

Maidstone Borough Local Plan Examination

Session 13B Tuesday 29th November 2016
14:00 – 17:00 regarding 'Alternative Sites'

**Representation R19113: Boughton Monchelsea, west of
Gandy's Lane**

By

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Replies to questions set by the Local Plan Inspector are as follows:

Issue (i) – whether the alternative site would be suitable, sustainable and deliverable.

Q 13.20 Does the site have any relevant planning history?

Not known.

The Council served TPO no. 5011/2015/TPO on the site on 26th February 2015 but this has not been confirmed. A copy of a report to the Planning Committee of the 20th August is attached (**Appendix 1**).

Q 13.21 What's the site's policy status in the submitted Local Plan?

The site is shown as 'white land' to the east of the defined built up area of the village; inclusive of the new housing allocation east of Church Street and north of Heath Road.

Q 13.22 What is the site's policy status in any made or emerging Neighbourhood Plan?

The Boughton Monchelsea Parish Council are in the process of preparing a Neighbourhood Plan. The process started in 29th October 2012, but has yet to be finalised.

Q 13.23 Is the site greenfield or previously developed (brownfield) land according to the definition in the glossary of the National Planning Policy Framework?

Greenfield. The site is an overgrown cobnut wooded area which has not had a functional use for decades.

Q 13.24 What previous consideration by the Council has been given to the site's development (e.g. inclusion in a Strategic Housing and Economic Land Availability Assessment (SHEDDLAA) and does the Representor have any comments on its conclusions?

The site (H03-269) has been considered by the Council and rejected (**Appendix 2**)

Q 13.25 What is the site area and has a plan been submitted which identifies the site?

The total site is 1.3ha, including the driveway.

Q 13.26 What type, and amount of development could be expected and at what density?

The site would be suitable for a small scheme of bungalows; approximately 10-14 in number.

Q 13.27 When could development be delivered and at what rate?

The site is owned by senior citizens and hence the land is available short term.

Q 13.28 What evidence is there of the viability of the proposed development?

There are no known constraints to development other than the need to obtain planning permission. The site can return normal levels of commercial profitability.

Q 13.30 Has the site been subject of sustainability appraisal and does the Representor have any comments on its conclusions?

The site is on the edge of Boughton Monchelsea which has been categorised as a Larger Village in the Plan. Given acceptance of this status, it is considered that the site is a sustainable location as the site is relatively close to the facilities available in the vicinity.

Q 13.31 What constraints are there on the site's development and how could any adverse impact be investigated?

The Council consider this decaying Cobb nut woodland to be worthy of protection by TPO coverage although the Council have failed to confirm the Order. The owners of the land and the company consider these overgrown trees not to be of value, and better use of the land could be achieved by providing much needed local housing.

The other constraint of significance to note is the poor quality of the adjacent Gandy's Lane / B2163 Heath Road junction which is substandard in terms of its vision splay for a long straight road with a 40mph speed limit. On leaving the junction, visibility to the left (east) is very poor indeed and is dangerous.

In order to overcome this, our highway consultant has evaluated the position and it is proposed to realign the northern kerb line, as there is scope to do so because there is a wide verge on the southern side of Heath Road. Basically, the carriageway moves slightly southward. This can provide improved vision splays to a standard of 59m x 2.4 x 59m which creates a highly improved junction in terms of visibility and safety performance. Bearing in mind that a one week traffic survey identified a two way weekly average flow of 9,962 vehicles along Heath Road this improvement as set out is significant in improving highway safety.

APPENDIX 1



Maidstone Borough Council

PLANNING COMMITTEE

20 August 2015

REPORT BY THE HEAD OF PLANNING SERVICES

**The Maidstone Borough Council
TREE PRESERVATION ORDER No. 5011/2015/TPO
Land West of Gandys Lane, Boughton Monchelsea, Kent**

EXECUTIVE SUMMARY

This report seeks the permission of the Planning Committee to Confirm with modification Tree Preservation Order (TPO) No. 5011/2015/TPO for which objections have been received.

