

**East Malling &  
Larkfield**  
East Malling

**20 December 2018**

**TM/18/03008/OA**  
**TM/18/03042/LB**

Proposal: (A) TM/18/03008/OA: Outline Application: Development of the site to provide up to 110 dwellings (Use Class C3) and the site access arrangement. All other matters reserved for future consideration

(B) TM/18/03042/LB: Listed Building Application: Proposed partial demolition of a section of curtilage listed boundary wall to allow for a new vehicular, pedestrian and cycle access in connection with an outline planning application (Ref: TM/18/03008/OA) for residential development at land to the east of New Road

Location: Development Site East Of Clare Park Estate New Road East Malling West Malling Kent

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**Description:**

Application (A):

- 1.2 Outline planning permission is sought for up to 110 dwellings with vehicular access to be created from New Road. All other matters are reserved for future consideration.
- 1.3 A series of illustrative masterplans have been provided setting out how a development of this nature and quantum could be laid out within the site. An illustrative mix of housing has been submitted and comprises 1, 2, 3, and 4 bedroom houses with a number of 1 and 2 bedroom apartments as set out in the table below. This will result in a density of 17 dwellings per hectare.

Dwelling Type	Percentage
1-bed flat	10%
2-bed flat	6%
2-bed terraced house	10%
3-bed terraced house	11%
3-bed semi-detached house	5%

3-bed detached house	5%
4-bed detached house	45%
5-bed detached house	8%
Total	100%

- 1.4 The illustrative Masterplans have been designed to provide at least 1 vehicle parking space for the 1 bedroom units with 2 vehicle parking spaces for the larger units, as well as visitor parking.
- 1.5 Areas of public open space are also shown on the indicative plans including informal open space in the north associated with the attenuation pond, a centrally located Local Area of Play (LAP) and three Locally Equipped Areas of Play (LEAP). There is also provision indicated for new cycle ways and footpaths.
- 1.6 The proposed development was screened under TM/18/02557/EASC in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and found not to comprise EIA development. This does not mean however that the environmental impacts of the proposal will not be fully assessed and are done so later in this report.

Application (B):

- 1.7 The wall forms the boundary to the former parkland associated with Bradbourne House. Bradbourne House is a grade I listed building and the wall forms a curtilage listed structure. The intention is to demolish part of the wall to create a new carriageway access to serve the residential development. The proposal would result in the removal of 23m of wall, with 6.9m either side to be rebuilt as inward curves to provide the necessary visibility splays. Given that these works would provide the access to serve the residential development, with access being a matter for consideration in full at this stage rather than reserved for future consideration, it is considered necessary to report both applications in the form of a single report.

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

- 2.1 Due to the balance which needs to be made between diverging and significant policy considerations.

**3. The Site:**

- 3.1 The site lies within the countryside, outside the defined settlement confines of East Malling. It comprises 6.6 hectares and was formerly used for agricultural research purposes. The site is part of the wider East Malling Research Trust and comprises

open fields and mature trees. The site is generally level with a gentle slope. For clarity the trees do not benefit from any designated or individual protection.

- 3.2 The site lies within the historic parkland associated with Bradbourne House. Bradbourne House lies to the north east of the application site, set within a CA. It is a Grade I listed building described in the listing details (inter alia) as a country house set in a landscaped park, dating from 1713-1715, on the site of a Tudor house.
- 3.3 To the north of Bradbourne House lie the stable block and barns, also set within the CA. These are Grade II listed buildings and described in the listing details (inter alia) as stable-block and barns dating from 1713-15.
- 3.4 To the south of the application site lies St James the Great Church. This is a Grade I listed building described in the listing details (inter alia) as dating from the C12 and C14, and rebuilt circa 1450-1500. There are a number of other Grade II listed buildings clustered around the junction of the High Street/New Road and Mill Street which fall within the CA to the south of the application site.
- 3.5 The listed wall runs parallel to New Road forming the south western boundary of the former parkland associated with Bradbourne House. The wall lies to the east of New Road. The northern section of the wall comprises ragstone with red brick coping. The wall has been interrupted by the new access road serving Bradbourne Fields. At the north a similar ragstone wall also lies to the west of New Road which reappears again further south.
- 3.6 Further south, the wall becomes red brick with a burnt brick header bond. The wall later deviates from the parallel alignment with New Road to create a small landscaped area of amenity space. The wall then continues in ragstone with a red brick coping with an area of brick infill at the existing layby. Continuing south the wall is brick with an opening to serve the small cluster of dwellings formerly associated with the EMT.

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

TM/18/02557/EASC    screening opinion EIA    15 November 2018  
not required  
Request for Screening Opinion under the Town and Country Planning  
(Environmental Impact Assessment) Regulations 2011: Residential development  
for up to 110 dwellings (Use Class C3) with car parking, cycle parking,  
landscaping and public realm works

#### **5. Consultees:**

Application (A)

##### 5.1 PC:

Representation received 18 February 2019

- 5.1.1 This application is for a new housing site included in the draft Local Plan submitted to the Planning Inspectorate.
- 5.1.2 It has been the subject of local consultations including with the parish council who have been concerned about its impact on Grade II (*sic*) Bradbourne House with its surrounding designated Conservation area and the separate area covenanted to the National Trust under the separate scheme of in effect statutory covenants which they were granted. In addition at the southern end the site is close to the East Malling Village Conservation area and particularly the area around St James the Great Church and Court Lodge. There is also the local feature of the long wall along the entire length of New Road from its junction with the A20 up to the village and which marked the boundary of the former Twisden estate. This feature would have probably come into being when a park was created and what was the “new” road established. (DPHEH: Bradbourne House is a Grade I listed building)
- 5.1.3 The impact of the application on these heritage assets is a crucial consideration and in respect of the wall we would refer to our separate comments in respect of the breach of the wall required to access the proposed housing site which has required a Listed Building application.
- 5.1.4 Against this background the Parish Council would have preferred this site remain a “green field” one but we have had to take into account its inclusion in the draft Plan; current National Planning Policies laid down by central Government especially “housing targets” , and the fact the Borough Council does not have a 5 year supply as required by Government.
- 5.1.5 We have also taken into account the changes that have taken place since the initial plans were first published. These include moving the access northwards and the reduction in the number of homes proposed. We feel the latter means that it is easier to mitigate the impact of the development on the Heritage Assets. We also think it is important that a decision be taken locally, and this is most important, that appropriate conditions and legal agreements can be achieved. We are also mindful of the Trustees intention to use the generated funds to continue research on the site as well as upgrading facilities and maintenance of Bradbourne house itself.
- 5.1.6 We therefore wish to raise NO OBJECTION to the principle of the development SUBJECT to the number of dwellings being limited to 110 dwellings but would raise the issues that follow.
- 5.1.7 For us the most important issue is that the new development should fit into its surroundings which includes reducing the impact on Bradbourne House and its Conservation Area as well as the village one at the southern end.
- 5.1.8 Adequate landscaping conditions will therefore be crucial including:

- a) The trees alongside the wall should be retained by the New Road Road save for the one trees(?) we understand will be required to be removed for the new access.
- b) The copse area at the northern end of the site is important to the setting of Bradbourne House and its surrounds. We take the point about the position in Winter when deciduous trees have lost their leaves. We await to see the perspectives we understand are to be provided.
- c) Where there is further planting it should be native trees so as to soften the site into the landscape including when viewed from Clare Park estate.....see page 111 of the Medway Gap Character Areas supplementary Planning Document adopted in February 2012.
- d) Landscaping should be maintained for the longest possible period under the planning conditions such as 20-25years.
- e) Tree Preservation Orders should be considered to supplement the protection given by the Conservation area and the area currently covered close to the A20 boundary.
- f) And there should be a condition to make sure during construction there is adequate clearance of the trees and their roots.

5.1.9 Views from and to East Malling Church. We strongly agree with the view that the view of the church from Bradbourne and vice versa is very important. It is important as it contributes to the local sense of place for East Malling and which can be seen also from the church Tower as the relationship between the two when the Twisdens held the estate.

5.1.10 We note and support the idea of a detailed Landscape assessment as suggested by the East Malling Conservation Group.

5.1.11 The new Road Wall. We realise the Listed Building application is needed as the wall is not listed separately but as part of the curtilage of Bradbourne House with its Historic surrounding garden and former parkland. When this land is separated off it is arguable this protection for the wall will cease. This may lead to pressure for new residents to create more access points to New Road or problems about its future maintenance so to address this point we would ask consideration be given to a boundary treatment condition which includes the retention of the wall. And a condition prohibiting making new openings without specific consent. We are aware such a condition exists in respect of sites along the A20 imposed to deter vehicles being parked for access to the then new homes and to keep a free flow of traffic. Ideally of course the wall should be separately listed but the northern parts of ragstone seem to be older but we cannot see amongst all the documents submitted any assessment of the brick sections as to the likely date of construction based on the type of brick for example.

5.1.12 New access to New Road. We realise the works within the highway will be covered by a separate section 278 Agreement with KCC but we ask that dropped kerbs be provided across the new entrance so that people including those with buggies and the disabled using the existing New Road pavement can easily cross

it. In addition this is also required to cross New Road itself. More comments on this will be submitted.

