

Representor number
PSLP_2048 to PSLP_2052

MATTER 11 – RETAIL, TOWN CENTRES AND COMMUNITY FACILITIES

TUNBRIDGE WELLS LOCAL PLAN

Prepared by Pro Vision on behalf of Cooper Estates Strategic Land Limited

June 2022

Representor number
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MATTER 11 – RETAIL, TOWN CENTRES AND COMMUNITY FACILITIES
PROJECT NO. 2133

PREPARED BY:

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DATE:

JUNE 2022

PRO VISION

THE LODGE

HIGHCROFT ROAD

WINCHESTER

HAMPSHIRE

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1.0 Introduction

- 1.1 This Hearing Statement has been prepared by Pro Vision on behalf of Cooper Estates Strategic Land Limited (“CESL”) who are promoting Land at Sandown Park¹ for a Care Community² within Use Class C2 to provide 108 Extra Care (“EC”) units with communal care and wellbeing facilities.
- 1.2 The Inspector will be aware through correspondence³ on behalf of CESL, that we have long been concerned that plan-making by Tunbridge Wells Borough Council (“TWBC”, “the LPA” or “the Council”) has failed its legal duties. Our submissions in relation to Matter 1 concluded that the Local Plan Examination should not proceed as the Submission Plan is not legally compliant.
- 1.3 We do not seek to repeat these concerns, but in order to assist the Inspector we provide cross-references to the CESL representations and additional communications previously made where they relate to the specific Stage 2 Examination Questions.
- 1.4 This Representation responds to the Inspector’s questions within Matter 11⁴ and has been prepared in the context of the tests of ‘Soundness’ as set out in Paragraph 35 of the National Planning Policy Framework 2021 which requires that a Plan is:
- Positively Prepared
 - Justified
 - Effective
 - Consistent with national policy
- 1.5 This hearing statement has been prepared in consultation with Gregory Jones QC, Francis Taylor Building, Temple. In summary, we have identified defects in the Council’ assessment of housing land supply, specifically that of specialist accommodation for older people. Flaws in the assessment will perpetuate the under-delivery of Extra Care in the Borough over the plan period. This relates to Matter 11 mainly via AL/RTW1 as is discussed below. The failure

¹ Regulation 22 version of the SHELAA (Jan 2021) – [Core Document 3.77n - Site 114](#)

² Specifically “EC accommodation” as a category of specialist housing for older people, as defined by the [Planning Practice Guide at Paragraph: 010 Reference ID: 63-010-20190626](#)

³ Representation [PSLP_2048](#), full document at [SI_140](#)

⁴ Examination document [ID05](#)

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to properly plan for the needs of older persons is not positive nor effective planning for a key, and growing, part of the local community.

2.0 Matter 11 Issue 1 – Town Centre Hierarchy

Q1. How has the hierarchy of centres in Policy [ED8](#) been established? Is it accurate and based on appropriate, up-to-date evidence?

2.1 CESL note that, in relation to CESL interests and whether sufficient land has been allocated to meet the needs of older persons and in the right location, Royal Tunbridge Wells is defined as the Primary Regional Town Centre by Table 13 whilst Pembury is defined as a Village Settlement yet the plan proposes to allocate 3 sites in Pembury for Care Home / Extra Care development. We consider this is disproportionate.

Q2. What are the Village Settlements for the purposes of Policy ED8? Are they retail centres, or villages defined by Limits to Built Development?

2.2 This is not clear.

Q3. What is the justification for including the proposed Neighbourhood Centres at Tudeley Village and Paddock Wood? How will they be defined for future decision-making purposes?

2.3 CESL note that the 4 centres proposed in Tudeley Village⁵ and the 2 centres proposed to the East of Paddock Wood⁶ are all within Green Belt. Mindful of our comments to Matter 6⁷, there is no clarity regarding the location of the proposed Extra Care (EC) developments that are proposed within these allocations.

⁵ See Exam Document [3.128, pg161](#) Map 32

⁶ See Exam Document [3.128, pg150](#) Map 28

⁷ Issue 1, Question 9 for Tudeley Village and Issue 3, Question 1 for Paddock Wood

3.0 Matter 11 Issue 2 – Managing Vitality and Viability

Q1. What is the need for commercial, leisure and town centre uses over the plan period and how will this be met?

3.1 CESL note that EC developments represent commercial operations (at least in part) and are sources of employment, for example the proposed Care Community at Sandown Park would create 50-60 job opportunities. Furthermore, EC operations would usually have recreational facilities and other operations that are commonly found in Town Centres (e.g. small retail unit(s), GP/medical consulting room(s), bookable community rooms, restaurants, and leisure facilities etc) as ancillary elements within a wider EC scheme that would also be available to for use by the wider community. As is detailed in their Matter 2 and Matter 8 Statements, CESL conclude that TWBC have not identified sufficient EC provision within the Submission Version of the Local Plan (SV LP).

