

Addington
Downs And Mereworth

22 May 2019

TM/19/01067/FL

Proposal: Redevelopment of the site to provide 10 x detached dwelling houses with associated parking, turning, landscaping and improvements to the access road

Location: Scarbutts And Winsor Works London Road Addington West Malling Kent ME19 5AN

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1. Description:

- 1.1 This planning application proposes the redevelopment of a longstanding industrial site for 10 residential dwellings (3no. five beds and the remaining four bed units). The dwellings are all two storey detached properties finished in a mixture of brick, tile hanging and render. Each property is proposed to be served by a detached double garage with two independently accessible spaces in front. A visitor parking area containing 4 spaces is also proposed to be provided along the main access road.
- 1.2 The application also proposes the re-grading and surfacing of the existing access from the A20 to provide an improved access to serve the site. Alterations are proposed to land levels across the site intended to mitigate against the potential for flooding. The application also indicates a scheme of ecological and biodiversity enhancement and management and maintenance of the trees and boundary hedging.
- 1.3 Members will be aware that the site has a long history of commercial and industrial use, primarily comprising a printers on the southern part of the land and a workshop and garage to the north that was later changed to a metal smelter. Since this time numerous other uses have been undertaken including transportation yard, breakers yard, scaffolding contactor's yard and depot for a demolition company. These uses were mostly undertaken without the benefit of planning permission but had become lawful over the passage of time.
- 1.4 Given the history of the site and the relationships between it and surrounding buildings, a Members' Site Inspection was undertaken (in October last year) in advance of reporting this item so that Members could re-familiarise themselves with the site since their last visit in 2015.
- 1.5 At the inspection it became apparent that the applicants had decided to clear the site of all previous buildings. These buildings had been in situ at the time the case officer previously visited the site and no indication had been given by the applicants or their agents that this was scheduled to or had taken place. This action fundamentally changed the parameters for assessing the application due to the change from a developed site in the Green Belt to a vacant site with only some

areas of hardstanding remaining and this will be discussed fully in the assessment that follows. Since this time, officers have repeatedly advised the prospective developers via their planning agent to provide an updated supporting case in light of this fundamental change to the site and latterly officers have advised them to withdraw the application and reconsider options for any resubmission. None of this advice has been taken up to date.

- 1.6 Most recently, we have received notification from the Planning Inspectorate that an appeal has been lodged against non-determination of the application within the requisite timeframe. A response has been sent advising that we consider the provisions to lodge such an appeal do not apply in this instance because the statutory timeframe within which to lodge such an appeal (six months from the target date for determination) has passed. On this basis, it is considered that the LPA can still make a determination on the application and there is no locus for the Inspectorate to accept the appeal. If, for some reason, we are advised differently ahead of the committee meeting taking place, our recommendation will be updated accordingly by way of a supplementary matter.

2. Reason for reporting to Committee:

- 2.1 Due to the controversial and complex planning history of the site.

3. The Site:

- 3.1 The application site is located behind the Humphries and Parks Mitsubishi Garage and car sales premises on the north side of London Road (A20), to the southeast of Addington in the countryside. Access to the site is via an access road that extends 90m to the north from the A20, between the Mitsubishi car sales yard to the east and the residential property of Emlyn to the west. The site provides an area of about 0.8ha and is currently vacant, with the buildings that historically occupied the site being demolished towards the end of 2019.
- 3.2 The existing site falls away towards the north towards Leybourne Stream that runs adjacent to the west and north boundaries. The main part of the site is relatively flat with a slight slope from the south down to the north. However, the access road to the site is relatively steep, with the level of the A20 being about 10m higher than the level of the site proper.
- 3.3 The dwellings of Mayhill House and May Hill Barn lie to the southeast of the application site. The Mitsubishi Garage and car sales premises lie further to the south fronting the A20. An open field/meadow lies to the east, with an area of woodland to the north and northeast. The West Malling Golf Course lies to the northwest and north of the site. The residential property of Emlyn adjoins the western boundary of the site adjacent to the access road. A number of other residential properties (Nos.1-6 Greenways) are sited further to the west. A cluster of residential properties is also located on the south side of the A20, opposite the site access.

