

**BROOMFIELD AND KINGSWOOD
NEIGHBOURHOOD DEVELOPMENT PLAN**

2015 – 2031

INDEPENDENT EXAMINATION

A Report to Maidstone Borough Council

By

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March 2016

SUMMARY AND FINDINGS

1. For the reasons stated in this Report the Kingswood and Broomfield Neighbourhood Plan as submitted for Examination does not comply with the basic conditions, and in particular condition 8(2)(e) of Schedule 4 to the Town and Country Planning Act 1990 (as amended). As submitted, therefore, the Proposed Plan unfortunately does not meet the basic conditions. Further, I do not consider that the Plan is capable of remedy in its current format.
2. As a consequence I cannot recommend that the Proposed Plan is submitted to a referendum.
3. I appreciate that this will be a great disappointment to the Parish Council and all those members of the community who have put in so much hard work over the years into achieving what they consider to be appropriate framework for their neighbourhood.
4. In the circumstances the Parish Council may wish to consider another route to achieve their aims, such as to seek a Development Order, or to propose an amendment to the recently published emerging Local Plan so as to seek a re-definition of the “Countryside” in so far as the boundaries relating to the Parish are concerned.

CHAPTER 1

Introduction

Background

Neighbourhood Planning

5. Neighbourhood planning is the process introduced by Parliament as enacted by the Localism Act 2011 (“the 2011 Act”). The intellectual purpose of neighbourhood planning is to seek to enfranchise those persons living and working in a community by providing the basis by which they can play a more active role in the process of deciding the future of their neighbourhood. They are able to play a role in the establishment of general planning policies for the development and use of land in the neighbourhood, such as to be involved decisions as to the siting, design and construction of new homes and offices. The neighbourhood plan sets a vision for the future. It can be detailed, or general, depending on what local people want.¹
6. In order to ensure that the new process is workable and effective the 2011 Act introduced the requisite amendments to the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”), and the Planning and Compulsory Purchase Act 2004 (as amended) (“the 2004 Act”).² These amendments came into force on 6th April 2012 and were supplemented by detailed procedures provided for in the Neighbourhood Planning (General) Regulations 2012 (“the 2012 Regulations”).
7. The first step towards producing a neighbourhood plan is for a parish council, or other qualifying body, to define a “neighbourhood area” for which it considers that a plan should be presented, and to prepare a draft plan for that area. The local planning authority will provide assistance, where appropriate. The draft plan must meet what are referred to in the legislation as the basic conditions (“the Basic Conditions”). This means that the draft plan must in general conformity with national and other local planning policies; and it must conform to other provisions.³
8. The draft plan is made available for inspection within the area in question, and anyone can make representations.

¹ <https://www.gov.uk/neighbourhood-planning>

² The 1990 Act, ss 61E to 61P, Sch 4B (neighbourhood development orders); the 2004 Act, ss 38A to 38C (neighbourhood plans).

³ The 1990 Act, Sch 4B, para 8, applied by the 2004 Act, s 38A(3). For a detailed examination of the Basic Conditions and other statutory requirements, and see Chapter 3, below.

9. Once a draft plan has been prepared, and members of the community have had the opportunity to comment upon it, an independent examiner is appointed by the planning authority, with the consent of the qualifying body that produced the draft plan. The examiner must be someone who is independent of the qualifying body and the planning authority, has appropriate qualifications and experience, and has no interest in any land affected by the plan.⁴ The examiner then produces a report which contains one of three possible recommendations. One of these recommendations is that the draft plan should be submitted to a referendum.⁵
10. A referendum is then held on whether the draft plan should be “made”, subject to any changes recommended by the examiner and accepted by the planning authority. If more than 50% of those voting vote in favour of the plan, the planning authority must then make the plan.
11. Once it comes into force, the neighbourhood plan is part of the development plan for the area to which it relates, together with the “saved” policies of the relevant local plan, any plans for minerals and water disposal, and any saved policies of the relevant regional strategy. Thereafter it forms an integral part of the policy framework that guides the planning authority and the inspectorate in making all planning decisions in the area.

The submitted Neighbourhood Plan

12. Maidstone Borough Council (“the Borough Council”) is the local planning authority for its area for all purposes pursuant to the 1990 Act, and the 2004 Act, including the parish of Broomfield and Kingswood.
13. Broomfield and Kingswood Parish is described by the planning officer as a largely rural parish to the east of Maidstone, immediately south of the M20 motorway and east of Leeds Castle, the celebrated ancient monument. The main settlement in the parish, comprising approximately 500 dwellings, is Kingswood which is located in the south east corner, and the smaller hamlet of Broomfield is located to the north. The Parish is overwhelmingly agricultural in nature and lies between four and five miles from Maidstone.

