP24 of the TMBCS requires development to be of a high quality and be well designed to respect the site and its surroundings in terms of its scale, layout, siting, character and appearance. Policy SQ1 of the MDE DPD advises that new development should protect, conserve and, where possible, enhance the character and local distinctiveness of the area including its setting in relation to the pattern of the settlement, roads and surrounding landscape. These policies broadly accord with the relevant policies contained within the Framework which set out as follows.
- 6.39 Paragraph 127 of the NPPF sets out that planning policies and decisions should ensure that developments:
- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
 - b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
 - c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
 - d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
 - e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
 - f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 6.40 Paragraph 130 goes on to state that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with

clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development. Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).

6.41 The density of the development and its resultant form and pattern would be completely at odds with the prevailing character of development within the immediate vicinity which would result in harm to the visual amenities of the area. Moreover, this site undoubtedly forms a key entrance to the historic town of West Malling and development occurring in this manner would cause harm in that respect also. This position is supported by the representations made by KCC Heritage which plainly set out that the proposed development would threaten the historical dynamic between the Abbey and the town, explaining that the proposed housing estate would effectively become the new outskirts of the town, with the new entrance being marked by housing development rather than the Abbey walls as has been the case since the Medieval period or before.

6.42 As such, and for these reasons, the development as proposed would demonstrably **not**:

- Respect the site and its surroundings in terms of its scale, layout, siting or character (policy CP24).
- Protect, conserve or enhance the character and local distinctiveness of the area including its setting in relation to the pattern of the settlement, roads and surrounding landscape (policy SQ1)
- Be sympathetic to local character and history, including the surrounding built environment and landscape setting (paragraph 127(c))
- Take opportunities available for improving the character and quality of the area and the way it functions (paragraph 130)

Planning Balance and Conclusion:

6.43 The proposed development would provide new dwellings which would assist in addressing the Borough's shortfall in housing supply. It would also provide 40% affordable housing with a mix of size and tenures which would help to address a recognised need for affordable housing in the Borough. In accordance with the Framework, I consider that these should be given significant weight in the overall balance.

6.44 In addition, a number of economic benefits of the scheme have been put forward by the applicant including through construction expenditure, local employment and household expenditure by future residents in the local area.

- 6.45 However, the development would cause harm to a number of designated heritage assets in the immediate vicinity which would not be clearly outweighed by these identified benefits. As such, there are specific policies relating to protected assets (designated heritage assets) advised in footnote 6 of the NPPF that provides a clear reason for refusing the proposed development and in accordance with paragraph 11(d) (i), the presumption in favour of sustainable development therefore does not apply in this case.
- 6.46 Furthermore, it is considered that the development would result in significant harm to the pattern of development and character of the area due to the scale, density and form of the development, contrary to the requirements of adopted development plan policy and the policies contained within the NPPF.
- 6.47 Whilst it is recognised that the Council does not have a 5 year housing land supply at this time, it certainly does not follow under national policy that *ad hoc* residential development of this nature, especially that which has ostensibly not been well-considered or planned for and that demonstrably would cause unacceptable levels of harm (including to the highly protected environment and heritage assets), should be approved.

7. Recommendation:

- 7.1 The Secretary of State (through his Inspector) and the Appellant be advised that, had the Local Planning Authority been in a position to determine the application at this time, it would have **Refused Outline Planning Permission** on the basis of, and having regard to, the following:
- 1 The Local Planning Authority considers that the Heritage Statement submitted in support of the proposed development continues to be inadequate in content and no recognised methodology has been adopted that would be demonstrably compliant with national policy and legislation meaning that it fails to meet the requirements set out at within the National Planning Policy Framework (2019) and the Historic England Good Practice Advice in Planning Note 3: Settings and Views' (GPA3).
 - 2 The proposed residential development is of a scale and location that would give rise to a direct impact on the setting of designated heritage assets including listed buildings and the West Malling Conservation Area. Notwithstanding [1] above, the proposed development by virtue of the amount and type of development proposed, the location of the site and the resultant proximity and relationship to St Marys Abbey, other listed buildings within the vicinity and the West Malling Conservation Area, would cause less than substantial harm to these designated heritage assets which are not outweighed by any public benefits that would be derived from the proposal in a manner required by the policies contained within the National Planning Policy Framework (2019). For these reasons, the proposed development also fails to meet the statutory duty provided for by the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990.

- 3 The proposed development by virtue of the overall number of units proposed, the resultant density, form, pattern and character that would subsequently arise would be entirely at odds with the prevailing character of the environment, which forms a key entrance to the historic town of West Malling, harmful to visual amenity and demonstrably would not respect the site and its surroundings, protect, conserve or enhance local distinctiveness, be sympathetic to local character and history, or take any opportunities for improving the character and quality of the area and the way it functions. The development proposed is therefore contrary to the requirements of policy CP24 of the Tonbridge and Malling Borough Core Strategy (2007), policy SQ1 of the Tonbridge and Malling Borough Managing Development and the Environment DPD (2010) and paragraphs 127(c) and 130 of the National Planning Policy Framework (2019).

Contact: Emma Keefe

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Direct Dial: 01483 252078

Our ref: P00970110

26 November 2018

Dear Mr Fewster

**T&CP (Development Management Procedure) (England) Order 2015
& Planning (Listed Buildings & Conservation Areas) Regulations 1990**

**FIELD AT CORNER OF LAVENDERS ROAD AND SWAN STREET WEST
MALLING KENT
Application No. 18/02093/OA**

Thank you for your letter of 18 September 2018 regarding the above application for planning permission. On the basis of the information available to date, we offer the following advice to assist your authority in determining the application.

Historic England Advice

This application seeks outline permission for up to 80 residential dwellings on land east of Lavender Road and south of Swan Street in West Malling. The site is sensitive in heritage terms for two reasons. Firstly the north-west corner of the site is within the West Malling conservation area while the remainder is within land forming part of the setting of the conservation within which are a number of listed buildings and a scheduled monument. Of most relevance to this application, because the development is within the setting of this group is the scheduled monument St Mary's Abbey. There are listed buildings within the monument including the chapter house and library, the convent building, gatehouse and St Mary's Abbey North Wall and St Mary's Abbey Tower (all grade I) the tithe barn and the post-war abbey church (both grade II*) and the monastery guesthouses and refectory (both grade II).

Significance of West Malling Abbey and West Malling Conservation Area

Nunneries were founded by all the major religious orders and were essentially settlements built to sustain a religious community and so usually included buildings for worship, accommodation and subsistence within a large enclosure or precinct. This was normally divided into an inner precinct with a church, cloister, accommodation,



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refectory and chapter house and usually an outer precinct with visitor lodgings and other ancillary buildings to support monastic life. An enclosure usually also contained gardens used by a community, some functional for growing food and others as a place for contemplation and exercise. Religious communities also usually contain a place for burial of their members which would often be a place for seclusion.

A Benedictine nunnery was founded in West Malling in 1090 by Gundulf, the first Bishop of Rochester and the abbey buildings including a magnificent church were erected soon after. The abbey was then dissolved in 1538 and by the 18th century was partly ruinous. However, its fortunes were reversed when Frazer Honeywood built a house among and incorporating some of the ruins in the mid-18th century. In the late 19th century, Anglican Benedictine nuns returned to the site and began transforming it back into a monastery establishing a Benedictine community which has thrived here now for more than a century.

West Malling Abbey is remarkable for several reasons and consequently also of outstanding significance. Firstly, despite falling into a ruinous state by the early 18th century a significant amount of medieval work survives including the fine tower of the abbey church giving us a tangible insight into the wealth of the medieval Benedictine community. Secondly, as these buildings were added to, first by Honeywood and then by the modern community of Anglican Benedictine nuns, it is possible to interpret both how a monastic community lived in the medieval period and continues to live now within an enclosure focussed on worship but relying on the spaces around those buildings to help sustain that community. There are still both productive and ornamental gardens at West Malling Abbey. The latter are especially important as a private space used for exercise and contemplation but also incorporating a small cemetery which holds particular significance for the community.

The wider conservation area covers the core of the settlement of West Malling, the abbey and the key historic routes into the town. West Malling developed from the medieval period when an abbess was granted a charter to hold markets. These were focussed on land west of the abbey and the distinctive wide High Street is illustrative of this historic use.

As the town grew up, development was historically confined to the High Street and Swan Street (which runs north of the Abbey) with land east of the abbey largely undeveloped. This pattern of development is sustained because modern extensions to the town have largely been to the west of the High Street and north of Swan Street. This means the distinctive morphology and spatial relationships between the town, abbey and the surrounding countryside have been sustained. The way in which the historic morphology of the town remains legible on its eastern edge including for the



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undeveloped character of the land east of Lavender Road therefore contributes to the character and appearance and thus also to the significance of the conservation area.

Proposal

It is proposed to build up to 80 houses on the field east of Lavender Road. A parcel of land in the north-west corner of the site would remain undeveloped and be managed as green open space while the remainder would be built upon. While the scheme is in outline, indicative plans are provided which give some idea of the probable densities and distribution of housing across the site. A new access would be created off Swan Road.

Impact of the Proposal on the significance of West Malling Abbey and the West Malling Conservation Area

We have reviewed the information submitted to support this application and have serious concerns about the impact it would have on the significance of the outstanding ensemble at West Malling Abbey and to an extent on the character and appearance and thus also the significance of the West Malling Conservation Area.

Our principle concern for the Abbey is two-fold. Firstly, the development would almost certainly be visible from within the abbey complex, both from the lodgings range on the eastern arm of the cloister and from the abbey's private garden to the south of this. The development would also be visible in views towards the abbey from the site (in which the lodgings are visible) and in which the undeveloped character of the land east of the abbey can be appreciated. This would harm an appreciation of the historic setting afforded to the abbey since its founding whereby land to its east has remained open and undeveloped. We also think the presence of housing as experienced from within the abbey grounds would be increased by higher ground levels within the development site.

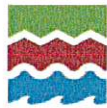
Secondly, such a large number of houses in close proximity will have a detrimental impact on the peace, tranquillity and privacy afforded to the abbey gardens and the cemetery within this. Historic England's guidance, Good Practice Advice Note 3 on the Setting of Heritage Assets is clear that setting is experienced in many ways, not just in visual considerations. It notes that "although views of or from an asset will play an important part, the way in which we experience an asset in its setting is also influenced by other environment factors such as noise, dust and vibration from other land uses in the vicinity and by our understanding of the historic relationship between places." (p.2) We think this is applicable here as the increased noise, light pollution and activity in close proximity to the abbey site will impact on its historic character as containing places of peace and tranquillity; thus causing harm to the significance of the



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abbey ensemble including for the scheduled monument and the listed buildings within it.

Building on land within the setting of the conservation area will also cause harm to an appreciation of its distinctive morphology and thus cause harm to the significance of the conservation area. This is because it will no longer be possible to understand that the town developed west of the abbey site and on Swan Street while land to its east remained undeveloped and in an agricultural use.

Policy and Position

In assessing this application your Council will need to take account of the relevant policies for decision taking in the National Planning Policy Framework (NPPF). We think the first of these relevant here is Paragraph 189 which requires an applicant to describe the significance of any assets affected by a proposal including any contribution made by their setting. It notes the level of detail should be proportionate to the asset's importance and no more than is sufficient to understand the potential impact on that significance.

Historic England strongly disagrees with the conclusions of the Heritage Statement. While this acknowledges there would be change within the setting of the listed buildings in the abbey complex and the conservation area (p.27 and 30) it concludes that the development would not harm the significance of either. We think this assessment is flawed and does not take account of the effects of setting beyond a visual consideration. Nor does it give sufficient weight to the distinctive morphology of the town and the way in which this can be understood as a contributor to the significance of the conservation area and to our understanding and appreciation of the abbey complex for its historic relationship to open undeveloped land to its east. The assessment places too much weight on the impacts to individual listed buildings within the complex without assessing the ensemble as a whole and the way in which the interrelated parts, including the open spaces within the enclosure, contribute to the exceptional significance of West Mallory Abbey. The heritage statement also fails to assess the impact to the scheduled monument which includes for some upstanding remains. We therefore conclude that the heritage statement fails to meet the requirements of Paragraph 189 of the National Planning Policy Framework (NPPF).

