

SUPPLEMENTARY REPORTS

AREA 2 PLANNING COMMITTEE

DATED 15th January 2025

East Malling, West Malling and Offham**TM/22/01570**

East Malling

Location: Land north, east and south of 161 Wateringbury Road East Malling**Proposal:** Outline Application: All matters reserved except for access for the erection of up to 52 residential dwellings, including affordable housing, open space and landscaping, roads, parking, drainage and earthworks. New access to be formed from Wateringbury Road.

East Malling and Larkfield PC: An Objection Statement (OS) has been submitted on behalf of the East Malling and Larkfield Parish Council. The full body of this document is attached at Appendix 1 of this supplementary report. In summary the report sets out the following:

The principal grounds for objection relate to the following: the failure of the applicant to undertake a sufficiently robust assessment of how setting contributes to the significance of identified heritage assets in the way and degree required by National and Local legislation which led to the conclusion that no harm would be caused to Ivy farmhouse and barn, 122 Chapel Street and the NDHA farmstead at 161 Wateringbury Road; the failure of the applicant to consider the direct impact of the development on the character and appearance of the East Malling Conservation Area, and the failure of the applicant to consider the cumulative impact of the proposed scheme in addition to other recent approved large housing schemes on the significance of the East Malling Conservation Area as a result of significantly increased traffic.

No mitigation measures have been provided by the applicant to protect the conservation area from being overwhelmed by the additional noise, smells, vibrations and visual impact caused by the significant traffic that will be generated by the scheme.

This OS concludes that despite the local planning authority not being able to demonstrate a sufficient supply of deliverable housing sites, that section 11(dii) of the NPPF will not apply as the proposal will result in unjustified harm to designated and non-designated heritage assets, contrary to local and national policy.

Ditton PC: Ditton Parish Council wishes to give its objections to this application and fully supports the comments and objections submitted by East Malling and Larkfield Parish Council. In particular the concerns of the increased traffic impact on High Street and Mill Street and also the detrimental effect this development would have on the Conservation Area and Heritage Assets of the area.

Conservation Officer: Comments provided in full at Appendix 2 of this document.

KCC Heritage: (These comments are provided in full having been summarised in the original report)

The site of proposed development lies south of the historic village of East Malling which may have Roman origins as a settlement, with the Scheduled Roman villa east of the village core. East Malling may have been an Early Medieval community and still reflects much of its Medieval heritage. A sister Medieval hamlet of The Rocks lies to the east of East Malling spreading along one of the main routeways. There has been Post Medieval and Modern development but this village is still surrounded by a rural and horticultural landscape of dispersed Post Medieval farms within open, linear fields and a mosaic of footpaths and narrow lanes.

Due to the rural nature of the terrain of the development site, there has been little formal archaeological investigation to inform the HER. Although there are no known HER sites within the application site, this area does have potential for Early Prehistoric and Later Prehistoric occupation. Prehistoric and Roman archaeological sites and findspots are known in the surrounding fields.

I note this application is supported by an Archaeological DBA and a Heritage Statement by HCUK, and there is a brief section in the Planning Statement on heritage. These assessments do seem to provide a reasonable account of heritage and archaeological issues.

I do have concerns over the density and number of housing proposed. The number of proposed dwellings is contrary to the historic landscape character of dispersed farms within open, linear fields. I also have concerns regarding the impact of increased traffic on the Medieval village of East Malling. I recommend consideration of the District Conservation Officers comments on East Malling village.

With regard to archaeology and archaeological landscapes, concerns can be addressed through conditions and I recommend the following conditions are placed on any forthcoming consent:

1 Prior to commencement of development the applicant, or their agents or successors in title, will secure the implementation of
i archaeological landscape 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 landscape remains and/or further archaeological landscape 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 landscape interest are properly examined and recorded and that due regard is had to the preservation in situ of important archaeological landscape remains and where possible the integration of key landscape features in the detailed masterplan and landscape design.

2 Prior to the commencement of development the applicant, or their agents or successors in title, will secure:

- 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 further archaeological investigation, recording and reporting, determined by the results of the evaluation, in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority;
- iii programme of post excavation assessment and publication.

Reason: To ensure that features of archaeological interest are properly examined, recorded, reported and disseminated.

Private Reps: 6 Further objections received to the development reiterating the objections previously listed in both the original and current report relating to wildlife, traffic and impact on the Conservation Area.

DPHEH:

The National Planning Policy Framework (NPPF) was revised in response to the Proposed reforms to the National Planning Policy Framework and other changes to the Planning system consultation and published on 12 December 2024. It sets out the government's planning policies for England and how these are expected to be applied. This revised framework replaces the previous 2023 NPPF.

The new planning framework updates requirements on various planning issues including introducing mandatory housing targets for councils. Further detail on this will be presented to HPSSC on 12th February 2025.

The now current position (which updates our recently published position as of October 2024, under the previous NPPF) is a 2.89 years housing supply, based upon the housing need of 1,096 dpa plus a 20% buffer, against the requirements of the NPPF December 2024. This means that the council has a shortfall and is not able to demonstrate the five-year housing land supply requirement.

In response to the Objection Statement submitted on behalf of East Malling and Larkfield PC it should be noted that this is not an independent assessment as it is particularly written to object to the development. The conclusion of this report does though agree with the view in the report that there is less than substantial harm to heritage and non-designated heritage assets. The Objection Report however deviates from the Officer report in that it concludes substantial harm to the Conservation area, through change to setting and also direct impact from traffic.

As noted in the Officer report, the Conservation Officer does not agree with the level of harm being attributed to the change to the setting of the Conservation Area. It should also be noted that the development proposed cannot result in a direct impact on the Conservation Area as Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is clear that a direct harm can only result from development within a Conservation Area. Therefore, as the development is outside the Conservation Area, temporary changes to environment, such as increase in traffic, noise etc cannot be considered a direct impact as there is no direct and permanent change to the conservation area itself.

On this basis it is considered that there is no justified reason to deviate from the assessment in the Officer report on the impact on the Conservation Area.

The submission of additional comments from residents regarding badgers on the site is noted however this does not alter the position in the Officer report regarding the suitability of the proposed ecological buffer zone.

MY RECOMMENDATION REMAINS UNCHANGED

**East Malling West Malling And Offham,
Birling Leybourne And Ryarsh****TM/23/03241**

East Malling And Larkfield, West Malling,
Leybourne

Location: DEVELOPMENT SITE LAND WEST OF Winterfield Lane, East Malling,
West Malling

Proposal: S73 Application to vary planning condition 11 (Access plans) to
TM/19/01814/OA Outline Application: Erection of up to 250 new homes
(40% affordable), new community building, provision of a new country park
and other areas of public open spaces, areas of play, upgrade of existing
footpaths, together with new vehicular access onto London Road and
associated parking and landscaping.

