

**East Malling &  
Larkfield**  
East Malling

**21 December 2018**

**TM/18/03031/OAEA**

Proposal: Outline Application: Redevelopment to provide up to 85 Class C3 residential units, together with landscaping, open space and other associated works. All matters reserved for future approval except for access (Site 5.4)

Location: Development Site North Of 51 Amber Lane Kings Hill West Malling Kent

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## 1. Description:

- 1.1 Outline planning permission is sought for the construction of up to 85 residential units along with associated infrastructure and landscaping. The application indicates that provision of 40% affordable housing would be made as part of the development. All matters except access are reserved for future consideration.
- 1.2 Vehicular access is proposed to be taken by extending the existing route off Amber Lane. A secondary emergency access route is proposed to be provided from Sandow Place. These are effectively proposed to run in tandem either side of the designated ancient woodland.
- 1.3 An illustrative masterplan has been provided setting out how a development of this nature and quantum could be laid out within the site, indicating areas of landscaping and buffers around the edge of site. The associated design and access statement indicates that the units would take the form of apartments and houses, limited to a maximum of 3 storeys in height in the central part of the site, with buildings up to 2.5 storeys towards the edge.
- 1.4 A small ecological enhancement area is shown to be provided within the northern part of the site.
- 1.5 Whilst precise details of the mix of units are not for determination at this stage, an indicative breakdown of the development is set out below:

Dwelling Type	No. of units
1-bed flat	10
2-bed flat	2
2-bed house	13
3-bed house	32

4-bed house	22
5-bed house	6
TOTAL	85

- 1.6 Although submitted as a standalone application, this was submitted alongside four other applications by Liberty proposing residential development on parcels of land within their ownership. The application proposing the development of land at Heath Farm is reported elsewhere in this agenda whilst the three other applications are to be reported separately to Area 2 Planning Committee on 29 May 2019. The outcomes of these applications will be reported as a supplementary matter for Member's information.
- 1.7 The proposed developments taken cumulatively fall within Schedule 2 10 (b) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and therefore have been subject to Environmental Impact Assessment (EIA). 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 they 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.
- 1.8 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.
- 1.9 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.
- 1.10 The contents and conclusions contained within the ES are considered throughout the detailed assessment of the scheme which follows.
- 1.11 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 In the event that Council then granted 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 Site:**

- 3.1 The site lies within the designated countryside, outside any defined settlement confines. The existing edge of the Kings Hill settlement lies around 90m (at its nearest point) to the south of the application site.
- 3.2 The main part of the site is currently formed of a single field, which is not subject to any particular forms of planning protection or designation. It is currently used informally for recreational purposes.
- 3.3 Pedestrian access is currently afforded to the main part of the site via links from the end of Amber Lane and Sandow Place, the latter of which forms a public right of way running along the western boundary of the site.
- 3.4 Designated ancient woodland lies between the existing settlement boundary and the application site. A proportion of this also falls within the application site insofar as it relates to the creation of the proposed emergency access. The boundary is denoted by chestnut post fencing and a distinct buffer.
- 3.5 The northern, western and eastern boundaries of the site are defined by tall, well-established trees.

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

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

**5. Consultees:**

- 5.1 Kings Hill PC: Objections raised on the following (summarised) grounds:
  - Access is inadequate and would have a severe impact;
  - Loss of open space;

- Additional traffic cannot be supported by the existing highway network;
- Lack of supporting infrastructure in place including doctors surgeries and school provision;
- Site is proposed to be allocated within the Green Belt extension as set out in the draft local plan;
- Adverse impact on nature conservation and biodiversity;
- Site is actually a considerable walking distance to nearest shops and facilities.

5.2 West Malling PC: Objects – this is an unacceptable development in the countryside, contrary to policy CP14, it is on land designated as Green Belt in the new local plan and would result in the loss of local open space.

5.3 EM&L PC: Objections raised on the following (summarised) grounds:

- Site is intended to be included within the Green Belt;
- Detrimental impact on ancient woodland;
- Loss of open green space;
- Impacts on public access and footpaths;

5.4 Teston PC: Objections raised on the following (summarised) grounds:

- Inadequate access;
- Additional traffic generation;
- Adverse impact on quality of life of existing residents;
- Potential for further development if this development and Heath Farm are allowed;
- Site is not sustainable

5.5 Wateringbury PC: Objections raised on the following (summarised) grounds:

- Site is proposed to be within the Green Belt as part of the new local plan;
- Increased levels of traffic;
- Increased levels of pollution

5.6 Woodland Trust: Objections on grounds of damage and loss to ancient woodland, as follows (reproduced in full):

### **Ancient Woodland:**

5.6.1 Natural England defines ancient woodland “as an irreplaceable habitat [which] is important for it’s: wildlife (which include rare and threatened species); soils; recreational value; cultural, historical and landscape value [which] has been wooded continuously since at least 1600AD. It includes:

- Ancient semi-natural woodland [ANSW] mainly made up of trees and shrubs native to the site, usually arising from natural regeneration
- Plantations on ancient woodland sites – [PAWS] replanted with conifer or broadleaved trees that retain ancient woodland feature, such as undisturbed soil, ground flora and fungi”

5.6.2 Both ASNW and PAWS woodland are given equal protection in the National Planning Policy Framework (NPPF) regardless of the woodland’s condition.

