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BY EMAIL ONLY

19 May 2017

Dear Alison

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

Thank you for providing Kent County Council with notification regarding the publication of proposed Main Modifications to the Maidstone Borough Local Plan.

The Main Modifications are - in part - a response to the Interim Findings released by the Planning Inspector, Mr Robert Mellor on 22 December 2016 [ED 110].

In my letter to the Inspector dated 20 January 2017 [ED 121], I set out the **profound disappointment of the County Council - as Local Highway Authority - in the initial conclusions reached**. I have subsequently noted from the Examination Documents published on the Maidstone Borough Council website that a number of other individuals and organisations have expressed equally strong and well-founded concerns about the allocations and policies comprising the Local Plan, and the severely detrimental impact that they will have on the day-to-day quality of life experienced by communities across the Maidstone Borough.

Notwithstanding the above, Kent County Council welcomes the opportunity to comment on the Main Modifications. For the avoidance of doubt this letter sets out the position of the County Council as Local Highway Authority, Minerals and Waste Planning Authority and as a Rule 6 (6)¹ party at the forthcoming Public Inquiry following the decision of the Borough Council to refuse outline planning consent for major commercial development at Woodcut Farm, Ashford Road, Hollingbourne².

¹ The Town and Country Planning (Inquiries Procedure) (England) Rules 2000 and The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000

² Planning application ref. 15/503288/OUT. Planning appeal ref. APP/U2235/W/16/3165998

Appendix 1 contains a schedule of comments on other matters and issues related to the Main Modifications.

1 Highways and Transportation

MM6 Policy SP3 (3) (i)

The reference to the extension of the Sutton Road bus lane is entirely at odds with the position adopted by the Borough Council and County Council, given that neither Authority wishes to pursue such a scheme. **Kent County Council continues to be completely unaware of any formal decision made by Maidstone Borough Council to reinstate it within its Integrated Transport Strategy, rescinding the decision of the Borough Council's Strategic Planning, Sustainability and Transportation Committee on 15 December 2015.**

At the Joint Transportation Board meeting held on 21 March 2017, Borough Council and County Council Elected Members reiterated their view that any bus prioritisation measures must not be to the detriment of the motorist.

There remains no conclusive evidence to support the view that the theoretical bus lane proposals put forward in the A274 Corridor Study [TRA 028 and TRA 028A] will not worsen delays for other road users. Furthermore, there are uncertainties as to whether the scheme can be delivered entirely within land forming part of the publicly maintainable highway.

The inclusion of an infrastructure requirement that is neither justified nor effective, lacking the support of Kent County Council and Maidstone Borough Council, renders the policy unsound.

MM13 Policy SP23 New Strategic Policy

The new reference to Maidstone Borough Council managing "...any negotiations and agreements" is likely to cause some confusion, given that works on the highway will require the developer to enter into a Section 278 Agreement directly with Kent County Council as Local Highway Authority.

In criterion 3 (as amended), there is an inference at sub-criterion (i) that the scope of bus priority measures will go above and beyond provision at junctions. This is **completely inappropriate** for the reasons given above (MM6).

MM18 Policy H1 (5) Langley Park, Sutton Road, Boughton Monchelsea

The proposed amendment will facilitate direct bus service connectivity between the Langley Park and South of Sutton Road sites. This is supported as a measure to benefit accessibility but for the avoidance of doubt, does not detract from the strong objections consistently made by the County Council regarding the unacceptable severe impact of further housing growth in south east Maidstone on the A229 and A274 corridors.

MM32 Policy H2 (3) Lenham and supporting text

To ensure consistency with national policy, the second principle should state:

*"Outline measures to mitigate the **cumulative** traffic impacts from development on the strategic and local road networks"*

MM36 Policy RMX1 (4) Syngenta

Given that sub-criteria 14 to 17 are proposed to be deleted, sub-criterion 9 (as amended) should be expanded to clarify that development may need to deliver improvements in addition to, or instead of, contributions. This will ensure that the policy is positively prepared, effective and consistent with national policy.

