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TONBRIDGE & MALLING BOROUGH COUNCIL

EXECUTIVE SERVICES

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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
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14 November 2018

To: MEMBERS OF THE AREA 3 PLANNING COMMITTEE
(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the Area 3 Planning Committee to be held in the Civic Suite, Gibson Building, Kings Hill, West Malling on Thursday, 22nd November, 2018 commencing at 7.30 pm. Deposited plans will be available for Members' inspection for half an hour before the start of the meeting.

Yours faithfully

JULIE BEILBY

Chief Executive

A G E N D A

PART 1 - PUBLIC

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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.

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.

MEMBERSHIP

Cllr M Parry-Waller (Chairman)
Cllr M C Base (Vice-Chairman)

Cllr Mrs S Bell
Cllr T Bishop
Cllr Mrs B A Brown
Cllr T I B Cannon
Cllr R W Dalton
Cllr D A S Davis
Cllr Mrs T Dean
Cllr S M Hammond
Cllr D Keeley
Cllr D Keers
Cllr S M King
Cllr D Lettington
Cllr D Markham
Cllr Mrs A S Oakley
Cllr R V Roud
Cllr A K Sullivan
Cllr B W Walker
Cllr T C Walker

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TONBRIDGE AND MALLING BOROUGH COUNCIL

AREA 3 PLANNING COMMITTEE

Thursday, 4th October, 2018

Present: Cllr M Parry-Waller (Chairman), Cllr Mrs S Bell, Cllr T Bishop, Cllr Mrs B A Brown, Cllr T I B Cannon, Cllr R W Dalton, Cllr D Keeley, Cllr S M King, Cllr Mrs A S Oakley, Cllr R V Roud, Cllr A K Sullivan and Cllr T C Walker

Councillor H S Rogers were also present pursuant to Council Procedure Rule No 15.21.

Apologies for absence were received from Councillors M C Base (Vice-Chairman), D A S Davis, Mrs T Dean, S M Hammond, D Keers, D Lettington, D Markham and B W Walker

PART 1 - PUBLIC

AP3 18/13 DECLARATIONS OF INTEREST

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

AP3 18/14 MINUTES

RESOLVED: That the Minutes of the meeting of the Area 3 Planning Committee held on 1 February 2018 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)

AP3 18/15 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.

AP3 18/16 TM/18/01394/FL - 4-6 NEW ROAD, DITTON

Erection of two, 2 bedroom dwellings with associated parking and access at 4 - 6 New Road, Ditton.

RESOLVED: That planning permission be GRANTED in accordance with the submitted details, conditions, reasons and informatives set out in the report; subject to:

(1) Addition of Conditions:

8. The first floor windows on the north (flank) elevation of the building hereby approved shall be fitted with obscured glass and, apart from any top-hung light, shall be non-opening. This work shall be effected before the dwelling is occupied and shall be retained at all times thereafter.

Reason: In the interests of residential amenity.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Classes B and C; of Part 1; of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: To enable the Local Planning Authority to regulate and control any such further development in the interests of the amenity and privacy.

10. No external lighting shall be installed on the dwellings hereby approved or within the associated residential curtilages or parking areas as laid out on drawing number 114-01.

Reason: In the interests of residential amenity.

[Speakers: Peter Dalton – Ditton Parish Council; Andrew Hawker and Alan Hawker – members of the public]

AP3 18/17 EXCLUSION OF PRESS AND PUBLIC

There were no items considered in private.

The meeting ended at 8.20 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

Aylesford Aylesford North And Walderslade	**22 November 2017**	**TM/17/02971/OA**
Proposal:	Outline application with all matters reserved except for access: 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 (cafe/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	
Location:	Development Site Eastern Part Of Former Aylesford Quarry Rochester Road Aylesford Kent	
Go to:	Recommendation	

1. Description:

1.1 This application is subject to an appeal against non-determination within the requisite target date. The appeal will be dealt with by way of public inquiry, which will commence on 12 March 2019 and is expected to last 6 days. 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 It will become evident from this report that there are several ongoing matters of relevance to important issues arising in the appeal. Officers have set out and addressed these in so far as possible, based on the most up-to-date information available. Inevitably, these matters will continue to be reviewed up until the inquiry next year. A strategy for addressing this in a transparent and informative way is recommended for Members' consideration.

1.3 The application sought planning permission for up to 146 dwellings of varying sizes and a local centre to provide a mix of A2 and A3 floor space, a community health centre (use class D1) and a local centre (use class D2). The appointed Inspector will consider this scheme.

1.4 The development proposed is indicated to be located in the south eastern corner of the wider Aylesford Quarry site. The development is proposed on an area of approximately 4.92ha with the wider quarry site extending to some 98ha. The land extends both sides of Bull Lane and incorporates the existing lakes, occupying approximately 32ha of the overall quarry area. The quarry is currently not operational although there is extant permission permitting minerals working at the site until 2042.

1.5 The site itself is relatively flat where mineral workings have been carried out but rises to a height of approximately 13m along the northern edge along the top of the existing unworked sand face. Due to this difference in land levels the application states that the land will need to be regraded to form development platforms and also to enable an appropriate gradient on the access road. No specific details of this landform are included to allow for assessment at this stage.

1.6 The land was historically subject to a wider quarry restoration plan that was approved as part of the minerals extraction consent. The extraction has currently ceased. However none of the approved restoration works have been implemented. These works are now thought to be incapable of implementation as approved due to subsequent changes to the landform on site, according to KCC, the Minerals Planning Authority. The restoration works in general and the land regrading require the movement of a considerable amount of material around the site and engineering works to ensure its final stability.

1.7 To summarise, the grounds of appeal as submitted raise the following matters:

- The Council's lack of five year supply of housing when measured against the objectively assessed need (OAN);
- 17% affordable housing provision on site which is considered by the developer to be a viable amount;
- Updated restoration scheme and Environmental Impact Assessment (EIA) are under preparation for submission to the County as Minerals Planning Authority. These timeframes, in the view of the developer, should not preclude determination of this planning application as the restoration of the site can be addressed by way of planning condition or obligation.

[DPHEH: these matters are discussed in detail within the body of the assessment that follows. Indeed, at the time of writing officers were made aware through formal consultation that the submissions to the County had just been made and these will need to be subject to careful and thorough review within the context of this case running in parallel.]

1.8 Members should be aware that until the appeal was lodged, the application was subject to a Planning Performance Agreement (PPA). It is therefore disappointing that the developer has chosen to abandon any proactive negotiation within the context of the PPA in favour of now appealing. A PPA is intended as a project management tool which LPAs and applicants can use to agree timescales, actions and resources for handling particular applications. The NPPG recognises that these can be particularly useful in setting out an efficient and transparent process for determining large and/or complex planning applications such as this. They encourage joint working between the applicant and LPA, and can also help to bring together other parties such as statutory consultees. Given the principle issues arising in respect of this scheme (discussed in detail in Section 6), I am of

the view that continuing with the application within the context of a revised PPA would have been the most appropriate mechanism, immediately going forward.

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 relates to the eastern part of Aylesford sand pit and covers an area of approximately 4.92ha. The site is immediately to the north and west of Aylesford Village and abuts the Aylesford Conservation Area. The quarry itself has an extant permission for the working of sand, gravel and clay deposits although at present little or no working is undertaken at the site.

3.2 The site is approximately 2km south of the scarp slope of the North Downs which forms part of the AONB. The AONB is at a considerably higher level than the application site which, given the topography of the area in general, sits on land that falls away to the south. To the south and east of the site is a TPO covering the woodland that separates the quarry from Aylesford Village. The land to the west of the site is designated as a Regionally Important Geological Site (RIGS), with a smaller part of this land designated as a Site of Special Scientific Interest (SSSI).