DPHEH: It is considered that upon reflection the wording of condition 9 should be expanded to provide additional details and monitoring of the proposed woodland management plan. Revised wording of this condition is therefore proposed. As the application is effectively amending a previously approved development there is a need to link the previously approved legal agreement to the current application. This can be achieved through the submission a Deed of Variation.

AMEND RECOMMENDATION:

The applicant to vary the legal agreement by Deed of Variation to link this application back to the original S106; and

Amend the wording of condition 9 as follows:-

9 The strategy contained in the Woodland Management Plan SJA WMR + APPs 24456-01a hereby approved shall be fully implemented in accordance with the schedule. Within one month of this decision an accurate scalable plan confirming the full extent of the area covered by the Woodland Management Plan shall be submitted to the Local Planning Authority for written agreement. Prior to the implementation of the specified tree works operations set out in the Management Schedule hereby approved 14 days written notice shall be given to the Local Planning Authority of the dates when the approved tree works are to be undertaken. Management reports will be submitted to the Local Planning Authority at the end of years 1,3, 5 and 10 to detail the management actions undertaken and when such

actions are to be undertaken. The management plan shall be reviewed alongside the submission of the reports and shall be amended with the agreement of the Local Planning Authority at these stages if considered necessary.

Reason: In the interests of good horticultural practices.

APPENDIX 1: Objection Statement submitted on behalf of East Malling and Larkfield PC



Objection Statement

OBJECTION TO A NEW DEVELOPMENT OF 52 HOMES ON LAND TO THE EAST OF WATERINGBURY ROAD, EAST MALLING

Project Ref: FL12262

Written By: Virginia Gillece IHBC, MRICS

Date:
January
2024

e: hello@fullerlong.com





1 EXECUTIVE SUMMARY

- 1.1.1. The proposed development on land to the east of Wateringbury Road in East Malling will result in a permanent change to the landscape and setting of the village and its heritage assets. Whilst it is accepted that change does not necessarily equate to harm, this OS contends that less than substantial harm will be caused to the settings of all of the heritage assets identified.
- 1.1.2. In addition, it is contended that the proposed development will equate to substantial harm as a result of the direct impact to the character and appearance of the conservation area.
- 1.1.3. The following is an Objection Statement (OS) commissioned on behalf of the East Malling and Larkfield Parish Council.
- 1.1.4. The principal grounds for objection relate to the following: the failure of the applicant to undertake a sufficiently robust assessment of how setting contributes to the significance of identified heritage assets in the way and degree required by National and Local legislation which led to the conclusion that no harm would be caused to Ivy farmhouse and barn, 122 Chapel Street and the NDHA farmstead at 161 Wateringbury Road; the failure of the applicant to consider the direct impact of the development on the character and appearance of the East Malling Conservation Area, and the failure of the applicant to consider the cumulative impact of the proposed scheme in addition to other recent approved large housing schemes on the significance of the East Malling Conservation Area as a result of significantly increased traffic.
- 1.1.5. No mitigation measures have been provided by the applicant to protect the conservation area from being overwhelmed by the additional noise, smells, vibrations and visual impact caused by the significant traffic that will be generated by the scheme.
- 1.1.6. This OS concludes that despite the local planning authority not being able to demonstrate a sufficient supply of deliverable housing sites, that section 11(dii) of the NPPF will not apply as the proposal will result in unjustified harm to designated and non-designated heritage assets, contrary to local and national policy



2 INTRODUCTION

- 2.1.1. This Objection Statement (OS) has been prepared by Virginia Gillece of HEA on behalf of the East Malling and Larkfield parish council.
- 1.1.1. Virginia Gillece is a Chartered Surveyor with a BSc in Land Management and an MSc in Architectural Conservation. She is a full member of the Institute of Historic Buildings Conservation (IHBC) and of the Royal Institute of Chartered Surveyors (RICS). Virginia has worked in the property sector for 30 years and has worked with The National Trust as well as within the private sector as a heritage consultant. She is currently a partner with Fuller Long HEA Planning and Heritage Consultants.
- 2.1.2. The following OS is submitted in relation to 'Land North East And South Of 161 Wateringbury Road, East Malling'. The development is proposed by Esquire Developments and comprises the erection of 52 residential dwellings on land currently used for an orchard immediately to the south of East Malling. A new access to this site is proposed from Wateringbury Road. The site is adjacent to a grade II listed house, and is in close proximity to the East Malling Conservation Area, Ivy Farm and Barn (both grade II listed structures), and a number of non-designated heritage assets (NDHAs).
- 2.1.3. The outline application has provided a Heritage Statement produced by the HCUK Group (2022) which concluded that *that the proposals would preserve the significance of a series of grade II listed buildings (122 Chapel Street, Ivy House Farmhouse and Ivy House Barn) but would result in a low level of less than substantial harm to the East Malling Conservation Area. This Heritage Statement did not identify any non-designated heritage assets, nor did it analyse the impact of the proposed scheme on the increased noise, visual impact and damage to the conservation area as a result of the substantial increase in traffic through the village as a result of the development of 52 new homes.*
- 2.1.4. A subsequent addendum was produced in November 2024 by the HCUK group to assess the impact to the NDHAs at 161 Wateringbury Road and to properly review the character and appearance of the East Malling Conservation Area Appraisal. This addendum highlighted that the conservation area appraisal was out of date and therefore not as valid as might be expected, but concluded that their original assessment of less than substantial harm remained unchanged, concluding that *'the proposals are found to result in some harm to the significance of the East Malling Conservation Area that amounts to a low level of less than substantial harm in NPPF terms. The significance and setting of all other designated heritage assets would be preserved.'*
- 2.1.5. With regards to the farmstead at 161 Wateringbury Road, the heritage addendum assessed the impact to the setting of the NDHAs present at this site to be negligible.
- 2.1.6. This OS will provide an independent assessment of the impact of the proposed scheme on the identified heritage assets



3 RELEVANT LEGISLATION AND PLANNING POLICY

- 3.1.1. The following legislation, policies and guidance are considered material considerations when appraising the impact of the Project.

NPPF (2024)

- 3.1.2. Section 16 of the NPPF, entitled Conserving and enhancing the historic environment provides guidance for planning authorities, property owners, developers and others on the conservation and investigation of heritage assets.
- 3.1.3. Paragraphs 202-211 consider the impact of development proposals upon the significance of designated heritage assets. Paragraph 202 states that where a development is proposed that would affect the significance of a designated heritage asset, great weight should be given to the asset's conservation and that the greater an asset's significance, the greater this weight should be. Paragraph 214 emphasises that where a proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this should be weighed against the public benefits of the scheme, bearing in mind the great weight highlighted in Paragraph 212.