MM37 New Policy RMX1 (5) Ballic Wharf supporting text

Sub-criterion 12 (as amended) should be expanded to clarify that development may need to deliver improvements in addition to, or instead of, contributions. This will ensure that the policy is positively prepared, effective and consistent with national policy.

MM41 Policy DM5 Development on Brownfield Land

The final two bullet points within the proposed new text should be clarified to highlight that the number and nature of traffic movements associated with the present or past use will be considered alongside the range of suitable travel options that are available to key local destinations, consistent with national policy. An approach that purely focuses on journey distances may disregard issues that need to be addressed (e.g. lack of footway provision).

MM52 Policy DM21 Assessing the transport impacts of development

The inclusion of revised policy DM21 is supported because it ensures that the Local Plan makes a clear reference to the required assessment and mitigation of transport impacts arising from new development. This will ensure that the policy is positively prepared, effective and consistent with national policy.

MM60 Monitoring and Review

Paragraph 21.28 and Policy LPR1 are non-committal on what components of the plan will be the subject of review. There is no clear indication of what steps will be taken to achieve adoption by April 2021 which fails to respond appropriately to paragraph 130 of the Interim Findings [ED 110]:

*"However there is no commitment to how quickly such a review would progress and **no timetable for the necessary work**".*

[Excerpt. My **emphasis** added]

Policy LPR1 will create uncertainty as to whether the review will provide the necessary clarity on the remainder of the plan period and is therefore **unsound on the basis that it is not positively prepared, effective or consistent with national policy**.

Kent County Council maintains the view that strategic forms of transport mitigation, including a Leeds-Langley Relief Road, should be a fundamental part of the review process. The review findings should also form a basis for appraising which site allocations should be taken forward post 2021. This is not made clear in Policy LPR1 as currently drafted.

2 Minerals and Waste

The Local Plan as originally prepared was silent on mineral safeguarding and was therefore not consistent with national policy³. As a result, dialogue took place between the Borough Council and the County Council as Minerals and Waste Planning Authority to establish how the emerging Local Plan could address mineral safeguarding matters in light of national planning policy and guidance, and the recently adopted (July 2016) Kent Minerals and Waste Local Plan (KMWLP).

Following discussions in August 2016, the County Council and Maidstone Borough Council agreed in a Joint Position Statement (dated 26 August 2016) that 3 core changes would be proposed to the Local Plan to ensure conformity. These were reflected in the September 2016 Statement of Common Ground [SUB 018 and SUB 018A] and proposed changes MS1, MS2 and MS3 which were the basis of the representation discussed at the Hearing Session in October 2016.

MS1 related to the reworking of paragraph 2.4 of the Local Plan to explain the relationship between the Local Plan and the KMWLP and to highlight the potential implications of mineral safeguarding policies in the latter plan. MS2 related to the cross reference to the KMWLP Safeguarding Area for the Maidstone Borough on the Policies Map and was proposed to add clarity to changes MS1 and MS3. MS3 proposed changes to site specific policies to ensure an adequate policy basis for the requirement for mineral assessments to be undertaken to ensure conformity with the KMWLP and national safeguarding requirements.

The Statement of Common Ground [SUB 018] shows that the Authorities did not agree on the extent of whether safeguarding should cover all the economic minerals recognised by the British Geological Survey and which forms the basis of the adopted Mineral Safeguarding Areas (MSAs). The County Council contends that the national policy context and the adopted KMWLP require all economic minerals to be safeguarded. The Borough Council considered in the Statement of Common Ground [SUB 018] that hard rock (Hythe Formation (Ragstone) and Industrial Sands - Sandgate Formation) could be excluded from safeguarding.

Changes to the emerging Maidstone Borough Local Plan regarding safeguarding were agreed by the Borough Council and County Council to reflect that both

³ See my letter dated 18 March 2016.

Authorities accepted that Policy DM7 of the adopted KMWLP would apply to development proposals identified in the Maidstone Borough Local Plan and that additional explanatory text to outline the purpose of the MSAs and the relationship between the Borough Council's Local Plan and the KMWLP was required. In addition, the parties agreed that to reflect the conclusions of the Inspector's Final Report into the KMWLP, a map showing the extent of the MSAs should be included in the Maidstone Borough Local Plan.