3.3 The site is immediately to the north of the Aylesford Conservation Area. The site is approximately 9-10m lower than the Conservation Area and the bank between is wooded and covered by a TPO. Views over the site towards the North Downs are available from Mount Pleasant and Vicarage Close. The nearest listed buildings are located along the north side of Mount Pleasant (22-32), the Almshouses on the south side of Mount Pleasant (5-19) and St. Peters Church on Vicarage Close. To the north of the site the proposed access would be situated to the north and west of the Grade II Listed Old Mill House 116 Rochester Road. Further to the north of the proposed access road there are further listed buildings along the western side of Rochester Road at Anchor Farm.

4. Planning History (relevant):

TM/17/00458/EASC	screening opinion EIA not required	7 March 2017

Request for screening opinion pursuant to article 5, town and country planning (Environmental Impact Assessment) regulations 2011: Demolition of existing buildings, structures and hardstanding, land raising of development area, development of up to 146 dwellings

TM/18/01640/CC EASC	screening opinion EIA required	2 July 2018

Request for screening opinion under Regulation 6 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017: to determine whether an Environmental Impact Assessment will need to accompany any one or all of the planning applications proposed to be submitted for revised restoration proposals for the Aylesford Quarry site (KCC ref: KCC/SCR/TM/0109/2018)

5. Consultees:

5.1 Aylesford PC: Objects to the above application on the following grounds:-

- Any development at this site is premature whatever its size and cannot be considered in isolation of the proposals for the whole of the East Bank of the Medway as these developments are interlinked in terms of the much needed infrastructure improvements required for the Aylesford/Eccles area.

- The Aylesford quarry site provides a great opportunity for the provision of leisure and community use. Housing should not be provided at this site unless it is considered necessary as the only means of delivering a leisure and community project which provides significant and much needed community benefit. Housing should not be provided in isolation.

- Any development at this location is premature and unnecessary at this stage until there is a clear plan setting out the proposals for the whole of the Aylesford Quarry site with particular emphasis on the leisure and community benefits to be provided at this location linked with any necessary road infrastructure improvements required to access any proposed development and to improve the existing road network on both sides of the lake with a view to reducing the vehicle movements through the Aylesford village

- This site is not identified for housing in the Tonbridge and Malling Borough Council Local Development Framework and there are no mitigating factors that would identify it as a site suitable for housing at this point in time.

- The transport assessment for this development identifies that a larger proportion of the traffic to and from this site will do so via Rochester Road and the A229 but still indicates that there will be a significant increase in traffic movements through Aylesford village. However it does not set out what measures it will take to mitigate against the increased traffic flows on the already treacherous Rochester Road approaching the A229 and through the already over congested village of Aylesford. This development should not take place without something being done particularly in relation to reducing traffic through the village.

- The transport assessment also identifies that there will be increased traffic accessing the A20 from this development particularly at peak times which will only exacerbate the existing problems at the already over capacity A20/Hall Road/Quarry wood Industrial Estate.

5.2 KCC (H+T): Under the robust assumptions made within the TA, the proportional effects of the traffic generated by the proposal against base line flows and guidance in the NPPF it is considered that a highway reason for refusal could not be asserted and sustained. Therefore there are no objections subject to the implementation of the improvements to the junction of Station Road/Forstal Road and the implementation of the Travel Plan along with a contribution of £5,000 to be provided to allow for the monitoring this plan for the agreed target period of 5 years.

5.3 Medway Valley ecologists: Appear to be Water Voles present on site

5.4 Environment Agency: Following receipt of revised information on the details of the road access where it crosses Aylesford Stream the EA raise no objection, subject to conditions relating to contamination, ground water protection, foul and surface water and foundation details.

5.5 Southern Water: Cannot accommodate needs of the development within the existing local infrastructure. Need a full drainage strategy for foul disposal. This can be sought by condition. No groundwater or land drainage should enter the public sewers. Need details of surface water drainage, which can be sought by condition. If SUDS are proposed means should be put in place to ensure the effectiveness of these systems is maintained in perpetuity.

5.6 Natural England: Following the receipt of further information it is considered that there is no objection to the residential development as it itself is unlikely to have any direct or indirect implications for the SSSI.

5.7 KCC SUDS: No objection subject to condition for SUDS scheme in line with the FRA.

5.8 KCC (Heritage): No objection subject to conditions.

5.9 Kent Police: Require contribution of £16,482 to cover infrastructure start-up costs for 3 x police officers.

5.10 West Kent CCG: Require contribution of £135,792 + legal costs to support improvements to primary care infrastructure.

5.11 KCC Economic Development: Contributions required towards Primary and Secondary education, Community Learning, Youth provision, Library book stock and adult social care.

5.12 Kent Police Crime Prevention: Have met with the agent to discuss the use of Secured by Design and appropriate recommendations have been made for an outline application.

5.13 KCC PROW: Object to the application as it stands until have seen in detail the plans for the PROWs and how these will cross the proposed new road.

5.14 Kent Fire and Rescue: Access roadway should be a minimum 3.7m in width which allows an appliance to within 45m of all points; or 90m of all points if a domestic sprinkler system is proposed.

5.15 Kent Downs AONB Unit: Important to ensure that the tree planting proposed in the illustrative masterplan is carried through in any subsequent reserved matters/full application. Also wish to ensure that the maximum heights set out in the parameter plans are adhered to in any subsequent application.

5.16 Private Reps: 147/0X/31R/0S + site and press notice: 31 representations received raising the following issues:

- Area already heavily congested and this will only get worse with any more development.
- No school places in the area, so is a new school to be built along with a doctor's practice.
- Inadequate parking provision.
- Increased traffic will add to air pollution.
- Existing doctors is full.
- Lake is very deep and cold. Dangerous to have people living in close proximity due to risk of drowning.
- Should be treated as the first stage of a much larger development not just a development of 146 houses.
- Unlikely that the majority of traffic will head north on Rochester Road but will add to congestion in Aylesford Village.
- Should be open space by the lake rather than a narrow shoreline path.
- An exit should be provided into the existing village.
- Efforts should be made to ensure that the site is not segregated from the rest of Aylesford.

- Surrounding roads must have provision for ‘fragile’ users, such as cyclists, walkers and horse riders.
- Entrance should not be moved onto a green field site.
- Potential for flooding in Aylesford Village due to increased runoff to the stream.
- Scheme should provide for a pedestrian bridge to enable better access to the railway station.
- Proposed facilities should be complimentary to those in the village and not unfairly competitive.
- Any lighting should be designed to ensure that there is no light pollution.
- Should be a link road from Bull Lane.
- Proposed doctors surgery needs more parking.
- Footway from the site to High Street is too narrow, in places only 1.1m for pushchairs etc. to pass.
- Station Road/Forstal Road junction gets overrun and looks unsightly. The junction should be realigned.
- Works should not pollute Aylesford Stream.
- Construction traffic should be directed from A229 rather than through Aylesford Village.
- No footpath should be blocked during construction and development.
- The tunnel from Rochester Road should be subject to an archaeological watching brief.
- Road and development should be appropriately landscaped to limit the wider landscape impact of the development.
- Concerns regarding traffic movements through the village and a scheme of traffic management should be proposed.
- Potential impact on flooding in Aylesford.
- Potentially detrimental to the historic village of Aylesford.
- Development in the wrong place as will lead to increased traffic.

