

Tonbridge & Malling Borough Council
Gibson Building Gibson Drive
Kings Hill
West Malling
ME19 4LZ

Our ref: KT/2006/000288/CS-03/PO1-
L01

Your ref:

Date: 09 November 2018

Tonbridge and Malling Borough Council Regulation 19 consultation – Draft Local Plan

Thank you for consulting us on the above. We have reviewed the Draft Local Plan and find that as it stands, the draft is “UN SOUND” for the following reasons:

- Policies **LP2**, **LP11**, **LP13** and **LP19** fail to align with the requirements of the 2018 NPPF paragraph 170d, which will apply to any developments brought forward through this Local Plan and which makes delivering net gain for biodiversity mandatory.
- **Objective 5 of LP2** also falls short of requirements to protect and enhance the natural environment.
- **LP17** is too generic when referring to the use of National Planning Policy Framework (NPPF). NPPF policy is high level and does not cover more complex issues such as windfall sites. The local plan should take opportunity to consider how to deal with these sites in terms of flood risk.
- **LP11** (Designated Areas, page 22) is unsound at this time as Source Protection Zones have not been included.
- There is a **lack of policy addressing groundwater protection**

Please see further details on these and other issues below.

Fisheries, Biodiversity and Geomorphology

We find policies LP2, LP11, LP13 and LP19 unsound as they fail to align with the requirements of the 2018 NPPF paragraph 170d, which will apply to any developments brought forward through this Local Plan and which makes delivering net gain for biodiversity mandatory. Objective 5 of LP2 also falls short of requirements to protect and enhance the natural environment.

LP2 (page 10), Objective 5

Protect [*We propose to add text: and enhance*] important natural and heritage assets.

LP2, Objective 8

Support opportunities to protect and [*We propose to remove text: where possible*] strengthen the existing Green Infrastructure and Ecological Network across the borough as illustrated on the map in Appendix C and defined in the Glossary.

LP2, Objective 9

Ensure development mitigates its impact on the environment [*We propose to add text: provides net gain for biodiversity*] and is resilient to the effects of climate change.

These objectives reflect the approach of the 2012 NPPF and do not reflect the requirement of the new 2018 NPPF for biodiversity net gain. Whilst the Local Plan may be submitted before 24/01/2019 and therefore not be required to apply the policies of the new NPPF, there could be future conflict between the LP objectives and the NPPF for the duration of the implementation of the LP. Objective 5 does not reflect the NPPF 2012 policy to conserve and enhance the natural environment. Objective 9 should be more ambitious and seek conservation gains, not just mitigation of impacts.

LP11: Designated Areas (Page 22)

1. For the following listed designations, as illustrated or defined on the proposals map, the Council will apply the relevant policy in the National Planning Policy Framework or whatever represents the relevant national planning policy at the time the planning application is determined.

- Special Areas of Conservation (SAC)
- Sites of Special Scientific Interest (SSSIs)
- Green Belt
- Historic Parks & Gardens
- Scheduled Ancient Monuments
- Conservation Areas
- Areas at risk of flooding

2. For listed buildings and ancient woodland the Council will apply the policy in the National Planning Policy Framework or whatever represents the relevant national planning policy at the time the planning application is determined.

3. If a development proposal is in conflict with the relevant national policy then it will be in conflict with this Policy.

This policy allows some flexibility to apply the new NPPF to designated areas during the lifetime of the Local Plan. However, the policy falls short of the Principals of the Lawton review: conservation work should lead to more areas, bigger areas, better managed areas and more joined up areas for wildlife. The new NPPF policies surrounding biodiversity net gain, ecological networks etc. are designed to protect the integrity of designated areas through landscape scale conservation. This policy should be extended to Local Designations, priority habitats and Principal Green Corridors.

