

**Kings Hill**  
Kings Hill

**21 December 2018**

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

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

(B) Outline Application: Redevelopment to provide up to 70 Class C3 residential units, together with landscaping, open space and other associated works. All matters reserved for future approval except for access (Site 5.6)

(C) Outline Application: Redevelopment to provide up to 210 Class C3 residential units, together with landscaping, open space and other associated works. All matters reserved for future approval except for access (site 5.2-5.3)

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

Go to: [Recommendation](#)

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## **1. Description:**

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

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

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

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

- 1.5 Application (B): this development, again for up to 70 residential units is proposed to be accessed directly via the A228, at the south-westerly corner of the site. A secondary access road is shown to be linking up with the internal Abbey Wood Road. The submitted illustrative master plan for this site suggests a buffer could be provided along the A228, with three residential blocks to be provided centrally within the site, surrounded by internal access roads and car parking.

- 1.6 Heights across this site are proposed to range between a maximum of 3 storeys fronting Malling Road and 2.5 storeys to the rear of the site.

- 1.7 A suggested breakdown of units (indicative only at this stage) is set out within the Planning Statement as follows:

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

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

1.9 Heights across this site are proposed to range from 3-storeys in the core area near to the office uses, wrapped by single-family dwellings up to a maximum of 2.5 storeys. This strategy intends to provide an area of higher density development close to the site entrance.

1.10 A suggested breakdown of house types (again, indicative only at this stage) is set out within the Planning Statement as follows:

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

1.11 The proposed development falls within Schedule 2 10 (b) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and therefore has been subject to Environmental Impact Assessment (EIA).

1.12 As such, an Environmental Statement (ES) has been submitted as part of the planning application. This is prepared to assess the environmental effects of the development in line with the statutory requirements contained within the Regulations. The purpose of the ES is to inform decision making by explaining the likely significant effects that the development may have on the environment during construction and once it is complete and how negative effects can be avoided or reduced. The EIA has been informed by a series of technical studies which form part of the ES. These studies include surveys, calculations and other forms of modelling as necessary.

1.13 An ES is intended to consider the likely effects of the development on its neighbours, local environment, local and regional economy, as well as the wider area. The environmental effects of the development are to be predicted in relation to sensitive receptors, including human beings, built resources and natural resources.

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

## **2. Reason for reporting to Committee:**

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

## **3. The Sites:**

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



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

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

*Benefits of the proposed developments:*

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

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

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

Loss of employment land:

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Highway safety, capacity and parking provision:*

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

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

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

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

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

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

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

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

- 6.48 Given the scale, nature and location of the developments, it is necessary to establish impacts in terms of both the strategic highway and local highway networks. Highways England and KCC (H+T) have provided detailed, comprehensive representations on these respectively (reproduced in full at Annexes 1 – 3), the former being chiefly concerning with capacity at Junction 4 of the M20.
- 6.49 Chapter 13 of the submitted ES addresses transport and access effects arising from the development. It sets out the study area, particular junctions and roads tested and concludes on necessary mitigation to be embedded into the developments in order to ensure any significant effects are suitably mitigated. Crucially, the ES concludes that there is no need for any “significant” mitigation measures to highway junctions, stating that effective mitigation is already in place. Some small scale proposals such as changes to the A228/Kings Hill (Blaise Farm) roundabout are embedded in the TA. The submitted TA further expands on mitigation measures and these have been fully considered by KCC (H+T) in their latest representations on the applications. Annexes 1 – 3 set out in full the latest set of representations made by KHS. These provide statutory advice based on detailed technical assessments of the proposed development, including the purported mitigation measures to improve certain junctions. I have given full regard to those comments in making the assessment that follows.
- 6.50 It is clear that the evidence provided to date has allowed for some detailed analysis of potential impacts and mitigation measures to take place. However, it is equally clear that proposed mitigation in a number of circumstances has not been properly or comprehensively worked up to a point whereby it can be concluded the developments would not cause harm to highway safety and capacity. KHS continue to conclude that there remain some key junctions where the impact would be severe. Suggestions have been made by KCC (H+T) that contributions could be sought to allow for improvements to be made, linked to the Infrastructure Delivery Plan but these have not been worked up, tested or designed at this stage.
- 6.51 As such, there is a question as to whether such schemes are deliverable or any evidence to suggest that they would mitigate adequately the impacts arising from the developments here in any case.
- 6.52 A High Court judgement in this respect is key (*Gladman Developments Ltd v SSCLG & CPRE (Kent) [2017] EWHC 2768 (Admin.)*). This case centred on whether or not adverse impacts on two AQMAs could be satisfactorily overcome by the payment of a financial contribution to fund mitigation measures. Specifically, the planning inspector had concluded that there was no evidence of the likely effectiveness of such mitigation measures to reduce NO<sub>2</sub> emissions and the appeal was dismissed. It was this decision that was subject to the challenge by Gladmans through the Court but was ultimately unsuccessful, with the judge considering that the financial contributions to mitigate adverse impacts on air quality ‘had not been shown to translate into actual measures ...’.