FOR DECISION

SUMMARY TPO INFORMATION

TPO Served (Date): 25 February 2015	Provisional TPO Expiry Date 25 August 2015	
Grounds for the making of the Order: The Council considers that the tree or trees contribute to amenity and local landscape character and it is expedient to make a Tree Preservation Order (TPO).		
Served on: Wealden Ltd. Owners (from Land Registry Search): Gaymarie Fernall, Dawn Ann Hadder, John Victor Fernall		
Copied to: MBC internal: Local Land Charges; GIS KCC Planning Applications Unit Parish Council The Forestry Commission Selected surrounding properties in Heath Road, Gandys Lane and Lewis Court Drive.		
Representations	Support: 0	Objections: 1

1.0 RELEVANT PLANNING HISTORY AND BACKGROUND

Housing Sites Assessment 2014 Reference H03 – 269

- 1.1 The site was put forward as a potential housing allocation site in the additional call for sites in 2014. In the assessment, the site was described as follows:

This is a flat, rectangular area of predominantly woodland adjacent to Boughton Monchelsea village. The site abuts the rear gardens of residential properties on Heath Road to the south and Gandy's Lane to the east. The northern boundary of the site abuts an open field which stretches north to Green Lane and the western boundary abuts an open field on Heath Road and the rear of properties on Lewis Court Drive.

The site is very well contained, with strong boundaries of mature trees on all sides and access to the site is difficult because it is heavily wooded. The access proposed if taken from Gandy's Lane and is quite narrow, running very close to existing residential properties"

- 1.2 The site was rejected. The conclusions of the report were as follows:

"The site is heavily wooded and access is not suitable as currently indicated. Development of this site would result in the removal of a large quantity of mature trees, which would have a significant impact on ecology.

The two fields adjacent to the site (to the north and west respectively) have also been submitted for consideration, and if all sites were to be developed it would infill the gap between Church Street, Green lane and Gandy's Lane. The development of this larger area would result in a compact built form in close proximity to village services, but it is my view that even if the sites to the north and west were developed, this site is not suitable for development and the trees should be retained and protected.

REJECT"

Felling works undertaken in February 2015

- 1.3 It came to the Council's attention that felling works had taken place on the site in February 2015. The trees were not protected by a TPO at the time. The Forestry Commission (FC) were contacted to see if the works undertaken were the subject of a felling licence application or were exempt from the need to apply for one. The FC were not aware of the works and a joint site visit was subsequently undertaken by the FC and the Landscape Officer on 18 February 2015, to assess the extent of felling that had taken place.
- 1.4 A number of mature trees had been felled, with the felled trees left on site. On the main part of the site, 9 individual mature Oaks were found felled to two metre high stumps. The FC subsequently reported that approximately 20 trees had been felled. The trees in the narrow strip of land to the east, which extends to Gandy's Lane, had also mostly been felled to ground level.

- 1.5 The FC measured the trees that had been felled and considered that the volume of timber fell within their thresholds for felling licences. As one had not been granted, the works are being considered by them as an illegal fell. At the time of this report, this is still an open investigation and the FC are considering their enforcement options.

Description of the site and the reasons for making a Tree Preservation Order

- 1.6 The site is an area of mixed deciduous woodland, approximately 1.3 hectares in area. Following the felling of the Oaks, the remaining woodland is predominantly regularly spaced, overstood Hazel Coppice, with a few semi-mature trees of other species. The character of the woodland is suggestive of a 'Hazel Platt' with Oak standards. These were a traditional and characteristic land use in Kent and are increasingly rare.
- 1.7 The site, being largely set back behind houses in Gandy's Lane, has limited public visibility from the east. The main woodland block is clearly visible from Green lane to the north, but is separated from Green Lane by an arable field approximately 180m deep. Glimpsed views of the woodland are seen between houses and other vegetation from Lewis Court Drive to the west and Heath Road to the south.
- 1.8 Following the manner in which the felling had taken place on the site, it was not considered that the works undertaken accorded with good forestry practice. The mature Oak trees appeared to have been felled regardless of their condition and left where they fell. It was not known if there were any plans to continue felling on the site and it was therefore considered expedient to make the remaining woodland the subject of a TPO to prevent uncontrolled clearance of the rest of the site.
- 1.9 A TPO was also considered expedient, as it will serve to protect any regenerating stumps and new planting, should the latter be ultimately directed by the FC on conclusion of their investigation.