MATERIAL CONSIDERATIONS

National Planning Practice Guidance

- 3.1.4. The NPPG is a web-based resource which is to be used in conjunction with the NPPF. It is aimed at planning professionals and prescribes best practice within the planning sector. The relevant section is entitled 'Conserving and enhancing the historic environment'. The guidance given in this section is effectively a condensed version of the PPS5 Practice Guide and sets out the best practice to applying government policy in the NPPF. It provides an interpretation for each of the interests assigned to heritage assets in understanding its significance; archaeological, architectural and artistic, and historic.
- 3.1.5. For ease of reference the following legislative and policy considerations are considered of particular relevance, and are set out below. Sections underlined are identified as of particular relevance by the author.

The Planning (Listed Buildings and Conservation Areas) Act 1990

- 3.1.6. Section 66 places a responsibility upon the decision maker in determining applications for planning permission for a Scheme that affects a listed building or its setting to 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; and

National Planning Policy Framework (2024)

Section 16.



- 3.1.7. *Para 202. Heritage assets range from sites and buildings of local historic value to those of the highest significance, such as World Heritage Sites..... These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.*
- 3.1.8. The above paragraph clearly recognises that there is a graduation from those assets of lower to higher significance, based on sites identified as of local historic value and increasing through statutory levels of designation to a WHS at an international level. The emphasis then places a responsibility on the conservation of these assets in a manner appropriate to their 'level' of significance. The lesser or greater that 'significance' the lesser or greater the material weighting it is applicable to apply in decision making. As a general rule, under these circumstances, the concept of significance and the attributes that can be attributed to a relative level of 'significance/ historical value' become increasingly more tightly drawn as the level of recognised significance drops from an international level of significance to a local level of significance.
- 3.1.9. *Para 212. 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.*
- 3.1.10. *Para 213. 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.*
- 3.1.11. *Para 214. 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.*
- 3.1.12. *Para 215. Where 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.*
- 3.1.13. *Para 216. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.*



- 3.1.14. In determining the effects of the Scheme this OS is also cognisant of case law. Including the below:
- Flag Station, Mansel Lacy, Herefordshire [22/09/2015] Case Number EWHC 2688
- 3.1.15. This ruling has emphasised the primacy of the 1990 Planning Act – and the fact that it is up to the decision makers in the planning system to 'have special regard to the desirability of preserving the [listed] building or its setting'. As stated by HH Judge David Cooke in a judgment of 22 September 2015 regarding the impact on the setting of a listed building:
- 3.1.16. 'It is still plainly the case that it is for the decision taker to assess the nature and degree of harm caused, and in the case of harm to setting rather than directly to a listed building itself, the degree to which the impact on the setting affects the reasons why it is listed.'
- PALMER Appellant and Herefordshire Council and ANR [04/11/16] Case No: C1/2015/3383
- 3.1.17. The judgment was agreed by Lord Justice Lewison at the Court of Appeal, who stated that:
- 3.1.18. 'It is also clear as a matter both of law and planning policy that harm (if it exists) is to be measured against both the scale of the harm and the significance of the heritage asset. Although the statutory duty requires special regard to be paid to the desirability of not harming the setting of a listed building, that cannot mean that any harm, however minor, would necessarily require planning permission to be refused.
- 3.1.19. With regards to non-designated heritage assets the NPPF does not apply the substantial harm test and it is clear that no additional weight is given to non-designated heritage assets but that a balanced judgement will be required with regard to the scale of harm and the significance of the heritage asset.
- 3.1.20. It is noted that setting is not a heritage asset, nor a heritage designation. The importance of setting lies in what it contributes to the significance of a heritage asset or to the ability to appreciate and understand that significance.
- 3.1.21. A recent appeal (Appeal Ref: APP/D1265/W/22/3291668) - Land South of Westleaze, Charminster, Dorset, is also relevant to this OS, and bears many similarities to East Malling. In this case, the planning inspectorate found that a proposed housing development would negatively impact to the setting of a significant grade I gentry courtyard house known as Wolfton House and several other designated heritage assets, causing harm the significance of the assets. The appeal was dismissed.



4 THE SUBJECT SITE AND EAST MALLING: LOCATION AND CONTEXT

- 4.1.1. East Malling is a small historic village located within the Parish of East Malling and Larkfield in the county of Kent, under the administrative boundary of Tonbridge and Malling District Council.
- 4.1.2. The village includes numerous buildings of national importance, including one grade I building, two grade II* buildings and thirty grade II buildings and structures. There is also evidence of an Iron Age enclosure and a Roman religious site which is designated as a scheduled monument. The conservation area has also been in place since 1971, and covers an extensive part of the village (East Malling Conservation Area).
- 4.1.3. The village is bisected by the Maidstone East Railway line running east west. The playing fields and school grounds to the north of the village provide a distinct gap between the historic settlement and a 20th century housing estate to the west of New Road, which also provides access to the A20 and the M20 in the north. To the west, the village extends along Mill Street towards West Malling. This area contains a few historic buildings but was predominantly developed in the 20th century with residential estates and a school. To the east is the world renowned East Malling Research Station, a horticultural and agricultural research site which specialises in crop production, and in particular fruit stock.
- 4.1.4. The village is approached from the south along Watlingbury Road which drops down from East Malling Heath through woodland, orchards and agricultural land before reaching the southernmost reaches of the village at 51 Watlingbury Road on the east side of the road and Ivy House Farmhouse (grade II) on the west side of the road. The subject site is located on the east side of the road, between 51 Watlingbury Road in the south and a cluster of cottages / converted farm buildings known as Ivy Farm, Belvidere Cottage and Belvidere Oast in the north. The subject site is approximately 4.6 hectares in size, sloping gently down south-north and has been historically in agricultural use, associated with the farmsteads on the south side of the village. The surrounding setting is rural in character: a small woodland flanks to site to the northeast corner, but otherwise the site is surrounded by orchards and open farmland on each side of the Watlingbury Road. This provides the historic rural backdrop to on the approach to the south side of the village and the conservation area.



Figure 1. The subject site looking north from 51 Wateringbury Road



Figure 2. The subject site looking west towards 122 Chapel Street (grade II)



Figure 3. the northeast corner of the site looking towards Ivy Farmhouse (grade II)



5 HISTORICAL BACKGROUND

- 5.1.1. This section provides an overview of the subject property and the historical background relevant to an understanding of the property, its site and its historic context and interest. This is based on accessible records. It is not the purpose of this document to create a detailed historical narrative of the area, but to provide an assessment of the subject property and the site's historical development and heritage potential in accordance with the NPPF.

