TOM TUGENDHAT MBE MP

HOUSE OF COMMONS
LONDON SW1A 0AA

15 September 2020

Holly Dutton
The Planning Inspectorate
Room 3/J, Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Ms Dutton,

We write in our capacities as Members of Parliament for Tonbridge and Malling and Chatham and Aylesford respectively, with regard to the Development Site at Land West of Winterfield Lane, East Malling, West Malling, Kent, application reference APP/H2265/W/20/3256877. This follows the decision of Tonbridge and Malling Borough Council (TMBC) to reject planning permission for application TM/19/01814/OA for the erection of up to 250 new homes, a new community building, provision of a new country park and other areas of public open spaces, areas of play, upgrade of existing footpaths, together with new vehicular access onto London Road and associated parking and landscaping.

Though the application site is in East Malling, within Tonbridge and Malling constituency, the site borders Larkfield which falls within Chatham and Aylesford constituency, which is why we both write jointly. The application site also borders the neighbouring parishes of Leybourne and West Malling. As a consequence, the future of this land, known locally as 'Forty Acre Field', and the result of this appeal is of great interest to a number of residents across East Malling, Larkfield, Leybourne, West Malling and beyond.

As you will be aware on 20 August 2020 elected Tonbridge and Malling Borough Councillors on its Area 3 Planning Committee came to the unanimous view that planning permission should be rejected. This vote was agreed by all members of the committee, irrespective of their political party or the ward they represented. The reasons for rejecting this application, which were put forward by Conservative Councillor for Aylesford North and Walderslade, Des Keers, were as follows:

The site is located within the designated countryside, beyond any defined settlement confines, where development is restricted to specified categories, none of which apply in the case of the development proposed by this application. Furthermore, the development of the site would diminish the separation between existing established settlements which would cause unacceptable coalescence. The proposal is therefore contrary to adopted development plan policies CP6, CP11 and CP14 and there are no material considerations to indicate a divergence from the restrictions set out in these policies.

The proposal includes substantial built development on the south side of the A20 where currently panoramic views over open countryside prevail. As a result, development at this

quantum and in this location would be to the detriment of the character and appearance of the immediate locality contrary to policy CP24 of the TMBC and policy SQ1 of the MDE DPD.

The site is classified as Grade 2 agricultural land which would be lost as a consequence of the proposed development. As such, the scheme does not recognise the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land and is therefore contrary to the requirements of paragraph 170 (c) of the National Planning Policy Framework 2019. The loss of this agricultural land would amount to a substantial adverse impact that would not be outweighed by the benefits of the proposal even in the absence of a deliverable five year housing land supply.

There is a strong likelihood that the proposed development would substantially and unacceptably prejudice one of the Council's key forthcoming strategic objectives, as set out in the draft Local Plan, insofar as it relates to the proposed Green Belt extension. The emerging plan is at an advanced stage of preparation, with dates set for its examination. The scheme is therefore considered to be premature for the purposes of applying paragraphs 49 and 50 of the National Planning Policy Framework 2019.

As Members of Parliament, we do not have the ability to determine individual planning applications as Borough Councillors do. Parliament has devolved the determination of planning applications to the Borough Council, in its capacity as Local Planning Authority, to take on the basis of their local knowledge. Throughout the course of this application there have been hundreds of objections presented by local residents, Parish Councils and amenity groups, and we know that many are extremely pleased with the decision that Tonbridge and Malling Borough Councillors took in response to this application.

However, since the Planning Inspectorate is accountable to the Ministry for Housing, Communities and Local Government, it is only right that we express clearly the views that hundreds of local residents have been sharing with us over the past few months. Indeed, it has been nearly a year since TMBC received this planning application and the uncertainty and worry which many neighbours have felt during this time has been concerning.

The comments we have received regarding this application have almost been unanimous in its condemnation of the need for development here. Many residents have noted how Forty Acre Field marks a clear boundary between the communities of East Malling, Larkfield, Leybourne and West Malling. As noted in the reasons for refusal which have been pursued by TMBC, this site lies beyond any defined settlement confines and is subsequently contrary to the policies of the adopted development plan.

In addition, many of the representations we have received focus on the loss of amenity should development occur on the south side of the A20 London Road here, including the loss of currently panoramic views over open countryside. Again, this is covered by policy SQ1 of the Managing Development in the Environment Development Plan Document, and cited in the reasons for refusal.

