

Pre-Submission Draft of the Kent Mineral Sites Plan (Regulation 19) Public Consultation response by Maidstone Borough Council

Consultation response – Maidstone Borough Council

The Pre-Submission Draft of the Kent Mineral Sites Plan sets out proposed updates to the current Kent Mineral Sites Plan that was adopted in 2020. The Kent Mineral Sites Plan forms part of the development plan for Kent against which planning applications and appeals for minerals and waste development in Kent are determined.

This consultation specifically seeks comments on the Plan's soundness and legal compliance. The consultation response must address the test of soundness as to whether the plan is:

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

The Pre-Submission Draft Plan sets out areas of land where the extraction of minerals is acceptable in principle. The Plan allocates land within Maidstone Borough at the following locations:

- Chapel Farm, Lenham (already allocated in the current Kent Mineral Sites Plan).
- Land to the South and West of Hermitage Quarry, near Aylesford (new allocation)

Land to the South and West of Hermitage Quarry

In June 2023, Kent County Council (KCC) launched a Regulation 18 consultation on the amendments to the Kent Mineral Sites Plan – Nominated Hard Rock Site Allocation. Maidstone Borough Council (MBC) wrote to KCC on 09 August 2023, setting out preliminary views on the proposed changes to the Minerals and Waste and Sites Plans and then updated that response on the 12th July 2024.

Those responses asked that KCC would provide significant reassurances to demonstrate that the tests in para 193 (c) of the National Planning Policy Framework (NPPF) 2024 could be met. This requires that;

c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons⁷⁰ and a suitable compensation strategy exists;

and references footnote 70;

70 For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.

The new 2026 NPPF repeats this test at paragraph N6(2) and footnote 62, with the same wording and requirements. However as the plan will be examined under the legacy system the 2024 NPPF will still apply (as directed by the annexes in the 2026 NPPF). For purposes of any cross referencing, para 193 and footnote 70 of the NPPF 2024, relate to NDMP N6(2) and footnote 62 of the 2026 NPPF.

The allocation of the land to the South and West of Hermitage Quarry is justified by KCC on the basis of the evidence base document, Hermitage Quarry – Suitability for Allocation Assessment Report June 2026. However it is not considered that the report provides the significant reassurances that the Council sought in its previous representations.

- a) The report makes various references to the Secretary of State's decision letter (13 July 2013). The Inspector at that time made recommendations under now out of date, planning policy (NPPF 2012). This had a lower test of importance and protection of ancient woodland. This is recognised in the report, but the report still relies on and draws conclusions and justifies the allocation, on the basis of that older decision (see para 6.43, 6.44). The conclusion drawn from the 2013 decision is based on a lesser policy test, not current planning policy which has a higher test. It was a decision based on conditions 'at that time' not policy and conditions now, and so is not reliable. Para 6.45 then concludes that;

6.45 It is considered that the overall planning considerations as summarised in this Report are broadly similar to that which existed at the time of the Secretary of State's 2013 decision, and that the planning benefits of the current proposed extension, when taken as a whole, should be considered "wholly exceptional circumstances" which justify the proposed Plan Allocation.

This is effectively saying that the decision to allocate now, is based on the conclusion of the 2013 decision and that KCC are using it as a precedent, without taking into account the changes in policy and protection of ancient woodland. It uses a decision based on older tests to argue and justify the consideration of the current test, rather than applying the current test to the current conditions and situation – the test has been mis-applied.

- b) Para 2.21 of the report states with reference to Kentish Ragstone as a heritage material that

"The conservation of historic buildings should be attributed great weight in accordance with the NPPF (para 213), and is a very significant factor weighing in favour of allocating the extension site to enable a continuation of the supply of this essential material."

NPPF Para 212 (It is assumed that the para 2.21 refers to para 212 and not 213) actually refers to the impact of a proposed development on a heritage asset, *"When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation."* It is an error to apply para 212 of the NPPF to the quarrying of material used to help conserve a heritage asset. The development of the quarry does not itself affect a designated heritage asset or directly its significance. Quarry operations for heritage stone does not attract great weight in planning policy and is therefore not a *'very significant factor weighing in favour of allocating the extension site'*. It is accepted that heritage materials are of course desirable but do not carry the weight in planning policy, inferred here.

Additionally as part of the evidence base the WSP MINERALS SITES PLAN Alternative Ragstone Supplies in summary states at 5.1 that;

"In this regard, the report has concluded that geological potential for Kentish Ragstone exists in Kent (and further afield in Sussex) – although it is recognised that delivery of a ragstone for building stone only quarry would not be practically or economically feasible." and then concludes

"However, it is considered that further evidence is required in respect of (a) whether building stone quality material is being used for aggregate purposes; and (b) what the anticipated future demand for building stone is, to ensure that the correct 'importance' is attached to Hermitage Quarry as a supplier of restoration stone."

