

AGENDA

PLANNING REFERRALS COMMITTEE MEETING



Date: Thursday 11 May 2017
Time: 6.30 p.m.
Venue: Town Hall, High Street,
Maidstone

Membership:

Councillors Mrs Hinder, B Mortimer and J Sams

Page No.

1. Apologies
2. Notification of Substitute Members
3. Election of Chairman
4. Election of Vice-Chairman
5. Urgent Items
6. Notification of Visiting Members
7. Disclosures by Members and Officers

Continued Over/:

Issued on 3 May 2017

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact Debbie Snook on 01622 602030 debbiesnook@maidstone.gov.uk**. To find out more about the work of the Committee, please visit www.maidstone.gov.uk

**Alison Broom, Chief Executive, Maidstone Borough Council,
Maidstone House, King Street, Maidstone, Kent ME15 6JQ**

8. Disclosures of lobbying
9. To consider whether any items should be taken in private because of the likely disclosure of exempt information
10. Minutes (Part I) of the meeting held on 11 May 2015 1 - 3
11. Presentation of Petitions (if any)
12. Question and Answer Session for Members of the Public (if any)
13. Report of the Head of Planning and Development - Application 15/503288/OUT - Land at Woodcut Farm, Ashford Road, Hollingbourne, Maidstone, Kent 4 - 75

PART II

To move that the public be excluded for the items set out in Part II of the Agenda because of the likely disclosure of exempt information for the reason specified having applied the Public Interest Test.

Head of Schedule 12A and Brief Description

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| 14. Minutes (Part II) of the meeting held on 11 May 2015 | 5 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings | 76 - 81 |
| 15. Legal Advice Relevant to Application 15/503288/OUT - Land at Woodcut Farm, Ashford Road, Hollingbourne, Maidstone, Kent (circulated separately) | 5 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings | |

PUBLIC SPEAKING

In order to book a slot to speak at this meeting of the Planning Referrals Committee, please contact Debbie Snook on 01622 602030 or by email on debbiesnook@maidstone.gov.uk by 5.00 p.m. one clear working day before the meeting. If asking a question, you will need to provide the full text in writing. If making a statement, you will need to say which agenda item you wish to speak on. Please note that slots will be allocated on a first come, first served basis.

MAIDSTONE BOROUGH COUNCIL

PLANNING REFERRALS COMMITTEE

MINUTES (PART I) OF THE MEETING HELD ON 11 MAY 2015

Present: Councillor B Mortimer (Chairman) and
Councillors Mrs Hinder and J Sams

Also Present: Councillors Chittenden and Harwood

1. APOLOGIES FOR ABSENCE

There were no apologies for absence.

2. NOTIFICATION OF SUBSTITUTE MEMBERS

There were no Substitute Members.

3. NOTIFICATION OF VISITING MEMBERS

Councillors Chittenden and Harwood indicated their wish to speak on the exempt report of the Head of Planning and Development relating to application MA/13/2197 – Land at Boughton Lane, Maidstone.

4. ELECTION OF CHAIRMAN

RESOLVED: That Councillor B Mortimer be elected as Chairman of the Committee for the remainder of the Municipal Year 2014/15.

5. ELECTION OF VICE-CHAIRMAN

RESOLVED: That Councillor J Sams be elected as Vice-Chairman of the Committee for the remainder of the Municipal Year 2014/15.

6. URGENT ITEMS

The Chairman drew the Committee's attention to the exempt update report of the Head of Planning and Development and to Counsel's detailed Opinion both of which had been circulated separately.

7. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members and Officers.

8. DISCLOSURES OF LOBBYING

All Members stated that they had been lobbied regarding the exempt report of the Head of Planning and Development relating to application MA/13/2197 – Land at Boughton Lane, Maidstone.

9. EXEMPT ITEMS

RESOLVED: That the item on Part II of the agenda together with the exempt update report of the Head of Planning and Development and Counsel’s detailed Opinion be taken in private.

10. MINUTES OF THE MEETING HELD ON 4 DECEMBER 2008

RESOLVED: That the Minutes of the meeting held on 4 December 2008 be approved as a correct record and signed.

11. EXCLUSION OF THE PUBLIC FROM THE MEETING

RESOLVED: That the public be excluded from the meeting for the following item of business because of the likely disclosure of exempt information for the reason specified having applied the Public Interest Test:

Head of Schedule 12A and Brief Description

Exempt Report of the Head of Planning and Development – Application MA/13/2197 – Land at Boughton Lane, Maidstone, Kent (Including the Exempt Update Report of the Head of Planning and Development and Counsel’s Detailed Opinion)

5 – Legal Proceedings

12. APPLICATION MA/13/2197 - LAND AT BOUGHTON LANE, MAIDSTONE, KENT

The Committee considered the exempt report and the exempt update report of the Head of Planning and Development regarding the appeal against the Planning Committee’s decision to refuse application MA/13/2197 and the Committee’s decision that, notwithstanding Counsel’s Opinion in relation to the likely prospects of success, the Council should not defend reason for refusal 2 relating to the level of affordable housing but should continue to defend reason 1 relating to the loss and deterioration of ancient woodland at the forthcoming Public Inquiry. It was noted that in accordance with paragraph 27.3 of Part 4 of the Council’s Constitution and paragraph 17 of the Local Code of Conduct for Councillors and Officers Dealing with Planning Matters, both relating to planning decisions which have significant cost implications, this decision of the Planning Committee had been referred to the Planning Referrals

Committee by the Head of Planning and Development upon the advice of the representative of the Head of Legal Partnership.

The Committee also considered Counsel's detailed Opinion. This Opinion was circulated at the meeting to Committee Members and Visiting Members under strict terms and all copies were returned to the representative of the Head of Legal Partnership after consideration.

RESOLVED:

1. That in the matter of the appeal against the Planning Committee's decision to refuse application MA/13/2197, and having regard to (a) the provision of new evidence and (b) Counsel's Opinion in relation to the likely prospects of success at appeal, the Council should not defend reason for refusal 2 relating to the level of affordable housing at the forthcoming Public Inquiry.

Voting: 3 – For 0 – Against

FURTHER RESOLVED:

1. That in the matter of the appeal against the Planning Committee's decision to refuse application MA/13/2197, and having regard to (a) the provision of new evidence and (b) Counsel's Opinion in relation to the likely prospects of success at appeal, the Council should not defend reason for refusal 1 relating to the loss and deterioration of ancient woodland at the forthcoming Public Inquiry.
2. That the Head of Planning and Development be requested to seek to achieve, through the Statement of Common Ground, a single vehicular access or an alternative vehicular access to the development which avoid the woodland and also the removal of the footways from the woodland buffer zone.

Voting: 2 – For 1 – Against

13. DURATION OF MEETING

6.00 p.m. to 8.30 p.m.

Agenda Item 13

MAIDSTONE BOROUGH COUNCIL

PLANNING REFERRALS COMMITTEE

11 May 2017

Head of Planning and Development

Report prepared by Richard Timms

1. APPLICATION MA/15/503288/OUT – LAND AT WOODCUT FARM, ASHFORD ROAD, HOLLINGBOURNE, MAIDSTONE, KENT.

1.0 Issue for Decision

1.1 To consider not defending the grounds for refusal at the Public Inquiry appeal into the above-mentioned planning application.

1.2 To consider the Council's position on potential amendments to the appeal proposals by the appellant.

2.0 Reason for Urgency

2.1 The appeal commenced on 27 January 2017. The Council is committed to the agreed appeal timetable, which requires the submission of its Statement of Case by 18 May 2017 (this being the third agreed extension to the original deadline following the Planning Committee on 27 April). A pre-inquiry meeting is scheduled for 5 June 2017 and the parties are required to submit proofs of evidence in September 2017, four weeks prior to the commencement of the public inquiry on 10 October 2017. At present, the inquiry is estimated to continue for 10 days.

2.2 To date, the Council has expended resources dealing with the appeal in terms of officers' work and Counsel's advice. Clearly, the appellant has also invested a significant amount of resources in support of its appeal. Both parties' costs will continue to rise as the appeal progresses.

2.3 The main parties to a planning appeal are subject to a duty to ensure that the Planning Inspectorate are informed of any material changes in planning circumstances relevant to the appeal, in particular, any changes in national or local planning policy that are relevant to the planning authority's reasons for refusal, and whether those reasons are still defensible. This report and the **Appendix** addresses this matter and recommends that the Council's reason for refusal cannot

be defended at the public inquiry in October 2017. To ensure the Council complies with the procedural requirements to submit its statement of case by the 18 May 2017 deadline and to reduce the Council's overall costs liability, in particular, by avoiding the risk of an adverse cost award against the Council, it is important that any decision is taken as soon as possible.

3.0 Recommendations (Numbered as per original Planning Committee Report)

3.1 **Recommendation 1:** To agree that the sole reason for refusal recorded in the Council's decision notice, should not be defended on appeal.

3.2 **Recommendation 3:** In the event that the appellant does not apply to amend the proposals, or if the Inspector does not accept the amendments, to defend the appeal, if necessary, on the basis that the application proposal does not accord with emerging Local Plan policy, in particular, policy EMP1(5) as proposed to be modified.

3.3 (Planning Committee made decisions on recommendations 2 and 4)

4.0 Reasons for Recommendations

4.1 Recommendation 1: There is considered to be no realistic prospect of defending Council's reason for refusal at appeal. Attempting to defend the Council's reason for refusal will expose the Council to a high risk of a very significant adverse costs award, on the grounds of unreasonable behaviour, by failing to produce substantial evidence to defend every aspect of the Council's reason for refusal. This risk of an adverse costs award is in addition to the Council's costs of defending the appeal, which would also be significant.

4.2 Recommendation 3: Background information on the potential amendment of the appellant's application is outlined below at paragraph 5.22. Should the appellant not apply to amend the proposals or should the Inspector refuse to determine the appeal on the basis of the potential amendments, the application proposals do not accord with the emerging Local Plan policy, in particular, policy EMP1(5), as proposed to be modified. In this situation the Council should object to the proposals.

5.0 Background

5.1 The appeal relates to planning application 15/503288/OUT, which was an outline application for a mixed commercial development comprising B1(a), B1(b), B1(c) and B8 units, with a maximum floorspace of 46,623sqm. All matters were reserved for future consideration, save

- for access to the proposed development, the arrangements for which were detailed in the application.
- 5.2 The application was originally reported to Planning Committee on 30 June 2016 with an officer recommendation to grant outline permission subject to conditions and a Section 106 legal agreement.
- 5.3 Contrary to that recommendation, Members voted to refuse the application (by 7 FOR /6 AGAINST) on the following grounds:
- "The proposed development would be harmful to the character and appearance of the countryside, Special Landscape Area, and the setting of the Kent Downs Area of Outstanding Natural Beauty and any benefits are not considered to outweigh this harm. It would also cause less than substantial harm to the setting of the Grade II listed building 'Woodcut Farm' and any public benefits are not considered to outweigh this harm. The development would therefore be contrary to saved policies ENV21, ENV28, and ENV34 of the Maidstone Borough-Wide Local Plan 2000 and advice within the National Planning Policy Framework 2012."*
- 5.4 Members were not given a costs warning before making their decision.
- 5.5 On 6 July 2016, the Council issued a decision notice (attached at the **Appendix**) notifying the applicant of its decision to refuse planning permission. The notice recorded the Council's sole reason for refusing planning permission in the following terms:
- "(1) The proposed development would be harmful to the character and appearance of the countryside, Special Landscape Area, and the setting of the Kent Downs Area of Outstanding Natural Beauty and any benefits are not considered to outweigh this harm. It would also cause less than substantial harm to the setting of the Grade II listed building 'Woodcut Farm' and any public benefits are not considered to outweigh this harm. The development would therefore be contrary to saved policies ENV21, ENV28, and ENV34 of the Maidstone Borough-Wide Local Plan 2000 and advice within the National Planning Policy Framework 2012."*
- 5.6 The appeal commenced on 27 January 2017 with the public inquiry on 10 October 2017, which at present is estimated to continue for 10 days.
- 5.7 Before submitting its Full Statement of Case, Officers have reviewed the Council's reason taking account of any material changes in planning circumstances relevant to the appeal and taken advice from Counsel. Consequently, four recommendations were reported to the

Planning Committee on 27 April 2017. (The full Planning Committee Report and appendices are attached at the **Appendix**). The first recommendation was the key issue, seeking agreement that the sole reason for refusal not be defended on appeal. The other recommendations related to potential scenarios that may occur (2 & 3), and seeking delegated powers to negotiate on a legal agreement (4).

- 5.8 The Planning Committee voted against recommendation 1, and decided that the Council should defend the appeal based on the reason for refusal. In line with the Council's Constitution, as this decision could have significant cost implications for the Council's budget, the decision was referred to the Planning Referrals Committee (PRC) by the Head of Planning & Development. Recommendation 3 was also referred to PRC as it is connected to recommendation 1.
- 5.9 Planning Committee made decisions on recommendations 2 and 4.
- 5.10 The reasoning for both recommendations is set out in detail in the original Planning Committee Report and appendices attached at the **Appendix**, and a summary is provided below.

Recommendation 1: To agree that the sole reason for refusal recorded in the Council's decision notice, should not be defended on appeal.

- 5.11 The application was an outline planning application, and therefore consideration of specific matters relating to layout, scale, appearance, and landscaping were, and continue to be reserved, for future consideration. The main issues for consideration by the Committee were the principle of circa 46,000sqm of business floorspace and the acceptability of the access to the site. The Committee did not (and could not) refuse the application because buildings might be too tall or because of their location, simply because these details were not up for consideration. On that basis, the Committee's reason for refusal must be construed as an 'in principle' objection to the proposed development.
- 5.12 An 'in principle' objection is fundamentally contrary to draft policy EMP1(5) of the submitted Local Plan. This policy allocates the application site for 49,000sqm of 'B' class employment floorspace (offices, research and development, light industry, general industry and warehousing).
- 5.13 The reasoning behind this allocation is the evidence base for the emerging Local Plan, which inter alia has to quantify the employment need (as measured in floorspace) for the Plan period (2011-2031). The need for 'B' class employment is 32,565sqm, which includes 24,600sqm of office floorspace. The evidence base also identifies a

- qualitative need for a new employment site at a location with good strategic road access to markets (i.e. by the M20 motorway). The Council had taken a democratic decision to submit its Local Plan for Examination which envisages the delivery of all of this floorspace within the administrative boundaries of Maidstone Borough including with land allocated at Woodcut Farm through policy EMP1(5) (Full Council, February 2016). The Plan was submitted for Examination in May 2016 prior to the Planning Committee's decision on the application.
- 5.14 The employment allocation at Woodcut Farm provides for 49,000msqm of mixed employment floorspace and this is by far the greatest 'B' class employment allocation in the emerging Local Plan (compared with Barradale Farm, Headcorn and Pattenden Lane, Marden). As this is a strategic employment allocation, if the site were to fall away, then other sites would have to be identified in the Local Plan in order to cater for the need.
- 5.15 Following the Committee's decision to refuse the application, the Council did not remove the site allocation policy from the Local Plan and defended the employment allocation during the Local Plan Examination hearings, which have now concluded.
- 5.16 In his Interim Findings report on the Examination, the Local Plan Inspector endorsed the general principle of the employment site allocation in policy EMP1(5), finding it necessary to meet identified need for employment development over the plan period, subject to the modifications. The Inspector has not signalled rejection of either this site (as he has done for some housing allocations), or the assessed employment need. Indeed, the Local Plan Inspector considers, in the absence of alternative provision (beyond Woodcut Farm and other Local Plan site allocations) that there is likely to be a shortfall in office floorspace in the Borough over the plan period. This is why the latest iteration of the Local Plan as agreed by SPS&T Committee (currently out to consultation) contains a proposed modification to the site allocation increasing the office floorspace to at least 10,000sqm, and this represents a further endorsement of the allocation by the Council.
- 5.17 As the public inquiry into this appeal will not take place until October 2017, it is very likely that the Local Plan Inspector will have delivered his Final Report on the Examination of the Local Plan and the Plan is adopted by the Borough before the inquiry opens. Indeed, this is the Council's anticipated timetable. In those circumstances, the Inspector must accord full weight to relevant Local Plan policies, including policy EMP1(5), as modified, when determining the appeal. Importantly, upon adoption of the Local Plan, the saved policies cited in the Council's reason for refusal will no longer be part of the development plan.