- 5.1.13 Bus shelter. There is mention of the possible need to re-locate one of the existing bus shelters which were provided by TMBC. These are used by the existing residents of Clare Park estate opposite and BEFORE any relocation takes place there should be consultation please with this Parish Council.
- 5.1.14 Archaeological Issues. The desk based report is noted and the mention of a trial archaeological trenches across the site. We would ask for a condition to this effect and a watching brief. The present position of New Road is the result of a diversion and it is understood that the previous road ran from East Malling closer to Bradbourne house to emerge on the London Road opposite its junction with New Hythe Lane. It would seem from the 1706 Isaac Gostling Map of the Manor of East Malling that the road may have crossed this site. There is a reference to a highway stopped up for Roger Twisden in 1741. Ref Q/RH/1/3Y at Archives but they do not seem to have the Order.
- 5.1.15 Ditton stream runs under New Road from the west from Clare Lake through the Research and Bradbourne House grounds on its way to Ditton and the River Medway. It is part of the main river system over which the Environment Agency have some powers. There should be arrangements or conditions to prevent any “run off” from the new roads on the development site that would pollute the stream. We note there is a flood plan associated with the stream and that it runs to the north outside the application site. There are however ditches which run into it including the one running down by the wall from East Malling village (see below). We consider the Ditton stream is a local feature and is also of ecological importance.
- 5.1.16 The East Malling Stream. This runs from Gilletts Hole south of the railway down the side of Rocks Road then in the back gardens of the High Street houses to emerge in public view at the ancient “Dip Hole” in Church Walk. Here it divides so one arm runs across in pipes to outside the King and Queen and once ran in a ditch beside New Road down to join the Ditton Stream at Watermeadow now the Chapman Way area. The other arm runs through the garden of Court Lodge then entering Research land and then down in a ditch close to the wall but inside the Research lands down to Ditton stream. This course runs through the application site and where the new access road will be sited so its existence needs to be taken into account there to provide adequate parking. The amount of flow depends on rainfall. The “western” part now runs under the pavement on the western side of New Road placed there when the stream was piped in the 1950s by KCC.
- 5.1.17 Flooding issues. There has been regular flooding of New Road north of its junctions with Chapman Way which has continued this year on a regular basis. This recently has been the subject of complaints to KCC who by email of 29<sup>th</sup>

January 2019 told us they had “dug out the head wall that goes into the pond inside of the Bradbourne House land”. They said “both culverts” are working but “not to full capacity”. A report was promised but so far not received.

5.1.18 We note the Ardent report on the Flood Assessment and Drainage Strategy. The KCC letter of 29.11.208 records flooding incidence from 2009 to 2017 but that is not factually correct as it has occurred since 2017 and up to the present date. We also note the report does not record the incidence when the Ditton stream flooded parts of the Chapman Way area when it “broke through” and the Environment Agency was involved as well as KCC. We think some of the flooding along New Road was the East Malling Stream also breaking out and not just blocked road drains. There was a flow down the left hand side of New Road in the gutter including opposite the proposed new junction. There was also an incident when the occupants of one of the former research New Road houses broke into the pipe carrying the stream down within the previous Research boundary at that point and this seemed to cause flooding in Church Walk.

5.1.19 We appreciate some of these systems are outside the application site but as a minimum we would ask appropriate steps are taken so the new site does not worsen the position or cause any pollution of existing watercourses. We have noted the Environment Agencies response but do not fully understand it.

5.1.20 We would ask the street lighting of the new development be low level and with the “down pointing” lights.

5.1.21 A20/New Road junction. We are aware of the proposals by KCC to ease the junctions along the A20 including the traffic lit junction of New Road and London Road. There are considerable pedestrian movements here and matters are complicated in terms of layout by the junction with Bradbourne Park Road including the extra central island which may be removed to increase capacity within the highway limits. We support sensible changes to this junction but taking into account the needs of pedestrians and here too the existence of the ragstone walls. We note from the traffic forecasts submitted with this application that movements are expected to be north to this junction with fewer south through East Malling village. We await the KCC response to this application and if they seek a contribution.

5.1.22 Street Naming. Not a planning matter but we would ask that we be involved in this process. We would wish to see a name with a local connection. Hatton has been suggested to us.

*Representation received 25 February 2019*

5.1.23 These are further detailed comments on the access. The access seems to be about the location of a 40mph speed limit sign (which would need re-positioning). To the south a surfaced path emerges from Lime Crescent with a barrier. A proper dropped kerb is needed by the barrier and one on the side of New Road where there is none at present. It is likely though pedestrian movements from the

site will involve crossing New Road in the vicinity of the Beech Road junction, with its bus stops, and access to the Malling School. Consideration needs to be given to making a safe crossing point possibly with lights.

Representation received 7 August 2019

5.1.24 East Malling and Larkfield have noted the amended layout and junction improvements and make no comment. When street names are being considered the Parish Council would like some input please. Could you please inform whoever will be dealing with this aspect please?

[DPHEH: Members will be aware that this is not a material planning consideration and it is for the PC and developer to liaise directly over such matters in the event that planning permission is granted at the appropriate juncture]

5.2 KCC (H+T)

Representation received 27 August 2019

5.2.1 Following my response of 22 January 2019 further work has been undertaken by this authority and the applicant, relevant to this application.

[DPHEH: Previous comments related to a different site]

5.2.2 A20 transport model (Visum) runs have been undertaken regarding revised Local Plan scenarios. This information has been shared with the applicant's transport consultant so that more accurate/up to date reflections of the impact of this proposal have been determined and reported.

5.2.3 The applicant has also agreed to undertake a larger, more comprehensive junction improvement scheme at the junction of New Road East Malling with the A20. This again is in line with work undertaken by this authority and is illustratively shown on Ardent drawing 182600-016 Rev A, uploaded on the portal on 16 July.

5.2.4 Through discussion, the applicant has also agreed to implement this scheme prior to occupation of any dwellings. These works will need to be implemented via a S278 agreement with this authority.

5.2.5 Consistent with other applications, the applicant has also agreed to make contributions to the wider A20 corridor improvement measures and to make contributions for new public transport enhancements comprising new connectivity and/or infrastructure. These funds will need to be incorporated into a S106 agreement. As is customary it is expected that any approval notice to this outline application would not be issued until the terms and details of a full S106 agreement, covering a range of subjects is signed and sealed.

5.2.6 On behalf of this authority I recommend approval to this application subject to the following conditions:

- Completion of a S106 agreement covering the issues described above.
- Implementation of improvements to the A20/New Road, East Malling junction via a S278 agreement with this authority, prior to occupation of any dwellings.
- Submission of a reserved matters application of details within the site to cover parking and highway standards. The reserved matters application should also cover an implementation proposal which considers a programme between any temporary arrangements and the permanent access.

5.2.7 It should be noted that implementation of the proposed new permanent access will require the applicant to enter into another S278 agreement with this authority. I consider that there should be no occupation within the development until the new permanent access with full visibility splays is available.

5.3 EA: No objection subject to planning conditions.

5.4 KCC (LLFA): Generally satisfied subject to the following advisories:

5.4.1 We are aware of shallow ground water levels in the vicinity of the site and would advise for the applicant to undertake Ground Investigation works at suitable locations so as to demonstrate that the proposals will not be at risk from ground water egress.

5.4.2 The presence of a culverted watercourse along the western boundary is acknowledged and blockages within this culvert have led to a number of instances of flooding affecting the local area. Investigations undertaken by KCC suggested that the culvert can be affected by the buildup of scale and the condition of the majority of the culvert has not been determined.

5.4.3 Our Drainage and Planning Policy Statement notes that 'When considering the development/redevelopment of any site, existing ordinary watercourses should be identified and accommodated within any drainage strategy and site masterplan. They should be preferably retained as an open feature within a designated corridor, and ideally retained within public open space'.

5.4.4 We would strongly recommend daylighting of the culvert is promoted at the reserved matters stage. This will significantly ease the maintenance requirements of the culvert as well as reducing flood risk to the development itself and elsewhere.

5.4.5 The section of pipe from the outfall of the pond to the watercourse appears to be outside of the red line boundary and we will require for the applicant to demonstrate that suitable arrangements are in place for the crossing of 3rd party land in its perpetuity.

5.4.6 Any feature capable of conveying water can be considered to fall under the definition of an 'ordinary watercourse' and we would urge the applicant to contact us prior to undertaking any works that may affect any watercourse/ditch/stream or any other feature which has a drainage or water conveyance function. Any works that have the potential to affect the watercourse or ditch's ability to convey water will require our formal flood defence consent (including culvert removal, access culverts and outfall structures).

5.5 SWS: (extract) Southern Water has undertaken a desk study of the impact that the additional foul sewerage flows from the proposed development will have on the existing public sewer network. This initial study indicates that there is an increased risk of flooding unless any required network reinforcement is provided by Southern Water. Any such network reinforcement will be part funded through the New Infrastructure Charge with the remainder funded through Southern Water's Capital Works programme. Southern Water and the Developer will need to work together in order to review if the delivery of our network reinforcement aligns with the proposed occupation of the development, as it will take time to design and deliver any such reinforcement. Southern Water hence requests that a relevant planning condition is applied.

5.6 Historic England (HE):

*Representation received 22 January 2019*

5.6.1 Bradbourne House is an extremely impressive house dating to the 16<sup>th</sup> century but with the largest phase of works dating to 1713-15. It is characterised by the quality, regularity and symmetry of its early 18<sup>th</sup> century facades. It retains part of its landscaped garden, including an ornamental lake and the ragstone park boundary. These form the conservation area, focussed around the house. Its wider parkland setting has been largely lost due to its reuse for orchards by the East Malling Trust in the 20<sup>th</sup> century.

5.6.2 This outline application is for the development of the site to provide up to 110 dwellings. We provided pre-application on this site to the East Malling Trust on 8 October 2018 and did not object to the principle of developing the land on site C, although we raised some concern regarding the low level of harm caused by constructing houses, particularly in the northern part of the site.

5.6.3 Site C lies within the historic parkland of Bradbourne House and can be glimpsed from the gardens of the house. The relationship between the house and its surroundings was designed so that the house could benefit from rural views across the park towards the church. These uninterrupted long views have been compromised considerably by the repurposing of the park as orchards for the East Malling Trust in the 20<sup>th</sup> century, and the relationship between the house and park has been lost in this process. Nevertheless, the orchards do help us understand that Bradbourne House was built as a country residence because they sustain the

rural setting the house always had and thus they do still contribute to its significance.

5.6.4 Consequently, we think that constructing houses on site C would cause a low level of harm to Bradbourne House's significance and its conservation area because it is likely that new development would be visible from Bradbourne House and its immediate garden, which is the focal point of the conservation area. This would harm an appreciation of its primary function as a country house at the centre of a large rural estate and would be located on land which was historically associated with Bradbourne House as former parkland. It would also cause a low level of harm to the character and appearance of the conservation area as the development is within its immediate setting and would remove part of its rural context.