6. Determining Issues:

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), the saved policies of the TMBLP and the KCC Minerals and Waste Local Plan 2013 – 2030. 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 is currently undergoing formal Regulation 19 consultation and that this site does not feature as a proposed allocation for housing development within the overall strategy. In all likelihood, there will not be an appeal determination prior to the submission of our local plan to the Secretary of State (scheduled for December 2018). The appeal will likely involve consideration of the fact that the appeal site is not included within the proposed housing allocations and is likely to impact on infrastructure and development around the A20 "corridor", where improvements have been planned to come forward in conjunction with allocated sites in the Local Plan. It is thought that there would be limited capacity (even with proposed improvements) for increased traffic on the A20, with the effect that permitting the appeal scheme could have a detrimental impact on this capacity, and in turn, on proposed site allocations within the local plan, including "strategic" sites and the infrastructure improvements that are proposed to come forward in conjunction with them. Further participation from KCC (H+T) will be sought as appropriate.

Minerals safeguarding:

6.3 Section 17 of the NPPF 2018 sets out national policy for facilitating the sustainable use of minerals. In particular paragraph 204(c) states that planning policies should 'safeguard mineral resources by defining Mineral Safeguarding Areas and adopt appropriate policies so that identified locations of specific minerals resources of local and national importance are not inappropriately sterilised by non-mineral development where this could and should be avoided (whilst not creating a presumption that the identified resources will be worked).

6.4 This site is safeguarded as part of the Kent Minerals and Waste Plan (2013 – 2030) and has extant planning permission for minerals extraction until 2042. In particular, the following policies are of relevance.

6.5 Policy CSM 5 (Land-won mineral safeguarding) states as follows:

Economic mineral resources are safeguarded from being unnecessarily sterilised by other development by the identification of:

1. Mineral Safeguarding Areas for the areas of brickearth, sharp sand and gravel, soft sand (including silica sand), ragstone and building stone as defined on the Mineral Safeguarding Area Policies Maps in Chapter 9.

2. Mineral Consultation Areas which cover the same area as the Minerals Safeguarding Areas and a separate area adjacent to the Strategic Site for Minerals at Medway Works, Holborough as shown in Figure 17

3. Sites for mineral working within the plan period identified in Appendix C and in the Mineral Sites Plan.

6.6 Policy DM 7 (Safeguarding mineral resources) states that:

Planning permission will only be granted for non-mineral development that is incompatible with minerals safeguarding, where it is demonstrated that either:

1. the mineral is not of economic value or does not exist; or

2. that extraction of the mineral would not be viable or practicable; or

3. the mineral can be extracted satisfactorily, having regard to Policy DM9, prior to the non-minerals development taking place without adversely affecting the viability or deliverability of the non-minerals development; or

4. the incompatible development is of a temporary nature that can be completed and the site returned to a condition that does not prevent mineral extraction within the timescale that the mineral is likely to be needed; or

5. material considerations indicate that the need for the development overrides the presumption for mineral safeguarding such that sterilisation of the mineral can be permitted following the exploration of opportunities for prior extraction; or

6. it constitutes development that is exempt from mineral safeguarding policy, namely householder applications, infill development of a minor nature in existing built up areas, advertisement applications, reserved matters applications, minor extensions and changes of use of buildings, minor works, non-material amendments to current planning permissions; or

7. it constitutes development on a site allocated in the adopted development plan.

6.7 The PPG is also clear that in determining applications this has to be done in accordance with development policy on minerals safeguarding. With these factors in mind, seeking to extinguish the minerals permission and bring forward the restoration of the site (to then allow for the redevelopment of the site for residential purposes) requires permission from KCC as the minerals planning authority. The developer is understood to have been in negotiation with KCC about how this

might be achieved for a considerable period of time. Most recently, KCC advised on how this might take place, through the issuing of a formal screening opinion. This advice explained not only that the revised restoration proposals would need to be subject to Environmental Impact Assessment (EIA) but also that the County had clear misgivings about the approach to such restoration, in terms of both process and merit. TMBC had conveyed a similar view prior to the application even having been submitted.

6.8 Applications have only just been submitted to the County in the above respects. TMBC has been formally consulted. At this time, on an initial reading of the documentation provided, I have some fundamental concerns regarding the level of detail forthcoming and, once a thorough assessment of the documents has been undertaken, representations will be made to the County accordingly.

6.9 Notwithstanding this, there is at least a possibility that the County will approve the variations and restoration plan in advance of the public inquiry in March.

6.10 In support of the application for the residential development the appellant has provided a financial appraisal that states that the remaining silica reserves have no economic value now or in the future because it is unviable to extract them and the quarry is therefore obsolete. This view is contrary to the current Minerals Plan that is not due to be reviewed until 2019. This supporting evidence is currently undergoing careful and thorough review by officers and may be a material consideration for the County in their decision taking.

6.11 At this stage, I am unable to advise in detail as to how determinative this might be, but it will be for the appellant to persuade the Inspector (and KCC) of matters relevant to development plan and national policy including the viability and operational practicability of further quarrying, and on the basis of adequate evidence.

Site restoration and the need for EIA:

6.12 Members will note from Section 4 of this report that TMBC previously issued a formal screening opinion setting out that the development solely to which this application relates did not require EIA, in its own right. I make it clear that this was given in isolation of the wider project or any information pertaining to that wider project being provided by the developer at that time. As such, this is in no way determinative of the issues now under consideration for the purposes of applying the EIA Regulations, and TMBC are in any event under a duty to review negative screening opinions where there has been a change in relevant circumstances.

6.13 For EIA purposes, a wider “project” encompassing the application scheme falls to be considered. A proposal should not be regarded in isolation if, in reality, it is properly to be regarded as an integral part of an inevitably more substantial development, so avoiding artificially “salami slicing” a development scheme into smaller components in order to avoid EIA.

6.14 It has become clear that the development the subject of this appeal forms part of a wider project that has already, in part, been screened by the minerals authority as EIA development. The Inspector will simply not be able to consider the merits of this appeal in the absence of an ES that addresses the project as a whole. Whilst an ES has been submitted in support of the restoration submissions, the assessment appears to have been undertaken in isolation (i.e. only seeking to address the part of the project which the minerals authority are responsible for determining). That approach may well be flawed and fail to meet with statutory requirements.

6.15 Members will be aware that EIA is required 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 they can be avoided or reduced. The EIA will be informed by a series of technical studies which form part of an ES. These studies include surveys, calculations and other forms of modelling as necessary.

6.16 An ES is intended to consider the likely significant 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. The sensitive receptors considered in the ES should include local residents and businesses, heritage assets and designations, road users, construction workers and future occupiers of the site.

6.17 Each topic assessment is designed to appraise the significance of the identified effects (both positive and negative), whether major, moderate, minor or negligible. Short and long-term (temporary and permanent), direct and indirect effects have to be 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.

6.18 In absence of the holistic assessment that is envisaged above I consider that it would have been premature of TMBC to proceed to determine the planning application for development until all material impacts arising in relation to the restoration, combined with the end development the subject of the appeal, could be properly considered.

6.19 It was ultimately on this basis that officers had continually advised the developer that a decision on the planning application should not be made until the above had been fully resolved. The decision to lodge an appeal against non-determination rather than to adopt a properly and logically sequenced approach to the potential of developing this site was rather misguided and this view is reinforced by the fact of the tardy submissions that have only very recently been made to KCC.

6.20 Officers have taken the opportunity to advise the Planning Inspectorate of this view and we are presently awaiting a formal determination as to whether they consider EIA is required for the project as a whole. We understand that they are currently undertaking their own screening exercise accordingly but there are more wide reaching consequences in terms of the potential impacts of this development which now require consideration.

6.21 Whilst we are now in receipt of some information concerning the nature and extent of earthworks required to be undertaken as part of the restoration scheme through the submission of an ES to the County, the document appears, on an initial view, to be deficient for EIA purposes. We will however be scrutinising the documentation in full, both in relation to the application before this Council and for the purposes of providing a consultation response to KCC on the minerals application.