- 5.18 As such, matters have moved on significantly since the original decision in July 2016, and will continue to do so in the months ahead before the inquiry opens and thereafter when the Inspector determines this appeal. The level of weight to be accorded to draft policies, in particular, the modified version of policy EMP1(5), should increase over time, as progress is made toward the Council's adoption of the new Local Plan. Consequently, it is no longer tenable for the Council to defend the Committee's reason for refusal, as it would be unreasonable for the Council to accord relevant draft Local Plan policies anything other than substantial weight.
- 5.19 With regard to the specific issues identified in the Council's reason for refusal (landscape and heritage impact), advice on these issues can be found at paragraphs 5.23 to 5.25 of the Planning Committee Report.
- 5.20 For all these reasons and the matters addressed in Counsel's advice, Officers do not consider the reason for refusal can be sustained at appeal and, in those circumstances, it would be unreasonable for the Council to defend the appeal by reference to its reason for refusal.
- 5.21 The amount of any adverse costs award is likely to be very substantial and the Council's liability to pay any adverse costs award will be in addition to the Council's usual liability to bear its own costs associated with defending the appeal. For the same reasons, those costs are likely to be very substantial.

Recommendation 3: In the event that the appellant does not apply to amend the proposals, or if the Inspector does not accept the amendments, to defend the appeal, if necessary, on the basis that the application proposal does not accord with emerging Local Plan policy, in particular, policy EMP1(5) as proposed to be modified.

- 5.22 The background on potential amendments to the application is outlined at paragraphs 5.29 to 5.49 of the Planning Committee Report. This explains that the draft policy has changed since the decision in 2016 through the Local Plan Examination, and so the appellant's proposals no longer comply with the modified policy. The appellant has however indicated that they intend to comply with the modified policy by potentially seeking amendments to their application as explained at paragraphs 5.31 to 5.34 of the Planning Committee Report.
- 5.23 Should the appellant seek amendments but the Inspector refuse to determine the appeal on the basis of the amendments, or in the event the appellant does not apply to amend the appeal proposals, the Inspector must determine the appeal on the basis of the development proposed in the application.

5.24 Having regard to the material changes in planning circumstances referred to above, in the unlikely event of the appellant pursuing the appeal on the basis of the application scheme, or the Inspector refusing to accept the amendments, it would be reasonable for the Council to resist the appeal on the grounds that the application proposals do not accord with Local Plan policy EMP1(5) as proposed to be modified. For the avoidance of doubt, this is not to defend the reason for refusal recorded in the Council’s decision notice.

6.0 Alternative Action and why not Recommended

6.1 Recommendation 1: The alternative course of action would be to continue to defend the grounds of the refusal. However, for the reasons explained, that alternative would be unreasonable and very likely to fail, thereby exposing the Council to a very significant adverse costs award.

6.2 Recommendation 3: There is no alternative course of action open to the local planning authority.

7.0 Risk Management

7.1 In the circumstances, attempting to defend the appeal by reference to the Council's reason for refusal would expose the Council to a very high risk of an adverse and substantial costs award. That risk can be avoided or mitigated by confirming in its Full Statement of Case that the Council will not defend the appeal by reference to the sole reason for reason recorded in the decision notice refusing to grant planning permission.

8.0 Other Implications

1. Financial	x
2 Staffing	
3 Legal	x
4 Equality Impact Needs Assessment	
5 Environmental/Sustainable Development	x
6 Community Safety	
7 Human Rights Act	
8 Procurement	

9 Asset Management



9.0 Financial Implications

9.1 The Council should ensure that it minimizes the risk of incurring costs that can and should be avoided. Having regard to the advice in this report and **Appendix**, the Council should not defend the reason for refusal to minimize the risk of incurring costs. As the Development Manager outlined at the Planning Committee meeting on 27 April, this is estimated to be between £350,000 and £450,000 based on the Council's own costs at the Waterside Park public inquiry and costs claims by appellants for two recent hearings.

10.0 Legal Implications

10.1 The legal implications and issues are set out in the body of the report and **Appendix**.

11.0 Conclusions

11.1 For the reasons set out in this report and **Appendix**, the Council's reason for refusal cannot be sustained at appeal and attempting to defend the Council's reason for refusal would be unreasonable and very likely to fail, thereby exposing the Council to a very significant adverse costs award, in addition to having to bear the its own costs defending the appeal.

11.2 In the event of the appellant not amending the application proposals or if the Inspector refuses to determine the appeal on the basis of the amendments, the Council should object to the proposal as it would fail to comply with Local Plan policy EMP1(5) as proposed to be modified.

12.0 Relevant Documents

12.1 **Appendix:** Committee Report, Appendices & Urgent Update (27 April 2017)

MAIDSTONE BOROUGH COUNCIL

PLANNING COMMITTEE MEETING

27 April 2017

Head of Planning and Development

Report prepared by Richard Timms

- 1. APPLICATION 15/503288/OUT – LAND AT WOODCUT FARM, ASHFORD ROAD, HOLLINGBOURNE, MAIDSTONE, KENT.**
 - 1.0 Issue for Decision
 - 1.1 To consider not defending the grounds for refusal at the Public Inquiry appeal into the above-mentioned planning application.
 - 1.2 To consider the Council's position on potential amendments to the appeal proposals by the appellant.
- 2.0 Reason for Referral to Planning Committee
 - 2.1 The appeal commenced on 27 January 2017. The Council is committed to the agreed appeal timetable, which requires the submission of its statement of case by 4 May 2017 (this being the second agreed extension to the original deadline). A pre-inquiry meeting is scheduled for 5 June 2017 and the parties are required to submit proofs of evidence in September 2017, four weeks prior to the commencement of the public inquiry on 10 October 2017. At present, the inquiry is estimated to continue for 10 days.
 - 2.2 To date, Council has expended resources dealing with the appeal in terms of officers' work and Counsel's advice. Clearly, the appellant has also invested a significant amount of resources in support of its appeal. Both parties' costs will continue to rise as the appeal progresses.
 - 2.3 The main parties to a planning appeal are subject to a duty to ensure that the Planning Inspectorate are informed of any material changes in planning circumstances relevant to the appeal, in particular, any changes in national or local planning policy that are relevant to the planning authority's reasons for refusal, and whether those reasons are still defensible. This report addresses this matter and recommends that the Council's reason for refusal cannot be defended at the public inquiry October 2017. To ensure the Council complies with the procedural requirements to submit its statement of case by the 4 May 2017 deadline and to reduce the Council's overall costs

liability, in particular, by avoiding the risk of an adverse cost award against the Council, it is important that any decision is taken as soon as possible.

3.0 Recommendation(s)

3.1 **Recommendation 1:** To agree that the sole reason for refusal recorded in the Council's decision notice, should not be defended on appeal.

3.2 **Recommendation 2:** To agree that the Council should adopt a neutral position in response to the Appellant's proposed amendments to the appeal proposals.

3.3 **Recommendation 3:** In the event that the appellant does not apply to amend the proposals, or if the Inspector does not accept the amendments, to defend the appeal, if necessary, on the basis that the application proposal does not accord with emerging Local Plan policy, in particular, policy EMP1(5) as proposed to be modified.

3.4 **Recommendation 4:** To agree that Members delegate authority to the Head of Planning & Development to negotiate the contents of any Section 106 Agreement.

4.0 Reasons for Recommendation(s)

4.1 There is considered to be no realistic prospect of defending Council's reason for refusal at appeal. Attempting to defend the Council's reason for refusal will expose the Council to a high risk of a very significant adverse costs award, on the grounds of unreasonable behaviour, by failing to produce substantial evidence to defend every aspect of the Council's reason for refusal. This risk of an adverse costs award is in addition to the Council's costs of defending the appeal, which would also be significant.

4.2 The decision to allow the Appellant to amend the application proposal is a matter for the Inspector, who must consider whether the amended proposals constitute a "substantial alteration" of what had been proposed by the application. The main consideration for the Inspector, amongst others, should be whether the development proposed was so changed that to grant permission would be to deprive those who should have been consulted of the opportunity of consultation. What constitutes a "substantial alteration" will depend upon the facts and circumstances of each case and is a matter within the discretion of the Planning Inspector.

4.3 Should the Inspector refuse to determine the appeal on the basis of the Appellant's proposed amendments, the application proposals do not accord with the emerging Local Plan policy, in particular, policy EMP1(5), as proposed to be modified.

4.4 Whatever the Committee decides, officers require delegated authority to negotiate the terms of a Section 106 Agreement.

5.0 Appraisal

Planning Application Background

5.1 The appeal relates to planning application 15/503288/OUT, which was an outline application for a mixed commercial development comprising B1(a), B1(b), B1(c) and B8 units, with maximum a floorspace of 46,623sqm. All matters were reserved for future consideration, save for access to the proposed development, the arrangements for which were detailed in the application.

5.2 The application was reported to Planning Committee on 30 June 2016 with an officer recommendation to grant outline permission subject to conditions and a Section 106 legal agreement.

5.3 Contrary to that recommendation, Members voted to refuse the application (by 7 FOR /6 AGAINST) on the following grounds:

"The proposed development would be harmful to the character and appearance of the countryside, Special Landscape Area, and the setting of the Kent Downs Area of Outstanding Natural Beauty and any benefits are not considered to outweigh this harm. It would also cause less than substantial harm to the setting of the Grade II listed building 'Woodcut Farm' and any public benefits are not considered to outweigh this harm. The development would therefore be contrary to saved policies ENV21, ENV28, and ENV34 of the Maidstone Borough-Wide Local Plan 2000 and advice within the National Planning Policy Framework 2012."

5.4 Members were not given a costs warning before making their decision.

5.5 On 6 July 2016, the Council issued a decision notice (attached as **Appendix 1**) notifying the applicant of its decision to refuse planning permission. The notice recorded the Council's sole reason for refusing planning permission in the following terms:

"(1) The proposed development would be harmful to the character and appearance of the countryside, Special Landscape Area, and the setting of the Kent Downs Area of Outstanding Natural Beauty and any benefits are not considered to outweigh this harm. It would also cause less than substantial harm to the setting of the Grade II listed building 'Woodcut Farm' and any public benefits are not considered to outweigh this harm. The development would therefore be contrary to saved policies ENV21, ENV28, and ENV34 of the Maidstone Borough-Wide

Maidstone Borough Local Plan Examination

- 5.6 The Inspector appointed to carry out the Examination of the submitted Local Plan, Mr Robert Mellor, BSc DipTRP DipDesBEnv DMS MRICS MRTPI ("the Local Plan Inspector"), held Examination hearings over 20 days between 4 October and 13 December 2016. The Local Plan Inspector provide the Council with a report of his Interim Findings on 22 December 2016 ("Interim Findings"), which addressed key issues in the Examination and the need, or otherwise, for modifications to be made to the submitted Local Plan, to make it sound (within the meaning of paragraph 182 of the NPPF) and enable its adoption. The Interim Findings addressed employment allocations in paragraphs 109 to 112, which can be found at **Appendix 2**.
- 5.7 The Local Plan Inspector held the Examination hearing closing session on 24 January 2017, which included a discussion concerning the Council's additional submissions in response relating to employment issues; proposed changes to the submitted Local Plan; and the future programming of the examination.
- 5.8 On 14 March 2017, the Council's Schedule of Proposed Main Modifications to the submitted Local Plan was approved by the Council's Strategic Planning, Sustainability and Transportation Committee (SPS&T) for public consultation over a seven-week period, which ends on Friday 19 May 2017.
- 5.9 The Schedule includes the proposed Main Modifications to draft Policy EMP1(5) — to be renumbered EMP1(4) — and its supporting text (Reference MM39), which can be found at **Appendix 3**. The principal change to the pre-submission version approved by Full Council on 12 January 2016 and submitted for Examination, is that the site allocation is now required to provide a minimum of 10,000sqm of B1(a)/(b) floorspace, to be safeguarded from alternative uses until at least April 2026, of which 5,000 sqm will be in the form of serviced land.
- 5.10 The Schedule of Proposed Main Modifications records that the Council considers the Main Modifications to Policy EMP1(5) and its supporting text to be necessary:
- "To ensure the policy is positively prepared, effective and deliverable whilst seeking to meet identified needs."*
- 5.11 Subject to the need to convene additional hearings, the Local Plan Inspector will provide the Council with his Final Report on the Examination well before the commencement of the public inquiry.

The Planning Appeal

- 5.12 On 22 December 2016, the applicant submitted an appeal to the Secretary of State against the Council's refusal to grant outline planning permission which is due to be considered at a public inquiry which is due to commence on 10 October 2017 and continue for 10 days. As is customary with public inquiries, the Council has appointed a barrister to advise the Council and appear on its behalf at the public inquiry. It is usual practice that the Council and its appointed Counsel review the reasons for refusal before submitting the Council's Full Statement of Case and, thereafter, continually monitor the main issues as part of the Council's preparation for the inquiry.
- 5.13 The Planning Inspector must determine this appeal, having regard to all material planning considerations, as they exist when making the decision. For that reason, the Council's Full Statement of Case must address any material changes in planning circumstances relevant to the appeal, which post-date the Council's refusal decision. That process requires the Council to assess whether, as a result of those changes, its reasons for refusing the application, or any part thereof, can no longer be defended. As stated above, practice guidance requires the main parties to an appeal to inform the Planning Inspectorate as soon as possible of any material changes in planning circumstances relevant to the determination of an appeal. It is also necessary to minimise the risk of an adverse costs award being made against the Council, on the grounds of unreasonable behaviour, which may include failing to produce substantial evidence to defend every aspect of its reason for refusal.
- 5.14 In accordance with those requirements, before submitting its Full Statement of Case, Officers have reviewed the Council's reason taking account of any material changes in planning circumstances relevant to the appeal and taken advice from Counsel. For the reasons explained below, Officers do not consider the Council's reason for refusal can be defended on appeal.

Recommendation 1: To agree that the sole reason for refusal recorded in the Council's decision notice, should not be defended on appeal.

- 5.15 As an application for outline planning permission, consideration of matters relating to layout, scale, appearance, and landscaping were and continue to be reserved for future consideration. Accordingly, the main issues for consideration by the Committee were the principle of the development proposed and the acceptability of the access to the site. As such, it is reasonable to conclude that, when determining the application, the Committee did not consider matters reserved for later consideration. For example, the Committee did not (and could not) refuse the application because buildings might be too tall or because of their location, simply because these details were not up for consideration. On that basis, the Committee's reason for refusal must

be construed as an 'in principle' objection to the proposed development.

- 5.16 As an 'in principle' objection, the decision is fundamentally contrary to draft policy EMP1(5) of the submitted Local Plan. As was outlined in the original Committee report, this policy allocates the application site for 49,000sqm of employment floorspace and the application was considered fundamentally to comply with that policy. At the time of the Committee's decision, the Council had taken a democratic decision to submit its Local Plan for Examination, which included policy EMP1(5) allocating the land for employment development (Full Council, February 2016). As such, the Council had endorsed this policy on the basis that the development proposed in the site allocation was necessary to meet the identified employment needs in the Borough over the Plan period, to ensure the submitted Local Plan was sound and legally compliant. For these reasons, officers advised the Committee that policy EMP1(5) should be accorded significant weight in the determination of the application. Since February 2016, the Council has considered the site to be appropriate for employment development, subject to suitable mitigation. However, when determining the application, the Committee did not identify any basis upon which the proposal failed to accord with the criteria within draft policy EMP1(5) in the reason for refusal but, instead, decided to attach limited weight to the emerging allocation policy, and significant weight to the saved policies of the adopted Local Plan (2000) in reaching its decision; and considered that the public benefits of the proposal would not outweigh harm identified.
- 5.17 Following the Committee's decision to refuse the application, the Council did not remove the site allocation policy from the Local Plan and has defended the employment floorspace allocation in policy EMP1(5) during the Local Plan Examination hearings, which have now concluded.
- 5.18 In his Interim Findings, the Local Plan Inspector endorsed the general principle of the employment site allocation in policy EMP1(5), finding it necessary to meet identified need for employment development over the plan period, subject to the modifications recommended in his Interim Findings, which safeguard the majority of the proposed employment floorspace for B1(a)/(b) (office/research & development use). Indeed, the Local Plan Inspector considers, in the absence of alternative provision (beyond Woodcut Farm and other Local Plan site allocations) that there is likely to be a shortfall in office floorspace in the Borough over the plan period. In those circumstances, Officers consider it very unlikely that the Inspector's final recommendations concerning the adoption of the Local Plan will be inconsistent with his Interim Findings, and certainly not to the extent that he recommends the deletion of policy EMP1(5) site allocation.

