Introduction

1. Westerham Town Council (WTC) is the elected body representing the town and parish of Westerham and Crockham Hill, which is located immediately to the east of Tandridge District, over the county boundary in Kent (Sevenoaks District). Westerham has a population of around 4,500. Westerham shares many planning issues with Tandridge District, particularly the challenge of accommodating growth in a heavily constrained area, much of which is covered by Metropolitan Green Belt and Area of Outstanding Natural Beauty (AONB) designations.

2. WTC lodged an objection to Policy SES 04 of the Local Plan, concerning the Westerham Road Industrial Estate (also known as Moorhouse Tile Works) at the Regulation 19 stage in summer 2018. The site lies close to the Surrey/Kent boundary. This objection was on the basis that:

   (a) The site still merits its current Green Belt status and there are no "exceptional circumstances" to justify its release from the Green Belt;

   (b) The previous use of the site for mineral extraction and brick/tile making does not justify its release from the Green Belt, as there are other such sites on both the Surrey and Kent sides. Post-use restoration to appropriate open uses within the Green Belt is the normal planning requirement;

   (c) Its release from the Green Belt would lead to more intensive and intrusive employment development on the site, with harm to the openness of the wider Green Belt and to the character and appearance of the Surrey Hills AONB, and to the landscape setting of Westerham;

   (d) This is not a sustainable location for strategic employment development as it is not in - or adjacent to - an existing settlement and its development would require both highway improvements and better public transport.

3. WTC has asked to be represented at any examination hearing concerning policy SES 04. This hearing statement addresses the following issues on this site identified
by the Inspector in his note ID/5 V3 dated 29 July 2019, as set out in paragraphs 5-22 below.

4. In this examination, the Inspector has the task of considering the "soundness" of the Local Plan against the criteria set out in paragraph 182 of the National Planning Policy Framework (NPPF) 2012, which are that the plan should be:

- Positively prepared
- Justified
- Effective
- Consistent with national policy

Each of the issues raised by the Inspector is now considered in turn.

**Issue 7.14: What are the exceptional circumstances for the release of the site from the Green Belt?**

5. The starting point here is the above version of the NPPF (2012) paragraph 83 which states that "Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. At that time, authorities should consider the Green Belt boundaries having regard to their intended permanence in the long term, so that they should be capable of enduring beyond the plan period". However, whilst national policy and guidance do not define "exceptional circumstances", certain principles have been established through interpretation of the NPPF and case law.

These principles are set out in Appendix A. Ultimately, the local authority (TDC) has to make a planning judgement in preparing its local plan on whether "exceptional circumstances" exist and the Inspector has to review that judgement and either endorse it, modify it or reject it.

6. TDC's stated reasons for an exceptional case at this site, as set out in the Green Belt Assessment (Part 3) – Appendix 1 (2018) Pages 200-203] (Document GB2) appear to be as follows:

(a) Work for the Local Plan has identified a need for at least 15 ha of additional employment land in Tandridge, which cannot wholly be met on sites outside the Green Belt;
(b) The Local Plan's Spatial Strategy seeks to meet needs for employment development through the expansion /intensification of existing employment sites and allocation of new sites in sustainable locations. This site is previously developed land with extensive concrete aprons, used for large scale open storage of building materials, bus parking and self-
storage units, and includes a number of empty and derelict buildings. On this basis, it is stated to be “policy compliant”;
(c) The site no longer serves Green Belt purposes or supports the openness of the surrounding Green Belt;
(d) The site has a degree of visual containment with no overriding ecological constraints and is close to the main highway network (A25).

7. WTC does not accept that a clear case has been made for “exceptional circumstances” on this site, so as to justify its release from the Green Belt. Whilst Tandridge may need to expand and diversify its employment base, the justification for the release of at least 15 ha is based on many different assumptions about the nature and form of new employment and its future land requirements, which are highly unpredictable and difficult to quantify precisely. In any event, evidence of unmet development need does not in itself represent “exceptional circumstances” (otherwise, the current NPPF 2019 paragraph 11 would not cite Green Belt policy as a possible reason for not meeting that need in full). It is important to note that TDC’s Economic Needs Assessments are “policy off” documents, which do not take account of Green Belt and AONB constraints (Documents ECTR4 and 9). The former document (ECT4) states in paragraph 6.112 “this site has limited attractiveness for more intensive employment uses”. Accordingly, we do not consider there is a firm basis for releasing green belt land in this location.

8. It is hard to see how TDC consider this site “policy compliant”. Its own analysis (Document GB2, page 200) says “it is in an isolated location in the east of the district” and it is unconnected to any settlement. Importantly, it is within the Surrey Hills AONB. Accordingly, as an AONB location, “great weight should be given to conserving and enhancing landscape and scenic beauty “and where “major development is only allowed exceptionally in the national interest” (NPPF 2012 paragraphs 115 and 116). These factors suggest this site is not a sustainable location for strategic employment development.