### **Planning policy**

5.6.3 National Planning Policy Framework, paragraph 175, states: “When determining planning applications, local planning authorities should apply the following principles:

c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons<sup>58</sup> and a suitable compensation strategy exists;” Footnote 58, defines exceptional reasons as follows: “For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public would benefit would clearly outweigh the loss of deterioration of habitat.”

5.6.4 There is no wholly exceptional reason for the development in this location and as such it should be refused on the grounds that it does not comply with national planning policy.

5.6.5 Further to this, paragraph 170 of the NPPF states the following: “Planning policies and decisions should contribute to and enhance the natural and local environment by : minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures”. Where an application involves the loss of irreplaceable habitats, such as ancient woodland, net gains for biodiversity cannot possibly be achieved.

5.6.6 Paragraph 5.4.17 of Tonbridge & Malling Borough Council’s ‘Managing Development and the Environment DPD’ states: “Within Tonbridge and Malling, there are 255ha of ancient woodland. Nationally, ancient woodland is identified as a valuable and, by definition irreplaceable, biodiversity resource. Development that would result in loss or deterioration will therefore not normally be permitted.

The nature conservation value of woodland generally increases with age provided it is appropriately managed and consequently the diversity of species occurring in Ancient Woodland cannot be recreated by replacement planting.”

5.6.7 Policy NE4 of the Manging Development and the Environment DPD states:

“Ancient woodland will be protected, and where possible, enhanced through improved management. Development that would adversely affect ancient woodland will not be permitted unless the need for, and benefits of, the development in that location can be demonstrated to override the harm that would be caused to the ecological and historic importance of the ancient woodland.”

5.6.8 We understand that the council’s new Local Plan is currently being considered by the Planning Inspectorate, however policy within this Local Plan strengthens previous wording for the protection of ancient woodland, stating in LP11: *“For listed buildings and ancient woodland the Council will apply the policy in the National Planning Policy Framework or whatever represents the relevant national planning policy at the time the planning application is determined.”*

5.6.9 It is clear that existing and newly proposed local plan policy favours the protection and retention of ancient woodland and that the current development proposals would clearly contravene these policies.

### **Impacts on ancient woodland**

5.6.10 The application in question involves the construction of a considerably sized residential development adjacent to the north side of the ancient Warren Wood. As part of locating housing in this area, two different means of access have been proposed the development site: a main access to the east of the ancient woodland and an emergency access road to the west of the ancient woodland. Considering the various element of this application the Trust is concerned about the following impacts:

- Direct loss of ancient woodland from the creation of access to the site.
- Intensification of the recreational activity of humans and their pets can result in disturbance to breeding birds, vegetation damage, soil compaction, removal of deadwood, litter, and fire damage.
- Fragmentation as a result of the separation of adjacent semi-natural habitats, such as small wooded areas, hedgerows, individual trees and wetland habitats.
- Disturbance by noise, lighting, vibration, and other activities from the development during both construction and operational phases.

- Damage to the wood edge where branches or even whole trees overhang access tracks, paths, working areas and bunds can be indiscriminately felled, lopped, topped or removed, causing reduction of the woodland canopy.
- The introduction of hard-standing areas can result in hydrological changes through the creation of new run-offs, altering ground water and surface water quality and quantity. Run off, drainage issues and dust loaded rainwater drift from the development can affect the adjacent woodland's water sources from pollution, contamination, etc.
- Residential development can provide a source of non-native plants and aid in their colonisation.

5.6.11 The siting of this development in this location is likely to result in both damage and loss to ancient woodland. The access road to the west of Warren Wood appears to result in the direct loss of ancient woodland; despite the applicant's intended use of no-dig construction, ancient woodland is still clearly being felled and replaced by an access road. Furthermore, trees adjacent to both of the access roads will need to be constantly managed for clearance and to avoid health and safety concerns. We consider this loss and likely further reduction of the woodland canopy to be unacceptable.

5.6.12 We also consider that siting development to the north of Warren Wood and the implementation of access roads either side of the ancient woodland constitutes fragmentation of this wood from the adjacent ecological network. This would potentially impact on local biodiversity; from both resident and migrating wildlife, to site endemic soils and their associated flora. The populations of plants and animals exposed to the change in environmental conditions from new development increases in magnitude with increasing land use intensity. Many species within ancient woodland are adapted to the relatively unchanging conditions within ancient woodland. They are slow to react to change and unable to adapt to the new enforced conditions within the woodland, leading to more generalist species dominating the specialist woodland species.

5.6.13 We appreciate that the applicant intends to implement a buffer zone between their development and the ancient woodland, however the 15m proposed is the minimum size in line with Natural England's 'standing advice'. In this instance we consider that a 15m buffer would not be sufficient to protect the ancient woodland. This is supported by NE's standing advice, which states: "Where assessment shows other impacts are likely to extend beyond this distance, you're likely to need a larger buffer zone. For example, the effect of air pollution from development that results in a significant increase in traffic." Furthermore, the proposed access roads either side of Warren Wood clearly do not maintain a minimum buffer size of 15m and in the case of the access road to the west, constitute direct loss of ancient woodland.

5.6.14 As such, the Trust requests that all areas of the development are moved outside of and at least 30m away from the ancient woodland of Warren Wood. Unless the applicant is able to adequately protect the ancient woodland from direct loss and indirect impacts then development in this location should be refused permission.