- 5.2 KCC (LLFA): Kent County Council as Lead Local Flood Authority have reviewed the Flood Risk Assessment and supporting drainage strategy and have no objection in principle to the proposed development subject to conditions.
- 5.3 KCC (Heritage): The site of the application lies in an area of broad potential for prehistoric and later remains. The site lies on Head deposits close to a stream-line. Such areas would have been favourable for prehistoric and later occupation. Prehistoric, Roman and Medieval artefacts have been located in the surrounding fields and the A20 routeway may have been use from the Prehistoric Period onwards. In view of this potential, I recommend that any permission be subject to a condition requiring an archaeological investigation to be undertaken.
- 5.4 Southern Water: No objections subject to a condition ensuring that there is no building works over the public sewer that crosses the site.
- 5.5 Environmental Protection: No objection subject to conditions relating to ground contamination.
- 5.6 Private Reps: 10 + site + press notice/4S/1X/3R.

Objections received are summarised as follows:

- Impact on outlook and privacy as house roofs will be level with the ground floor of houses to the south.
- Development inappropriate in the Metropolitan Green Belt as it would not accord with policy.
- Should be limited to a maximum of 5 houses.
- Business premises are situated at a higher level and therefore more likely to cause a disturbance.
- Residential development will put pressure for restrictions on existing businesses that will adversely impact their operations that operate 24 hours.
- Pressure on infrastructure
- Impact on wildlife on the adjacent land.

Comments in support are summarised below:

- Welcome development as the site is currently unsightly.
- Area predominantly residential and the development is more appropriate than previous industrial uses.

- Residential use would remove large, slow moving vehicles from the A20 at this point.
- Decontamination will have a positive effect on the surrounding nature and protect the stream that flows along the boundary.

6. Determining Issues:

Background and preliminary matters:

- 6.1 The site has a long history of commercial and industrial use with a workshop and garage erected on the site in the early 1960s and laying of concrete for parking in 1977. The southern building remained in general industrial use as a printing works (known as “Scarbutts”) until its closure.
- 6.2 Planning permissions were also granted for a replacement building for storage of commercial vehicles and plant spares in 1982, erection of an office building to replace a temporary building in 1982 and erection of a replacement industrial building for repair and sale of commercial vehicles in 1984. These permissions do not appear to have been implemented though.
- 6.3 A steel framed building used as a furnace for the recovery of aluminium was erected in 1990 along with a change of use of the land to B4(c) (now B2 General Industry) which appears to be the last lawful use of the northern part of the site.
- 6.4 The northern part of the site was also most recently used (unlawfully) as a demolition contractor’s depot. Permission was refused for this retrospective change of use in 2015 with the subsequent enforcement notice upheld on appeal the following year. In upholding the notice the Inspector noted the issues with regard the operation of the site as being its use 6 days a week from 6am to 10pm, noise from the operation, issues regarding the laboured process of HGV movements from the steep access to the site and turning onto the A20 and also concerns as to pollution of the nearby watercourse, of a major aquifer under the site, and pollution arising from fires on the site.
- 6.5 The site is now currently vacant, having been cleared of all buildings last year, with only areas of hardstanding now remaining in situ. It is on this basis that the current planning application before Members must now be assessed.

Principle of development:

- 6.6 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF at paragraph 12 sets out that it:

“does not change the statutory status of the development plan as the starting point

for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise”.