Q2. Does the Plan allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed, looking at least ten years ahead, as required by paragraph 86 of the Framework?

3.2 See response to Q1, above.

Q3. What is meant by ‘a range of appropriate uses’ for the purposes of Policy ED9? Does the Plan define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations, as required by paragraph 86 of the Framework?

3.3 No comment.

Q4. What is the justification for requiring retail, office and leisure uses to be located in defined centres, and not other main town centre uses, under Policy ED10? Is this approach consistent with national planning policy?

3.4 No comment.

Q5. What is the justification for requiring development proposals to consider operating from a number of smaller units, rather than a single unit, as set out in paragraph 6.525 of the Plan?

3.5 No comment.

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Q6. What are the thresholds for impact assessments in Policy [ED10](#) based on? Are they appropriate and justified?

3.6 No comment.

Q7. Why are assessments required where there is the potential for 'adverse impacts' – would the level of harm not be established by the assessment?

3.7 No comment.

4.0 Matter 11 Issue 3 – Primary Shopping Areas and Retail Frontages

Q1. What is the justification for the proposed Primary Retail Frontages? How do they differ from the remainder of the Primary Shopping Areas?

4.1 No comment.

Q2. How would a decision-maker react to a proposal for a change of use away from a main town centre use outside the Primary Shopping Area, but still within the Town Centre?

4.2 No comment.

5.0 Matter 11 Issue 4 – Commercial and Mixed-Use Site Allocations

[AL/RTW2](#) – LAND AT THE AUCTION HOUSE, LINDEN PARK ROAD

Q1. What is the latest position regarding the construction of the scheme already approved on the site?

Q2. Is the allocation developable within the plan period?

5.1 CESL have no comments relating to this site.

[AL/RTW14](#) – LAND AT TUNBRIDGE WELLS GARDEN CENTRE

Q3. What is the justification for allocating the site as a mixed-use development of housing and an extension of the garden centre?

5.2 No comment.

Q4. Can the proposed uses be achieved on the site? Is the allocation developable?

5.3 No comment.

Q5. Can a safe and suitable access be achieved for the proposed uses? How has this been considered as part of the plan making process?

5.4 No comment.

Q6. How have the proposed site areas been established? What are they based on and are they justified?

5.5 No comment.

Q7. Do the exceptional circumstances exist to justify amending the Green Belt boundary in this location?

5.6 Yes, exceptional circumstances exist to alter Green Belt boundaries generally to enable the housing need for the Borough to be met. See CESL Matter 4 Statement. The site selection methodology is unclear and unsound, however (see CESL Matter 5 Statement).

[AL/RTW1 – FORMER CINEMA SITE, MOUNT PLEASANT ROAD](#)

Q8. What is the latest position regarding the construction of the scheme already approved on the site?

5.7 This site has a long, and complex, planning history⁸. The site was cleared of former development, CESL understand, in 2014, and is arguably the most sensitive urban regeneration site within the entirety of Royal Tunbridge Wells. It is a prominent site in the centre of the Town that has been derelict for more than two decades⁹. Permission was granted in February 2018 for a mixed-use scheme involving commercial units at lower levels, with 99 dwelling units above¹⁰. That scheme was later amended, via Minor Material Amendment permission 19/01869/FULL¹¹, issued 12 September 2019 (Appendix 3) to increase the number of dwellings to 108 units (again above some commercial elements, though the scale of these was greatly reduced from that of the earlier permission¹²).

5.8 The application submission and subsequent Officer Report (Appendix 4) are notably quiet as to the mix of the residential units within the scheme¹³, however it is possible to interrogate the approved plans (collated at Appendix 5) and establish that the approved mix of units (alongside a cinema and other commercial premises) is:

- 10x 1-bed units
- 96x 2-bed units
- 2x 3-bed units

5.9 The AL/RTW1 site is highly constrained in urban design terms, as is illustrated by a key plan within the 19/01869/FULL submission (Appendix 6). Accordingly, a detailed Daylight, Sunlight and Overshadowing report by Avison Young informed the application. The full report is

⁸ Appendix 1 – this is from From [TWBC website](#)

⁹ Appendix 2 – [Kent press story regarding the site 20.02.2022](#)

¹⁰ 29x 1-bed units, 62x 2-bed units, 17x 3-bed units and 6,355sqm (GIA) commercial floorspace via Permission [17/02262/FULL](#). Of the commercial floorspace, the cinema was anticipated to be 1,049sqm.