### **Conclusion**

5.7 Ancient woodland is irreplaceable; it simply cannot be re-created. Development resulting in damage or loss to ancient woodland is unacceptable and steps must be taken to address and avoid such impacts.

5.8 In summary, the Woodland Trust objects to the application in question on account of damage and loss to the ancient woodland of Warren Wood. We consider that the proposals at present are unacceptable in their nature and directly contravene both national and local planning policies aimed at conserving and protecting irreplaceable habitats. As such, this application should be refused in its current form.

5.9 KWT: Objects on the grounds that the development is contrary to national planning policy guidance relating to ancient woodlands and because of its potential impact on wider habitat connectivity and priority species in the surrounding area.

5.9.1 Paragraph 175 c of the NPPF states that “development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists”. Natural England standing advice, which is a material consideration, states that development adjacent to ancient woodland should contain “a buffer zone of at least 15 metres to avoid root damage”.

5.9.2 The proposed development site is located to the north of Warren Wood, which is scheduled as ancient woodland. The main access road to the site runs to the east of the woodland and an emergency access road runs to the east. The Environmental Statement that forms part of the Application states that the emergency access road will result in the destruction of a strip of this ancient woodland incorporating 30 trees, while the buffer to the ancient woodland adjacent to the main access road will be 12.5 meters.

5.9.3 The Environmental Statement and Planning statement give no justification of “*wholly exceptional reasons*” to destroy ancient woodland and propose a buffer less than Natural England Standing advice. Therefore we object to the application on these grounds and consider that in its present form planning consent should be refused.

5.9.4 Our further concern is the impact that this development will have on habitat connectivity in the wider area, given that it will effectively isolate Warren Wood from surrounding semi natural habitat. Paragraph 170 of the NPPF states that “*planning policies and decisions should contribute to and enhance the natural and*



*local environment by: d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures”.*

5.9.5 Warren Wood forms part of a coherent ecological network of ancient woodlands, replanted woodlands and hedgerows that run along the current northern edge of Kings Hill between designated local wildlife sites to the east and west. This contains significant populations of a variety of species, including dormouse which is protected under national and European legislation.

5.9.6 In our response to the regulation 19 consultation for the Tonbridge and Malling emergent Local Plan Kent Wildlife Trust has already commented on the need to safeguard this ecological network. This was made in relation to the allocation of Broadwater Farm across as a strategic housing site under policy LP30, which is located across the northern edge of Kings Hill adjacent to the proposed development. We are concerned that, when combined with future development, this development will also have a cumulative impact on this ecological network.

5.9.7 While the Environmental Statement for the proposed development does mention that measures will be put in place to mitigate for disruption to ecological networks, nothing specific is suggested. We consider that the two access routes to the east and west of Warren Wood will represent a significant barrier to the passage of protected species, such as dormouse, and that this will not be able to be adequately mitigated or compensated for given the current configuration of development. In the absence of robust plans to adequately deal with disruption to ecological networks we wish to register a further objection to this application.

5.10 NE: No objections

5.11 KCC (H&T): Initial comments provided on 01 March; seeking further information and clarification but in terms of the proposed access stating that the width of the existing road is restrictive due to on street parking making access difficult,. This is a concern as the implementation of a Traffic Regulation Order (TRO) to address the parking issues may not be deliverable. The emergency access is not shown in sufficient detail on the plan and appears to require land outside of the applicant's control. Significant widening would be required to the existing footpath which would mean loss of trees. The connection to the highway along Sandow Place would require widening to the existing footway and again the removal of trees. These works may not be possible and therefore further detail is required.

*Further representations received on 07 May as follows:*

5.11.1 Access: The technical note indicates that parking stress on Amber Lane is caused by residents not using their provided parking areas, however insufficient evidence has been provided to support this. The homes served off Amber Lane are large mainly 4+ bedroom properties and it may be that the parking demand in this area exceeds parking provision. A TRO to implement parking restrictions is

subject to consultation and it is likely that residents would object to such a proposal. The implementation of a TRO cannot be guaranteed but would be necessary for safe access to the proposed development site.

### **Committed Development**

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

### **Trip Rates**

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

### **Traffic Generation**

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

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

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

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

**Impact**

5.11.7 The arrival and departure profile will change significantly for the different use of the sites and the effect of this, including the Local Plan development allocations, should be shown in a capacity assessment. The recent Visum modelling and Forecast Junction Capacity Assessments which were prepared as evidence for the Local Plan includes for 24,217m2 of previously permitted unbuilt development at Kings Hill; please clarify whether the current applications form part of this land or a larger unbuilt employment parcel.

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

**Tower View/Kings Hill Avenue**

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

**Tower View/A228 Ashton Way**

5.11.10

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

contributions to be pooled from the development parcels through the Infrastructure Delivery Plan.

### **King Hill/A228/Malling Road – Blaise Farm**

#### 5.11.11

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

### **Malling Road/Gibson Drive**

#### 5.11.12

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

### **M20 Junction 4**

#### 5.11.13

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

### **Crashes**

#### 5.11.14

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

### **Conclusion**

#### 5.11.15

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

*Further representations received on 24 May as follows:*

5.11.16

Access: Amber Lane is currently not a publicly maintainable highway and therefore the implementation of private parking restrictions is possible. A scheme to provide parking restrictions which allow for safe access for vehicles, demonstrated by tracking diagrams, but which also allows for some on-street parking is to be prepared by the applicant.