9. WTC considers that the site continues to serve Green Belt purposes in that it:
   - prevents the neighbouring towns of Oxted and Westerham from merging;
   - assists in safeguarding the countryside from encroachment;
   - preserves the setting and special character of the historic town of Westerham (sited approximately 1.5 km to the east of the site).

Much of the site remains open land, albeit with vacant concrete aprons or given over to open storage uses.

Whist Tandridge’s Green Belt Assessment (Document GB2 - ENA 8 –page 200) states that “the site does not serve a Green Belt purpose in this location”, it
accepts that “there is potential for harm to the wider Green Belt if employment use of this site is intensified”.

10. Visual containment by topography, trees and woods, lack of overriding ecological constraints and proximity to the main highway network do not amount - either individually or collectively - to “exceptional circumstances” justifying the release of land from the Green Belt. These qualities could be ascribed to very many areas of land within the Green Belt and are wholly unexceptional.

11. Key passages from the Framework relevant to the above points are that “the essential characteristics of Green Belts are their openness and permanence” (paragraph 79) and “Once Green Belts have been defined, local planning authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land” (paragraph 81). The current appearance of the site suggests that these opportunities have not been pursued here since the former use ceased.

**Issue 7.15: Is the proposed Green Belt boundary justified and consistent with national policy as set out in paragraph 85 of the Framework?**

12. The proposed new Green Belt boundary in policy SES04 includes an area of 8.61ha of which 2.84ha is vacant and termed “additional provision”. The NPPF 2012 states “When drawing up or reviewing Green Belt boundaries local planning authorities should take account of the need to promote sustainable patterns of development. They should consider the consequences for sustainable development of channelling development towards urban areas inside the Green Belt boundary, towards towns and villages inset within the Green Belt or towards locations beyond the outer Green Belt boundary” (paragraph 84).

As indicated above, we do not consider that this is a sustainable location. It is not part of, or immediately adjacent to, any existing settlement. It is poorly served by public transport: about 4km from the nearest railway station at Oxted and an infrequent bus service with only three early morning buses in the Oxted-Westerham direction and none at all in the opposite direction. Most buses between the two towns pass through Limpsfield Chart instead.

13. When defining boundaries, local planning authorities are advised in NPPF paragraph 85 that they should:

- ensure consistency with the Local Plan strategy for meeting identified requirements for sustainable development;
- not include land which it is unnecessary to keep permanently open:
where necessary, identify in their plans areas of ‘safeguarded land’ between the urban area and the Green Belt, in order to meet longer-term development needs stretching well beyond the plan period;

- make clear that the safeguarded land is not allocated for development at the present time. Planning permission for the permanent development of safeguarded land should only be granted following a Local Plan review which proposes the development;

- satisfy themselves that Green Belt boundaries will not need to be altered at the end of the development plan period;

- define boundaries clearly, using physical features that are readily recognisable and likely to be permanent.

14. The proposed new Green Belt "inset" boundary of SES04 partly reflects the existing pattern of development on the site, incorporating all the larger buildings, the extensive concrete aprons and some peripheral tree belts. However, over 30% of it (2.84/8.61 ha) is "additional provision". Even if a case for "exceptional circumstances" is made out by TDC, any release of Green Belt land should be justified and proportionate. It is not clear how this "additional provision" is derived and, so, whether it meets these tests.

Issue 7.16 Does the allocation constitute major development within the Surrey Hills AONB? Would the proposed allocation conserve the landscape and scenic beauty of the AONB?

15. This site has been used for commercial purposes for many years. However, the level of activity has varied over time, often being fairly low key. Much of the site is now vacant or derelict. It is accepted that, in its current condition, it does not make a positive contribution to the Surrey Hills AONB.

16. The NPPF 2012 does not define "major development" for the application of paragraphs 115 and 116 (see paragraph 8 above). However, subsequently, NPPF 2018 and 2019 both included a footnote (55) to say that, for the purposes of paragraphs 172 and 173, whether a proposal is 'major development' is "a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated". This is a very important consideration because — if confirmed as "major development" — it raises the bar considerably in terms of having to demonstrate both "exceptional circumstances" and "a national interest".

17. This is always a difficult judgement with a specific proposal in a planning application. It is even harder with a local plan allocation, where the precise nature and scale of development is unknown (the Local Plan refers only to "B-class uses and employment generating sui generis uses"). Case law tends to be based on specific planning applications in AONBs. However, the Local Plan itself defines this allocation as a "strategic employment site" (one of only four in
Tandridge and the only one in the AONB). We would argue that this designation, in itself, largely answers the "major development" question in the affirmative.