¹¹ Online record available via [this link](#), although key extracts from that are appended to this Hearing Statement

¹² See Appendix 4 – Section 3 – Summary Information. The commercial floorspace of the 2019 proposal is reduced to a total of 3,671sqm GIA; or 57.7% of that in the 2018 consent. The approved cinema has a floor area of 1,067sqm, with the remainder as A1/A3 uses.

¹³ Mix information does not appear in any of the following to 19/01869/FULL:

- Application form
- Planning Statement
- Transport Assessment
- Officer Report to Planning Committee

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reproduced at Appendix 7, however key illustrations from that are extracted below. The first of these refers to the pre-existing built form on site.

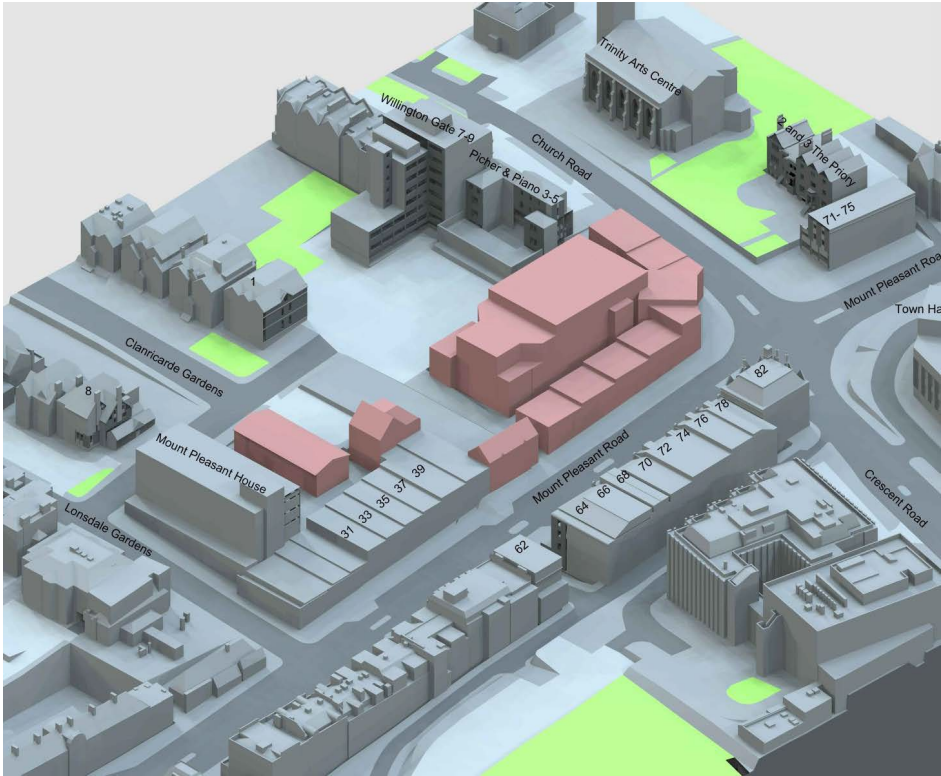


Figure 1 - Avison Young report (Fig 1 in that document)

