

From: [REDACTED] (NE)
To: [localplan](#)
Cc: [REDACTED]
Subject: Local Plan Response
Date: 19 November 2018 16:00:37
Attachments: [Tonbridge & Malling Reg. 19 - NE Response.pdf](#)

Good afternoon,

Thank you for consulting Natural England on the Tonbridge & Malling Local Plan Reg. 19 consultation.

Please find attached our response.

Kind regards,

[REDACTED]
[REDACTED]

Sustainable Development Team (Sussex and Kent)

Natural England
3rd Floor, Guildbourne House, Chatsworth Road, Worthing, West Sussex, BN11 1LD
T: 0208 2258409 M: 07786 022 161

www.gov.uk/natural-england

We are here to secure a healthy natural environment for people to enjoy, where wildlife is protected and England's traditional landscapes are safeguarded for future generations.

In an effort to reduce Natural England's carbon footprint, I will, wherever possible, avoid travelling to meetings and attend via audio, video or web conferencing.

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Date: 19 November 2018
Our ref: [REDACTED]



Ian Bailey
Planning Policy Manager
Tonbridge & Malling Borough Council

localplan@tmbc.gov.uk

Customer Services
Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

T 0300 060 3900

BY EMAIL ONLY

Dear Mr Bailey

**Tonbridge & Malling Borough Council Draft Local Plan Consultation
(Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations)**

Thank you for your consultation on the above dated 01 October 2018 which was received by Natural England on the same date.

Natural England is a non-departmental public body. Our statutory purpose is to ensure the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Natural England has reviewed the Regulation 19 Pre-submission publication of the Local Plan and accompanying appendices together with the Habitats Regulations Assessment and Sustainability Appraisal (SA). Our comments on these documents are provided below, which I hope you find useful.

Overarching comment regarding soundness

Natural England objects to Allocation LP29 (Borough Green Gardens). This allocation is not **justified** as it does not provide sufficient evidence to support its inclusion in the Local Plan with regard to impacts on the Kent Downs Area of Outstanding Natural Beauty (AONB) and its setting, considered against reasonable alternatives. Furthermore it is **not consistent with national policy** with regard to conserving landscape and scenic beauty within a nationally protected landscape (Paragraphs 115 and 116, NPPF 2012). Natural England advises that insufficient evidence has been provided to demonstrate that the site is **deliverable** without resulting in an adverse impact on the Kent Downs Area of Outstanding Natural Beauty (AONB).

The allocation should be assessed against the three tests (NPPF 2012 para 116), including clear and reasonable justification if exceptional circumstances and public benefit are to be demonstrated, in accordance with national policy and LP12 of the proposed Local Plan. **If it cannot be proven that these criteria are met, the allocation should not be pursued.**

Further detail on Natural England's objection in Appendix A.

Overarching comment regarding the Habitats Regulations Assessment (HRA)

Natural England notes that the HRA has not been produced by your authority, but by a third party. As competent authority, it is your responsibility to produce the HRA. We provide the advice enclosed on the assumption that your authority intends to adopt this HRA to fulfil your duty as competent authority.

On the basis of information provided, it is the advice of Natural England that **it is not possible** to conclude that the proposal is unlikely to result in significant effects on the European sites in question. Further information on our position is provided in Appendix B.

Other comments

Further comments regarding policy wording is provided in the Appendices (Appendix C), including advice on other site allocations that may affect the AONB (Appendix D). We have recommended various wording amendments to improve policy with regard to the protection and enhancement of the natural environment.

I hope that these comments are useful. We would be happy to discuss our comments further should the need arise but in the meantime if you have any queries, please do not hesitate to contact us. For queries relating to the specific advice in this letter please contact [REDACTED]. For any new consultations, or to provide further information on this consultation, please send your correspondences to consultations@naturalengland.org.uk.