The County Council therefore supports the proposed changes to the Local Plan identified previously as MS1 and MS2 (now identified as MC1 and MC19 (criterion 3) respectively) that are included in the published Minor Modifications⁴. **The County Council considers that these previously agreed changes are essential to the soundness of the Local Plan and to ensure conformity with national policy.** Minerals are a finite natural resource that needs to be conserved wisely so as to avoid unnecessary loss through sterilisation. Mineral safeguarding is an important part of national planning policy and plays a critical role husbanding these valuable resources and in the delivery of sustainable development.

It is recognised in paragraph 7 of the National Planning Policy Framework (NPPF) that there are, "... *three dimensions to sustainable development: economic, social and environmental*" and in terms of the roles of the planning system these, "*... should not be undertaken in isolation, because they are mutually dependent*" (paragraph 8). Minerals are integral to the development cycle and are finite in nature. Paragraph 142 of the National Planning Policy Framework states:

"Minerals are essential to support sustainable economic growth and our quality of life. It is therefore important that there is a sufficient supply of material to provide the infrastructure, buildings, energy and goods that the country needs. However, since minerals are a finite natural resource, and can only be worked where they are found, it is important to make best use of them to secure their long-term conservation."

In addition, the Planning Practice Guidance (para 003) provides plan making authorities with advice on what data should be used to define MSAs. It advises that information provided by the British Geological Survey as data and maps are an appropriate basis for the identification of the economic minerals to be safeguarded and included in MSAs.

With regard to the proposed **Main Modification MM16** (in that it relates to the **Proposed Change MS3** in the **September 2016 Statement of Common Ground [SUB 018]**), the County Council objects to the proposed change because it **does not address comprehensively all the safeguarded economic minerals affected by the proposed non-mineral allocation policies.** All emerging Local Plan allocations that potentially sterilise economic minerals need to be considered against the mineral safeguarding policies of the KMWLP in order for the Local Plan to be found sound.

In examining the soundness of the KMWLP, the appointed Inspector (Jonathan King) considered very carefully the approach to safeguarding, its appropriateness for Kent and whether the strategy proposed was sound. Safeguarding was a key matter for

⁴ Schedule of Minor Changes to Regulation 19 Maidstone Borough Local Plan March 2017

debate at the Hearing Sessions. As a result, the safeguarding policies - including the extent of the MSAs - were considered in considerable detail. The Examination carefully assessed and debated what should and should not be included in the MSAs with particular reference to the extent of the mineral land banks and industrial minerals. It recognised that mineral needs may change over time and once lost through sterilisation cannot easily be recovered. Strong objections from house builders and a number of Borough Councils regarding **potential impact upon viability were debated at some length and found not to outweigh the presumption to safeguard**. In particular, Policy DM7 of the KMWLP was revised to balance competing concerns of stakeholders and provides a number of exemptions from the presumption to safeguard, consistent with national policy.

The County Council has since adopted (April 2017) the Kent Minerals and Waste Safeguarding Supplementary Planning Document which articulates how the safeguarding policies of the KMWLP are to be implemented.

It is of note that **Maldstone Borough Council did not raise any objection to the safeguarding strategy during the preparation and examination of the KMWLP**. In developing the policy context, the extent of the Ragstone land bank (i.e. the permitted reserve) and the relative importance of the Sandgate Formation sands resources were well known and not accepted as grounds for their exclusion from the MSAs. The need to address safeguarding matters in the consideration of non-mineral development such as housing is not a new requirement in planning and is just one of a number of technical assessments required as part of the consideration of a planning proposal. As with other technical assessments, the necessary Mineral Assessment for those developments falling within the MSAs needs to be proportionate, but failure to provide such an assessment is not consistent with national policy.