Paragraph 190 notes that harm should be avoided or minimised to avoid conflict between the conservation of a designated asset and any aspect of a proposal. Where a proposal causes harm to heritage significance, Paragraph 194 requires clear and convincing justification for that harm. Finally, where a proposal leads to less than substantial harm, that harm should be weighed against the public (including heritage) benefits of the proposal in the manner set out in Paragraph 196.

Turning to the requirement for avoiding or minimising harm, we do not think this has been demonstrated because the applicant has not shown that the public benefit of 80



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residential dwellings cannot be provided on another site which avoids harm altogether. On this basis, we also do not think there is clear and convincing justification for the harm as required by Paragraph 194. It is for your Council to weigh the public benefits of the proposal, which here are principally about the contribution of housing to your overall need, against the harm entailed to designated heritage in the manner suggested in Paragraph 196. In this case we think it helpful to note that in our view the application does not propose any heritage benefits. In reaching a decision on this proposal we also draw your attention to Paragraph 193 of the framework which highlights a requirement to give great weight to the conservation of an asset (and the more important the asset, the greater the weight). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm.

Recommendation

Historic England has concerns regarding the application on heritage grounds and consider that the application fails to meet the requirements of the NPPF, in particular paragraph numbers 189, 190, 194 and 196. In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice. If there are any material changes to the proposals, or you would like further advice, please contact us.

Yours sincerely



Alice Brockway

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Our ref: P00970110

20 March 2019

Dear Mr Fewster

**T&CP (Development Management Procedure) (England) Order 2015
& Planning (Listed Buildings & Conservation Areas) Regulations 1990**

**FIELD AT CORNER OF LAVENDERS ROAD AND SWAN STREET WEST
MALLING KENT
Application No. 18/02093/OA**

Thank you for your letter of 15 February 2019 regarding further information on the above application for planning permission. On the basis of this information, we offer the following advice to assist your authority in determining the application.

Historic England Advice

Historic England has received updated information on heritage impacts arising from an outline application for up to 80 dwellings on land adjacent to West Malling Abbey. This was submitted in the form of a 'heritage rebuttal' following receipt of our advice of 26 November 2018 which raised a number of concerns about the harmful impacts of the scheme on designated heritage including the scheduled West Malling Abbey (and standing scheduled buildings), listed buildings in the Abbey complex and the West Malling Conservation Area.

Since receiving a consultation on the amendments we have also met the applicant's heritage consultant for a constructive discussion about the concerns raised by Historic England. As a consequence of this meeting we expect the applicant to update their heritage statement and/or rebuttal statement and therefore suggest it would be appropriate for us to advise only when these updates are complete and request that your Council re-consult us on this matter in due course. We note that it would be helpful for the consultants to access the abbey site in order to make their assessment and to fulfil the requirements of Paragraph 189 of the NPPF.

Since our advice of 26 November 2018 we have also reviewed the archaeological aspects of the proposal following a request by KCC. We concur with KCC that there is potential for prehistoric, Roman and Medieval origins on the proposed development



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site given the general archaeological context and the proximity to St Mary's Abbey. We note the speculation that this open ground may have been used for trading and market activities by the Abbey and that there is a historic gateway at the south west corner of the proposed development site that might suggest a connection to the abbey precinct, which might itself have been a focus for historic activity. We also note that a Second World War aircraft crashed on the proposed development site, the remains of which might survive.

In view of the archaeological potential of the proposed development site and the potential for remains to be of considerable heritage significance we consider that it should be considered a heritage asset of archaeological interest and that the applicant has not yet adequately described its heritage significance. We concur with KCC that further archaeological assessment of it would be appropriate prior to determination of the application and we recommend that the Council should advise the applicant that archaeological evaluation in accordance with a Written Scheme of Investigation approved by the Council will be necessary before the application is determined, in accordance with paragraph 189 of the NPPF.

Recommendation

Historic England continues to have concerns regarding the application on heritage grounds. We consider that the application fails to meet the requirements of the NPPF and in particular paragraphs 189, 190, 194 and 196. We would welcome the opportunity to continue engaging on this proposal and look forward to receiving further information in due course. That notwithstanding if your Council chooses to determine this application our advice of 26 November 2018 should be treated as Historic England's formal position on this proposal. In determining this application your Council should also bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice. If there are any material changes to the proposals, or you would like further advice, please contact us.

Yours sincerely



Alice Brockway

Inspector of Historic Buildings and Areas



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Direct Dial: 0207 973 3700

Our ref: P00970110

9 May 2019

Dear Ms Keefe

**T&CP (Development Management Procedure) (England) Order 2015
& Planning (Listed Buildings & Conservation Areas) Regulations 1990**

**FIELD AT CORNER OF LAVENDERS ROAD AND SWAN STREET WEST
MALLING KENT
Application No. 18/02093/OA**

Thank you for your letter of 29 April 2019 regarding further information on the above application for planning permission. On the basis of this information, we offer the following advice to assist your authority in determining the application.

Historic England Advice

Thank you for consulting Historic England on revised proposals for an outline application for up to 80 dwellings on land at the corner of Lavenders Road and Swan Street. Updates were provided following Historic England's initial advice of 26 November 2018. In this we highlighted a high level of harm to the heritage significance of the scheduled monument and highly graded listed buildings which collectively form the medieval monastic site at West Malling Abbey and part of the West Malling conservation area (of which the abbey is an important component). Harm arises from development proposed in the setting of these designated heritage assets.

The revised proposal increases the landscape buffer between the eastern boundary of the abbey and the development. This will reduce the presence of new housing from within the abbey complex, but we are not convinced that it would remove that presence altogether. While we note the comments provided by the applicant's heritage consultant in Addendum Heritage Statement (dated stamped 17 April 2019), we do not agree that there would be no harm to designated heritage and thus that the engagement of S.66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 is questionable. Nevertheless, we do, as noted above, accept that the level of harm to heritage significance is reduced by the amendment but in respect of



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designated heritage at West Malling Abbey, we do not think this removes harm altogether.

For the avoidance of doubt we think the harm to designated heritage at West Malling Abbey is chiefly about two factors. Firstly, though the presence of the development will be reduced by recent amendments, as noted above, we think it likely it would still have some presence from within the abbey site. We say this as setting is not exclusively about views but is also about all ways in which a heritage asset is experienced. In our view this revised proposal would harm an appreciation of the historic setting for the abbey which to its east has always been open and undeveloped. This can be appreciated in views from the site towards the abbey and from views within the abbey complex looking back towards the site. This would in our view cause harm to the significance of the abbey site including for the scheduled monuments and highly graded buildings within it which collectively continue to illustrate how a medieval monastic site functioned and developed with countryside to its east. Secondly, though the housing will be further from the abbey site, it is still possible that the development will impact on the tranquil and peaceful character of the abbey site, an aspect of its historic character which helps illustrate its medieval and modern function as a monastic site (including a burial ground for which tranquillity takes on added importance). We note the updated heritage report highlights three views from within the abbey to illustrate the impact of the development which are then used as evidence for the claim of no harm to heritage significance. However two of those illustrations do not include the site, but are views of the core buildings in the abbey and thus in our view cannot illustrate the level of impact. We accept the point made that in summer months the visibility of the development is likely to be reduced but note that an assessment of impact here should take account of the worst case scenario, i.e. when the visibility of the development is at its greatest in winter. Overall, we think the harm has been substantially reduced but we still conclude that there is remaining harm to the significance of designated heritage within West Malling Abbey arising from this revised development.

We also conclude that the amendments also reduce harm to the significance of the West Malling Conservation Area but again do not remove it altogether. Harm arises from the way in which development on this field harms an appreciation of the distinct morphology of West Malling where urban development was historically focussed to the abbey's west and in ribbon development on the principal historic routes in to the settlement. An understanding of West Malling's distinctive development pattern which makes an important contribution the character and appearance of the conservation area, would thus be harmed to a degree by an essentially suburban housing development as proposed. We accept that this understanding will be limited to views of the conservation area as it is approached along Swan Road from the east and in views of the conservation area from within the site and thus that overall the harm to the significance of the conservation area will be low.



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The National Planning Policy Framework (NPPF) places great weight on the conservation of heritage assets noting that heritage assets are “an irreplaceable resource, and should be conserved in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of existing and future generations (Paragraph 184). The framework goes on to highlight a requirement to avoid or minimise harm to heritage assets (Paragraph 190), that great weight should be given to the conservation of designated heritage assets (Paragraph 193) and to require that any harm to the significance of designated heritage should have clear and convincing justification (Paragraph 194). Paragraph 193 also explains that the more important the asset the greater the weight should be and explains that this applies irrespective of the level of harm that is applicable. Your Council will also need to consider whether the harm, which we assess as less than substantial, is outweighed by public benefits in the manner described in Paragraph 196.

In this case we think the harm has been significantly reduced by the amendments. Nevertheless we do not think the requirement of Paragraph 190 - to avoid or minimise harm to designate heritage - is fulfilled by this change because the applicants have not demonstrated that the public benefit, including up to 80 new dwellings, cannot be provided on another site within the borough and thus that the harm might be avoided altogether. If the harm to designated heritage does not have clear and convincing justification we question whether the application meets the requirements of Paragraph 194. This includes taking note of the great weight needed for conservation of the high grade designated assets, which takes in the contribution to their significance made by their setting.

For clarity we would also like to address statements in the addendum to the heritage statement which questions the reliability of Historic England's views for this proposal on the basis that we have previously raised no objection to other development within the abbey confines in 2006 and 2008. We think the two types of development referred to here are not directly comparable to this application; Historic England has engaged in detail for proposals within the abbey complex over many years and where we have not raised an objection this has been on the basis that we thought any harm was justified by the need to sustain the abbey buildings in their optimum viable use, including by extending built areas of the site. That is not the case for residential development in the setting of the abbey not linked to the needs of the abbey site and its community.

Recommendation

Though we recognise that harm to the significance of designated heritage has been substantially reduced Historic England still raises concerns about this application on heritage grounds. We do not think the changes made have fully removed harm



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altogether and on this basis that the applicant has not made a case to show how the harm has been avoided or minimised. This is because they have not demonstrated that the public benefits (new housing) cannot be provided elsewhere in the borough. We conclude that the requirements of Paragraph 190 appear not to be met and that the admittedly low level of harm does not have clear and convincing justification in line with the requirements of Paragraph 194.

In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice. If there are any material changes to the proposals, or you would like further advice, please contact us.

Yours sincerely



Alice Brockway

Inspector of Historic Buildings and Areas

E-mail: alice.brockway@HistoricEngland.org.uk



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23 November 2018

For the attention of Mark Fewster

SENT BY EMAIL

Re: TM/18/02093 OA – Land off Lavenders Road Swan Street West Malling

Thank you for your letter consulting us on the above outline planning application for up to 80 dwellings and associated works.

The site of the application lies in a sensitive area for the historic environment and the proposed development may have an impact on several designated heritage assets and their settings. The proposed development is situated extremely close to the Scheduled Monument of St Mary's Abbey, an extensive walled religious complex, of early Medieval origins. As such I recommend consultation with Historic England.

The proposed scheme may also have an impact on nearby designated historic buildings including Lavenders, West Malling Station and Went House and their settings. It is also likely to have an impact on West Malling historic town. As such I recommend consultation with the District Conservation Officer.

With regard to the general heritage background for this site, there is potential for prehistoric remains on the basis of the location within a stream valley. Although no prehistoric remains have been located within the application site itself, Mesolithic, Neolithic, Bronze Age and Iron Age remains have been found in the nearby area. Roman remains are recorded from this area, including from within the abbey complex, and it is suggested that St Leonard Street is on the alignment of a Roman road which continues along the western side of the abbey complex.

St Mary's Abbey is considered to be of early Medieval origins but it is possible that an earlier Early Medieval religious complex was here prior to that and early buildings may survive below current ground levels. There is potential for Early Medieval remains to survive on the site, some of which could be sensitive, either include burials or significant remains directly associated with St Mary's Abbey. It is of particular interest that the abbey incorporates the

stream and there are key structures relating to the water. Understanding the origins of the Abbey is a fundamental part of its significance.