LP13: Local Natural Environment Designations (Page 24)

1. Development must protect and [*We propose to remove text: where possible*] enhance the following, as illustrated or defined on the proposals map:

- Local Sites (Local Wildlife Sites (LWS), and Regionally Important
- Geological Sites (RIGS));
- Local Nature Reserves (LNR));
- Publicly accessible open spaces;
- Allotments.

Environment Agency

Orchard House Endeavour Park, London Road, Addington, West Malling, Kent, ME19 5SH

Customer services line: 03708 506 506

Email: enquiries@environment-agency.gov.uk

www.gov.uk/environment-agency

2. Development must protect and *[We propose to remove text: where possible]* enhance Priority Habitats.

3. Development of existing publicly accessible open spaces and allotments, as defined on the proposals map and any other publicly accessible open spaces that are provided during the lifetime of the Local Plan, will only be permitted if a replacement site is provided which is equivalent or better in terms of quantity, quality and accessibility. The replacement site should *[We propose to remove text: where practicable,]* be located where it can provide opportunities to strengthen the wider Green Infrastructure and Ecological Network as illustrated in Appendix C. [amalgamate LP13 with LP11].

The inclusion of the phrase “where possible” will put this policy of the Local Plan in conflict with paragraph 170 of the 2018 NPPF. Whilst this LP does not have to take account of the new NPPF policies, the new NPPF will apply to planning applications throughout the lifetime of this LP so it is short sighted not to align the policy to the new NPPF, which removes the phrase “where possible”. See NPPF, 2018 para 170d “*minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures*”.

We suggest this policy (LP13) should be amalgamated within Policy LP11 so that the following statement will apply to local designations and priority habitats “*the Council will apply the relevant policy in the National Planning Policy Framework or whatever represents the relevant national planning policy at the time the planning application is determined.*”

LP19: Habitat Protection and Creation (Page 29)

1. Major development within the Principal Green Corridors identified on the Green Infrastructure and Ecological Network diagram (see Appendix C) should [remove text:., where practicable and proportionate,] provide opportunities for habitat creation, taking account of the habitat and species of the Biodiversity Opportunity Areas.

2. Major development should *[We propose to remove text: where practicable and proportionate]* make space for nature by including, as an integral part of the external building fabric, opportunities for habitat creation for wildlife.

The Green Infrastructure and Ecological Network diagram appears to miss the vital role that river corridors play in ecological networks. Whilst the Green Infrastructure and Ecological Network Report, 2018 references the fact that “This network of waterways provides a range of valuable habitats”. The river network does not appear to be included in the Principal Green Corridors, although the resolution of the GIEN diagram does make it hard to tell definitively. The PGCs should be updated to include all main river corridors within the borough.

The implication of paragraph 170d in the new NPPF 2018 is that it is always “practicable and proportionate” for major developments to provide opportunities for habitat creation. Therefore this phrase should be removed.

Flood risk

The local authority should have utilised our previous advice provided in the Call for sites allocation responses, to form the local plan. Referencing LP11 (p129) designated areas: Flood zone 3a with Climate Change allowance, new development should be avoided in the high risk flood zone where possible. Development should be encouraged in areas at lower risk of flooding (Flood zone 1/2). The settlement hierarchy (LP5) and (LP25) Housing allocations appear to, in general have done this but see further comments below. We may object on flood risk grounds to applications at planning stage for those developments in unsuitable areas.

LP5,1, Lower Hayesden Tonbridge

In considering layout of potential development, the sequential layout should be considered with development restricted to those parts of the site within Flood Zone 1, and parts of Flood Zone 2 and 3 (to the north) left as public open space.