Yours sincerely

[REDACTED]

[REDACTED]

Sussex and Kent Area Team

Appendix A – detailed advice relating to strategic allocation LP29 (Borough Green Gardens)

Further detail to accompany our objection to strategic allocation LP29 is provided below:

- Allocation LP29 would result in the development of 1,720 homes over the plan period, with an additional 1,280 homes safeguarded for the next plan period (3000 homes in total). The majority of the site lies directly adjacent to the Kent Downs AONB and the westerly portion of the site sits within the AONB itself. National policy affords the highest protection to conserving and enhancing protected landscape and Paragraph 116 requires assessment of three tests prior to considering major development in such areas. Enhanced wording in the revised NPPF (July 2018) demonstrates further need to protect and enhance AONBs (para 172) outlining that the scale of development within AONBs should be limited.
- From the information provided there does not appear to be any landscape evidence to inform the site allocation process both in terms of the impact on setting and the direct impact of development within the AONB boundary. It is not appropriate to defer such assessment to the project stage and consideration should be given to the three tests outlined in paragraph 116 (2012 NPPF), including assessment of reasonable alternatives and the consideration of meeting need elsewhere.
- The Sustainability Appraisal accompanying the Local Plan confirms potential adverse effects and also highlights various uncertain aspects to allocating the site:

'The policy proposes to allocate land within the Kent Downs AONB which could have significant negative impacts, however it does not permit residential or commercial development within the protected landscape thereby protecting the designated asset from some forms of development. Other uses are considered appropriate, but the policy includes for appropriate mitigation. Significant areas of land are also identified for development within the setting of the Kent Downs AONB and specific reference is included within this policy to manage any impacts on this. The scale of the development and the proximity to the AONB mean there remains some uncertainty as to the precise nature of any impact.'

(Page 376 and 377, Final Environmental Report, Sustainability Appraisal)

- Contrary to the Sustainability Appraisal Policy LP29 does not restrict development within the AONB boundary and provides criteria to assess applications, this criteria is significantly weaker than the major development tests set in national planning policy.
- Specific mitigation, informed by landscape assessment, has not been provided to justify allocating within the AONB and in its setting. Any uncertainty regarding impacts should be properly considered at the plan stage to ensure delivery of the site. It is not appropriate to defer the assessment of such affects to the project level.

Appendix B – Detailed advice relating to the Habitats Regulations Assessment.

Natural England advises that the assessment currently does not provide enough information and/or certainty to justify the assessment conclusion. We have reached this view for the following reasons:

The assessment concludes that your authority is able to rule out the likelihood of significant effects arising from air quality impacts. However, the assessment does not refer to the consideration of any other impacts on designated sites which may occur as a result of this local plan (either alone or in combination). For example, it has previously been identified that increased recreational access may impact on the designated sites through disturbance (Tonbridge & Malling Local Plan HRA Screening Report, May 2017). This impact does not appear to have been addressed.

The Habitats Regulations Assessment (HRA) document published as part of the Regulation 19 consultation consists of the Stage 1 Air Quality Screening (MottMac July 2018). Therefore it is not an appropriate Local Plan HRA as it does not address the any other impacts to designated sites that could result as a consequence of development coming forward within the plan.

All likely effects of a plan or project need to be thought about individually and in combination with other relevant plans or projects. This is a legal requirement of the Habitats Regulations and it helps to ensure that European sites are not inadvertently damaged by the additive effects of multiple plans or projects.

It is not clear from the air quality screening report what level of housing has been considered within the assessment. Table 1 identifies the 5 main strategic locations of development but it is unclear as to whether this includes the totality of the development within the Local Plan. In order to comply with the requirements of the Habitats Regulations, and to enable a fair and reasonable assessment, the plan should be considered in its entirety, with likely significant effects considered for the plan alone and in combination with other plans and projects.

A competent authority should clearly record which plans and/or projects are included in their assessment, together with clear justification for plans or projects which have not been considered. In combination assessment may potentially include the following:

- Incomplete or non-implemented parts of plans or projects that have already commenced;
- Plans or projects given consent or given effect but not yet started.
- Plans or projects currently subject to an application for consent or proposed to be given effect;
- Projects that are the subject of an outstanding appeal;
- Ongoing plans or projects that are the subject of regular review and renewal
- Any draft plans being prepared by any public body
- Any proposed plans or projects that are reasonably

Regarding the screening of impacts associated with traffic, we refer to the recent clarification provided in the [Wealden Judgment 2017](#). The Court concluded that where the likely effect of an individual plan or project does not itself exceed the threshold of 1000 AADT (or 1%), its effect must still be considered alongside the similar effects of other 'live' plans and projects to check whether their added or combined effect on a site could be significant.