6.22 In particular, paragraph 127 of the NPPF states that planning policies and decisions should ensure that developments **[my emphasis added]**:

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

6.23 Paragraph 178 states that planning policies and decisions should ensure matters including, 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)

6.24 Paragraph 127 in particular sets out the benchmark for all good planning principles (and is reflected in adopted policy through CP24 of the TMBCS and SQ1 of the MDE DPD). It addresses those intrinsic qualities of successful places and the inspector effectively is being asked through the appeal to consider certain elements of a scheme in a vacuum without the necessary toolkit (the ES) to make important judgments. Until such time as a holistic ES is prepared for consideration, addressing the project as a whole – or until such time as PINS directs otherwise – this will continue to inform part of our case on appeal.

Potential for restoration and EIA to be addressed by planning condition or obligation:

6.25 Much of the developer's case put forward at the time the appeal was lodged centred on the belief that a planning permission for the housing development here could be subject to a condition or obligation requiring them to make an application to the County to seek to extinguish the minerals permission; undertaking an EIA at that point in time. This was also a flawed approach for several reasons.

6.26 Paragraph 54 of the NPPF (2018) advises that LPAs should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

6.27 Paragraph 55 states that such conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. These requirements are given a statutory footing in the Neighbourhood Planning Act 2017.

6.28 Where the effect of imposing a condition would be such as to be tantamount to the refusal of planning permission, it should not be imposed. This was broadly the advice of Circular 05/95 and, whilst this has been superseded by the NPPF, the principle remains. It is on this basis that I make the observations below.

6.29 A condition conflicting with, or duplicating other controls will most likely be unreasonable and/or unnecessary. The extinguishment of the minerals consent and restoration scheme are matters to be addressed through the Act by KCC, as minerals planning authority, and through application of EIA Regulations 2017. It is unreasonable to purport to impose a planning condition that requires something to be addressed at a later date that is in fact statutorily required to be a formal consideration before such a decision can be taken: in this case, EIA.

6.30 Conditions should also not be imposed where there is doubt about whether the person carrying out the development to which it relates can reasonably be expected to comply with it. If not, subsequent enforcement action is likely to fail on the ground that what is required cannot reasonably be enforced. In this case, such an obligation would be entirely predicated on KCC granting separate permission and on the assumption that environmental impacts are acceptable before they have been tested through the ES. There are at this time far too many unknowns concerning the potential environmental impacts arising from the restoration and what any appropriate mitigation might comprise to make a judgement as to whether such mitigation could be reasonably carried out.

6.31 It would equally be unreasonable to impose a condition worded in a positive form which developers would be unable to comply with, or which they could comply with only with the consent or authorisation of a third party. In this respect, an unreasonable condition does not become reasonable simply because a developer suggests or consents to it. The condition will normally run with the land and may therefore remain operative after the land has transferred. It must always be justified on its planning merits. In this case, the effect of imposing such a condition would effectively mean that the developer would be dependent on KCC (the third party in this instance) to grant permission for the minerals consent to be extinguished and for the restoration scheme to be implementable.

6.32 Nor is it possible to enter into a suitable planning obligation. An uncertain obligation, purporting to obtain permission from KCC in the future, would be flawed. An obligation to apply to KCC would not be sufficient to make the application acceptable in planning terms. Nor would it obviate the need for EIA.

6.33 In addition, the restoration scheme in and of itself amounts to “development” as statutorily defined.

6.34 When viewed in totality, the nature of the development and the circumstances surrounding the site, constraints and pertinent Regulations effectively creates an unworkable cycle that would not be prevented in the manner that has previously been expressed by the developer.

6.35 Whilst submissions have now been made to the County in an attempt to resolve this, there is still a great deal of uncertainty about whether the submissions will be acceptable and even if they are what the timeframes for determination may be.

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

6.36 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.

6.37 The Council's objectively assessed need is 696 dwellings per year but it is currently not delivering that. The shortfall, as of 31 March 2017, stood at 199 dwellings, meaning a housing land supply of 4.7 years.

6.38 The AMR for this year is currently being calculated. It may be that the Council's land supply position will be below 4 years. This matter will be updated having appropriate regard also to national policy as well as to the Government's intended direction of policy travel.

6.39 For decision making purposes this would mean that the presumption in favour of sustainable development as set out in paragraph 11 of the NPPF falls to be applied. The grounds of appeal suggest that the appellant will argue that the Council's current lack of 5 year housing land supply is a key material consideration for determining the appeal.

6.40 The development plan is the starting point for determining any planning application (as statutorily required by s38 (6) of the Planning and Compulsory Purchase Act 2004). This is reiterated at paragraph 12 of the NPPF.

6.41 In any event, paragraph 11(d) of the NPPF advises, in part, that planning permission should be granted unless, amongst other matters, the application of policies within the Framework that protect areas or assets of particular importance provides a clear reason for refusing the proposed development. Footnote 6 to this policy identifies these policies. For the purposes of assessing this development, this includes policies for:

- Areas at risk of flooding;
- Sites of special scientific interest;
- Land designated as AONB; and
- Designated heritage assets.

6.42 The statutory consultee responses indicate that matters concerning flood risk and the impact on the SSSI are not matters on which a decision to refuse could properly be sustained. This will not be taken forward as part of our case at appeal.

6.43 Matters concerning the impact on the AONB and designated heritage assets are discussed in the assessment below.

Implications for plan making and housing allocations:

6.44 The draft local plan is now undergoing Regulation 19 consultation with the plan to be submitted to the Secretary of State in advance of 24 January 2019, with the current programme indicating submission before the end of the year. The draft plan sets out the strategic development allocations for the Borough, based on an extensive programme of site assessment, widespread consultation and associated technical assessments.

6.45 It is acknowledged that in the early stages of this process ("call for sites" exercise) this site formed part of a wider site submitted for consideration for allocation. The site as submitted totalled some 98.21 hectares and was assessed as being suitable and deliverable at that time. A key point in this respect is that the assessment that took place at that point was not an assessment as to whether sites would ultimately be allocated for development within the new local plan, either in whole or in part, but rather it formed a technical exercise which the Council is required to undertake as part of the plan making process.

6.46 Draft policy LP3 sets out that provision is made within the draft local plan for at least 6,834 dwellings to address in full the OAN for housing during the plan period up to 2031.

6.47 In terms of evidence informing the strategy relevant to this site, the borough-wide Transport Assessment prepared by the Council's consultants, Mott Macdonald, considered the potential transport impacts of the future development proposed in the Local Plan and explored mitigation measures to alleviate such impacts where necessary. The assessment was based on background growth, committed and planned developments in the borough and surrounding areas covering a period of time between 2017 and 2031. The results of the VISUM modelling of the A20 Corridor additionally confirmed that in the absence of any further interventions the developments and mitigations already committed will lead to further capacity issues locally up to the end of the Plan period in 2031.

6.48 Two strategic sites are put forward for allocation in the draft plan in closest proximity to the site: Bushey Wood and South Aylesford.

6.49 The Bushey Wood Area of Opportunity was identified in the current development plan as having potential for meeting residential needs in the post 2021 period or earlier if there is any significant shortfall in strategic housing provision (see Policy CP16 in the adopted TMBCS). The allocation in the draft plan is for a yield of 900 homes along with infrastructure improvements including road links to Bull Lane north and south and Court Lane (see draft/policy LP27).