The Maidstone Borough area is rich in mineral resources. A significant number of allocations currently excluded from the need for Mineral Assessment in the emerging Local Plan fall within the Hythe Formation (Kentish Ragstone). This hard rock is important to aggregate supply and for building stone, often associated with buildings of heritage status that require restoration materials (i.e. Tower of London) and for new development that incorporates this material to retain the vernacular identity of local street scenes. In addition to the policy context outlined above, it should also be recognised that although significant reserves with planning permission currently exist in the County, this can be subject to change due to re-evaluation of reserves as quarrying progresses at permitted sites, leading to reductions in the available reserves to what is already a finite resource. In terms of the Sandgate Formation (a friable sandstone), this is important for industrial applications and used as moulding sands as an alternative foundry sand. Whilst it is an economic mineral, **there are currently no permitted reserves in Kent. Safeguarding is therefore critical for ensuring that this resource is not sterilised**.

In summary, and for the reasons set out above, Kent County Council welcomes and supports the proposed Minor Changes *MC1* and *MC19* (criterion 3) and Main Modifications *MM33* and *MM36*. In addition, the County Council supports the additional criterion that is proposed for inclusion at *MM16*. However, **Kent County Council objects to the extent of the site allocations on the basis that the Main**

Modification MM16 only partially addresses the lack of consistency with national policy and guidance. The County Council – as Minerals and Waste Planning Authority – takes the view that the additional criterion should extend to all site allocations that potentially affect an economic mineral. This approach is supported by the planning policy guidance outlined above and the adopted KMWLP. The County Council therefore considers that further modifications are required to ensure the soundness of the Local Plan and its consistency with national policy. Therefore, it is requested that Main Modification MM16 is revised to include all sites that are identified as safeguarded in the KMWLP and shown within the *Maidstone Mineral Safeguarding Areas* (pg. 165):

Policies H1 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (17), (21), (23), (24), (27), (28), (29), (30), (31), (32), (33), (34), (35), (36), (37), (44), (45), (46), (47), (48), (50), (51), (52), (53), (54), (55), (56), (57), (58), (59), (60), (61), (62), (63), H2(2), RMX1(1), GT1 (1), (2), (4), RMX1(4), EMP1 (1), EMP1 (2), EMP1 (5), EMP1(4); Insert Additional criterion to read: "Minerals Safeguarding – 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.

3 Woodcut Farm, Ashford Road, Hollingbourne

Planning permission was refused by Maidstone Borough Council on 6 July 2016 for major commercial development at Woodcut Farm (ref. 15/503288/OUT). Notwithstanding the decision of its Planning Committee, the Borough Council proceeded to retain the allocation of the site in the emerging Local Plan and has sought to defend this position throughout the current Examination in Public.

The refusal of outline planning consent is now subject to an appeal which will follow the Public Inquiry procedure. Kent County Council has consistently strongly objected to major commercial development at Woodcut Farm and has therefore successfully obtained Rule 6 (6) status from the Planning Inspectorate. **This Authority will take a very active part in the Inquiry** and has submitted its Statement of Case on 18 May 2017.

However, I note that Officers of the Borough Council recently prepared a report to the 27 April 2017 Planning Committee for Elected Members to consider not defending the refusal at the Public Inquiry. The Officer justification for such a course of action was primarily due to the perceived exposure to an award of costs against the Borough Council in view of the allocation of the site in the emerging Local Plan (Policy EMP 1 (5)) and the issue of the Interim Findings [ED 110]. As you will be aware, **Members of the Planning Committee rejected the principal recommendations put forward by Borough Council Officers** and the decision to defend the appeal was upheld at the 11 May 2017 Planning Referrals Committee.

This demonstrates a clear inconsistency in the position of the Borough Council. The well documented in principle objection of the Planning Committee to major commercial development in this location has not been duly reflected in the plan making process. The County Council strongly supports the relevant decisions of the Planning Committee and particularly in light of the **Local Plan evidence base which does not provide a robust justification in terms of both qualitative and quantitative economic development needs for the allocation of the site under Policy EMP 1 (5).**

The principal evidence underpinning the allocation of Woodcut Farm is comprised of the *Economic Sensitivity Testing & Employment Land Forecast* [ECON 001] and the *Final Qualitative Employment Site Assessment Report* [ECON 002], the findings of which were summarised in the Council's *Employment and Retail Topic Paper* [SUB 003]. In the light of this evidence, the Examination found that while there is an apparent quantitative need for 24,000 sqm of additional B1a office floorspace across the Borough to which Woodcut Farm could contribute, the quantitative need for B8 floorspace was limited to a net requirement of 6,500 sqm between 2014-31 – this was subsequently revised to a net requirement for 7,965 sqm between 2016-31 in the Council's response to the Interim Findings [ED 118].