5.6.5 In our pre-application advice we also stated that new development would likely be more visible from the house and immediate gardens in winter, and that a views assessment should be carried out as part of a planning application to assess the impact, including winter and summer visualisations. An LVIA is included in the application but this does not include wireframes indicating maximum height and extent of development. We think this is essential to understand whether the harm has been minimised in line with the requirements of Paragraph 190. We highlighted a need for a landscape buffer between the developable area and Bradbourne House during pre-application discussions. However, without more detail in the LVIA we cannot assess whether the developable land as shown on the 'Parkside Parameter Plan: Developable Area' drawing has adequately addressed our concerns about visual impact and would lead to development which meets the requirements of Paragraph 190. We also note that while an LVIA has been submitted this was carried out in September, so does not include an assessment of the impact during winter. The LVIA states that the construction of housing would have a medium level of change with an adverse effect on Bradbourne House in LVA terms, which we agree with. However, winter and summer visualisations have not been submitted as part of this outline application to fully assess the harm, and we remain concerned about the level of visibility and the low level of harm it would cause to Bradbourne House. We think an updated LVIA should also include winter and summer visualisations.

5.6.6 Once an updated LVIA has been submitted we would be pleased to provide further advice on whether we think the harm is adequately minimised. That notwithstanding, when your Council is satisfied that the harm caused by the proposal has been sufficiently minimised in line with paragraph 190, then paragraph 194 applies. This states that any harm to a designated heritage asset, including a conservation area, should require a clear and convincing justification, while paragraph 196 of the Framework states that where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, the local authority should weigh this harm against the public benefits of the proposal. Your Council will need to decide how to weight the public benefits of providing new

housing which contributes to your need. When considering this application, your council will also want to consider whether the development makes a positive contribution to the local character and distinctiveness of the area as per paragraph 192. If your Council is minded to approve the application we think the conditions relating to landscaping, layout and the design of the development will be critical to ensure that harm is further minimised at the reserved matters stage. While we are content to defer to the advice of your in-house Conservation staff regarding the detailed wording of these conditions, we request that Historic England is consulted again on these matters in any future application for reserved matters.

5.6.7 Recommendation: Historic England has concerns regarding the application on heritage grounds. We consider that the issues and safeguards outlined in our advice need to be addressed in order for the application to meet the requirements of paragraphs 190, 192, 194 and 196 of the NPPF.

Representation received 21 May 2019

5.6.8 In our previous letter dated 23 January 2019 for this application we requested winter visualisations of the proposals to fully assess the level of harm caused to Bradbourne House and its conservation area through changes to its setting and the visibility of the site from Bradbourne House.

5.6.9 Winter visualisations with wireframes have now been provided for three key views at years 0, 5 and 15. These have been based on the indicative layout as shown in the previously submitted parameter plans.

5.6.10 We note that the applicant's design intention is to create a semi-permeable visual barrier between the park and new development by arranging informal tree clumps so that they appear to merge to form a continuous edge of the park when viewed from the church or Bradbourne House. This is to ensure that the historic western boundary remains legible. We are unsure how successful this would be and how understandable the historic boundary would be given that there would be houses built between the historic park boundary and the new semi-permeable visual barrier.

5.6.11 This notwithstanding, we note that the wireframes make it clear that there would be some harm to Bradbourne House and its conservation area caused by the development as it stands. This is because it would remove some of the parkland character which forms part of the setting of the house and conservation area. This is the case in both views 2 and 3 where the construction of houses and addition of a semi-permeable barrier of trees are visible from the terraced area and garden immediately adjacent to Bradbourne House. We question whether the design of the parameter plan could be re-evaluated to further minimise the harm caused as per paragraph 190 of the NPPF. We think that it may be possible to achieve this through removing some of the housing plots to the north so that the houses do not intrude as much on the setting of the house and conservation area.

5.6.12 These concerns notwithstanding, when your Council is satisfied that the harm caused by the proposal has been sufficiently minimised in line with paragraph 190, then paragraph 194 applies. This states that any harm to a designated heritage asset, including a conservation area, should require a clear and convincing justification, while paragraph 196 of the Framework states that where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, the local authority should weigh this harm against the public benefits of the proposal. Your Council will need to decide how to weight the public benefits of providing new housing which contributes to your need. When considering this application, your council will also want to consider whether the development makes a positive contribution to the local character and distinctiveness of the area as per paragraph 192. If your Council is minded to approve the application we think the conditions relating to landscaping, layout and the design of the development will be critical to ensure that harm is further minimised at the reserved matters stage. While we are content to defer to the advice of your in-house Conservation staff regarding the detailed wording of these conditions, we request that Historic England is consulted again on these matters in any future application for reserved matters.

5.6.13 Recommendation: Historic England has concerns regarding the application on heritage grounds. We consider that the issues and safeguards outlined in our advice need to be addressed in order for the application to meet the requirements of paragraphs 190, 192, 194 and 196 of the NPPF.

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

*Representation received 1 August 2019*

5.6.15 On the basis of the information available to date, we are able to conclude that the amended parameter plan would reduce harm to the significance of Bradbourne House and to the conservation area as suggested in our letter of 21 May 2019. Your Council will need to decide if this is sufficient to meet the requirements of Paragraph 190 and whether any remaining harm has clear and convincing justification in line with Paragraph 194 before weighing the harm to the significance of designated heritage against the public benefits in the manner set out in Paragraph 196. We also recommend seeking the view of your own specialist conservation advisor before reaching a view on this application.

Representation received 17 September 2019

5.6.16 We refer you to our last letter of 1 August 2019, in which we stated that the amendments to the parameter plan would reduce harm to the significance of Bradbourne House and to the conservation area. We continue to think that this is the case with the updated plans.

5.7 KCC (Heritage):

5.7.1 The site of the application lies in an archaeologically sensitive area for multi-period remains and remnants of the formal grounds associated with Bradbourne House. Prehistoric and Roman remains have been located in the general area including a Roman settlement and cemetery to the north east. There are few indications of significant later activity until the post medieval period when an 18th century estate map suggests a landscaped carriageway running north to south serving Bradbourne House.

5.7.2 The site seems to have been utilised for orchards during the later 19th and 20th centuries which could have had an impact on the post medieval archaeology and historic landscape features.

5.7.3 The site does lie immediately adjacent to part of the existing recognised historic parkland of Bradbourne House. The impact of this scheme on the parkland both in terms of setting and direct impact, needs to be carefully considered. Sympathetic design should be part of this scheme and the proposed development should include clear heritage enhancement measures for the parkland.

5.8 The application is supported by an Archaeological Desk based Assessment and a Heritage Statement. Both provide reasonable description of the heritage assets but I do not entirely agree with the conclusions of the DBA. Archaeological issues can be addressed through condition and I recommend the following condition is placed on any forthcoming consent.

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

- Primary Education - £4535 per house and £1134 per flat towards phase 1 of a new Aylesford Primary School
- Primary Land - £3208.18 per house and £802.05 towards land acquisition for a new Aylesford Primary School
- Secondary Education - £4115 per house and 1029 per flat Aylesford School enhancement of teaching space
- Community Learning – total of 3582.64 towards Aylesford School Adult Education Centre, additional equipment for new learners
- Youth – total of £1481.73 towards Aylesford Youth Club

- Libraries – total of £5542.55 towards Larkfield Library enhancement and additional bookstock for the new borrowers
- Social Care – total of £6149 towards the Aylesford Priory changing place facility
- 1 wheelchair adaptable home as part of the on-site affordable homes delivery

5.10 KFRS: The means of access is considered satisfactory

5.11 Kent Police: Welcome further discussions with the applicant regarding Crime Prevention through Environmental Design

5.12 CCG: A contribution of £92,664 is sought towards refurbishment, reconfiguration and/or extension at Thornhills Medical Centre, Watlington Surgery and/or West Malling Group Practice.

5.13 KWT: No response

5.14 NE: No comment/objection

5.15 National Trust: I can confirm that the Trust is not proposing to make any representations in respect of this application.

5.16 EP:

*Representation received 21 January 2019*

5.16.1 This site forms part of the wider East Malling Research facility, and as such is identified as potentially contaminated land. It is not known what kind of chemicals, if any, have been used on this site in association with the agricultural research activities. There is also a historic landfill site on the North West boundary of the site. I would therefore recommend the following conditions.

*Representation received 24 January 2019*

5.16.2 The Applicant has submitted a Noise Assessment carried out by their consultant Ardent Consulting Engineers (their ref 182600-09, dated December 2018). The report details measurements of site noise levels taken at two representative locations at the proposed site. The report has compared these with maximum levels cited in BS8233:2014 and given recommendation as to construction type/specification to ensure that suitable internal levels will be achieved. I would concur with the information.

5.16.3 The report does not, however, appear to have specifically considered the 'windows partially open' scenario, and whether additional ventilation is required. This issue is referred to in the notes accompanying Table 4 in para 7.7.2 of BS8233:2014, and that if the levels stated can only be achieved with windows

closed, then consideration needs to be given to the provision of a satisfactory alternative means of ventilation. The Assessment does make reference at Para 6.13 to the fact that acoustically speaking Passive Trickle Ventilators will be adequate. However, such ventilators are not good for decent ventilation rates. We should therefore be looking for either:

- a) Some form of whole property mechanical ventilation system with heat exchange; or
- b) Individual room ventilation units that will give controllable levels of mechanical ventilation at satisfactory rates whilst maintaining acoustic integrity.

5.16.4 I do not believe that all properties within this proposal will require this, it likely to affect properties fronting onto New Road and may be a matter for which additional, more specific information can be provided at the full application stage.

5.16.5 The Assessment has also considered the effect of the additional traffic generated by the proposal upon the wider environment and assessed this, taking into account projected traffic increases to 2031. The report calculates that the noise increase due to traffic from the proposed development would be approximately 0.3dB, which is considerably below the commonly accepted minimum detectable change of 3dB.