6.7 In the absence of a five year housing land supply, the presumption in favour of sustainable development applies. Paragraph 11 of the NPPF states that for decision making this means:

(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 planning permission unless:

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

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

6.8 The site lies outside any defined settlement boundary and on land defined as countryside. Policy CP14 of the TMBCS requires that in the countryside development will be restricted to certain, stipulated, forms of development, including (inter alia) the redevelopment of the defined Major Developed Sites in the Green Belt which improves visual appearance, enhances openness and improves sustainability (listed as policy CP14 (f)). The assessment concerning the caveats included within this requirement is set out in detail below and, briefly, the development proposed is not considered to accord with the requirements of the policy in respect of enhancing openness but in any event in the absence of a five year housing land supply, policy CP14 is considered to be out of date and substantially less weight should be afforded to it as a result. This reflects previous decisions made by the Authority since we have no longer been able to demonstrate a five year housing land supply, supported by various appeal decisions which Members will be aware of.

6.9 The site also falls to be assessed under policy E2 of the DLA DPD. This states that whilst not safeguarded for employment use, their loss for other purposes would need to pass a series of strict tests. It states that such areas are considered to be suitable for continued employment use subject to certain caveats and that proposals for uses other than General Industrial (B2), Business Use (B1) or Storage and Distribution uses will not be permitted unless the following requirements are met:

(1) proposals must be able to demonstrate no significant adverse impact on the quality and quantity of employment land supply in the market area;

(2) applicants must demonstrate that they have actively marketed the site for employment purposes on realistic terms and for a reasonable period, including consideration of sub-dividing a larger site;

(3) applicants must be able to demonstrate that continued use or redevelopment of the existing buildings for employment purposes is not viable; and Any proposal that is permitted having regard to the above requirements must be able to demonstrate that the amenity benefits of redevelopment outweigh the benefits of retaining the site in employment use.

6.10 This approach is supported by paragraph 80 of the NPPF that states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

6.11 In support of the application the applicants have provided evidence regarding the viability and suitability of the site in accordance with the three tests set out in Policy E2 for ongoing business use. The evidence shows that the site has been marketed with little or no interest and that there are other sites readily available in the locality. The evidence also sets out that the costs of redeveloping the site make it unviable to retain the existing use. On this basis, it is considered in principle that the development accords with the three requirements of Policy E2.

6.12 As such, it is necessary to turn to the requirements of paragraph 11 (d) and for the purposes of determining this application, the restrictive policies referred to in paragraph 11 (d) (i) include those relating to development within the Green Belt and areas of flood risk. It is therefore necessary to firstly establish whether the application of those policies in respect of this scheme indicate any clear reason for refusing planning permission.

Development in the Green Belt:

6.13 The site is allocated by Policy M1 of the DLA DPD as a Major Developed Site in the Green Belt. This policy provides for the redevelopment of such sites if the development accords with each of the six listed criteria, as follows:

(1) it does not lead to any greater impact on the openness of the Green Belt and the purposes of including land within it;

(2) it leads to an overall improvement in the environment, does not harm the landscape setting, includes provision for the maintenance of landscaped areas and appropriately integrates with its surroundings;

(3) any changes to traffic generated can be satisfactorily accommodated without conflict with rural amenity and without prejudice to highway safety and if possible bring beneficial changes;

(4) it does not exceed the height of existing buildings;

(5) for infill development, it does not result in an extension to the currently developed extent of the site; and

(6) for redevelopment, the proposed coverage of the site by buildings (i.e. the footprint) is no larger than the ground floor extent of the original buildings unless occupying a larger footprint would achieve a reduction in height which would benefit visual amenity and reduce impact on the wider Green Belt.

There is also an additional requirement that new residential development proposed must demonstrate the following:

(1) uses appropriate to the Green Belt cannot be achieved on the site and the site cannot continue to be used for its existing purpose (provided the existing use is not, in itself, detrimental to the purposes of the Green Belt); or

(2) residential redevelopment or reuse of the site will bring significant environmental benefits.

6.14 Paragraph 143 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. "Very special circumstances" will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal is clearly outweighed by other considerations.