⁴ The 1990 Act, Sch 4B, para 7(6), applied by the 2004 Act, s 38A(3).

⁵ The 1990 Act, Sch 4B, para 10(2)), applied by the 2004 Act, s 38A(3). For the appointment and role of the examiner, and the possible recommendations see paragraphs 16ff, below.

14. The parish council of Broomfield and Kingswood is a parish council within the terms of the Local Government Act 1972 (“the Parish Council”). It is a qualifying body for the purposes of the 2004 Act.⁶ The Parish Council is “...entitled to initiate a process for the purpose of requiring the local planning authority in England to make a neighbourhood development plan” for the whole or any part of its area specified in the plan.⁷ “A ‘neighbourhood development plan’ is a plan “.....which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area”.⁸
15. Following a consultation process the Borough Council on 15th October 2012 approved the application made by the Parish Council to be classified as a neighbourhood plan area. It is stated in the Record of Decision that the Parish Council was considered to be a “relevant body” for the purposes of the 2011 Act.⁹ The plan area was considered acceptable in planning terms and conforms precisely to the parish boundaries.
16. The details of the process by which the submitted neighbourhood plan (“the Proposed Plan”) came into existence, and the dates on which each stage was reached, are set out in the *Broomfield and Kingswood Consultation Statement*, published by the Parish Council in April 2015.¹⁰ The plan-making process commenced on 1st March 2012, and a neighbourhood plan steering group was established shortly thereafter. The steering group then embarked upon an extensive consultation exercise between 2012 and 2015, and a draft of the Proposed Plan was provided to Maidstone Borough Council on 6th February 2015. The *Broomfield and Kingswood Consultation Statement* provides a comprehensive guide to the process, and an outline of the hard work that has been undertaken by the community in the production of the Proposed Plan.

Role of the Independent Examiner

⁶ See s 38A(1).

⁷ The 1990 Act, s 61F(1), (2), applied by the 2004 Act, s 38C(2)(a).

⁸ By virtue of section 38A(2).

⁹ See the 1990 Act s 61G(2), inserted by 2011 Act, sch 9, para 2.

¹⁰ See Chapter 2, below.

17. The role of the independent examiner (“the Examiner”) is to conduct an independent examination of the draft plan (“the Examination”) so as to test whether or not it meets the Basic Conditions, and to ensure that it complies with the various other statutory requirements contained in the planning legislation. In essence his or her role is to assess whether the draft plan is “sound”. If in the event that the draft plan does not comply with the various statutory requirements, the Examiner then is obliged to consider whether it can be altered so that it does so comply.

18. The Examiner then produces a report, which contains one of three possible recommendations, namely, whether:

- “(a) the draft plan is to be submitted to a referendum;
- (b) the modifications specified in the report are to be made to the draft plan, and that the draft plan as modified is submitted to a referendum; or
- (c) the proposal for a plan is to be refused.”¹¹

19. The recommended modifications can only be those that the Examiner feels are necessary to ensure that the draft plan complies with the Basic Conditions and the other relevant statutory requirements, or are needed for the purpose of correcting errors. The planning authority then decides whether it is willing to make any or all of those changes. If the changes are substantial, then they may have to be the subject of a further round of consultation.

20. The Basic Conditions¹² may be summarised as follows - namely whether the draft plan:

- (a) has proper regard to national policy and guidance;
- (b) contributes to the achievement of sustainable development;
- (c) is in general conformity with the strategic policies of the development plan for the area or any part of that area; and

¹¹ 1990 Act, Sch 4B, para 10(2), applied by the 2004 Act, s 38A(3).

¹² For a detailed analysis of the Basic Conditions, see Chapter 3, below.

(d) does not breach or is otherwise compatible with EU obligations, including the Strategic Environmental Assessment Directive 2001/42/EC and Habitats Directive 92/43/EEC

21. The further requirements of the Examiner, as defined in the 2012 Regulations, include considering whether the draft plan complies with the definition of a Neighbourhood Development Plan, and the provisions that can be made by a Neighbourhood Development Plan; and whether the draft plan is compatible with the European Convention on Human Rights. The Examiner may also make recommendations on whether the Neighbourhood Plan Area for referendum should extend beyond the Neighbourhood Plan boundaries.

Appointment of the Independent Examiner

My appointment

22. I have been appointed by the Borough Council to conduct the Examination of the Proposed Plan. I am independent of the Parish Council and the Borough Council. I have no interest in any land affected by the Proposed Plan.

23. I am an Associate Member of Francis Taylor Building having joined Chambers in October 2013 as a Legal Adviser, Mediator and Arbitrator. Prior to that until September 2003 I was in practice as a Chancery Barrister in Chambers in Lincoln's Inn until September 2003, when I was appointed to the salaried full-time judicial role as the Adjudicator to HM Land Registry. In October 2014 I retired from that position and joined FTB since when I have specialised in planning and related property issues. To that end I have been appointed to the Panel of NPIERS as an Examiner. I am also qualified to sit as a non-statutory Inspector and I have been retained in that role on a number of town and village green inquiries.