The level of importance of the need for heritage stone is therefore in doubt and requires further research to understand the level of demand and use of this form of stone, making the heritage stone requirement of lower importance in the planning balance.

Para's 6.10 – 6.15 of the report headed 'Would the development result in the loss or deterioration of the PAWS and Soils?' focusses solely on soil translocation. It does not address or account for the total loss of the actual woodland itself. In doing so it is failing to

recognise the actual surface cover destruction and is making the case that the translocation of the soils manages the loss of the ancient woodland. Natural England guidance is quoted as saying; “will result in the loss or deterioration of ancient woodland, ancient trees and veteran trees”. The assessment should take account of the actual physical loss of the existing woodland cover, ground cover, soils and other features including transient wildlife. Oaken Wood has defining ecological characteristics which make it a particularly locally significant landscape. This includes its size, which has to-date acted to reduce disturbance and fragmentation, its long history of rotational coppice management and underlying geology and hydrology and its somewhat idiosyncratic flora and fauna, with its affinities with heathland habitat, including scarce cudweeds, green tiger beetle and nightjar.

Para 6.12 quotes the advice in the 2013 SoS decision in full regarding the use of soil translocation. It appears to rely on this justification alone without any up-to-date information or analysis of current science and understanding of soil translocation. This reliance on the 2013 decision means that the report is using out of date evidence to support its conclusions. It is noted that para 6.14 then states that

“If it were concluded that there is no loss or deterioration of the soils in respect of their value as PAWS then the remaining ancient woodland policy tests would not be invoked, and the site allocation would be acceptable in principle from this perspective.”

Simply taking the soil away and not recognising the actual woodland loss itself is not justified and does not allow for the exclusion of the primary policy test – loss of the ancient woodland, nor is this conclusion based on current science and understanding of soil translocation.

- c) Availability of alternatives sources of stone. MBC notes that no other site for the extraction of hard rock has been identified or come forward in the Call for Sites undertaken in 2022 and 2023. However, MBC also notes in its earlier consultation responses that an alternative could be not allocating the site and instead relying on imports of hard rock from outside of the county. In light of the documented road building end-use for most hard rock earmarked to be excavated from a Hermitage Quarry extension, the Minerals Planning Authority may wish to ascertain whether the Supreme Court ruling on Horse Hill, Surrey also requires ‘downstream’ emissions to be taken into consideration when calculating the total carbon footprint for the proposal. For planning practitioners, the main principle is that where downstream emissions are a reasonably foreseeable consequence of a development, they may need to be assessed as part of the EIA. The Court confirmed that planning authorities can still grant permission for environmentally harmful projects, provided they have properly assessed the environmental effects and taken them into account.

The availability of alternatives analysis at paras 3.10 - 3.19 is somewhat outline and lacks detail, and mainly concludes that the easiest way to meet need is at the application site, but gives no definite or conclusive reasons other than the lack of response to call for sites. This does not meet the response by MBC urging that KCC robustly assess all evidence, potential risks and options for the provision of these materials.

- d) Given that the requirement of NPPF policy para 193(c) (loss or deterioration of irreplaceable habitats) must be engaged due the total loss of the woodland itself (regardless of any translocation which does not preserve or prevent loss of the ancient woodland as it is irreplaceable) then the test of ‘wholly exceptional reasons’ must be engaged. Para 6.16 of the report states that “The need for the continued extraction of Kentish Ragstone for restoration of historic buildings including UNESCO designated buildings, and the fact that no viable alternative sources are currently known to exist is

considered a wholly exceptional reason for the purposes of the policy test, and aligns with the limited examples given in Footnote 70 of the NPPF.” There are 3 issues here;

- i. need for heritage stone
- ii. no viable alternative sources
- iii. alignment with footnote 70

Firstly the need for heritage stone is predicated on an incorrect application of NPPF para 212 (see (b) above) which affords great weight to the use of heritage stone. It is accepted that the use of heritage stone is of value in heritage conservation but in this context, does not carry great weight. Para 224 of the NPPF does give great weight to the benefits of mineral extraction, but only gives consideration of heritage stone (sub para f) as a lesser factor. The reports assertion in para 4.16

“There is a very obvious tension between the designation of the site as PAWS, and the need for a continuing supply of Kentish Ragstone for heritage purposes. This is a binary issue, with either one or other priority losing out. Both the preservation of our heritage and the protection of PAWS attract great weight as planning considerations.”

is simply incorrect. The need for heritage stone is a lesser consideration and does not attract great weight in policy, whilst the protection of ancient woodland has the very highest level (above great weight) of policy protection under NPPF para 193 ‘wholly exceptional’ test. The wholly exceptional test must always be passed first, before any other considerations – it is not a binary option but part of the wider planning balance considerations.