St Mary's Abbey is one of the key historic assets of West Malling. It is a walled complex containing several designated heritage assets, including church, towers, kitchens, burial ground, etc, and the Scheduled boundary includes the surrounding wall and gateways. The area immediately adjacent to the wall and gateways is of high sensitivity both in terms of archaeological remains and in terms of immediate setting of the scheduled site. There is an importance to the views of the Abbey and from the Abbey, especially to and from the high buildings within the walls.

The establishment of St Mary's Abbey is closely connected to the development of West Malling as a medieval market town. There is a strong historic relationship between the settlement and the Abbey and that relationship continues today, through the abbey still being an active religious hostel with church, burial ground and inclusion in community events. The understanding, awareness and appreciation of the Abbey is very strong and is part of its significance. The Abbey is currently on the edge of the historic settlement core and forms the visible entrance in to West Malling from the surrounding fields, farms, villages and routeways. This siting is also part of its historic character.

There are limited number of residences and farms to the east of the Abbey. It has been consistently open ground, except for Lavenders to the south east, dated to 19th century, and Eden Cottages, which is identifiable on the 1st Ed OS map as a collection of farm buildings. Eden House is a mid-20th century construction. There is the enclosure and tennis court associated with Wents House in the north west corner as well. There is speculation that this open ground may have been used for trading and market activities in the early times of the Abbey. There is a historic gateway in to the Abbey at the south west corner of the proposed development site, which suggests the need for movement from/to the Abbey from the East, across the application site. Gateways tend to attract traders and services, such as smithing.

The HER records the site of a crashed plane within the application site. The siting needs verifying as this should be a protected site and preferably not disturbed, especially if there are sensitivities around it, such as pilot still present.

On the basis of a quick review of current HER data, this proposed development may have an impact on sensitive and significant buried archaeological remains and may also have an impact on the setting and significance of designated heritage assets, especially St Mary's Abbey. There is a need to thoroughly assess all the heritage issues and to ensure that decisions are fully informed.

I note the application is supported by Heritage Statement and an Archaeological DBA. Both reports and assessments are detailed and do consider key heritage issues. I have no major comments on their content or structure. However, I do not agree with their conclusions.

I consider the impact on the setting of St Mary's Abbey to be of considerable significance. Historic England advice is crucial on this aspect and I strongly recommend HE advice is gained before any decision is made. I also consider that the potential for significant buried remains is extremely high and further assessment would be appropriate.

In view of the potential for significant buried archaeological remains, some of which may be associated with the Scheduled St Marys Abbey or with the protected wreck, I recommend that prior to determination of this application further assessment through fieldwork is

undertaken. I recommend a geophysical survey and possibly targeted trial trenching is essential to ensure informed decisions are made.

I therefore recommend pre-determination evaluation work is undertaken. This work should be in agreement with the County Archaeologist in accordance with specifications agreed with the County Archaeologist, LPA and Historic England.

I would be pleased to discuss any of the above further.

Yours sincerely

Wendy Rogers
Senior Archaeological Officer
Heritage Conservation



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8 February 2019

For the attention of Mark Fewster

SENT BY EMAIL

Re: TM/18/02093 OA – Land off Lavenders Road Swan Street West Malling

Further to my letter of 23 November, I note there have been several additional comments and a Geophysical Report provided. I would like to provide brief comments replying to the applicant's Heritage Rebuttal statement and on the Archaeological Geophysical Report.

Firstly, I welcome the Geophysical Report. The geophysical survey is part of some pre-determination archaeological works being undertaken by the applicant. I am pleased with this approach and agree with the applicant's statement, that a phased programme of archaeological fieldworks is being discussed. The geophysical survey did highlight several anomalies which could be representative of buried archaeological remains. I am now in discussions regarding some targeted trial trenching to clarify the date, nature, character and significance of these buried remains.

With regard to Heritage Collective's heritage rebuttal statement, I would like to provide a brief response to some elements of this. This Rebuttal mainly focuses on the comments from Historic England and the District Conservation Officer. In my original comments of 23 November I too highlighted concerns regarding impact on the character and setting of the Scheduled Abbey complex. I therefore support the comments of Historic England and the District Conservation Officer.

The Rebuttal refers to my comments in sections 33 to 35. Heritage Collective agree with some of my comments but they do not feel that the application proposals threaten the historical dynamic between the abbey and the town. I do not agree with this view because the proposed housing will become the new outskirts of the town of West Malling. Instead of the easterly entrance to the settlement being highlighted as the Abbey walls, which has been the case since the Medieval Period or before, the entrance to West Malling will be marked

by the new housing estate. As such I consider that the application proposals will fundamentally change the historic perception.

I would urge the applicant to progress the targeted archaeological evaluation which may provide some clarification of the presence/absence of significant buried remains.

I would be pleased to discuss any of the above further.

Yours sincerely

Wendy Rogers
Senior Archaeological Officer
Heritage Conservation



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12 April 2019

For the attention of Emma Keefe

SENT BY EMAIL

Re: TM/18/02093 OA – Land off Lavenders Road Swan Street West Malling

Further to my letter of 8 February, the applicant has arranged for some additional research on the archaeological potential, has met Historic England on site, and has submitted a revised scheme layout.

The additional research has provided useful data on the potential crash site. Archaeology Collective has liaised direct with the MoD and according to the MoD research information, there is no aircraft in the proposed development site. I welcome this additional research and useful clarification. However, the information from the MoD is very brief and I suggest this confirmation is not definitive and there is still some potential for some crash remains to be within the proposed development site. The potential is low but should not be discounted completely.

I welcome the illustrative revised layout. This places much of the built layout away from the sensitive environs of St Mary's Abbey and it provides landscaping to decrease detrimental impact on the designated heritage assets.

However, I still have a few concerns:

Firstly, I would prefer any re-design of the layout to reflect the buried archaeological sensitivities as well. The geophysical survey highlighted several anomalies which could represent sensitive and significant buried archaeology, particularly under the smaller western block of new build. I therefore recommend that re-design should be appropriately informed. For potential buried archaeology this should include targeted trial trenching. Such pre-determination evaluation fieldwork, in accordance with NPPF, should provide clarification of the nature, date and ultimately the significance of archaeology impacted by the scheme and

thereby ensure that detailed mitigation is informed, including appropriate consideration of preservation in situ of significant buried archaeology.

Secondly, the geophysical survey highlighted a possible trackway and feature anomalies which may be associated with St Mary's Abbey and medieval activity. If these are archaeological remains and are associated with the abbey, it may be preferable to preserve them in situ and to reflect them in the final layout design. At present the revised layout does not reflect the possible trackway leading from the south east gateway of the Abbey, nor does it seem to take in to account the other geophysical anomalies.

In summary, although I welcome the clarification on the crash site and the amendments to the housing layout, I recommend the need for decisions to be appropriately informed by the results of an agreed pre-determination trial trench investigation. I urge the applicant to progress the targeted archaeological evaluation which may provide some clarification of the presence/absence of significant buried remains.

I recommend this application is still not determined until there is appropriate information from a phase of targeted trial trenching in accordance with the specification agreed with the County Archaeologist and with Historic England.

I would be pleased to discuss any of the above further.

Yours sincerely

Wendy Rogers

Senior Archaeological Officer
Heritage Conservation



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29 April 2019

For the attention of Emma Keefe

SENT BY EMAIL

Re: TM/18/02093 OA – Land off Lavenders Road Swan Street West Malling

Further to my letter of 12 April, the applicant has provided an amended site layout and parameter plan and the applicant's heritage adviser has undertaken assessment of setting and views to and from St Mary's Abbey; the results of which are set out in a Heritage Statement Addendum.

The additional assessment of the views from and towards St Mary's Abbey and the potential impact from the proposed development are welcome and I have reviewed with interest. For this issue, Historic England's comments would take the lead and I will not comment in detail on this matter. However, I would like to comment briefly on the Addendum for the Heritage Statement: the assessment seems to have focused on views. It would have been helpful to have more assessment regarding the potential impact on the significance of St Mary's Abbey from light pollution, noise pollution, additional traffic and as mentioned before, the impact of the Abbey no longer forming the historic edge of settlement.

My letter of 12 April commented on the revised parameter plan and layout but I repeat them here for convenience: I welcome the illustrative revised layout. This places much of the built layout further from the sensitive environs of St Mary's Abbey and it proposes landscaping to decrease detrimental impact on the designated heritage assets.

However, I still have a few concerns:

Firstly, I would prefer any re-design of the layout to reflect the buried archaeological sensitivities as well. The geophysical survey highlighted several anomalies which could represent sensitive and significant buried archaeology, particularly under the smaller western block of new build. I therefore recommend that any re-design should be appropriately informed. For potential buried archaeology this should include targeted trial trenching. Such

pre-determination evaluation fieldwork, in accordance with NPPF, should provide clarification of the nature, date and ultimately the significance of archaeology impacted by the scheme and thereby ensure that detailed mitigation is informed, including appropriate consideration of preservation in situ of significant buried archaeology.

Secondly, the geophysical survey highlighted a possible trackway and feature anomalies which may be associated with St Mary's Abbey and medieval activity. If these are archaeological remains and are associated with the medieval abbey, it may be preferable to preserve them in situ and to reflect them in the final layout design. At present the revised layout does not reflect the possible trackway leading from the south east gateway of the Abbey, nor does it seem to take in to account the other geophysical anomalies.

In summary, I welcome the additional assessment of views in and out of St Mary's Abbey but assessing significance and impact on that significance is complex and involves many issues. With regard to buried archaeology, I recommend the need for decisions to be appropriately informed by the results of an agreed pre-determination trial trench investigation. I urge the applicant to progress the targeted archaeological evaluation which may provide some clarification of the presence/absence of significant buried remains. Such trenching may also provide information on the historic environs of the Abbey and the contribution of the environs to the significance of the medieval abbey complex in relation to the historic town of West Malling.

I recommend this application is still not determined until there is clear understanding of the impact of the scheme on the significance of St Mary's Abbey and there is the opportunity to assess appropriate information from a phase of targeted trial trenching in accordance with the specification agreed with the County Archaeologist and with Historic England.

I would be pleased to discuss any of the above further.

Yours sincerely

Wendy Rogers

Senior Archaeological Officer
Heritage Conservation

Planning Ref: 18/02093/OA

Mark Fewster

Planning Services

Tonbridge & Malling Borough Council

Kings Hill

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Kings Hill

West Malling

Heritage Consultation Response

Application Address: Field at Corner of Lavenders Road and Swan Street, West Malling

SUMMARY

This application is in outline form (details of all matters but the access is reserved) and proposes the construction of up to 80 residential dwellings with associated services. The site is situated adjacent to the West Malling Conservation Area, though a small part of the site is also located within the Conservation Area because of its former use as part of the classically-laid out gardens to the grade II* listed Went House, as surveyed by the Kent Historic Gardens Trust. It is also located adjacent to the complex of highly graded listed buildings forming part of the St. Mary's Abbey complex, which is also a Scheduled Ancient Monument. Other listed buildings are located near to the site.

In accordance with paragraph 189 of the NPPF, a heritage statement has been submitted with the application which identifies those heritage assets which may be affected by the proposals, and comments on the potential impact of the proposed development on the significance of the heritage assets identified. However, the statement is, in my view, incomplete as it does not appear as though the Historic Environment Record for Kent has been referenced (this, in accordance with paragraph 189, should be the minimum for desk based assessment) as the report does not acknowledge that the abbey site is a Scheduled Ancient Monument – an abbey established and built by the Bishop who built the White Tower at the Tower of London. The assessment of significance of each of the heritage assets that are identified in the report includes a discussion of their settings and how these contribute towards significance. In my view, much of this is incorrect and in particular fails to take into account the high importance of the spatial relationship of the abbey site with the town. The report concludes that no harm is caused to significance, even though it does acknowledge that there would be impact on setting. Impact (and what, to me, is to be read as harm) is limited to mostly visual impact and does not take into consideration other factors that may form part of the setting.

In my view, less than substantial harm, on the higher end of the scale, would be caused to the conservation area and the individual, and grouping of, listed buildings at St. Mary's Abbey, and less than substantial harm to a lesser degree to the non-designated heritage

assets identified (the oast kilns to the east) and some of the other listed buildings nearby. I also cannot support the application being in outline form, with all matters other than access reserved, given the high national importance of the heritage assets that would be affected by a housing development of this size.