5.11.17

Further information is to be provided which clearly shows the route of the emergency access with tracking diagrams and the trees to be lost. TMBC have confirmed that the loss of the ancient woodland is not acceptable and therefore it seems that the emergency access is not deliverable.

**Trip Rates**

5.11.18

The trip rates used have been validated against 2014 surveys and the TRICs database and found to be robust. Clarification has been provided regarding school trips and this is accepted.

**Traffic Generation**

5.11.19

It has been demonstrated that the traffic generated by the residential use of the sites, when compared to the employment use, is reduced

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

**Impact**

5.11.20

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

**Tower View/Kings Hill Avenue**

5.11.21

The impact of the current Kings Hill planning applications on the capacity of this roundabout is minor and the applicant has agreed to monitor the junction and provide mitigation if required. A condition to this effect is considered acceptable.

### **Tower View/A228 Ashton Way**

#### 5.11.22

The net decrease in trips arising from the residential development replacing the employment land use has no significant impact on this junction. Kings Hill phase 3 development is required to improve the junction under Condition 15. This being the case any permission for the current application sites should include a condition for no occupation until the works have been completed.

### **King Hill/A228/Malling Road – Blaise Farm**

#### 5.11.23

Improvements are proposed comprising an extension of the flare length to allow 2 lanes of queuing on the northbound approach on the A228. This will mitigate the impact of the development. An appropriate condition to secure the highway works through a S278 agreement is required.

### **Malling Road/Gibson Drive**

#### 5.11.24

The junction has been identified for improvements in the Local Plan TA. The current applications lead to a small benefit to capacity in the AM peak and a small worsening to capacity in the PM peak. The applicant has agreed to appropriate and proportionate contribution towards the junction improvement scheme and this should be secured through a S106 Agreement.

### **M20 Junction 4**

#### 5.11.25

The impact of the proposals at M20 Junction 4 has been assessed by Highways England who have confirmed that there is not significant impact and they have no objection.

### **Crashes**

#### 5.11.26

An analysis of the crash data indicates no particular pattern.

### **Conclusion:**

#### 5.11.27

Further information is required to demonstrate that safe and suitable access can be provided. Also, I am currently not convinced that an emergency access can be provided to serve this site. I would therefore recommend that this planning application is refused.

#### 5.12 HE:

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

Further comments provided on 05 March 2019 as follows:

- 5.12.1 Highways England has been appointed by the Secretary of State for Transport as strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the strategic road network (SRN). The SRN is a critical national asset and as such Highways England works to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity.
- 5.12.2 Highways England will be concerned with proposals that have the potential to impact on the safe and efficient operation of the SRN, in this case the M20 (and particularly in the vicinity of Junction 4).
- 5.12.3 Highways England responded on 14 February 2019, indicating that we need more time to review the Transport Assessment (TA) and Transport Statement (TS) which had only just been uploaded to the planning portal. We have since received additional correspondence on the 01 March 2019 indicating that the TA appendices had now been uploaded – these documents have not been reviewed at this time and further communication relating to this new information will be provided in due course.
- 5.12.4 By way of background, Highways England has been liaising with Tonbridge and Malling Borough Council and Kent County Council over the traffic impacts of the Regulation 19 Local Plan on the SRN, which covers the M20 Junctions 3 to 5, M26 Junction 2a and the A21 at Tonbridge. This has involved the consideration of the traffic modelling that underpins the transport assessment work to be found within the evidence base and which included the M20 Junction 4 Revised Capacity Assessment Report (October 2018). We are generally content that the Local Plan transport impacts to 2031 can be accommodated on the SRN along the M20 and A21 without the need for any physical improvements to the associated junctions including merges and diverges.
- 5.12.5 In this context, having now considered the application in the context of the TA and TS (without appendices) it is apparent that the proposed development covered by these applications fall outside of the recent Local Plan Regulation 19 consultation and therefore are unlikely to have been included in the modelling assessment of 2031 impacts. Further evidence is required to justify the proposed offset of existing use status.
- 5.12.6 In summary we have the following comments regarding the TA and TS associated with these developments:

- 5.12.7 The TA section 3.2 does not directly relate the site boundaries to the sites to Phase 2 committed development i.e. the direct comparison of the sites and their relevance to Phase 2 (TM/02/03429) is not evidenced.
- 5.12.8 The TA section 6.1 and table 6.1 and TS section 7.1 indicate that the trip rates are “*derived from the Phase 3 TA*”. This reference should be clarified however, it appears that these rates refer to planning application 13/01535 King Hill Phase 3. The associated Kings Hill Phase 3 TA states that trip generation ..... “*has been agreed through the scoping exercise that trip generation rates by mode of travel will be based upon those rates that were previously agreed through the 2002 SoCG*” and were agreed with HA. A sensitivity test is required using TRICS to demonstrate that these rates are still appropriate.
- 5.12.9 The TA section 6.2 ‘offset’ section does not clarify what of Phase 2’s 92,900 m<sup>2</sup> of commercial and 750 houses has been built out / is available for use. Section 6.2.1 states that “*The commercial land parcels of Phase 2 that are the subject of this new residential planning application have not been built out, and it is noted that the planning permissions for unimplemented Phase 2 plots has recently elapsed*”.
- 5.12.10  
The justification for offsetting the residential element of the development with the commercial is not evidenced – the status of the consent associated with TM/02/03429 appears uncertain in terms of if all consents were actually exercised before elapsing. Furthermore the traffic baseline has changed since 2002 and since the infrastructure at the M20 J4 was built in 2006/2007 which was presumably for the purpose of accommodating the Phase 2 development as it was intended at the time. It is not clear how much of the commercial / residential elements were built out as part of the Phase 2 permission and any future amendments to the application – this needs to be further clarified.
- 5.12.11  
The TA section 6.2.2 states “The Planning permission for Phase 2 allowed for a maximum commercial development density on any one plot at a rate of *15,000 sq ft per acre*.” – a TA from the TM/02/03429 planning application does not appear to be on line and has not been directly evidenced within the TA associated with these developments.
- 5.12.12  
The TA section 6.2.3 and table 6.3 indicates that the “*table below sets out the trip rates and the proposed trip generation for the phase 2 commercial units on the following sites within this proposed development*” as above this is not referenced as to how the site descriptions and sizes associated with these developments, relate to the 2002 application trip rates and calculations indicated in the tables.
- 5.12.13  
The TA table 6.2.4 and table 6.4 summarises how sites 5.1, 5.2, 5.3 and 5.6 are



offset by commercial, however does not account for site 5.4 which has no planning history. Similarly the cumulative impact of all sites including 5.5 in the TS should be considered.

5.12.14

The TA section 6.2.5 acknowledges that a tidal flow direction from the change in development type. However the ability of the forward funded M20 J4 to accommodate a tidal change in flow and any associated change in trip distribution is not considered.

5.12.15

There is no overall acknowledgement of the cumulative impact of vehicles associated with all of these developments at the M20 Junction 4 – the TA section 6.3 and section 7 “impact assessments” or the TS section 7 and 8 do not consider trip distribution as far as the SRN. Trip generation as far as the M20 J4 should be included in the spreadsheet model referenced in the TA section 6.3.4 (to be provided).

5.12.16

In summary the traffic associated with these developments at the M20 Junction 4 is not clarified. We are concerned that the additional (and redistributed) traffic generated by the sites in combination could result in capacity issues in 2031. This impact has not been assessed and we are currently unable to determine if the proposal would result in a ‘severe’ impact on the SRN and therefore will not materially affect the safety, reliability and / or operation of the SRN (the tests set out in DfT C2/13 para 10 and DCLG NPPF para 109).

5.12.17

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

*Additional representations received 15 May 2019:*

5.12.18

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

5.12.19

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

5.12.20

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

5.12.21

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

5.12.22

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

5.13 KCC (PROW): Requests more information concerning the proposed link with existing footpath.

5.14 EA: No objections subject to the imposition of conditions.

5.15 KCC (LLFA): Satisfied with the drainage proposals but recommend further ground investigations and imposition of conditions.

5.16 SWS: No objections but informative recommended.

5.17 KCC (Heritage): Recommends that archaeological watching brief should be secured by planning condition.

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

- Primary Education - £333,323 (towards Valley Invicta Primary School)
- Secondary Education - £302,453 (towards Phase 2 Judd School expansion)
- Community Learning - £2,768 (Commissioning of community learning classes, arts and culture events at Kings Hill)
- Youth - £1,144.97 (towards providing sports and IT equipment and storage for KCC commissioned youth services at Kings Hill)
- Libraries - £14,913.08 (Towards community outreach library services at Kings Hill)
- Social Care - £4,751 (Towards providing new or adopted facilities for those with physical or learning disabilities at Kings Hill or West Malling and for the installation of assistive technology in housing units within the development)

5.19 KFRS: Means of access considered satisfactory.

5.20 Kent Police: General comments provided

5.21 CCG: Contribution of £86,184 sought towards refurbishment, reconfiguration or extension at West Malling Group Practice and/or Wateringbury Surgery or towards new general practice premises.

5.22 BHS: Requests that the application be used as an opportunity for the Council to ensure equestrian routes in the area are provided for.

5.23 Private Reps: 5 + site + press notices/0X/533R/1S. Objections raised on the following (summarised) grounds:

- Loss of ancient woodland;
- Impact on wildlife and nature;
- Site supports various species of wildlife, flora and fauna;
- Site is intended to be located within the Green Belt;
- Siting of the development is ill-considered;
- Loss of open space which is used by local people for leisure and recreation;

- Site is peaceful and enjoyed by many local residents;
- Valuable public amenity that should be protected;
- Loss of the site reduces opportunities for relaxation and exercise for local community;
- Formal parks are not the same as countryside;
- Site acts as a green lung;
- Light pollution;
- Increased pressure on local infrastructure and services in particular doctors and schools;
- Highway safety of Amber Lane;
- Local junctions are already at capacity;
- Environmental impact of stationary vehicles;
- Inadequate access;
- Roads are already narrow with cars parked on-street making it difficult for emergency vehicles to access;
- Poor bus services already to serve additional population;
- Inadequate parking would be provided to serve the development;
- Access road will be too close to existing houses;
- Emergency access can only be provided by destroying part of the ancient woodland;
- Increased levels of noise, disturbance and congestion;
- People do not walk to amenities on Kings Hill and this site is not within easy walking distance of services;
- People need outdoor spaces, not just more houses;
- Kings Hill is losing its original identity and characteristics are being lost;
- Wrong place for development to take place;
- Greater urbanisation of the area;