BRIEF OVERVIEW

- 5.1.2. There is evidence of East Malling having been occupied by pre-Roman settlers, the land likely chosen due to its rich soil quality and availability of clean water in the form of a stream originating on the heath above the village. The highly productive arable land provided sustenance and an ongoing livelihood for the village throughout the centuries, with corn being the primary crop before fruit and hops became the dominant choice.
- 5.1.3. The earliest documented reference to East Malling originates from a 942-946 AD charter under the reign of King Edmund I, describing gallows which stood in the then 'East Mealing'. It was later recorded in the Domesday Book of 1086 as 'Mellingete'.
- 5.1.4. The village became further developed as droeways and trackways began to converge on the settlement, a Norman Church later being built to serve the early farmers. With the increased population, wealthier farmsteads began to appear in the land surrounding the village.
- 5.1.5. The agricultural economy remained dominant, although the 17th century saw the introduction of commercial mills, further shaping the character to the west of the village; by the 19th century, several mills were present, specialising in corn, fulling and papermaking. The need for labour to man these mills led to the development of terraced housing in the 18th and 19th centuries within the village.
- 5.1.6. The 1839 Tithe Map illustrates the layout of the village roads and properties, many of which are present today. The subject site is clearly delineated as farmland. A later Ordnance Survey from 1870 partially illustrates the site in more detail, partially planted as orchards. By 1897, a subsequent Ordnance Survey shows that the entirety of the site was now laid down to orchards.
- 5.1.7. Further growth to the village arose as a result of the introduction of the railway between Ashford and London in the late 19th century, with additional terraced properties constructed along the High Street, many with retail units on the ground floor - although most of these have since been converted to residential use.
- 5.1.8. The start of the 20th century saw the village expand to fulfil the needs and requirements of a growing population after WWI. As such, large areas of land were developed which changed the rural nature of the village to the north and west.



5.1.9. By the mid-20th century, Ordnance Survey maps illustrate that the subject site and much of the land surrounding East Malling was used for orchards. Further urban development occurred in the 1960s when more housing was constructed, merging the village and the neighbouring properties of Mill Street into one settlement. The rural nature of the village has consequently been diminished, with only the open countryside to the south now retaining the historic setting of the village.

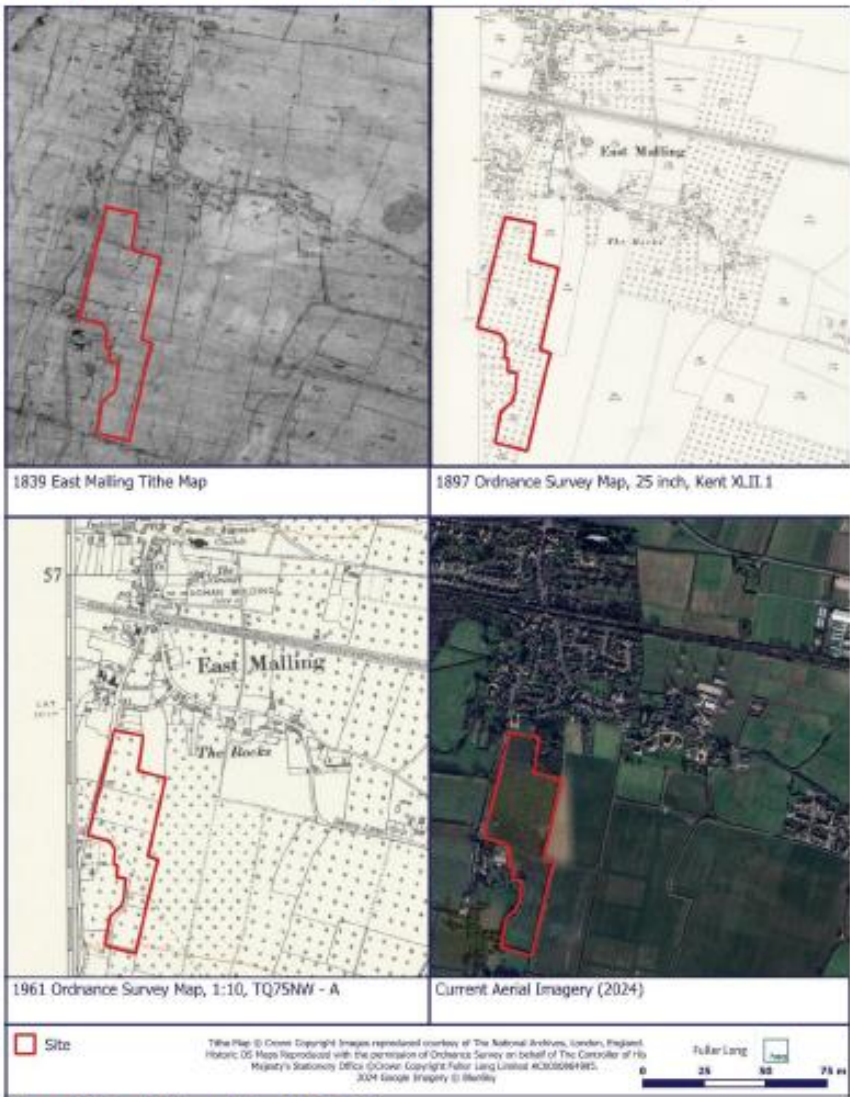


Figure 4. Historic Maps of Site, 1839-2004



6 HERITAGE ASSETS

- 6.1.1. The following section will identify the heritage assets within East Malling that have the potential to be affected by the proposed scheme through a change to the contribution of their setting and through a change of the character of the area.
- 6.1.2. A brief description and assessment of these assets is included within this report below.

