

Examination of the Tonbridge and Malling Local Plan

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Tonbridge and Malling Borough Council

FAO: Mr Ian Bailey

By email only

23 May 2019

Dear Mr Bailey,

Examination of the Tonbridge and Malling Local Plan

Following the submission of the Tonbridge and Malling Local Plan (the Local Plan) for examination, we continue our initial review of the plan and the supporting evidence. However, we have identified a number of issues which we set out below.

1. The Regulation 19 representations

As you know, technical issues prevented us from being able to access the representations for some time. They were eventually published on the Council's website on 29 March 2019. However, they have been redacted, with the names and addresses of representors removed. Consequently, neither we, nor any participant to the examination save for the Council, can identify the author of any individual representation. This is a significant problem.

We understand that the Council considers the redaction undertaken to be necessary under the terms of the General Data Protection Regulations. We recognise that, as a separate data controller, the Council is required to establish a lawful basis for processing personal data, and that such processing must be necessary and proportionate. Guidance from the Information Commissioner's Office makes clear that necessity does not mean absolutely essential, but the processing must be more than useful or just standard practice.

It seems to us that being able to identify representors by name and address is more than just useful. As set out in the Planning Inspectorate's own privacy notice¹, the processing of

¹ Available from <https://www.gov.uk/guidance/local-plans#plans-privacy-statement>

name and address data on local plan examinations is necessary for the performance of a task carried out in the public interest, with that task firmly underpinned by statutory requirements. Those requirements include holding an independent examination (under s20 of the Planning and Compulsory Purchase Act) and consideration of the representations made to a local planning authority (under Regulation 23 of The Town and Country Planning (Local Planning) (England) Regulations 2012). As they form part of the evidence base, Regulation 22 also includes obligations on the Council to submit representations to the Secretary of State and to make those representations publicly available.

We acknowledge that the procedural statutory requirements are silent on the handling of any personal data. However, we consider identity and address information to form an intrinsic part of a representation and that processing such personal information is necessary for a fair and independent examination, for the following reasons:

- This personal information provides context to a representation and may affect the weight that it is given, or the consideration demanded of it. For instance, we will need to be able to consider if a representation is informed by local knowledge, made on behalf of a representative organisation, or whether a particular representation requires a site-specific assessment;
- Site promoters will find it difficult to respond to site specific concerns if they cannot link a representation to an address/site/individual; and
- Natural justice and transparent decision-making considerations require factors that affect weight to be made publicly available.

Additionally, we consider the provision of identity and address information to be necessary to ensure the effective procedural running of the examination, for the following reasons:

- To allow individual representors the opportunity to contact each other and work together (for example, to co-ordinate the presentation of evidence and make the most effective use of examination time);
- To provide us with reasonable means to prepare and conduct the public hearing sessions we will need to be able to readily link representations to participants, ask questions about their representation and enforce the limitations of the right to be heard; and
- To provide us with reasonable means to investigate individual queries/concerns raised by individuals in respect of their participation in the examination and the procedural decisions made.

We therefore ask whether, in the light of these comments, the Council considers that it can make name and address information publicly available, such that the representations can be published with names and addresses unredacted. If the Council considers that it cannot, then given our view set out above, it is difficult to see how the examination could proceed. Indeed, it is highly likely that it could not. We ask that you contact us as soon as possible once you have reached a settled position on this.

2. Main issues raised in the representations

Paragraph 3.7 of the Procedural Practice in the Examination of Local Plans makes clear the value of a summary of the main issues (as required by Regulation 22(c)(v)) in identifying Matters and Issues to be explored at the hearings. Section 3.7 of your Consultation Statement [LS16] is not sufficiently detailed to assist us in defining the likely issues to be assessed through the examination.

We therefore ask if you would provide us with a table listing the policies and setting out against each a summary of the main issues raised. It would also help the efficiency of the examination to have listed the Council's brief response to each main issue. We would be grateful for this by **28 June 2019**.

3. Documents submitted after 23 January 2019

We have now received all of the documents you previously indicated you were going to submit after the Local Plan was submitted. In the interests of clarity for all those involved, the key documents submitted are listed in the table included as Appendix 1 and are all available on the examination webpages.

4. Recommending Main Modifications

It is clear to us that it will be necessary for us to recommend main modifications in order to make the Local Plan sound. We have not yet undertaken any examination where this has not been the case. We therefore ask that you formally request us to recommend any main modifications necessary for soundness.

5. The Spatial Strategy and the Sustainability Appraisal

For the Local Plan to be justified it will need to be demonstrated that it is the most appropriate strategy when considered against the reasonable alternatives, based on proportionate evidence. To reach a conclusion in this regard, we need to fully understand precisely what is proposed, where, and why that is the most appropriate option.