CHAPTER 2

The Process of the Examination

24. For the purposes of the Examination I have been supplied with the following documents:

- (1) the *Broomfield and Kingswood Submission Neighbourhood Plan, October 2015-2031*;
- (2) the *Broomfield and Kingswood Consultation Statement, April 2015*;
- (3) the *Basic Conditions Statement, February 2015*; and
- (4) the *Appraisal of Site Development Options, October 2013*.¹³

25. I have also been supplied with (or referred to) a number of other relevant documents, including the following:

- (1) the relevant policies of the *Maidstone Borough-wide Local Plan 2000* produced by the Borough Council (“the Local Plan”) saved in 2007;
- (2) the Local Development Scheme. This came into effect on 9th December 2015;
- (3) the recently published emerging consultation draft *Maidstone Borough Local Plan Publication (Regulation 19) 2016 to 2031* (“the Emerging Local Plan”);¹⁴
- (4) the *SEA and Habitat Regulation Assessment Screening Report* produced by Maidstone Borough Council in October 2015. The screening opinion concludes that SEA and HRA is not required for the Proposed Plan, i.e. a full assessment is unnecessary¹⁵;

¹³ For the purposes of this Examination I am satisfied that the *Broomfield and Kingswood Consultation Statement*, the *Basic Conditions Statement*, and the *Appraisal of Site Development Options* are all compliant with the legislative requirements in their documentary format, but subject to compliance with the overarching requirements of the Basic Conditions, see Chapter 3, below

¹⁴ This was produced after the submission of the Proposed Plan in February 2016. The consultation commenced on 5th February 2016 and is due to close on 18th March 2016. It is anticipated that the Emerging Local Plan will be adopted in Spring 2017. A number of the Local Plan saved Policies relevant to the Proposed Plan, and referred to below, will be superseded by the Emerging Local Plan Policies.

¹⁵ See paragraph 70 (b), below.

(5) the representations received by the Borough Council in response to the consultant carried out under regulation 16;¹⁶

The development plan

26. In this Examination, the development plan for the area of Broomfield and Kingswood consists principally of the saved policies of the adopted Local Plan, together with the proposed policies of the Emerging Local Plan which will eventually supersede those existing saved policies. In carrying out the Examination of the draft plan, the Examiner is required to consider the Basic Conditions and in particular, *inter alia*, whether it is in general conformity with the strategic policies contained in the development plan for the area (Basic Condition (e)).

The Emerging Local Plan

27. In February 2016 the Emerging Local Plan was produced by the Borough Council. It therefore was not available during the period when the Proposed Plan was put out for consultation. The current time-scale for its adoption is Spring 2017. Meanwhile the saved parts of the Local Plan will still govern planning decisions; and the Proposed Plan will still have to be “in general conformity with” its strategic policies.

28. As it is put by the Borough Council in the Emerging Local Plan (Chapter 2 - “Key Influences”)

“The Development Plan, which comprises adopted local plans and adopted neighbourhood development plans, is central to the planning system and is needed to guide the decision making process for land uses and development proposals. The Maidstone Borough Local Plan will supersede a number of adopted local plan policies, which are listed in Appendix C. Neighbourhood development plans, which are also called neighbourhood plans, are being prepared by a number of parish councils and neighbourhood forums. A neighbourhood plan attains the same legal status as the local plan once it has been agreed at a referendum and is made (brought into legal force) by the Borough Council. At this point it becomes part of the statutory development plan. Government advises that a neighbourhood plan should support the strategic development needs set out in the local plan and plan positively to support local development. Neighbourhood plans must be prepared in accordance with the

¹⁶ As set out in the spreadsheet generated by the Borough Council

National Planning Policy Framework and be in general conformity with the strategic policies of the adopted Maidstone Borough Local Plan. Whilst general conformity to an emerging local plan is not a legal requirement, the reasoning and evidence informing the local plan process may be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested. Where neighbourhood planning has been undertaken before an up-to-date local plan is in place, the council has taken an active role in advising and supporting the local neighbourhood plan team, sharing evidence and information.”

29. This enforces the position that a local plan may post-date a neighbourhood plan; and also, that it must “reflect” the priorities contained in any relevant neighbourhood plan, and not repeat the non-strategic policies contained within it.

CHAPTER 3

The Basic Conditions – Overview

The legal requirement

30. In this Chapter the Basic Conditions are analysed. The requirement made in paragraph 8(1)(a) of Schedule 4B to the 1990 Act is for the Examiner to consider whether the Proposed Plan for Broomfield and Kingswood meets the Basic Conditions.¹⁷ Thereafter in this Report consideration is then directed as to whether the Proposed Plan meets the Basic Conditions.