2.0 OBJECTIONS

- 2.1 An objection to the making of the TPO was received from Mrs Dawn Hadder on behalf of Mr John Fernall and Miss G Fernall (the landowners) on 17 March 2015. The content of the objection is summarised in italics below, with any response to the objection following in standard text.

'We are the registered owners of the land...which has been owned by our family for over 40 years. It is necessary to access the site to contain many recurring instances of fly tipping that have occurred over the years. In the past it has been necessary to take legal action against owners of properties adjoining our land as a result of their trespass, most recently in November 2014, the illegal erection of a large shed, sited wholly on our land, resulted in us incurring legal fees of over £600.

In the light of the above comments we would register our objections in two separate areas:

- 1) *The linear access strip of the land running between the bungalows in Gandy's Lane; Redroof to the north and Frandor to the south*
- 2) *The residual land, being the core area within our ownership*

1) *The Linear Access Strip*

The only access to the site from a public highway is via this strip of land. Until its recent clearance our only legal access relied on the good offices of a resident in Gandy's Lane allowing us to enter the site by climbing a step ladder over their adjoining boundary fence. The clearance of 50 years of growth from this strip will enable a vehicle to drive onto the site, avoiding the need to park in Gandy's lane and the associated hazards to others. The Order as drafted prevents the clearance of coppice stumps from this area, which, we submit has no amenity value or public benefit and prevents the completion of a safe vehicular access being established for future site management.

Officer comment:

It is considered that this is a reasonable argument. The site has clearly not been managed as coppice for a number of years and if it is to be brought back into an appropriate woodland management regime, the need for vehicular access is reasonably necessary. The strip contains largely stumps of natural regeneration species which visually presented as a wooded strip before it was felled. It would be possible to confirm the TPO including this strip and invite an application for the removal of trees as and when access becomes necessary to carry out woodland management works. In considering applications relating to woodland, councils must grant consent so far as accords with good forestry practice. In this case, it is considered that any application to gain access to the site by felling trees on this strip would have to be granted consent on this basis. Therefore, requiring one to be made by confirming the TPO on this part of the site seems unreasonable.

Furthermore, prior to the clearance of the trees on this strip it was not possible to gain access to the site except via another person's land, and it is not unreasonable to expect that access may be requires at short notice for other reasons other than woodland management.

I therefore recommend that this strip is not included in a confirmed TPO.

2) *The Coppice Woodland Area*

Public visibility of the woodland area is very limited from any of the potential public vantage points. The site and its surrounding area is relatively flat and therefore the site is not overlooked from higher ground with public accessibility.

There are three potential public viewing points:

a) *Gandy's Lane*

Due to the access now being improved it is now possible to see the coppice woodland on the western side of the lane...as the view along the gap between the bungalows is now uninterrupted... this short distance viewpoint enables a relatively small proportion of the eastern flank of the coppice to be viewed.

b) *Heath Road/Church Street*

Views of the southwest corner of the coppice are currently afforded across the open fields but are distanced at 90m and 180m respectively. This view is now more open because the owner has removed all of the orchard trees and transformed to arable, are restricted by the hedge boundary to the field and will be removed completely in due course as the Council has zoned the land for housing in the local planning process.

c) *Green Lane*

To the north of the coppice is a large open field and to the north of this is Green Lane. This land is approximately 185m away and only the northern edge of the coppice can be viewed although it is somewhat restricted.

The site is mainly shielded from public view by the properties in Gandy's Lane, Heath Road and Lewis Court Drive. Approximately 66% of the boundary will be screened by housing, the remaining boundary facing towards Green lane is over 180m from any public vantage point and would barely enter the peripheral vision of anyone driving along the lane. Green Lane has no pedestrian facility but even so, the site is largely obscured by a hedgerow along much of the lane and in any event, due to the topography of the land, would only afford a view of the very edge of the site.