5.16.6 The Assessment has also briefly considered construction noise, but as this is for an Outline Application, no specifics are available for consideration. If felt necessary, the Applicant could seek a Section 61 Prior Consent under the Control of Pollution Act 1974 from the Council. I do, however, believe that there is an error in Table 5.2 and that the '>' cited should be '<'. Clarification should be sought from the applicant.

5.16.7 In conclusion, I do not consider that noise will be a limiting factor on this Outline application, but that additional information will be required once the layout has been finalised.

*Representation received 7 August 2019*

5.16.8 Air Quality: Providing developers stick to their plans on EV charging no further comments to be made on the application.

5.16.9 Noise: I do not believe that there is anything in the recently submitted documents that would impact upon my earlier comments. I thus have no additional comments to make.

5.17 Leisure Services: If full offsite contribution were to be required a total financial contribution of £1,332,399 would be sought.

[DPHEH: The application proposes onsite open space and play area provision. This issue is discussed later in the report]

5.18 Private Reps: 3+ site + press notices: 2X/24R/0S. Objections raised on the following grounds:

- Increased traffic resulting in reduced highway safety and increased congestion. Queues will remain the same.
- No evidence of traffic survey. Done in school holidays. Traffic modelling does not take account of Bradbourne Park Road and can therefore not be understood. Lack of accident data.
- Insufficient parking.
- Lack of public transport.
- Difficult for emergency access.
- No suitable pedestrian or cycle route.
- No details of speed restrictions or surveys. Markings not shown on the junction plans.
- Not sustainable development. Concern about Ditton being urban. Cumulative impact of total development.
- Existing schools and healthcare facilities oversubscribed, no new schools.
- Increased noise, air and light pollution.
- Issues relating to surface water and foul water disposal. Localised flooding. No update on flooding issues.
- Set a precedent for other development.
- No local benefits.
- Development too dense. Lack of open space.
- Need to protect heritage assets. Impact on LB, Bradbourne House. Need for archaeological assessment. Visual impact. Needs to be sensitive to the area. Access needs to be minimum to preserve the LB.
- Loss of trees and the need for environmental protection. Need for a detailed Landscape Impact Assessment.
- Need to extend deadlines.
- There is a National Trust covenant to protect Bradbourne House.

- Disruption during construction.

Application (B)

5.19 PC:

Representation received 15 February 2019

- 5.19.1 These comments relate solely to the proposed demolition of a section of the brick wall forming the boundary between the proposed Parkside development and New Road. Detailed comments on the main application will follow separately.
- 5.19.2 This wall forms part of the historic wall of the former Bradbourne estate of the Twisden family who lived at Bradbourne House. It runs behind the buildings on the A20 including Wealden Hall and then southwards along the complete length of New Road itself up to the village of East Malling. It continues at the back of the village green and forms the boundary between what is now the “Research” site and Court Lodge and Church. This boundary would seem to date from the diversion of the road from Larkfield to East Malling to its present position instead of its former course close to Bradbourne House and hence its name “New Road”. The sections to the north are ragstone though parts have been rebuilt particularly when the entrance to serve the “Larkfield Bank” site now Bradbourne Park Road was made. There is also a line of trees behind the wall as viewed from New Road.
- 5.19.3 It should also be noted that opposite this proposed access is the eastern wall boundary of the former park that surrounded Clare House once the home of the Wigans. These two features are an important part of the local street scene and make an important “entrance” from the north to the historic heart of East Malling village with its Conservation Area status. And it should be recorded such estate walls are a feature of the local area especially within East Malling and ragstone walls in particular.
- 5.19.4 When the original plans were produced it was proposed that access should be via the existing access just north of the village green on the edge of the Conservation area and the parish council felt this was unsuitable including on traffic grounds. It suggested an access on the site of the former “Blue Door” near to the junction of Chapman Way be considered. It understands this was done by the applicants (for which we are grateful) but was ruled out on its impact upon the trees at this location and upon the setting of Bradbourne House with its own designated Conservation area and on the edge of the National Trust covenants. I understand after considering other locations this access now proposed is put forward as raising no objection in principle from KCC as Highway authority and affecting what appears to be a less historic section of wall.
- 5.19.5 Given this the Parish Council stance is that it wishes to see the minimum length of wall affected and it notes it has been suggested that if the speed limit were reduced to 30mph this could result in a reduction in the need for a site line to meet

KCC/highway guidelines. We understand this may not be the case but would appreciate specific confirmation of the position. The sculpting of the wall also means a longer length is affected. Anything which could be done to ameliorate this would be appreciated and we would ask that consideration be given to “turning” the wall into the new road entrance as was done previously at Bradbourne Park Road to the north.

5.19.6 We would ask that there be a condition that in doing work to the wall the removed bricks be used and so the work matches the existing length of wall

5.19.7 We would also ask that any permission should only be given if it is granted at the same time as the main application. We would not wish to see this application allowing the wall to be removed as a separate operation given its status as part of the curtilage of the current Bradbourne House and its former parkland. We note this is a point made by the Conservation Group.

Representation received 29 April 2019

5.19.8 Whilst the Parish Council felt this access to the Parkside site should be further North utilizing the existing bricked up gateway it is with reservation that the proposal be accepted with the following conditions:-

5.19.9 No more than one tree to be removed in order to accommodate the access.

5.19.10 The curvature of the new wall should replicate the curvature of the entrance to Bradbourne House. With a brick pier terminating it at the footpath end. Similar again to Bradbourne House.

5.19.11 There should be no planting in front of the wall at all. This is in a Conservation Area and should respect that fact with the whole area in front of the wall being tarmac footpath. This is the entrance to the village and must be seen as such not the entrance to a designer development.

5.19.12 It is believed the radius of the new section could be smaller in order that it would reduce the amount of demolition of the existing wall. It seems that the proposal is sized to allow for 103 metres visibility splay. When KCC Sight Stopping Distance for a 40mph road is specified as 65 metres (see KCC Highways comments in planning application TM/18/01106. This would negate the need to move the existing bus shelter. 5. It is also suggested that the developer should create a dropped kerb adjacent to the bus stop in addition to the one shown to the south of the entrance which is adjacent to the footpath exiting Lime Crescent by the Village Hall.

5.20 Historic England:

Representation received 23 January 2019

- 5.21 Bradbourne House is an extremely impressive house dating to the 16th century but with the largest phase of works dating to 1713-15. It is characterised by the quality, regularity and symmetry of its early 18th century facades. It retains part of its landscaped garden, including an ornamental lake and the ragstone park boundary. The boundary wall, which is curtilage listed, has been greatly rebuilt in sections along New Road, with the majority of the original wall lying to the north, closest to the house. It nevertheless has historic value as it is evidence of the historic extent of the park surrounding Bradbourne House.
- 5.22 We provided pre-application advice for the outline development applications for sites B and C on 8 October 2018 to the East Malling Trust. During this process it became clear that the access to the new estate from New Road would entail a new opening through the park wall to allow sufficient and safe vehicle access. We commented at the time that we thought this would cause a low level of harm. This is because it would compromise the integrity of the wall in a limited way by creating a new opening which did not exist historically. However, we think that it is justified and the harm is minimised by situating the opening in an area of wall which has already been altered and rebuilt in different materials over the centuries.
- 5.23 We therefore do not wish to raise any concerns regarding this application. We think that the harm has been minimised, as per paragraph 190 of the NPPF, by keeping the new opening to a minimum. We also think that the low level of harm caused is justified in order to provide safe and sufficient vehicular access to the proposed associated development site, as per paragraph 194.
- 5.24 Recommendation: Historic England has no objection to the application on heritage grounds. We consider that the application meets the requirements of the NPPF, in particular paragraph numbers 190 and 194.

Representations received 1 May 2019

- 5.24.1 Thank you for your letter of 26 April 2019 regarding further information on the above application for listed building consent. On the basis of this information, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation adviser.
- 5.24.2 It is not necessary for us to be consulted on this application again, unless there are material changes to the proposals. However, if you would like detailed advice from us, please contact us to explain your request.
- 5.25 KCC (H+T) The development proposal does not meet the criteria to warrant involvement from the Highway Authority.

[DPHEH: These comments relate to the listed building application only]

5.26 Private Reps: Site + press notices: 4X/2R/0S. Objections raised on the following grounds:

- This application should only be approved if TM/18/03008/OA is approved.
- Wall already eroded by Bradbourne Park housing estate.
- A traffic study is needed to assess the necessary sight lines and speed limit to reduce the impact on the fabric of the wall.
- Requested longer consultation times.
- No justification for the demolition, substantial harm the listed building and therefore contrary to paragraph 195 of the NPPF.
- Pedestrian access to the southern access.
- Cumulative effect of the removal and sculpting of the wall will seriously impact on the appearance of the listed wall and the overall width should be reduced.
- To reduce the amount of wall removal to achieve the required site lines the speed limit should be reduced to 30/20mph.
- Move the gap north to the 'Blue Gate'.
- The loss of the wall is contrary to the NPPF, harmful to the grade I listed building and should be refused.

## **6. Determining Issues:**

### Principle of development:

- 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.
- 6.2 The site lies to the north of the confines of East Malling village, and to the east of the urban settlement, within the countryside. Policy CP14 of the TMBCS seeks to restrict development in the countryside and whilst it includes circumstances where development can be acceptable, the introduction of up to 110 dwellings does not fall within one of the exceptions listed. The proposal is therefore contrary to this development plan policy. However, TMBC cannot presently demonstrate a five year supply of housing and in this context CP14 has been confirmed by recent

appeal decisions to be out of date and cannot therefore provide any justification to resist the development in terms of broad principles.

6.3 In the absence of a 5 year housing supply the presumption in favour of sustainable development must be applied. For decision taking, this is set out at paragraph 11 of the NPPF as follows:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless:

i. the application of policies within this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

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

6.4 Dealing firstly with paragraph 11 d) (i), Footnote 6 of the NPPF provides a closed list of those restrictive policies that relate to protected areas and assets of particular importance. Designated heritage assets are specifically referenced. The western boundary of the application site comprises a curtilage listed wall and the site falls within the former parkland associated with Bradbourne House, a Grade I listed building. In addition, St James the Great Church lies to the south and both listed buildings are sited within CAs. It is therefore necessary to assess the application with regard to the relevant policies of the NPPF that protect heritage assets in order to determine, in the first instance, whether there is a clear reason to refuse the proposed development.

