

Tonbridge and Malling Borough Council

**LOCAL DEVELOPMENT FRAMEWORK
DEVELOPMENT LAND ALLOCATIONS DPD**

RESPONSE STATEMENT No DLA01

Housing Sites

Aylesford Parish Council – Matter DLA01/20.06/1
Mr Jason Rutherford – Matter DLA01/176./02/WR
Mr Bryan Ebdon – Matter DLA01/53.02/WR

Tonbridge and Malling Local Development Framework

Response Statement No DLA01

Housing Sites

1 Introduction

- 1.1 This Response Statement addresses matters raised in the following Submission Statements
- Mr Jason Rutherford, regarding the allocation of land at the Freehold, Carpenters Lane, Hadlow for housing
 - Mr Bryan Ebbdon, regarding the allocation of land southwest of Offham for housing; and
 - Aylesford Parish Council regarding their objection to the allocation of land at Preston Hall for housing.
- 1.2 It does not seek to respond to every point made in the Submission Statements. The absence of comment should not be taken as acceptance of the points made since the Council's case relies on its Position Statements DLA01, CS01 and CS03. This Response Statement therefore confines itself to correcting any erroneous statements and where necessary clarifying the Council's position where there appear to be misunderstandings

2 Mr Rutherford – The Freehold, Carpenters Lane, Hadlow

- 2.1 The Borough Council does not wish to add anything to the case it has made in para 3.6 of Position Statement DLA01 in support of its decision to reject Mr Rutherford's proposal. However, it does find it necessary to comment on some of the things said in the Statement submitted by, or on behalf of, Mr Rutherford.
- 2.2 In section 1.3 of his Statement he says that "no future windfall sites have been identified for Hadlow". By definition, it is not possible to identify windfall sites. A windfall is an unidentified site
- 2.3 Mr Rutherford is concerned that the DLA DPD is not based upon a specific Housing Needs Study for Hadlow. Insofar as Rural Housing Needs Studies are concerned the Borough Council is progressing a programme of such studies in liaison with Parish Councils¹. Resources are such that only so many studies can be undertaken at one time. Priority is being afforded to those Parishes which have already indicated an interest in carrying out such studies. Hadlow is not in the first tranche of such studies. However, Hadlow Parish Council has embarked upon the preparation of a review of its Parish Plan and, as para 6.3.36 of the Core Strategy makes clear, the need to prepare a Local Housing Needs Study can form part of, or be identified through, the preparation of a Village or Parish Plan.
- 2.4 He argues that Isles Quarry West at Borough Green is not suitable to meet the local affordable housing needs of Hadlow. Isles Quarry is intended to meet the affordable housing needs of the wider Malling area. This should not be confused with the specific needs of individual villages which may be identified

¹ See para 2.6 in Rebuttal Statement CS04

through Local Needs Studies. These studies are principally aimed at justifying or supporting the release of Exception Sites (see Core Policy CP19). Whether there is a need to release an Exception Site would itself have regard to the availability of other accommodation and other sites in the village.