6.50 The South Aylesford allocation is for a total yield of 1000 homes and also proposes significant new road infrastructure to address highway capacity issues as a result of committed development in the area, especially within Maidstone Borough along Hermitage Lane, including a relief road to divert the traffic using the

northern part of Hermitage Lane by utilising land at Whitepost Field and a new access to the south of Quarry Wood Retail Park to take pressure off the current and only access on the A20 (see draft/policy LP28 for full details).

6.51 In addition, KCC (Highways) is intending to bring forward a number of junction improvements along the A20 corridor to alleviate existing issues and increase capacity for the future. Significant improvements to the Quarry Wood junction and Coldharbour Roundabout are being brought forward as part of the Maidstone Integrated Transport Strategy.

6.52 As such, the draft plan seeks to deliver significant infrastructure improvements as a key strategic objective (draft policy LP2) planning obligations from major sites, built on an allocation in a local plan, provide opportunities to secure infrastructure enhancements or improvements.

6.53 The allocations in the draft plan, in the case of Aylesford and the surrounds specifically, are predicated greatly on the provision of significant and evidentially necessary infrastructure improvements taking place in tandem. The tangible implications for allowing this site to come forward for 146 residential units could be to import additional pressure onto that infrastructure which has not been calculated and for which there is no evidence base to demonstrate whether the additional capacity could be successfully accommodated.

6.54 This could ultimately result in one of the allocated sites failing to acceptably come forward and thus the LPA not delivering on its planned housing supply.

6.55 Such an occurrence would significantly prejudice the overarching strategy underpinning the plan itself and whilst, in the short term, the provision of the 146 units would contribute towards our supply, this would in no way outweigh the significantly harmful impacts arising. Equally, it should be recognised that the development overall as proposed brings with it no conspicuous benefits to the wider area. Any provision of localised improvements, community facilities or similar are entirely born out of a need to mitigate the impact of these additional units only.

6.56 We continue to work closely with colleagues at KCC (H+T) regarding the evidence base for these potential implications.

Impact on AONB setting:

6.57 This is one aspect of the scheme that we are at this time able to have a greater amount of certainty around concerning potential impact and therefore can provide Members with a more detailed assessment.

6.58 The statutory purpose of the AONB is to conserve and enhance the area's natural beauty. There is a duty on public bodies to have regard to this statutory purpose in carrying out their functions (section 85 of the Countryside and Rights of Way Act

2000). The PPG confirms that this duty also applies to proposals for land outside the designated area but which nonetheless impact upon it.

6.59 TMBCS Policy CP7 requires that:

"Development will not be proposed in the LDF, or otherwise permitted, which would be detrimental to the natural beauty and quiet enjoyment of the Areas of Outstanding Natural Beauty, including their landscape, wildlife and geological interest, other than in the exceptional circumstances of:

a) major development that is demonstrably in the national interest and where there are no alternative sites available or the need cannot be met in any other way; and

(b) any other development that is essential to meet local social or economic needs.

Any such development must have regard to local distinctiveness and landscape character, and use sympathetic materials and appropriate design."

6.60 It will be recognised that the proposed development is not a major development of national interest and is not essential to meet local social or economic needs; the LPA is addressing those needs through the local plan in a strategic manner that is appropriate and there are no tangible benefits arising from the development that would meet a specific identified need more widely. Notwithstanding this, and having made this distinction, I turn to a discussion of the physical impact of the development within the context of the AONB.

6.61 Linked to this, policy SQ1 of the adopted MDE DPD seeks to protect and enhance landscape and townscape by setting out as follows:

Proposals for development will be required to reflect the local distinctiveness, condition and sensitivity to change of the local character areas as defined in the Character Area Appraisals SPD.

All new development should protect, conserve and, where possible, enhance:

(a) the character and local distinctiveness of the area including its historical and architectural interest and the prevailing level of tranquillity;

(b) the distinctive setting of, and relationship between, the pattern of settlement, roads and the landscape, urban form and important views; and

(c) the biodiversity value of the area, including patterns of vegetation, property boundaries and water bodies.

6.62 The text that accompanies this policy acknowledges that in addition to the AONBs in the Borough, there are other broad areas of landscape which are of strategic importance either because they provide a setting to settlements and/or because

they have landscape value in their own right as part of the wider historic landscape of the Borough. It also recognises that Natural England has identified a series of Joint Character Areas across England.

6.63 The requirements of these policies sit squarely with the restrictive policy within the NPPF which recognises the importance of AONBs, stating at paragraph 172 that great weight should be given to conserving and enhancing landscape and scenic beauty in, amongst other areas, Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues.

6.64 More generally, 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.

6.65 The key aspects derived from this statutory and policy context is that there is a need to conserve or enhance the natural beauty of the AONB *and* the quiet enjoyment of it and more broadly there is a clear emphasis on the need to protect, preserve and enhance where possible valued landscapes. There must therefore be an assessment of the physical beauty of the landscape – and the effects of any development – but also the way in which that landscape is experienced.

6.66 In these respects, I turn to Natural England's Joint Character Area assessment, discussed within the context of adopted policy SQ1. These are broad areas of countryside with a unique combination of characteristics. Four of these character areas have been identified in Tonbridge and Malling. These are the:

- North Downs;
- Wealden Greensand;
- Low Weald; and
- High Weald.

6.67 Of particular relevance in this instance is the North Downs. The document describes this as follows:

"The North Downs National Character Area (NCA) forms a chain of chalk hills extending from the Hog's Back in Surrey and ending dramatically at the internationally renowned White Cliffs of Dover. The settlement pattern is characterised by traditional small, nucleated villages, scattered farms and large houses with timber framing, flint walls and Wealden brick detailing. Twisting sunken lanes, often aligned along ancient drove roads, cut across the scarp and are a feature of much of the dip slope. The Kent Downs and Surrey Hills Areas of Outstanding Natural Beauty designations are testament to the qualities and natural beauty of the area."

6.68 The document goes on to state:

"The scarp forms a defining feature along the length of the NCA and panoramic views provide links with adjoining NCAs and beyond. Views across London, the Thames Estuary and to the south help provide the context and setting of this NCA."

6.69 These identified features are readily experienced in relation to the AONB, in particular views south from the scarp towards this site where the small, nucleated villages, scattered farms and sunken historic lanes contribute to the enjoyment of the view from the AONB and make an altogether positive contribution to the value of its setting.

6.70 Furthermore, the Kent Downs AONB Management Plan acknowledges that much of the AONB provides what they term to be surprisingly tranquil and remote countryside – offering dark night skies and peace. These are highlighted as being much valued qualities of the AONB.

6.71 In terms of tranquillity and remoteness, the management plan sets out that the perception of being away from the noise, sights and smells of modern life is a much valued feature of many parts of the AONB where people can refresh body and soul. In the south east of England tranquillity is an increasingly rare resource. Research by the Campaign for the Protection of Rural England (CPRE) has shown that since the 1960s England has lost over 20% of its tranquil areas to urban sprawl, traffic and light pollution. The average size of our tranquil areas has reduced by 73%.

6.72 It also explains that a 2003 CPRE survey documents the loss of dark night skies over the last 20 years through badly designed and sited night lighting. An accepted and often valued part of country living has always been dark, star-filled skies.

6.73 The document goes onto describe the setting of the Kent Downs AONB as being the land outside the designated area that is visible from the AONB and from which

the AONB may be prominently seen, but may be wider when affected by intrusive features beyond that.

6.74 It is not formally defined or indicated on a map and what comprises the setting is thus a matter of evaluative judgment.

6.75 The setting of the AONB landscape should be distinguished from the setting of listed buildings and other heritage assets.