Secondly as regards alternative sources of supply MBC is not satisfied that a fully robust and detailed assessment of all alternatives and options have been explored, costed and examined from a wide range of options, not just operational convenience and so the assessment is flawed by the lack of clear evidence in this respect.

Thirdly footnote 70 provides examples of the types of development that may meet the wholly exceptional test as; “infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.” There are 2 elements to these examples, one that they should be at least of national consideration and have statutory level initiation or authority and secondly that the public benefit would clearly outweigh the damage. The need for heritage quality ragstone and a restricted supply do not appear to meet the example of a statutory led or initiated, national level need of presumably very substantial status. The public benefit matter is more nuanced and largely a matter for the examiner to decide, but it is a very finely balanced decision on its own. However, in the context of a major piece of national infrastructure (as implied by footnote 70) the public benefit would likely be justified by the form and need of the development itself, at a national level. This justification is not present in this case, for a single stone quarry in Kent. The report itself fails to argue or justify how the need for heritage quality ragstone and a restricted supply could meet this very high policy requirement .

The report at para 6.17 states;

“The Kentish Ragstone cannot be extracted in isolation, and relies on the associated extraction of crushed rock to facilitate this. As a result, wider benefits also result which add further weight in respect of the “wholly exceptional reasons” which justify the plan allocation.”

This is also referred to in the WSP Alternative Ragstone Supplies report which states; *“This is because aggregate grade ragstone is inextricably linked to building stone ragstone, and operators must extract large quantities of the former to produce small quantities of the latter.”*

However, this is a circular argument as the need for heritage stone is reliant on the crushed stone, so we need the crushed stone to get the heritage stone. Just because you can't get one, without the other isn't an exceptional reason, its an operational matter, and of itself is not exceptional. As the same WSP report has concerns about the level of need of heritage stone (as above) a more robust assessment is required to justify this circular argument.

Overall it is not considered that the requirements of para 193 and footnote 70 are met or justified as the reasons given do not align with the examples under footnote 70, a circular argument of need is used, and public benefit is not demonstrated. The decision appears to be based solely on the 2013 decision (see para 6.45 above) and makes the claim that *"It is considered that the overall planning considerations as summarised in this Report are broadly similar to that which existed at the time of the Secretary of State's 2013 decision."* without any justification or argument to support this. It is not considered that the condition under footnote 70 are met.

Proposed Modifications and amendments

Maidstone Borough Council considers that the tests of soundness have not been met in regard to the issues detailed above, namely that the Hermitage Quarry – Suitability for Allocation Assessment Report June 2026 (HQSAAR) that provides the justification for the allocation of the Land, does not provide the level of detail and cohesive argument, and in some cases appears to mis-apply national planning policy thereby failing to justify the site allocation. This is due to;

- a) reference to and reliance on the 2013 SoS decision.
- b) mistakenly applying NPPF para 212 to provision of heritage material
- c) failing to account for the physical loss of trees and woodland itself
- d) lack of alternative sources of hard rock or roadstone
- e) incomplete application of footnote 70 and wholly exceptional reasons

Maidstone Borough Council therefore recommends that, to remedy these issues, additional work and analysis is required in order that a fully considered and robust planning assessment may be undertaken. This reconsideration would then trigger a revised appraisal of the site allocation on land at Hermitage Quarry in the light of those revisions, with it is suggested the conclusion that the site not be allocated. This would entail the revision or review of the supporting evidence and the following modifications

Modifications

- 1 The HQSAAR assessment places an over reliance on the 2013 SoS decision, which is un-sound considering the changes in planning policy and conditions at that time meaning that that decision was based on fundamentally different considerations. That decision does not form a precedent as it does not deal with points of planning law and planning famously relies on each case 'on its merits.' All references in the HQSAAR to the 2013 SoS decision should be reviewed and modified accordingly and given significantly less weight in the assessment.
- 2 The use of the quarry site for heritage stone mis-applies NPPF para 212 which applies 'great weight' to development impacts on the historic structure or site itself. Quarrying of stone in Kent does not meet the purpose of para 212, so great weight is not applied to quarrying in this context. This fundamentally undermines the major justification in the HQSAAR that the need for heritage stone provides (an element) of the wholly

exceptional reasons. The assessment should be modified to remove this approach and moderate the weight given to the sourcing of heritage stone accordingly.