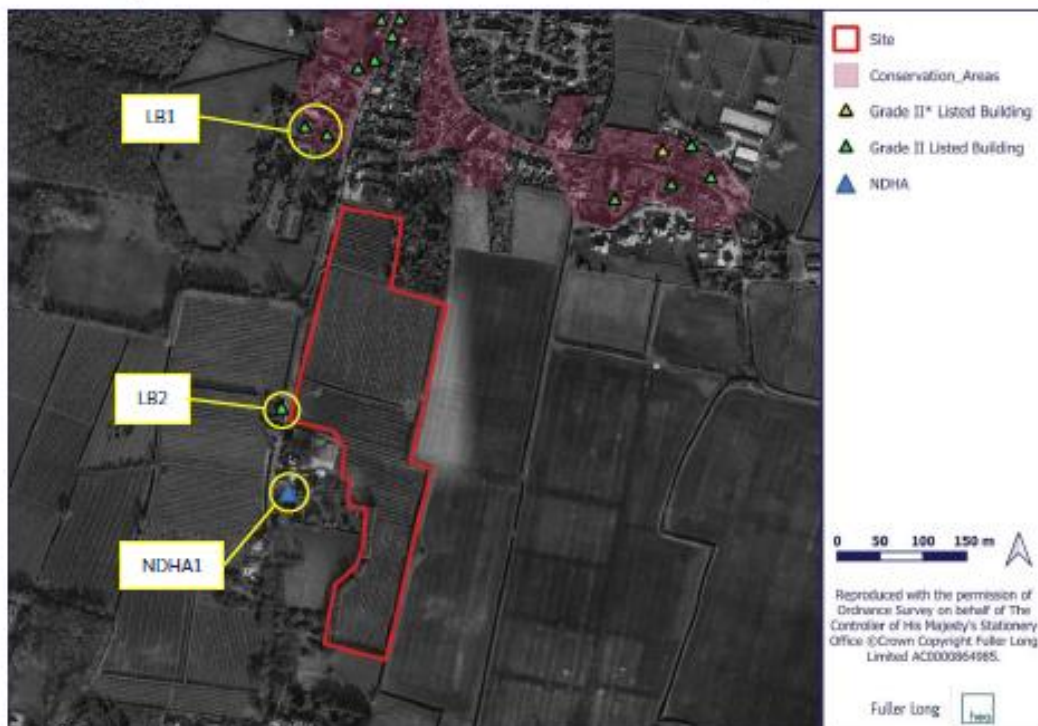


Figure 4. Heritage Assets of East Malling

LISTED BUILDINGS

LB1: IVY HOUSE FARMHOUSE AND BARN – GRADE II

Ivy House Farmhouse: Farmhouse enclosing possible former hall-house. Early C15 with C16 addition. Exposed timber-framing with painted brick infilling on ground-floor and close studding on 1st floor. Return gabled wing to left with first-floor jetty supported on moulded bressumer and corner brackets. Hipped plain tiled roof with gabled return wing with original moulded barge-boards left and C20 catslide extension to extreme right in front of C19 plastered brick wing at right angles to main block.



Large stack central to main block off-ridge to rear. 2 storeys; 2 window irregular front to main block, C18 and C19 glazing bar sashes. 1 win- dow front to return wing, casements. Boarded door with pentice hood to right of main block. INTERIOR: Much restored. One ground-floor room has very fine moulded ceiling joists.

Ivy House Barn: Barn. C17 with aisle probably of C18. Timber-framed and weather boarded with hipped plain tiled roof. Aisled on west side only, with central wagon entrances on both sides. 5 bays, with queen-post roof, heavy splayed posts carrying clasped purlins and principals diminishing above the purlins.

LB2: 122, CHAPEL STREET – GRADE II

Farmhouse. C17 with C18 elevations. Painted brick with tile-hanging in gables. Plain tiled roofs, half-hipped, with ridge stack off-centre to left and left-end stack. 2 storeys; irregular fenestration of 5 windows on 1st floor and 3 win- dows on ground-floor, all casements. Entrance off-centre to left with half-glazed door. Lean-to extensions to right.

NON-DESIGNATED HERITAGE ASSETS

NDHA1: IVY FARM, BELVIDERE OAST AND BELVIDERE OAST COTTAGES

- 6.1.3. Situated south, west and north west of the proposed site, this farmyard cluster comprises a farm house, (Ivy Farm) constructed from brick with wall hung tiles and a clay tile roof, a cottage (formerly subdivided and now extended to the east) constructed from red brick in a simple form with a clay tiled roof and a converted brick oasthouse with an unusual kiln roof. This farmstead is evident on the Tithe map of 1839.

ASSESSMENT OF SIGNIFICANCE AND SETTING OF THE LISTED BUILDINGS AND NDHAS

- 6.1.4. Ivy House Farmhouse is a timber framed vernacular farmhouse thought to date from the 15-16th centuries, or earlier. The structure is timber framed with a steeply pitched Kent peg tile roof. There is evidence of later additions. A characterful stone wall marks the front boundary with Chapel Street. The farmhouse sits forward of a collection of mostly traditional agricultural buildings configured in a somewhat loose courtyard arrangement. An historic double kiln oast house (now converted) is located immediately to the north.
- 6.1.5. One of the buildings to the south of the farmhouse is the second listed building and comprises a timber framed barn. Dating from the 17th – 18th centuries, it is a substantial building with a broadly rectangular footprint and simple form. It has timber weatherboard cladding and a deep clay tiled roof and remains unmistakably agricultural in appearance.



- 6.1.6. 122 Chapel Street (now known as Huntleys Cottage, 122 Wateringbury Road) is an attractive vernacular house constructed from red brick on a stone plinth with a clay tiled, half hipped roof. The building is set back slightly from the road behind a small front garden and a stone wall surrounds the garden to the side and rear. A black weatherboarded historic barn, likely once connected with the house, is evident to the south.
- 6.1.7. The special interest and significance of these heritage assets is primarily derived from their architectural and aesthetic interest as good examples of vernacular farmhouses, cottages, oast houses and barns. It comes from their distinctive form, traditional construction, and prevalent use of local materials. However, in addition, they hold notable historic interest as surviving tangible evidence of traditional farmsteads. On that basis, they help tell a story about the agricultural past of East Malling. This interest includes the historic fabric embodied within the buildings themselves but also extends wider to their setting.
- 6.1.8. The immediate farmstead/courtyard arrangements of the three clusters assessed above is an important component of the setting as their configuration provides strong clues as to how the buildings functioned as part of an agricultural operation relative to each other. Wider still, elements of the surrounding rural landscape within which the former farmsteads sit, give greater insight into how former occupants of the buildings would probably have used them in conjunction with the land they worked. Moreover, the proximity of the undeveloped land between them gives emphasis to the importance of land and agriculture as part of a traditional rural way of life.

CONSERVATION AREA

EAST MALLING CONSERVATION AREA

- 6.1.9. Designated in 1971 the CA was established around the historic streets of East Malling, and was subsequently extended in 1975 and 1993. The settlement dates back to the Roman period, but the majority of the conservation area comprises medieval and post-medieval architecture, with a range of timber framed, Georgian fronted and Victorian properties evident. The majority date from the 18th and 19th centuries. The focal point of the village is centred on the village green and the King and Queen Public House. The High Street and Church Walk converge here with New Road and Mill Street. The Church, 4-6 Church Walk and the pub provide focal points in the village
- 6.1.10. The character of the conservation area is derived from the architectural interest of the houses and boundary walls of the village which provide a varied and eclectic mix of built form. Many are constructed from red brick, featuring chequered brickwork patterns of red stock and burnt blue headers. There are some examples of the use of yellow stock brick, as well as the local material of ragstone. Aside from this, there are scattered examples of timber framing and limewashed render throughout the CA, coinciding with the other traditional materials and typologies. On the High Street, the urban grain becomes denser, with houses built hard on the street which gives a sense of enclosure. The road here is narrow, with on street parking which effectively makes the thoroughfare single track, causing traffic congestion and



damage to the conservation area. This is the single most detrimental and threatening aspect of the designated heritage asset.

- 6.1.11. There is some modern development to the west, east and south of the CA boundary which does not contribute positively to the significance of the asset. Chapel Street to the south becomes more verdant and less dense in nature as the village gives way to open countryside.