6.15 Paragraph 145 of the NPPF sets out that local planning authorities should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this, relevant to this application, are:

e) limited infilling in villages;

g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

- not have a greater impact on the openness of the Green Belt than the existing development; or
- not cause substantial harm to the openness of the Green Belt, where the development would reuse previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

- 6.16 The adopted policy set out within the DPD is broadly consistent with the relevant paragraphs contained within the Framework although it is noted that it does set out a number of additional parameters to meet which go above and beyond the requirements of the Framework. For that reason, the weight to be afforded to policy M1 is reduced. In any event, given that there are no buildings now remaining on site, it is not possible to accord with a number of the express requirements of the policy and as such the proposed development is contrary to this policy.
- 6.17 In terms of the restrictive policies within the Framework pertaining to development within the Green Belt, it is not considered that the site can reasonably be said to lie within the village of Addington. That is a matter of planning judgement and appeal decisions in the immediate vicinity support this position. For example, when considering the nearby Mayhill Bungalow appeal (application TM/18/02608/FL refers) the Inspector, in dismissing the proposed development, stated that the area had 'dispersed pockets of development that do not comprise a cohesive settlement in visual terms'. As such, the exception to inappropriate development provided by paragraph 145(e) of the NPPF does not apply.
- 6.18 Although the buildings previously occupying the site have been demolished, areas of hardstanding do remain across the site and as such the site continues to fall within the definition of previously developed land as set out at Annex 2 of the NPPF. Paragraph 145(g) therefore falls to be applied but it is the condition of the site as it currently stands that the development must be judged against, rather than the historic situation.
- 6.19 There can be no doubt that the amount, footprint and scale of the development proposed by this application would have a greater impact on openness and as such the exception provided by paragraph 145 (g) cannot apply either. The development therefore constitutes inappropriate development which is harmful by definition. Moreover, this also results in material harm to openness in spatial and visual terms. Specifically, the residential development proposed would lead to a taller built form spread over a wider area of the site. This harm taken in totality (along with any other planning harm identified during the course of assessment) must be clearly outweighed by very special circumstances before planning permission can be granted.
- 6.20 In this instance, the applicant has sought to put forward a case of very special circumstances for the development and the need to clear the site of the existing buildings. In summary, this case centres on the decontamination of the site, prevention of flooding, ecological benefits and a reduction in traffic movements onto the A20 as a result of the cessation of the historic industrial use.
- 6.21 Members will be aware that the Courts have held that the existence of very special circumstances must go beyond straightforward compliance with the normal development management policy requirements. These are addressed as follows:

- 6.22 It is accepted that the site is heavily contaminated due to the nature of the previous industrial uses that have taken place on the site. Paragraph 178 of the NPPF requires that a site is suitable for its end use taking account of ground conditions and any risks arising from land instability and contamination. The development proposed has been supported by a detailed geo-technical report that indicates the level of remediation required on site to accord with the requirements of paragraph 178. The submitted report goes further detailing enhancements that would arise in the area in general as a result of the decontamination of the site including the removal of pollution sources for the adjacent watercourse and also the removal of a source of contaminants that could enter groundwater. However, the decontamination of the site is a consequence of the proposed development that is expressly required to make the residential development acceptable in planning terms and this cannot therefore, in my view, amount to a very special circumstance.
- 6.23 Similarly, specific and detailed policies require development taking place in areas of flood risk to mitigate the effects of flooding. It is accepted that the proposed development has been designed to enable management of the watercourse to the rear of the site and also give greater controls on surface water runoff towards this watercourse and that this approach has been set out as a result of a detailed Flood Risk Assessment. The development would provide enhancements to the flood risk in the area as a whole by proposing management of the watercourse which, by maintaining the river channel would lower the overall water level and thus lower the overall flood risk in the area.
- 6.24 Flooding from surface water would also be reduced as a result of the development. At present surface water is free to flow down the slope from the A20, across the site and into the watercourse leading to surface water flooding to the east of the site. The installation of a formal drainage system would be required as part of the development and in this instance the scheme proposes a holding tank under the visitor parking area which would slow the flow of water across the site to reduce peak runoff. The scheme is in full accordance with Policy CP10 but could not be considered a very special circumstance as it is only resulting in a policy compliant development.
- 6.25 The site at present has very low ecological value as a result of its previous uses and the general lack of vegetation within the site. The residential development proposed proposes the provision of numerous environmental enhancements across the site in the form of additional planting, bird and bat boxes and access holes for small mammals in the fences. The works also enable the creation of an ecological buffer strip along the southern bank of the stream which can be managed to open the area up as a habitat water voles and reptiles such as grass snake and lizards. The development would also bring about the overall enhancements by removing the industrial use from the area in relation to the removal of lighting, noise, activity etc. associated with the previous use of the site, in particular close to the river bank. This level of provision comfortably meets the