6.76 With this in mind, there is no doubt that the site forms part of the setting of the AONB.

6.77 The management plan acknowledges that development proposals which would affect the setting of the AONB are not subject to the same level of constraint as those which would affect the AONB itself. The weight to be afforded to setting issues must depend on the significance of the impact. Matters such as the size of proposals, their distance, and incompatibility with their surroundings, movement, reflectivity and colour are likely to affect impact.

6.78 Of particular significance to the consideration of the development, the plan states that where the qualities of the AONB instrumental for its designation are affected, then the impacts should be given considerable weight in decisions. This particularly applies to views both to and from the scarp of the North Downs.

6.79 I consider that that the proposed development would have an unacceptably adverse impact on the setting of the AONB both in terms of the natural beauty of the landscape and the quiet enjoyment of that landscape.

6.80 This is derived primarily from the inclusion of a major access road into the development, across unspoilt countryside in a prominent location that would serve the residential development and be of a construction, design and scale that would appear as an alien feature within the landscape.

6.81 Moreover, the way in which the access road would function - being a major adopted highway serving 146 residential units with all the associated paraphernalia that would undoubtedly be installed – would cause significant visual harm which would be further exacerbated by the fact that the road would be situated on rising land (rather than sunken into the landscape in the way of the traditional road networks in the area).

6.82 As such, I disagree with the conclusions of the submitted LVIA that seek to suggest that the development in totality would not be seen from the AONB. The LVIA appears to rely most heavily on the existing landscape being qualitatively damaged by quarrying operations and the use of soft landscaping to screen the development. This conveys an inappropriately narrow interpretation. Landscaping would not successfully mitigate the identified harm.

6.83 In making this assessment I remain mindful that the surrounding landscape is not free from contextual development. This development however does not inform the setting of the AONB and from which key views from it are experienced, which is dominated by insulated pockets of historic development. This is referenced as being characteristic of the landscape in the documents referenced above. The proposed new road would evidently appear incongruous to the landscape setting to the AONB.

6.84 It is also appreciated that KCC granted a temporary planning permission for a haul road in connection with sand extraction operations and that the route of this haul road would effectively follow the same route as that proposed as part of this development. However, I do not consider this to be determinative in this respect for various reasons.

6.85 Firstly, the permission that was granted was temporary (albeit up to 2042) with restoration requirements in the event that quarry operations ceased across the site, and was also parasitic on sand extraction permission being implemented. As such, even if the road had been completed in full and extraction was taking place, the AONB impact would have only been temporary but in any event is at this time nothing more than a theoretical fallback.

6.86 Equally, I am aware that there were pre-commencement conditions imposed on that temporary permission concerning, amongst other matters, the detailed design and construction of the access road, the detail of which I can find no reference of ever having been subsequently approved by the County. Conversely, whilst the current planning application is in outline form, the matter of access is not reserved for future consideration, and so we have adequate details of its location and of its appearance.

6.87 In terms of relative merit, an access to a large-scale residential development would be markedly different in visual terms than a temporary haul road serving a quarry. Equally the level of activity would be quite different, most notably because the minerals permission restricts the number of daily vehicle movements.

6.88 With these considerations in mind, I consider the development would cause unacceptable harm to the setting of the AONB and would demonstrably fail to meet the statutory and policy tests which seek to preserve or enhance the designated setting, and in particular (but not limited to), the setting and associated experience of that setting.

6.89 I do not consider that any suitable conditions could be imposed which would appropriately mitigate this impact.

6.90 Notwithstanding the ongoing concerns related to the absence of an ES addressing the project as a whole, I am able to conclude at this stage on these matters given that they are predicated on two aspects of the development which are fixed as part

of the outline application; the quantum of residential units (146) and the position, size and route of the access road to serve the development.

6.91 In addition, and more generally, an assessment of broader matters concerning the impact on landscape character also fall to be determined in these respects and officers continue to make detailed assessments on this basis.

Designated heritage assets and setting:

6.92 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.

6.93 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.

6.94 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.

6.95 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.

6.96 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.

6.97 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.

6.98 Annexe 2 of the NPPF defines the setting of a heritage asset as being:

"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."

6.99 The only reference to the impact on heritage assets contained within the applicant's LVIA states that:

"The potential for visual intrusion arising from the development is limited to some views from local footpaths and the proximity of the access road to Mill House. With the implementation of mitigation measures outlined in the landscape strategy, it has taken into account the potential for the setting of the listed building to be affected. Any potential visual intrusion should be effectively mitigated."

6.100

As such, the submission itself does not address the potential significant impacts of the development in its entirety in a manner that would be expected of a development of this scale and nature. In this respect, I refer to my earlier commentary concerning the regrettable lack of EIA having been undertaken for the project as a whole.

6.101

There are however certain impacts that can reasonably be assumed given the

relationship between the site and its immediate surroundings in this respect and the detail of this is set out as follows.

6.102

Historic England guidance sets out that where the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting, to accord with NPPF policies consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset. Negative change could include severing the last link between an asset and its original setting; positive change could include the restoration of a building's original designed landscape or the removal of structures impairing key views of it. It is important here to remember that significant effects for the purposes of applying the EIA Regulations also means an assessment of any significant positive effects, not just negative ones.

6.103

Moreover, it should not simply be concluded that because the setting of heritage assets here has for many years been predicated to some extent on the existence of the quarry, that anything other than this remaining in situ would automatically bring about a positive change to setting in all respects.

Old Mill House, Rochester Road (Grade II listed 31.01.2005)

6.104

This is the designated heritage asset with arguably the most direct relationship to the development in question.

6.105

Representations made on behalf of the owner of this property set out that there would be harm arising to the setting of the listed building but indicates that this would be less than substantial when applying the tests and goes on to apply the public benefit tests as required by the NPPF.

6.106

My view is that there is a strong likelihood that the setting of this listed building would suffer a substantial and unacceptable level of harm given the proposed route of the access road. The physical presence of the road would undoubtedly adversely affect the setting by virtue of the introduction of a significant piece of built infrastructure that would also need to be serviced in order to ensure it met adoptable standards. In the longer term, once the development is occupied the road would be utilised continually in a way to be expected by a residential development of this size.

6.107

It follows that the quiet countryside landscape that currently provides the setting of this heritage asset would in my view be irrevocably and significantly harmed.

6.108

Notwithstanding this position (insofar as it relates to the alternative heritage tests to be applied), I consider that only modest public benefit would arise from the development militating in favour of conceding this harm even in the event that less than substantial harm were to be concluded.

6.109

My conclusions and comparisons drawn in respect of the access road and the impact on the AONB also fall to be applied in this instance.

22-32 Mount Pleasant (Grade II listed 25.02.1987)

6.110

These listed buildings form a row of two-storey ragstone cottages (circa 1860-70). They are situated to the immediate south-west of the application site, separated by the adjacent public footpath which runs along the site boundary linking Mount Pleasant to Vicarage Court and the bank of protected trees which are located within the site itself. This effectively provides the immediate setting for the row of cottages at its point nearest the application site, with the quarry beyond set at a much lower ground level. In the short term, there is potential for this setting to be significantly adversely impacted by land stabilisation and raising works that would be required in order to facilitate the residential development (notwithstanding the current lack of detail we have before us in this respect). Equally, once in occupation the residential development would have a direct relationship with the listed buildings, but given that the application is made in outline with matters of layout, appearance and scale all reserved for future consideration that cannot be fully assessed at this time.

Trinity Court, Rochester Road (Almshouse row, Grade II* listed 01.08.1952)

6.111

The almshouses are situated on the opposite side of Rochester Road to the application site, at a lower ground level to the highway and the listed cottages addressed above. These are arguably the buildings with the least direct relationship to the site given distances and land levels. The immediate setting forms private gardens with the higher level road beyond. However, the wider setting is formed of the application site meaning that the short and long term aspects discussed above would also require consideration within the context of these heritage assets.