This is because projects and plans that increase road traffic flow have a high likelihood of acting together, or in-combination, with other plans or projects that would also increase traffic on the same roads. Vehicles generated by different plans or projects can end up on the exact same road(s) (forming a line source of emissions) within or close to the same site. In these cases, it is difficult to justify use of a threshold alone for determining likelihood for significant effect by applying it solely to the project being assessed. The threshold should be applied in-combination.

We note that TemPro has been used in the assessment and welcome this approach. However

when considering the impact of the Local Plan, the assessment has been undertaken on a “without development” (development within Tonbridge and Malling and in other districts) comparison with “with development” (no development within Tonbridge and Malling but with development in other districts). This identifies the contribution from the Local Plan alone and does not consider the in combination impacts. This is not in accordance with the Wealden Judgement

Notwithstanding the above, Natural England concur that the 3 AADT increase identified for Ashdown Forest SAC can be discounted as insignificant as this level of AADT and the resultant Nitrogen deposition would be impossible to measure. Additionally, Natural England’s response to other LPAs in relation to air quality impacts on Ashdown Forest has identified that there will be no adverse effect on integrity.

The assessment identifies that Nitrogen deposition from the Local Plan will have a likely significant effect on the North Downs Woodlands SAC as it will be over the 1% level of insignificance. The report makes some attempt to suggest this is not significant based on favourable conservation status of the SSSI units however Common Standards Monitoring (CSM) is not designed to assess air quality impacts therefore this is not a relevant conclusion. The implications of the increase in Nitrogen deposition require consideration under an appropriate assessment that considers the Conservation Objectives to determine whether the impacts would have an adverse effect on the integrity of the designated site.

On the basis of the above advice, we recommend that the HRA is revised to include consideration of the plan in its entirety, ensuring robust assessment all of the impacts on designated sites, including in-combination impacts, and with clear justifications to support the conclusions.

Appendix C – General advice on policy, including recommended amendments on policy wording

Strategic objectives

Natural England raises concerns with the following strategic objectives, however considered amendments to wording would overcome these issues:

- Objective 5

As highlighted in Natural England's response to the Local Plan Regulation 18 consultation Paragraph 114 of the NPPF requires local planning authorities to '*plan positively for the creation, protection, enhancement and management of biodiversity*'. To ensure this objective fully aligns with the requirements of the NPPF, the wording should be amended to refer to enhancement of the environment as well as its protection. It is important that the plan recognises the value of all components of ecological networks, not just the most important ones. Furthermore, it is unclear how 'important' would be defined in terms of policy. As such we suggest we suggest the following amendments (shown in bold and strikethrough):

*'Protect **and enhance** ~~important~~ natural and heritage assets, taking into account the mitigation hierarchy with regard to the natural environment.'*

- Objective 8

'Where possible' should be removed from this objective. This wording weakens the objective and does not support the strengthening of Green Infrastructure (GI) and ecological networks. Paragraph 117 of the NPPF requires planning policies to protect, create and restore ecological networks, and removal of this wording would allow the objective to better align with this requirement.

'Support opportunities to protect ~~and 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.'

- Objective 9

We support the general aim that development should mitigate its impact on the environment. However it is important that development should firstly aim to avoid such impacts (NPPF para 118). As this objective provides the general framework for more detailed policies, you may wish to clarify this aim by referring to the mitigation of 'unavoidable impacts', in accordance with the mitigation hierarchy¹.