CONTRIBUTION OF THE SUBJECT SITE TO THE SETTING OF THE CONSERVATION AREA

- 6.1.12. The subject site is a parcel of undeveloped land that forms part of the rural setting of the village. This, combined with its agricultural appearance, give rise to an intuitive understanding that it was closely associated with the historic farmsteads immediately to the north, south and west of the site. The likely functional relationship between the land and the surrounding farmsteads can still be appreciated to an extent. Moreover, the agricultural and rural qualities of the subject site enhance the setting of the listed buildings, the NDHAs and the conservation area.
- 6.1.13. In turn, this promotes an appreciation of the close relationship with the landscape and thereby contributes to their historic significance as heritage assets. The subject site therefore makes a positive contribution to the setting of the conservation area
- 6.1.14. The proposed development would detrimentally alter and undermine the rural attributes of the land, with the substantive volume and massing of 52 houses, the presence of hardstanding and access roads adversely eroding the undeveloped character and sense of spaciousness that currently exists to the south of the village and the conservation area.



7 GROUNDWORK FOR OBJECTION

7.1 INTRODUCTION

7.1.1. The following section of the OS is prepared in accordance with the National Planning Policy Framework and will provide an analysis of the impact of The Project on the identified Heritage Assets.

7.1.2. A Heritage Statement and Addendum has been produced by HCUK for the applicant which concluded that the proposed development will amount to less than substantial harm to the setting of the East Malling Conservation Area due to the loss of rural land to the south of the village. No harm was found to impact any of the identified listed buildings or the non-designated heritage farmstead to the south of the site.

THE SUBJECT SITE

7.1.3. The appeal site is an area of undeveloped land comprising cultivated orchards and rough grass in a plot of 4.26 acres. There is some boundary hedgerow growth, and a small woodland to the northeast corner. Power lines and associated pylons cross the southwest corner of the plot. Despite this, the character of the subject site is clearly agricultural, with a spacious appearance and a strong countryside character which contributes positively to the verdant rural qualities of the area and the setting of the identified heritage assets.

7.1.4. Consequently, the appeal site forms part of the rural landscape close to the conservation area, the listed buildings and NDHAs. Evidence indicates that the subject site once formed part of the land closely associated with Ivy Farmhouse which is located within the East Malling Conservation Area.

SETTING

7.1.5. The assessment of setting has been undertaken following guidelines in 'The Setting of Heritage Assets; Good Practice Advice Note 3' by Historic England

7.1.6. An analysis of the setting of the conservation area above has assessed that the open nature of the agricultural land to the south of the village makes a positive contribution to the setting of the conservation area. This area between the village and The Heath provides the last remaining expanse of rural landscape that once traditionally surrounded the village. Housing developments to the north and west and the East Malling Research Station to the east has irrevocably changed the nature of the setting of the village from an small rural settlement to a more sprawling extension of Larkfield and West Malling. Consequently, the access to East Malling from the south down Watlingbury Road provides the last historically contextual approach to the village and conservation area. The development of 52 new homes will negatively impact this setting, and will urbanise the only surviving rural aspect immediately outside the historic core of the village.



- 7.1.7. The conservation area appraisal clearly states that *the surrounding landscape [to the village] is distinctive, giving the Conservation Area a unique character*. In addition, the appraisal goes on to say that *some of the open spaces remain between the farmsteads allowing their distinct identities to be retained. The retention of these important open spaces, not just as visual breaks, but as a record of the historic development of the village, is essential as they are as important to the character of the Conservation Area as the buildings themselves*. Whilst this relates to the conservation area itself, it can equally be applied to the setting beyond the conservation area, which is characterised by this very description to the south of the village.
- 7.1.8. With regards to the listed buildings, the Heritage Statement prepared by the applicant stated that setting of Ivy Farm House and Barn was derived from
- *The group value of the historic agricultural elements of Ivy House Farm which together form an important agricultural grouping and better reveal the historic origins of the farmhouse;*
 - *The relationship with the village of East Malling, the farmstead appears to have always been located close to the historic core of the village rather than in a historically isolated location;*
 - *The relationship with the road and surrounding road fronting historic buildings; and*
 - *The relationship with the surrounding agricultural land, particularly that historically associated with the farmstead.*
- 7.1.9. Thus it is accepted that the subject site contributes to the setting of these listed buildings as it historically forms land associated with the farmstead, but despite the proposed urbanisation of the land, the report concludes that no harm will be caused to these assets.
- 7.1.10. Similarly, the impact to the contribution made by the subject site to 122 Chapel Street is also dismissed, despite the development being located opposite this asset and despite the cottage and the subject site having strong intervisibility.
- 7.1.11. Within the subsequent heritage addendum, an assessment of the farmstead known as Ivy Farm. Belvidere Oast and Belvidere Cottage (161-163 Watlingbury Road), has also been undertaken, but likewise, the impact to the setting of these NDHAs has been dismissed, despite the subject site forming the rural surroundings that contributes to an understanding of the historic agrarian nature of these buildings.
- 7.1.12. Once built, The Project will not only urbanise the landscape on the south side of the village, but the associated light spill and increased traffic movements will also negatively impact the rural setting of the conservation area. It is considered, therefore that the conclusions reached by the applicants heritage statement are flawed, and that less than substantial harm will be caused to the settings of all of the identified heritage assets.



IMPACT TO THE CONSERVATION AREA

- 7.1.13. In addition to the harm caused to the rural setting of the conservation area, it is considered that additional harm will be caused directly to the character and appearance of the conservation area as a result of the substantially increased through-traffic from the development of 52 new homes.
- 7.1.14. The medieval narrow streets of the conservation area, particularly along Chapel Street and the High Street, with historic buildings built hard against the pavement edge, has inevitably evolved into a bottleneck in the 21st century as parked and moving cars clog the roads that were never intended for modern traffic. The status quo at present is already untenable, with historic buildings and boundary walls flanking the road being repeatedly damaged by passing vehicles. The installation of bollards which are intended to protect the built form of the village already detracts from the character and appearance of the conservation area and creates a terribly narrow footpath which is a danger to able and impaired pedestrians alike. Larger vehicles, and in particular HGVs, often get stuck on the street and have to be reversed out with the unavoidable impact to other road users (Fig. 11).
- 7.1.15. Historic England's Good Practice Advice Note 3 (The Setting of Heritage Assets) states that the character and appearance of a conservation area is not limited to its architectural built form, layout, verdant qualities or historical associations, but is also influenced by other factors which influence the 'feel' of an area: the noise, smells and sense of tranquillity can all contribute to character, which can be harmed by the introduction of external elements such as traffic. The guidance goes on to state that *'the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places.'*
- 7.1.16. Historic England Guidance Note 1 (Second Edition) recommends that conservation areas should be assessed at different times to *'experience of the sense of place, including impacts of traffic'*. The advice goes on to say traffic, noise and odour can detrimentally affect the ability to experience of the sense of place. The erosion of a conservation area's special interest may be caused by the increase in car use in the vicinity, which can change the character of a conservation area to such an extent that its special interest – its *'illustrative value as a Kentish village which contains an eclectic grouping of built form'* (as described in the applicant's Heritage Statement), is completely lost as a result of the noise, vibrations, smell and visual disturbance caused by the substantial additional levels of traffic that will further add to the congestion within the conservation area.
- 7.1.17. The impact of traffic within the conservation area is a critical factor. The dominance of heavy traffic (and the measures to calm it) together with the damage it causes is already the main negative feature of the East Malling Conservation Area. The additional traffic generated by 52 new homes will only serve to



exacerbate this problem. Recent studies¹ have suggested that each house generates around 5 to 5.5 vehicle trips per day. These include all vehicles coming and going - not just residents, but friends visiting, post vans, supermarket deliveries, couriers etc. which are now widespread on the roads today. This equates, on average, to an additional 286 cars per day through the already over congested conservation area, causing significant harm to the experience of the heritage asset and thus its character and appearance.