LP5,9/ LP25 T,V - South of Church Lane, East Peckham

These sites are partially in Flood Zone 2 and 3. It is likely we would oppose residential development in flood zone 3. Safe access is a planning consideration for all of the sites as the roads flood with deep fast flowing water. The EA would advise the local authority to allocate these sites sequentially favouring development in areas least at risk i.e. Flood Zone 1. It should be noted that a flood alleviation scheme is proposed for East Peckham which could reduce the risk of flooding to these sites and therefore increase the value of the land in Flood Zone 2. A substantial proportion of the increase in land value should be used to set the contribution to the flood alleviation scheme. The scheme will not proceed without large external contributions from 3rd parties, including new development which would benefit from the scheme. Without the flood alleviation scheme, we would object to development in much of these sites.

LP5 21 / LP25 A - Bushey Wood

A large proportion of the site is within Flood Zone 1 but parts of the site are within Flood Zone 2 and 3 along the tidal Medway Estuary. In considering layout of potential development, the sequential approach should be considered with development restricted to those parts of the site within Flood Zone 1, and parts of Flood Zone 2 and 3 left as open space. The Environment Agency is currently undertaking the Medway Estuary and Swale Strategy which will recommend future flood defence schemes to reduce flood risk in the estuary. Should a scheme be proposed which benefits this area, the site value is likely to increase and this should guide contributions from the developer. We would have no objection to development in Flood Zone 1, subject to the incorporation of Sustainable Drainage (SuDS) which should be considered in consultation with Kent County Council (KCC) Flood & Drainage Team.

LP25 h- North of Borough Green and Platt 1a b

With a few exceptions, these sites are within Flood Zone 1 but if surface runoff is not considered, there is the potential to increase flood risk to a number of communities downstream. We recommend consultation with KCC Flood & Drainage team to develop a strategic surface water drainage strategy. For sites with small areas of Flood Zone 3 within their boundary, the sequential approach should be adopted so

Environment Agency

Orchard House Endeavour Park, London Road, Addington, West Malling, Kent, ME19 5SH

Customer services line: 03708 506 506

Email: enquiries@environment-agency.gov.uk

www.gov.uk/environment-agency

that areas at high risk to flooding remain undeveloped and are maintained as Public Open space.

LP25 I- Station Road, Ditton

We would object to development on a large proportion of the site, as it is located in Flood Zone 3. Webb's Field is particularly vulnerable to flooding when the screen protecting the culvert under the M20 gets blocked. However, some limited development in Flood Zone 1 maybe possible along the road, subject to a suitable layout and FRA. The incorporation of Sustainable Drainage (SuDS) should be considered in consultation with KCC Flood & Drainage Team.

LP25 X – Land At Stocks Green road, Hildenborough

These sites are in FZ1 but runoff from the site could exacerbate risk downstream. In addition to incorporation of SuDS, we recommend contributions from the development to schemes which will reduce flood risk in Tonbridge or Hildenborough.

LP25, ab – North of Dryhill Park road, Tonbridge

We would oppose any new residential development in Flood Zone 3. We would not object to development in Flood Zone 1. In addition, runoff from the site could exacerbate risk downstream. As well as the incorporation of SuDS in these areas, we would recommend significant contributions from the development to schemes which will reduce flood risk to the communities in Tonbridge or Hildenborough.

Groundwater and Contaminated Land

LP22 (Contamination)

This policy has addressed issues of concern to us from a land quality/contamination point of view and is therefore sound.

LP11 (Designated Areas, page 22)

This policy is unsound at this time as Source Protection Zones have not been included. It is important for Source Protection Zones to be acknowledged as designated areas as certain developments/activities may be restricted within these zones.

We also recommend to include a policy that is specifically related to groundwater protection and addresses issues relating to groundwater quality to ensure groundwater it is not put at unnecessary risk from pollution.

We further encourage to include a policy which addresses the need for the provision of relevant foul drainage to be in place prior to occupation, either by upgrading the existing network or the provision of a new network for rural developments

Some of the site allocation areas development may be restricted due to contamination issues. We refer to the Masterplan Area figures in the report.

Figure 4 Bushey Wood, Eccles Masterplan Area page 39

Historic landfills found within/adjacent to Masterplan Area boundary