31. The 2012 Regulations provide that the submission of a proposed neighbourhood plan by a qualifying body to a planning authority must be accompanied by a statement explaining how the plan meets the Basic Conditions, together with other statutory requirements.¹⁸ In the case of the Proposed Plan, a document entitled the *Basic Conditions Statement* dated February 2015 has been produced to accompany it. It provides summary of the measures that have been taken in this case to ensure that the Plan does meet the Basic Conditions.

The Basic Conditions

32. Paragraph 8(2) of Schedule 4B to the 1990 Act provides that a neighbourhood development plan meets the Basic Conditions if:

- “(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make [the plan],
- (b).....
- (c).....
- (d) the making of [the plan] contributes to the achievement of sustainable development,
- (e) the making of [the plan] is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),
- (f) the making of [the plan] does not breach, and is otherwise compatible with, EU obligations, and

¹⁷ The 1990 Act, Sch 4B, para 8(1), applied by the 2004 Act, ss 38A(3), 38C(5)(b), (c). Sub-para 8(1)(c) does not apply to neighbourhood development plans.

¹⁸ The 2012 Regulations, Reg 15(1)(d); see below.

(g) prescribed conditions are met in relation to [the plan] and prescribed matters have been complied with in connection with the proposal for [the plan].”¹⁹

33. Basic Conditions (b) and (c), relating to the built heritage, apply to the examination of proposed neighbourhood development orders, but not to that of neighbourhood plans.

34. Only one further Basic Condition has been prescribed under paragraph 8(2)(g), as follows:

“The making of the neighbourhood development plan is not likely to have a significant effect on a European site ... or a European offshore marine site ... (either alone or in combination with other plans or projects).”²⁰

35. Further, a draft plan must meet all of the Basic Conditions specified in paragraph 8(2), if it is to be submitted to a referendum, not just some of them.

National policies and advice: the National Planning Policy Framework

36. In carrying out the Examination of a draft plan, and deciding whether to recommend that it should be submitted to a referendum, the Examiner is required to have regard to national policies and advice contained in guidance issued by the Secretary of State (see Basic Condition (a)).

37. The most significant national policies relevant to planning matters are set out in the *National Planning Policy Framework* (“the NPPF”). This was issued in March 2012. It replaced almost all of the Planning Policy Guidance notes and Planning Policy Statements (PPGs and PPSs) that were extant at that time.

38. The Government’s understanding of neighbourhood plan-making is summarised at paragraphs 15 and 16 of the NPPF, as follows:

¹⁹ 1990 Act, Sch 4B, para 8(2), applied by the 2004 Act, ss 38A(3), 38C(5)(d).

²⁰ 2012 Regulations, Sch 2, para 1.

“15. ... All plans should be based upon and reflect the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally.

16. The application of the presumption will have implications for how communities engage in neighbourhood planning. Critically, it will mean that neighbourhoods should:

- develop plans that support the strategic development needs set out in Local Plans, including policies for housing and economic development;
- plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan”

39. The core principles that should underpin all planning are then summarised at paragraph 17, and elaborated in relation to specific topics in the remainder of the NPPF. That paragraph provides as follows:

“17. Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking. These 12 principles are that planning should:

- be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency; ...”

40. The principal policies of the NPPF specifically relating to neighbourhood planning are as follows:

“183. Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. Parishes and neighbourhood forums can use neighbourhood planning to:

- set planning policies through neighbourhood plans to determine decisions on planning applications; and
- grant planning permission through Neighbourhood Development Orders and Community Right to Build Orders for specific development which complies with the order.

184. Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development

for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies.

185. Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area. Once a neighbourhood plan has demonstrated its general conformity with the strategic policies of the Local Plan and is brought into force, the policies it contains take precedence over existing non-strategic policies in the Local Plan for that neighbourhood, where they are in conflict. ...”

41. Other policies directly relating to the making of neighbourhood plans are in paragraphs 28, 56-58, 69-70, 76-77, 97, 109-111, and 117.
42. More general policies relating to “plan making” are found throughout the NPPF, but they generally refer to the making of local plans. For example, paragraphs 47 and 158-159 contain important policies regarding the need to ensure an adequate supply of housing; but these specifically refer to action by local planning authorities. Nevertheless, since neighbourhood plans are to be in general conformity with strategic policies in local plans, those policies in the NPPF relating to local plans will still be indirectly relevant.
43. More generally, the NPPF sets out a whole suite of policies relating to a wide range of issues, including in particular transport, housing, design, climate change, the natural environment, and the historic environment. It is necessary for the Examiner to have regard to these where appropriate in carrying out the Examination.