The justification made for the allocation of Woodcut Farm for 49,000 sqm of B-class floorspace under Policy EMP1 (5) is based on a qualitative need for additional floorspace, as identified in the *Final Qualitative Employment Site Assessment Report* [ECON 002]. Proposed Main Modification MM1 now includes specific reference to this analysis. Proposed Main Modification MM39 further confirms that the rationale for the Woodcut Farm allocation is predicated on the assessment [ECON 002] that there is a qualitative gap in the Borough's portfolio of employment sites.

However, proposed Main Modification MM39 does not specifically address the basis for the floorspace capacity of 49,000 sqm proposed at Woodcut Farm. This was a clear action point arising from Session 8 *Employment* of the Examination [ED 065] which sought a justification for the claimed need for B1c/ B8 floorspace over and above the quantitative requirement of 6,500 sqm (subsequently revised to 7,965 sqm). While the additional text at Proposed Main Modification MM39 makes reference to the findings [ECON 002] that a new, mixed use business park might contribute to addressing qualitative deficiencies, and confirms that the key priority is the delivery of office floorspace, it falls short of clarifying why an allocation with a capacity of 49,000 sqm of floorspace is required.

Assuming that the suggested minimum provision of 10,000 sqm of B1a/b floorspace is secured for the site, as proposed in Main Modification MM39, the policy would still leave headroom for a further 39,000 sqm of B-class floorspace at Woodcut Farm. It is clear from recent planning applications that developers will seek to promote this headroom principally for B8 use. On this basis, Woodcut Farm, as currently proposed in the policy, **is creating potential capacity for almost five times the level of B8 floorspace for which quantitative need has been identified across the whole of the Maidstone Borough.**

There is no apparent evidence to justify the level of B-class floorspace proposed at Woodcut Farm under Policy EMP1 (5). The *Final Qualitative Employment Site*

Assessment Report [ECON 002] does not make any specific recommendation on the employment floorspace required to meet the identified qualitative need. However, it does indicate (para 6.49) that if additional capacity is to be provided on a single strategic site, then this would require "... an area broadly the scale of the original Eclipse allocation". This appears to be a reference to the Eclipse Business Park at M20 Junction 7 which is believed to have a site area of some 6.5 hectares, around one third of the scale of the proposed allocation at Woodcut Farm.

The development capacity at Woodcut Farm, as proposed in the draft Local Plan, appears to have adopted the capacity indicated in the original 'Call for Sites' submission relating to Woodcut Farm rather than reflecting an objective assessment of the floorspace scale, type, mix and location required to address the identified qualitative need. There is no attempt made in proposed Main Modification MM39 to address the issue raised in the Examination seeking justification for the claimed need for B8 floorspace at Woodcut Farm to substantially exceed the assessed quantitative requirements. Unlike in relation to B1a/b floorspace, proposed Main Modification MM39 provides no control over the level of B8 development that could be developed at Woodcut Farm up to the identified site capacity of 49,000 sqm.

In particular, specific reference is made at para 3.16 only to "*smaller scale distribution space*" [ECON 002] as part of its description of the proposed mix on a new employment site to address qualitative deficiencies. Moreover, the Core Strategy Strategic Site Allocations Public Consultation document issued by Maidstone Borough Council in 2012 stated explicitly (para 5.3) in reference to options for a strategic site allocation at J8 M20 that land allocated in this location would be for a mix of B-class uses but with limited distribution / warehousing. It is acknowledged that whilst this statement was made in advance of the Local Plan evidence base, it is clear that the scale of development potential for B8 uses reflected in policy EMP1 (5) as proposed to be modified by Main Modification MM39, is inconsistent with the Borough Council's original intentions for the site as a potential strategic employment allocation.