- 5.19 During the Examination hearings, several changes to the submitted Local Plan were identified as being necessary to address the Local Plan Inspector's concerns about the soundness of the submitted Plan, and in response to his specific requests. The Inspector has confirmed the proposed changes which should be identified as proposed 'Main Modifications', which must be subject to public consultation. Main Modifications are those changes which the Inspector considers necessary to make the submitted Plan sound and legally compliant. It is important to note that, without those Main Modifications, including the proposed main modification 'MM39' to policy EMP1(5), the Local Plan Inspector cannot recommend the adoption of the Local Plan.
- 5.20 As the public inquiry into this appeal will not take place until October 2017, it is very likely that the Local Plan Inspector will have delivered his Final Report on the Examination of the Local Plan before the inquiry opens. At that stage, the Council may also have adopted the Local Plan, including the site allocation, subject to Main Modifications recommended in the Inspector's Final Report. Indeed, this is the Council's anticipated timetable for adoption of the Local Plan. In that event, the policies of the adopted Local Plan will become part of the statutory development plan and will replace the saved policies of the MBWLP (2000), including those cited in the Council's reason for refusal.
- 5.21 Accordingly, the Council's Full Statement of Case must also take account of the circumstances and relevant planning considerations which are likely to prevail from October 2017 onward. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the Inspector to determine this appeal in accordance with the development plan, which at that stage, is likely to be the newly adopted Local Plan. In those circumstances, the Inspector must accord full weight to relevant Local Plan policies, including policy EMP1(5), as modified, when determining the appeal. Importantly, upon adoption of the Local Plan, the saved policies cited in the Council's reason for refusal will no longer be part of the development plan.
- 5.22 The Committee justified its decision to refuse outline planning permission by according limited weight to the relevant emerging Local Plan policies identified in the original Committee report. However, for the reasons set out above, matters have moved on significantly, and will continue to do so in the months ahead before the inquiry opens and thereafter when the Inspector determines this appeal. The level of weight to be accorded to those policies, in particular, the modified version of policy EMP1(5), should increase over time, as progress is made toward the Council's adoption of the new Local Plan. Consequently, it is no longer tenable for the Council to defend the Committee's reason for refusal, as it would be unreasonable for the Council to accord relevant draft Local Plan policies anything other than substantial weight.

- 5.23 With regard to the specific issues identified in the Council's reason for refusal, in respect of the alleged landscape impact, the Committee's reason for refusing permission does not explain how the proposals will cause harm to the character and appearance of the countryside, the Special Landscape Area, and the setting of the AONB, or the extent of that harm. Also, the Committee attached significant weight to saved policies of the Maidstone Borough-Wide Local Plan (2000) without citing relevant policies in the emerging Local Plan.
- 5.24 The Landscape and Visual Impact Assessment (LVIA) accompanying the application provides an assessment of the proposed development including viewpoints, the character and appearance of the countryside and Special Landscape Area, and the setting of the AONB. The Council's Landscape Officers considered the key principles of the Landscape and Visual Assessment to be acceptable. The proposed development also incorporates the landscape requirements of Policy EMP1(5), which as outlined above, must now be accorded substantial weight.
- 5.25 In relation to the setting of the listed building identified (Woodcut Farm), the reason for refusal does not explain how the setting of the Woodcut Farm (Grade II listed) contributes to its significance, the importance of that setting to the significance of the designated heritage asset, and how the proposal causes harm to the setting and thereby the significance of that asset. In respect of this aspect of the Council's reason for refusal, Members followed the advice of the Council's conservation officer. Again, this is set against the context of the Council having allocated the site for development, and thus accepting some impact upon the listed building. Nevertheless, even if the Inspector concluded that the proposed development would cause 'less than substantial harm', paragraph 134 of the NPPF requires the public benefits of the development proposal to be weighed against that harm.
- 5.26 Finally, having regard to the material changes in planning circumstance outlined above, the presumption in favour of sustainable development (within paragraph 14 of the NPPF) requires permission to be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. Applying that test, the Council's reason for refusal cannot be sustained.
- 5.27 For all these reasons and the matters addressed in Counsel's advice, Officers do not consider the reason for refusal can be sustained at appeal and, in those circumstances, it would be unreasonable for the Council to defend the appeal by reference to its reason for refusal.
- 5.28 The main parties agree that the public inquiry is likely to extend to 10 days to accommodate the examination of the evidence submitted by at least seven professional witnesses and the usual business of a public inquiry. As such, the amount of any adverse costs award is likely to be

very substantial and the Council's liability to pay any adverse costs award will be in addition to the Council's usual liability to bear its own costs associated with defending the appeal. For the same reasons, those costs are likely to be very substantial.

Recommendation 2: To agree that the Council should adopt a neutral position in response to the Appellant's proposed amendments to the appeal proposals.

- 5.29 As outlined above, since the Planning Committee's decision to refuse outline planning permission, the Council now accepts the Local Plan Inspector's recommendation that significant changes to the draft Local Plan site allocation policy are necessary to make the submitted Local Plan sound. The Council's SPS&T has now approved the Schedule of Proposed Main Modifications for public consultation to give effect to the Inspector's recommendations in his Interim Findings. The most significant changes to draft policy EMP1(5) are to provide at least 10,000sqm of B1(a)/B1(b) floorspace, which shall be safeguarded from any other uses until April 2026; and for 5,000sqm of this floorspace to be provided with access and be serviced prior to occupation of any other uses on site. The delivery of this much needed floorspace is a key priority of the allocation and the Local Plan's employment strategy.
- 5.30 The application proposal was based on the draft Local Plan policies, including the site allocation policy EMP1(5), as submitted to the Examination in May 2016. Due to the Proposed Main Modifications, which the Council accepts are necessary to make the submitted Local Plan sound, it is now necessary to consider whether the application proposal accords with draft Local Plan policies, in particular, policy EMP1(5), as proposed to be modified.
- 5.31 Understandably, to date, the Appellant has yet to respond formally to the Local Plan Modifications Consultation (and will no doubt do so during before the consultation ends on 19 May 2017). However, to inform the preparation of the Council's Full Statement of Case, at Officer's request, the Appellant has outlined its position in response to the proposed Main Modifications for the purposes of this appeal, as follows (Full Letter attached at **Appendix 4**):

"Overall, it is the Appellant's intention to adhere as closely as possible to the additional requirements that have been introduced through the Proposed Modifications to Policy EMP1(5)."

- 5.32 The Appellant considers the appeal background documents (e.g., the Environmental Assessment supporting the application, which includes the Transport Assessment) adequately assess the likely impact of the 10,000sqm increase in floorspace proposed in 'MM39'. However, the 'Building Areas Parameters Plan' submitted with application proposed 7,864sqm of Class B1(a)/B1(b) floorspace (within Plots C1-2 and D1-

- 2) and, as submitted, the shortfall of 2,136sqm does not comply with a key requirement of emerging development plan policy.
- 5.33 The Appellant proposes to address that shortfall by way of a section 106 planning obligation to secure the following measures:
- "(a) Notwithstanding the previously submitted Parameter Plans, the area of Plots A1-2 would be excluded from the proposed development. As a consequence of this change, reserved matters applications could not be submitted for Class B8/B1c development in the area of Plots A1-2 pursuant to the current proposed;*
 - (b) The Appellant would commit to submitting a new planning application for at least 2,500sqm of Class B1a/B1b floorspace, to be located within the excluded area, within a period to be agreed with MBC and use reasonable endeavours to obtain planning permission; and*
 - (c) The excluded area would be safeguarded from any other uses until April 2026, or until otherwise allocated through a Local Plan Review, or until alternative provision for at least 2,500 sqm of Class B1a/B1b floorspace is secured on an alternative plot in the vicinity of the excluded area."*
- 5.34 The Appellant's proposed amendments to the application scheme are intended to address the additional requirements introduced by proposed Main Modification 'MM39', including adjustments to the maximum unit sizes which are outlined in the draft Statement of Common Ground prepared by the Appellant and shown on the revised Building Areas Parameters Plan to be attached thereto. In terms of addressing the new policy requirement concerning the Minerals Safeguarding (i.e., the potential extraction of minerals prior to development), the Appellant proposes to deal with this by way of a planning condition. Otherwise, to the extent appropriate at the outline planning permission stage, these other changes could be secured by planning conditions, or a section 106 planning obligation.
- 5.35 Although planning appeals should usually be determined by reference to the application proposals considered by the local planning authority, in certain circumstances, amendments to the application proposal may be considered on appeal. In such circumstances, the Inspector must consider whether the amended proposals constitute a "substantial alteration" of what had been proposed by the application. The main consideration for the Inspector, amongst others, should be whether the development proposed was so changed that to grant permission would be to deprive those who should have been consulted of the opportunity of consultation. What constitutes a "substantial alteration" will depend upon the facts and circumstances of each case and is a matter within the discretion of the Planning Inspector.

- 5.36 The Planning Inspectorate's 'Planning Appeals Procedural Guide' confirms (within Annex M) that the Inspector will take account of these considerations, which are known as the "Wheatcroft Principles" when deciding whether the proposals can formally be amended on appeal. In this case, the Appellant contends that the amended proposals would fully accord with the Wheatcroft Principles, because the amended proposals already accord with the vast majority of the new criteria introduced by proposed 'MM39'; the changes proposed in the revised Building Areas Parameters Plan would be minor and would not affect the overall amount or location of the proposed floorspace; the changes would not affect the conclusions of the Environmental Assessment Addendum; and would not prejudice anyone involved in the appeal.
- 5.37 The Appellant's proposed amendments are a direct response to the proposed Main Modification 'MM39', which significantly alters the aims of draft policy EMP1(5) and the Council's aspirations for the development of the Site, within the wider context of the employment strategy in the Local Plan. The proposed Main Modification 'MM39' introduces a new key priority for the Woodcut Farm site (i.e., the delivery of at least 10,000sqm of new office/research & development floorspace (B1a/b), which importance of which is reflected in the new policy requirement to safeguard the land specifically for B1(a)/(b) and no other purpose, pending improvements in the viability position for such development improving in the latter part of the plan period.
- 5.38 Prior to Main Modification 'MM39' which the Council confirmed on 31 January 2017, the Appellant could not have foreseen the recently proposed key policy priority and associated safeguarding requirement, or the significance of the modifications to draft Local Plan policy. The Council's reason for refusal does not contend that the application proposals failed to accord with draft Local Plan policy EMP1(5), to the contrary, Officers considered the application to comply with the Council's policy priorities for the site at the time. Against that background, the Appellant's attempts to amend the proposals to adhere, as closely as possible, to the additional requirements that have been introduced through proposed MM39, will be relevant to the Inspector's decision whether to determine the appeal by reference to amended proposals.
- 5.39 Whether those amendments would result in a substantial alteration of the development proposed in the application will be a matter for the Inspector's judgement, taking proper account of the specific facts and circumstances of this case. The Wheatcroft Principles require the Inspector to consider, amongst other things, whether the amendment proposals would be "so changed that to grant permission would be to deprive those who should have been consulted of the opportunity of consultation".
- 5.40 Had the Appellant proposed similar amendments at the application stage, Officers consider that full re-consultation and advertisement

would have been carried out on the amendment proposals. Although the proposed amendments are intended to ensure compliance with recently proposed modifications to emerging development plan policy, it is impossible to know whether consultation responses would raise issues that, to date, have not been considered. As such, unless the amended proposals are subject to further consultation, the possibility that someone who should have been consulted being deprived of the opportunity of consultation, cannot be excluded.

- 5.41 Although details of layout, appearance, scale and landscaping are reserved, the application was accompanied by illustrative plans to show how the proposed amount of development could potentially be accommodated on the site. To date, the Appellant has stated that key site parameters, including the finished ground levels, and maximum height of buildings would be established through any grant of outline permission. By contrast, the Appellant's proposed mechanism for addressing the shortfall in B1(a)/(b) provision will require the submission of a second planning application to secure full compliance with the modifications to policy EMP1(5).
- 5.42 Although the proposal represents a reduction in the total amount of development, unlike other cases, the amendment does not result in any reduction in harm, or secure compliance with development plan policy. To the contrary, the Appellant accepts that compliance with proposed MM39 cannot be achieved by the Inspector granting outline planning permission in this appeal. The key priority of policy EMP1(5) can only be achieved through the submission of an additional application for planning permission and a further grant of planning permission. As such, the scope of the Inspector may conclude that the amended proposals, in qualitative and quantitative terms, constitutes a "substantial alteration" of the development proposed by the application.
- 5.43 The complex mechanism required to address the significant shortfall in B1(a)/(c) provision, could be avoided if the Appellant submitted a new application for outline planning permission, that comprehensively addresses the proposed changes necessary to secure compliance with the modifications to policy EMP1(5) and addresses the appeal proposal's shortfall in B1(a)/(b) provision, without the need to submit an additional planning application for at least 2,500sqm of B1(a)/(c) in the vicinity of the proposed excluded area. Doing so would allow interested persons to consider the amended proposals in their entirety and make representation, in the context of the significant modifications to policy EMP1(5), before outline planning permission has been granted for part of the development proposed.
- 5.44 The Council accepts that the Wheatcroft Principles are the main but not the only consideration which the Inspector must take into account when considering whether to determine the appeal by reference to the amendment proposal. The circumstances of the present case are

unusual and the Inspector should take account of the Appellant's reasons for proposing the amendments; the history of the planning application and appeal; the public interest in delivering development on the site that accords with the key priority of emerging development plan (as modified); the futility of determining the appeals on the basis of scheme that neither the Appellant or the Council supports; and the prejudice which the Appellant is likely to suffer if the Inspector refuses to determine the appeal on the basis of the amended proposals.

- 5.45 In all the circumstances, Officers consider that the appeal process should not be used to circumvent that the procedural protections afforded by the Part III of the Town and Country Planning Act 1990, which cannot be guaranteed by the Appellant's proposed amendments to the application scheme, which considered as whole, constitute a substantial alteration to the proposals considered by the Council's committee in June 2016. For the reasons set out above, the Appellant should submit a new application for outline planning permission for the amended proposals, the determination of which will ensure that interested persons are given a proper opportunity to consider and comment on the proposals and participate in the decision-making process.
- 5.46 The appeal process cannot replicate the procedural protections guaranteed by the planning application process and should not be used to evolve proposals for development. The prompt submission of a new application would allow the merits of the proposals to be considered in advance of the public inquiry. Submitting a new application for planning permission would not require the Appellant to withdraw this appeal and, whatever the outcome, the determination of the new application will be relevant to the conduct and, if necessary, the determination of the appeal.
- 5.47 For the reasons set out above, at this stage, Officers do not consider it necessary or appropriate to support the Appellant's proposed amendments to the application proposals, and should encourage the Appellant to submit a new application for outline planning permission for its amended proposals, before formally applying to amend the appeal proposal. Subject to raising the concerns identified above, the Council should adopt a neutral position in response to the Appellant's proposed application to amend the appeal proposals.
- 5.48 Unless and until the Appellant withdraws this appeal, the Inspector must hold the planning inquiry before determining the appeal, even if the Council decides not to defend its reason for refusal. In those circumstances, the Council must attend the inquiry and submit evidence. However, if the Council decides not to defend its reason for refusal, its evidence will be limited to explaining the basis upon which it no longer objects to the proposed development, and the basis upon which outline planning should be granted. In such circumstances, the primary role of the Local Planning Authority will be to assist the

Inspector and, although the Council will not challenge the Appellant's evidence or cross-examine the Appellant's witnesses, the Council will actively participate in important aspects of the inquiry process, including, for example, the usual round-table discussion on conditions and planning obligations.

- 5.49 The Council's evidence may also address relevant matters upon which the Appellant and the Council may not agree, subject to the proviso that any disagreement between the parties does not justify withholding outline planning permission.

Recommendation 3: In the event that the appellant does not apply to amend the proposals, or if the Inspector does not accept the amendments, to defend the appeal, if necessary, on the basis that the application proposal does not accord with emerging Local Plan policy, in particular, policy EMP1(5) as proposed to be modified.

- 5.50 Should the Inspector refuse to determine the appeal on the basis of the Appellant's proposed amendments, or in the event the Appellant does not apply to amend the appeal proposals, the Inspector must determine the appeal on the basis of the development proposed in the application. For the reasons stated above, the application proposals do not accord with policy EMP1(5), as proposed to be modified.

- 5.51 Having regard to the material changes in planning circumstances referred to above, in the unlikely event of the Appellant pursuing the appeal on the basis of the application scheme, or the Inspector refusing to accept the amendments, it would be reasonable for the Council to resist the appeal on the grounds that the application proposals do not accord with Local Plan policy EMP1(5) as proposed to be modified. For the avoidance of doubt, this is not to defend the reason for refusal recorded in the Council's decision notice.

Recommendation 4: To agree that Members delegate authority to the Head of Planning & Development to negotiate the contents of any Section 106 Agreement.

- 5.52 As the application was refused by the Planning Committee, the Constitution requires the Committee to delegate authority to officers to negotiate the terms of any Section 106 Agreement. Whether or not the Council defends the reason for refusal, it must negotiate the terms of a section 106 planning obligation to ensure that development is acceptable in planning terms, if the Inspector allows the appeal.

6.0 Alternative Action and why not Recommended

- 6.1 Recommendation 1: The alternative course of action would be to continue to defend the grounds of the refusal. However, for these reasons explained, that alternative would be unreasonable and very

likely to fail, thereby exposing the Council to a very significant adverse costs award.