POLICY

Paragraph 190 requires that local planning authorities also identify and assess the significance of heritage assets that may be affected by the proposal. In this case, the main issue is impact on setting, although a small part of the conservation area is directly affected as it is located within the site. With this in mind, paragraph 18a-013 of the NPPG applies, which discusses setting. It states that 'a thorough assessment of the impact on setting needs to be taken into account, and be proportionate to, the significance of the heritage asset under consideration and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate it.' I consider the heritage statement does not meet this requirement, given the high importance of the heritage assets (a group of grade II* and grade I listed buildings, which are also designated as a scheduled ancient monument) affected, and this is demonstrated by the fact that the report concludes that no harm is caused to the setting of these. The main reason for this, I believe, is that setting factors are mostly limited to views, and the contention that much of the development would be screened. The NPPG paragraph also states that 'the extent and importance of setting is often expressed by reference to visual considerations. Although views of or from an asset will play an important part, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places'.

The NPPG paragraph is further supported by the Historic England 'Good Practice Advice in Planning Note 3: Settings and Views' (GPA3), which provides a framework for assessment of contribution towards significance of a setting, and what factors of the setting may be a consideration.

As mentioned above, the heritage statement mainly limits the setting of the listed buildings and conservation area to the inter-visibility of each with the site, or incorrectly concludes that the assets' curtilages are well-confined and tightly bound within their curtilages (setting and curtilage are separate factors, as concluded by caselaw). It also concludes that the proposed landscaping of the site, indicative layout and density mean that the development would be somewhat hidden. This does not take into account the increased activity and other associated changes to character of an area that are the result of a new residential development.

Paragraph 192 of the NPPF requires that local planning authorities take account of the 'desirability of new development making a positive contribution to local character and distinctiveness'. The heritage statement does not discuss this policy. In my view, the access points would introduce hard landscaping to the rural setting of the abbey complex and the conservation area. The indicative volume of residential development, layout and density bears no relationship with the historic grain of the settlement here and in the vicinity. The design and access statement contends that it is a mix of local density types, but this, in my view, is not successful as mixing lower and higher densities in one small site results in a layout that appears completely at odds with local character and distinctiveness.

Paragraph 193 states that 'when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.' This paragraph supports my view that the high degree of importance of the heritage assets adjacent, at St. Mary's Abbey, has not been given sufficient consideration in the heritage statement. The assessment in the statement of impact on significance is not sufficiently rigorous considering the importance (high grade, type of significance, and scheduling) of many of the heritage assets affected, as advised in the NPPF. Harm would be caused by fundamentally changing the way in which the abbey complex has been historically appreciated. This is linked with the impact on the setting of the conservation area as the spatial relationship between the abbey site and the town is a very important element of the significance of each, as discussed below in detail.

Paragraph 194 of the NPPF states that 'any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting) should require clear and convincing justification'. Paragraph 196 then states: 'where a development proposal will lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal.' Justification for the proposal in the form of public benefits has not, in my view, has not been provided in the application. For instance, it has not been demonstrated that there are no other sites that could accommodate this volume of residential development that would cause less, or no harm to heritage assets. The heritage statement, in paragraph 5.4, concludes that the application proposals would change the settings of the listed buildings adjacent, and the conservation area. However, it then concludes that this effect would not be harmful, relying on the screening of the site from the development-free buffer zones and the planned green open space as indicatively shown in the parameters plan. Firstly, this shows that an outline application has not allowed for an adequate assessment of impact of a residential development in this location on significance. Secondly, it disregards any other considerations than inter-visibility of the development as indicated on site with the heritage assets affected, and use of the parts of the land intended to remain open. I disagree, therefore, with this conclusion and provide further details below.

Finally, paragraph 197 directs local planning authorities to apply similar considerations in the paragraphs relating to impact on designated heritage assets, to non-designated heritage assets, but proportionate to their status and the scale of harm or loss. In my view, as discussed in detail below, less than substantial harm would be caused to the setting of the oast kilns as part of an isolated rural historic farmstead separated from the built form of the town by fields in agricultural use, and by the Abbey.

IMPACT ON HERITAGE ASSETS

As the heritage statement discusses each heritage asset identified, I will also take each in turn using the GPA3 framework.

Setting of the listed buildings in the Abbey grounds

The report concludes that the setting of the listed buildings is limited to the curtilage defined by the walls, and that they are best appreciated, therefore, in close proximity. This fails to

take into consideration, in my view, the historic surroundings of the abbey and the relationship of it to the other forms of development or landscape in the area. Step 3 of the suggested assessment in GPA3 provides a non-exhaustive checklist of potential attributes of a development that may affect setting. Of these, the proximity to the Abbey grounds, the conspicuousness of the development despite the landscaping (also taking into consideration seasonal change to this), the introduction of movement and activity, the lighting effects, the change to suburban character, the change to land use and the permanence of the development would all have a harmful impact on this historically open piece of land which forms part of the rural setting of the Abbey and market town.

For instance, with the grand houses such as Went House and Lavender House, the land formed part of a pattern of wealthy land ownership which began first with the abbey buildings and later included large houses with extensive landscaped gardens, some of which were associated with the wealth of the town. The exception to the low density is the market town of West Malling, the history and settlement of which directly relates to the Abbey, as the charter for the market was granted to the Abbess. There is a very important spatial relationship historically, therefore, between all of the designated (and non-designated) heritage assets in the area and the proposed development does not reference this relationship. It would, in fact, cause harm to it, and this is a relationship that has barely changed over time. In the case of the listed buildings in the Abbey grounds (also a scheduled ancient monument), it would blur the distinctive relationship, in built form and spaces between, of the town and the abbey complex by adding a substantial number of houses to the immediate setting of each, at odds with the historic development. This harm would be less than substantial, but in my view the fundamental change to the rural setting of each, and the presence of a housing development to the side of the Abbey where the market town did not extend, would cause less than substantial harm on the higher end of the scale. As stated above, paragraph 193 of the NPPF sets out that 'great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.'

Effects on the setting of the Cascade

I do agree with the conclusion that the setting of the Cascade as a folly (that which contributes towards its significance) is mainly limited to the visual relationship it has with the designed landscape here, and therefore, given that there would be no inter-visibility with the site, no harm would be caused to its significance.

Effects on the setting of Went House and attached wall, gate and railings

It is concluded in the heritage statement that no harm would be caused and that only a minor change to setting would occur. This limits the considerations to visual relationship with the site. In regards to the step 3 check list, the piece of land in the conservation area on the site is identified as being part of the open designed landscape of Went House. Whilst this is to be maintained, the housing development would be formed around this open space and no longer provide the rural setting from which it was historically appreciated. This is also true of the house itself. I disagree that the green undeveloped nature of the site, as part of the setting, would be maintained by the development just because of the proposed buffer zones. Less than substantial harm would therefore be caused.

Effects on the setting of Lavenders House

The house is one of the handful of large country estate houses related to the wealth of the market town and Abbey, and it is meant to be appreciated as a country house and not one within a larger settlement. In my view, therefore, in regards to some of the attributes in the Step 3 checklist, less than substantial harm would be caused to its setting.

Effects on the setting of the Church of St Mary

The assessment of the change to the setting of the church is correct – it will introduce built form into the view of the church when looking from the station, which is historically isolated from the town with the Abbey and fields between. The rural context of the church (spire in distance, fields in foreground) would therefore be harmed and the long-standing experience of it as a heritage asset, an intentionally dominant landmark in the landscape which also identifies the centre of the market town settlement, would be altered, referring again to steps 2 and 3 in GPA3.

Effects on the setting of West Malling station

I agree with the analysis of the contribution of the site towards the setting of the station, to an extent. It only plays a minor role as a open area separating the station from the Abbey and town, and harm to significance would therefore be very minor.

Effects on the character and appearance of the West Malling Conservation Area

The small piece of land on the site which is in the conservation area, according to the Kent Historic Environment Record, formed part of the classically landscaped gardens of Went House, which is situated within and contributes positively to character and appearance of the conservation area. Because the intention in the indicative plans is to keep this as open space, provided that this is maintained I agree that it is likely that the significance of this part of the conservation area would be sustained – this is very much dependent on details and therefore is another reason why I do not support any application for development of this scale on this site in outline form.

Effects on the setting of the West Malling Conservation Area

The assessment in the heritage statement of the contribution of the site towards the significance of the conservation area does not take into consideration the historic and functional relationship between the Abbey site and the town. The charter for the market when first founded was granted to the Abbess and therefore the growth (into a cranked linear village with market at centre, following the trade routes) of the town is directly related to the Abbey, forming to one side of it with agricultural fields and then landscaped gardens of some of the wealthier land owners surrounding. Introducing the volume of residential development that is proposed in this location would unbalance this relationship and surround the Abbey with residential development rather than allowing for the appreciation of the two elements (Abbey lands and market town) as discrete but historically dependent and inter-linked entities. This, in my view, would cause less than substantial harm, but at the higher end of the scale. Mitigation by landscaping would help to an extent but the introduction of the access onto a rural lane, and what appears to be a drove route given the sunken nature of it, and the presence of a relatively large housing development cannot be justified through attempts to hide it with position and landscaping. Again, the conclusion that no harm would be caused relies only on inter-visibility – in accordance with the NPPG advice, contribution

towards significance can include a number of factors other than views when assessing how a development would change the way a heritage asset is experienced.

Effects on the Eden Farm Oast Houses

The heritage statement concludes that the farm buildings within this historic farmstead are best experienced at close quarters. This disregards both views to the roundels as a traditional part of the Kent rural landscape, which would be altered by the introduction of a housing development here, and the spatial relationship of the separation of this small industry from the town and the Abbey, with agricultural fields between. Harm would therefore be caused, but in my view this would be less than substantial.

CONCLUSION

This application proposes the introduction of a relatively high number, in comparison with the total amount of built form in the area, of residential units into the setting of a number of highly graded listed buildings, a scheduled ancient monument, and a conservation area whose significance is directly related to the significance of the listed buildings and monument. It is difficult to fully assess the impact on significance as all matters are reserved other than access, and for this reason in my view it is not appropriate for an application to be in outline form. This is demonstrated as well by the lack of rigorous assessment of the contribution of the site towards significance of the heritage assets, particularly given the important status of many of them. Notwithstanding this and given the indicative information provided about density and layout, in my view the proposal bears no relationship with the existing settlement and would fundamentally alter the way that the heritage assets in close proximity, together and, in some cases, individually, would be appreciated. This alteration would amount to harm to significance, and much of the harm would be at the higher end of less than substantial, for the reasons given above. My view, therefore, is that the proposals are contrary to paragraphs 192(c), 193, 196 and 197 of the NPPF and I cannot support this application.

Kind regards,
Debbie

ADDENDUM 15/2/19

An additional heritage statement report with additional comments has been submitted, dated January 2019. These address some consultee comments regarding impact on heritage, including mine. The comments directly respond to each of mine but in some cases seek to correct any inaccuracies rather than having a fundamental objection to my assessment. I therefore have brief additional responses to these where necessary to clarify, but principally would like to reiterate my original conclusion, that less than substantial harm would be caused to the heritage assets affected.

- Whether or not the original statement correctly assessed setting, my own assessment as set out in my original comments above still leads me to conclude that harm would be caused, using one methodology, but one that is provided by the Government's heritage advisor, Historic England, and is referred to in the National Planning Practice Guidance. It is therefore a material consideration. To clarify, the application site forms part of the setting of the group of heritage assets, and therefore

contributes towards their significance – this is agreed. Therefore, alterations to it will impact on the significance of the heritage assets.