- 2.5 In terms of site availability it is relevant to note that a site further down Carpenters Lane was developed just a few years ago by an RSL specifically for affordable housing (16 dwellings). There is also a current planning application for another site in Carpenters Lane for a further 20 dwellings, 8 of which will need to be affordable. Furthermore, there is the site safeguarded under Policy CP4(d) at the other end of Carpenters Lane, which although admittedly a greenfield site, is potentially available to meet any affordable housing needs of the village that cannot be met in any other way (see Map at **Annex A**).
- 2.6 However, whether there is an affordable housing need or not in Hadlow is academic in relation to the objection site because, in the view of the Council, the reasons for its protection from development cannot simply be set aside because of an argument of housing need.
- 2.7 Mr Rutherford expresses concern about the Council's declared intention to pursue the future identification of the site as an Important Green Space and possibly, subject to further study, as an Area of Historic Significance which he sees as being in conflict with the Council's decision to not pursue its designation as a Conservation Area. The fact that the open area itself may possibly be of some historic significance does not mean that the wider Freehold area, including the properties around the open area, is necessarily of sufficient architectural or historic interest to be designated a Conservation Area. So there is no inconsistency in the Borough Council's approach.
- 2.8 It is important to note that whether the site is considered to be an Important Green Space or of Area of Historic Significance would in no way be influenced by the need for competing land uses. It would be determined by the merits of the case. These are, in any case, not matters for the Development Land Allocations DPD, though as it says in Position Statement DLA01, clearly to allocate part of the site now for housing would totally compromise any possibility of protecting the site in future.
- 2.9 It is also relevant that the Council is currently in the process of preparing an Open Space Strategy in accordance with the requirements of PPG17 as part of the evidence base for the Management of Development and the Environment DPD (MDE DPD). It is possible that this study might identify a need for further recreation provision in Hadlow and, if this is the case, then it is even more important that this site is retained because it might be needed as a possible new recreation area. In this respect, it is of note that the Parish Council already owns part of the Freehold site (see annex to Mr Rutherford's own evidence). It is, therefore, quite possible to envisage the entire site being acquired (compulsorily if necessary) as a public open space. It could then be significantly enhanced and could become an extremely pleasant open green area surrounded by housing, perhaps including a children's playspace. But this is not for this DPD. If this is what comes out of the work on the Managing Development and the Environment DPD then Mr Rutherford will have every opportunity to oppose the proposals at that time, but nothing should be done now that prejudices future options.
- 2.10 If the Council fails in its future intentions then, as Mr Rutherford rightly says, as a site lying within the confines of the village, its possible development would be

considered on its merits and, if permitted, would be a windfall site. It does not need to be allocated for this to be the case.

- 2.11 Turning now to section 1.7 of Mr Rutherford's Statement. It is not true to say that the land's use for open space has already been considered and determined by KCC in 2006 following a five day Inquiry. What was considered at that time was an application for the area to be registered as a Village Green. That has absolutely nothing to do with whether there is a need in Hadlow sufficient to justify the acquisition of the site as a public open space, and nothing to do with the need to protect the open area as an important amenity or for historic reasons. These are planning matters that will be dealt with in due course through the proper statutory plan making process.
- 2.12 It is accepted that the sequence of events regarding the submission and withdrawal of the planning application were not correctly stated in Position Statement DLA01, but that is of no relevance to the merits of the Council's case.
- 2.13 Likewise, it is accepted that Position Statement DLA01 incorrectly suggested that the decision on the registration of the Village Green was taken by the Secretary of State rather than by the County Council. Again this in no way affects the strength of the Council's case. However, the Council takes exception to the suggestion that its interpretation of the Inspector's recommendation on this case was influenced by "second hand vested and biased opinions from others". The full Inspector's Report is a Reference Document for this Public Examination². It is clear that, whatever other views he may have had on the merits of the case, the Inspector found himself unable to recommend the designation of the area as a Village Green because he had heard convincing evidence that the land had been cultivated for allotments during the previous 20 years (para 285 of report). This specifically precluded it from being recommended for registration because, by definition, it could not during that time have been exclusively available for "sports and pastimes". The Council therefore stands by the views it expressed in Position Statement DLA01 which are based upon the evidence.
- 2.14 Section 1.8 of Mr Rutherford's Statement refers to his complaint about the way the Council determined the Lawful Development Certificate of Existing Use (LDCEU) as allotment gardens and claims that the Council cannot rely on that fact as evidence in support of its case. Putting on one side the fact that the Council has not accepted Mr Rutherford's complaint (see **Annex A**), it is not true to say that the Council relies in any way on this as evidence in support of its case. It was merely referred to in Position Statement DLA01 as a statement of fact about the planning history of the site. Whether there is a LDCEU on the site or not is totally irrelevant as to the merits of the case in favour of its protection from development.
- 2.15 It is noted under section 1.8 of Mr Rutherford's evidence that he seeks to introduce a proposal which is on a site at variance to the original submitted objection. This is not acceptable procedurally, but, for the avoidance of doubt, the alternative proposals would make absolutely no difference to the Council's opposition to the prospect of any development on open land at the Freehold. The Development Land Allocations DPD is sound without the allocation of this land and the objection from Mr Rutherford should therefore be rejected.

² RD 7.34 – Inspector's Report on the application for land at the Freehold, Hadlow to registered as Village Green

3 Aylesford Parish Council – Preston Hall, Aylesford

- 3.1 The Borough Council wishes to add nothing to what it has said in Position Statement DLA01 in response to the Submission Statement received from Aylesford Parish Council.