6.2 Recommendation 2: The alternative course of action would be to actively object to the Appellant's proposed amendments to the appeal proposals. Officers advise the proposed changes would not cause prejudice to the conduct of the Council's case, and indeed support the Council's emerging policy for the site.

6.3 Recommendation 3: There is no alternative course of action open to the local planning authority.

6.4 Recommendation 4: The alternative course of action would be not to agree delegated authority to negotiate the Section 106. This would deny the Council the opportunity to negotiate an appropriate legal agreement for the scheme and the risk of planning permission being granted for development that is unacceptable in planning terms. Failure to negotiate the terms of a section 106 planning obligation would constitute unreasonable behaviour and expose the Council to the risk of an adverse costs award.

7.0 Risk Management

7.1 In the circumstances, attempting to defend the appeal by reference to the Council's reason for refusal would expose the Council to a very high risk of an adverse and substantial costs award. That risk can be avoided or mitigated by confirming in its Full Statement of Case that the Council will not defend the appeal by reference to the sole reason for refusal recorded in the decision notice refusing to grant planning permission.

8.0 Other Implications

1. Financial	x
2. Staffing	
3. Legal	x
4. Equality Impact Needs Assessment	
5. Environmental/Sustainable Development	x
6. Community Safety	
7. Human Rights Act	
8. Procurement	

9 Asset Management



9.0 Financial Implications

- 9.1 The Council should ensure that it minimizes the risk of incurring costs that can and should be avoided. Having regard to the advice in this Report, the Council should not defend the reason for refusal to minimize the risk of incurring costs. It is not possible to quantify the level of costs but they are likely to be significant.

10.0 Legal Implications

- 10.1 The legal implications and issues are set out in the body of the report.

11.0 Conclusions

- 11.1 For the reasons set out in this report, the Council's reason for refusal cannot be sustained at appeal and attempting to defend the Council's reason for refusal would be unreasonable and very likely to fail, thereby exposing the Council to a very significant adverse costs award, in addition to having to bear the its own costs defending the appeal.

- 11.2 In the event of the Appellant refusing to submit a new application for planning permission, the Council should adopt a neutral position in respect of the Appellant's proposed amendments, and object to the application proposal if the Appellant pursues the appeal on that basis. The Council will continue to negotiate the contents of any Section 106 Agreement; and to provide evidence on any relevant matters relating to the appeal.

12.0 Relevant Documents

- 12.1 Appendices

Appendix 1: Decision Notice

Appendix 2: Local Plan Inspector's Interim Findings

Appendix 3: Main Modification of Policy EMP1(5) (Ref. MM39)

Appendix 4: Barton Willmore Letter on behalf of Appellant



Roxhill Developments Ltd
C/O
Hobbs Parker Property Consultants
Romney House
Monument Way
Orbital Park
Ashford
TN24 0HB

6 July 2016

PLANNING DECISION NOTICE

APPLICANT:	Roxhill Developments Ltd
DEVELOPMENT TYPE:	Large Maj Office/R&D/Light Industry
APPLICATION REFERENCE:	15/503288/OUT
PROPOSAL:	Outline application for a mixed commercial development comprising B1(a), B1(b), B1(c) and B8 units, maximum floor space 46,623 square metres. (access being sought).
ADDRESS:	Land At Woodcut Farm Ashford Road Hollingbourne Kent ME17 1XH

The Council hereby **REFUSES** Outline Planning Permission for the above for the following Reason(s):

- (1) The proposed development would be harmful to the character and appearance of the countryside, Special Landscape Area, and the setting of the Kent Downs Area of Outstanding Natural Beauty and any benefits are not considered to outweigh this harm. It would also cause less than substantial harm to the setting of the Grade II listed building 'Woodcut Farm' and any public benefits are not considered to outweigh this harm. The development would therefore be contrary to saved policies ENV21, ENV28, and ENV34 of the Maidstone Borough-Wide Local Plan 2000 and advice within the National Planning Policy Framework 2012.

MKPS – Working in Partnership with: Maidstone Borough Council
Please Note: All planning related correspondence for MBC should be sent to:
Mid Kent Planning Support, Maidstone House, King Street, Maidstone ME15 6JQ
Tel: 01622 602736 email: planningsupport@midkent.gov.uk
Access planning services online at: www.maidstone.gov.uk; or submit an application via www.planningportal.gov.uk

The Council's approach to this application:

The Council's approach to this application: In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered to be fundamentally contrary to the provisions of the Development Plan and the NPPF, and these were not considered to be any solutions to resolve this conflict. The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

Yours faithfully

R. L. Jarman

Rob Jarman
Head of Planning Services
Maidstone Borough Council

IMPORTANT:- YOUR ATTENTION IS DRAWN TO THE ATTACHED NOTES

NOTIFICATION TO APPLICANT FOLLOWING REFUSAL OF PERMISSION OR GRANT OF PERMISSION SUBJECT TO CONDITIONS

This decision does not give approval or consent that may be required under any act, bylaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Appeals to the Secretary of State

If you are aggrieved by the decision of your local planning authority (LPA) to refuse permission for the proposed development, or to grant it subject to Conditions, then you can appeal to the Secretary of State (SoS) under Section 78 of the Town and Country Planning Act 1990.

Please see “Development Type” on page 1 of the decision notice to identify which type of appeal is relevant.

- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice and if you want to appeal against the LPA's decision on your application, then you must do so within **28 days** of the date of this notice.
- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against the LPA's decision on your application, then you must do so within **28 days** of the date of service of the enforcement notice, or within **6 months [12 weeks** in the case of a **householder** or **minor commercial** application decision] of the date of this notice, whichever period expires earlier.
- If this is a decision to refuse planning permission for a **Householder** application or a **Minor Commercial** application and you want to appeal the LPA's decision, or any of the conditions imposed, then you must do so within **12 weeks** of the date of this notice.
- In all other cases, you will need to submit your appeal against the LPA's decision, or any of the conditions imposed, within **6 months** of the date of this notice.

Appeals must be made using a form which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or online at www.planningportal.gov.uk/pcs.

The SoS can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The SoS need not consider an appeal if it seems to the SoS that the LPA could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

INTERIM FINDINGS FROM THE EXAMINATION OF THE MAIDSTONE BOROUGH LOCAL PLAN

22 December 2016

Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

An Inspector appointed by the Secretary of State for Communities and Local Government

The scope of these findings

This paper has been produced to address a number of main matters which have been discussed at examination hearings to indicate where main modifications may or may not be required to make the Plan sound. It does not cover every matter but it provides a broad overview. It is also intended to assist in identifying where further work may be needed to support an update of the proposed changes that have already been prepared by the Council and which will form the basis of draft main modifications to the Plan (to be supported by revised sustainability appraisal) which would then be subject to public consultation. Such main modifications are also likely to include additional and typically more detailed matters which have previously been the subject of changes proposed by Maidstone Borough Council. These have been the subject of discussion at Examination hearings.

These are interim findings only. Final and fuller conclusions on the matters and issues referred to below will be set out in the Final Report at the end of the Examination process.

Matter 1: Duty to Cooperate

Issue – Whether the Local Planning Authority and other relevant persons have complied with the Duty to Cooperate?

1. S33A of the P&CPA sets out a statutory 'Duty to Cooperate' (DtC) which here applies to Maidstone BC and other local planning authorities, to Kent County Council, and to other persons prescribed by Regulation 4 of the Town and Country Planning (Local Planning) England Regulations 2012 (the Regulations).
2. The duty requires those persons to cooperate with other persons to 'maximise the effectiveness' with which named activities are undertaken. Those activities include the preparation of development plan documents (such as this local plan) and activities that support that activity 'so far as relating to a strategic matter'. A strategic matter is defined by S33A(4) in summary as: (a) 'sustainable development or use of land that has or would have a significant impact on at least two planning areas' (a planning area in this case is the area of a borough or district council); and (b) 'sustainable development or use of land in a two tier area' (as this is) 'if the development

or use (i) is a county matter, or (ii) has or would have a significant impact on a county matter'. County matters broadly relate to minerals and waste and associated developments as defined by Paragraph 1 of schedule 1 to the Town and Country Planning Act 1990 (as amended).

3. S33A(7) requires persons subject to the DtC to have regard to any guidance issued by the Secretary of State about how the duty is to be complied with. In that regard Paragraph ID 9-004-29140306 of the Government's Planning Practice Guidance (PPG) confirms amongst other things that the duty to cooperate is not a duty to agree albeit that local planning authorities should make every effort to secure the necessary cooperation on strategic cross border matters before they submit local plans for examination.
4. A number of Representors have claimed that MBC as the local planning authority has not complied with the DtC. These claims are made mainly in relation to the following broad subject areas:
 - Cross border housing needs and supply
 - Cross border provision for economic development and employment
 - Provision of strategic infrastructure, especially transport
 - Cross border strategic gaps in development
 - Minerals Planning Issues
5. MBC has issued a Duty to Cooperate Compliance Statement [SUB 005] as recommended in paragraph ID 9-011-20140306 of the PPG. This was published after the closing date for representations on the submission plan and thus was not available when Representors were preparing their representations. It lists the relevant bodies and the forms and methods of cooperation undertaken over many years. This demonstrates that there has been extensive engagement notwithstanding that the minuting of meetings and their outcomes is sometimes incomplete.
6. The DtC Statement sets out the 4 strategic areas where there has been active cooperation under the following headings:
 - The homes needed in the area
 - The provision of employment, retail and commercial development

- The provision of infrastructure (includes transport)
 - The natural and historic environment
7. There has not been agreement between the Borough Council and all the persons with which there has been engagement under the DtC and that has impaired the ultimate effectiveness of cooperation. However the above national guidance confirms that there is not a duty to agree. Whether a lack of agreement raises an issue of soundness may be of relevance to other interim findings.

The evidence of the DtC Statement and supplementary evidence provided during the examination supports my conclusion that the Borough Council has engaged with neighbouring authorities and prescribed bodies to address strategic matters and has sought maximum effectiveness. It has therefore met the statutory duty set out in section 33A of the 2004 Act.

Matter 2: Objectively Assessed Housing Need (OAHN)

8. The National Planning Policy Framework at paragraph 47 provides amongst other things and in summary, that to boost significantly the supply of housing local planning authorities should:
- 'Use their evidence base to ensure that their Local Plan meets the full objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period'.*
9. Based on the 2015 Update of the Strategic Housing Market Assessment (SHMA) the submitted Local Plan identifies an Objectively Assessed Housing Need for 18,560 dwellings over the full Local Plan period between 1 April 2011 and 31 March 2031 (928 dwellings per annum).
10. The Housing Topic Paper [[SUB 005] records that 2,860 dwellings had been completed by 31 March 2016 and that there were extant planning permissions at 1 April 2016 for 5,475 dwellings (including a 5% non-implementation discount). That would leave a residual need for 10,225 dwellings.

11. A significant number of additional dwellings have either been permitted since 1 April 2016 or are the subject to a resolution to permit subject to the completion of a Section 106 planning obligation.

Issue - Whether the OAHN is based on the appropriate Housing Market Area

12. The Housing Market Area (HMA) for Maidstone as employed in the SHMA overlaps into Tonbridge & Malling Borough to the west. The Ashford HMA extends into Maidstone from the east. The SHMA has been commissioned jointly to assess needs in all 3 areas. Whereas a small part of the Borough's existing stock abuts the Medway towns there is little development potential in that area and it is appropriately included in the Maidstone HMA for the purposes of this assessment.

13. Housing Market Areas may need to be adjusted in the future to reflect changing migration patterns. However that is not necessary at this stage.

The Housing Market Areas have been appropriately assessed for the purposes of the SHMA.

Issue - What may be the contribution of local needs to the OAHN by comparison with migration from outside the Borough

14. Only about one quarter of the anticipated population growth in Maidstone is expected to come from natural growth of the existing population. The remainder is expected to result from net migration with about half of the total accounted for by internal migration from elsewhere in the UK including from London and from other Kent Boroughs or Districts. The remaining one quarter would come from international migration. The Annual Monitoring Report July 2016 records that the average total net migration inflow per year in the ten years up to 2014 was 1,317 people. That would equate to 13,170 persons over that period. The overall population rise in Maidstone between 2005 and 2015 is estimated at 21,146 persons including natural growth.

15. To seek to assess only those needs arising from the existing population would be ineffective in that continued migration from London or other areas could not be prevented and local people would likely be outbid in the market by those moving from higher value areas.

16. Whilst some Representatives suggest that international migration will reduce as a result of Brexit, the current ONS projections only assume net international in-migration of 180,000 persons per year. The current rate of net

international in-migration is running at about 330,000 persons per year of which more than half are from outside the EU. That does not suggest that an early net reduction below 180,000 can be relied upon or that there is any reliable basis to amend the forecast need in Maidstone.

The OAHN has made an appropriate assessment of local needs and of those arising from migration from outside of the Borough.

Issue - Effect of the 2014-based household projections

17. Whereas the SHMA is based on the 2012 household projections, the ONS has since published 2014 based projections. These indicate a modest increase in need. However national PPG at 2a-016-20150227 makes clear that a new projection does not automatically mean that housing assessments are rendered outdated every time new projections are issued.

Whilst the latest information would need to be taken into account at the date of a Plan review, I do not consider that it is necessary to alter the assessment at this stage to reflect the 2014-based household projections and to do so would only delay the delivery of that housing for which the need has already been identified.

Issue - Whether the OAHN should be reduced because of a claimed previous over-supply of housing

18. Some Representors have argued that there has been a past 'spike' in housing delivery as a result particularly of high density flatted developments on brownfield sites at a time when there was a moratorium on greenfield development. That is claimed to have distorted the trends that have informed the ONS population and household projections. They point to advice in national Planning Practice Guidance at paragraph ID 3-036-20140306 that consideration can be given to evidence that the Council has delivered over and above its housing need in previous years and that past high delivery rates are no longer realistic.
19. However the South East Plan targets for Maidstone were not based on an objective assessment of needs in this Borough but were instead informed by wider regional and sub-regional assessments with individual targets for local areas that took into account a deliberate redistribution of population and households. Also there is no evidence that past delivery rates, which in any case were lower than now proposed, will not be maintained or exceeded. Office to residential conversions in Maidstone and other redevelopment are likely to continue to make a significant contribution to housing supply including high density flats. The SHEDLAA has identified extensive supply

elsewhere including greenfield development which had previously been precluded.

It would not be appropriate or necessary to reduce the OAHN because of alleged past over-supply of housing.

Issue - Whether additional provision should be made for increased population as a consequence of changing migration patterns with London or other migration from areas where supply may be constrained.

20. Representors have raised an issue as to whether adequate provision has been made for migration from London or from parts of West Kent where there are particular development constraints, notably the Metropolitan Green Belt.

21. There are disputes as to whether London is able to meet its own housing needs within its defined Housing Market Area in accordance with the London Mayor's previously stated intention. This relates both to whether those needs have been appropriately assessed and whether the London Boroughs have the capacity to meet the assessed requirement. An important consideration is whether insufficient housing supply in London or affordability issues will result in an uplift in migration from London to the rest of the South East including Maidstone.

22. The SHMA Update 2015 gave consideration to the potential effect of higher migration from London than that assumed in the ONS projections. Past migration figures at Table 28 of Document HOU 004 show that the net annual population flows from London to Maidstone averaged 760pa before 2008 but only 467pa in the period between 2007-2012 which is the period used for the ONS 2012 Sub National Population Projection. On the basis of a forecast that there may be a return to higher levels of movement in between these 2 rates a sensitivity analysis indicates that this could add demand for an additional 5.1% households in Maidstone. However the London Mayor has not requested that authorities outside London accommodate higher levels of migration and no additional allowance for higher migration has been included in the Maidstone OAHN.

23. The west Kent Boroughs of Tunbridge Wells and Sevenoaks have particular constraints on development including extensive areas of Green Belt. If they do not plan to meet their own assessed needs (including migration from London) then there could be increased migration to other areas such as Tonbridge & Malling (which has an overlapping housing market area) and

Maidstone. However whilst those Boroughs have identified an OAHN significantly above the annual housing requirement previously set by the South East Plan, they have yet to determine what their housing requirement should be in future years.

Whilst it is not impossible that increased migration from West Kent or London would place pressure on areas such as Maidstone with transport links those areas, this is a matter which would best be considered at the first Review of the Local Plan when policy provisions for London and west Kent will be clearer.

Issue - Whether the OAHN is based on an appropriate Average Household Size

24. Household size can significantly affect the projected need for dwellings. A long term trend towards smaller household sizes was arrested in recent years. This probably results from the suppression of household formation because of weak affordability, particularly for young people. However the planned uplift in the supply of market and affordable housing should improve affordability with a return to the trend towards smaller households.

The OAHN is based on appropriate Average Household Size.