*Impact designated heritage assets and their settings:*

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

6.6 Similarly, section 72 of the Act requires that special attention must be paid to the desirability of preserving or enhancing the character or appearance of these areas, in accordance with Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).

- 6.7 Paragraph 189 of the NPPF requires LPAs, in determining applications to require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.
- 6.8 Paragraph 190 of the NPPF requires LPAs to identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.
- 6.9 Paragraph 192 of the NPPF states that in determining applications, local planning authorities should take account of:
- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
  - b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
  - c) the desirability of new development making a positive contribution to local character and distinctiveness.
- 6.10 Paragraph 193 of the NPPF requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
- 6.11 Paragraph 194 sets out that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:
- a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;

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

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

a) the nature of the heritage asset prevents all reasonable uses of the site; and

b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and

c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and

d) the harm or loss is outweighed by the benefit of bringing the site back into use.

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

6.14 The NPPG provides additional guidance. It makes it clear that the significance of a heritage asset derives not only from its physical presence but also from its setting. The guidance requires potential harm to designated heritage assets to be categorised as either substantial (which includes total loss) or less than substantial harm, in order to determine which of the policy tests should be applied. However, within the category of “less than substantial harm” it is accepted in case law that a decision maker must take a view as a matter of planning judgement as to the level of harm within that category.

6.15 It is vital therefore to identify the relevant heritage assets; identify the settings of the relevant heritage assets; and determine whether the proposal will result in substantial harm or less than substantial harm, and if less than substantial harm the level of that less than substantial harm. Further guidance on such matters can be found in the NPPF and Historic England’s The Setting of Heritage Assets Historic Environment Good Practice Advice in Planning Note 3 (Second Edition) 2017.

6.16 Historic England's guidance recommends a series of steps to ensure good decision making and these are applied in turn below as part of my detailed assessment.

*Step 1: Identify which heritage assets and their settings are affected*

6.17 Significance (for heritage policy) is defined in the NPPF glossary as - "The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting."

6.18 The setting of a heritage asset is defined in the NPPF glossary as – "The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral."

6.19 In light of the above, the relevant significant heritage assets are identified as Bradbourne House (Grade I listed), the former stable and barn to the north of Bradbourne House (Grade II listed), St James the Great Church (Grade I listed), the curtilage listed wall, and the associated Bradbourne East Malling and East Malling Village Conservation Areas.

*Step 2: Assess the degree to which these settings make a contribution to the significance of the heritage asset(s) or allow significance to be appreciated*

6.20 In terms of the settings of these heritage assets, it is a matter of planning judgement as to the continued significance of the former parkland in terms of the wider setting of Bradbourne House. The CA surrounds Bradbourne House and its associated Grade II listed outbuildings. It can reasonably be concluded that the CA was so designated as to reflect the extent of the historic setting of Bradbourne House and its associated outbuildings. However the application site lies within the former parkland associated with Bradbourne House.

6.21 HE has commented that Bradbourne House is an extremely impressive house dating from the 16th century. The house is characterised by the quality, regularity and symmetry of its early 18th century facades. It retains part of its landscaped garden, including an ornamental lake and the ragstone park boundary but its wider parkland setting has been largely lost due to its reuse for orchards by the East Malling Trust in the 20th century.

6.22 It can therefore be concluded that the functional relationship between Bradbourne House and its wider parkland has been eroded over time. Bradbourne House now operates as the HQ of the EMT and a conference and wedding venue. The associated outbuildings have been converted to commercial uses and ancillary parking areas created. Whilst the outbuildings contribute to the immediate setting

of Bradbourne House, owing to their siting to the north of the House there is no direct visual relationship between these buildings and the proposed development. Notwithstanding, the former parkland is still discernible and delineated to the south west by the existing ragstone and brick wall. I therefore conclude that whilst a functional separation may have occurred, the views from Bradbourne House to the boundary wall form part of its setting and also that of the CA in which the House is set. However, the contribution made by the application site to these listed buildings has been much eroded and in my view it now makes a very limited contribution to that setting

6.23 In the same way the functional and cultural relationship between Bradbourne House and St James the Great Church has long since been severed. However the views between the two are an important reminder of the historic and cultural relationship between these two buildings and, although to a lesser extent, the views between the two CAs. I therefore conclude that the visual relationship between Bradbourne House and St James the Great Church and the respective CAs forms part of their interdependent wider settings.

*Step 3: Assess the effects of the proposed development, whether beneficial or harmful, on that significance or on the ability to appreciate it*

6.24 The proposal for residential development is submitted as an outline planning application. Details relating to layout, appearance, landscaping and scale are reserved matters to be agreed at a later date. However the application includes an indicative layout. This is essential in order to allow for a full assessment of the potential impact of the proposal on the nearby heritage assets. This masterplan layout has been subject to numerous amendments in order to seek to minimise the impact on the setting of designated heritage assets.

6.25 The indicative layout has been designed to respect the visual relationship between Bradbourne House and St James the Great Church, and by association the Bradbourne and East Malling CAs. This visual relationship would have been paramount in the original siting, design and orientation of Bradbourne House, and reflects the important cultural and historic links between social class and religion. However HE note that this relationship has been compromised by the use of the former parkland for commercial and research purposes. Notwithstanding, the current indicative layout ensures that this view remains uninterrupted.

6.26 HE raised no objection to the principle of the proposal nor to the visual relationship between the Bradbourne House and St James the Great Church which has already been compromised. However concern was raised about the original indicative layout which could potentially result in a low level of harm to the significance of Bradbourne House and the character and appearance of its CA. HE requested additional assessment in the form of a Landscape Visual Impact Assessment (LVIA) to be carried out during the winter. This information was required in order to ascertain whether the harm, albeit less than substantial harm,

had been sufficiently minimised in order to meet the requirements of paragraph 190 – to avoid or minimise any conflict between the heritage asset’s conservation and any aspect of the proposal.

6.27 The required information was provided and in light of further HE comments the design of the indicative layout was further refined. HE, in response to the current indicative layout now conclude that the amended parameter plan would reduce harm to the significance of Bradbourne House and the CA. I concur and conclude that the current indicative layout has been designed to minimise any impact on the visual relationship between Bradbourne House and its former parkland. Although the functional relationship has been severed, the dwellings and associated landscape/tree planting have been designed to create visual green corridors. The green corridors are to provide visual links between the remaining western boundary and the wider former parkland to the east. The corridors will be vital to the overall success of the detailed layout and I concur with the conclusions of the submitted Arboricultural Report that the best quality trees should be identified from the outset and used to inform the proposed design.

6.28 The only direct physical impact of the proposed development on a designated heritage asset will be the proposed new access onto New Road. Listed building consent is sought to remove a section of wall and rebuild curved walls to create a new access roadway. The scheme will result in a total of 23m of wall to be removed, with 6.9m either side to be rebuilt as inward curves.

6.29 The wall comprises part of the boundary of the former parkland associated with Bradbourne House. It is this function that in heritage terms is the primary significance of the wall. The introduction of a modest opening will not erode this historic function, the majority of the boundary will clearly remain. In terms of impact on the fabric of the wall, HE has confirmed that the wall has been greatly rebuilt. The opening is proposed in a later brick rebuilt section and therefore the works will not have an unacceptable impact on the historic integrity of the wall. The modest size of the opening, and the partial rebuilding of the wall in inward curves, will ensure the impact of the proposal is visually acceptable - both on the character of the wall and its wider setting.

*Step 4: Explore ways to maximise enhancement and avoid or minimise harm*

6.30 The proposed opening in the curtilage listed wall will result in the removal of a later section of rebuilt brick wall. Although of later construction this section of the wall has an attractive bond using burnt brick headers. In order to minimise any harm it will be important to replicate this detail, and where feasible, to reuse the existing bricks. This can be ensured by planning condition. It also remains important to ensure that the works to the wall are not carried out in isolation but only as a part of the wider development of the site. Again, this can be ensured by planning condition.

6.31 The indicative layout proposes four clusters of development with green corridors which allow for views to remain across the site. Although indicative, the proposed dwellings have been sited further to the west to ensure uninterrupted views between Bradbourne House and St James the Great Church. This has been accompanied by clumps of tree planting. In order to ensure the retained trees are protected throughout the build it will be imperative that the design at reserved matters stage be undertaken in consultation with an arboriculturist in order to achieve a harmonious relationship between the trees and the development. Consequently the indicative layout has been repeatedly improved to ensure the impact of the development on the heritage assets is minimal. This impact has been reduced to such a level that if considered as a 'sliding scale of harm' this harm is at the very lowest level. Paragraph 193 NPPF requires that great weight be given to the preservation of heritage assets. Case law has established that in practice this means great weight needs also to be placed upon any harm to a heritage asset, whether substantial harm or less than substantial harm.

6.32 The proposed development will not lead to substantial harm and therefore it is not necessary to engage paragraph 195 of the NPPF. The proposed development will lead to less than substantial harm, at the very lowest level, and therefore it is necessary to engage paragraph 196 of the NPPF. This means that the resulting harm must be weighed against the public benefits of the proposal.

6.33 The developer has identified a number of public benefits which they consider will result from the residential development coming forward. These are summarised as follows:

- Contribution towards housing supply in the Borough;
- Provision of affordable housing;
- Use of capital receipts to preserve and maintain Bradbourne House as it falls within the same ownership of the EMT;
- Use of capital receipts to fund horticultural research work of the EMT which will also provide opportunities for skilled employment.

6.34 Firstly, Members should be aware that the arguments put forward in connection with how EMT might benefit fiscally from the development coming forward are not material in this case. There is no suggestion that in the event the development did not come forward EMT would fail as a business nor is Bradbourne House in a condition that means its maintenance needs urgent funding in some way. There is therefore no legitimate "enabling" argument that can weigh as a public benefit in favour of the scheme. Crucially, as a result, there would be no legitimate ability for the Council to *require* the developer to spend the income generated by this scheme in a certain way. As such, the benefits to be derived from the development, insofar as they are material, are centred on the provision of housing, including an element of affordable housing, and the associated benefits that would

arise from any new housing development coming forward in a location such as this.