requirements of Policy NE3 of the MDE DPD that seeks for development to mitigate their impacts on the loss of habitats and the retention of wildlife corridors.

6.26 This level of provision is also in line with the general requirements of paragraph 170 of the NPPF which states that planning policies and decisions should contribute to and enhance the natural and local environment by *inter alia*:

(d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;

(f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

6.27 The NPPF goes into greater detail on net gains for biodiversity in paragraph 175 (d) which states that '*development whose **primary objective** is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity*'. (**my emphasis**).

6.28 In this instance it is considered that whilst the development complies with the requirements of Policy NE3 and paragraph 170 of the NPPF it does not have the primary objective of conserving or enhancing biodiversity as set out in paragraph 175(d). On this basis the ecological enhancements being provided would only be considered compliant with policy and would therefore not be viewed as a very special circumstance clearly outweighing identified harm.

6.29 I accept that the industrial uses of the site have previously led to complaints regarding excessive noise, pollution from bonfires and impacts on traffic flows on the A20 due to the nature of slope of the access and the effect this has on the movement of HGVs turning from the site onto the main carriageway. Whilst the nature of poor site management would not form a planning consideration the benefits of the loss of HGV movements and the industrial use in this rural area do. The fact that the existing use of the site is an unfettered B2 use that by definition means that there is no ability to control HGV movements does not make the loss of HGV movements and the industrial use a very special circumstance.

6.30 It is my judgement, these are all aspects which are normal requirements of planning policy in assessing any development proposals and therefore are not "very special" in terms of clearly outweighing the identified harm to the Green Belt. They are not capable of amounting to, or contributing to a cumulative case, of very special circumstances; they are simply matters that are required of all good quality development across the Borough.

6.31 As such, the relevant restrictive policies of the Framework (and indeed the relevant development plan policies insofar as they remain consistent with those

policies) provide a clear reason for refusal (being the correct test set out in paragraph 11 (d) (i)). The presumption in favour of sustainable development does not therefore re-emerge to be applied here.

Flood risk and impact:

- 6.32 The site is partially located within flood zones 2 and 3 and due to this adopted policies generally seek to restrict development in such areas unless it can be shown that the development would not be at risk nor would it increase flooding elsewhere. 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).
- 6.33 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. Flood attenuation measures in the form of underground water storage is proposed as part of the drainage strategy which would further minimise the potential for increased surface water flooding both on-site and outside the site as a result of the development.
- 6.34 Paragraph 163 of the NPPF requires that when determining applications, local planning authorities should ensure that flood risk is not increased elsewhere. The nature of the development is such that it will enable the management of Leybourne Stream as part of the environmental and ecological enhancements. The management of the stream would enable regular maintenance of the watercourse which would ensure that the channel is kept clear. This in turn would reduce the potential for off-site flooding to the east of the site to the benefit of the area in general.
- 6.35 The restrictive policies contained within the Framework in respect of flood risk therefore do not provide a clear reason for refusal in their own right but this does not alter the position already reached on the application of the presumption in favour of sustainable development. The remainder of the assessment that follows reflects that.

Impact on visual amenities:

- 6.36 Policy CP1 of the TMBCS requires all new development to result in a high quality sustainable environment. Policies CP24 of the TMBCS and SQ1 of the MDE DPD are the most relevant design policies and require development to be well designed and through its scale, density, layout, siting, character and appearance respect the

site and its surroundings. Development should also 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.

6.37 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.