- No consideration as to the impact of this site when taken with proposed Broadwater Farm houses;
- Understand that more houses are needed but question whether these would be affordable homes that people need;
- Impact during construction phase – large vehicles, noise and disturbance;

5.23.2 Matters also raised concerning property prices which is not a material planning consideration

5.23.3 Letter in support makes reference to the need for affordable housing.

## **6. Determining Issues:**

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

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

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

- i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (footnote 6); or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

6.5 In this case, the policies that protect areas or assets of particular importance specified in footnote 6 include those in the NPPF relating to irreplaceable habitats (in this case the adjacent ancient woodland). These are therefore addressed first in order to establish how the presumption falls to be applied in this case.

*Irreplaceable habitats (ancient woodland and veteran trees):*

6.6 The NPPF states at paragraph 175 that when determining planning applications, local planning authorities should apply the following principles:

- a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
- b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;
- c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and
- d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

6.7 The key limb for the purposes of assessing this application being (c). Footnote 58 explains that “wholly exceptional” reasons for the purposes of applying paragraph 170(c) means, for example, infrastructure projects, (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills) where the public benefit would clearly outweigh the loss or deterioration of habitat.

- 6.8 Paragraph 177 reiterates that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.
- 6.9 Policy NE4 of the MDE DPD requires 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. This includes provision of new habitats as part of development proposals. The policy goes on to state that development that would result in the net loss or deterioration of woodland will only be permitted if all of the following tests are met:
- (a) development cannot reasonably be located on an alternative site;
  - (b) the need for development clearly outweighs any harm which may be caused to the ecological, archaeological and landscape value of the woodland; and
  - (c) harm can be reduced to acceptable limits through the implementation of positive environmental mitigation measures within the site or by replacement planting elsewhere or enhanced management.
- Ancient woodland will be protected, and where possible, enhanced through improved management. Development that would adversely affect ancient woodland will not be permitted unless the need for, and benefits of, the development in that location can be demonstrated to override the harm that would be caused to the ecological and historical importance of the ancient woodland.
- 6.10 One of the reasons ancient woodland is considered to be so important is through the support of biodiversity. In these respects, 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.
- 6.11 Furthermore, 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.

- 6.12 The adopted policy position in these respects is in broad conformity with the requirements of the restrictive policies of the Framework.
- 6.13 In making their representations, NE have signposted any decision making to paragraph 175 of the NPPF and the standing advice provided by NE and the Forestry Commission that should be taken into account in determining relevant planning applications. They make clear in their representations that NE will only provide bespoke advice on ancient woodland and ancient and veteran trees where they form part of an SSSI or in exceptional circumstances. As such, the lack of objection by this consultee should in no way be construed as a conclusion that the development is acceptable in this regard.
- 6.14 The cited standing advice sets out that when making planning decisions consideration should be given to conserving and enhancing biodiversity; and reducing the level of impact of the proposed development on ancient woodland and ancient and veteran trees.
- 6.15 Reference is also expressly made within the standing advice to the need to apply the strict tests contained within paragraph 175 (c) of the NPPF and that planning permission should be refused for development that would result in the loss of or deterioration of ancient woodland, ancient trees and veteran trees unless there are wholly exceptional reasons and there is a suitable compensation strategy in place.
- 6.16 It goes on to explain that potential direct impacts of development on ancient woodland and veteran trees include:
- damaging or destroying all or part of them (including their soils, ground flora or fungi)
  - damaging roots and under storey (all the vegetation under the taller trees)
  - damaging or compacting soil around the tree roots
  - polluting the ground around them
  - changing the water table or drainage of woodland or individual trees
  - damaging archaeological features or heritage assets
- 6.17 There is also recognition that nearby development can also have an indirect impact on ancient woodland or ancient and veteran trees and the species they support. These can include:
- breaking up or destroying connections between woodlands and ancient or veteran trees
  - reducing the amount of semi-natural habitats next to ancient woodland



- increasing the amount of pollution, including dust
- increasing disturbance to wildlife from additional traffic and visitors
- increasing light or air pollution
- increasing damaging activities like fly-tipping and the impact of domestic pets
- changing the landscape character of the area

6.18 With these factors in mind, I have given full regard to the detailed and comprehensive representations put forward by both Kent Wildlife Trust and the Woodlands Trust. The conclusions reached in these respects are adopted for the purposes of this assessment. Those bodies have found as follows (summarised only and to be read in conjunction with the representations reproduced in full within Section 5 of this report)

- The proposed emergency access road will result in the destruction of a strip of ancient woodland incorporating 30 trees;
- The buffer to the ancient woodland adjacent to the main access road is only proposed to be 12.5m (minimum should be 15m);
- The development will isolate the ancient woodland from surrounding semi-natural habitat and cause fragmentation;
- The access routes will represent a significant barrier to the passage of protected species which will not be adequately mitigated for given the proposed configuration of the development;
- Further harm and disturbance would arise through the introduction of residential use of the site and associated intensification of human activity

6.19 With these considerations in mind, I can only conclude that the development would result in the loss (in part) and deterioration of an irreplaceable habitat. There are no wholly exceptional reasons for allowing this to happen within the terms of Footnote 58 of the Framework). For the avoidance of any doubt, it is absolutely clear within the policies of the Framework (in particular reading paragraph 170 and Footnotes 6 and 58 together) that the provision of housing units where there is an absence of a five year supply cannot be said to be a wholly exceptional reason that would outweigh the harm arising.