- 6.35 It has been concluded that the impact of the development on the heritage assets would result in less than substantial harm at the very lowest level. It is therefore necessary to balance this level of harm against the public benefits of the development. The provision of additional housing, including affordable housing has clear public benefits at a time when additional housing is needed in the Borough. I therefore conclude that in this instance, the provision of housing (along with the associated benefits that would be derived from the increase in population on the local economy) outweighs the less than substantial harm to the heritage assets, but only on the basis that the less than substantial harm is at the very lowest level.
- 6.36 I am aware of the recent appeal decision at Aylesford Lakes where the Inspector concluded the provision of new housing did not outweigh the less than substantial harm to the setting of nearby heritage assets. However in the Aylesford case the vehicle access to serve a proposed 146 dwellings would have encircled the nearby listed building. The Inspector attached great weight to the harm that would result to the setting of this listed building, and also identified additional harm to the character and appearance of the of the area and setting of the CA. With regard to the current application, the siting of the proposed development is of a sufficient distance from Bradbourne House to ensure no direct impact would be made on the listed building arising from vehicle movements or any other disturbance associated with the proposed residential development.
- 6.37 The circumstances of the appeal decision at Lavenders Road are also very different from the current application. In the Lavenders Road appeal the Inspector concluded that the public benefits of the scheme did not outweigh the less than substantial heritage harm. However this harm was cited as being an 'inordinate amount of harm' and was identified as being harm at the 'highest level'. This is in clear contrast with the current application where the less than substantial harm has been identified as being at the very lowest level.
- 6.38 Consequently there is no clear reason to refuse the proposed development in this regard, as set out by paragraph 11 (d) (i) of the NPPF. It therefore becomes necessary to determine whether the proposal would result in any adverse impacts that would **significantly and demonstrably** outweigh the benefits, when assessed against the policies in the development plan and the NPPF taken as a whole as required by paragraph 11(d) (ii) of the NPPF. It is on this basis that the remainder of my assessment follows.

Location of development:

- 6.39 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.

- 6.40 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”.
- 6.41 The site lies immediately adjacent to the confines of East Malling. New Road has pavements and street lights. To the south of the site, within easy walking distance lies the church, public house, village hall and main line railway station. To the east is the local parade of shops on Twisden Road. Again, within walking distance to the north lies the A20 London Road with a variety of shops including a supermarket. New Road is served by buses and the A20 is a major bus route. Potential residents would not therefore be reliant on the private car as the primary mode of transport. Consequently the site does not in any way constitute an isolated location.

*Impact on visual amenities:*

- 6.42 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 requires development to reflect the local distinctiveness, condition and sensitivity to change of the local character areas as defined in the Character Area Appraisals Supplementary Planning Documents.
- 6.43 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 entirely consistent with the relevant policies of the Framework which are set out as follows:
- 6.44 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.

6.45 It has already been demonstrated that although indicative, the proposed layout will ensure that a detailed scheme could come forward in a manner that would ensure no impact on the nearby heritage assets or their settings. Similarly the indicative layout demonstrates that the site is capable of accommodating the proposed number of dwellings without resulting in any adverse impact on wider character of the area. In addition, the existing and proposed landscaping will contribute to the wider character of the countryside, particularly to the east. The layout of the dwellings, albeit indicative, and the proposed landscaping has been designed to shield direct views of the proposal development whilst the creation of visual green corridors will provide views through to the boundary wall. This will maintain a sense of the former parkland. In addition, owing to the siting and landscaping the proposal will not erode the separate identity of East Malling. I therefore conclude that the proposal will not adversely impact on the character of the countryside.

Highway safety, capacity and parking provision:

6.46 Policy SQ8 of the MDE DPD sets out that:

1. 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.
2. 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.
3. 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.

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

5. 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.

6.47 This is consistent with the relevant policies of the Framework which state as follows.

6.48 Paragraph 102 of the NPPF states that transport issues should be considered from the earliest stages of plan-making and development proposals, so that:

- a) the potential impacts of development on transport networks can be addressed;
- b) opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated;
- c) opportunities to promote walking, cycling and public transport use are identified and pursued;
- d) the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains; and
- e) patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places.

6.49 Paragraph 103 makes clear that the planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.

6.50 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.

6.51 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.

6.52 The development seeks to provide a vehicle access onto New Road. The intention is to remove 23m of wall, with 6.9m either side to be rebuilt as inward curves. This will provide the necessary visibility splays to ensure no adverse impact on pedestrian or wider highway safety, and on this basis I conclude that the proposed new access is acceptable. However I appreciate that this is the single access point for the development and therefore it is therefore necessary to consider the need for a secondary access into the site in cases of emergency – should the single entrance onto New Road become blocked. The land to the north, east and south east is owned and operated by the EMT. It is therefore possible to provide an emergency access via the existing roadways. This is illustrated in the details provided by email on 31.10.2019. The provision of such an access can be ensured by planning condition.

6.53 The illustrative Masterplan allows for at least 1 vehicle parking space for the 1 bedroom units with 2 vehicle parking spaces for the larger units, as well as visitor parking. IGN3 recommends for suburban edge and village settlements a provision of 1 space per 1 and 2 bed flats, 1.5 spaces for 1 and 2 bed houses, and 2 spaces for 3 and 4 bed houses. The site is of a sufficient size to ensure adequate vehicle parking can be provided and this will be addressed at reserved matters stage.

6.54 It is acknowledged that the development will result in additional traffic movements, and whilst the new access arrangements and on-site parking arrangements are acceptable, it is important to consider the impact of the development on the wider

highway network. In this regard KCC H+T raise no objection to the development subject to the implementation of the proposed new permanent access onto New Road, implementation of the junction improvements to New Road/London Road A20 and contributions to the identified A20 corridor improvement measures and new public transport enhancements.

- 6.55 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.
- 6.56 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. In addition, case law (*Gladman Developments Ltd v SSCLG & CPRE*) has shown that the effectiveness of any proposed mitigation measures must be demonstrated. It is not therefore appropriate to seek financial contributions without a specific scheme in place.
- 6.57 The new access onto New Road is directly related to the development and fairly and reasonably related in scale. The proposed junction improvements at New Road/London Road A20 are shown on drawing referenced 182 600-016 rev A received 16 July 2019. This junction is close to the application site and it is reasonable to conclude that traffic generated by the application will primarily be using this junction to access the nearest A road (A20). The junction improvements are therefore directly related to the development and fairly and reasonably related in scale and kind. The junction improvements are necessary in order to mitigate the impact of the additional vehicle movements and are consequently necessary. The junction improvements have been agreed between the developer and the highway authority and are precise and reasonable. The junction improvements are relevant to planning and can be ensured by S106 agreement.
- 6.58 The additional traffic will have a direct impact on the New Road/London Road A20 junction and therefore it is appropriate for the proposed development to directly implement this junction improvement. However the additional traffic will also have a residual impact on the wider highway network. Consequently, whilst the level of additional traffic would not warrant the direct improvement of other junctions it is appropriate to seek a financial contribution toward the implementation of additional junction improvements along the A20 corridor. These improvements have been identified in the A20 corridor study from the West Malling By-pass to Coldharbour

Lane. These improvements also include contributions towards new public transport enhancements such as bus stops and to investigate other public transport routes between the application site and other amenities. The required improvements are therefore directly related to the development and necessary in order to mitigate its highway impact. The required sums have, in principle, been agreed between the developer and the highway authority and are therefore considered to be fair, reasonable and precise. The improvements are relevant to planning and can be ensured by S106 agreement.

- 6.59 Paragraph 91 of the NPPF requires the aims of planning policies and decisions to achieve healthy, inclusive and safe places. In particular section c) requires policies and decisions to enable and support healthy lifestyles and (inter alia) layouts that encourage walking and cycling.
- 6.60 The Design and Access Statement makes reference to a new network of public footpaths and cycle routes, stating that a new around-the-site footway and the green corridors will provide opportunities for walking, running, cycling and dog walking. These features can be incorporated into any future design as reserved matters stage.

*Ecology and biodiversity:*

- 6.61 In accordance with section 40 of the Natural Environment and Rural Communities Act 2006 in decision making LPAs must have regard to conserving biodiversity. 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. 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. The policy continues to state 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.
- 6.62 Policy NE4 further sets out that the extent of tree cover and the hedgerow network should be maintained and enhanced. Provision should be made for the creation of new woodland and hedgerows, especially indigenous broad-leaved species, at appropriate locations to support and enhance the Green Infrastructure Network. These are all in general conformity with the policies in the Framework. In particular, paragraph 170 of the NPPF states that planning policies and decisions should contribute to, and enhance, the natural and local environment by (inter alia) protecting and enhancing sites of biodiversity value and minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

6.63 The submitted Ecological Assessment concludes that the site is not subject to any statutory or non-statutory nature conservation designations and although a number of statutory and non-statutory sites lie within 3km of the site, it is unlikely, due to physical separation distances, that the proposed development will have any adverse effect. On the contrary, a suitable design at reserved matters stage would be likely to ensure enhancement to the overall biodiversity of the site - through the creation of an attenuation pond, increased native species planting and the incorporation of features such as bird and bat boxes. I therefore conclude that the application is acceptable in this regard.

Potential land contamination:

6.64 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.

6.65 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

6.66 Nevertheless the site forms part of the wider EM Research facility, and as such is identified as potentially contaminated land. There is no evidence of what chemicals have been used in association with the agricultural research activities, and there is a historic landfill site on the north west site boundary. It is therefore necessary to attach planning conditions to deal with any potential land contamination issues.

Potential flood risk:

6.67 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).

6.68 The submitted Flood Risk Assessment and Drainage Strategy concludes that the site is located within an area with a low risk of groundwater flooding and very low risk of surface water flooding. There is a very small area of high risk of flooding on the northern site boundary but this will not pose a risk as there will not be any development on these areas.