Issue - Whether the OAHN should include a market signals adjustment for housing affordability

25. The OAHN figure of 18,560 dwellings in the submitted Local Plan includes an approximate 5% uplift for market signals. That equates to 45 dwellings per annum or a total of 900 dwellings over the full plan period.

26. At the examination hearings it was acknowledged by participants that the figure is arbitrary and lacks a scientific basis. The Home Builders Federation acknowledged that a 5% uplift would be too modest to make a difference to affordability and they sought a higher uplift. A modest uplift is unlikely to have a significant effect on market values, particularly if developers do not increase building rates by the same margin. In that regard representatives of the developer of the single largest housing site proposed for allocation told the Inquiry that they would be likely to deliver only 50 dwellings per annum rather than the 85 dwellings per annum previously advised. That 35dpa reduction alone would almost cancel out the 5% uplift which equates to only 45 dwellings per annum. Moreover new dwellings only account for a proportion of the total number of dwellings in the market which include many second hand properties.

27. A much more significant effect on market prices can be expected from the overall increase in past building rates that can be anticipated through the allocations in the plan. These are likely to at least double average completions during the early years of the remaining plan period. In these circumstances a still higher uplift is not justified.

I do not consider that the 5% market signals uplift would have the desired effect or is justified in this case. The OAHN figure should accordingly be reduced by 900 dwellings.

Issue – Whether a need for Additional Affordable Housing would justify and overall increase in housing provision

28. The Strategic Housing Market Assessment identifies an affordable housing need for 5,800 dwellings from 2013 to 2031. The Housing Topic Paper 2016 [SUB 005] identified a supply of 5,350 affordable dwellings from completions, commitments, allocated sites, broad locations and local needs housing on exception sites. That figure has already required revision to 4,961 following the reintroduction of Government policy to raise the threshold for developments where affordable provision is required. It will require further revision to reflect other changes in supply including a reduced supply from the Broad Locations. However there will be an opportunity at the plan review stage to identify further provision from alternative allocations. Additional supply is also expected from the activities of registered providers of social housing.

29. What effect a redefinition of affordable housing to include starter homes may have is uncertain and awaits further Government guidance. The SHMA Update also refers to the significant role of the private rented sector in Maidstone. Those who cannot obtain a mortgage sufficient to purchase in the open market are likely to sort to private rented housing and will pay a market rent which may or may not be supported by housing benefit. However this is not relied upon in the plan as part of the supply of affordable housing.

There is not a current justification to increase the overall housing need figure as a means of boosting the supply of affordable housing.

Matter 3: Housing Supply

Issue – Whether the housing supply proposed in the Local Plan is justified, effective, and consistent with national policy

Issue – Whether there are constraints on the supply of suitable sites that would justify a lower housing requirement which would not meet or exceed the OAHN

30. That England as a nation has for a number of years been building many fewer houses than are needed by a growing population and growing household numbers has been widely reported. The resulting pressures on the housing stock and associated issues of affordability are particularly acute in London and the South East. As one of the main urban areas in Kent, Maidstone town cannot be insulated from these pressures and must have a role in addressing them, including migration from other areas. It is also appropriate to consider the role that the Borough's other settlements can play, particularly those that already have supporting services and infrastructure, such as the railway stations that provide connections to London and other parts of the region.
31. A Core Planning Principle of the National Planning Policy Framework at paragraph 17 is that planning should: *'proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability, and set out a clear strategy for allocating sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities.'*
32. More specifically in relation to housing, paragraph 17 provides amongst other things that: *'To boost significantly the supply of housing, local planning authorities should: use their evidence base to ensure that their Local Plan meets the full objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period.'*
33. In a letter to Helen Grant MP dated 24 September 2015 and attached to her Representation R19421, the then Minister of State for Housing and Planning, Brandon Lewis, made reference to the above guidance and confirmed that the housing need identified for Maidstone in the Strategic Housing Market Assessment is not the same as the housing requirement.

34. As the Minister pointed out: *'Once the need has been assessed the Council should prepare a Strategic Housing Land Availability Assessment [as it has] to establish realistic assumptions about the availability, suitability and likely economic viability of land to meet the need for housing over the plan period, and in so doing take account of any constraints such as Green Belt, which indicate that development should be restricted and which may restrain the ability of an authority to meet its need. Once these constraints are taken into account the Council can decide how many homes it can plan for. It is against this figure that the five year supply of land is calculated'*.
35. The Minister also pointed out that national planning practice guidance: *'makes it clear that local plans can pass the test of soundness where local planning authorities have not been able to identify sites or broad locations for growth in the years 11-15 of the plan period.'*
36. In the case of Maidstone the amount of brownfield land that is available for redevelopment falls well short of the assessed housing needs. In common with most towns in South East England the main town has grown organically in the past. Whilst that external growth was paused for several years in the early part of this century that position cannot be sustained if the town is to make an appropriate contribution to housing needs. There are nevertheless particular physical constraints on expansion which include the proximity to the Borough boundary to the west, the presence of the River Medway, and the physical barrier created by the M20 motorway to the north.
37. Unlike in much of west Kent, the Green Belt covers only a small part of Maidstone Borough and therefore does not represent a significant constraint on development across the Borough. The main potential constraints of relevance to national planning policy are rather: landscape (especially the Kent Downs AONB and its setting); transport and other infrastructure; agricultural land quality; flood risk; and the natural and historic environment. In some cases such as flood risk and agricultural land value national policy provides for a sequential approach to site selection. Other policy tests also provide in various ways for the weighing of any adverse impacts with any public benefits.

Whilst development constraints are relevant considerations in Framework policies, they do not preclude all housing development or create a fixed capacity limit for the Borough. Rather it is necessary to assess locations individually and to apply judgements as to the impact of development there including whether what would be

significant adverse impacts can be adequately mitigated to allow development to proceed.

Because consideration of the relevant constraints involves judgements, there have been inevitable disagreements in the assessments of impacts as between the Council and those making representations on the Local Plan including those participating at the hearings.

Housing Strategy

Issue – Whether the plan is the most appropriate strategy when considered against the reasonable alternatives, based on proportionate evidence

38. Whilst the submitted Local Plan includes a Spatial Strategy set out in a single Policy SS1, it also includes other spatial policies that are strategic in nature. Some of the allocation and Development Management Policies are also wholly or partly strategic but are not clearly identified as such. The Council has been asked to reorder and amend policies so that the strategic policies are more readily identifiable.
39. A core planning principle of the National Planning Policy Framework at paragraph 17 is that planning should: *‘ actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling and focus significant development in locations which are or can be made sustainable’.*
40. The spatial strategy set out in Policy SS1 of the submitted Local Plan appropriately seeks that Maidstone town is the principle focus of development to include making best use of available sites within the urban area, the town centre as the primary office and retail location and with strategic development to the north west and south east of the urban area. 5 rural service centres are identified as second tier locations for development with 5 large villages as third tier locations and restraint elsewhere.
41. Accessibility to services and facilities by sustainable modes will inevitably vary between locations and not all villages or suburban locations will have all services and facilities close at hand. However distance to facilities cannot be the only consideration. Other matters include infrastructure

capacity, congestion and site specific considerations such as the natural and historic environment.

42. The physical layout of the Borough including the existing distribution of settlements, the location of rail and road routes and landscape, flood risk and other environmental constraints all limit the reasonable alternative strategies. The Sustainability Appraisal appraised 5 alternative strategies for the distribution of housing development of between 18,600 and 19,600 dwellings. Two strategies involved a new settlement to the east of Maidstone but that was rejected because of the need for extensive new infrastructure and the harm to the area's character. The other rejected alternatives involved differing amounts of development at the villages, including whether or not there would be major development at Lenham. I consider that the alternatives have been appropriately assessed.

The Spatial Strategy set out in the Local Plan for housing development is consistent with national policy to manage growth patterns that favour sustainable means of travel whilst also taking account of other relevant factors.

The strategic policies in the Local Plan should be more clearly identified and distinguished from the non-strategic policies.

South East Maidstone

43. Policy SP3 of the submitted Local Plan proposes a Strategic Development Location comprising 6 housing sites in South East Maidstone on either side of the A274 Sutton Road. A key issue for these sites concerns highways and transport infrastructure. Some Representors including Kent County Council consider inadequate transport infrastructure to be a constraint that makes this location unsuitable for that development.
44. Maidstone currently experiences unusually high rates of car ownership and use, encouraged by the town's close proximity to the motorway network with 4 motorway junctions. Like other radial routes in Maidstone town which converge on the town centre gyratory system, the A274 Sutton Road already experiences congestion, particularly in the peak hours, as do the side roads that connect south east Maidstone to the A20 and M20 to the north of the town, avoiding the town centre. That congestion also affects bus services including a high frequency route that connects south east Maidstone to the town centre.

45. Under the heading '*Promoting sustainable transport*', Paragraph 32 of the National Planning Policy Framework provides amongst other things that:

'Plans and decision should take account of whether:

- The opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;*
- safe and suitable access to the site can be achieved for all people; and*
- improvements can be undertaken within the transport network that cost effectively limit the significant impacts of development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.*

46. Of the 6 housing sites included in the SP3 allocation, sites H1(5) and H1(6) were previously allocated for development in the current Local Plan that was adopted in 2000. Both sites are now under construction and will together provide some 886 dwellings. In each case the planning permission for the sites was granted in 2014 and gave effect to a unilateral planning obligation under Section 106 of the Town and Country Planning Act 1990 which included a financial contribution to highway mitigation works on the A274. The works included bus stops, highway widening, bus prioritisation measures between the Wellington Street Junction and the Wheatsheaf junction, and junction capacity improvements in the vicinity of Wellington Street and Wallis Avenue. The need for such works had been identified in the adopted Local Plan and in Transport Assessment for each site.

47. In accordance with paragraph 32 of the National Planning Policy Framework those works include an identified opportunity for sustainable transport. This would improve the reliability and speed of the bus service during congested periods and make it a more attractive mode of travel. The obligations would have been taken into account as highways mitigation when the planning permissions were granted.

48. The Local Plan is required to have regard to the Local Transport Plan. The Local Transport Plan for Kent 2011-2016 [Document ORD 013] (LTP3)

provides that the Maidstone Transport Strategy and an Integrated Transport Programme *'will be driven by the desire to preserve and enhance the accessibility of Maidstone town centre by sustainable means. The proposed level of development will be underpinned by a package containing a number of traffic management measures including the enhanced provision and priority of bus services through the Maidstone Quality Bus Partnership involving the County and Borough Councils along with the town's principal bus operator, Arriva. These priorities will drive scheme delivery irrespective of the future development scenario, with the detail and phasing dependent on the specific sites that come forward through the Local Development Framework'*.

49. The Implementation Plan for the Local Transport Plan theme of a 'Safer and Healthier County (2011-2016)' identifies the sole method of air quality management as *'Provision of bus priority and traffic management measures to reduce congestion and improve traffic flow in Air Quality Management Areas.'*
50. Bus priority on the A274 Sutton Road would accord with those priorities and in any event had already featured in the adopted Local Plan of 2000. Whilst the Local Transport Plan refers to the then draft target of 10,080 dwellings in Maidstone Borough that referred only to a plan period ending in 2026, not 2031. In any case the Local Transport Plan states that the priorities will be retained irrespective of the future development scenario.
51. It is acknowledged that the Local Transport Plan 2011-2016 (LTP3) is due to be replaced by the Local Transport Plan 4 2016-2031(LTP4) which is currently at draft consultation stage [Document TRA 034]. The draft plan contains much less detail than LTP3. Nevertheless it does set out outcomes which include measures to improve air quality, reduce congestion and improve journey time reliability, and to promote affordable, accessible and connected transport. A relevant Countywide priority is to provide: *'Increased access to jobs, education and health by public transport, providing opportunities to Kent's residents without the need for a private car and therefore reducing road congestion. An integrated transport package remains a priority for Maidstone.*
52. The Examination was informed that payments specified in the above S106 obligations have already been made to Kent County Council as the local highway authority. However the County Council has stated that whilst it supports the junction capacity improvements it will not implement the bus

prioritisation measures on the grounds that they would disadvantage other road users. The County Council is seeking instead to divert the relevant funds to pay for exploratory work to develop a case for a new road from the A274 to the A20 which road it would join in the vicinity of Junction 8 of the M20.

53. Of the remaining 4 sites in the SP3 allocation, sites H1(7), H1(9) and H1(10) are the subject of resolutions by the Borough Council to grant planning permission subject to the completion of S106 planning obligations which would also include transport mitigation payments. These would include additional contributions to bus priority measures, the provision of new bus services connecting south east Maidstone to railway stations (including the main Maidstone East station which is to be a Thameslink terminus), and various junction capacity works including signalisation to address congestion at Junction 7 of the M20. There is no application as yet on the fourth housing site - H1(8).

54. Kent County Council has not objected to the allocation of sites H1(5) and H1(6) which in any event are already committed. In these circumstances it is unreasonable for the County Council to obstruct the bus priority measures in Sutton Road on which the decisions to permit those developments were based and which accord with:

- saved policies of the adopted Local Plan;
- the Borough Council's Integrated Transport Strategy
- the sustainable travel objectives of the County Council's own Local Transport Plan 3 - 2011-2016;
- the similar objectives the County Council's emerging Local Transport Plan 4; and
- paragraph 32 of the National Planning Policy Framework.

55. The installation of an extended bus lane in Sutton Road would certainly qualify as a sustainable transport mode which has previously been identified as suitable in this location and its installation would be cost effective in that developer funding is already available. It would accord with the objectives of the adopted Local Plan and both the current and emerging Local Transport Plans. It has been relied upon as mitigation for the already permitted developments. To divert those funds to a study of a relief road would at

best delay mitigation by up to 10 years and at worst may result in no mitigation if that road does not go ahead. Neither would that road promote sustainable travel or provide significant transport capacity for movements between South East Maidstone and the town centre.

56. The County Council has suggested that a bus lane would disadvantage other road users but has not produced substantive evidence to that effect. The A274 Corridor Study prepared for the Borough Council contradicts that stance. It demonstrates that a bus lane can be provided within the existing highway land whilst maintaining one running lane in each direction for other traffic as at present. A bus lane would enhance the speed and reliability of bus services and provide a strong incentive for modal shift from car to bus use that would benefit all road users including other car drivers.
57. The County Council has objected to the allocation of the remaining four sites within the SP3 Strategic Development Location. This is on the grounds that their interpretation of transport modelling is that after mitigation the residual cumulative impacts of development would remain 'severe'. That modelling included a series of junction improvements but did not include any bus priority measures. The Borough Council disagrees that the impacts would be severe.
58. There is no national definition of what may constitute a severe impact and the Secretary of State's decision in relation to the New Line Learning appeal in Boughton Lane (see below) does not provide one. That decision related to a particular development with access to the A229 and where adequate mitigation had not been identified. That decision has in any event been quashed and new transport evidence is likely to be before the Secretary of State when it is redetermined.
59. Whilst the various Sutton Road developments would generate additional traffic movements some mitigation measures have been agreed by the County Council to increase junction capacities.
60. The County Council wishes to develop a case for constructing a new road between the A274 and the A20 which would by-pass the villages of Leeds and Langley and provide relief to existing roads (including Willington Street and the B2163) with potential environmental benefits as well as reduced congestion. Modelling suggests it may also reduce the number of cars heading through the town centre to destinations beyond the town. Such a

road was included in the adopted Local Plan 2000 and was also considered in the context of a new settlement but proposals for that settlement and a road were later abandoned. A new road may follow a different route. The Borough Council is generally supportive but funding the road would be a significant challenge unless it were to support further major development. In any event it would be unlikely to be delivered until very late in the plan period or even outside the plan period. It would not support the provision of housing that is needed in the shorter and medium terms and to delay that housing on the basis that a new road could be a possibility would not be justified when other measures are already available to mitigate its transport impacts.

The Policy SP3 South East Maidstone Strategic Development Location will generate additional traffic but the concentration of development close to the town allows alternative means of travel to be made available and the development proposals include measures to mitigate the travel impacts include highway capacity improvements, and improved bus services supported by bus priority measures.