6.20 Paragraph 170 (c) requires such reasons **and** a suitable compensation strategy (it is not an either or requirement). Whilst there are no wholly exceptional reasons, I do note that the indicative layout proposes an ecological enhancement area formed of a small strip of land located centrally at the northern edge of the site (farthest from the ancient woodland). Chapter 9 of the ES sets out that this is

intended to compensate for the loss of habitat arising from the creation of the emergency access route. Whilst the ES states that this area is intended to be mitigation embedded within the scheme, little specific detail has been provided. In any event, the test set out within the restrictive policy is not met.

6.21 As such, the proposed development is contrary to the requirements of paragraph 175(c). As such, the application of the relevant policies in the Framework provide a clear reason for refusing planning permission. As a result, the presumption in favour of sustainable development does not resurface to be applied in this case.

6.22 In the interests of completeness at this stage in the assessment, I would make clear that I have given consideration as to whether any mitigation measures could reasonably be put in place to overcome the harm identified. This is in line with the standing advice that states that if planning permission is to be granted, planning conditions or obligations should be considered that secure measures to either avoid, mitigate or compensate for damage. It makes clear that because these are irreplaceable habitats, compensation measures should not be considered as part of the assessment of the merits of the development proposal. Mitigation measures could include:

- improving the condition of the woodland
- putting up screening barriers to protect woodland or ancient and veteran trees from dust and pollution
- noise or light reduction measures
- protecting ancient and veteran trees by designing open space around them
- identifying and protecting trees that could become ancient and veteran trees in the future
- rerouting footpaths
- removing invasive species
- buffer zones

6.23 The ES submits that in order to prevent any increases in physical ingress to the ancient woodland arising from new residents in such close proximity to it, a new barrier in the form of fencing would be embedded into the scheme. Again, no further details of this have been provided. In the absence of any details to the contrary, there is at least the very real risk that such a barrier, in order to be effective, would run for a considerable distance on all sides of the ancient woodland and be a prominent and abrupt urbanising feature in its own right.

6.24 I also acknowledge that reference has been made to the use of a non-dig method of construction for the emergency access. This in no way overcomes the loss of the ancient woodland that would arise from the creation of this secondary access into the site.

6.25 These measures do not in any way mitigate the harms identified more broadly.

6.26 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 adopted planning policy and undertake an assessment of the development in all other respects, as follows:

*Locational characteristics and associated impacts:*

6.27 The site is located outside any defined settlement confines and therefore lies within the countryside. A recent appeal decision concerning residential development elsewhere in the Borough has confirmed that in the absence of a five year housing land supply, policy CP14 of the TMBCS, which historically has sought to restrict development outside of settlement confines, is out of date and the weight to be afforded to it is therefore reduced.

6.28 Paragraph 78 of the NPPF advises that *“to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.”* Paragraph 79 then follows stating that *“planning policies and decisions should avoid the development of isolated homes in the countryside”* unless one or more of a list of certain circumstances apply.

6.29 The interpretation of isolated homes in the countryside has been clarified in the Court of Appeal judgment in *Braintree DC v SSCLG* [2018] EWCA Civ. 610. In this judgment, LJ Lindblom stated that when taken in its particular context within the policy *“the word ‘isolated’ in the phrase ‘isolated homes in the countryside’ simply connotes a dwelling that is physically separate or remote from a settlement. Whether a proposed new dwelling that is, or is not, “isolated” in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand”.* (para.31)

6.30 Although the site demonstrably is physically separate from Kings Hill, its particular location could not in all reasonableness be said to be “isolated” within this sense. As such, in this case there is no requirement for the development to meet the exceptions specified at paragraph 79 of the NPPF.

6.31 I do appreciate that there has been a significant amount of objection raised on the grounds that the development would result in the loss of open space that is currently enjoyed by the local community. However, the site is not allocated for such purposes and therefore there is no policy basis within which to seek its retention for such a use.

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

- 6.32 Notwithstanding the conclusions made above concerning the locational characteristics set out above, the existing edge of the Kings Hill settlement at this point is physically finite and this site is ostensibly distinct from it, being demonstrably rural in character, appearance and setting.
- 6.33 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 are broadly in conformity with those contained within the Framework which relate to quality of new developments.
- 6.34 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.
- 6.35 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).