As development around and along the A20 has increased over recent years the loss of agricultural land has been noted. Indeed, thanks to the success of East Malling Research at the other side of the village the area is well known, both at home and abroad, for the success which the area has for rural industries. Forty Acre Field itself falls on Grade 2 agricultural land and is beautiful in its character. The number of residents who have confirmed how they make best use of the land for walks, rides, and fresh air has been exceptional. You will note that the reasons for refusal reference paragraph 170C of the National Planning Policy Framework as development here cannot replace the value of the agricultural land which will be lost.

Finally, the comments from local residents have focused on the site allocation in both the Tonbridge and Malling Core Strategy, and also the draft Tonbridge and Malling Borough Council Local Plan, which has been with the Planning Inspectorate for examination for nearly two years, and has yet to have its first hearing in public. Forty Acre Field was not put forward for development in the draft Local Plan and has not been allocated for development in any previous development plan. In fact, the draft Local Plan seeks to extend the greenbelt boundary to include Forty Acre Field within it.

Your Chief Executive will be aware from our letter of 19 August 2020 that the delays in hearing the Tonbridge and Malling Borough Council Local Plan fall with the Planning Inspectorate. TMBC did what the Government required of Local Authorities by presenting a Local Plan on time, and therefore when planning applications come forward for sites which are not included within this, it is no surprise that they seek to reject them.

For the reasons set out above, which have been expressed to us by local residents, it is clear that there is widespread support for the position which TMBC have taken in rejecting this planning application. We trust that the Planning Inspectorate will take seriously the strong views of hundreds of residents, Parish Councils and amenity groups in assessing the appeal which has been submitted by Wates Developments.

Finally, we have enclosed with this letter a copy of a letter sent by David Brocklebank, Executive Managing Director for Wates Developments Ltd, which was sent to Julie Beilby, Chief Executive at TMBC on 19 August 2020, ahead of its Area 3 Planning Committee meeting to determine the planning application in question. You will see from the letter that Wates Developments includes a reference to an appeal decision in Tandridge District Council which is of no relevance whatsoever to the status of Forty Acre Field, and should not be used to threaten local councillors ahead of them exercising their judgement on behalf of the communities which they have been elected to represent.

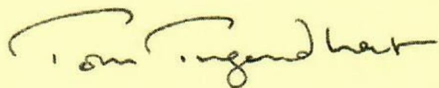
Furthermore, we are highly concerned that the tone of the letter, including the unnecessary referral to a costs award of £250,000, does not demonstrate that Wates Developments are interested in the wider good of the communities of East Malling, Larkfield, Leybourne and West Malling. In our experience of planning applications across both Chatham and Aylesford and Tonbridge and Malling, it is rare that a developer will consider it appropriate to send such a letter in advance of its decision.

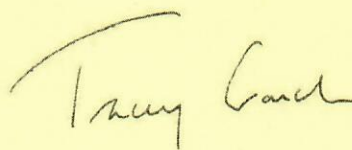
Therefore we would be grateful for your assurance that the Planning Inspectorate will pay full consideration towards the views of local residents, Parish Councils, amenity groups and of

course TMBC, and not seek to be swayed by threats from Wates Developments when coming to its decision on this application.

We trust that a fair hearing can happen and look forward to this taking place later this year.

Best wishes,





TOM TUGENDHAT
Member of Parliament for
Tonbridge and Malling

TRACEY CROUCH
Member of Parliament for
Chatham and Aylesford

19th August 2020

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T: 01372 861000

Julie Beilby
Chief Executive
Tonbridge & Malling Borough Council
Gibson Building
Gibson Drive
Kings Hill
West Malling
Kent ME19 4LZ

Dear Julie,

RE: Area Committee 3 - Wates Application for Land West of Winterfield Lane

I hope you are well.

I am writing this letter in advance of the meeting of the Area Planning Committee to be held tomorrow evening and in the knowledge that our appeal against the Council's non-determination of the above application is now set to be heard later this year. You may be aware that we have also submitted a duplicate planning application for this scheme that has now been registered by the Council.

The meeting follows the Council's Constitution being invoked by your legal representative, Kevin Toogood. Mr Toogood cited in his professional opinion over the unreasonable behaviour of the Planning Committee in opposing your Officers' professional judgement in recommending approval for the Application. The Application was positively supported by Officers following extensive engagement with all statutory stakeholders, none of whom raised any objections to the scheme.

Despite repeated efforts by Officers to convince members that the proposed reasons for refusal would not be defensible, it appeared that some members were determined to refuse the Application at all costs. The recommendation at the Committee tomorrow remains in favour of the proposals with Officers continuing to set out that planning permission should be granted for this development, noting significant housing need and benefits.