You have set out the number of dwellings anticipated in each settlement tier in the Spatial Strategy Topic Paper [ED12]. However, we remain unclear about the level of housing apportioned to each individual settlement. To assist us in this regard, please could you complete the table set out in Appendix 2 of this letter.

In addition, please can you explain the justification for the settlement hierarchy and the categorisation of the settlements within it. It appears to us that the settlement hierarchy was directly carried over from the present development plan. If so, please explain whether or not consideration was given to amending it. Please also explain the justification for the

level of housing and employment development proposed in each settlement and how it relates to the settlement hierarchy.

Furthermore, we also request that the Council explains the justification for the chosen spatial strategy and the appraised reasonable alternatives. The Interim Sustainability Appraisal 2016 [NHE3] identifies four options as reasonable alternatives. It concludes that Option 5 – an additional option representing “*a combination of the most sustainable aspects*” of Options 1 to 4 – is likely to be the most sustainable. We understand that Option 5 is the strategy in the submitted Local Plan. But it is not apparent to us precisely what the most sustainable aspects of Options 1 to 4 are. We are also unclear as to how the most sustainable aspects of each of these options could possibly be achieved at the same time. For example, how can the most sustainable aspects of an urban focussed strategy (Option 1) be achieved alongside the most sustainable aspects of a more dispersed strategy (Option 2)?

The Local Plan – The Way Forward [OLP4 & OLP5] set out and sought views on “*what a sustainable strategy for the new Local Plan*” could look like. Did the Council seek views on any alternative development strategy in a similar level of detail and if not why?

In addition, we cannot find any appraisal of reasonable alternatives for other policies in the Local Plan, for example those relating to affordable housing, retail and designated areas. Has one been done? If not, why not?

6. Green Belt

Substantial Green Belt boundary alterations are proposed in the Local Plan to enable land to come forward for development. National policy is clear that Green Belt boundaries should only be altered in exceptional circumstances. Even where such exceptional circumstances are demonstrated to exist, consideration must also be given to the nature and extent of the harm to the Green Belt (or those parts of it that would be lost), and the effect on the Green Belt objectives.

The evidence supporting the proposed Green Belt alterations is set out in the Green Belt Study (2016) [LG9(a)-LG9(e)], the Green Belt Study: Stage Two Report (2018) [LG8] and the Green Belt Topic Paper [ED10]. However, the analysis given is brief and lacking in fine-grained detail. LG9(a)-LG9(e) at paragraph 3.1.8 recognises the need to divide the Green Belt into “*parcels*” – this is an approach commonly used and is necessary to draw informed conclusions about harm caused. But the parcels are extensive, in many cases surrounding whole settlements, and in some cases the exact extent of the parcels considered is unclear. On this basis, we do not see how this analysis has provided any meaningful input into the site selection process. Unless we have missed something here, this is a significant issue. We ask that you explain to us precisely how the analysis of land parcels has influenced the selection of each of the sites proposed for allocation.

Document LG8 is a short document which states that it demonstrates the exceptional circumstances necessary to justify the proposed Green Belt alterations. We understand the concept of the Council's "*building blocks*". However, please can the Council explain in detail exactly what work has been done (when, what and how) to fully assess the current capacity for non-Green Belt locations to accommodate as much of the required new development as possible.

The Local Plan proposes to designate a significant area of land between two urban areas as Green Belt that presently is not. In the Council's view, does this amount to proposing a new Green Belt under the terms of paragraph 82 of the National Planning Policy Framework (2012) (the Framework), or is it the alteration of an existing Green Belt boundary? Either way, can the Council explain whether any alternative policy approaches to designating this new land as Green Belt have been considered, and how the sustainability appraisal process has influenced the option pursued.

Paragraph 85 of the Framework is clear that when defining Green Belt boundaries, local planning authorities should satisfy themselves that those boundaries will not need to be altered at the end of the development plan period. Can the Council please explain how the new Green Belt boundaries proposed will avoid this.

7. Site selection, site size, site deliverability/developability and the Sustainability Appraisal

Approximately 72% of all proposed housing is envisaged to be delivered through five strategic sites, the remainder to be delivered through small and medium sized sites. That is not necessarily a problem in itself. However, reliance on a small number of larger sites can have implications in terms of the timing of delivery. Has the Council considered this? Has the housing trajectory been informed by reliable information concerning the anticipated scale of development on each of the strategic sites, and the likely delivery timeframes and rates? Please can you point us to the evidence in this regard, or otherwise clarify the situation.

Additionally, whether any alternative strategic sites options have been considered is unclear to us. Have they? Why have any alternatives been rejected in favour of those selected, and where is the evidence of all this?

The Site Selection Topic Paper [ED11] identifies the desire to deliver significant elements of infrastructure to the benefit of the community as step two in the site selection process. However, from what we have read thus far, we cannot tell whether this infrastructure is already needed or whether the necessity for it would only be brought about by the development proposed in the Local Plan. If the former, has this been a factor that has influenced the selection of sites in some way, preferring sites that could potentially deliver

infrastructure for which there is a pre-existing need? We need clarity on this point, and we return to it below.