6.38 Paragraph 130 is also material and sets out that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development.

6.39 The adopted development plan policies generally conform to the requirements of the NPPF in these respects.

6.40 The dwellings are proposed to be set over two storeys and are of a traditional design. The dwellings are proposed to be finished in brick, render and tile hanging under tiled roofs. Parking is to be provided within detached double garages designed to complement the appearance of the dwellings. The buildings would not appear in any way out of keeping with the prevailing character of the locality in

terms of form, design or use of materials. I also note that the existing established planting to the site boundaries is to be retained with further enhancements proposed to ensure that the general character of the area is retained. The building works are to be set away from the existing mature trees on the boundary of the site. The details of the landscaping can be sought by condition. I am therefore of the view that the design of the dwellings proposed would be more in keeping with the surrounding development over that which historically occupied the site. The design of the buildings accords with the adopted and national policy in these respects.

Impact on residential amenity:

- 6.41 The layout of the site is such that the development would not lead to any privacy or overlooking issues for neighbouring dwellings. The relationships between the proposed houses and the existing surrounding dwellings to the west and south are such that there would be no direct views between properties. The site is set at a considerably lower level than the surroundings, with the proposed dwellings set at least 25m from the nearest existing neighbouring properties. The site layout is such that the new properties would also not be positioned directly in line with the existing properties to further reduce the potential for any loss of amenity to the surrounding houses.
- 6.42 Similarly the positioning of new residential units behind two existing business premises would not result in a conflict between the uses. It is not considered that the proposed dwellings would be unacceptably impacted upon by noise from either neighbouring business premises to the south due to the considerable separation distances proposed. The submitted acoustic report indicates that the distances involved are such that the proposed dwellings would not require mitigation over and above that normally sought under building regulations. On this basis it is considered that there are no objections to residential development on the grounds of noise. It is noted that there are floodlights at the Humphries and Parks site that face towards the application site. The potential for these to have an adverse impact on the amenity of the new dwellings has been assessed as part of the submission. This assessment has concluded that the floodlight angles combined with the difference in land levels and the separation distances involved would ensure that there would be no adverse impact on amenity to the proposed properties.
- 6.43 The existing tree band along the southern boundary of the site has been assessed and it is considered that these trees would not be at risk of removal due as a result of them overshadowing the new development. The natural shape of these trees when combined with the substantial size of the proposed plots would ensure that dappled light would filter through the canopy to the proposed dwellings ensuring that there would not be a noticeable shading effect that would lead to pressure to remove the trees.

Highway safety and parking provision:

- 6.44 The relevant development plan policy in relation to highway safety and parking is contained within Policy SQ8 of the MDE DPD. This states that before proposals for development are permitted, they will need to demonstrate that any necessary transport infrastructure, the need for which arises wholly or substantially from the development, is in place or is certain to be provided.
- 6.45 Paragraphs 109 and 110 of the NPPF are also material and set out 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; and that developments should create places that are safe, secure and attractive avoiding conflict between users. Again, there is general conformity between the requirements of adopted policy and the NPPF in these respects.
- 6.46 The proposal seeks to gain access to the site from the A20 using a re-graded and improved access along the route of the existing. Works are proposed to the western boundary hedge to enable improved vision splays. This improvement plus the removal of the use of the access by commercial vehicles is considered to be a betterment in highway safety terms.
- 6.47 The provision of at least two parking spaces plus a double garage to serve each new dwelling along with the provision of 5 visitor parking bays would exceed the requirements set out in KHS IG3: Residential Parking. The site layout indicates the provision of electric car charging points for each dwelling. This is welcomed and is considered to be fully in line with the requirements of paragraph 110 (e) of the NPPF which requires developments to be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations. These charging points can be controlled by condition.
- 6.48 As such, there are no justifiable grounds to resist the development on grounds of highway safety or parking provision when considering the proposal against adopted and national policy requirements.