Other South Maidstone Allocations

61. Traffic congestion is also a key issue for housing allocations that would rely on access to the A229 road which joins the A274 at The Wheatsheaf junction. In particular this relates to allocations H1(29) New Line Learning and H1(53) Boughton Lane. Both sites would be served from the northern end of Boughton Lane which joins the A229 at its junction with Cripple Street (also known as The Swan junction) to the south of The Wheatsheaf junction. In the submitted Local Plan these sites are proposed for allocation for 220 and 75 dwellings respectively.
62. The Borough Council has proposed a series of changes (PC/27, PC/28 & PC/29) which would: reduce the H1(29) allocation to 180 dwellings (with associated density changes); amend the access arrangements from Boughton Lane; and require capacity improvements at The Wheatsheaf junction (in addition to those already required by the policy at The Swan junction).
63. In 2014 the H1(29) site was the subject of a refused planning application for 220 dwellings. The appeal Inspector recommended, and the Secretary of State agreed in early 2016, that the appeal should be dismissed for reasons which included that the proposed development would have a severe adverse impact on the highway network in terms of congestion and inconvenience to local residents and other road users and on the strategic transport planning

of the area generally, contrary to the aims of paragraph 32 of the National Planning Policy Framework (App/U2235/A/14/2227839). That decision was subsequently quashed for unrelated reasons but is to be redetermined. The Highway Authority did not object to the original application but does now object to the proposal subject to the appeal redetermination.

64. Compared to that appeal scheme the H1(29) allocation including the proposed changes would amend the dwelling numbers and access arrangements within Boughton Lane. A scheme to alter The Swan junction has also been investigated as a means of improving its capacity. The Council has also proposed the addition of a policy criterion relating to capacity improvements at The Wheatsheaf junction. However one scheme to improve capacity by restricting access to the Cranborne Avenue arm of that junction has already been rejected. The alternatives would require land acquisition, road widening and the relocation of services which measures have not been agreed. The Kent County Council as Highway Authority now objects to the proposed allocation on the basis that the mitigation would not be sufficient to avoid a severe impact and it has particular safety concerns about the proposed Swan junction improvements.
65. The A229 already carries more traffic than the A274 and is also likely to attract additional movements due to development at villages to the south of Maidstone and the withdrawal from the Local Plan of proposals for a park and ride site at Linton Crossroads which would have diverted some trips. Unlike the A274 road there is insufficient room within the highway to create bus priority measures that would encourage modal shift. A lack of capacity at The Wheatsheaf junction is likely to contribute to queues backing up and obstructing the Swan junction. Moreover Boughton Lane is itself already anticipated to carry significantly more traffic due to school expansion.
66. In all of these circumstances I do not consider the allocation of the H1(29) site to be sound. The H1(53) site is proposed for 75 dwellings which would also generate significant movements in the northern part of Boughton Lane. Without adequate identified mitigation that allocation is also unsound and that site allocation should also be deleted.
67. The H1(54) Boughton Mount site is a brownfield site for only 25 dwellings. It was included on a list of sites in South Maidstone to which the Highway Authority objected in its letter of 16 December 2016. However it would generate fewer traffic movements than the H1(53) site to which the Highway

Authority did not then object and some movements would have been generated by the site's previous use. The allocation should be retained.

68. Another site H1(55) for 40 dwellings at the junction of Church Road and Heath Road in Boughton Monchelsea may also generate additional movements on Boughton Lane. However traffic from that site has the opportunity to disperse to other routes and is likely to do so depending upon congestion levels on each route. Its development has not been objected to by the highway authority in relation to traffic impacts. This allocation should also be retained.

Having regard to the previous conclusions of the Secretary of State concerning development in Boughton Lane and because adequate mitigation measures for the impact on the A229 have not been demonstrated, allocations H1(29) and H1(53) should be removed from the Local Plan.

Policy H2 Broad Locations for Housing Development

69. Paragraph 45 of the National Planning Policy Framework provides amongst other things that local planning authorities should identify a supply of specific deliverable sites sufficient to provide five years' worth of housing and to *'identify a supply of specific, developable sites or broad locations for growth for years 6-10 and, where possible, for years 11-15'*. Footnote 12 provides that: *'To be considered developable, sites should be in a suitable location for housing development and there should be a reasonable prospect that the site is available and could be viably developed at the point envisaged'*.

70. The submitted Local Plan relies on 3 Broad Locations for the delivery of 3,500 dwellings.

H2(1) Town Centre Broad Location

71. The submitted Local Plan defines the whole town centre as a broad location for approximately 700 dwellings. During the examination the Council clarified that this would not include the other specific allocations proposed within the town centre and that neither would it include all windfall

development. The Council has also proposed a change which would increase the estimated number of dwellings to 990 such that the total delivery from all 3 Broad Locations would rise to 3,790 dwellings.

72. As the town centre covers a large area and development could take a variety of forms, including high density and mixed development schemes, there is uncertainty about how and where this housing would come forward. In further evidence to the examination the Borough Council has agreed that the policy should be modified so that delivery is concentrated firstly on 2 locations where change is anticipated in the plan period – The Mall and the Riverside Quarter. Both were previously identified in the Town Centre Study [Document CEN 002]. The second main source of supply would be through office to residential conversions that would typically come forward through the prior notification process as permitted development. The scope for such development has previously been identified in Document ECON 002 and has been demonstrated by a stream of prior notification applications. The residual 50 dwellings on unidentified sites in the town centre would be removed from the Broad Location and added to the windfall allowance.

The H2(1) Town Centre Broad Location should be amended to increase the amount of housing to 940 dwellings from the 700 proposed in the submitted Local Plan and to focus on the 2 areas of The Mall and the Riverside Quarter within which redevelopment is expected to deliver additional housing together with an allowance for office to residential conversions elsewhere in the town centre. 50 units should be added to the Borough wide windfall allowance in respect of other development on unidentified sites in the town centre that was previously part of the Broad Location allowance.

H2(2)Invicta Park Barracks Broad Location

73. The second Broad Location identified for housing development in the submitted Local Plan is the Invicta Park Barracks site which at present remains in operational use. At the date of submission it remained uncertain whether the Invicta Barracks site would become available for development within the plan period. However the Ministry of Defence has since announced that the Barracks are to close in 2027. This is a brownfield site in a sustainable location. However it is improbable that all 1,300 dwellings proposed on the site could then be delivered before the end of the plan period. A more realistic figure would be 500 dwellings.

The H2(2) Invicta Park Barracks Broad Location should be amended as only 500 of the anticipated 1300 dwellings are likely to be delivered within the Local Plan period.

H2(3) Lenham Broad Location and Allocations

74. The submitted Local Plan proposed Lenham as a Broad Location to deliver 1,500 dwellings between 2026 and the end of the plan period in 2031. Lenham is unusually well provided with services and facilities including shops, a secondary school, a railway station and direct access to the A20. It is also in a housing market area which overlaps with that of Ashford. Nevertheless development on that scale would represent a very substantial increase in size for the village, the railway service is inferior to that on other lines, and the village is relatively distant from both Maidstone and Ashford. It would thus be improbable that housing could be delivered at the rate of 300 per annum implied by the policy.
75. There is no reason to delay delivery until 2026 (as proposed in the submitted Local Plan). However, as there is an available supply of planning permissions and proposed allocations in both Lenham and nearby Harrietsham, neither is it necessary or appropriate to bring development forward sooner than 2021, particularly as there are expected to be infrastructure constraints to be addressed including sewerage and waste water treatment capacity and the need for a new primary school.
76. The Council has agreed that 2 existing permissions for sites granted on appeal at Ham Lane and the Old Goods Yard should be deducted from the Broad Location figure. That would leave a need to identify sites for 1,350 dwellings. However I consider that it would remain unrealistic in this village location to deliver 135 dwellings each year for 10 years. I therefore consider that the Broad Location should be further reduced to 1,000 dwellings, equivalent to 100 dwellings per annum between 2021 and 2031.
77. There is controversy over where development should be located around Lenham and especially what effect housing development at Lenham would have on the Kent Downs AONB which borders parts of the village to the north. If development is to come forward after 2021 that would allow that the Lenham Neighbourhood Plan can determine what sites should be

allocated. In particular it can examine the scope for development south of the railway which the Borough Council no longer opposes in principle. To that end the Borough Council has agreed to delete an inset map from the submitted Local plan that suggested the Broad Location development would be both east and west of the village and not to the south. In any event that map does not accord with statute and national policy provisions relating to how proposals are to be shown on the Policies Map and Key Diagram. The Borough Council proposes instead to amend the Key Diagram to indicate that the village would be a Broad Location but without further identifying where land would be developed. The above reduction in total numbers would also create more flexibility for the allocation of sites. Should the Neighbourhood Plan not succeed in identifying suitable site allocations then it would fall to a review of the Local Plan to do so.

78. Landscape capacity assessments have recommended that sites around Lenham and especially to the east have a low capacity for housing development. However such an assessment by its nature can only consider landscape character impacts within the identified areas and not the many other considerations that need to be weighed in the planning balance.
79. The Countryside and Rights of Way Act requires that due regard be had to the purposes of the AONB designation when considering development that may affect an AONB. That would include relevant development within the setting of the AONB as Lenham is. However it does not constitute an overriding duty to conserve or enhance all views to and from the AONB without regard to other considerations.
80. Evidence at the examination was that the main concern relates to views to and from the scarp and the Pilgrims Way long distance footpath which passes close to a memorial cross on the hillside. The outward views from here already include the built up area of Lenham, where not screened by trees, and especially the prominent industrial estate to the east of the village. There are also wide and distant views beyond the village as well as across the open foreground within the AONB which would be retained.
81. In that context the identified low landscape capacity east of Lenham means that more housing development can be expected to result in some change to landscape character adjacent to the village and some adverse effect on outward views from the AONB - albeit mitigated by the design and landscaping of the development. Some views towards the AONB and towards the memorial cross may also be affected. However views are

already restricted in places by buildings and vegetation and important viewpoints can be protected in the design and layout of schemes. Neither does the ability to see development from within the AONB necessarily harm the purposes of the AONB.

82. Whereas the final siting of the Broad Location development would be a matter for the Neighbourhood Plan, or by default a Local Plan Review, the submitted Local Plan also includes proposed housing allocations at H1(42) Tanyard Farm and H1(43) Glebe Gardens.
83. The small H1(43) site is already the subject of planning permission and does not require further consideration here.
84. The H1(42) site is separated from the AONB only by the A20 road and it straddles a right of way that leads from Old Ashford Road up to the memorial cross and the Pilgrims Way and from which long views are available. Parts of the site have also been affected by ground water and surface water flows during periods of high rainfall. Whilst the H1(42) site would be visible from the AONB, just as the adjacent industrial estate is already visible, there is scope for mitigation in the design and landscaping of the development to soften the edge of the built development. The site is sufficiently distant from the Pilgrims Way and set at a lower level such that its impact on the wider available views would be limited. Views towards the AONB and the memorial cross would continue to be available from the right of way that leads through the site and development can be set back from this route to allow broader views. Whilst there would remain some residual effects on views to and from the AONB I consider that these would be outweighed by the benefits of early provision of needed market and affordable housing in a sustainable settlement. The ground water and surface water issues would require detailed assessment through the development management process but there is likely to be a suitable engineering solution.

The H2(3) Lenham Broad Location should be reduced from 1500 to 1000 dwellings to be delivered between 2021 and 2031. That would be a more realistic delivery rate. The reduced total development within the Plan period would also allow more flexibility for its location. The allocations would be determined by a Neighbourhood Plan or, by default, in a Local Plan review before April 2021. The plans would need to address any infrastructure constraints. An additional 150 dwellings which would have been part of the Broad

Location will now come forward before 2021 as commitments following appeal decisions at Ham Lane and the Old Goods Yard.

The H1(42) Tanyard Farm allocation should also be retained in the Local Plan to support housing delivery before 2021.

Other Rural Service Centres

85. Lenham is one of 5 Rural Service centres identified in the submitted Local Plan as second tier locations for growth. Harrietsham is close to Lenham and shares some of its characteristics.

86. Headcorn, Staplehurst and Marden all lie on the same railway line south of Maidstone with particularly good rail connections to west Kent and London that would make them attractive for those migrating from those areas (including commuters and retirees) and offset their relatively weaker road links. There are also some local employment opportunities.

The rural service centres are appropriately identified as second tier settlements for development.

Large Villages

87. The third tier settlements are the large villages of Coxheath, Sutton Valence Yalding, Boughton Monchelsea and Eyhorne Street (Hollingbourne).

88. Coxheath has a wide range of services and shares many characteristics with the Rural Service Centres. Whilst it lacks a railway station it is close to Maidstone.

89. Sutton Valence and Yalding have fewer services and are more constrained by heritage, landscape and (at Yalding) floodrisk.

90. The main mixed development proposed at the Syngenta site at Yalding would make use of a brownfield site and is much closer to the railway station than the main village. However its allocation would not be sound as the housing development needed to make the development viable would conflict with the floodrisk and there is a lack of evidence that the risk could be adequately mitigated without worsening flood risk elsewhere in an area that has experienced severe local flooding and where the Environment Agency has

been unable to devise the means to prevent repeated flooding. The allocation should be deleted as it would not be effective in delivering the allocated development but to make best use of this derelict site it should be replaced by a policy that positively seeks alternative uses that would be compatible with the site's Zone 3a flood status.

91. Only one other housing allocation is proposed at either Sutton Valence or Yalding. These should be retained to provide the limited housing growth identified for these villages. The Sutton Valence allocation already has planning permission. In each case there is the opportunity for an emerging neighbourhood plan to identify the additional smaller sites which the parish councils have indicated that they would prefer. However once the Local Plan is in place with an identified housing supply these and other villages will be in a stronger position to resist unallocated development outside the settlement boundaries except where it would accord with other Local Plan policies such as that to provide affordable housing to meet local needs.
92. Traffic issues relating to Boughton Lane affect some of the Boughton Monchelsea allocations and are addressed above.

The large villages are appropriately identified and the amount of development is suitably related to the existing services and facilities which they possess. However due to floodrisk the RMX1(4) Syngenta site at Yalding should be deleted as an allocation for housing or specified employment use. The H1(53) Boughton Lane housing allocation at Boughton Monchelsea should also be deleted for traffic impact reasons.

Windfall

93. The Borough Council has provided suitable evidence to support its estimate of the contribution to housing supply of windfall development on brownfield sites. It has reasonably excluded a windfall allowance for the early years of the plan as this would risk double counting with existing commitments. It has also reasonably concluded that the number of anticipated windfalls should be reduced in the middle years of the plan period as many sites have already been identified through the SHEDLAA and allocation processes. Whilst a higher annual windfall figure is indicated for the final 5 years of the plan period, that would need to be similarly adjusted in a plan review as further sites are identified and allocated.

The windfall allowance as amended has been adequately justified.

The Housing Trajectory and the 5 year Housing land Supply

94. The revised housing need figure of 17,660 dwellings over the plan period would equate to 883 dwellings each year on average. As delivery in the first 5 years of the plan from 2011 to 2016 was at a lower rate there is an existing shortfall which needs to be made up. The national Planning Practice Guidance advises that, where possible, this backlog should be made up in the first 5 years of the plan period (also known as the Sedgefield Method). The trajectory seeks to reflect this.
95. The trajectory also takes account of the 5% buffer sought by paragraph 47 of the National Planning Policy Framework whereby supply is brought forward from later in the plan period. Some have argued for the application of a higher 20% buffer on the basis of alleged persistent under delivery of housing in the past. I disagree. Past delivery overall has exceeded the previous housing targets set out in the South East Plan and it would be unreasonable to apply higher housing need figures retrospectively that were only identified as recently as 2014.
96. Nevertheless, the combination of: a much higher housing need figure than the previous housing target; the Sedgefield method of addressing the backlog; and the 5% buffer together lead to a trajectory which oscillates from a low rate of delivery against currently assessed needs to a very high and possibly unachievable rate in the early years of the remaining plan period before reverting to a low rate. The latter low rate is exacerbated by a heavy and unrealistic reliance on high rates of delivery from 2 Broad Location sites. There is also some evidence of likely slippage in the delivery of some allocated sites early in the plan period.
97. There is a strong case for seeking a smoother and more realistic rate of delivery over the plan period. That would also provide more regular local employment in construction to accompany the uplift in housing provision. Such a smoothing of the trajectory would be most readily achieved by addressing the existing backlog over a 10 year period from April 2016 rather than over 5 years as currently proposed. However additional allocations on a greater variety of sites in the latter part of the plan period through the first plan review would also boost delivery then and especially in the final 5 years, avoiding overall under-provision against the assessed needs across the plan

period. If sufficient sites cannot be identified then the matter would need to be pursued through the duty to cooperate.

98. The recommended smoothing of the trajectory should strengthen the 5 year supply position as at 1 April 2016. That many additional planning permissions have been granted since that date indicates that the 5 year supply should also be strong at 1 April 2017 and in subsequent years.

If the suggested changes to the allocations and broad locations are carried forward as main modification the housing trajectory would need to be amended pending any new allocations at the first review of the Local Plan. Spreading the existing backlog over the 10 years from 2016 to 2026 would allow for a more realistic rate of delivery of the allocations and provide steady employment in the construction industry as a contribution to the identified need for additional employment in the Borough.