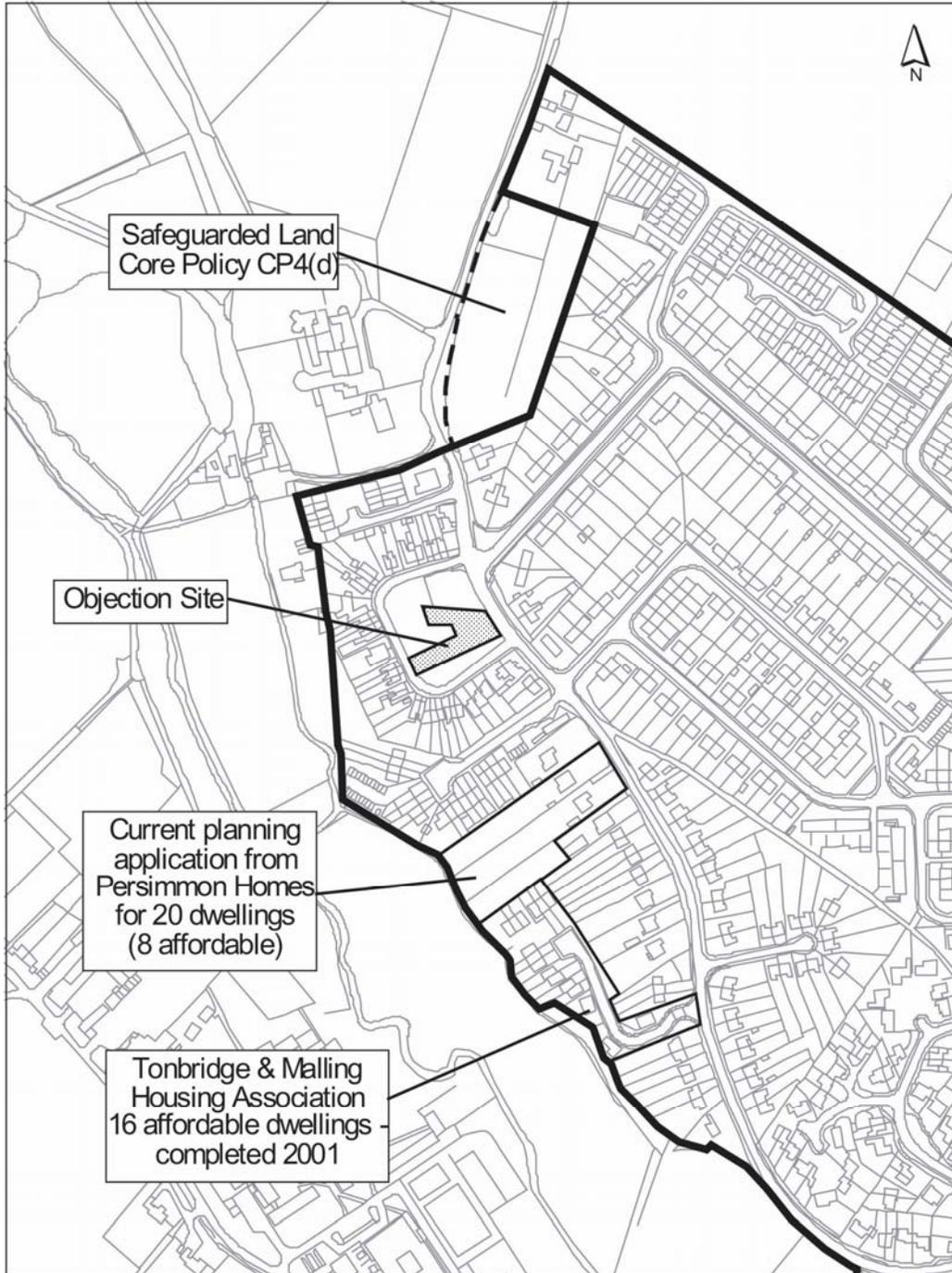
4 Mr Bryan Ebdon – Land south west of Offham

- 4.1 The Inspector has concluded in para 3.6 of her Report on the Core Strategy³ that “there is no justification for a general review of Green Belt boundaries, or a need to identify greenfield locations to meet general needs housing”. The Borough Council wishes to add nothing to the case it has made in Position and Rebuttal Statements CS03 in respect of this site.