We appreciate that Councillors are fully able to exercise their democratic powers and understand that there is significant local opposition to this positive recommendation. However, strong local feelings are of course not a valid material consideration to support a

Wates

refusal. Valid and lawful planning reasons must be set out in order for the Council to not be considered to have acted unreasonably at the forthcoming appeal.

Prior to tomorrow's meeting, I felt that it might assist to set out one of our own recent and very similar examples on a site in Tandridge that might assist your own internal discussions on this case. I enclose the Decision Notice for your information. In this example, Officers similarly did not consider the appeal defensible and decided to withdraw all reasons for refusal (highways and amenity) before the Inquiry commenced. This ultimately led to the Planning Inspectorate both allowing the appeal with a full costs award against the Council. This sum amounted to over £250,000, ignoring the Council's own costs for what was a far simpler case than this. Wates take no pleasure whatsoever in making cost claims against Councils, a burden that then falls squarely on local taxpayers. However, we are prepared to make such claims in circumstances where we and our legal advisors consider that a Council has acted unreasonably.

I do recognise the sensitivity of new homes proposals but always balance this challenge against the considerable need for new homes and particularly affordable homes. I am certainly satisfied that we have taken steps to enage with the local community as positively as possible and presented attractive proposals with significant community benefits. I do appreciate the support of your Officers in "doing the right thing" and remain willing to support the Council in any way we can to resolve this matter as soon as possible.

Yours sincerely

David Brocklebank
Executive Managing Director
Wates Developments Ltd

Email: David.brocklebank@wates.co.uk
Tel: 07736 379 682

CC:
Cllr Nicholas Heslop
Eleanor Hoyle
Kevin Toogood
Emma Keefe

The Planning Inspectorate

Costs Decisions

Inquiry Held on 14-15 May 2019

Site visit made on 15 May 2019

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 25th June 2019

Costs application in relation to Appeal A Ref: APP/M3645/W/18/3198090
17 Copthone Road, Felbridge, East Grinstead RH19 2NR

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Andy Morehen, Abbey Developments Ltd for a full award of costs against Tandridge District Council.
- The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for an access road from Copthorne Road to serve permitted residential development within Mid Sussex District.

Costs application in relation to Appeal B Ref: APP/M3645/W/18/3205537
15 and 39 Crawley Down Road, Felbridge, East Grinstead RH19 2PP

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Wates Developments Ltd for a full award of costs against Tandridge District Council.
- The inquiry was in connection with an appeal against the refusal of outline planning permission for the demolition of the existing buildings at Nos 15 and 39 Crawley Down Road and the erection of 63 dwellings with associated new access.

Decision

1. Both applications for a full award of costs are allowed in the terms set out below.

The submissions for the two appellants

2. The applications of both Abbey Developments Ltd (Appeal A) and Wates Developments Ltd (Appeal B) were made verbally at the inquiry but written copies of these applications were also provided.

The response by Tandridge District Council

3. The response of Tandridge District Council to both applications was made verbally at the inquiry but a written copy of the response was also provided.

Reasons

4. Planning Practice Guidance advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

5. In the case of Appeal A, the appellant argues that the Council delayed making a decision without good reason, in particular after the highway authority had reached a firm recommendation, and this forced the appellant to appeal against non-determination after 15 months. In both cases the appellants argue the Council had no reasonable basis for its primary reason for refusal[1] which was contrary to the advice of its officers, had no professional advice at the time to support that reason, failed to properly apply NPPF paragraph 109, failed to carry out any planning balance, failed to take account of the Hill Place Farm decision, failed to provide adequate proofs of evidence to make a respectable case, withdrew its opposition to the appeals just one working day before the inquiry and ultimately offered no evidence to justify its refusals.

6. The Council, acting in its role as local planning authority, should not unduly delay decision making but in any particular case it is difficult to pinpoint the moment when delay becomes unreasonable. In the case of Appeal A the highway authority made its final comments by December 2017 after which it would appear the application could have been determined. In any event, the right of appeal against non-determination is the appropriate remedy for excessive delay, after which the Council may be liable for costs.

7. The Council is not bound to accept the advice of its officers providing there are good grounds for taking a contrary decision and evidence is produced at appeal to substantiate the reason(s) for refusal. To take a decision against officer advice is not therefore unreasonable in itself.