Matter 4: Employment

Issue - Whether employment needs and existing supply have been appropriately assessed

99. National Planning Practice Guidance advises that the assessment of economic development needs should relate to the functional economic market area. The Economic Sensitivity Testing and Employment Land forecast 2014 [Document ECON 001] concluded that it is reasonable to define the functional economic area of Maidstone as focussed on the immediately surrounding districts. However whilst that document refers to a selection of plans and proposals in the adjoining targets and some of their targets for jobs and housing growth, it acknowledges that plans and proposals are being revised or finalised and could be subject to change. The Document does not contain any overall assessment of employment needs or provision across the neighbouring districts and does not relate employment growth to planned housing growth across that area in the light of commuting patterns.
100. MBC has issued an Employment and Retail Topic Paper 2016 [Document SUB 003] as supporting evidence for the Local Plan's employment policies. It explains that the Local Plan anticipates the creation of 14,400 jobs by 2031 in accordance with the aims of the *Maidstone Economic Development Strategy (2011-2031)* (EDS) [Document ORD 005]. This figure is derived

from the *Economic Sensitivity Testing and Employment Land Forecast Final Report (February 2014)* [Document ECON 001].

101. The Economic Development Strategy indicates what sectors are relied upon to deliver that jobs growth.

Issue - Whether employment trends are appropriately taken into account when assessing housing needs.

Issue - What are the implications of the housing and employment targets for cross-border commuting patterns

102. The Economic Development Strategy acknowledges that Maidstone Borough has moved from being a slight net importer of labour to a net exporter. Information provided to the examination on commuting patterns in the 2011 census indicates that the net daily outward flow from Maidstone to London is 5,834 and that there is a net daily inflow to Maidstone from other mid and west Kent authority areas of 3,844 persons. The strongest net daily flows include 2,008 persons from Maidstone to Tonbridge and Malling and 3,413 persons from Medway to Maidstone.

103. Table 33 of the *Strategic Housing Market Assessment* [Document HOU 002] acknowledges that employment growth in Maidstone could partly support housing demand in the Medway Towns, Tonbridge and Malling, Tunbridge Wells, Maidstone and Swale. It might have also referred to Ashford from which there is also a significant net daily inflow of commuters.

104. Table 33 sets out what was then known about Housing and Employment Growth policies in the nearby authorities (including Ashford). However 3 of the 6 authorities then had no employment growth target and the only recent targets for the period ending in 2031 were then in the Swale Draft Local Plan of 2013. The Swale housing target has since been increased. Some updated information was provided in the Borough Council's written statement for Session 8.

105. In the examination hearings attention has been drawn to how the Maidstone housing target may relate to the employment target. It has been pointed out that the 14,400 jobs target is acknowledged as ambitious and yet at a current estimated employment rate of 1.3 jobs per household it may fall short of the numbers of employed persons that might be accommodated by the new dwellings proposed in the Local Plan.

106. Relevant factors could include changes in average household size including more single person households, and an increase in the proportion of retired persons and households no longer participating in the labour market. These trends would affect existing as well as new households.
107. What remains unclear is what impact cross-border commuting between Maidstone and neighbouring areas (and London) would have on job provision.
108. There is evidence that where the adjoining authorities have assessed their employment needs they consider that they can meet their needs within their own areas and in most cases are proposing new employment allocations to that end. However there are apparent disparities between the authorities concerning the number of jobs and the amount of employment land that is being proposed relative to the intended growth in housing in each area. It is also unclear how each authority is taking account of the effect of net cross-border commuting flows. Where flows are currently in equilibrium and likely to remain so this may not matter. However where an authority is planning for particularly high or low rates of job growth relative to the anticipated change in population or housing this could result in sharp changes in commuting patterns.

It is necessary to establish both whether there is likely to be sufficient land overall to accommodate the employment needs and also what effect there may be on travel patterns, including net flows to London or elsewhere.

An assessment is therefore needed which updates the position on job targets and employment land provision in Maidstone and the adjoining Boroughs/Districts within the same economic area relative to the anticipated housing and population growth in those areas.

Issue – Whether the employment allocations are justified and consistent with national policy and whether they would be effective in terms of deliverability

109. Only part of the growth in employment would be in B class business floorspace amounting to 3,732 jobs with a further 4,200 jobs at the medical

campus being developed at Junction 7. The Employment and Retail Topic Paper [Document SUB 003] and Proposed Change PC/2 corrected the employment floorspace requirements set out in the submitted Local Plan at Table 4.4 and identified a need for 24,000sqm of B1a office floorspace, 6,500sqm of warehouse floorspace and -15,600sqm of industrial floorspace.

110.EMP1(5) Woodcut Farm is identified as a strategic site that is critical to address a qualitative and quantitative need for high quality business space, notwithstanding that it is acknowledged that it would have adverse landscape impacts and that one scheme for the site has been refused planning permission mainly on landscape grounds.

111.The Employment and Retail Topic Paper suggested that the identified need for 24,000sqm of office floorspace would be met with 16,000sqm at Woodcut Farm and 8,000sqm at Mote Road in Maidstone Town Centre. However there are evident viability issues with both sites such that neither site is now expected by the Council to deliver this much space. Provision may be as little as half the figure of 24,000sqm. The suggested identification of 3,000sqm of office floorspace at Maidstone East would only partially make up the anticipated shortfall.

112.The Syngenta site at Yalding has been identified for 8,640sqm of business space. However floodrisk issues and the necessary deletion of a housing allocation that would have assisted development viability also mean that site is unlikely to be delivered in that form.

Unless alternative provision is identified there is likely to be a shortfall in the delivery of office floorspace against the identified requirement. Alternative provision may involve mixing development with more lucrative land uses in the town centre.

In the town centre, reduced on-site parking requirements could improve viability where alternative parking and public transport are available.

Consideration should be given to safeguarding part of Woodcut Farm or other sites suitable for office development from other uses for a

period pending a recovery of office development values later in the plan period.

Matter 5: Transport and Air Quality

Issue: Whether the Local Plan is consistent with national policy in relation to air quality impacts.

113.Paragraph 110 of the National Planning Policy Framework provides amongst other things that in preparing to meet development needs, the aim should be to minimise pollution and other adverse effects on the local and natural environment.

114.An issue that has come to the fore during the Examination is that of air quality, especially in relation to road traffic emissions and their associated health impacts. This follows the intended quashing by the High Court of the National Air Quality Plan (AQP) and the direction that the Government should urgently replace it with a new plan by July 2017.

115.Maidstone town is designated as an Air Quality Management Area on the basis that air quality targets for Nitrogen Oxide emissions exceed limits set by an EU Directive and national regulations at a series of locations within the town. These locations include The Wheatsheaf junction and also Upper Stone Street which is part of the town centre gyratory and carries traffic towards the A274, A229(S), A20(E) and B2010.

116.An Air Quality Action Plan adopted for Maidstone in 2010 is referred to in the national AQP but has not yet succeeded in bringing emissions within the limits.

117.Whilst some have argued that the air quality issue warrants a moratorium on new development in the town, that would not solve the existing problem and would not be consistent with national policy. A solution is needed that both addresses the existing air quality problem and allows that the needs for housing and other development can still be met whilst minimising pollution.

118.The amount of emissions from road vehicles is affected by the number of vehicles and also by the means of propulsion. The number of vehicles is unusually high in Maidstone because of high levels of car use relative to

other modes such as public transport, walking and cycling. The proportion of diesel vehicles has also grown in recent years and is likely to have arrested what was previously a downward trend in emissions. A switch away from older diesel vehicles towards electric vehicles as range improves and costs reduce and might help. Heavy diesel vehicles such as lorries and buses also make a significant contribution to emissions although the introduction of low emission vehicles can achieve reductions. Moreover one bus can carry as many people as a large number of cars, resulting in less emissions overall. This further supports the need for a bus lane on Sutton Road to encourage modal shift in south east Maidstone, including by existing residents.

119. Even where they are physically possible, road capacity improvements may reduce congestion and pollution from stationary traffic but can also encourage more vehicle movements with their associated emissions.

120. The need to reduce emissions supports the aims of the Borough Council's Integrated Transport Strategy and the Walking and Cycling Strategy to encourage modal shift.

121. Additional measures are likely to be needed including the designation of low emission zones or clean air zones, additional bus priority, replacing or retrofitting existing buses to reduce emissions, encouraging the use of electric cars and electric bicycles by requiring charging places and storage provision at homes, and reviews of the amount of parking provision in the town centre and its costs relative to other travel modes, especially bus travel. The commitment in the Integrated Transport Strategy to increase long stay parking costs 50% by 2031 lacks sufficient urgency and is unlikely to prompt the necessary early shift to other transport modes that is needed to reduce congestion and improve air quality, particularly if bus and train fares rise at a similar or greater rate.

122. Park and Ride (or Park and Train) may also be part of the solution if it results in fewer vehicles entering the town centre and would be of most benefit to those travelling from locations outside Maidstone with poor public transport connections. However careful siting and pricing policies are needed if park and ride sites are not to encourage passenger transfer from service buses to cheaper park and ride services that depend on subsidy, especially if this would harm the frequency or viability of service buses.

123. That significant modal shift is possible is demonstrated by other towns in the south including Brighton, Poole and Oxford. Concentrating development in or adjacent to the town on high frequency bus routes and in those rural service centres with railway services as proposed in the Local Plan makes modal shift more likely to be achieved than if development were to be more dispersed or located in new settlements with fewer facilities or public transport services and which still relied heavily on access to Maidstone town by car for employment, services and facilities.

124. A land use plan like the Local Plan can only partially address the air quality issues. Other available measures include the emerging Low Emissions Strategy, the intended review of the Maidstone Air Quality Action Plan, and a review of the parking strategy. The national Air Quality Plan may propose other specific measures for local implementation.

The need to address poor air quality within the Air Quality Management Area and especially at the exceedance locations would not justify a moratorium on development although it does emphasise the need for mitigation measures for individual developments. To achieve satisfactory air quality is likely to require a range of measures to address the existing problem whilst also allowing for necessary growth.

Issue - Whether the Local Plan is consistent with national policy for the avoidance of severe traffic impacts on the strategic road network resulting from development and is it supported by proportionate evidence

125. Further modelling work has been undertaken during the examination to test the cumulative impacts of planned development in Maidstone and adjoining Boroughs on the strategic road network.

126. A Statement of Common Ground [Document ED 103] has been agreed between Highways England and Maidstone Borough Council which concludes in summary that proposed junction improvements at M20 junctions 5-8 can adequately mitigate development but that timely implementation and continued monitoring are necessary as well as the possibility of Plan B mitigation if the planning permissions that would provide mitigation are not implemented in a timely fashion. Changes to the Policies DM24 and ID1 are recommended in the Statement including the use of Section 278 agreements under the Highways Act 1980. Subject to these changes Highways England is content that its objections have been addressed.

Severe traffic impacts on the strategic network are capable of avoidance through mitigation.

Matter 6: Monitoring and Plan Review

127. During the examination, consideration has been given to when the Local Plan should be first reviewed and whether the timing of such a review should be adjusted to address particular issues that have arisen.

128. A commitment to an early plan review has been used elsewhere to deal with identified shortcomings in plans and to allow them to proceed to adoption. Advice by the Planning Advisory service in '*Early Reviews' and Local Plans* suggests that they should not be used to resolve matters critical to the Plan's strategy and that they are not a panacea for addressing the difficult issues.

129. In this case there are some issues which do need to be resolved before the plan is first adopted. However there are others, especially in relation to housing delivery at the end of the Local Plan period. These are less urgent because they do not impact on strategy in the first 5 years of the Local Plan. To delay the adoption of the Local Plan to resolve all of these matters would have other disbenefits including prolonged uncertainty about the 5 year housing supply position later in the plan period.

130. The submitted Local Plan indicated at paragraph 17.126 that a first review of the Local Plan '*will commence in 2022*'. A change proposed by the Borough Council (PC/59) would amend this to '*will commence by 2022*.' However there is no commitment to how quickly such a review would progress and no timetable for the necessary work. Moreover that would be too late to address the need to identify specific development site allocations in the Broad Locations (including any need to address a failure of the Lenham Neighbourhood Plan to make such allocations). A review would also be needed in association with any decision by Kent County Council to go ahead with the Leeds-Langley Relief Road. Additional allocations will also be needed for the latter part of the plan period to supplement supply from the Broad Locations in order to provide necessary choice and to offset a reduced rate of delivery from those sites.

The Local Plan should include a policy commitment to a review with a target adoption date by April 2021. That review process would accordingly need to start much earlier. The plan could then be rolled forward by 5 years from 2031 to 2036.

Robert Mellor

INSPECTOR

Schedule of Proposed Main Modifications to the Regulation 19 Maidstone Borough Local Plan

March 2017

The Main Modifications which are proposed to be made to the Regulation 19 version of the Maidstone Borough Local Plan (which was dated February 2016) are set out in the schedule below.

The schedule includes the proposed Main Modifications which at this stage the Local Plan Inspector, Mr Robert Mellor BSC DIPTRP DIPDBE DMS MRICS MRTPI, considers will be necessary in order for him to be able to find the Local Plan sound and legally compliant. The proposed Main Modifications are put forward without prejudice to the Inspector’s final conclusions on the Plan and they need to be subject to public consultation.

The public consultation on the proposed Main Modifications runs from Friday 31st March until **5pm** on Friday 19th May 2017.

All duly made representations on the proposed Main Modifications received by **5pm** on Friday 19th May 2017 will be sent to the Inspector for his consideration. Please note that representations must relate to the proposed Main Modifications Schedule and not to other, unchanged aspects of the Plan.

Text proposed to be deleted is shown as strikethrough, and new text is shown as italic and underlined. Each proposed Main Modification is referenced for ease, and also indicates its location in the submitted plan, a reference to its origin (PC/ ref) and a reason for the proposed Main Modification.

MM39	Policy EMP1(54) Woodcut Farm, Ashford Road, Bearsted Supportin g text	Action 8.5	Reason
		Amend supporting text to Policy EMP1(54) as follows:	
		15.2 There is a unique opportunity in the borough to provide a prestigious business park at Junction 8 of the M20 that is well connected to the motorway network and that can provide for a range of job needs up to 2031. <i>The Woodcut Farm site will meet the 'qualitative' need for a new, well-serviced and well connected mixed use business park in the borough which can meet the anticipated demand for new offices, small business orientated space, stand-alone industrial and manufacturing space built for specific end users and smaller scale distribution businesses. This site will overcome this 'qualitative' gap in the borough's existing portfolio of employment sites and will thereby help to diversify the range of sites available to new and expanding businesses in the borough to help accommodate future demand. The key priority for the Woodcut Farm site is the delivery of new office/research & development floorspace (B1a/b). The site will provide at least 10,000sqm of B1a/b floorspace, thereby contributing significantly towards the evidenced need for 24,600sqm of this type of floorspace by the end of the Plan period. Land at Woodcut Farm is allocated to provide for a mix of business uses comprising industrial, offices and distribution/logistics. High quality office development is sought, such as that required by company headquarters for example, providing complementary provision to the town centre. As the viability of office development may be challenging in the shorter term, land will be safeguarded specifically for B1a/b uses, and for no other purpose, pending the viability position improving in the later part of the Plan period. This approach will help ensure that the site delivers a genuine mixed B class use business park, which is what is required, rather than a logistics park or conventional industrial estate. Industrial (B2) and distribution (B8) uses are nonetheless appropriate as part of the mix of uses on the site and, in addition to the office requirement, the allocation will help deliver the quantitative need for the 7,965sqm additional warehousing floorspace which is needed in the borough by 2031.</i>	
		15.9 The flatter area of the site, to the east of the stream, is better able to accommodate larger footprint buildings up to 40,000sqm <i>5,000sqm</i> with heights restricted to a maximum of 12m. To the west of the stream the land rises and is suited to smaller footprint buildings <i>of up to 2,500sqm and up to 8m in height.</i> The siting, scale and detailed design of development within this area must also have particular regard to the setting of Woodcut Farmhouse (Grade II listed). <i>On the highest part of the site, as shown on the policies map, to the east of the Woodcut Farm complex building footprints will be limited to 500sqm.</i>	