Aylesford Conservation Area:

6.112

In this respect, I would draw specific reference to the material points made in representations received which notes:

"The historic village of Aylesford will be detrimentally affected. Over the past few decades Aylesford has seen an onslaught of development to the east and west (industry) and to the south (housing). The only connection the historic village now has with its historic setting is to the north, towards the North Downs, Little Kits Coty and Kits Coty. The current proposal would eliminate that connection and open a new front for development north of the village."

6.113

The Conservation Area (CA) is not subject to a detailed, adopted appraisal. However, it is clear that the boundary of the site (which also forms the edge of the CA) forms a marked distinction between the built up area of the historic village and the countryside beyond. Whilst the site may be considered to be harmed in landscape or environmental terms by the quarrying activities that have taken place over the years, it is, in visual terms, clearly reflective of the countryside setting rather than the historic village.

6.114

Even in the event that quarrying resumed across the site in accordance with the extant permission, the visual relationships between the site and the designated heritage assets would remain largely as they do now. It is accepted that such a scenario would bring about an increase in the level of activity and this may have an impact on setting. However, when compared to some remaining unknowns (arising from the absence of the EIA at the present time) arising from the restoration, subsequent residential development of the site and its long-term occupation and associated appearance and activities, it cannot in my view be positively concluded that the appeal development would appropriately meet the statutory or policy tests.

6.115

In all respects, I conclude that there is a strong likelihood that designated heritage assets will, not least in the long term, be substantially and unacceptably harmed by the appeal development.

6.116

Even however were the heritage harm considered to be less than substantial (but in the absence of EIA addressing the whole project, this cannot be soundly concluded), the appeal development would not in my view give rise to public benefits capable of outweighing the arising harms, meaning that under either scenario arising under the statutory duty and national policy on heritage impacts, the development would be unacceptable.

Affordable housing:

6.117

Any major housing development would be expected to provide affordable housing in line with adopted Council policy. Policy CP17 of the TMBCS states that development should provide 40% affordable housing. Government policy on

affordable housing is contained in section 5 of the NPPF. This states that when a need for affordable housing is identified planning policies should establish housing requirement, what type of affordable housing is required and what level of provision there should be.

6.118

The developer sets out that to require a higher level of affordable housing would render the scheme unviable based on exceptional costs. Consultants have been commissioned to analyse this on the Council's behalf and this work is ongoing. However, it is clear that the current offer of 17% falls far below the policy requirement of 40% and at this time the failure to accord with this adopted policy in the absence of any material considerations suggesting otherwise will form part of the basis of the Council's case against the appeal development.

Highway implications:

6.119

Section 9 of the NPPF deals with transport related issues. In particular paragraphs 109-111 state:

109. 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.

110. 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.

111. 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.

6.120

With regard to the highways implications of the development the application has been supported by a full transport assessment as a standalone document which considers the highway implications arising solely from the completed and occupied residential development only, rather than inclusive of the short and medium term impacts of any restoration scheme. My earlier comments concerning the need for EIA addressing the project as a whole have application here also.

6.121

This document indicates that it is anticipated that the majority of the vehicle movements resulting from the residential development would head north from the site to join the A229. The limited movements which have been modelled as travelling south through Aylesford village show minimal traffic flow increase at the junction of Station Road and Forstal Road. The developer holds out some improvements to this junction in the form of realigning the kerbs and providing overruns and new road markings.

6.122

In this respect, I return again to the implications arising for the draft local plan. Members are well aware of the traffic modelling works that have been undertaken with regard to the M20/A20 corridor.

6.123

At this juncture, we consider that there remain a number of uncertainties as to whether the infrastructure improvements that effectively underpin the development strategy set out in the draft plan will be adversely impacted should this development come forward on a standalone basis. We are in communication with colleagues at KCC in these respects and are requesting that further analysis take place as this is likely to form a key part of our evidence moving forward.

Overall conclusions:

6.124

As above, paragraph 11(d) of the NPPF sets out that where there are no relevant development plan policies, or the policies which are most important for determining the application are 'out of date' (which they would be, in light of the Council's housing land supply being below a 5 years level of supply), planning permission should be granted unless:

(i) the application of policies in the NPPF that protect areas or assets of particular importance (which include AONB policy) provides a clear reason for refusing the development proposed; or

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

6.125

Paragraph 11(d) has been considered with regard to both limbs (i) and (ii), in the alternative, in order to provide a complete assessment. So, it is considered, applying limb (i) that the application of AONB policy provides a clear reason in respect of this appeal for refusing the development proposed. Even however were this not the case, I have gone onto consider whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. As to limb (ii), I consider that the adverse impacts of granting permission – arising, in this case, from multiple and significant conflicts with development plan policy - would significantly and demonstrably outweigh its few, modest benefits.

6.126

As above however, there inevitably remain at the present time a number of matters in respect of which assessment remains incomplete in part or are naturally incapable of full appraisal at this stage, especially given the Appellant's belated minerals submission to KCC. It is not anticipated that the completion of this assessment will fundamentally change my overall conclusions with regard to paragraph 11(d) but, of course, this will properly be kept under close review.

6.127

Where detailed analysis has been possible at this stage (as detailed in this report) it is concluded that conspicuous and unacceptable harm would be caused by the appeal development. There are also not considered to be any benefits arising from the appeal development that are capable of providing sufficient justification for approval, applying paragraph 11(d) of the NPPF.

6.128

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.

6.129

In making my recommendation, I make Members aware that this report only seeks to address the matters in dispute with the developer that will likely inform our case on appeal. This case will naturally develop however as the timetable becomes clearer in parallel to the submission of the local plan to the Secretary of State and through the further work we are continuing to undertake. Officers will continue to update Members on all matters as the appeal progresses.

6.130 Equally, there are matters that – notwithstanding the issues set out above – might become capable of being "common ground" between the parties. I 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.

6.131 At this juncture, it will be clear to Members that even at this preliminary stage of the appeal, the framework within which we will be required to operate will be evolving. Not least, the appellant has already sought to significantly revise their position through formal submissions to KCC concerning the minerals consent and that behaviour is likely to escalate as the inquiry approaches. The Council will be updating its position regarding the draft plan towards the end of the year.

6.132 In the event that is considered the appellant is acting unreasonably in some manner, advice will be sought by the Council regarding its position in seeking an award of costs.

7. Recommendation:

7.1 With regard to matters known to the Local Planning Authority at the present stage, 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 development to which the appeal relates forms part of a wider project for the purposes of applying the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, whereby the residential development of the site is predicated on the extinguishment of an extant minerals consent and associated scheme of restoration which requires Environmental Impact Assessment to be undertaken in order to establish any and all individual and cumulative significant effects arising in the short, medium and long term and any required mitigation measures, through the production of an adequate Environmental Statement. The Local Planning Authority is aware that submissions have been made to Kent County Council, as Minerals Planning Authority, inviting the variation of conditions imposed on the extant minerals consent to allow for its extinguishment within the context of an associated scheme of restoration and that these submissions are accompanied by an Environmental Statement. Insofar however as this may be adequate for KCC's decision making, this merely addresses part of the relevant, wider project, and so will not prove

determinative of the Council's own consideration of the appeal development. In the absence of such an assessment having been holistically and properly undertaken, the Local Planning Authority considers that determination of the application to which the appeal relates is not reasonably practicable, and moreover, to purport to make such a decision may be contrary to the EIA Regulations. Separately, in the absence of such an assessment being undertaken, the Local Planning Authority is unable to complete important assessments on matters including (but not limited to) the following:

- Implications of required earthworks particularly but not necessarily limited to in respect of public safety and amenity;
- Effects of land stabilisation and remediation particularly but not necessarily limited to in respect of public safety and amenity;
- Appropriate and finished land levels;
- Cumulative highway impacts for the lifetime of the project as a whole;
- Short, medium and long term impacts on residential amenity; and
- How the setting of designated heritage assets might be affected in respect of all matters set out above.