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

*Biodiversity and nature conservation:*

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

6.60 Policy NE4 further sets out that the extent of tree cover and the hedgerow network should be maintained and enhanced. Provision should be made for the creation of new woodland and hedgerows, especially indigenous broad-leaved species, at appropriate locations to support and enhance the Green Infrastructure Network.

6.61 These policies broadly accord with the policies of the NPPF. In particular, paragraph 170 states that planning policies and decisions should contribute to and enhance the natural and local environment by (inter alia) protecting and enhancing sites of biodiversity value and minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

6.62 I am satisfied that, on the basis of the submissions and the suggested mitigation put forward within the ES, impacts on biodiversity and ecology could be adequately addressed so as to accord with the requirements of these policies.

Ground conditions and land contamination:

6.63 Paragraph 178 of the NPPF states that planning policies and decisions should ensure that:

a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);

b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and

c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.

6.64 Paragraph 179 makes clear that where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner

6.65 Ground conditions are addressed in Chapter 11 of the ES and this confirms that in most cases there would be a negligible environmental impact arising and that in the case of soil contamination a minor beneficial effect in the long term at local level as a result of necessary remediation measures. The conclusions in these respects appear to be sound and, as such, the applications accord with paragraph 178 of the NPPF.

*Flooding and drainage:*

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

*The draft local plan:*

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

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

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

6.73 Paragraph 49 then advises that this, when taken in the context of the NPPF and *“in particular the presumption in favour of sustainable development - arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:*

*a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and*

*b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.”*

6.74 Paragraph 50 goes on to make clear that where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process.

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

*“... I understand Guidance to mean that the emerging plan should be sufficiently advanced to be not yet formally part of the Development Plan, i.e. that the examining Inspector’s Main Modifications have been published, so that it is reasonably clear what final form the plan would take, even though it has not been finalised or formally adopted”.*

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

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

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

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

*Planning obligations:*

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

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

- 6.80 Regulation 122 of the CIL Regulations also sets out that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development.
- 6.81 Policy CP17 of the TMBCS states that in urban areas affordable housing provision will be sought on all sites of 15 dwellings or above at a level of 40% of the number of dwellings within that scheme (70% affordable rent, 30% shared ownership). Only in exceptional circumstances should off-site provision be secured or a commuted sum provided in lieu of on-site provision. In this respect, the submission indicates that a policy compliant level of affordable housing would be provided for across each of the sites although the precise details of that provision has not been set out at this stage. Had the proposals been acceptable in all other respects, this would have been the subject of detailed negotiations between the parties to ensure local need was being appropriately met on this sites culminating in an agreed legal agreement to secure the necessary provision in the event that outline planning permission was granted.
- 6.82 Policy OS3 of the MDE DPD required all developments of 5 units or more (net) to provide an open space provision in line with Policy Annex OS3. The policy sets out that, where possible to do so, open space should be provided on-site. The indicative plans show that the development would incorporate a level of on-site provision across the three sites. This, along with any necessary off-site contributions, could suitably be secured by legal agreement in the event that the developments were deemed to be acceptable in planning terms.
- 6.83 Local planning authorities should work with other authorities and providers to assess the quality and capacity of infrastructure for transport, water supply, wastewater and its treatment, energy (including heat), telecommunications, utilities, waste, health, social care, education, flood risk and coastal change management, and its ability to meet forecast demands.
- 6.84 The representations received from various providers in connection with these applications have been reproduced within the associated annexes to this report and in all instances mitigation required could be appropriately secured via legal agreement had the development proposals been acceptable in all other respects.
- 6.85 However, the significant harms identified as arising through the proposed development within the preceding assessment cannot be suitably overcome in a manner that would meet the requisite tests, for the reasons set out in the detailed assessment.

Planning balance and overall conclusions:

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

**7. Recommendation:**

Application (A)

**7.1 Refuse outline planning permission** for the following reasons:

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

Application (B)

**7.2 Refuse outline planning permission** for the following reasons:

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



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

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

#### Application (C)

#### **7.3 Refuse outline planning permission** for the following reasons:

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

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

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