Potential land contamination:

- 6.49 Paragraph 170(f) of the NPPF states that planning decisions should contribute to and enhance the natural and local environment by 'remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.' The site is derelict and contaminated as a result of its previous industrial use, with the application proposing appropriate remediation to ensure that the land is suitable for the residential use. In this respect the application fully accords with paragraph 170 of the NPPF.

6.50 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.

6.51 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

6.52 The site was previously occupied by industrial uses and the submitted contamination report does state that numerous contaminants are present. A detailed plan for the remediation of the site has been submitted with the application which provides adequate detail to prove that the site can be made suitable for the end use and these works can be controlled through the use of appropriate planning conditions.

Environmental Impacts:

6.53 The site is located on a principal aquifer and therefore the construction of the development has the opportunity to lead to the pollution of controlled waters. Policy SQ5 of the MDE DPD seeks to ensure that development would not compromise the quality and supply of water. Paragraph 170 of the NPPF states that 'planning policies and decisions should contribute to and enhance the natural and local environment by (inter alia):

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans.

6.54 The development has been subject to consultation with the EA who are satisfied that through the use of Sustainable Drainage Systems the development will not lead to the contamination of groundwater.

6.55 Given the previous use of the site the applicant has proposed a series of ecological enhancements to encourage wildlife into the area in the shape of nesting boxes for birds and bats; hedgehog friendly fences and an ecological buffer strip along the southern bank of the Leybourne Stream. The development is therefore considered to utilise the types of measures to meet the requirements of paragraph 175 of the NPPF and Policy NE3 of the MDE DPD which encourage development that incorporates biodiversity improvements.

Planning obligations:

6.56 Section 1 of Policy CP25 of the TMBCS requires development proposals to either incorporate the infrastructure required as a result of the scheme or make provision for financial contributions. Paragraph 54 of the NPPF requires local planning authorities to consider whether otherwise unacceptable development could be made acceptable through the use of conditions or 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.

6.57 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.

6.58 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. Given the size of the development financial contributions of a total of £46,530 for offsite provision for parks and gardens, outdoor sports facilities and children's and young people's play areas in the vicinity of the site are required and these can be secured by S106 agreement.

6.59 Similarly, KCC (Economic Development) seeks contributions of £33,240 towards Primary School provision at Leybourne Chase School; £41,150 towards Secondary School expansion at The Malling School and £480.16 towards additional bookstock for the new borrowers at West Malling Library. These contributions can also be ensured by S106 agreement.

6.60 Although Policy CP17 states that in rural areas developments of 5 or more dwellings should provide affordable housing this policy has been superseded by

National Planning Practice Guidance which has raised the threshold of development to more than 10 units. As such this development is not large enough to trigger the requirement.

- 6.61 Had the development been acceptable in all other respects, these matters could have been appropriately secured by planning obligation.

Planning balance and overall conclusions:

- 6.62 The development constitutes inappropriate development within the Green Belt which is harmful by definition. Furthermore, the nature and scale of the development when considered alongside the current physical condition of the site which is absent any built development with the exception of remaining areas of hardstanding would reduce openness in spatial and visual terms. It is not considered that any very special circumstances – whether taken individually or cumulatively – have been demonstrated that would clearly outweigh the harm identified to the Green Belt in this case. As such, the application of policies contained within the Framework insofar as they relate to development in the Green belt provides a clear reason for refusing the development proposed.

7. Recommendation:

- 7.1 **Refuse planning permission** for the following reason:

- 1 The site lies within the Metropolitan Green Belt where there is a strong presumption against inappropriate development, as defined in the National Planning Policy Framework (2019). The development constitutes inappropriate development within the Green Belt which is substantially harmful by definition. Furthermore, the development would cause material harm to openness by virtue of the amount of built form across the site. No very special circumstances have been demonstrated that clearly outweigh the degree of harm to the Metropolitan Green Belt and the development is therefore contrary to paragraphs 143 to 145 of the National Planning Policy Framework (2019) and Policy CP3 of the Tonbridge and Malling Borough Core Strategy 2007 and Policy M1 of the Tonbridge and Malling Development Land Allocations Development Plan Document 2010

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