Officer comment:

- 2.2 This part of the objection essentially argues that the main woodland block has limited public amenity value and should not, therefore be protected. The Town and Country Planning Act 1990 gives the local planning authority power to make TPOs "If it appears necessary...that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area". Amenity is not defined in the Act, but current government guidance suggests that "Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future." The guidance goes on to discuss the definition of amenity, which includes the extent to which it can be seen by the public and states that "the trees, or at least part of them should normally be visible from a public place, such as a road or footpath.
- 2.3 In this case, it is accepted that the woodland as a whole is not highly visible from public viewpoints. It is typical of most woodlands that the boundary trees are the most, or possibly the only trees visible. The most significant viewpoint is from Green Lane and views of parts of it are seen from various surrounding viewpoints, with views limited to parts of the woodland only being visible between and over buildings or other vegetation. It does satisfy the criteria that at least part of it is visible from a public place.
- 2.4 However, 'amenity' is not limited to visual amenity. The guidance goes on to discuss other factors in assessing amenity, which includes size and form; future potential; rarity, cultural or historic value; contribution to, and relationship with landscape. This site appears to be a former Hazel platt that has fallen into disuse. Once a common land use in Kent, few remain today and the Council's Landscape Character Assessment specifically refers to them, stating that there is only around 100 hectares left in England, most centred around Plaxtol, with the rest in isolated pockets across the Greensand. This gives the site cultural and historic interest. There are ecological and biodiversity benefits of retaining woodland units within the landscape particularly in managed coppice, which can be species-rich. The Landscape Character Assessment guidelines for this area (Boughton Monchelsea to Chart Sutton Plateau) aims to conserve and improve the extent of woodland cover.
- 2.5 Maidstone Borough Council currently assesses amenity using TEMPO (Tree Evaluation Method for Preservation Orders) by Forbes-Laird. This is a systemised amenity

assessment tool used by many local authorities as guidance in making and confirming TPOs. In an assessment for this site, the woodland fell within the highest category, 'definitely merits TPO'.

- 2.6 *The majority of the woodland consists of Hazel trees which have never been managed or cut. In many cases these specimens are thin and in poor condition and we believe do not meet the defined criteria of a tree. We believe it is inappropriate for the TPO to be made on specimens that do not meet this defined criteria.*

Officer comment:

- 2.7 The fact that the woodland has been unmanaged is not considered to be a reason not to protect it. It must have been managed at some point, for the coppice trees to have taken the form they have. That management has certainly lapsed for some considerable time. The making of and confirmation of the TPO would not serve to frustrate any proposals to bring it back into management. An application would be required for future works if the TPO remains in place, but consent would be granted for any works that were in accordance with good forestry practice.

- 2.8 It is not stated what the 'defined criteria of a tree' is considered to be. The TPO guidance states that protected trees can be 'of any size or species'. Authorities may only use an Order to protect anything that may ordinarily be termed a tree and that this would not normally include shrubs. Even if it were to be argued that Hazel is a shrub rather than a tree on the basis that it is not single stemmed (in line with some dictionary definitions of a tree), many reference books refer to the species as a large shrub or small tree, including the Hillier manual of trees and shrubs.

- 2.9 *During the years we have owned the land, it has continued to decline into virtually impenetrable undergrowth used by adjacent householders to dump rubbish and burn waste. Many unauthorised gates have been established from the adjoining properties allowing unrestrained trespass. Along with the illegal trespass, we have also discovered a makeshift camp used by a drug user, along with abandoned drug paraphernalia.*

Officer comment:

- 2.10 These are not considered to be matters related to the making or confirmation of the TPO.
- 2.11 *Accordingly, we believe that there is little merit in the argument that the TPO will provide public amenity, conversely, we believe it will only accelerate the dereliction of a neglected site. We respectfully ask that this provisional order is not confirmed by your Council.*

Officer comment:

- 2.12 It is not considered that confirming the Order will prevent the owners from bringing the site back into management. By modifying the TPO to allow a permanent vehicular access to be established, works to reinstate a coppice regime will be possible. Confirming the TPO on the main woodland block will mean that applications will be needed for future management works, but there is no fee for applications and if the works proposed are good forestry practice, the Council must grant consent for any application.