We note your request for advice on Statements of Common Ground (SOCG) between the Council and the strategic site proponents. It would assist if such SOCG were to follow a consistent, simple format. They should set out an agreed series of steps and a delivery timeline across the plan period, and should list the infrastructure required to deliver the proposed development. Any uncommon ground should also be clearly set out. All parties involved in the delivery of each strategic site should be engaged and they should explain any progress towards, and any barriers to, delivery – for example, whether any planning applications have been made, or whether there may be infrastructure, access or land ownership issues. Where potential barriers are identified, the strategy for overcoming them should be indicated.

The SOCG should be relatively short summary documents with technical evidence appended to them. They should, at this stage, involve simply pulling together what you already know. It would be helpful to all parties if these could be completed **as soon as possible**. Therefore, please can the Council complete the proposed statements by **28 June 2019**.

We understand that the process of arriving at the proposed site allocations has included a number of filtering steps through both the Strategic Land Availability Assessment and Sustainability Appraisal. However, we do not understand how the proposed settlement hierarchy has influenced this process. Please can the Council explain this.

In addition, we note that site ownership features frequently as a filter at various stages. On the face of it, it appears that sites have been rejected from consideration on the basis that ownership is unknown. Have we understood this correctly? We ask that you clarify the situation here and provide illumination regarding the engagement that has been undertaken with site owners and developers at each step in the site selection process. We note that document ED11 says there was a call for sites between April 2014 and September 2015. What has happened to any sites submitted for consideration after September 2015?

Maps of a scale similar to those of the existing ‘proposals maps’ showing all the sites promoted and subsequently filtered out would be helpful to us in understanding the selection process. The table appended to ED11 is helpful as are those detailing sites in ED13. However, they do not include the housing allocation numbers given by Policy LP25 of the Local Plan and we are therefore finding it difficult to correlate them with the Local Plan sites. Please can this be rectified.

8. Infrastructure

The Infrastructure Delivery Plan (2018) [T11] provides a schedule of infrastructure required by site. Items of infrastructure are categorised as either critical, essential or desirable.

However, we are unclear how the infrastructure items feed into the trajectory of development proposed. That is to say we cannot tell precisely when – at what stage of delivery – specific infrastructure items also need to be delivered. As previously mentioned, we are also unclear whether some of the items of infrastructure are already needed, or whether they are needed as a consequence of specific developments proposed in the Local Plan. Given the limitations on the use of planning obligations, how could infrastructure for which there is a pre-existing need be secured from developments proposed in the Local Plan?

The Borough Green relief road (labelled as item TH5 in document TI1) is just one example of the above. Policy LG8 quotes the need for it to alleviate existing air quality and traffic issues. Document TI1 notes it is critical to the delivery of the strategic site at Borough Green and that it would be wholly funded by the developers of that site. Policy LP29 states it will be required by no later than the occupation of 450 dwellings or 15% of the total number of dwellings some (1720 dwellings up to 2031 approximately 3000 thereafter).

In short, TH5 is a substantial road expected to be completed and wholly funded by developers and is required relatively early in the construction cycle. Can the Council please explain what discussion has taken place between the delivery parties and whether it is agreed that the developers can and should deliver it. Furthermore, can the Council direct us to any evidence which demonstrates that TH5 would be operational in 2027/28 as indicated in the Housing Trajectory at Appendix E of the Local Plan?

In addition, from what we have read, it appears that the funding position around many critical or essential infrastructure items is uncertain. If that is so, are the sites which rely on that infrastructure deliverable or developable?

Furthermore, the way in which the information is presented makes it difficult to get a clear picture of how the infrastructure requirements relate to the proposed developments over the plan period. We therefore request that the Local Plan Trajectory information is combined with the TI1 information into a Gantt chart which clearly illustrates when the specific infrastructure items will be required.

9. Provision for Gypsies and Travellers, and travelling showpeople

Using the definition in the national Planning Policy for Traveller Sites, Policy LP38 identifies a need for 16 pitches for Gypsies and Travellers, two plots for travelling show people and the need for a transit site of between 6 and 10 pitches between 2017/18 and 2030/31.

However, no allocations are proposed to meet these needs and there is no explanation as to how the Council consider these needs will be met. This is a significant soundness concern. These needs must be met and it is the role of the Local Plan to ensure that they are. We ask that the Council clearly explains the situation here.