- 6.36 I accept that the indicative layout proposes a type of residential development that would be broadly commensurate with the density and layout of the adjacent residential development of this part of Kings Hill. However, given the location of the ancient woodland, the development is proposed to be sited away from the existing residential settlement and would not readily be seen as a natural adjunct in any way. As I have already explained, the site is distinctly rural in character and appearance. In stark contrast, the new development would appear as a standalone development very much “out on a limb”. This would result in the development completely lacking any true cohesion with the nearby built environment, which would be visually harmful to the prevailing character and appearance of the locality.
- 6.37 Introducing a wholesale housing development onto this site in the manner proposed would eradicate this character, appearance and setting and would be entirely at odds with it, regardless of the inclusion of buffered landscaped edges.
- 6.38 Additionally, the creation of the vehicular access off Amber Lane of a size and design that would be required to serve a housing development of this nature through what is currently a demonstrably rural setting would cause overt visual harm and erode the character of the site and locality.
- 6.39 Moreover, this would also be true of the creation of the emergency access to the western side of the site, which already has been demonstrated to cause the loss of an area of ancient woodland. This would result in further visual harm in addition to the loss of an irreplaceable habitat. The only way to create an emergency access point here to the satisfaction of the highways authority would be in the manner proposed and this cannot be achieved in a way that does not cause planning harm.
- 6.40 Furthermore, whilst there is no justification to resist the development on the grounds of a loss of open space (for the reasons set out earlier), that does not diminish the fact that this site is relatively peaceful in nature and that the residents of Amber Lane, Sandow Close and Greenway consider that its current characteristics contribute to their enjoyment of the locality. Moreover, the intensification of the use of Amber Lane to this extent would undoubtedly increase noise and disturbance along this road to an extent that would cause harm to the residential amenities of properties along Amber Lane. This gives rise to additional harm arising from the development.

6.41 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)

6.42 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:*

6.43 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.

6.44 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.

6.45 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.

6.46 In these respects, KCC (H+T) have, to date, provided clear technical advice within their representations, which has been twofold. Firstly, that the proposed access to serve the residential units, based on the information submitted, is inadequate. Secondly, that the development would cause harm to the local highway network in terms of increased traffic movements.

6.47 The applicant has sought to address these objections (provided by KCC (H+T) within their representations dated 15 May 2019 and reproduced at paragraphs 5.12.18 – 5.12.22 of this report) through the submission of a technical note. I also understand that officers from KCC have met with the applicant and their highways consultants very recently. Consequently, KCC (H+T) have provided final representations on this application which conclude that further information is required to demonstrate that safe and suitable access can be provided to serve the development. KCC also remains to be convinced that an emergency access can be provided to serve this site given the impact that would arise to the ancient woodland as discussed elsewhere in the report. As such, it is considered that this

emergency access is unlikely deliverable. KCC therefore continues to recommend that planning permission be refused for this development on this basis.

Ground conditions and land contamination:

6.48 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.

6.49 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

6.50 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 application accords with paragraph 178 of the NPPF.

Flooding and drainage:

6.51 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).

6.52 Chapter 12 of the ES addresses drainage and flood risk across the sites in question. It sets out that the proposed development 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.

6.53 In these respects, I am therefore satisfied that the proposed development would accord with local adopted and national policy.

*The draft local plan:*

6.54 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 proposed allocations for housing development within the overall strategy

6.55 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.

6.56 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.”*

6.57 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.

6.58 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”.*

6.59 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.”*

6.60 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.

6.61 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 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 and that the plan is not sufficiently advanced to rely upon in these respects.

6.62 Furthermore, in terms of strategic allocations, confirmation by Highways England that this development coming forward at this time would not severely affect the strategic road network 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.

6.63 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 throughout this report in the usual way within the context of the adopted development plan and national policy as required.

6.64 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 the intention to include the land within the Green Belt. 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:

- 6.65 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.
- 6.66 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.
- 6.67 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.
- 6.68 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.

- 6.69 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.
- 6.70 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.
- 6.71 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:*

- 6.72 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.
- 6.73 In addition, I recognise that there would be 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.
- 6.74 However, the development would cause loss (in part) and deterioration of an irreplaceable habitat for which there are no wholly exceptional reasons. The mere provision of housing units in the absence of a five year supply cannot be considered as such a reason to justify such harm arising. As such, there are specific policies 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 further in this case.
- 6.75 Furthermore, it is considered that the development would result in significant harm to the pattern of development and character of the area and the visual amenities of the locality due to the scale, density and form of the development and the creation of new accesses. Additional harm would also arise to residential amenity.

6.76 Demonstrably, this site is simply not capable of accommodating residential development in the manner proposed in an acceptable manner in accordance with adopted and national policy.

6.77 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 an irreplaceable habitat), should be approved.

6.78 I therefore recommend accordingly.

## **7. Recommendation:**

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

- 1 The proposed development, by virtue of its location, siting, proposed means of access and intensification of residential activities would result in the partial loss (insofar as it relates to the means of access) and deterioration of ancient woodland, which is an irreplaceable habitat. There are no demonstrated reasons which are wholly exceptional to allow for such loss and deterioration to take place and no suitable compensation strategy. Furthermore, there are no acceptable measures proposed that would mitigate the harm that would arise. As such, the development is contrary to the requirements of paragraph 170(c) of the National Planning Policy Framework (2019) and the associated standing advice of Natural England and the Forestry Commission.
- 2 The proposed development by virtue of its location and siting and the lack of any cohesive or responsive relationship with the nearby residential settlement would be entirely at odds with the prevailing character of the immediate and surrounding environment. As such, the development would be 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).
- 3 The proposed development by virtue of the form, scale and design of the vehicular and emergency accesses would significantly erode the prevailing character of the site and its immediate surroundings and introduce urbanising features which would cause visual harm to the appearance of the site and locality. 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).

- 4 The proposed development by virtue of its overall quantum, size and proposed means of access would cause increased levels of vehicular activity along Amber Lane giving rise to noise and disturbance which would be harmful to the residential amenities of the occupants of properties along Amber Lane. As such, the development is contrary to the requirements of 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).
- 5 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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