- 7.1.18. Most of the journeys undertaken from the subject site will likely pass through the village and the conservation area to access supermarkets, motorways, and major conurbations further north. Those travelling south will eventually join the congestion at the Watlington Crossroads, located within another conservation area also plagued by the traffic conditions in the village at peak times.
- 7.1.19. Step 4 of GPA 3 states that a developer should explore ways to maximise enhancement and avoid or minimise harm. It is considered that the proposed development cannot avoid or minimise the harm to the conservation area that will be caused by an increase in traffic unless the houses are constructed as car-free dwellings.



Figure 5. Traffic on Chapel Street looking north



Figure 6. Traffic on Chapel Street looking south

¹ <https://gordonstokes.co.uk/transp-ta/triprates.html>



Figure 7. Traffic on High Street looking south with narrow pavements and bollards in the background.



Figure 8. Traffic on High Street looking north



Figure 9. Traffic on High Street looking south to the King & Queen pub



Figure 10. Traffic on High Street looking south



Figure 11. HGV stuck on the High Street



Figure 12. Damage to historic building in the conservation area as a result of passing large vehicles on the very narrow street.

CUMULATIVE IMPACT

- 7.1.20. Other large housing developments that have been given permission in recent years include one in 2019 ref. TM/19/01814/OA for 250 dwellings, one in 2020 ref. TM/18/03008/OA for 110 dwellings to the east of New Road on the direct A20 to A26 route through East Malling, and one in 2024 ref. TM/23/03060/OA for 150 dwellings on land west of Stickens lane and south of Mill Street being. These developments are within 2 miles of the subject site and East Malling and will also add to the traffic pressures on the conservation area and the village, adding to the harm inflicted on all of the heritage assets along the roads of the conservation area.

SUMMARY

- 7.1.21. While the Tonbridge and Malling housing supply has a shortfall in line with government housing targets, there will always be pressure to build new homes in the borough. However, The Secretary of State gives the preservation of the nation's heritage assets GREAT WEIGHT, irrespective of whether the harm is substantial or less than substantial.
- 7.1.22. This OS has demonstrated that the harm caused to the setting of the heritage assets is LESS THAN SUBSTANTIAL as a result of the loss of the rural setting to the south of the village and SUBSTANTIAL in



terms of the direct impact to the character and appearance of the conservation area as a result of the increased noise, fumes, vibrations and visual traffic load on the single track road into the village.

- 7.1.23. Whilst the case officer has considered the less than substantial impact to the setting of the heritage assets to be offset by the public benefit of the new homes, to date no consideration has been given to the significant impact to the character and appearance of the conservation area as a result of increased traffic. Long term this may lead to people leaving the village with knock on effects of properties lying empty and in disrepair which will further harm the conservation area.
- 7.1.24. This OS therefore requests that due consideration and great weight is given in the decision making process to preserving the conservation area.



8 CONCLUSION

- 8.1 Amongst the Government's planning policies for the historic environment, decision makers should make conservation decisions based on a proportionate assessment of the particular significance of any heritage asset that may be affected by a proposal, including by development affecting the setting of a heritage asset.
- 8.2 A setting's importance lies in what it contributes to the significance of the heritage asset or to the ability to appreciate that significance. Not all settings have the same capacity to accommodate change without harm to the significance of the heritage asset or the ability to appreciate it.
- 8.3 When assessing any application for development which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change. They may also need to consider the fact that developments which materially detract from the asset's significance may also damage its economic viability now, or in the future, thereby threatening its on-going conservation. Cumulative assessment is also required to identify impacts that are the result of introducing the development in combination with other existing and proposed developments in the area. The combined impact may not simply be the sum of the impacts of individual developments; it may be more, or less.
- 8.4 This OS has assessed the significance of the heritage assets likely to be impacted by the scheme together with the contribution made by their settings. It has established that the development would erode positive rural qualities that form part of the setting to the listed buildings and conservation area, and thereby would be detrimental to a component of their special interest and significance. Consequently, the proposal would run counter to the expectations of the Planning (Listed Buildings and Conservation Areas) Act 1990. In the terms of the National Planning Policy Framework (the Framework), cognisant that only part of the setting of the listed buildings would be affected, the degree of harm to their overall significance as designated heritage assets would be less than substantial in each case.
- 8.5 Paragraph 215 of the Framework states that in these circumstances the harm should be weighed against the public benefits of the proposal. Paragraph 212 confirms that when considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
- 8.6 Paragraph 216 of the Framework requires a balanced judgement to be required when assessing the impact of the development on the setting of the non-designated heritage assets.
- 8.7 The principal public benefit arising from the scheme would be the provision of 52 additional dwellings towards the overall housing supply in an area where there is considerable unmet need. However, it is considered that the extent of the public benefit arising from the 52 dwellings would be insufficient to outweigh the great weight attributed to the less than substantial harm caused to the setting of the listed buildings and the conservation area.
- 8.8 In addition, and in accordance with paragraph 214 of the Framework, it is considered that the substantial harm caused by an additional 100,000 vehicles passing through the village each year (resulting in a direct impact to the character and appearance of the East Malling Conservation Area), will not be outweighed by the public benefit and consequently consent should be refused.



- 8.9 Conflict therefore arises with the historic environment protection policies in the Framework. In addition, paragraph 187 of the Framework stipulates that planning decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.
- 8.10 Footnote 8 of the Framework confirms that paragraph 11d) is engaged in circumstances where the local planning authority cannot demonstrate a five year supply of deliverable housing sites. The presumption in favour of sustainable development means that planning permission should be granted unless
- (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development, or
 - (ii) that 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.
- 8.11 This OS has found that the proposal would result in unjustified harm to designated and non-designated heritage assets. Footnote 7 to paragraph 11 of the Framework confirms that this amounts to a clear reason for refusing the development proposed for the purposes of paragraph 11d)(i). As such, paragraph 11d)(ii) does not apply.
- 8.12 Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. It is considered that the proposal would conflict with policies of the development plan which seek to protect the quality of the historic and natural environment. Consequently, the proposals would be contrary to the Tonbridge and Malling Local Plan, The Planning (Listed Buildings and Conservation Areas) Act 1990, and the NPPF.