10. Mapping the detail concerning the proposed changes to the Policies Map

The Changes to the Adopted Proposals Map January 2019 [LPS1-LPS9] contains maps of a variety of unknown scales with varying degrees of annotation and clarity and some of the proposed boundary lines do not seem to naturally follow physical features such as roads or field boundaries. As such, some of the detailed changes proposed are unclear and we cannot be sure they are accurate. This applies to the majority of the proposed allocations but seems to most acutely apply to housing allocations LP25 aa, ab, t, v & ae. You will appreciate that we need to be able to understand fully what is proposed by the Local Plan, including the precise geographic extent of policies. At present, we cannot, and we have some concerns that this may have presented difficulties for other parties. This situation must be rectified. To enable this, clearer maps will be needed.

To this end, we ask the Council to produce amended versions of submission documents LPS1-LPS9 to clearly show the geographic illustration of policies using a clear OS base, a set range of standard scales, and a clear indication on each map of its scale. Furthermore, we request that the alterations for each settlement are shown on the same sheet. It would also be very helpful to have one district-wide map showing the proposed land allocations and other designations on a single map/sheet, or across two sheets at the most. The point here is to enable us to clearly see the geographical relationship between the district's settlements and spatial relationship between the various allocations and designations proposed to be brought about by the Local Plan. On a minor point, these documents should be retitled to refer to the 'Policies Map' rather than 'Proposals Map' – there is no basis for the latter in legislation.

11. The way forward

In terms of how the examination can progress from here, much depends on the Council. As we have indicated, the Council's view concerning the redaction of the representations may in itself be a determinative factor. That point aside, the Council's responses to the issues and questions we have set out in this letter will have a significant bearing on the way forward. You will appreciate that we have raised in this letter some significant concerns, and until we have the Council's reply we will not be in a position to set out a definitive process or timetable.

We should say, though, that quite a significant amount of new evidence and other documentation has been produced since the examination commenced on which interested parties have not yet had the opportunity to comment. We anticipate that the Council's reply to this letter will lead to the submission of further material. Consequently, before any hearings can take place, consultation on all this will be necessary. We will provide further advice at the appropriate point, in due course.

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This letter raises a number of points and includes numerous requests that will require the Council to undertake further work. We appreciate that this may take some time to address fully and properly. However, to keep the examination moving as expediently as possible, we ask that you respond to this letter by no later than **28 June 2019** explaining your position, at least with regard to the representations and main modifications. If it is not possible to provide a comprehensive response to this letter by then, then we ask that you set out a timetable for providing the information and clarifications that we seek.

Finally, we understand that there has been some issue concerning the placing of documents on the examination web page. For the avoidance of doubt, when we ask through Mrs St John Howe for documents to be published on the web page, our expectation is that that will happen without quarrel or undue delay. We therefore respectfully ask for your continued cooperation in this regard – it is essential for the effective running of the examination and will become increasingly important as the examination progresses.

We trust that you find this letter helpful. As before, rest assured that we will do all we can to assist the Council to progress the examination going forward. However, if you do have any questions then please do not hesitate to ask, via Mrs St John Howe.

Yours sincerely

Simon Berkeley and Luke Fleming

INSPECTORS

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Appendix 1: Documents Submitted after 23 January 2019

Reference	Title	Date Received
ED3	Landscape & Visual Appraisal Report	8 March 2019
ED3A	Figures Part 1	
ED3B	Figures Part 2	
ED3C	Figures Part 3	
ED3D	Figures Part 4	
ED3E	Figures Part 5	
ED4	VISUM Forecasting Report	
ED4A	A20 Corridor Junction Assessment	29 March 2019
ED5	Mott MacDonald: M26 Jn2a Merge Diverge Assessment	
ED6	Habitats Regulation Assessment Revision C	
ED8A	Natural England response on HRA	29 March 2019
ED8B	Topic Paper on Para 116	
ED10	Green Belt Topic Paper	22 April 2019
ED11	Site Selection Topic Paper	
ED12	Spatial Strategy Topic Paper	
ED13	TMBC Local Plan Sustainability Report Addendum	25 April 2019

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Appendix 2: Indicative Development Distribution Table

Tier	Settlement	Housing Commitments	Housing Allocations (LP25)	Employment Allocations (LP34)	Dwellings up to 2031	Employment Land (ha) up to 2031	Total by Tier		Settlement Total up 2031		Percent of all development up to 2031 by Tier		Percent of all development up to 2031 by settlement	
							Dwgs		Dwgs		Dwgs		Dwgs	
Urban Areas	Tonbridge		Site 1	Site 1										
			Site 2	Site 2										
	Medway Gap		Site 1	Site 1										
			Site 2	Site 2										
			Etc	Etc										
	Kings Hill		Site 1	Site 1										
			Site 2	Site 2										
			Etc	Etc										
	Snodland		Site 1	Site 1										
			Site 2	Site 2										
			Etc	Etc										
	Rural Service Centres		Borough Green		Site 1	Site 1								
etc														
etc														
Other Rural Settlements	Addington													
	etc													
	etc													
Rural Areas														

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