- My view would be that seclusion with higher walls does not indicate that any development at all would not affect the setting of the Abbey precinct. Again, my original comments regarding the historic spatial relationship of the Abbey and the main settlement remain relevant. The permanent housing development would fundamentally alter this and the built extent of West Malling in a manner that would be detrimental to the settings of all of the designated heritage assets. I disagree with the conclusions reached in this addendum to that effect – the relationship between the town and abbey would, in my view, not be conserved, by altering the built extent of the town to surround the abbey complex and fundamentally change the character of the town; how it is entered, and how it is approached.
- I have one specific point to raise in regards to paragraph 23. I have referred to the relationship of Went House with the Abbey, if not specifically, by noting the historic relationship of the settlement pattern being town on one side of the Abbey, and the more rural or landscaped agricultural land and land belonging to wealthy land owners to the other sides. To confirm, this attribute of the setting of Went House would be harmed; it contributes towards its significance, and therefore harm would be caused to significance.
- To confirm, my comments regarding the impact on Lavenders, St Mary's Church, West Malling station and the setting of West Malling Conservation Area remain the same, in response to this additional statement, and I disagree with the conclusions reached.
- In regards to the oasts as non-designated heritage assets, the NPPG's paragraphs 18a-039 to 18a-041 allow local authorities to identify non-designated heritage assets through the planning process, regardless of whether there is a formal local recognition separate to this. To confirm, we consider these locally distinctive historic agricultural buildings to be non-designated heritage assets in accordance with paragraph 197 of the NPPF, and therefore my original comments remain relevant.

Debbie Maltby
Conservation and Urban Design Officer

ADDENDUM 1/5/19

Additional documentation has now been submitted in the form of amended parameter and indicative layout plans which have shifted the development area away from the eastern boundary of the Abbey, with open space ('non-residential usage') now indicated between the two sites, and an additional north/south row of planting for screening purposes. An additional heritage statement has also been submitted which analyses the visibility of the site from within the Abbey precinct in relation to the amended parameter plan and indicative layout. From this analysis it does appear that visibility from the Abbey of the residential

development will be reduced in relation to the original proposals. However, my conclusion remains the same in regards to the nature of harm caused to the various heritage assets affected, many of which are not mentioned in the addendum. Therefore, I can re-confirm that my comments regarding the impact on Lavenders, St Mary's Church, West Malling station and the setting of West Malling Conservation Area remain the same, in response to this additional statement which does not address these heritage assets. The additional buffer of undeveloped land would only result in a minor reduction of harm to the setting of the Abbey precinct in comparison to the initial proposals as this addresses only one attribute of its setting; the presence of a new residential development would still be evident. Therefore, my comments above remain relevant and I remain of the view, to repeat from my initial summary, that 'less than substantial harm, on the higher end of the scale, would be caused to the conservation area and the individual, and grouping of, listed buildings at St. Mary's Abbey, and less than substantial harm to a lesser degree to the non-designated heritage assets identified (the oast kilns to the east) and some of the other listed buildings nearby. I also cannot support the application being in outline form, with all matters other than access reserved, given the high national importance of the heritage assets that would be affected by a housing development of this size.'

Debbie Maltby
Conservation and Urban Design Officer

Appeal Decision

Inquiry Held between 12 and 20 March 2019

Site visit made on 20 March 2019

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th April 2019

Appeal Ref: APP/H2265/W/18/3209279

The Cabins, 78a Rochester Road, Aylesford ME20 7DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Mr Clifford Thurlow of Aylesford Heritage Ltd against Tonbridge & Malling Borough Council.
- The application, Ref TM/17/02971/OA, is dated 18 October 2017.
- The development proposed is demolition of existing buildings, structures and hardstanding, land raising of development area, development of up to 146 dwellings as a mix of houses and apartments and provision of a local centre for Use Classes A2 (financial and professional services), A3 (café/restaurant), D1 (clinics/creche) and D2 (assembly and leisure) up to a total floorspace of 1,256 sq m (13,519 sq ft), and provision of new access road and pedestrian/cycle access, and provision of open space.

Decision

1. The appeal is dismissed, and planning permission is refused.

Procedural Matters

2. The application is for outline permission with details of access submitted for approval and all other matters reserved. An illustrative masterplan has been submitted which shows a possible layout.
3. A screening direction was issued by the Secretary of State on 16 January 2019 that the development is not Environmental Impact Assessment (EIA) development. This direction was made on the understanding that the quarry restoration of the appeal site, which has been subject to a separate application to Kent County Council, is carried out before commencement of the proposed development. It is also on the understanding that any land raising required by the proposal would only require material to be sourced and moved on the quarry site via internal roads and would not exceed 0.5m above the restored levels. The Council maintains that the development should be considered together with the restoration scheme as a single project and that on this basis the development is EIA development. No further information or evidence was presented at the inquiry that would alter the basis for the Secretary of State's direction, however.

Background

4. Six putative reasons were provided by the Council in its Statement of Case. Subsequently, and prior to opening of the Inquiry, the Council advised that it

did not wish to defend its first reason which concerned the impact of the development on the setting of the Kent North Downs Area of Outstanding Natural Beauty (AONB).

5. Shortly before the Inquiry, Kent County Council approved an amended restoration scheme for the part of Aylesford quarry in which the development would be located. The Council advised during the Inquiry that it did not wish to pursue its third and fourth putative reasons which concerned the need for approval of the restoration scheme and mineral safeguarding.
6. The parties reached agreement during the Inquiry as to the level of affordable housing that could viably be provided and a Statement of Common Ground on this matter was submitted. This overcomes the Council's fifth putative reason.
7. During the Inquiry, the Council advised that it did not wish to pursue its case in terms of prematurity in relation to the emerging Tonbridge and Malling Local Plan, although the Council maintains that very significant weight should be given to the emerging Plan.
8. The remaining matters at issue between the parties are the impact of the proposal on the landscape and on the settings of heritage assets.

Main Issue

9. The main issue in the appeal is the effect of the proposal on the character and appearance of the area, including the effect on the settings of heritage assets.

Reasons

Planning Policies

10. The relevant development plan policies are in the Tonbridge and Malling Core Strategy (2007) (CS) and the 'Managing Development and the Environment' document (2010) (MDE). The site is within part of a quarry and adjoins the settlement of Aylesford. This is defined in Policy CP13 of the CS as a rural settlement where development will be restricted to minor development appropriate to the scale and character of the settlement. The site is within the countryside as defined in the development plan. Policy CP14 restricts the types of development that can take place in the countryside. The proposal does not accord with those policies.
11. The Council cannot demonstrate a 5-year supply of deliverable housing sites, and on this basis the presumption in favour of sustainable development, as set out in paragraph 11 of the National Planning Policy Framework (the Framework) must be considered. Although the parties differ on the level of housing land supply, for the purposes of this appeal it is agreed that this is within the range of 2.7 years to 3.1 years. In accordance with footnote 7 of the Framework, Policies CP13 and CP14 are out-of-date and this limits the weight that can be given to them.
12. The Tonbridge and Malling Local Plan (LP) has been submitted to the Secretary of State for examination. The site remains outside the settlement in that plan and not in accordance with it. At the time of the Inquiry necessary evidence documents had not been produced and these could potentially lead to the need for main modifications to the plan. The Council stated that approximately 2,500 objections had been received. Natural England has objected to an

allocation within the AONB. Historic England has also raised an objection. Detailed evidence on the nature and extent of unresolved objections to the LP was not available to the Inquiry but, from the information that is available it seems to me that there are significant unresolved objections to the plan. This limits the weight that I can give to it.

Heritage Assets

13. The quarry has been in existence for more than a century. Silica sand and soft sand have been extracted and the silica sand reserves are no longer economically viable to extract. The quarry workings have resulted in the creation of two lakes, one on either side of Bull Lane. The lakes are immediately north of the village. The proposed development would be adjacent to the east lake and to the quarry access from Rochester Road. The site is about 9 to 10 metres lower than the adjacent parts of the village on Mount Pleasant. A restoration scheme has been approved by Kent County Council which would be carried out before the development. Further land raising would take place which would not exceed 0.5m above restored levels. The banks around the southern boundary of the site are wooded and the woodland is protected by a Tree Preservation Order. The existing access would be closed to vehicular traffic but maintained for pedestrian and cycle use. A new access road would be constructed which would join Rochester Road further to the north.
14. The adjacent part of Mount Pleasant to the south of the site forms part of the Aylesford Conservation Area (ACA). This covers the historic core of the village, including Aylesford bridge, the church of St Peter and St Paul and The Friary. To the immediate south of the site there is a row of 19th century cottages at 22-32 Mount Pleasant which are in the domestic revival style and are grade II listed. On the other side of Mount Pleasant is the rear of grade II* listed almshouses at Trinity Court which front onto Rochester Road. The rear boundary wall and arch to Trinity Court on Mount Pleasant is grade II listed. Thus, the immediately adjacent part of the village is of significant historic interest. The proposed new access road would also pass around two sides of the curtilage of Old Mill House, which is grade II listed.
15. The 17th century almshouses are physically separated from the appeal site by Mount Pleasant, which is at a higher level than the listed building. The significance of the building lies in its age and use as well as its architecture. The main elevation faces Rochester Road, away from the appeal site and this would not be affected by the proposal. A full-length extension was added to the rear of the building in the 1960s and the original architecture of the rear elevation has been obscured. In addition to Mount Pleasant forming a physical barrier, the wooded bank to the quarry along Mount Pleasant and the lower level of the site are further separating features. For these reasons the proposal would not affect the setting of Trinity Court Almshouses.
16. There are 2nd floor side dormer windows in 32 Mount Pleasant which would be likely to afford views over the site clear of the tree cover. At ground level, I saw that views of the site from Mount Pleasant are limited by the trees and vegetation but that there are glimpsed views through the trees. Any street lighting within the site would increase the likelihood of the development being seen through the trees and the extent to which this may be the case may vary according to the time of year, given that most of the trees are deciduous.

17. Detailed matters of scale and layout are not part of the application, but the illustrative plans give typical building heights ranging from 9.9m for a two-storey house to 16.65m for an apartment block. Although the finished site levels do not form part of the application, based on the depth of the quarry as given by the parties and shown on the restoration scheme drawings, the development would project significantly above the level of Mount Pleasant. The development would clearly intrude on the open setting as seen from N^o 32.
18. Because Mount Pleasant forms the boundary to the village, the settings of 22-32 Mount Pleasant and the boundary wall and arch to Trinity Court are rural in character. The presence of the quarry beyond the trees does not alter this in terms of the general openness. Although the quarry is currently despoiled land, the restoration scheme will secure the creation of a naturalistic landscape.
19. For the reasons given above, the setting of 22-32 Mount Pleasant would be affected by the proposal as it would be intrusive in views from the windows of N^o 32. The effect on the setting of the boundary wall and arch to Trinity Court would be less. However, to the extent that the development would be visible through the trees, the rural setting would be significantly altered. For this reason, although the effect on the setting of the wall and arch would be limited, there would be some harm.
20. The harm to the settings of these buildings would be less than substantial because of the separation provided by the trees. For the same reason, any effect on the setting of the ACA would be limited.
21. Old Mill House dates from the 17th century and its significance mainly lies in its architecture and age. It was historically associated with an adjacent mill. Its historic use aids an understanding of its design and informs its significance. The mill building was demolished in the late 19th century and the mill pond, which was to the north of the buildings was removed at about the same time.
22. There appears to be no evidence of the former mill building. The stream which fed the pond runs to the side of the house. The pond was partially within the current garden of the house and partly outside its boundary fence. I saw that there is a distinct depression in the land to the north of the boundary fence which enables the former existence of the pond to be appreciated.
23. This forms part of the significance of the house. In addition to this, although the rear elevation of the house faces north, it has a clear relationship with the adjacent open farmland. The boundary is formed by a post and wire fence and the trees and vegetation along the boundary permit clear views through.
24. The proposed access road would run very close to the curtilage boundary of the house. It would be raised by over 2 metres where it crosses the stream. It would effectively sever the link between the house and the open countryside and would conceal the remaining evidence of the former mill pond. For these reasons the proposed road would harm the setting of this listed building.
25. The primary significance of the house is in its architecture and design and this would not be harmed. In as much as evidence of the former pond would be removed, there would be a direct effect on significance but although the historic use is referred to in the list description the remnant of the pond is not.

For these reasons, the direct effect on significance would be limited. The other effects on the setting would be indirect.