Appendix 2: Comments from Conservation Officer

Thank you for consulting with me in order to provide a professional review of the letter of objection to this development that has been submitted by Fuller Long on behalf of the East Malling and Larkfield Parish Council, dated January 2024. I have reviewed the application but please note that my comments are specific to the policy and statutory elements of this objection rather than the details of the proposals, for which my colleague has already provided advice.

The proposed development is in outline form, for up to 52 dwellings and associated landscaping, roads, and protected open space. All matters are reserved other than access. It is agreed that the proposal will, indicatively given that it is in outline form, result in a permanent change to the landscape and setting of the village and its heritage assets, as per the third assessment table in Historic England's GPA3, 'The Setting of Heritage Assets'. The letter sets out the opinion of the nature and level of harm to Ivy farmhouse and barn, 122 Chapel Street and the non-designate heritage asset farmstead at 161 Wateringbury Road, as well as the East Malling Conservation Area. For the latter, the level of harm is considered to be substantial, which the courts have determined in a high bar to reach. For the listed buildings, the level of harm is considered to be less than substantial. The principal grounds for objection are set out in paragraph 1.1.4, copied below. My response is the same for all three of these grounds, to do with interpretation of the NPPF historic environment paragraphs and relevant caselaw.

1. COMMENT ON GROUNDS OF OBJECTION

'1.1.4 The principal grounds for objection relate to the following: the failure of the applicant to undertake a sufficiently robust assessment of how setting contributes to the significance of identified heritage assets in the way and degree required by National and Local legislation which led to the conclusion that no harm would be caused to Ivy farmhouse and barn, 122 Chapel Street and the NDHA farmstead at 161 Wateringbury Road; the failure of the applicant to consider the direct impact of the development on the character and appearance of the East Malling Conservation Area, and the failure of the applicant to consider the cumulative impact of the proposed scheme in addition to other recent approved large housing schemes on the significance of the East Malling Conservation Area as a result of significantly increased traffic.'

There is caselaw which confirms that (new) NPPF paragraph 207 does not require that an applicant follow a prescriptive method for describing the significance of heritage assets affected, as it is a matter for the decision maker. *Bramshill Ltd v Hart District* 2019, however, determined that the balance, and sequential consideration of the paragraphs of the NPPF in terms of compliance with the legislation, is a matter of judgement for the decision maker. Note that the paragraph, copied below, requires only description of significance, including contribution of setting, and not an actual assessment. This falls to the local authority as a requirement under the subsequent paragraph 208, also copied below. Finally, the supporting Planning Practice Guidance, in paragraph 18a-009, clarifies that *'applicants should include analysis of the significance of the asset and its setting, and, where relevant, how this has informed the development of the proposals.'* This does not require agreement between the LPA and the applicant on the effect, as the LPA under paragraph 208 is required to make the judgement on the effect on significance in the decision-making process, not the applicant. The LPA will have considered cumulative impact as part of this decision making process as well, in accordance with paragraph 18a-013 of the PPG, which is the final quotation below (note that it is the LPA that 'may need to consider the effects of cumulative change') The applicant has accurately identified the heritage assets to be affected, I believe, and you may be of the view that the heritage statement submitted has otherwise met the requirements of paragraph 207.

NPPF paragraphs:

'207. In determining applications, local planning authorities should 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.

208. Local planning authorities should 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.'

PPG paragraphs:

'Applicants are expected to describe in their application the significance of any heritage assets affected, including any contribution made by their setting ([National Planning Policy Framework paragraph 189](#)). In doing so, applicants should include analysis of the significance of the asset and its setting, and, where relevant, how this has informed the development of the proposals. The level of detail should be proportionate to the asset's importance and no more than is sufficient to understand the potential impact of the proposal on its significance.

Paragraph: 009 Reference ID: 18a-009-20190723'

'When assessing any application which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change. They may also need to consider the fact that developments which materially detract from the asset's significance may also damage its economic viability now, or in the future, thereby threatening its ongoing conservation.

See [further guidance on setting of heritage assets and wind turbine development](#).

Paragraph: 013 Reference ID: 18a-013-20190723'

COMMENT ON OPINION OF LEVELS OF HARM

The applicant's heritage statement, including addendum, concludes that no harm is caused to the listed buildings within the setting, or the NDHA farmstead, and that less than substantial harm would be caused to the significance of the East Malling Conservation Area, through change to its setting. This objection report concludes less than substantial harm to the LBs and NDHA, and substantial harm to the Conservation area, through change to setting and also direct impact from traffic.

I will leave the judgement of the harm suggested through change of setting to you, based on the advice given to you by my colleague, and comment only on the suggested direct harm to the conservation area, even though the development sits outside it. The NPPF is Government policy to advise local planning authorities in producing plans and making planning decisions. The historic environment section includes policies that allow the decision maker to follow a process that, the courts have determined, will lead to correct application of the underlying legislation in the Planning (Listed Buildings and Conservation Areas) Act 1990. Section 72 of the Act relates to decision making in conservation areas. It states that:

'72 General duty as respects conservation areas in exercise of planning functions.

*(1) In the exercise, with respect to any buildings or other land **in a conservation area [my emphasis]**, of any **[F1] functions under or by virtue of [F1]** any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of **preserving or enhancing the character or appearance of that area [my emphasis]**.*

*(2) The provisions referred to in subsection (1) are the planning Acts and Part I of the **M1** Historic Buildings and Ancient Monuments Act 1953 **[F2]** and sections 70 and 73 of the Leasehold Reform, Housing and Urban Development Act 1993.'*

This does not mean that setting cannot be taken into account, as it is Government policy for LPAs to do so. However, it is not a statutory requirement in relation to conservation areas, as this section deals only with development within conservation areas. It's important to note that, whilst the effect of developments and everything that comes with them (particularly a residential development) can be considered in decision making, and GPA3 provides guidance on this, direct impact will only ever be the result of development within the conservation area. Therefore, temporary changes to environment, such as increase in traffic, cannot be considered a direct impact. You may wish to consider the effect of the traffic on the setting as well as the character and appearance of the conservation area under NPPF paragraph 208, but otherwise there is no direct and permanent change to the conservation area itself. I disagree, therefore, that substantial harm would be caused to the conservation area by direct impact, which would invoke s.72 of the Act and therefore is an incorrect assessment as set out above.

Not only this, in the judgement for *Bedford BC v Sos [2012] EWHC 4344*, it was established that substantial harm will equate to 'very much if not all' of the significance being taken away, or removed altogether. This has not been further challenged and so remains relevant. My view is that the indirect impact, that is to say the change to that part of the setting of the conservation area that contributes to significance, would not come near reaching that level of harm as defined in the judgement. The Planning Practice Guidance confirms this in paragraph 18a-018. It also confirms in accordance with *Barnswell* that 'whether a proposal causes substantial harm will be a judgement for the decision maker'.

I hope the above is of assistance.

Kind regards,

Debbie Salter

Conservation and Urban Design Officer

Consultant to Tonbridge and Malling Borough Council



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