*'Ensure development mitigates ~~its any~~ **unavoidable** impact on the environment and is resilient to the effects of climate change.'*

Policy Wording

- LP6: Rural Exception sites

This policy aims to restrict residential development in rural areas to 'small sites'. Currently, the policy does not provide clear criteria on what would be considered as 'small sites'. Without further clarification, it will be difficult to apply this policy, and it is difficult to understand and assess the likely impacts of implementing the policy. Natural England recommends further detail be added to the

¹ The NPPF sets out in Paragraph 118 how the mitigation hierarchy should be applied: '*If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.*'

supporting text of the policy to outline what is meant by 'small sites'.

LP10: Infrastructure Requirements

This policy wording is very vague. At least, clarification should be provided as to how development may be viewed as 'acceptable in planning terms'. We advise this policy includes a clear framework for decision making, with criteria to guide applicants towards 'acceptable' proposals.

This policy presents an opportunity to guide and influence the development of infrastructure which can have positive outcomes for the environment. Transport infrastructure (particularly new transport routes such as roads and cycle routes) can provide for wildlife and presents valuable Green Infrastructure (GI) opportunities. For example, highway verges and embankments (e.g. alongside railway lines) can be important habitats in their own right, but also provide valuable connecting habitat, contributing to the overall coherence of the ecological network. We would expect this policy to acknowledge such benefits and seek opportunities for the creation and enhancement of biodiversity assets including GI provision, in addition to appropriate mitigation of environmental impacts. Please note that the above comments on GI also apply to policy LP23: Sustainable Transport.

LP14: Achieving High Quality Sustainable Design

In order to achieve high quality sustainable design, development must protect and enhance environmental features in addition to features of historical, architectural and landscape value. To strengthen policy wording, 'where practicable' should be removed, and wording amended to maximise opportunities to ensure net gain can be achieved.

Additionally, we advise this policy recognises the importance of GI in the design of sustainable development, including provision of new green infrastructure, links to the existing green infrastructure network and provision of access and recreation opportunities.

LP25 & LP26: Housing Allocations & Policy Requirements

Comments on individual allocations where development is more likely to impact on the natural environment are contained within Appendix 1. This includes advice on potential impacts, what to include in the policies, and what to consider should the allocation be taken forward. Please note that where we have not objected to, or otherwise commented on, a policy or proposal, it should not be assumed that it would not have an adverse effect on landscape or biodiversity, because we have focused on the most important environmental issues in the plan.

In general, policy wording for allocations located within or in the setting of either the Kent Downs or High Weald AONB needs to have a clear commitment to protecting and enhancing the character of the AONB, in line with the relevant AONB Management Plan, supporting documents and position statements, and be in accordance with the relevant AONB/Landscape policy.

LP27, LP28, LP30, LP31: Strategic Allocations

Where relevant, wording on AONB considerations and LVIA requirements is welcome. You may wish to consider adding/incorporating similar text into landscape/AONB policy wording.

To strengthen policy aims and to secure opportunities for biodiversity enhancements and net gain, 'where possible' should be removed from policy wording.

LP41: Publicly Accessible Open Space

Having reviewed the information contained within Appendix R we do not consider the standards for the provision of green space (on or off-site) are sufficient to achieve the policy requirements for habitat creation, strengthening of GI and securing contributions to the ecological network. We recommend the use of Accessible Natural Greenspace Standard (ANGSt) as a useful tool to help

ensure adequate provision of accessible natural greenspace.

As suggested in the supporting text, adequate greenspace provision can assist in achieving net gain through development, and will also contribute to achieving GI aims. Open/green space policies should therefore be linked to relevant biodiversity and GI policies.

APPENDIX D – Comments on Site Allocations

High Weald AONB and Kent Downs AONB

The following comments apply to all allocations within or in the setting of an AONB. The sites we have identified as in or within the setting of an AONB are presented in Table 1. Our comments apply equally to sites in or within the setting of either the High Weald AONB or the Kent Downs AONB.