Despite the requirement arising from the Local Plan Examination for a clear justification of how the level of floorspace proposed at Woodcut Farm relates to qualitative need, no substantive evidence has been identified and the Main Modifications fail to provide such justification. In the absence of such justification and in the context of the Borough Council's decision to refuse planning permission for the previous outline planning application (ref. 15/503288/OUT) and subsequently to defend that refusal at appeal, the proposed allocation at Woodcut Farm should be deleted and alternative options considered for addressing the qualitative gap in employment land supply.

Kent County Council will continue to work with Maidstone Borough Council to establish consensus on the strategic priorities for the Maidstone Borough so that as far as possible, the Local Plan can positively contribute to the delivery of genuinely sustainable development that reflects the vision and aspirations of local communities.

If you require further information or clarification on any matter in this response then please do not hesitate to contact me.

Yours sincerely



Barbara Cooper
Corporate Director – Growth, Environment and Transport

Cc: Mr. R Jarman, Head of Planning and Development, Maidstone Borough Council

Enc. Appendix 1: Historic and Natural Environment matters.

APPENDIX 1: Historic and Natural Environment matters

Main Modification Number	Comment/ Recommended Change [highlighted in bold]	Reason
MM12	KCC Heritage Conservation supports the general principle of this policy but would emphasise that the objectives in the bullet points are more likely to be achieved if there is an overarching heritage strategy to set the goals for the Borough as a whole. Otherwise, there is a risk that the objectives will be addressed in a piecemeal and reactive fashion that is unlikely to either sustain or enhance the historic environment. An overarching strategy will also help communities engaged in Neighbourhood Plans identify key themes of relevance for their local heritage, draw on case studies and understand how the heritage can be used to conserve and enhance local character and thereby contribute to the character of the Borough as a whole.	Consistency with national policy - paragraph 126.
MM12	<i>"... The diversity of heritage assets is recognised through designations made at the national level by Historic England such as listed buildings, scheduled ancient monuments and historic registered parks and gardens and also those identified more locally such as conservation areas, the parks and gardens included in the Kent Gardens Compendium and locally listed buildings."</i>	Consistency with national policy - paragraph 132 and Annex 2.
MM40	Reference is made to the Local Biodiversity Action Plan priority habitats. The Action Plan is no longer updated and therefore Policy DM3 should refer to the England Biodiversity List published by the Secretary of State in accordance with section 41 of the Natural Environment and Rural Communities Act 2006.	Consistency with national policy - Annex 2.
MM40	<i>6i) For internationally designated sites (including candidate sites), the highest level of protection will apply. The council will ensure that plans and projects proceed only when in accordance with relevant Directives, Conventions and Regulations. Developments will only be permitted if it can be demonstrated that there will no adverse effect on the integrity of the European site. When the proposed development will have an adverse effect on the</i>	Legal compliance. The wording of the relevant legislation does <i>not</i> state where there are less ecological damaging alternatives – it states no alternative solutions. It may be possible that the same development could be accommodated on

Main Modification Number	Comment/ Recommended Change (highlighted in bold)	Reason
	<i>integrity of a European site, planning permission will only be granted in exceptional circumstances, where there are no less ecologically damaging alternatives, if there are no alternative solutions or there are imperative reasons of overriding public interest and damage can be fully compensated.</i>	another site without the same ecological impact.
MM40	<i>6ii) ... Where damage to a nationally designated site cannot be avoided or mitigated, compensatory measures will be sought and implemented...</i>	Consistency with national policy - paragraphs 109, 114 and 117.
MM44	There is no difference between a Local Wildlife Site and County Wildlife Site. The Policy should refer <i>only</i> to Local Wildlife Sites.	Consistency with national policy - Annex 2.
MM57	KCC Heritage Conservation supports the general principle of this policy but notes that there is no agreed method or specification for the type of heritage assessment mentioned. KCC Heritage Conservation would welcome the opportunity to engage with the Borough Council to develop an advice note to assist applicants in the heritage assessment process. KCC Heritage Conservation would not expect the process by which the loss of heritage significance is managed and recorded to be detailed in the Local Plan but note that criterion 5 does not say that the recording should be carried out by appropriately qualified professionals. This is clearly essential if the requirements of the Framework are to be met.	Consistency with national policy. Consistency with national policy - paragraphs 141 and 169.