26. In the Bedford judgment¹ it was found that for harm to be substantial, the impact on significance was required to be serious such that very much, if not all, of the significance was drained away. This would not be the case in this appeal. Therefore, the harm to the setting of Old Mill House would be less than substantial.
27. This harm must be considered in the context that there are implemented planning permissions for a quarry haul road. Both alternative approved routes would cross the field to the north of Old Mill House and are comparable to the appeal proposal. The first of the approved routes, which was approved in 2000 would be routed directly adjacent to the boundary with Old Mill House. The second route, which was approved in 2005, would cross the centre of the field and would be sited away from the boundary. Part of the haul road which is common to both of those applications, to the west of Old Mill House, has been implemented. The appellants have stated an intention to construct one of the approved routes if this appeal is dismissed.
28. There are economically viable reserves of hoggin in the quarry which could be extracted if this appeal were to be dismissed. There is no evidence before me to demonstrate that the haul road would be essential to allow for hoggin extraction, or that the existing access could not be used for this purpose. For these reasons I have some doubt as to whether construction of the haul road is realistic.
29. In both approved schemes, the stream would be culverted. The plan for the first scheme states that the culvert would be 1.5m in diameter. The approved roads would pass through a cutting to the west of Old Mill House, similarly to the proposed road. The levels of the approved roads as they cross the stream are not stated on the drawings, but neither is any proposed embankment shown. On the assumption that it would be necessary to place the culvert at least partially below ground level to accommodate the stream, the approved haul roads would not be greatly above existing ground levels. The Environment Agency has changed its requirements since the earlier approvals such that a clear span bridge with a height of about 2m is now required in order to allow wildlife to pass through. The proposed bridge and the associated embankment would be much higher and more intrusive than either of the approved haul roads would be.
30. It is a condition of the approvals that acoustic fencing is erected along the boundary of Old Mill House. Such fencing, which is shown on the plan as being 2m high, would reduce the inter-visibility between the curtilage and the land to the north. However, the haul road would be temporary and would be required to be removed within two years of completion of mineral extraction or by 21 February 2042. Of course, it is possible that an application to extend this period could be submitted, but there is no evidence before me to indicate that the extraction of hoggin would be likely to extend beyond that date. Indeed, the Hoggin Summary financial model submitted as part of Mr Pavlou's evidence assumes that extraction of the hoggin reserves would take place over less than 14 years.

¹ Bedford Borough Council v Secretary of State for Communities and Local Government and Nuon UK Ltd [2013] EWHC 2847 (Admin)

31. Evidence has been put forward to show that the use of the approved haul road by HGVs would result in more noise than the appeal proposal. Such noise may affect the surroundings in which the heritage asset is experienced. However, any difference between the approved and proposed roads in this respect would be limited in terms of the effect on the setting.
32. I give great weight to the less than substantial harm to the setting of Old Mill House. The potential fall-back position carries limited weight for the reasons given and does not outweigh that great weight.

Public Benefits

33. There would be clear public benefits arising from the provision of new housing. Given that it is agreed between the parties that the housing land supply stands at 2.7 to 3.1 years, the shortfall is significant. The Council has previously had a good record of delivery and the shortfall has arisen quite recently. The level of supply has declined since March 2018, when there was 3.7 years' supply.
34. A Section 106 Agreement would secure provision of affordable housing at 19.2%, this being the level agreed between the parties as being viable, taking into account the other contributions. This level would be well below the requirement of Policy CP17 of the CS for 40%, but it would nonetheless help to address local need. In the context of the supply shortfall the proposed provision of up to 146 new homes, including affordable homes would be of very significant benefit.
35. The parties agree that the restoration scheme would take 3 months to carry out and that the housing would be constructed over 3 years following this. The housing could be delivered well within 5 years and would be of value in helping to address the shortfall. The housing would be easily accessible on foot and by bicycle to shops and facilities in the village and to public transport services. Taking these matters into account, I give very significant weight to the social benefits that would flow from the proposed housing.
36. The proposed local centre could also be of benefit both socially and economically. However, no substantive evidence has been put forward to demonstrate a need for the proposed facilities, or of prospective occupiers. A need for new or improved medical facilities has been identified, but the Clinical Commissioning Group will not commit to provision of a new facility until permission has been granted.
37. As there is no substantive evidence underpinning the proposed local centre, I have doubt as to its realistic prospect of delivery and for this reason I can give only limited weight to this potential benefit.
38. There would be economic benefits arising from construction and from the expenditure of the occupiers of the development. If the development were to go ahead, however, there would be no existing access available to extract the reserves of hoggin. Planning permission would be required for a new access to the northern part of the east lake where the hoggin reserves are. For this reason, there is uncertainty as to whether extraction of hoggin would be realistic. The potential loss of the opportunity for hoggin extraction would be an economic disbenefit which would weigh against any economic benefit as identified above. Any net economic benefit would therefore be limited and I give limited weight to this.

39. It is intended that provision would be made for public access to the lake shore. The illustrative plans show a path along the shore and three jetties. There is no planning permission for use of the lake for recreational activities, however. On this basis any increased opportunity for public enjoyment of the lake would be limited and I give this limited weight.
40. The approved restoration scheme includes provisions for biodiversity and in this context the proposed development would be unlikely to offer any advantage. I cannot accord weight in favour of the proposal on this basis.
41. Contributions would be secured by the section 106 agreements towards public services and highway improvement works would be secured. Those services and infrastructure improvements would be necessary as a result of the development and would not amount to wider public benefit.
42. I give great weight to each of the individual identified harms to the settings of listed buildings. The fall-back position of the approved haul road is of limited weight in counteracting that weight in the case of the setting of Old Mill House. However, taking this into account the combined weights of the harms to heritage assets remains great. The very significant and limited weights that I have given to the public benefits of the proposal are not sufficient to outweigh the great weight that I give to the harms.

Landscape

43. The site is within the Medway Valley Lower Landscape Character Area in the Landscape Assessment of Kent (2004). This landscape is described as incoherent with many detracting features. There are industrial areas which detract from landscape quality but the immediate area to the north of Aylesford and beyond the quarry is open farmland which stretches to the North Downs AONB. Although the quarry is despoiled land, it is required to be restored. On this basis it is not previously-developed land as defined in the Framework, and this does not alter the essentially rural character of the area. The development would be clearly visible from the footpath to the east of the site. It would also be likely to be visible from the footpath along Bull Lane, although views would be filtered by the hedge along that road. The proposal would urbanise the setting and change its current rural character.
44. Mitigation measures would be incorporated into the new road. There would be no raised kerbs or footpaths and no street lighting other than at the junction with Rochester Road. The land raising necessary to bridge over the stream would be carried out with gentle gradients to minimise change to the landform. New trees and shrubs would be planted along both the new road and the footpath to the north. The new road would, however be visible across the wider landscape, including from the footpath. In the context of the countryside setting the road would be visually intrusive notwithstanding the mitigation measures.
45. Policy CP1 of the CS requires development to result in a high-quality sustainable environment. The need for development must be balanced against the need to protect and enhance the natural and built environment. Policy CP24 of the CS requires that development is not detrimental to the character of the countryside. Policy SQ1 of the MDE requires proposals to protect, conserve and, where possible, enhance character and local distinctiveness and the distinctive setting of, and relationship between, the pattern of settlement and

the landscape. For the reasons given above, the proposal would not accord with those policies, which carry full weight.

46. For the reasons given, the proposal would result in harm to the landscape. The doubt that I have as to the realistic prospect of the haul road being built, and its temporary nature, means that this potential fall-back position does not outweigh the landscape harm that would result from the proposed new road.
47. Because the quarry is separated from the village and the ACA by the trees, I give limited weight to the harm to the setting of the ACA. I also give further limited weight to the landscape harm from the new road, taking into account the new planting and other mitigation measures. I conclude on the main issue that the proposal would unacceptably harm the character and appearance of the area.

Overall

48. Where there is not a five-year supply of deliverable housing sites, as is the case here, paragraph 11 (d) (i) of the Framework provides that planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the proposal.
49. I have found that the proposal would cause less than substantial harm to the settings of heritage assets and I have found that that harm is not outweighed by the public benefits of the proposal. In accordance with Section 16 of the Framework, this exercise provides a clear reason to refuse permission.
50. I have also found additional harms to the character and appearance of the area in terms of landscape impact and the setting of the ACA. The proposal would not accord with development plan policies which seek to protect the character of the area. Neither would the proposal accord with policies for housing development, or with the emerging LP, both of which carry limited weight. Considered in total, material considerations do not outweigh the conflict with the development plan.

Conclusion

51. For the reasons given I conclude that the appeal should be dismissed, and planning permission refused.

Nick Palmer

INSPECTOR

APPEARANCES**FOR THE APPELLANT:**

Russell Harris, of Queens Counsel

He called

David Thaddeus FRICS, DipMS

Consultant, Matthews & Son LLP

Jaquelin Clay BSc, MSc, CMLI, FAE

Managing Director and Principal
Landscape Architect, JFA Ecosystem
Services Ltd

Joanna Burton BA, MPhil, MSt, FMIHBC

Director, Barton Willmore

Paul Lulham MSc, MA, CMILT

Director of Transport Planning, DHA

Clifford Thurlow BA (Hons), Dip TP, MRTPI, DMS Planning Director, Aylesford
Heritage Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Juan Lopez, of Counsel, instructed by Kevin Toogood BSc (Hons), Solicitor-
Advocate of Tonbridge and Malling Borough Council

He called

Robin Gilbert BSc, Dip TP, MRTPI

Principal Planning Officer

Nigel De Wit MRTPI

Principal Planning Officer

Emma Keefe MA, BA (Hons) Dip TP, MRTPI Development Manager

DOCUMENTS SUBMITTED DURING THE INQUIRY:

- 1 Letter dated 5 March 2019 from Council's Solicitor-Advocate to Head of Planning, Kent County Council
- 2 Email exchange between Council's Solicitor-Advocate and Head of Planning, Kent County Council dated 5 March 2019
- 3 A20 Corridor Junction Assessments A20 VISUM Model 10-044-02 rev D (March 2019)
- 4 Technical Note Forecasting Report A20 VISUM Model 18-044-03 Rev B (March 2019)
- 5 Signed Statement of Common Ground dated 8 March 2019
- 6 Planning decision notice – TM/18/2549/(KCC/TM/0491/2018) dated 11 March 2019
- 7 Planning decision notice – TM/18/2555 (KCC/TM/0492/2018) dated 11 March 2019
- 8 Kent County Council Planning Committee report, March 2019