- All allocations within an AONB have the potential to negatively impact upon the designated landscape. As such, Natural England recommend that allocations outside of the AONB be considered wherever possible.
- Allocations within the AONB must protect and enhance the character of the AONB, in accordance with your Local Plan Policies, the relevant AONB Management Plan and supporting guidance, National Character Areas and Local Character Areas.
- Tonbridge and Malling Borough Council is responsible for determining if allocations constitute major development, in line with paragraphs 172 of the NPPF. Natural England advises that AONBs should not be considered as suitable locations for major development. Please note that absence of direct reference to major development does not mean that we have no concerns. At this stage we cannot be sure whether the expected yield of each allocation would or would not be considered major development. This is a matter for the Council to consider. Through the local plan, the Council must ensure that all allocations for major development within the AONB are robustly assessed against the three tests, including if there are alternatives to meet housing requirements.
- Development proposals should be informed by a Landscape and Visual Impact Assessment (LVIA) in line with the *Guidelines for Landscape and Visual Impact Assessment* (GLVIA 3rd edition).
- Development within the setting of an AONB has the potential to impact on that AONB. Development should respect the value of the setting of the AONB, and ensure the setting can be protected. Proposals should refer to the relevant AONB Management Plan and supporting guidance, National Character Areas and Local Character Areas.

Table 1. Allocations within or in the setting of an AONB

	ID	Site	Provision	Designation Impacted
Housing Allocations	h	Borough Green Gardens Phase 1A + 1B <i>Subject to further information, Natural England currently object to this allocation. Please see our detailed comments on Policy LP29.</i>	1720	Kent Downs AONB
	ai	Land at Howlands Allotments, Wrotham	39	
	a	Bushey Wood Phase 1, Eccles	900	Kent Downs AONB (setting)
	j	Bell Lane, Burham	58	
	aj	North of Fairfield Road, Borough Green	16	
	ac	South West Tonbridge	480	High Weald AONB
	ad	South of Vauxhall Gardens, Tonbridge	61	

Safeguarded Employment Land		Works, south of Cricketts Farm, Ightham	B1 / B2 / B8	Kent Downs AONB
		Tower Garage, Wrotham Hill, Wrotham		
		Lower Bell, Aylesford		
		Ham Hill, Snodland	B1 / B2 / B8	Kent Downs AONB (setting)
		Bourne Enterprise Centre, Borough Green		
		Platt Industrial Estate		
		Long Pond Works, Borough Green		
		Laker Road, Bridgewood	B1	
		North of Station Approach, Borough Green		
		North of Fairfield Road, Borough Green		
Employment Allocations	k	Borough Green Gardens (within the strategic site covered by Policy 29)	B1, B2, B8	Kent Downs AONB
	d	Rochester Road, Borstal	B2 / B8	Kent Downs AONB (setting)
	j	Rochester Airfield	B1 / B2	

Biodiversity

A number of allocations in the Local Plan may impact sites which are notified for their biodiversity or geological importance at national and international levels. These issues are addressed for each allocation in Table 2.

Table 2. Allocations which may impact Sites of Special Scientific Interest (SSSI).

ID	Site	Designation Impacted	What should be considered for this allocation?
a	Bushey Wood Phase 1, Eccles (900 homes)	Holborough to Burham Marshes SSSI	Proposals should consider the hydrological impact of the development, with appropriate mitigation measures to avoid impacts to water quality and quantity which support the interest features of the SSSI. Sustainable drainage systems (SuDS) should be appropriately designed and managed to mitigate any hydrological impacts associated with the development.
j	Bell Lane, Burham (58 homes)		
b	Holborough, Snodland		
c	Land east of the bypass, Snodland		
d	New Hythe Area, Larkfield		
e	Rockfort Road, Snodland		
h	Lower Bell, Aylesford	Wouldham to Detling Escarpment SSSI	Proposals should consider the hydrological impact of the development, with appropriate mitigation measures to avoid impacts to water quality and quantity which support the interest features of the SSSI. Sustainable drainage systems

			<p>(SuDS) should be appropriately designed and managed to mitigate any hydrological impacts associated with the development.</p> <p>Impacts to local air quality arising from development at this location which may adversely affect the interest features of the SSSI need to be considered, together with appropriate mitigation measures. Impact from construction and operational phases should be considered.</p>
a	20/20 Estate, Aylesford	Allington Quarry SSSI	Development in this location needs to respect and protect the geological interest features of the SSSI.