Planning Practice Guidance

44. More detailed guidance and advice, expanding on the general policies in the NPPF, has been available since March 2014 on the Planning Portal website, as *Planning*

Practice Guidance (“PPG”).²¹ This guidance relates to a whole range of planning issues.

45. In particular, the PPG contains the following guidance:

“How should the policies in a neighbourhood plan be drafted?”

A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.”²²

46. A policy that is not “clear and unambiguous” is thus not in accordance with the Basic Conditions.

47. The requirement that a policy should be distinct, reflecting local circumstances, is less straightforward. Many policies in proposed neighbourhood plans are to a greater or lesser extent generic policies that could apply to many if not all locations. However, the fact that a particular community has chosen to include a particular generalised policy in its plan reflects its awareness that the issue in question is of special relevance in its circumstances. The inclusion of such general policies thus does not of itself mean that those policies, or the plan as a whole, is not in accordance with the basic conditions.

Other national policies and advice

48. The reference in the first basic condition to national policies and advice is not limited to the guidance in the NPPF and the PPG. Historically, a plethora of Circulars, practice guidance notes and other such documents were in existence at an earlier stage. Fortunately, most of these were cancelled when the NPPF was produced in 2012. Those that survived, and in particular the 2007 practice guidance on *Strategic Housing Market Assessments* and *Strategic Housing Land Availability Assessments*, were cancelled in March 2014.

²¹ <http://planningguidance.planningportal.gov.uk/blog/guidance/>

²² PPG, ref ID: 41-041-20140306.

49. For the purposes of this Examination the assumption has been that the relevant national policies and advice are those that are now exclusively contained in the NPPF and the PPG.

Sustainable development

50. In carrying out an examination of a draft plan, The Examiner is also required to consider whether the making of it would contribute to the achievement of sustainable development (Basic Condition (d)).

51. Paragraph 6 of the NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Reference is then made to paragraphs 18 to 219 as constituting the Government's view of what sustainable development in England means for the planning system. It is then stated in the following paragraph:

“7. There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

- **an economic role** – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
- **a social role** – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and
- **an environmental role** – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy. “

52. The NPPF then explains that there is a presumption in favour of sustainable development:

“14. At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking.

For **plan-making** this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.”

53. In paragraphs 15 and 16 specific reference is made to neighbourhood plans.

54. None of those who submitted written representations has referred to any other definition of sustainable development, or any other documents relating to it, that should be taken into account in this Examination of the Proposed Plan.

EU obligations

55. In carrying out the examination of a draft plan, the Examiner is also required to consider specifically whether the draft plan is likely to have a significant effect on

- (1) a European site (as defined in the Conservation of Habitats and Species Regulations 2010), or
- (2) a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007),

either alone or in combination with other plans or projects (additional basic condition (g)).²³

²³ 2012 Regulations, Reg 32; Sch 2, para 1.

56. More generally, the Examiner is required to consider whether the making of the draft plan is in general conformity with “EU obligations” (Basic Condition (f)).

57. The principal relevant EU obligation is under the EC directive on the assessment of the effects of certain plans and programmes on the environment (strategic environmental assessment, or SEA) (Directive 2001/42/EC). That requires, where plans and programmes are likely to have significant effects on the environment, that an environmental assessment be carried out at the time they are prepared and before they are adopted.

58. It is not considered that any of the policies in the Proposed Plan are likely to have significant effects on the environment, such that an SEA needs to be prepared.²⁴

59. The second EU obligation is that:

“any plan or project not directly connected with or necessary to the management of [a European site] but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s nature conservation objectives.”²⁵

This reflects the more specific requirement of Basic Condition (g), (see above).

60. The Examiner is not aware that any of the policies in the Proposed Plan are likely to have a significant effect on any European site.

61. None of those who submitted written representations has drawn attention to any other relevant EU obligation that the Examiner should take into account in my examination of the Proposed Plan. In particular, other potentially relevant EU obligations might arise under the Waste Framework Directive, the Air Quality Directive, or the Water Framework Directive. However, none of those would seem to be relevant in this case.

²⁴ See paragraph 25(4), above.

²⁵ Habitats Directive 92/43/EEC, article 6(3).