BRG/17/10/2007 14:35

³ RD 5.14 – Core Strategy – Inspector’s Report

Carpenters Lane, Hadlow



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Date: 05 October 2007

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Dear Mr Rutherford

TM/07/00291/LDE: Lawful Development Certificate Existing: land as allotment gardens and amenity space

Thank you for your letter of 12 September (received in my office on 17 September) concerning your formal complaint of maladministration and injustice in respect of the above Lawful Development Certificate (LDC). I also acknowledge receipt of your letter 25 September and whilst I note your additional comments these are not matters for this Council as the person you refer to is not one of our employees.

I am sorry that you feel that the case for the LDC was not investigated in a proper manner. However I will set out in this letter the steps that were taken in deciding whether to issue the LDC and to answer the questions raised in your letter. At this stage I am treating your letter as a Stage 2 complaint to the Council. If you are not satisfied with this reply you may escalate your complaint by reference to the Chief Executive. As I understand the process, the Local Government Ombudsman will normally accept a case only after you have exhausted the Council's Complaints system.

The LDC application was made to certify the use of the land as being allotment gardens and amenity space. The description applied to site as whole as outlined in red on the plan accompanying the application form, a copy of which is attached for your information.

Having read through the Inspector's Report on the application for Village Green Status (VGS) I do not consider the evidence given at that VGS Inquiry contradicts the description on the LDC. I do not believe we have any differences over the term 'allotments' as it is clear from the VGS Inspector's Report that there were substantial amounts of land under active cultivation for vegetables and the like (indeed on page 2 of your letter you mention the fact that your land was cultivated up to 2000 and then fenced) .

I think the confusion may arise with the term 'amenity space'. There is no specific planning definition for 'amenity space' but in my view it can normally fall into two broad categories. The first of these, 'Public amenity space', is usually characterised by small areas of land often used by residents for recreation such as children's play space, seating areas or land which is communally or publicly maintained such as landscaped areas contributing the general ambience of the area. The other category, in which I would consider your parcel of land to fall, is 'private amenity space' which could include private gardens or private outdoor space.

The legislative framework supporting Town or Village Greens differs greatly from the planning legislation related to LDCs even though there are some common threads. I see no evidence in the application for the VGS which contradicts the decision made on the LDC. In order to meet the requirements of a Village Green the Inspector was required to advise on whether the land fell within section 22(1A) of the Commons Registration Act 1965 ... 'if it is land on which for not less than twenty years a significant number of the inhabitants of any

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locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as a right, and either –

(a) continue to do so, or

(b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions.'

The Inspector concluded that the land did not meet **these tests** and advised rejection of the application on the basis that, as I understand it, some of the land was used for allotment purposes and some was unsuitable and/or was or had been unavailable for sports and pastime for the requisite period.

The purpose of an LDC is to establish the lawful use of the land in terms of the Planning Acts "*on the balance of probabilities*". The LDC was submitted under Section 191 of the 1990 Act. The Secretary of State has advised that the burden of proof in applications submitted under this Section is firmly with applicants. With the relevant test being the "*balance of probabilities*", Local Authorities are that advised if they have no evidence of their own to contradict or undermine the applicants version of events there is no good reason to refuse the application. In the LDC application submitted by Miss Allen the Council had no evidence to contradict the contents of the application. There is no planning or other history relating to the site other than your withdrawn outline planning application for 3 dwellings and indeed a site inspection undertaken by the case officer confirmed the uses on the site as a whole. My reading of the decision for Village Green status is that it presents no additional information that would have led the Borough Council to refuse the LDC.

I note your concern that you were not notified of the application. There is no requirement under the legislation (Town and Country Planning (General Development Procedure) Order 1995) for applications to be notified to other owners or publicised. This is because the matters to be determined are solely matters of evidence or law. In cases such as these it is normal for the Council to consult the Parish Council and surrounding residents **in respect of their knowledge or recollections about the site**.

