

**West Malling**  
West Malling And  
Leybourne

**12 September 2018**

**TM/18/02093/OA**

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| Proposal: | Outline Application: Development comprising up to 80 residential dwellings (including 40% affordable housing), open space, drainage, access and associated works, with all matters reserved except for access which is to be considered in detail at this stage |
| Location: | Field At Corner Of Lavenders Road And Swan Street West<br>Malling Kent                                                                                                                                                                                          |
| Go to:    | <a href="#"><u>Recommendation</u></a>                                                                                                                                                                                                                           |

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### **1. Description:**

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

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

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

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

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

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

**3. The Site:**

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

**4. Planning History (relevant):**

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

Removal of derelict tennis court and replacement with dressage arena

**5. Consultees:**

DPHEH:

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

**5.1 West Malling PC: Objections raised, summarised below:**

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

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

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

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

5.3 EA:

Initial response dated 04 October 2018:

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

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

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

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

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

*Subsequent response received 09 November 2018:*

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

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

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

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

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

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

5.3.10 Planning conditions are requested.

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

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

5.5 Highways England: No objections raised

5.6 KCC (H&T):

*Initial response dated 03 October 2018:*

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

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

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

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

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

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

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

*Further response received dated 31 January 2019:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.15 Kent Fire Brigade: No comments received.

5.16 Network Rail: No comments received.

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

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

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

## 6. Determining Issues:

### Preliminary matters:

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

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

- 6.2 Members will be aware that the draft local plan has been submitted to the Secretary of State but that no date has been set as yet for the examination to take place. This site does not feature as a proposed allocation for housing development within the overall strategy. Moreover, the site is proposed to form part of an extended Green Belt. In all likelihood, the determination of this appeal will happen prior to the outcome of the local plan process.
- 6.3 Under paragraph 48 of the NPPF, a local planning authority can give weight to relevant policies in an emerging plan according to (1) the stage of preparation of the plan, (2) whether there are unresolved objections to the relevant policies and (3) the degree of consistency of the relevant policies with the NPPF.
- 6.4 Paragraph 49 then advises that this, when taken in the context of the NPPF and *"in particular the presumption in favour of sustainable development - arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:*
  - a) *the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and*
  - b) *the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area."*
- 6.5 Paragraph 50 goes on to make clear that where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process.
- 6.6 In relation to these provisions, whilst the draft local plan has been submitted to the Secretary of State for examination, this has yet to be taken forward and therefore the inclusion of the site within the Green Belt (Policy LP11) has not been tested at examination. Equally, the site in question would represent a very small proportion of the proposed Green Belt extension in terms of site area and would be seen directly in the context of West Malling itself, on the very edge of that existing settlement.
- 6.7 I can therefore conclude that limited weight can be afforded to the draft plan at this stage in respect of this site and the proposal to include the land as part of the Green Belt extension cannot at this time represent a reasonable or justifiable putative ground of refusal. My conclusion being that the specific development

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

- 6.8 Furthermore, confirmation by Highways England that this development coming forward at this time would not severely affect the strategic road network when viewed in connection with proposed strategic allocations and other committed development. This means that there would be no prejudice to any of the specific housing allocations within local plan arising from this scheme coming forward at this time.
- 6.9 These conclusions relate only to the consideration of the policies contained within the draft local plan in respect of the Green Belt extension and highway related matters. All other matters of assessed impact are addressed below in the usual way within the context of the adopted development plan and national policy as required.

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

- 6.10 Policy CP15 of the TMBCS sets out a requirement for the provision of at least 6,375 dwellings in the plan period 2006 – 2021, equating to 450 units per year. Historically the Council has persistently over-delivered on that requirement due to a highly successful strategy of allocating sites through plan making right across the Borough including the Kings Hill airfield along with many sites that had historically been used for a range of industrial and manufacturing activities but had reached a natural end of operational life. Those sites in some cases are continuing to be delivered but many have been in residential use for some time and inevitably there are fewer sites representing similar opportunities now.
- 6.11 For the purposes of this scheme and appeal, the Council cannot demonstrate a 5 year supply of housing land. For decision making purposes, this means that the presumption in favour of sustainable development as set out in paragraph 11 of the NPPF falls to be applied.
- 6.12 Paragraph 11 of the NPPF states that planning decisions should apply a presumption in favour of sustainable development. Under paragraph 11(d), where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless:
  - i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (footnote 6); or

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

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

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

Designated heritage assets:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other planning harm identified:

6.37 With the above in mind, it is now necessary to establish whether any further harms are identified that result in the development proposed conflicting with the policies contained within the Framework and adopted planning policy.

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

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

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

6.40 Paragraph 130 goes on to state that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with

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

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

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

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

Planning Balance and Conclusion:

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

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

6.45 However, the development would cause harm to a number of designated heritage assets in the immediate vicinity which would not be clearly outweighed by these identified benefits. As such, there are specific policies relating to protected assets (designated heritage assets) advised in footnote 6 of the NPPF that provides a clear reason for refusing the proposed development and in accordance with paragraph 11(d) (i), the presumption in favour of sustainable development therefore does not apply in this case.

6.46 Furthermore, it is considered that the development would result in significant harm to the pattern of development and character of the area due to the scale, density and form of the development, contrary to the requirements of adopted development plan policy and the policies contained within the NPPF.

6.47 Whilst it is recognised that the Council does not have a 5 year housing land supply at this time, it certainly does not follow under national policy that *ad hoc* residential development of this nature, especially that which has ostensibly not been well-considered or planned for and that demonstrably would cause unacceptable levels of harm (including to the highly protected environment and heritage assets), should be approved.

## 7. Recommendation:

7.1 The Secretary of State (through his Inspector) and the Appellant be advised that, had the Local Planning Authority been in a position to determine the application at this time, it would have **Refused Outline Planning Permission** on the basis of, and having regard to, the following:

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

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

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