CHAPTER 4

The Broomfield and Kingswood Neighbourhood Plan

The Neighbourhood Plan Submission

62. In October 2015 the Parish Council submitted their draft plan. The background history to this was that shortly after the 2011 Act came into force the Parish Council decided to seek the views of the parishioners with regard to the consideration and production of a neighbourhood plan, the essential feature of which is to create a village green (“the Village Green”) surrounding which there will be the provision of 20 residential units, 8 of which will be affordable homes. The Forward to the Proposed Plan sets out the historical circumstances as to the meetings and the subsequent presentations that took place with this aim in mind.²⁶

The Neighbourhood Plan

63. The Neighbourhood Plan contains 6 sections, as follows:-

- Introduction;
- Background;
- Visual Statement;
- Aims and Objectives;
- Constraints and Opportunities;
- Neighbourhood Plan Policies and
- Delivery

Policy Proposal

64. The Policy Proposal is:-

“Policy VG1: Kingswood Village Green and the provision of new housing” and seeks that “permission will be granted for a Village Green and 20 new dwellings of land enclosed by Gravelly Bottom Road, Duck Pond Land and Chartway Street. The Village Green will be publicly available, and of at least 1 acre in size. It is proposed that there should be 12 “market houses” together with 8

²⁶ See paragraph 16, above.

“affordable houses suitable to meet the needs of the local community of Broomfield and Kingswood.”

The housing proposed lies immediately south of Kingswood Village, and is outside the village boundary. The affordable housing proposed is 40% of a total and is for local community needs.

65. In *Section 3 – Vision Statement Aims and Objectives* - the basis is what is proposed by the Parish Council is set out, namely to create the Village Green in Kingswood. The purpose of this will be to create a focal point for village life, and an open space for leisure and limited recreational use, and for somewhere for people to meet. It be connected to the existing village hall. At the same time the expressed purpose is to limit new residential development over and above that which is necessary to enable the provision of the proposed Village Green. A minimum of one hectare of land has been identified for the new Village Green and the construction of up to 20 new dwellings. It is also specified that the developer of the housing scheme to be established shall meet the Local Plan requirement for affordable homes, which wherever possible should in the first instance be offered to those in need within the Parish. Other objectives are set out in *Section 3*, such as to ensure that there are proper traffic management measures put in place, and that the remainder of the open space countryside woodland and landscape, will be safeguarded.

66. In *Section 4 - Constraints and Opportunities* –it is stated that the Proposed Plan is a response to local people’s desire to establish the Village Green in Kingswood and to create a new heart for Kingswood Village, and a focal point (paragraph 25). In paragraph 27 it is stated that this will provide a valuable resource for Kingswood Village in creating a new focus for local people. In paragraph 32 it is acknowledged that there is no strategic need to provide new housing in Kingswood as most of the housing identified in the Emerging Local Plan is to be focussed within adjoining the urban area of Maidstone, with further housing allocated in a number of other villages. The proposed allocation of 20 new dwellings includes the provision of eight new affordable homes which represents 40% of the total homes constructed.

67. *Policy VGI – Kingswood Village Green and Provision of New Housing* - provides as follows: -

“Village Green and Enabling Development. Permission will be granted for a Village Green and 20 new dwellings on land enclosed by Gravelly Bottom Road, Duck Pond Land and Chartway Street as identified on the site allocation plan [Figure 1].

The proposal must be based on a masterplan indicating how the whole of the site is to be used. This shall be in accordance with the Diagram (Fig. 2).

The proposal will include:

- (a) A Village Green which will be publicly available, landscaped area of at least 1 hectare. The Village Green must be arranged in accordance with the Diagram (Figure 2) and shall include a children’s play area.
- (b) 12 market houses which shall comprise a range of types and costs/values rather than being limited to only top-end executive dwellings.
- (c) 8 affordable homes suitable to meet the needs of the local community of Broomfield and Kingswood.
- (d) Structural landscaping proposals as shown in the Diagram.
- (e) Access and parking arrangements.

The proposal may also include a mixed-use community building (use Class D, Use Class Order 1987 as amended) as part of the mix of uses, in the area identified within the Diagram.

The proposal must demonstrate that the development will deliver a good quality public space and arrangements to ensure how it will be maintained in the long term.

Design

The detailed proposals shall be in accordance with:

- (a) Building for Life 12;
- (b) Secured by Design;
- (c) Kent Design Guide guidance for villages.

and shall be subject to Design Review by a Design Review Panel set up by the Parish Council.

Transport

The proposal must provide the following on site:

- (a) Traffic calming measures to help minimise vehicle speeds for traffic entering from Gravelly Bottom Road and within the site;
- (b) Provide a single point of vehicular access to Gravelly Bottom Road, as shown in Figure 2;
- (c) A footpath shall link to Gravelly Bottom Road within the site to the South of the landscape strip;
- (d) The carriageway width should be 4.8 metres with 1.8 metre wide footpaths.”