2 Until such time (if any) as KCC as Minerals Planning Authority accepts the submissions made concerning the extinguishment of the extant minerals consent and the purported restoration scheme, the proposed remains contrary to the development plan insofar that the site is safeguarded by the Minerals and Waste Plan 2011 - 2031 and is therefore contrary to policies CSM5 and DM7.

3 The appeal development, by virtue of the location, route, size and design of the access road to serve the residential development and resultant levels of activity, would cause unacceptable harm to the natural beauty and quiet enjoyment of the immediate setting of the Kent Downs Area of Outstanding Beauty, contrary to local and national policies requiring preservation or enhancement. No appropriate conditions could reasonably be imposed to sufficiently mitigate these adverse impacts.

4 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 Aylesford Conservation Area. Not least in the absence of an Environmental Statement which relates to the project as a whole, the Local Planning Authority is not persuaded that the appeal development would satisfactorily preserve or enhance the setting of designated heritage assets in a manner required by the National Planning Policy Framework 2018 and the statutory duty provided for in the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990.

5 The appeal development proposes merely 17% of affordable housing, contrary to the requirements of policy CP17 of the adopted Tonbridge and Malling Borough Core Strategy (2007). There are, at this time, no material considerations or justificatory reasons that justify departure from adopted policy.

6 The Local Planning Authority considers that there is a strong likelihood that the appeal development would substantially and unacceptably prejudice the Council's forthcoming strategic objectives, as set out in the draft/Local Plan, for future housing delivery and, separately, for future delivery of associated infrastructure improvements.

7.2 In addition, it should **BE NOTED** that Officers will continue to update the Planning Committee through regular information reports and/or briefing sessions as deemed appropriate in liaison with the Chairman on matters pertaining to:

- The assessment and likely timeframes for determination of the associated applications to the County Council as Minerals Planning Authority as these will have direct implications for the Council's case in respect of Reasons for Refusal 1 and 2 as set out above.

- Internal officer assessment of the associated applications to the County Council as Minerals Planning Authority particularly with regards to whether the submitted Environmental Statement is fit for purpose given the ultimate end use is proposed for residential development. This assessment will be undertaken within the context of the ongoing view that the Environmental Impact Assessment relates to only one part of a wider project.

- Whether the Secretary of State ultimately agrees the Local Planning Authority's view that the residential development forms part of a wider project that properly requires holistic assessment and thus directs the appellant to provide an Environmental Statement accordingly. In the event that such action is reached by the Secretary of State, there will need to follow an enlarged review of the scheme in whole and a further substantive report provided to the Committee for its consideration;

- Ongoing viability work due to be undertaken by external consultants, within the context of Reason for Refusal 5 as set out above;

- The Council's 5 year housing land supply and any associated implications for decision making, including with reference to any appeal decisions coming forward in the period up to the public inquiry;

- Ongoing liaison with colleagues at KCC (Highways) concerning matters of local highway capacity and prejudice to the draft plan infrastructure improvements; and

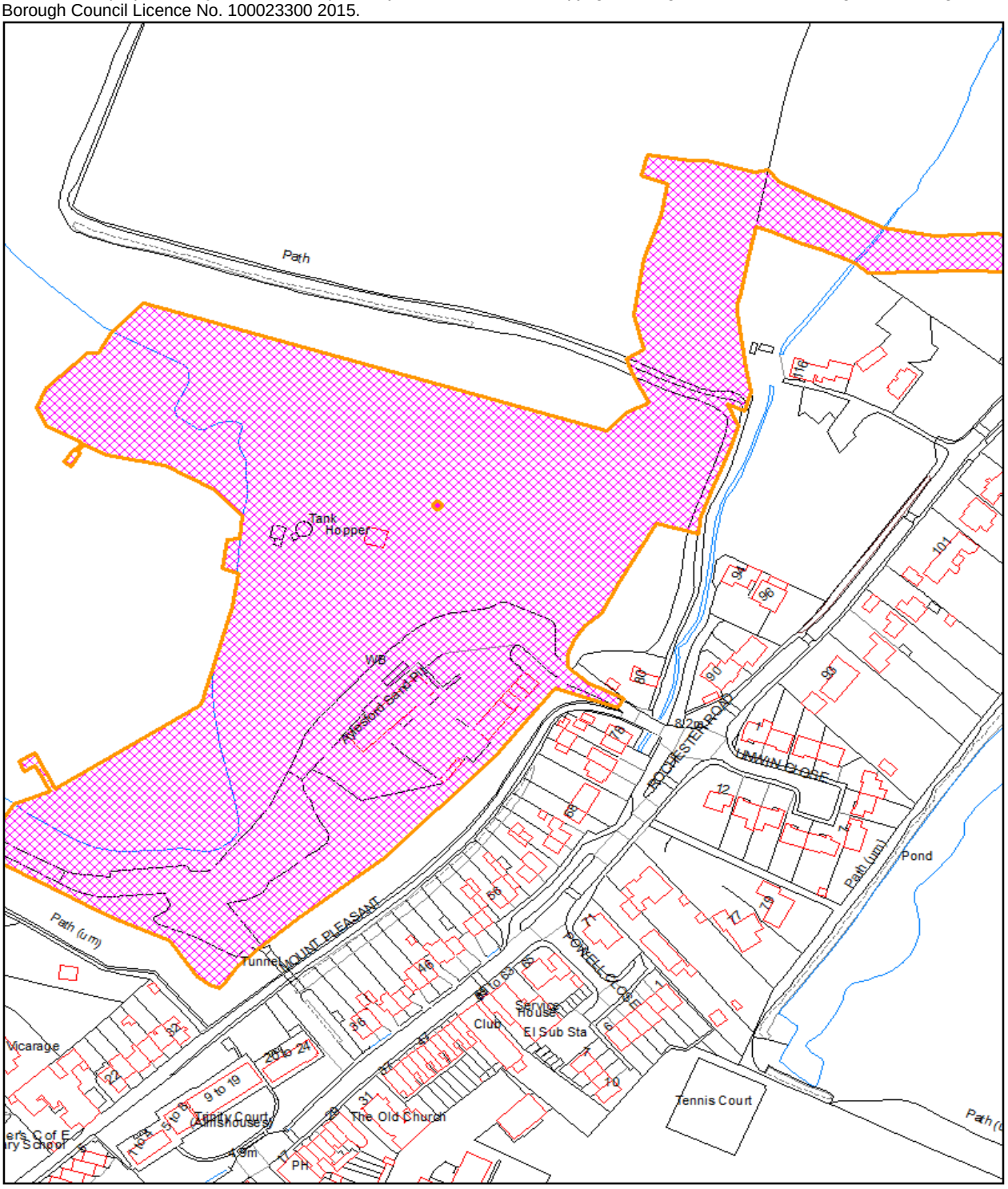
- Any further information provided by the Appellant on matters pertaining to adverse impacts on the Area of Outstanding Natural Beauty and/or designated heritage assets.

Contact: Robin Gilbert

TM/17/02971/OA

Development Site Eastern Part Of Former Aylesford Quarry Rochester Road Aylesford Kent

Outline application with all matters reserved except for access: 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 (cafe/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



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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.

ANY REPORTS APPEARING AFTER THIS PAGE CONTAIN EXEMPT INFORMATION

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