6.69 However very recent occurrences of surface water flooding on New Road have been brought to my attention. KCC LLFA are aware that blockages in the culverted watercourse along the western boundary have led to a number of instances of flooding affecting the local area. It is therefore recommended that the culvert is exposed to aid maintenance and reduce flood risk. I concur with this recommendation and this can be ensured by planning condition.

Other material considerations:

6.70 The majority of the site lies in an area of archaeological potential (AAP) for prehistoric and Roman remains. The application includes an Archaeological Report which provides a reasonable summary and on this basis the application is acceptable in this regard subject to an archaeological watching brief. This can be ensured by planning condition and again will avoid any harm in this regard.

6.71 Paragraph 180 a) of the NPPF requires planning decisions to mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and quality of life. The submitted Noise Assessment concludes that the site is 'low risk' and I concur with this conclusion.

6.72 Policy SQ4 of the MDE DPD only allows for development where the proposed land use does not result in a significant deterioration in air quality, does not result in the creation of a new Air Quality Management Area (AQMA), is not sited close to an existing harmful source of air pollution or impact on designated sites of nature conservation.

6.73 The Air Quality Assessment concludes that if the application is assessed alone then any impact on air quality is considered negligible at all the modelled receptors. However if the application is considered in conjunction with all other committed development then there would be a medium impact for which mitigation will be sought. It is therefore important to ensure the identified mitigation measures are implemented. These include the provision of electric vehicle charging points, a travel plan (submitted 19 December 2019), designated parking spaces for low emission vehicles, and improved cycle paths to link cycle network and secure storage. These measures can be ensured by planning condition.

6.74 The indicative layout demonstrates that the development can come forward in a manner that would ensure there would be no harm to the residential amenity of the existing dwellings immediately to the south. Similarly, the proposal will provide a suitable level of residential amenity for future occupiers. I am aware that the

introduction of additional dwellings is associated with increases in noise and general disturbance. I am also aware that an increase in traffic movements can have an impact in terms of air quality. However the associated junction and other highway improvements will have a positive impact on air quality

The draft local plan:

- 6.75 Members will be aware that this site is a proposed allocation for housing development in the draft local plan under policy LP25.
- 6.76 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.
- 6.77 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.”
- 6.78 However at present only limited weight can be given to the draft local plan until it has progressed further through the examination process and therefore the draft allocation cannot be determinative at this time.

Planning obligations:

- 6.79 As previously noted, the NPPF requires the Council to consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. It states that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Similarly paragraph 55 states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
- 6.80 Regulation 122 of the CIL Regulations also sets out that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is: (a) necessary to make the development acceptable in planning

terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development.

- 6.81 Policy CP17 of the TMBCS states that in rural areas affordable housing provision will be sought on all sites of 5 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.
- 6.82 The application however seeks to provide affordable housing at a level of 25%. This complies with the level proposed in the draft local plan policy LP39: Affordable Housing. As already noted the draft local plan is not sufficiently advanced in the examination process to be afforded any more than limited weight. Consequently a viability report had been submitted which concludes that the appropriate level of provision is 25%. This is unsurprising as the viability report was based on the same evidence as the draft local plan which states that 25% affordable housing provision is appropriate for this part of the Borough. I am aware that provision at a level of 25% does not accord with the 40% requirement set out in the current development plan. I am also aware that the draft local plan policy carries little weight. However the evidence put forward in the submitted viability report is based on the same evidence as the draft local plan policy and therefore, owing to the timing of the submission, there are material planning considerations that indicate the provision of 25% to be acceptable in this instance. The level of provision, including the precise mix and tenure split will be ensured through a S106 agreement.
- 6.83 Policy OS3 of the MDE DPD requires 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 Masterplan identifies some 2.86 hectares of open space and 0.18 hectares of formal public open space. The application states that a LEAP is to be sited in the centre of the site and three LAPS to be dispersed within the site. The proposal therefore includes substantial levels of open space, full details of which can be provided at reserved matters stage. Financial contributions for offsite provision for other types of open space (parks and gardens and outdoor sports facilities) can be secured by S106 agreement.
- 6.84 The CCG seeks financial contributions towards the refurbishment, reconfiguration and/or extension to Thornhills Medical Centre, Wateringbury Surgery and/or West Malling Group Practice. The amount sought is based on population increase projections arising from the additional households. Again, this can be ensured by S106 agreement.
- 6.85 Similarly, KCC (Economic Development) seeks contributions towards education, community learning, youth, libraries and social care. These contributions can also be ensured by S106 agreement.

Planning balance and overall conclusions:

- 6.86 It has been demonstrated that the development will result in less than substantial harm (at the very lower end of the scale) to the setting of identified heritage assets, and the physical works to the curtilage listed wall. This low level of harm (to which great weight must be attributed) has been balanced against the public benefits arising from the development and the provision of additional housing, including an element of affordable housing, found to outweigh this low level of harm. Consequently, in accordance with paragraph 11 d) (i) there are no clear reasons for refusing the proposed development.
- 6.87 In addition, and in accordance with paragraph 11 d) (ii) there are no other significant or demonstrable adverse impacts arising that would outweigh the benefits of the development when assessed against the policies in the Framework when taken as a whole. Any identified impacts arising from the development can be adequately and appropriately mitigated through planning obligations and conditions. I therefore conclude that the balance in favour of sustainable development falls to be applied and accordingly I put forward the following recommendation.

**7. Recommendation:**

Application (A)

- 7.1 **Grant outline planning permission** is accordance with the following submitted details: Email Emergency access received 31.10.2019, Letter received 25.10.2019, Revised Drawing EMT-C-02 REV C received 02.09.2019, Revised Drawing EMT-C-03 REV C received 02.09.2019, Revised Drawing EMT-C-04 REV C received 02.09.2019, Revised Drawing EMT-C-05 REV C received 02.09.2019, Revised Drawing EMT-C-06 REV C received 02.09.2019, Revised Drawing EMT-C-07 REV C received 02.09.2019, Revised Drawing EMT-C-08 REV C received 02.09.2019, Revised Drawing EMT-C-09 REV C received 02.09.2019, Email received 02.09.2019, Letter viability response received 03.04.2019, Other Technical Note received 09.05.2019, Assessment Landscape received 26.04.2019, Other Illustrative Landscape received 26.04.2019, Location Plan EMT-C-01\_REV\_A received 19.12.2018, Letter received 19.12.2018, Air Quality Assessment received 19.12.2018, Arboricultural Survey received 19.12.2018, Archaeological Assessment received 19.12.2018, Ecological Assessment received 19.12.2018, Flood Risk Assessment received 19.12.2018, Travel Plan received 19.12.2018, Statement Heritage received 19.12.2018, Landscape Statement received 19.12.2018, Noise Assessment received 19.12.2018, Statement Community Involvement received 19.12.2018, Transport Assessment received 19.12.2018, Statement Utilities and servicing received 19.12.2018, Design and Access Statement received 20.12.2018, Planning Statement received 20.12.2018, Email 5.7.19 received 16.07.2019, Master Plan 4923-LLB-XX-XX-DR-L-0001 P07 received 16.07.2019, Statement

supplementary supporting received 16.07.2019, Email 15.7.19 received 16.07.2019, Other KCC improvements A received 16.07.2019, Other Existing layout B received 16.07.2019, Viability Assessment received 25.07.2019, Letter received 14.10.2019, subject to :

- The applicant entering into a planning obligation with the Borough Council to provide on-site affordable housing and financial contributions towards public open space provision (parks and gardens and outdoor sports facilities) and enhancement and health provision;
- The applicant entering into a planning obligation with Kent County Council to make financial contributions towards off-site highway junction improvements, public transport, the provision of education facilities, and community services

It is expected that the section 106 agreement should be agreed in principle within 3 months and the legalities completed within 6 months of the committee resolution unless there are good reasons for the delay. Should the agreement under Section 106 of the Act not be completed and signed by all relevant parties by 21 May 2020, a report back to the Area 3 Planning Committee will be made either updating on progress and making a further recommendation or in the alternative the application may be refused under powers delegated to the Director of Planning, Housing and Environmental Health who will determine the specific reasons for refusal in consultation with the Chairman and Ward Members.

- The following conditions:

- 1 Approval of details of the layout and appearance of the development, the landscaping of the site, and the scale of the development (hereinafter called the "reserved matters") shall be obtained from the Local Planning Authority.

Reason: No such approval has been given.

- 2 Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of one year from the date of this permission.

Reason: In pursuance of Section 92(2) of the Town and Country Planning Act 1990.

- 3 The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason: In pursuance of Section 92(2) of the Town and Country Planning Act 1990.

- 4 Applications for the approval of the reserved matters shall be in general conformity with the indicative layout referenced EMT – C – 02 Rev C, EMT – C – 03 Rev C, EMT – C – 04 Rev C, EMT – C – 05 Rev C, EMT – C – 06 Rev C, EMT – C – 07 Rev C EMT – C – 08 Rev C, EMT – C – 09 Rev C received 2 September 2019 and details of the emergency access in email received 31.10.19.

Reason: To ensure that the layout of the proposed development will not result in any unacceptable impact on the nearby heritage assets or the wider highway network.

- 5 The details submitted in pursuance to Condition 1 shall be accompanied by a contoured site plan and full details of the slab levels at which the dwellings are to be constructed and the development shall be carried out in accordance with the approved details.

Reason: To enable the Local Planning Authority to assess adequately the impact of the development on visual relationship with the nearby heritage assets.

- 6 The details submitted in pursuance of Condition 1 shall be accompanied by a scheme of landscaping and boundary treatment. The scheme shall be in general conformity to the indicative layout referenced EMT – C – 09 Rev C received 2 September 2019 and follow the recommendations set out in the Arboricultural Report received 19 December 2019. The scheme shall be approved in writing by the Authority Planning Authority and shall be implemented by the approved date. Any trees or plants which within 10 years of planting are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of visual amenity

- 7 The details submitted in pursuance of Condition 1 shall show adequate land to be reserved for the parking and turning of vehicles. The dwellings hereby permitted shall not be occupied until these areas has been provided, surfaced and drained in accordance with the approved details. Thereafter no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown (other than the erection of a private garage or garages) or in such a position as to preclude vehicular access to reserved vehicle parking areas.