18. The likely type of development on the site, if released from the Green Belt, is suggested by recent planning applications:

<table>
<thead>
<tr>
<th>Application reference</th>
<th>Description</th>
<th>Decision</th>
<th>Date of decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018/1792</td>
<td>Demolition of existing buildings and erection of class B8 commercial building (5595 m²), access, servicing, parking and landscaping</td>
<td>Refused</td>
<td>08.03.19</td>
</tr>
<tr>
<td>2016/1036</td>
<td>Demolition of existing buildings and erection of class B8 commercial building (9311 m²), access, servicing, parking and landscaping</td>
<td>Withdrawn</td>
<td>09.12.16</td>
</tr>
<tr>
<td>2015/1217</td>
<td>Demolition of existing buildings and erection of up to 20,938 m² of Class B8 commercial buildings across four plots</td>
<td>Refused</td>
<td>18.12.15</td>
</tr>
</tbody>
</table>

19. The common feature of all these applications was the very extensive footprint of the buildings (all of which were proposed for large distribution businesses) making them of a nature and scale rarely seen in AONBs. If the previous proposals were re-activated after release of the site from the Green Belt, it is highly likely that they would constitute "major development" and so need to meet the "exceptional case" and "national interest" tests in the NPPF. Moreover, the allocation’s designation as a "strategic employment site" surely indicates "major development" in the AONB.

**Issue 7.17** To be effective and to be consistent with national policy as set out in paragraph 24 of the Framework, should the Policy be clear as to whether Use Class B1 (Offices) or other main town centre uses would be acceptable within the identified site boundary?

20. Without prejudice to our view that the site should not be released from the Green Belt, if the Inspector arrives at a contrary conclusion, we support the application of NPPF 2012 paragraph 24 in applying a sequential test for Use Class B1 offices and other town centre uses, which are best located in Oxted and other town centres, rather than in an isolated rural location such as this site. This would mean that such uses would normally have to be located in or adjacent to existing centres and only go "out of town" if they could not be accommodated there. The need for such a policy has increased in recent years as town centres have
struggled with digital shopping, business rates, parking fees and other disadvantages.

**Issue 7.18 Are the requirements for financial contributions as set out in V. consistent with national policy for planning obligations and conditions as set out in the Framework and are they justified?**

21. Whilst we do not support release from the Green Belt, and intensification and expansion of employment on this site, if they occur, then it is essential that the local highway infrastructure is upgraded in the way indicated in section V of policy SES04. We would prefer this to be done via s.106 and/or s.278 agreement with the developer for improving the junction with the A25 Westerham Road when any planning permission[s] is [are] granted, rather than bid for funding in a district-wide CIL "pool" with no certainty of its delivery being co-ordinated with development of this site.

**Issue 7.19 Are the Proposed Modifications necessary for soundness?**

22. The site's location within groundwater source protection zones 1-4, should be addressed in order to comply with NPPF 2012 paragraphs 109, 110 and 122 and to meet the requirements of the Environment Agency. This will make the requirements on development clearer and easier to understand for those framing planning applications, but the Proposed Modification probably does not bear on the overall "soundness" of the plan.

Signed

Helen Ogden  
Chairman of Westerham Town Council

12th September 2019
APPENDIX A

PRINCIPLES CONCERNING “EXCEPTIONAL CIRCUMSTANCES” WHICH MAY WARRANT CHANGES TO GREEN BELT BOUNDARIES, DERIVED FROM THE NPPF AND FROM CASE LAW

The principal legal cases are Gallagher Homes v Solihull MBC [2014] EWLC 1283 (Admin) and Calverton PC v Nottingham CC, Broxtowe BC and Gedling BC [2015] EWHC 1078 (Admin)

- “exceptional circumstances” is a composite test based on the local authority’s planning judgement of all relevant factors
- Whilst each such planning judgement is based on the facts of the case, what is capable of amounting to exceptional circumstances is a matter of law
- A local authority must find that exceptional circumstances exist before making any alteration to a Green Belt boundary
- The test applies at the time when the local authority is drawing up or reviewing its local plan, as TDC is now
- The mere fact that a local authority is drawing up a local plan is not in itself an exceptional circumstance justifying a boundary change
- The general planning merits of a site (such as whether it is a suitable location for development) do not amount to exceptional circumstances justifying a boundary change
- The fact that housing or employment needs in an area cannot be met from non-Green Belt land does not automatically constitute exceptional circumstances (Otherwise, NPPF 2019 paragraph 11 would not cite Green Belt policy as a reason for not meeting that need in full)
- Even if a local authority deem that exceptional circumstances exist, they are not obliged to change Green Belt boundaries to meet that need in full. There may be good reasons, as a matter of planning judgement, why such changes may be inappropriate
- If a local authority decides that exceptional circumstances do exist, then:
(a) they cannot revise the Green Belt boundaries further than is necessary to meet those exceptional circumstances: the extent of any change has to be justified and proportionate

(b) in revising boundaries, they must have regard to the matters set out in NPPF 2012 paragraph 85, as well as the principles of sustainable development