8. To agree a reason for refusal without first obtaining professional advice that it can be substantiated is unwise rather than unreasonable as it runs the risk that it may not prove supportable in due course and this may lead to an award of costs. In these cases the Council took that risk on 26 April 2018 when the schemes were refused on highway grounds without expert advice. In the light of difficulties securing professional support the Council was recommended to withdraw the reasons for refusal on 25 July 2018 but it was resolved to proceed unless a consultant that had been identified advised that the Council did not have a defendable case. In the event further surveys were carried out and a proof of evidence produced but this was not presented at the inquiry.

9. Be that as it may, it is unreasonable behaviour when, as here, the Council chooses to pursue an appeal that has no realistic prospect of success and subsequently withdraws its opposition at the last minute.

10. The Council's written statement for Appeal A (when it was initially being dealt with by written representations) reveals two fundamental errors which it should have known made its decision to refuse the application unsupportable (and by extension also its refusal of Appeal B).

11. The first is the statement that 'it is not sufficient for a development to simply mitigate it's impact on the highway network when the network is already at or over capacity, instead the test is the development should not be permitted unless effective measures are taken to relieve or counter the existing overloading of the highway network'. This is simply wrong, and an incorrect interpretation of both Policy DP5 of the Tandridge Local Plan Part Two 2014 and the severe residual cumulative impact test now in paragraph 109 of the

[1] In the case of Appeal B, one reason for refusal relating to residential amenity was withdrawn well before the inquiry but this is not the subject of any complaint.

National Planning Policy Framework. The Council's proof of evidence for the inquiry maintained this mistaken approach, claiming that current traffic conditions were severe so any extra traffic would be unacceptable. No assessment was made of the impact of the additional traffic on current traffic conditions which is the test required by policy.

12. The second fundamental flaw was the failure to recognise that any impact on the highway network, even a severe one, should be balanced against the benefits of the proposal. Whilst there was a comment that the loss of the site would not render Mid Sussex unable to meet its housing commitments, there was no assessment of the positive benefits of the proposal and no balancing exercise undertaken. Subsequently, the proof of evidence only referred to highway issues. The Council failed to provide any planning evidence to the inquiry and consequently had no basis on which to undertake the necessary planning balance.

13. It was unreasonable for the Council to pursue such a fundamentally flawed case that had no realistic prospect of success.

14. In relation to the Hill Place Farm decision, it was not unreasonable to consider a different approach to traffic light queues as that case related to queuing on the A22 through East Grinstead which can be distinguished from that on the A264 through Felbridge. However, it was unreasonable not to take into account the improvement to the A264/A22 junction which would be delivered as part of that development and result in a significant reduction in delays.

15. The length and detail of the Council's proof is not evidence in itself of unreasonable behaviour, a respectable case may be both short and simple.

16. The Council's argument in defending the prosecution of these appeals was that the cases were of great concern locally and it was only when the appellant's detailed proofs of evidence were submitted on 16 April 2019 that the strength of the appellants' cases became clear. However, both appellants submitted detailed transport statements with their applications which together with subsequent iterations were thoroughly assessed over many months by Surrey County Council as highway authority. In both cases clear advice was provided that any traffic impacts would not be severe and there was no highway reason to withhold permission. The appeal statements in both cases also set out the appellants' evidence and arguments in full. Although the appellants' proofs contained further, updated evidence this did not change the two cases in any substantive way and did not justify the late change of position of the Council. The email sent at 4.48 pm on Friday 10 May - well after 16 April and only one working day before the inquiry opened - contained no explanation other than the Council had carefully reviewed the appellant's evidence. This should have been done at application stage or at the outset of the appeal process.

17. The Council's other arguments relate to the quantum of any costs award but this is not a matter for me. I make no comments on the strength of these arguments.

18. In essence, in the face of clear officer advice, the Council pursued two appeals that had no realistic prospects of success. The Council delayed development which should clearly have been permitted, misapplied policy, failed to carry out a planning balance, failed to keep the cases under review until the last minute and failed to present any evidence to substantiate the reasons for refusal at the

inquiry. The appellants therefore had no option but to pursue their appeals to an unnecessary inquiry, incurring wasted expense in doing so.

19. I therefore find that, in both cases, unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

20. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Tandridge District Council shall pay to Abbey Developments Ltd and Wates Developments Ltd the costs of the respective appeal proceedings described in the heading of this decision.

21. In the case of Abbey Developments Ltd the appeal proceedings commenced on 15 March 2018, the date the appeal against non-determination was lodged, and in the case of Wates Development Ltd the appeal proceedings commenced on 27 April 2018, the date the application was refused.

22. The two applicants are now invited to submit to Tandridge District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the respective amounts.

David Reed

INSPECTOR