The position of the Borough Council

68. On 1st December 2015 the Strategic Planning, Sustainability and Transportation Committee of the Borough Council made a final decision on the recommendations contained in the Officer’s Report presented to the Committee. The decision made was that the Borough Council’s consultation responses to the Proposed Plan, as presented in the Report to the Committee, be agreed and used as the basis for Council’s formal representations in accordance with Regulation 16 of the 2012 Regulations. The expressed position of the Borough Council was that the Proposed Plan:-

- (1) Is in general conformity with the strategic policies of the adopted Maidstone Borough-wide Local Plan, except with regard to the allocation of a significant development proposal of 20 units outside the village boundary of Kingswood;
- (2) Has been assessed, at this stage, not to require Strategic Environmental Assessment or Habitats Regulations Assessment;
- (3) Is in general conformity with the adopted policies of the Local Plan 2000, apart from a number of specific policies of the Local Plan as thereafter set out.

69. It was therefore necessary for the Borough Council to make an assessment of these specific policies that to which reference has been made and whether the Proposed Plan met the Basic Conditions, and other legislative requirements to which reference has been made above.

Planning Policies

Local Plan Policy ENV 28²⁷ – Development in the Countryside: NP Policy VGI Village Green and Enabling Development

70. The Local Plan contains a number of saved provisions. One of these is Policy ENV 28²⁸. This forms part of the section entitled “Countryside” in the Environment Chapter. Paragraph 3.87 refers to the Urban and Village Development Boundaries shown on the Proposals Map which identify the built-up extent of urban Maidstone and the larger villages in the Borough. The “Countryside” is defined as all those parts of the Plan area which are not within the development boundaries. Reference in paragraph 3.88 is made to PPG 7 which is the Government advice dealing with “Countryside-Environmental Quality and Economic Development”. The thrust of the paragraphs is to reserve and conserve the character of the Countryside, as defined.
71. Policy ENV 28 provides as follows:- “In the Countryside planning permission will not be given for development which harms the character and appearance of the area or the amenities of surrounding occupiers ...” and development will be confined to the five points set out. Paragraph (3) limits development to “Open Air Recreation and Ancillary Buildings providing operational uses only”, and paragraph (5) refers to “such other exceptions as indicated by policies elsewhere in this Plan”. It is also specified that proposals should include measures for Habitat restoration and creation to ensure that there is no net loss of wildlife resources.
72. The Borough Council makes reference to the fact that the Proposed Plan allocates a site which includes 20 dwellings in the Countryside. This means that the village envelope would necessarily extend beyond the settlement boundary defined on the Local Plan Proposals Map in order to accommodate those new proposals for the village. It is stated that this”is not in general conformity with this adopted

²⁷ To be superseded by Policy SP17 of the Emerging Local Plan.

²⁸ Ibid.

Local Plan Policy as a proposal for Market Housing Development encroaches into the Countryside.”

73. The Borough Council further states that there is no evidence base which justifies this development in the location proposed. There is passing reference in the Proposed Plan to a mixed-use community building, but such community benefits may not be achieved.

Local Plan Policy H1²⁹ – Housing Land Allocations

74. Saved Policy H1 under the heading “Housing Land Allocations” refers to 24 sites as defined on the Proposals Map as being allocated for housing development. None of those sites is located in the Proposed Plan Area. However, the Proposed Plan allocates a site for 20 dwellings, and therefore is not in conformity with this adopted Local Plan Policy as it is outside those allocated sites. Further the Borough Council refers to the proposal to construct 20 dwellings as being “substantial” i.e. more than 10 units.

Local Plan Policy H27³⁰ – Rural Settlements (minor developments)

75. Further, under the heading “Rural Settlements” of the Local Plan paragraph 4.175 makes reference to the 1996 Kent Structure Plan which continues previous policies of concentrating new development in or adjoining towns and restricting the outward spread of most villages. Three types of rural settlement are identified in the Structure Plan, the first of these as contained in (i) “Settlements where new residential development will be restricted to minor development (Structure Plan Policy RS2).” Policy H27 provides that within the boundaries of certain specified villages as listed and found on the Proposals Map, new residential development will be restricted to “minor development”. One such village is the village of

²⁹ To be superseded by Policy H1 of the Emerging Local Plan.

³⁰ To be superseded by Policies SS1; SP5; and SP11 of the Emerging Local Plan.

Kingswood. The definition of “minor development” is to be found in paragraph 4.176. This provides as follows:-

“Minor development will include infilling which the completion of an otherwise substantial built-up frontage by the filling of a narrow gap capable usually of taking one or two dwellings only. Otherwise the Borough Council’s interpretation of what constitutes minor development will be considered in each case in the context of the settlement concerned advised in the Kent Structure Plan.”

Local Plan Policy T21³¹ – Accessibility of new development

Local Plan Policy T23³² – Need for Highway – Public Transport

76. In so far as Policy T21 is concerned there is a single point of access to the proposed site and a footpath linking Gravelly Bottom Road, within the site to the landscape strip to the south, as stated in NP Policy VG1 – Transport (a) – (c). There is no available evidence that the current proposals are acceptable to the Local Highway Authority. However Highways England did confirm in a letter from Mr Kevin Bown that they had no comments to make on the Proposed Plan.