You mention not being notified by the applicant despite the fact that the applicant purports in Section 7 of the application form to have done so. In LDC cases the Local Planning Authority would expect to take the statement of the applicant made on such an application form at face value and would not seek additional evidence simply on the basis that the site appeared to be in fragmented ownership. I say this because the LDC process does not make judgements about merit of the uses involved nor does the outcome of the LPA's assessment override any private property rights associated with ownership.

I hope that this explanation will help to explain the context surrounding the decision made on the LDC and having investigated this matter I do not consider that the way the application was handled was contrary to the Council's own Codes or guidance or amounted to maladministration.

I am unsure how you believe that the issue of the LDC will prejudice the outcome of the Development Land Allocation (DLA) DPD. The Position Statement (DLA01) is a document that deals with **objections to the soundness of the DLADPD**. The Statement makes clear the Council's position as to the merits of a housing allocation on this land. The existence of the LDC was set out, as a matter of fact. Of course the Council could have taken the view that, notwithstanding the existence of the LDC, this site should be allocated for housing. It does not take this approach for the reason set out in the following paragraph in the Position Statement:

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'The issue as to whether the land should be defined as an Important Green Space will be taken forward in the Managing Development and the Environment DPD and cannot be objected to at this stage since, whilst the Council's intention is clear, there is, as yet, no such proposal. However, to accept the allocation for housing of an irregular area of land virtually in the middle of the site would clearly be prejudicial to this intention. Mr Rutherford will have an opportunity to challenge the Council's proposal to define the area as an Important Green Space at the appropriate time. In the meantime, the proposed housing allocation should be rejected. Regardless of whether the site is formally defined as an Important Green Space, residential development on this site would be detrimental to the amenities of residents and the particular character of the built environment of the Freehold where houses traditionally surround and relate to a central open area.'

I understand your Agent made representations to the LDF Inspector on this issue and the Programme Officer has very kindly copied me into her reply. Her penultimate paragraph sums up the position in respect of the DPD.

'To summarise, the question facing the Inspector is NOT whether this site should be allocated for housing or open space. She has to consider whether the failure to allocate the site for housing renders the DLADPD unsound, when considered against the test of soundness set out in PPS12. In the circumstances, the Inspector will not hear or consider evidence from any party relating to the potential future designation of the site for open space, as that is not a matter which is before her to determine. Furthermore, the issue of a certificate of lawful use or development in relation to any site does not, in itself, preclude the allocation or designation of that land for other purposes in a development plan. It is not, therefore, a determining factor in the Inspector's consideration of whether it is necessary to allocate the site for housing to make the DLADPD sound. There would appear to be no reason why any proceedings your client may pursue regarding the circumstances surrounding the issue of a certificate relating to his land should delay, or otherwise influence, the progress of the Examination into the DLADPD.'

You mention that you believe that the applicant at that time worked for a nearby local authority and you invite me to consider action against her. I am afraid that we know nothing of the employment position of applicants, save by chance. Given my comments above I am satisfied that the application was dealt with appropriately and that there is no reason or remit to consider further action in this particular respect.

To summarise, the circumstances and procedures that pertain to the decisions of LDC applications and VGS applications differ markedly and have limited weight for the consideration of the other. Insofar as the VGS decision has relevance to the LDC, I note that the VGS Inspector concluded that, *inter alia*,

"...substantial parts of the Application Land were under active cultivation for growing vegetables and the like..."

I am satisfied that we approached the processing of the LDC application in the appropriate fashion. The decision to issue a positive LDC does not circumscribe your right to object to any DPD promoted by the Borough Council (either because the Borough fails to allocate the land for a use that you desire or because you object to a proposed allocation that you consider unsound). and I note that the Inspector dealing with our Development Land Allocations DPD has explained the process to you. Similarly the decision on the LDC does not override the private law rights that you enjoy over land that you own or control.

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I trust that this clarifies the situation for you with regard to both the LDC and the DLADPD. I cannot accept that the Council has, in all the circumstances, been guilty of maladministration or that the issuing of a positive LDC has caused you any injustice or curtailed any rights that you may have with regard to this land.

Nevertheless, in light of your continuing concern that you did not receive the notification from the applicant purported to be made in section 7 of the application form I am pursuing this aspect of the case further with the applicant and will review the situation in the light of her responses.

Yours sincerely

Steve Humphrey

Director of Planning, Transport & Leisure