3 RECOMMENDED

To confirm Tree Preservation Order No. 5011/2015/TPO, with modification to exclude the eastern access strip from the TPO plan.

Contact Officer: Nick Gallavin

Head of Planning Services

Appendices: Plan and schedule for 5011/2015/TPO

APPENDIX 2

Housing Sites Assessment Proforma - 2014

1. SITE INFORMATION	
Reference number	H03-269
Site name/address	Land West of Gandy's Lane, Boughton Monchelsea
Landowner	Developer
Agent	Graham Norton, Wealden Homes
Greenfield/PDL	Greenfield
Site area (ha)	1.31
Proposed yield	Not Specified
Is the site urban, adjacent to urban, rural settlement or rural	Adjacent to urban area
Site origin (call for sites/local plan rep?)	Additional call for sites 2014

2. SITE ASSESSMENT/SUITABILITY	
Site description (including topography and surrounding land uses)	<p>This is a flat, rectangular area of predominantly woodland adjacent to Boughton Monchelsea village. The site abuts the rear gardens of residential properties on Heath Road, to the south, and Gandy's Lane, to the east. The northern boundary of the site abuts an open field which stretches north to Green Lane, and the western boundary abuts an open field on Heath Road and the rear of properties on Lewis Court Drive.</p> <p>The site is very well contained, with strong boundaries of mature trees on all sides and access to the site is difficult because it is heavily wooded. The access proposed is taken from Gandy's Lane and is quite narrow, running very close to existing residential properties.</p>
Current use	Woodland
Adjacent uses	Residential/agriculture
Planning and other designations (AONB, greenbelt etc)	Site is part of the Southern Anti-Coalescence Belt MBWLP 2000 policy ENV32
Planning history	82/0323 (Land at Green Lane, BOUGHTON MONCHELSEA) - Residential development - Refused
Has site previously been considered in Local Plan Inquiry, if so, record Inspectors recommendation	No
Landscape/townscape impact – including reference to Landscape Character Assessment 2012 (inc. long distance views); cumulative landscape impact; existing screening	<p>Landscape Character Area No. 29. Boughton Monchelsea to Chart Sutton Plateau</p> <p>KEY CHARACTERISTICS</p> <ul style="list-style-type: none"> • Plateau above the Greensand Ridge • Sweet chestnut coppice woodland • Orchards • Arable land • Recent infill development • Grid like road pattern <p>Condition Assessment - Very Poor Sensitivity Assessment - Very Low</p> <p>SUMMARY OF ACTIONS</p> <ul style="list-style-type: none"> • Consider the generic guidelines for Greensand Orchards and Mixed Farmlands • Conserve and improve the extent of woodland cover • Improve hedgerows and therefore habitat connectivity by gapping up where practicable