Reason: Development without provision of adequate accommodation for the parking or garaging of vehicles is likely to lead to hazardous on-street parking.

- 8 The details submitted in pursuance of Condition 1 shall show the proposed pedestrian and cycle routes within the site and how the routes will link to the existing public rights of way, particularly links between the southern part of the site and East Malling village. The dwellings hereby permitted shall not be occupied

until these routes have been provided, surfaced and drained in accordance with the approved details and shall be retained at all times thereafter.

Reason: To promote healthy lifestyles and social connectivity.

- 9 The details submitted in pursuance of Condition 1 shall show the proposed emergency access route as detailed in email received 31.10.19. The dwellings hereby permitted shall not be occupied until this route has been identified and made available for such use at all times thereafter.

Reason: In the interest of public safety.

- 10 The details submitted in pursuance of Condition 1 shall show arrangements for the storage and screening of refuse and recycling. Prior to the occupation of each unit the approved arrangements shall be implemented in relation to that particular unit, and shall be retained at all times thereafter.

Reason: To facilitate the collection of refuse and preserve visual amenity.

- 11 The details submitted in pursuance of Condition 1 shall incorporate the mitigation and enhancement measures detailed in the Ecological Assessment received 19 December 2018. The measures shall be implemented in accordance with an agreed timetable and retained thereafter.

Reason: In the interests of nature conservation and biodiversity.

- 12 The details submitted in pursuance of Condition 1 shall incorporate the mitigation measures detailed in the Air Quality Assessment and Travel Plan received 19 December 2018. The measures shall be implemented in accordance with an agreed timetable and retained thereafter.

Reason: To ensure suitable levels of air quality

- 13 The details submitted in pursuance of Condition 1 shall show the proposed areas of amenity, natural and formal open space, a centrally located Local Equipped Area of Play and three Local Areas of Play. The open space and play areas shall be implemented in accordance with an agreed timetable and retained thereafter.

Reason: To ensure suitable levels of open space in the interests of health and wellbeing.

- 14 Prior to the commencement of the development hereby approved, arrangements for the management of all construction works shall be submitted to and approved by the Local Planning Authority. The management arrangements to be submitted shall include (but not necessarily be limited to) the following:

- The days of the week and hours of the day when the construction works will be limited to and measured to ensure these are adhered to;

- Procedures for managing all traffic movements associated with the construction works including (but not limited to) the delivery of building materials to the site (including the times of the day when those deliveries will be permitted to take place and how/where materials will be offloaded into the site) and for the management of all other construction related traffic and measures to ensure these are adhered to;
- Procedures for notifying neighbouring properties as to the ongoing timetabling of works, the nature of the works and likely their duration, with particular reference to any such works which may give rise to noise and disturbance and any other regular liaison or information dissemination; and
- The specific arrangements for the parking of contractor's vehicles within or around the site during construction and any external storage of materials or plant throughout the construction phase.

The development shall be undertaken in full compliance with the approved details.

Reason: In the interests of residential amenity and highway safety.

- 15 No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of
- i archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved by the Local Planning Authority; and
  - ii following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority

Reason: To ensure that features of archaeological interest are properly examined and recorded and that due regard is had to the preservation in situ of important archaeological remains.

- 16 No above ground works, other than ground investigations work or site survey works, shall commence until a scheme to connect all plots to mains foul drainage has been submitted to, and approved in writing by the local planning authority. The occupation of the development hereby permitted is to be phased and implemented to align with the delivery by Southern Water of any required sewerage network reinforcement.

Reason: To ensure that adequate waste water network capacity is available to adequately drain the development.

- 17 Prior to any above ground works, except ground investigations or site survey works, details and samples of all materials to be used externally shall be submitted to and approved by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not harm the character of the countryside.

- 18 Prior to any above ground works, except ground investigations or site survey works a detailed sustainable surface water drainage scheme for the site shall be submitted to, and approved in writing by, the local planning authority. The detailed drainage scheme shall be based upon the FRA prepared by Ardent Consulting, ref 18600-02, December 2018 and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site. The scheme, where possible shall include daylighting of the existing culvert to the western site boundary.

The drainage scheme shall also demonstrate (with reference to published guidance):

- that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding.

- 19 The dwellings shall not be occupied until a Verification Report pertaining to the surface water drainage system, carried out by a suitably qualified professional, has been submitted to the Local Planning Authority which demonstrates the suitable modelled operation of the drainage system such that flood risk is appropriately managed, as approved by the Lead Local Flood Authority. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; topographical survey of 'as constructed'

features; and an operation and maintenance manual for the sustainable drainage scheme as constructed.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems.

20 No above ground works, except ground investigations or site survey works shall commence until the following have been submitted to and approved by the Local Planning Authority:

a) a contaminated land desktop study identifying all previous site uses, potential contaminants associated with those uses including a survey of the condition of any existing building(s), a conceptual model of the site indicating sources, pathways and receptors and any potentially unacceptable risks arising from contamination at the site;

(b) based on the findings of the desktop study, proposals for a site investigation scheme that will provide information for an assessment of the risk to all receptors that may be affected including those off site. The site investigation scheme should also include details of any site clearance, ground investigations or site survey work that may be required to allow for intrusive investigations to be undertaken.

If, in seeking to comply with the terms of this condition, reliance is made on studies or assessments prepared as part of the substantive application for planning permission, these documents should be clearly identified and cross-referenced in the submission of the details pursuant to this condition.

Reason: In the interests of amenity, public safety and human health.

21 No development shall take place other than as required as part of any relevant approved site investigation works until the following have been submitted to and approved by the Local Planning Authority:

a) results of the site investigations (including any necessary intrusive investigations) and a risk assessment of the degree and nature of any contamination on site and the impact on human health, controlled waters and the wider environment. These results shall include a detailed remediation method statement informed by the site investigation results and associated risk assessment, which details how the site will be made suitable for its approved end use through removal or mitigation measures. The method statement must include details of all works to be undertaken, proposed remediation objectives, remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site cannot be determined as Contaminated Land as defined under Part 2A of the Environmental Protection Act 1990 (or as otherwise amended).

The submitted scheme shall include details of arrangements for responding to any discovery of unforeseen contamination during the undertaking hereby permitted. Such arrangements shall include a requirement to notify the Local Planning Authority in writing of the presence of any such unforeseen contamination along with a timetable of works to be undertaken to make the site suitable for its approved end use.

(b) prior to the commencement of the development the relevant approved remediation scheme shall be carried out as approved. The Local Planning Authority should be given a minimum of two weeks written notification of the commencement of the remediation scheme works.

Reason: In the interests of amenity, public safety and human health.

- 22 Following completion of the approved remediation strategy, and prior to the first occupation of the development, a relevant verification report that scientifically and technically demonstrates the effectiveness and completion of the remediation scheme at above and below ground level shall be submitted for the information of the Local Planning Authority.

The report shall be undertaken in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. Where it is identified that further remediation works are necessary, details and a timetable of those works shall be submitted to the Local Planning Authority for written approval and shall be fully implemented as approved.

Thereafter, no works shall take place such as to prejudice the effectiveness of the approved scheme of remediation.

Reason: In the interests of amenity, public safety and human health.

### **Informatives**

- 1 It is recommended that all developers work with a telecommunication partner or subcontractor in the early stages of planning for any new development to make sure that Next Generation Access Broadband is a fundamental part of the project. Access to superfast broadband should be thought of as an essential utility for all new homes and businesses and given the same importance as water or power in any development design. Please liaise with a telecom provider to decide the appropriate solution for this development and the availability of the nearest connection point to high speed broadband. We understand that major telecommunication providers are now offering Next Generation Access Broadband connections free of charge to the developer. For advice on how to proceed with providing access to superfast broadband please contact [broadband@kent.gov.uk](mailto:broadband@kent.gov.uk)
- 2 The proposed development is within a road which has a formal street numbering scheme and it will be necessary for the Council to allocate postal address(es) to

the new property/ies. To discuss the arrangements, you are invited to write to Street Naming & Numbering, Tonbridge and Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ or to e-mail to addresses@tmbc.gov.uk. To avoid difficulties for first occupiers, you are advised to do this as soon as possible and, in any event, not less than one month before the new properties are ready for occupation.

- 3 The network provided by Southern Water will require reinforcement. Any such network reinforcement will be part funded through the New Infrastructure Charge with the remainder funded through Southern Water's Capital Works programme. Accordingly Southern Water and the Developer will need to work together in order to review if the delivery of the network reinforcement aligns with the proposed occupation of the development, as it will take time to design and deliver any such reinforcement.

Application (B)

- 7.2 **Grant listed building consent** in accordance with the following submitted details: Letter dated 21.12.2018, Design and Access Statement dated 21.12.2018, Statement Heritage dated 21.12.2018, Statement dated 21.12.2018, Email dated 11.04.2019, Statement Supplementary Heritage dated 11.04.2019, Revised Drawing 182600-009 B dated 11.04.2019, Revised Drawing 182600-012 B dated 11.04.2019, Revised Drawing 182600 - 010 B dated 11.04.2019, Revised Drawing 82600-011 A dated 11.04.2019 subject to the following conditions

- 1 The development and works to which this consent relates shall be begun before the expiration of three years from the date of this consent.

Reason: In pursuance of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

- 2 The listed building works hereby permitted shall not commence until the reserved matters application for TM/18/03008/OA has been submitted and approved.

Reason: To ensure the listed building works are not carried out in isolation.

- 3 The new sections of the boundary wall shall be erected using the retrieved bricks from the removal of the wall hereby permitted. If the existing bricks cannot be reused a brick to match the size, colour and style of the existing bricks shall be used. The new sections of wall shall be constructed to match the brick bonding of the existing wall.

Reason: To retain the visual appearance of the historic feature.

Contact: Maria Brown