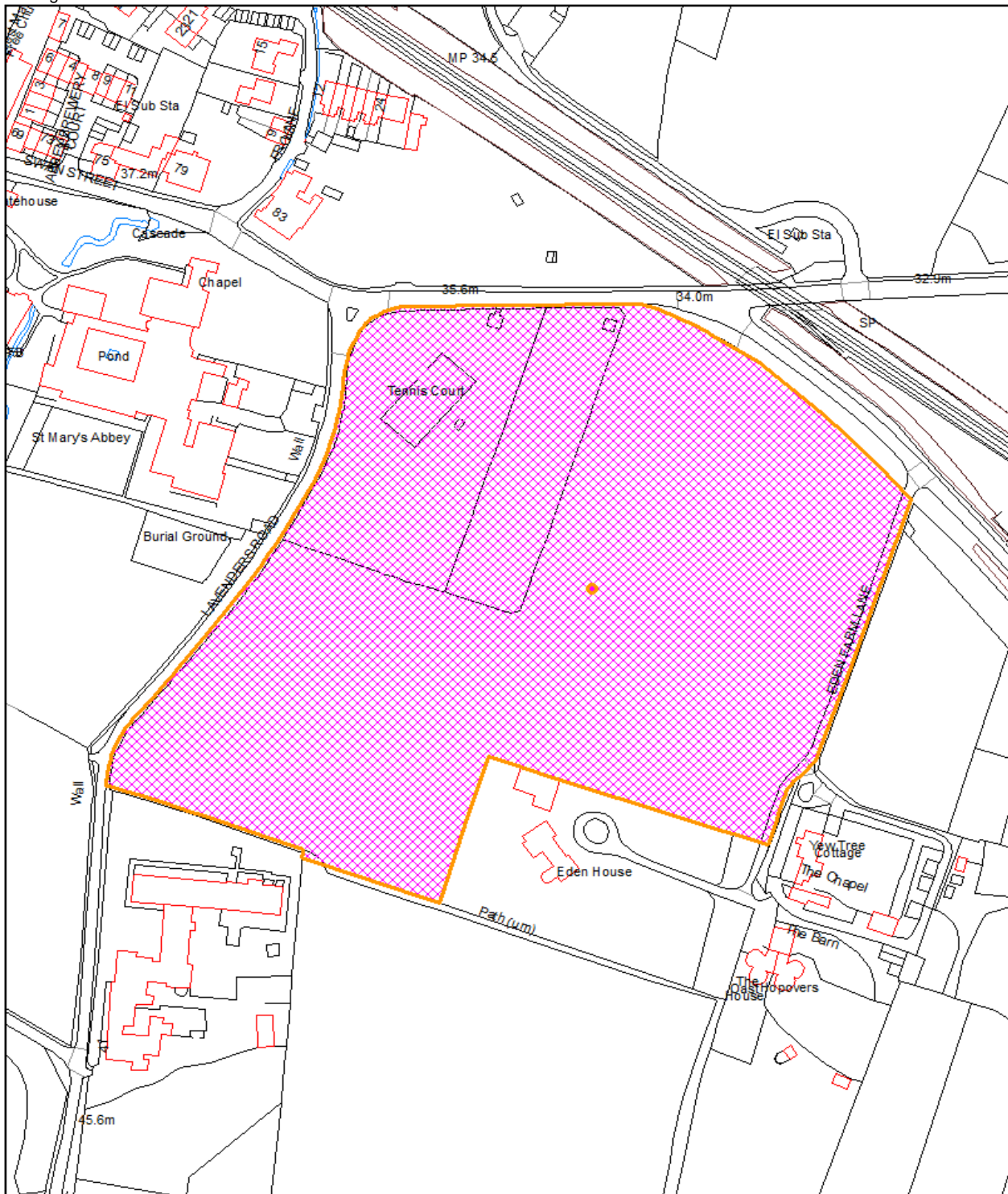
9	Policies CP11, CP12, CP13 Tonbridge and Malling Core Strategy 2007
10	Landscape and Visual Appraisal report March 2019
11	Statement of Common Ground on Housing Land Supply dated 13 March 2019
12	Covering letter relating to application TM/04/04319 to expand on decision attached to Mr Thurlow's proof appendix 4
13	Plan submitted with application TM/17/00458/EASC
14	Development programme note by Avison Young
15	Briefing Note on calculation of KCC Section 106 contributions for CIL compliance by Avison Young
16	Statement of CIL compliance by LPA
17	Email from K Toogood to C Thurlow 12 February 2019
18	Housing need and supply table
19	Statement of Common Ground on viability
20	Journal of Planning & Environment Law: Michael Mansell v Tonbridge and Malling BC and Croudace Portland and the East Malling Trust
21	Journal of Planning & Environment Law: Cheshire East BC v Secretary of State for Communities and Local Government and Renew Land Developments Ltd
22	Housing Delivery Test: 2018 measurement
23	Schedule of Conditions
AHL42	Email from TMBC Local Plan Programme Officer, letter to TMBC dated 1 March 2019, reply from TMBC dated 8 March 2019
AHL43	Statement of Common Ground
AHL44	Extract from Procedural Practice in the Examination of Local Plans, Examination of the Lancaster District Strategic Policies and Land Allocations Development Plan – Pre-hearing note to the Council
AHL45	Decision notice from KCC TM/18/2555
AHL46	Decision notice from KCC TM/18/2549
AHL47	Extract from Planning Practice Guidance
AHL48	Section 106 Agreements
AHL49	KCC letter to Mr Thurlow 11 March 2019 TM/17/02971/OA

TM/18/02093/OA

Field At Corner Of Lavenders Road And Swan Street West Malling Kent

Outline Application: Development comprising up to 80 residential dwellings (including 40% affordable housing), open space, drainage, access and associated works, with all matters reserved except for access which is to be considered in detail at this stage

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West Malling
West Malling And
Leybourne

TM/19/00001/TPO

Location: Field At Corner Of Lavenders Road And Swan Street West
Malling Kent
Go to: [Recommendation](#)

1. Description:

- 1.1 Since receipt of the planning application proposing residential development of this site (as discussed elsewhere on this Agenda), consideration has been given as to whether any trees within the site merit specific protection by Tree Preservation Order.
- 1.2 Having made an assessment of the collective amenity value of a number of trees along the site boundaries, it was considered appropriate to serve a Tree Preservation Order in February 2019. A copy of the Order is annexed to this report in full for ease of information (Annex 1).

2. Reason for reporting to Committee:

- 2.1 Procedure requires that upon making a TPO consultations are carried out and consideration given to any representations received. The consultation undertaken has resulted in an objection being lodged on behalf of the prospective developer of the land and, in these circumstances (given other matters ongoing in connection with this site), the authority should consider these objections when deciding whether the Order should be confirmed.

3. The Site:

- 3.1 The Swan Street and Lavenders Road frontages of the site are aligned with mature trees atop raised landscaped banks.

4. Consultees:

- 4.1 One letter of objection received on behalf of the prospective developer of the land. A redacted version of this letter is reproduced in full at Annexe 2 for completeness.

5. Determining Issues:

- 5.1 An Order comes into effect on the day the authority makes it. This provisional effect lasts for 6 months, unless the authority first either confirms the Order to provide long-term protection or decides not to confirm it.

- 5.2 Authorities can confirm Orders, either without modification or with modification, to provide long-term tree protection. They may also decide not to confirm the Order, which will stop its effect. Authorities cannot confirm an Order unless they have first considered any duly made objections or other representations.
- 5.3 Authorities should bear in mind that, since they are responsible for making and confirming Orders, they are in effect both proposer and judge. They should therefore consider how best to demonstrate that they have made their decisions at this stage in an even-handed and open manner.
- 5.4 The main issue in determining this application is whether or not the trees in question have sufficient amenity value to warrant retention and thus confirm the TPO made on the five identified groups.
- 5.5 Planning Practice Guidance (PPG) makes clear that 'amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order. It goes on to make clear that Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.
- 5.6 It is considered that the trees do have high amenity value sufficient to warrant such protection. In particular, due to the size and maturity of the groups, they provide amenity value to the area as a whole especially as the site serves as an important, sylvan entrance to the town of West Malling.
- 5.7 The objections raised are made with specific references to Groups G2 and G3; these are considered to be of poor quality. I accept that one Ash in G3 has been identified as being potentially hazardous (no. 224 on the survey plan), so should be removed from the TPO.
- 5.8 The arboriculturalist is disputing the number of species of trees within G1 and G2. Under the circumstances these will need to be reviewed.
- 5.9 I remain of the view that it is necessary and appropriate in the circumstances to seek to protect the trees in question through confirmation of a TPO and recommend accordingly, subject to further confirmation of tree species cited in Groups 1 and 2.

6. Recommendation:

- 6.1 The Tree Preservation Order as set out in Annex 1 **BE REVIEWED AND CONFIRMED FOLLOWING MODIFICATION**

Contact: Liz Guthrie

**Town and Country Planning Act 1990
Tree Preservation Order No: 19/00001/TPO**

The Tonbridge & Malling Borough Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 hereby make the following Order.

Citation

1. This Order may be cited as the Tonbridge and Malling Borough Council Tree Preservation Order No. 19/00001/TPO.

Interpretation

2. In this Order "the authority" means the Tonbridge & Malling Borough Council and any reference in this Order to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Effect

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.

(2) Without prejudice to subsection (7) of Section 198 (power to make tree preservation orders) or subsection (1) of Section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall –

(a) cut down, top lop, uproot, wilfully damage or wilfully destroy; or

(b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

CONFIRMATION OF ORDER

This Order was confirmed by Tonbridge & Malling Borough Council without modification on

OR

This Order was confirmed by Tonbridge & Malling Borough Council, subject to the modifications indicated by
on

.....
Authorised Signatory

19/00001/TPO

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by Tonbridge & Malling Borough Council on

.....
Authorised Signatory

VARIATION OF ORDER

This Order was varied by Tonbridge & Malling Borough Council on
under the reference number,
a copy of which is attached.

.....
Authorised Signatory

REVOCATION OF ORDER

This Order was revoked by Tonbridge & Malling Borough Council on
under the reference number

.....
Authorised Signatory

19/00001/TPO

SCHEDULE 1**SPECIFICATION OF TREES****Trees specified individually**
(encircled in black on the map)

Reference on map	Description	Situation
None		

Trees specified by reference to an area
(within a dotted black line on the map)

Reference on map	Description	Situation
None		

Groups of trees
(within a broken black line on the map)

Reference on map	Description	Situation
G1	Group consisting of 23 Sycamores and 2 Hawthorns	West side of Lavenders Road
G2	Group consisting of 43 Sycamores, 6 Ash and 1 Silver Birch	West side of Lavenders Road
G3	Group consisting of 18 Sycamores, 2 Ash and 3 Beech	South side of Swan Street
G4	Group consisting of 12 Sycamores and 7 Ash	Junction of Swan Street and Station Approach
G5	Group consisting of 6 Sycamores and 1 Ash	South West of Station Approach

G1	Group consisting of 23 Sycamores and 2 Hawthorns	West side of Lavenders Road
G2	Group consisting of 43 Sycamores, 6 Ash and 1 Silver Birch	West side of Lavenders Road
G3	Group consisting of 18 Sycamores, 2 Ash and 3 Beech	South side of Swan Street
G4	Group consisting of 12 Sycamores and 7 Ash	Junction of Swan Street and Station Approach
G5	Group consisting of 6 Sycamores and 1 Ash	South West of Station Approach

19/00001/TPO

Woodlands
(within a continuous black line on the map)

Reference on map	Description	Situation
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None		
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Given under the COMMON SEAL
of the **TONBRIDGE AND MALLING**
BOROUGH COUNCIL