	<ul style="list-style-type: none"> Improve the sense of place by maintaining remaining open space between swathes of development
Ecological Impacts (inc. SSI & local wildlife sites within or adjacent to site)	Ecological Constraints Level 2 - potential for moderate ecological impacts: Woodland area which has been present since at least 1990. There is some connectivity to the surrounding area and there is the potential for protected/notable species to be present. Including reptiles and bats.
Trees (inc. TPO, ancient woodland within and adjacent to site)	<p>Comments from Landscape team are as follows:</p> <p>Tree protection status: Whilst there are no protected trees the site is covered by significant trees/ woodland.</p> <p>Ancient woodlands (<i>from 'a revision of the Ancient Woodland Inventory for Maidstone borough, August 2012'</i>) There is no designated ancient woodland.</p> <p>Hedgerow status: There are potentially 'important' hedgerows on field boundaries.</p>
Agricultural land quality	N/A
Heritage impacts (Listed building, conservation area)	None
Archaeology (SAM etc.)	Within safeguarded Area of Archaeological Potential
PROW (within or near site)	None
Access (Highways) <ul style="list-style-type: none"> Site access Impact on wider highway network Access to strategic/main highway network Availability of public transport/walking/cycling 	<p>KCC Comments: Concern about access. Access would be better off Green Lane, as the Gandy's Lane/Heath Road junction has very poor visibility (Would still need to improve Brishing Lane/Heath Road junction , and look at footway connection to village.</p> <p>Officer comments: The site access from Gandy's Lane is unsuitable. It is narrow and runs very close to the properties on either side, namely Frandor and Redroof. Gandy's Lane itself is single carriageway and although there is a wide verge it is unsuitable for two-way traffic.</p>
Access to services – distances from bus stop/rail station/shop/GP/school	<p>All of the village services within Boughton Monchelsea are within walking and cycling distance of the site. The bus stops on Heath Road and Church Street are served by Bus Route 59, which provides two return journeys daily to Maidstone."</p> <p>The primary school, village hall, sports field and shop are all less than 500m from the site</p>
Impacts on existing residential amenity (including access to open space)	Development of this site, and access in particular, would have a detrimental impact of neighbouring properties.
Availability of utilities infrastructure – e.g. water/gas/electric	No issue – site is adjacent to existing residential properties
Air quality/noise	Not in an AQMA Noise unlikely to be an issue
Land contamination	Unlikely
Flood Risk (zone/drainage)	The EA has made the following comments:

	<p>The area between Cliff Hill and Beresfords Hill of Boughton Monchelsea (NGR TQ773517) is at risk of flooding. The flooding mechanism of this area is complex and believed to be a combination of fluvial and groundwater flooding. Particular attention must therefore be given to means of surface water disposal from any new development upstream from Boughton Monchelsea, especially if infiltration of surface water drainage is being considered. This is because the structure of the underlying geology could allow rapid infiltration from a developed area to discharge to the watercourse to the south more rapidly than the natural greenfield rate, thereby increasing flood risk to existing properties.</p> <p>Furthermore, the reservoir at Brishing Lane is maintained and operated by the Boughton Monchelsea Parish Council for flood alleviation purposes. Significant expenditure is likely to be required in order to raise the standard of reservoir safety of this structure. We recommend the local authority consult the Parish Council and seek a financial contribution from all potential developers in this catchment to secure funding for essential long term maintenance and improvements to this structure.</p>
Suitability (assessment conclusion)	<p>The site is heavily wooded and access is not suitable as currently indicated. Development of this site would result in the removal of a large quantity of mature trees, which would have a significant impact on ecology.</p> <p>The two fields adjacent to the site (to the north and west respectively) have also been submitted for consideration, and if all sites were to be developed it would infill the gap between Church Street, Green Lane and Gandy's Lane. Although this would result in a compact development form, the site is not suitable for development and the trees should be retained and protected even if the sites to the north and west were developed.</p>

3. AVAILABILITY	
<p>Is the whole site available for the proposed use: e.g.</p> <ul style="list-style-type: none"> • No existing uses • Willing landowner • Willing developer • Existing tenancy or lease agreement 	Yes, willing developer with consent from landowner
Availability conclusion	Site is available

4. ACHIEVABILITY

Identification of any abnormal costs or other constraints to development which would prevent or delay this site being delivered	Access to site is difficult and would only be suitable if taken from Green Lane (potential ransom strip) or with the loss of a property on Gandy's Lane.
Achievability conclusion	Concerns over the deliverability of this site, particularly in terms of access

Timing (following assessment - when could the site be delivered?)

now - 2016	
2016 - 2021	X
2021 - 2026	
2026 - 2031	

5. CONCLUSIONS

The site is heavily wooded and access is not suitable as currently indicated. Development of this site would result in the removal of a large quantity of mature trees, which would have a significant impact on ecology.

The two fields adjacent to the site (to the north and west respectively) have also been submitted for consideration, and if all sites were to be developed it would infill the gap between Church Street, Green Lane and Gandy's Lane. The development of this larger area would result in a compact built form in close proximity to village services. But this site is not suitable for development and the trees should be retained and protected even if the sites to the north and west were developed.

REJECT

Yield = 0