Adopted open space DPD Policy OS1³³

77. The allocated site for housing development contained in NP Policy VG1 VG provides for a Village Green of 1 hectare of public open space, to include a children’s play area. The proposal is that the Village Green will serve 20 dwellings, and as such sufficiently meets the adopted standard of open space for a development of this size. Paragraph 1.14 of the Open Space Development Plan document makes reference to PPG 17 which requires Local Authority’s to assess the level of provision of open space within its boundary. Policy OS1 provides as follows: -

³¹ To be superseded by Policy DM24 of the Emerging Local Plan.

³² To be superseded by Policies DM24, and ID1 of the Emerging Local Plan.

³³ To be superseded by Policies DM22, and OS1 of the Emerging Local Plan.

“On all residential developments of 10 dwellings or more there will be a requirement for open space provision in accordance with standards specified in the Appendix to this Policy.”

Thus the proposal clearly meets the adopted standards of open space for a development of this size and clearly falls within one or more of the 8 categories of open space referred to in the Green Spaces Strategy in paragraphs 1.14 and 1.15 of OS1. The Borough Council suggests that the insertion of the word “equip” before the words “children’s play area” will ensure conformity with the policy.

Adopted Affordable Housing DPD Policy AH1³⁴

78. NP Policy VG1 currently allocates a proposed site of 20 residential units, 8 of which are for affordable homes to meet the needs of the local community of Broomfield and Kingswood. This policy provides that on housing sites or mixed-use development sites of 15 units or more, or 0.5 hectare or greater the Council will seek to negotiate that a minimum of 40% of the total number of dwellings to be provided will be affordable housing to meet the identified housing need, unless the Council is satisfied of the exceptional circumstances that can demonstrate that any lesser proportion can be provided. Thus, it is apparent that the proposal is in conformity with DPD Policy AH1, although as the Borough Council states the actual wording needs to be checked with the Housing Service of the Borough Council to assess the appropriateness of the proposal.

79. The Borough Council then refers to other saved Local Plan Policies where the Proposed Plan is either consistent with, or reliant upon existing policy. These are:-

- (1) Policies ENV 22, 23, 24, 27, 32, 34, 41 and 44.
- (2) Policies ED1, and 2
- (3) Policies T17, and 18
- (4) Policy R11
- (5) Policies CF1, 2, 3 and 8

³⁴ To be superseded by Policy DM13 of the Emerging Local Plan.

CHAPTER 5

Conclusions

80. Having regard to the Basic Conditions, and in particular to Condition (e) , the terms of the NPPF, the saved policies of the Local Plan, and the proposed policies of the Emerging Local Plan (to which reference has been made above), the Proposed Plan does not comply with the legislative requirements in certain important respects, for the following reasons:-

- (1) Although the Proposed Plan does conform with a number of Policies (as referred to above), the position of the Borough Council is that the Neighbourhood Plan is not in general conformity with the adopted Local Plan Policy ENV28 as it allocates a site for the construction of 20 residential units outside the village boundary of Kingswood. In other words the area of the proposed development extends beyond the settlement boundary, as defined in the Proposals Map, and encroaches into the Countryside.
- (2) Further, the proposed housing development is more than ten units, means that it is classified as “substantial” for the purposes of Policy H1, and is more than “minor development” for the purposes of Policy H27. It is therefore not in conformity with the spatial objectives set down by the policies of the Local Plan, and the Emerging Local Plan.
- (3) Further, the Parish Council has provided no evidence base justifying the scale of development in this location on the basis of community engagement, or sustainable development.
- (4) The Borough Council makes the point that although reference is made in Policy VG1 in the Proposed Plan to the possibility that a mixed-use building might be provided, this is in effect only tentative, and not included in the actual proposal. Even if it were possible to justify the proposal by the inclusion of a mixed-used community building under either (3) or (4) of Policy ENV 28, there is a fundamental difficulty

with that approach. There is already a village hall in existence, as referred to in paragraph 22 of the Proposed Plan.

(5) The fact that the proposed housing development extends beyond the settlement boundary and encroaches into the Countryside, is “substantial”, and cannot be classified as “minor development” is, in my judgment, fatal to the Proposed Plan. There would appear to be no basis for any amendment of the proposal to avoid that fatality as the proposal in its current form is incapable of modification.

81. In essence unless and until the Borough Council considers the extension of the allocation of further development for housing in Broomfield and Kingswood so as to take account of a proposal such as that put forward by the Parish Council, then the Proposed Plan fails to meet the Basic Conditions, and in particular condition (e).

Edward F Cousins

1st March 2016