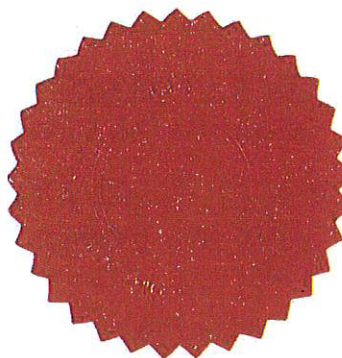
Dated this 21st day of February 2019



Authorised Signatory

Seal Book No

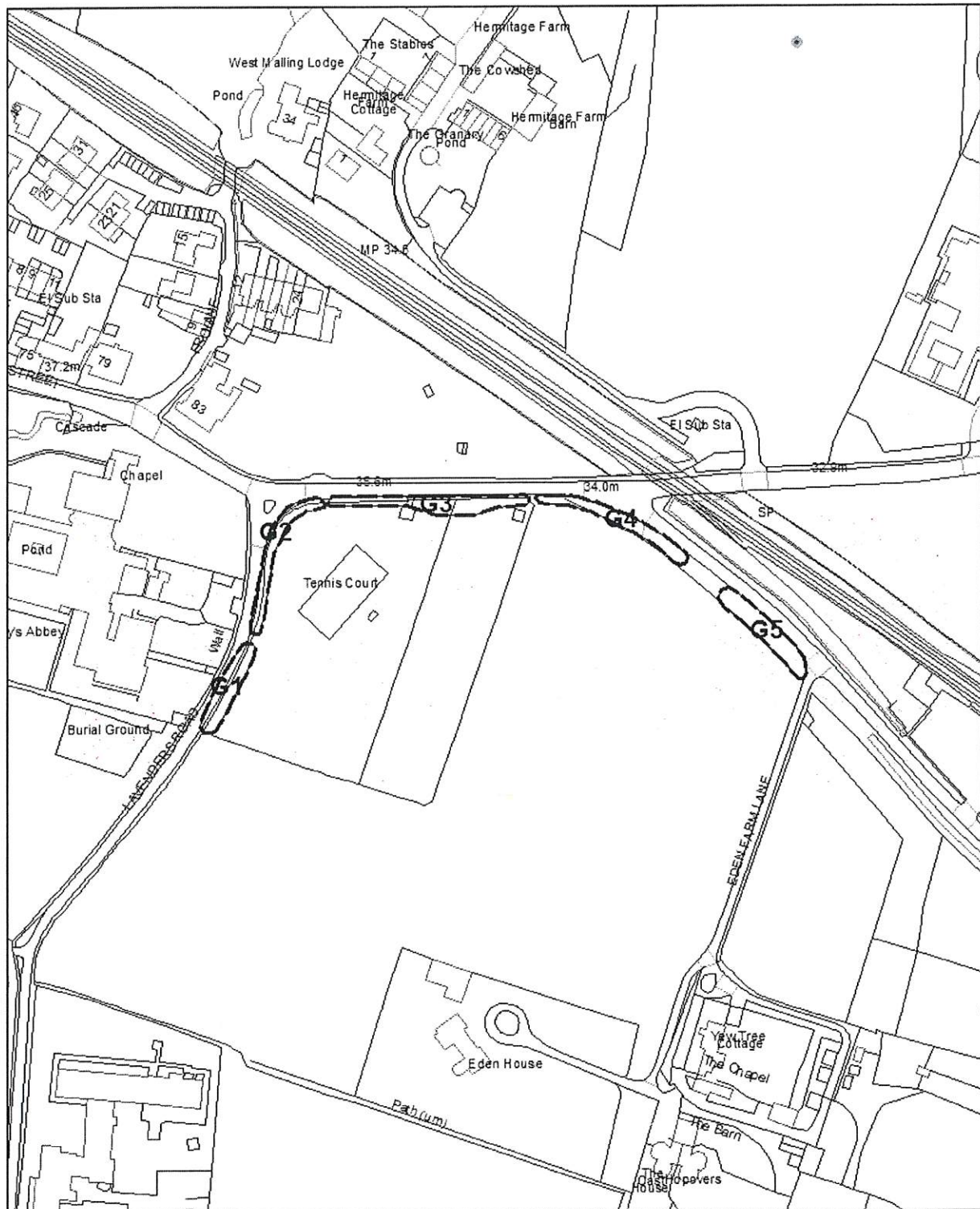
2184



19/00001/TPO

Field At Corner Of Lavenders Road And Swan Street West Malling Kent

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Frank P. S. Spooner BSc (Hons), MArborA., TechCert (ArborA)

Louise Reid
Tonbridge & Malling Borough Council
Gibson Building
Gibson Drive
Kings Hill
West Malling
Kent ME19 4LZ

15th March 2019

Our ref: s6 16182-01

Ms Reid,

Ref.: Town and Country Planning Act 1990

The Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Tonbridge & Malling Borough Council Tree Preservation Order No: 19/00001/TPO

OBJECTION under Regulation 6

On behalf of my clients, I write to object formally to the imposition of the above Tree Preservation Order.

The Order covers five groups of trees (G1-G5), which together consist of 102 sycamores, 16 ash, three beech, two hawthorns and one silver birch. The grounds upon which the Council considered that the Order should be made were stated in the Regulation 3 notice as follows: **"The Council considers that the tree or trees contribute to amenity and local landscape character and it is expedient to make a Tree Preservation Order. Collectively the trees provide a sylvan character to the area and screen to a potential development site"**.

This objection is made in respect of all of the groups included within the Order, and in particular for G2 and G3.

The objection is made on the following grounds:

1. There is no evidence that it was expedient to make these trees the subject of an Order. The majority of the trees covered by the TPO (all of G1, G4 and G5 and half of G2) are shown to be retained and protected throughout the proposed development of the disused land to the south. Those trees in G2 and G3 which are considered for removal as part of the development would be replaced by trees of similar mature stature, only 5-10m from the existing tree belt's location. A 25m-long section of G3 will not be replaced, to accommodate the proposed access drive, but this includes only eight trees within the existing tree belt (for context, the TPO covers a total of 124 trees).

Moreover, no trees have been felled recently, and there is no reason to believe that these trees are not under good arboricultural management and will not remain so in the foreseeable future.

2. Although the tree belt forming G2 and G3 overhangs Swan Street and is prominent from the adjacent footway, creating a "sylvan character", it is very narrow (only a single tree wide at most points) and consists almost exclusively of multi-stemmed and heavily ivy-covered sycamores. Individually these trees are of low quality, and many show tight compressions forks with evidence of included bark and/or bark stripping for up to 1.5m, with limited woundwood growth. Moreover, most trees forming G2 and G3 are growing at the top edge of a steep bank, which becomes nearly vertical along G3; here, the soil is exposed with little or no ground cover, and there are numerous exposed surface roots consistent with bank erosion despite the presence of the trees.

Therefore, stem, branch and even entire tree failures might be expected in the future, with a consequent risk of harm occurring to vehicles and pedestrians using the road. Ongoing management will be required, irrespective of whether the site is developed, and in the absence of any previous management it is difficult to suggest any effective remedial works other than removal and replacement.

The proposed development provides an opportunity to secure a higher standard of replacement planting, which might be harder to ensure if the trees were removed on another occasion for purely tree management and safety reasons. Replacement

planting could incorporate tree species of higher quality, ecological value and, over time, a more sylvan character than the existing tree belt provides. It would also allow a greater species mix, reflecting the higher diversity found to the north of Swan Street.

3. The sylvan character of Swan Street is relatively new. Historical maps show no indication that the site used to be bordered by trees, and the specimens within G2 and G3 are consistent with being self-seeded specimens that have grown up within a former hedgerow, maintenance of which was ceased some time ago.
4. The second reason given for making the TPO (that the trees "screen ... a potential development site") is misleading as there will be no development for 100m south of G3, with the exception of the proposed access drive and a SuDS pond. There are two additional belts of sycamore and ash growing south and east of G2 and G3 which will be retained throughout the proposed development. These tree belts contain larger and higher quality specimens than G2 or G3, and would provide effective screening of the whole of the proposed development (with the sole exception of the access drive) even if no replacement planting was proposed.
5. One of the ash included within G3 (tree no. 224 on the tree protection plan no. 16182-02a submitted with the planning application) was assessed as category 'U', showing an extremely sparse crown and substantial decay in both stems. Its short-term potential, hazardous structure and location make it inappropriate for inclusion in a TPO.
6. There are technical discrepancies within the TPO group descriptions and map which make it difficult to identify protected trees with confidence, and therefore limit the utility of the TPO document. Specifically:
 - a. The list of individual trees comprising G1 (23 sycamores and two hawthorns) does not match our observations on site for the area covered by G1 (as drawn on the TPO map); we found several ash and a large silver birch not mentioned in the TPO, and fewer than 23 sycamores.
 - b. The list of individual trees comprising G2 (43 sycamores, 6 ash and 1 silver birch) does not match our observations on site for the area covered by G2 (as

drawn on the TPO map); we found only three ash and no silver birch in this area.

- c. It is unclear from the TPO map whether the copper beech and adjacent common beech growing south of the tree belt along Swan Street are included in G3. Whether or not these two trees are included in this group, the group's species list does not match our observations on site.

As such, the imposition of a Tree Preservation Order on these three specimens does not comply with government guidelines on the expediency of making TPOs as laid down in the Town and Country Planning Act 1990, The Town and Country Planning (Tree Preservation) (England) Regulations 2012 and current Planning Practice Guidance, and no reasonable degree of public benefit will accrue from this Tree Preservation Order.

I thus respectfully ask that this Tree Preservation Order is not confirmed.

Yours sincerely,

Jeff Mashburn

SIMON JONES ASSOCIATES



Appendix: Guidance on the making of Tree Preservation Orders

Section 198 (1) of the Town and Country Planning Act 1990 states:

“If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.”

Planning Practice Guidance on Tree Preservation Orders and trees in conservation areas states (paragraph 005):

“Authorities can either initiate this process themselves or in response to a request made by any other party. When deciding whether an Order is appropriate, authorities are advised to take into consideration what ‘amenity’ means in practice, what to take into account when assessing amenity value, what ‘expedient’ means in practice, what trees can be protected and how they can be identified.”

Paragraph 008 of the Planning Practice Guidance, titled “What might a local authority take into account when assessing amenity value?” states:

“When considering whether trees should be protected by an Order, authorities are advised to develop ways of assessing the amenity value of trees in a structured and consistent way, taking into account the following criteria:

Visibility

The extent to which the trees or woodlands can be seen by the public will inform the authority’s assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.

Individual, collective and wider impact

Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:

- size and form;
- future potential as an amenity;
- rarity, cultural or historic value;
- contribution to, and relationship with, the landscape; and
- contribution to the character or appearance of a conservation area.

Other factors

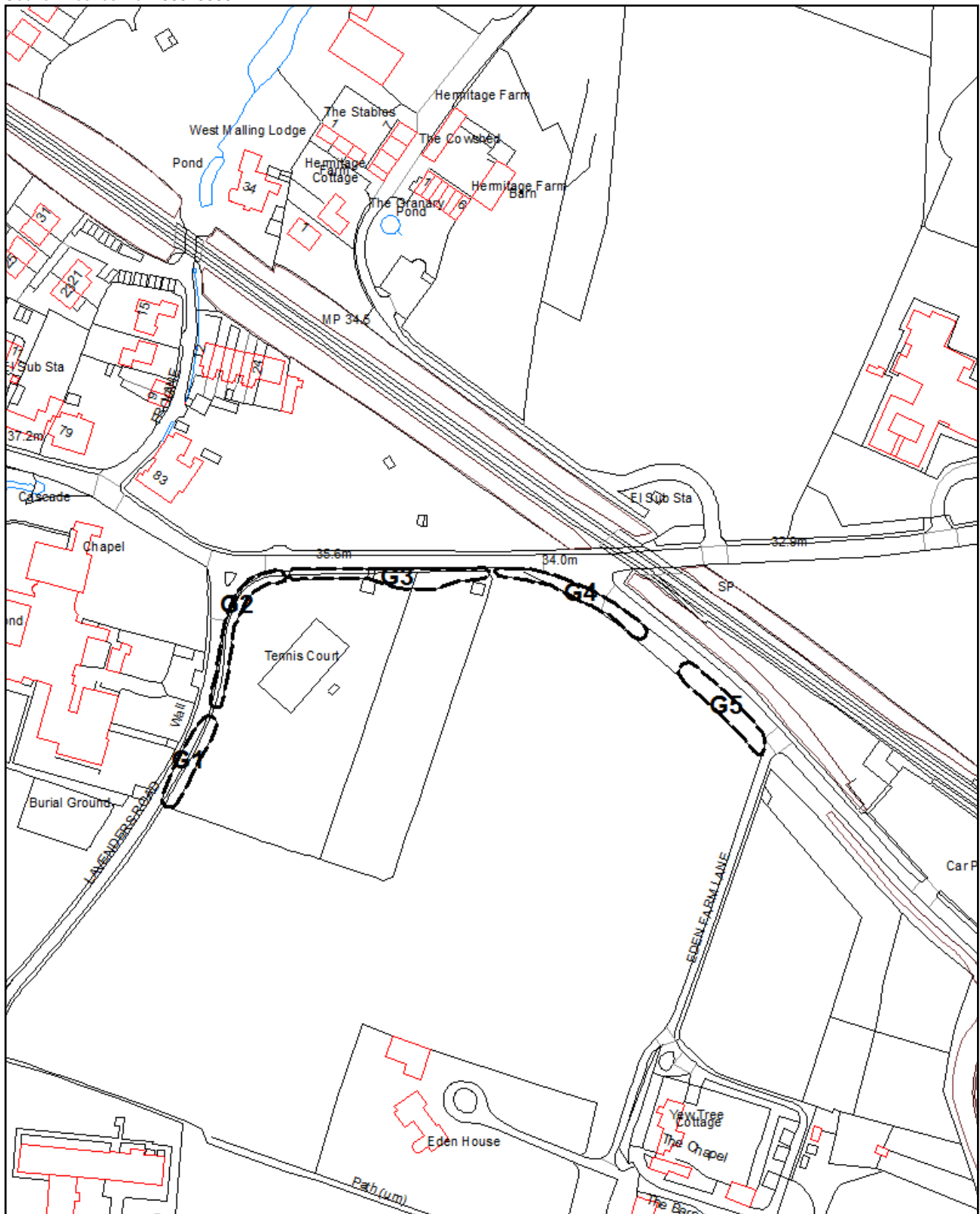
Where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change. These factors alone would not warrant making an Order.”

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19/00001/TPO

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Agenda Item 9

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**ANY REPORTS APPEARING AFTER THIS PAGE CONTAIN EXEMPT
INFORMATION**

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