- 3 The HQSAAR assessment focusses on the translocation of soils as the main (or only) element of ancient woodland loss to the exclusion of the actual physical loss of tree, ground and soils itself. The assessment should be modified to take full account of the entire site loss and its interconnected biosphere and make a full assessment of this loss. Additionally the reliance on the 2013 SoS decision in regard to soil translocation is clearly out of date. No up-to-date evidence on the science behind and supporting the translocation of soils is provided or used to support the efficacy of this method and whether and to what degree it supports or moderates total ancient loss. The assessment should be modified to include current science and evidence supporting soil translocation.
- 4 The HQSAAR assessment does not provide a detailed and robust assessment of the alternative sources of hard rock or roadstone, and options and alternatives to providing this material in other ways, nor any impacts of the alternatives. The assessment should be modified to give a full and robust account of alternatives to the use of this quarry site to justify the site allocation.
- 5 The assessment of wholly exceptional circumstances in the HQSAAR is inadequate and based on flawed assumptions (as above) and in particular the mis-application of the test of wholly exceptional reasons. The HQSAAR should be modified to make a more complete and reasoned assessment of wholly exceptional that aligns fully with the examples under footnote 7 and that are fully justified and supported by the additional evidence and reasoning.

In the absence of these modifications and revisions to the HQSAAR, the evidence base supporting the allocation of the Land to the South and West of Hermitage Quarry site is considered to be inadequate. The allocation therefore cannot be sound in the absence of this full and complete consideration of all the issues and without the proper application of planning test in the NPPF. As the Minerals and Site Plan currently stands the proposed site allocation on Land to the South and West of Hermitage Quarry is considered to be un-justified.

Maidstone Borough Council recommends that the Examination require the re-assessment of the supporting evidence base, making it fully up to date, based on current science and data (especially as regards soil translocation and the woodlands inherent value and unique woodland habitat including rare species), need for and alternative means of meeting the need for hard rock and road stone, need and demand for heritage stone, and a review of the implications of the provision of heritage stone.

The NPPF tests for the total loss of irreplaceable ancient woodland are perhaps the highest of any requirements in planning policy and this level of significance and justification is not demonstrated in regard to the allocation of this site.

The Kent Minerals and Waste Local Plan 2024-39 Draft Kent Mineral Sites Plan July 2026 Regulation 19 Pre-Submission Draft sets out from page 30 onwards the development Management Criteria relating to any future planning application on the site. Under the Need, alternatives and irreplaceable habitat section, bullets 1-4 appear to require a level of assessment and justification that would appear to be more appropriately delivered within the Site Allocation plan itself.

This includes reference to the need for or evidence to support;

- to determine whether development resulting in the loss or deterioration of irreplaceable habitat is justified,

- to determine whether the relevant national and development plan policy tests for irreplaceable habitat are met.
- the full extent of direct and indirect impacts on ancient woodland (PAWS) and associated ecological features,
- a detailed 'Ancient Woodland Compensation Strategy'. The strategy must acknowledge that ancient woodland (PAWS)) and any veteran or ancient trees is irreplaceable habitat

These are all matters that are referenced in the supporting evidence (subject to our concerns detailed above) and used to justify the allocation. The Plan itself however appears to then require the planning application to repeat and make these justification all over again. If for instance the planning application has to show whether the loss of irreplaceable habitat is justified, why hasn't the Plan already confirmed this? The relevant national policy test for irreplaceable habitat should have been demonstrated by the Plan already. This both places additional burden and duty on the applicant to do this additional work, but could also be considered to be 'kicking the decision' down the road as the key decision on the major issue of irreplaceable habitat is deferred to a planning application.

If these issues aren't resolved by the Plan then they should not be deferred to a planning application stage. The plan should be amended to remove any elements of the Development Management Criteria that could be reasonably be considered to be the role and duty of the Plan to resolve and decide at the site allocation stage. If the Plan does not make the decision that the policy tests and barriers have been fully considered and agreed to the extent that site allocation is on balance, proper, then the site allocation itself must be un-sound, as is the case here.

The site allocation at Chapel Farm (originally allocated in the 2020 Minerals Site Plan) appears to be unchanged from that version in the consultation. It is considered that the standard 15m ancient woodland buffer may be inadequate and that consideration of a larger buffer, in accordance with Natural England advice, be implemented at any planning application stage as appropriate. It is recommended that the development management criteria, Biodiversity bullet 1 of the Plan be amended be amended to read;

A minimum 15 metre buffer and implementation of a larger buffer under Natural England standing advice be considered, and maintained around the Ancient Woodland and protected trees at all times.