		<p>Policy EMP1(54) Woodcut Farm, Ashford Road, Bearsted:</p> <p>Woodcut Farm, as shown on the policies map, is allocated for development for up to 49,000m² mixed employment floorspace (B1c; B2; B1a; B1b; B8). <i>The site will deliver a genuine mix of B class uses in terms of type and range. Office type uses (B1a & b) will be a vital component of this mix and the site will provide at least 10,000sqm of B1a /B1b floorspace as an absolute minimum. In the event of a demand arising, an element of hi-tech and/or research and development (B1(b)) would be appropriate as part of the overall mix of B class uses on the site. The mixed use employment, landscaping and infrastructure elements will be delivered in an integrated and co-ordinated manner that respect the site's visual and physical relationship with the Kent Downs AONB. Planning permission will be granted if the following criteria are met.</i></p> <p>Design & layout</p> <ol style="list-style-type: none"> 1. The proposals create a spacious parkland setting for development through the addition of substantial internal landscaping which <i>will be sympathetic to the site's countryside context and which</i> will help to break up the visual appearance of the development <i>including parking areas</i> in particular in views from the AONB <i>including through the use of substantial tracts of planting extending into the body of the development to achieve clear visual separation between individual buildings and between parking areas</i>; buildings will cover not more than 40% of the developed site area. 2. The development proposals will respect the topography of the site by minimising the need for site excavation. 3. Landscaping buffers of at least 15m in width are established along the site's boundaries, to M20 and to Musket Lane, which will also help secure the setting to Woodcut Farmhouse (Grade II listed) and the amenity of residential properties at Chestnuts and White Heath. Development will have a landscaped frontage to A20. 3. <i>Landscaping buffers of at least 35m in depth are established along the site's boundary to the M20 including a new native woodland shaw, at least 15m to Musket Lane, at least 25m to the A20 including a planted bund, and at least 30m along the western boundary, which will also help secure the setting to Woodcut Farmhouse (Grade II listed) and the amenity of residential properties at Chestnuts and White Heath. Tracts of structural landscaping will extend into development areas of at least 15m in width.</i> 4. An area of 9ha to the north and north west of Woodcut Farm is secured as an undeveloped landscape area in the form of open woodland including the addition of a landscape buffer of at least 30m along the eastern boundary. Future management of this area will be secured by means of legal agreement and maintained in perpetuity. 5. Larger footprint buildings <i>will be</i> are accommodated in the field to the east of the stream up to a maximum unit size of 10,000sqm <i>5,000sqm</i> with building ridge heights not to exceed 12m. Units should be orientated end-on to predominant views to and from the AONB. 6. Development on the field to the west of the stream comprises smaller units <i>of up to 2,500sqm footprint with a</i> 9. Graded building heights that <i>will</i> take account of the site's topography with building ridge heights not to exceed 8m. <i>On the highest part of the site to the east of the Woodcut Farm complex at and above the 55m contour line as shown on the policies map, building footprints will be limited to 500sqm.</i> The siting, scale and detailed design of development must have regard to <i>the preservation of</i> Woodcut Farmhouse (Grade II) and its setting. <p>[additional criterion] X. <i>The development proposals are designed to limit their visual impact including through the use of curved roofs on buildings, non-reflective materials, sensitive colouring, green roofs and walls on smaller footprint buildings (500sqm and below), and sensitive lighting proposals. Buildings should include active frontage elements incorporating glazing, and address both the A20 and M20.</i></p> <p>[additional criterion]</p>
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	<p><u>Y. To the east of the stream, land to accommodate a minimum of 7,500sqm of floorspace within Use Classes B1(a) and B1(b) will be provided. Land sufficient for at least 5,000sqm of this floorspace will be provided with vehicular access and all necessary services including drainage and electrical power supply to the boundary of the plot/s prior to the first occupation of any units falling within Use Classes B1(c), B2 or B8. The land which is provided for the minimum of 7,500sqm of B1(a) and B1(b) will be safeguarded from any other uses until April 2026 or until otherwise allocated through a Local Plan Review.</u></p> <p>[additional criterion]</p> <p><u>Z. To the west of the stream, land to accommodate a minimum of 2,500sqm of floorspace within Use Classes B1(a) and B1(b) will be provided. This land will be safeguarded from any other uses until April 2026 or until otherwise allocated through a Local Plan Review.</u></p> <p>Landscape and ecology</p> <p>7. The development proposals are designed to take into account the results of a landscape and visual impact assessment (LVIA) undertaken in accordance with the principles of current guidance. The assessment will specifically address the impact of development on views to and from the Kent Downs AONB escarpment. This will include environmental enhancements of the wider landscape beyond the allocation boundaries through financial contributions using the mechanism of a S106 agreement.</p> <p>8. The development proposals are designed to take account of the results of a phase 1 habitat survey and any species specific surveys that may as a result be necessary, together with any necessary mitigation and significant enhancement measures.</p> <p>Archaeology</p> <p>9. The proposals are designed to take account of the archaeological interest on the site as revealed through appropriate survey.</p> <p>Access</p> <p>10. Vehicular access to the site will be from A20 Ashford Road.</p> <p>Highways and transportation</p> <p>11. Improvements to capacity at the A20/Willington Street junction.</p> <p>12. Package of measures to provide bus stops, pedestrian refuges and improvements to the footway on the northern side of the A20 Ashford Road.</p> <p>13. Development will contribute, as proven necessary through a Transport Assessment, to improvements at the following junctions:</p> <ul style="list-style-type: none"> i. the M20 Junction 8 (including the west-bound on-slip and merge); ii. the A20 Ashford Rd/M20 link road roundabout; iii. the A20 Ashford Rd/Penford Hill junction; iv. the A20 Ashford Rd/Eyehorne Street/Great Danes Hotel access; and v. the Willington Street/A20 Ashford Rd junction. <p>14. Development will deliver a significant package of sustainable transport measures to secure access to the site by a range of sustainable modes, including the provision of a subsidised bus route, and must be supported by the implementation of a Travel Plan.</p>
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	<p><u>Minerals safeguarding</u></p> <p><i>15. This site falls within the Minerals Safeguarding Areas as shown on the policies map and therefore development proposals will be required to undertake a minerals assessment to assess the viability and practicability of prior extraction of the minerals resource. The minerals assessment will comply with Policy DM7 of the Kent Minerals and Waste Local Plan (2013-2030) and any supplementary planning guidance produced by the Minerals Planning Authority in respect of minerals safeguarding."</i></p>	
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VIA EMAIL

26653/A3/SF/kf

21 March 2017

Dear Richard

APP/U2235/W/16/3165998: LAND AT WOODCUT FARM, ASHFORD ROAD, MAIDSTONE

As requested, I am pleased to outline the Appellant's position in relation to compliance with the recently prepared Proposed Modifications to Policy EMP1(5). The latest version of Policy EMP1(5) differs from the version that applied at the time of the determination of the planning application by Maidstone Borough Council ('MBC') on 6th July 2016. It also differs from the version that applied at the time of the submission of the planning appeal on 22nd December 2016.

Overall, it is the Appellant's intention to adhere as closely as possible to the additional requirements that have been introduced through the Proposed Modifications to Policy EMP1(5).

Initial Proposed Modifications (November 2016)

The Appellant's Statement of Case (Paragraph 5.8) and the draft Statement of Common Ground (Paragraphs 7.38-41) both make reference to the Proposed Modifications that were prepared by MBC in November 2016 in the context of the ongoing Local Plan Examination.

The main additional policy provisions, together with the Appellant's responses, are summarised in the following table:

Criterion	Response
<i>1. Mix of floorspace to include Class B1b</i>	The Building Areas Parameters Plan already includes Class B1b floorspace as part of the mix (Plots C1-2, D1-2).
<i>2. At least 7,500sqm of Class B1a/B1b floorspace</i>	The Building Areas Parameters Plan already includes 7,864sqm of Class B1a/B1b floorspace (Plots C1-2 and D1-2). In addition, it is expected that ancillary office floorspace would be provided within the larger buildings (Plots A1-9 and B1-2).



Criterion	Response
<p>3. <i>Landscape buffers of 35m adjacent to M20, 15m to Musket Lane, 25m to A20 and 30m to western boundary</i></p>	<p>The Landscape Parameters Plan meets the criterion. Along the length of some of the site boundary, the proposed landscape buffers would be even wider than the distances to which the criterion makes reference.</p> <p>The final details of the landscape buffers would be secured by planning condition/subsequent reserved matters application.</p>
<p>4. <i>Maximum unit size of 5,000sqm to the east of the stream</i></p>	<p>The Building Areas Parameters Plan exceeds the threshold for Plots B1-2. However, in order to resolve this potential discrepancy, the draft Statement of Common Ground makes clear that the Appellant is prepared to agree to the maximum unit size threshold for Plots B1-2.</p> <p>The draft Statement of Common Ground appends a revised Building Areas Parameters Plan. This plan subdivides Plots B1-2 into Plots B1-4. It accords with the criterion.</p>
<p>5. <i>Maximum unit size of 2,500sqm to the west of the stream</i></p>	<p>The Building Areas Parameters Plan exceeds the threshold for Plots A6-9. However, in order to resolve this potential discrepancy, the draft Statement of Common Ground makes clear that the Appellant is prepared to agree to the maximum unit size threshold for Plots A6-9.</p> <p>The draft Statement of Common Ground appends a revised Building Areas Parameters Plan. This plan subdivides Plots A6-9 into Plots A6-11. It accords with the criterion.</p>
<p>6. <i>Maximum building footprint of 500sqm above the 55m AOD contour line on the highest part of the site</i></p>	<p>The Building Areas Parameters Plan does not propose any complete buildings above the 55m AOD contour on the highest part of the site (north western corner).</p> <p>Only a small corner of Plot A8 is proposed in this location. Furthermore, the Building Heights Parameters Plan confirms that the proposed ground level of this plot, at 52.60m AOD, would be less than 55m AOD.</p>
<p>7. <i>Use of curved roofs, non-reflective materials, sensitive colouring, green roofs and walls on smaller footprint buildings, sensitive lighting, active frontage elements</i></p>	<p>Layout, scale and appearance are reserved matters.</p> <p>The final design details would be managed through a reserved matters application.</p>
<p>8. <i>Land to accommodate 3,300sqm Class B1a/B1b to be provided with access and services prior to first occupation of Class B1c/B2/B8 units</i></p>	<p>Compliance with the criterion would be secured through a S106 obligation (see also Criterion 11 below).</p>

Further Proposed Modifications (March 2017)

It is understood that further Proposed Modifications were reported to MBC's Strategic Planning, Sustainability and Transportation Committee on 14th March.

The Appellant's responses to the further policy provisions are summarised in the following table:

Criterion	Response
<p>9. At least 10,000sqm of Class B1a/B1b floorspace</p>	<p>The Building Areas Parameters Plan includes 7,864sqm of Class B1a/B1b floorspace (Plots C1-2 and D1-2), which is a shortfall of 2,136sqm.</p> <p>In addition, it is expected that ancillary office floorspace would be provided within the larger buildings (Plots A1-9 and B1-2).</p> <p>In order to resolve the potential discrepancy, compliance with the criterion would be secured through an additional S106 obligation. The S106 obligation would secure the following measures:</p> <ol style="list-style-type: none"> a. Notwithstanding the previously submitted Parameter Plans, the area of Plots A1-2 would be excluded from the proposed development. As a consequence of this change, reserved matters applications could not be submitted for Class B8/B1c development in the area of Plots A1-2 pursuant to the current proposed development; b. The Appellant would commit to submitting a new planning application for at least 2,500sqm of Class B1a/B1b floorspace, to be located within the excluded area, within a period to be agreed with MBC and use reasonable endeavours to obtain planning permission; c. The excluded area would be safeguarded from any other uses until April 2026, or until otherwise allocated through a Local Plan Review, or until alternative provision for at least 2,500sqm of Class B1a/B1b floorspace is secured on an alternative plot in the vicinity of the excluded area. <p>It should be noted that, in assessment terms, the principle of increasing the amount of Class B1a/B1b floorspace has been previously considered. For example the Environmental Assessment Addendum (including the Transport Assessment) takes account of a significant element of office provision at Waterside Park as a cumulative scheme, which is no longer the subject of a planning application (Paragraphs A2.30-32 and A10.121-124).</p>

Criterion	Response
10. At least 7,500sqm of Class B1a/B1b floorspace to be provided to the east of the stream	The Building Areas Parameters Plan already includes 7,864sqm of Class B1a/B1b floorspace (Plots C1-2 and D1-2) to the east of the stream. In addition, it is expected that ancillary office floorspace would be provided within the larger buildings (Plots A1-9 and B1-2).
11. Land to accommodate 5,000sqm Class B1a/B1b to be provided with access and services prior to first occupation of Class B1c/B2/B8 units	Compliance with the criterion would be secured through a S106 obligation.
12. Land for the 7,500sqm of Class B1a/B1b floorspace to be safeguarded from any other uses until April 2026 or until otherwise allocated through a Local Plan Review	Compliance with the criterion would be secured through a S106 obligation.
13. At least 2,500sqm of Class B1a/B1b floorspace to be provided to the west of the stream	Compliance with the criterion would be secured through a S106 obligation, as detailed above at Criterion 9.
14. Land for the 2,500sqm of Class B1a/B1b floorspace to be safeguarded from any other uses until April 2026 or until otherwise allocated through a Local Plan Review	Compliance with the criterion would be secured through a S106 obligation, as detailed above at Criterion 9.
15. Minerals assessment to assess the viability and practicability of prior extraction of minerals resource	Compliance with the criterion would be secured through a planning condition.

Compliance with Procedural Guidance

The Planning Inspectorate's 'Planning Appeals Procedural Guide' confirms that, in instances where amendments are made during the appeals process, the Inspector will normally take account of the Wheatcroft Principles when deciding if the proposals can be formally amended (Paragraph M2.2).

The Wheatcroft Principles establish that the main, but not the only, criterion on which judgment should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation.

In this instance, it is considered that the responses that have been provided above would fully accord with the Wheatcroft Principles, for the following reasons:

- The proposed development already accords with the vast majority of the criteria that have been added by MBC to Policy EMP1(5);
- In response to Criteria 4 and 5, reference is made to a revised Building Areas Parameters Plan. It is considered that consideration of the revised Building Areas Parameters Plan would accord with the Wheatcroft Principles because the changes would be minor and would not prejudice anyone involved in the appeal. In particular, the change would not affect the overall amount or location of the proposed floorspace. Moreover, the change would not affect the conclusions of the Environmental Assessment Addendum, including the Landscape and Visual Assessment which has already assessed the 'worst case' scenario (Chapter A7);

21 March 2017

- In response to Criterion 9, reference is made to an additional S106 obligation, which excludes the area of Plots A1-2 from the proposed development and provides for a further planning application for Class B1a/B1b floorspace within this area alongside future safeguarding of the land. It is considered that this response would accord with the Wheatcroft Principles, because the further planning application would be subject to statutory consultation and therefore would not prejudice anyone involved in the appeal;
- In particular, it should be noted that the proposed amendments result in a cutting back of the scale of development to be considered on appeal from that which was originally considered by MBC. It has long been established that this may be achieved via the Wheatcroft principles since a cutting back could only very rarely result in any prejudice to a third party. In the present case, it is very difficult indeed to see how there could be any prejudice to a third party as a result of the amendments proposed.

It is acknowledged that any 'appeal stage' amendments agreed between the Appellant and MBC would be subject to a decision by the Inspector and any references to amended plans in the Statement of Common Ground would be made on that understanding.

I trust that these details will be of assistance and please do not hesitate to let me know should you require any additional details at this stage.

Yours sincerely



SIMON FLISHER
Director

Representations

Two representations have been received from CPRE Kent on behalf of the Joint Parishes Group, CPRE (Maidstone), Bearsted & Thurnham Society, and Leeds Castle; and from a resident raising the following (summarised) points:

- The item should be withdrawn from the agenda.
- The development of this land would be intensely damaging to the local environment and has poor environmental credentials.
- There is not published evidence to support the officer's conclusion on the risk of costs.
- How do officers know the case is lost and on several occasions, the belief that an appeal would be lost by officers has not materialised.
- The report is unbalanced and does not mention strong objections from various parties.
- Members should stick to their original decision and it is perfectly reasonable to defend the reason for refusal.
- Officer's refused to help Members frame the reasons for refusal.
- The lack of a costs warning was officer's fault.
- Officers should mount a robust defence of Members decision.
- It is premature to jump to conclusions about what the Inspector will conclude until all arguments have been heard and there is no certainty over the site allocation.
- The Interim Findings cannot be relied upon as evidence that the allocation policy will remain intact when the examination is concluded.
- The call by the Local Plan Inspector for an assessment of job requirements and employment land allocations in the wider economic area needs to be considered, and in the light of any submissions made within the consultation period. Any conclusions should also be made against the background that the 2022 review provides opportunity to consider other sites that have or are about to enter the market.
- The additional work carried out by the Council does not support the need for the land to be developed as a matter of urgency to meet either Maidstone's or the wider economic area's needs.
- The time to review the decision is when the Inspector has delivered his final findings.
- The Council should think again about the decision to support development at Woodcut Farm through the Local Plan.
- Reference to a dismissed appeal for 57 houses in Headcorn.

Members have also been sent lobbying material in the form of a letter from the Kent Association of Local Councils.

Officer Comment

The representations and lobbying material are not considered to alter the recommendations in the main report.

RECOMMENDATION: My recommendations remain unchanged.

By virtue of paragraph(s) 5 of Part 1 of Schedule 12A of the Local Government Act 1972.

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