5.10 The second of these images shows the built form that would result from 19/01869/FULL.

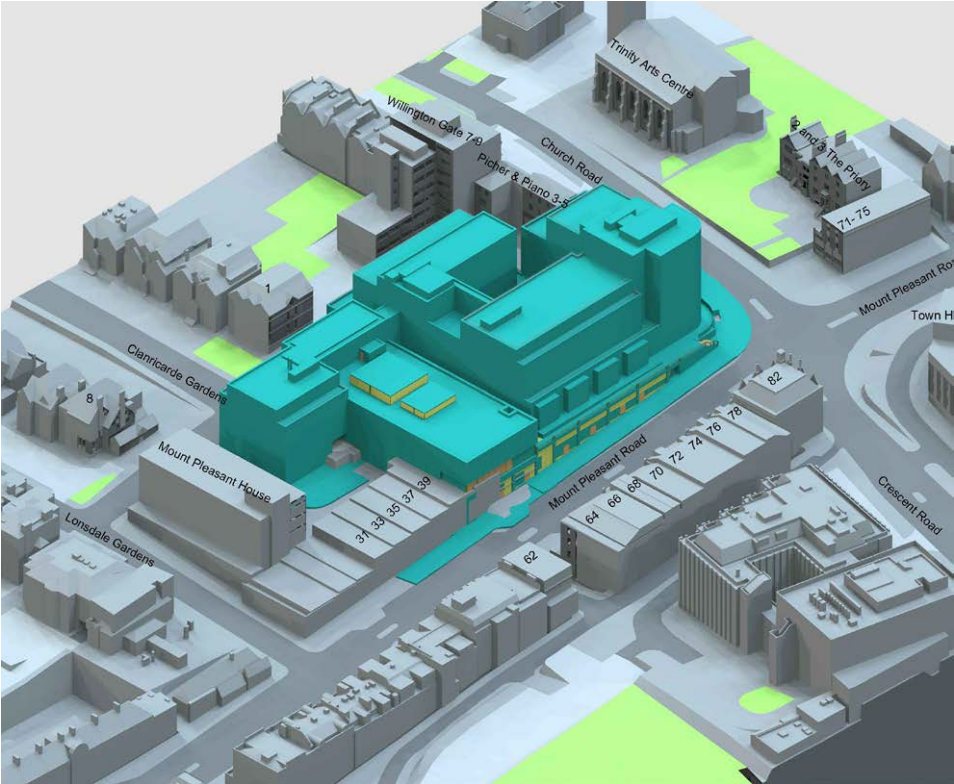


Figure 2 - Avison Young report (Fig 3 in that document)

5.11 Taking all of the forgoing into account, it is noteworthy, and unsurprising, that the Officer Report to the 11 September 2019 Planning Committee in relation to application 19/01869/FULL (Appendix 4) is explicit that the additional residential accommodation in the revised proposal was achieved, relative to the earlier scheme, without increasing the height of the scheme. The key part of paragraph 10.08 of the Officer Report is reproduced below (our underlining):

“The tallest and most prominent building (Block A) would remain the same height, although an extra level of residential accommodation is proposed within this block. This additional floor has been achieved through reducing the height of the retail units on the ground floor and the height of the top floor accommodation.”

5.12 It is therefore clear that the 19/01869/FULL scheme represents a reasonable maximising of the site potential, above ground. Additional residential elements could not be added without further reduction in commercial floorspace and increasing the risk of failing to deliver the mixed-use scheme sought by the allocation. It is therefore extremely unlikely that any more units would be deliverable on this site than the 108 for which permission has been granted.

5.13 However, we also note that while Condition 4 of 19/01869/FULL limits occupation of the units to the over-65s, there is no requirement for occupiers to be in receipt of a minimum Care Package in either the decision to 19/01869/FULL or the S106 agreement to the previous permission (Appendix 8; there was no new S106 apparently concluded in relation to the later permission, despite a number of the obligations relating to the, reduced, quantum of commercial floorspace). Therefore, we consider the permission as granted will simply deliver retirement housing as a C3 scheme, i.e. it is not a C2 extra care facility as there is no requirement on the operator to deliver any element of care to residents.

5.14 Thus, the permission which has been granted by the Council cannot be considered to be an Extra Care facility.

5.15 Below ground there is a significant constraint in the form of a weak railway tunnel which is discussed further below with regard to deliverability. There is therefore limited scope for increasing the capacity of the site below ground level.

5.16 However, notwithstanding the fact that TWBC Development Management functions have considered the site on at least 2 occasions in the past 4 years, the Planning Policy position

regarding the capacity of the site is discussed in the Council's Matter 8, Issue 6 Statement (Appendix 9). In that document, at paragraph 29(d), it is suggested that:

"AL/RTW 1 (The Cinema Site in Royal Tunbridge Wells) has been acquired by Retirement Villages and it is understood that it is its intention to provide some 150 extra care units" [our emphasis, of past tense, added]

- 5.17 While it is accepted that Retirement Villages (RV) have created a website specifically for this site¹⁴, the body of the RTW1 allocation is within Land Registry Title K372657 (See Appendix 10). A copy of this entry, dated 27 May 2022 is attached at Appendix 11 and clearly demonstrates that the owners of the site are still the Luxemburg-based company (Prime Finance (Tunbridge Wells) SARL). Furthermore, there is no indication on the Land Registry record for that title that a transaction to change the ownership to the site has even commenced. There is therefore no evidence to support that RV have acquired the site either directly or through its parent AXA. At the Full Council meeting of Wednesday 23 February 2022, Councillor Scott stated that *"retirement homes have placed an option to buy, the contractual and financial terms where an option was placed are confidential to them, and different elements will have financial implications"*.¹⁵
- 5.18 Secondly, the roads within the southern part of the allocation (Clanricarde Road and Lonsdale Gardens) fall within a separate Land Registry entry (TT6675), and are privately owned. They are registered to the Trustees of the Belvedere Estate.
- 5.19 Finally, the only approach to TWBC relating to a possible EC proposal at this site, to date, is a request for EIA Screening Request¹⁶, rather than a planning application. That approach was received by TWBC on 19 May 2022, and remains undetermined at the current time.
- 5.20 The accompanying DHA document to this Screening Request is reproduced at Appendix 13. It indicates, at paragraph 1.4.1 that approximately 165 apartments are intended, alongside just 800sqm of commercial floorspace. That quantum of commercial floorspace would not deliver the expected cinema of previous proposals (which is an expected requirement of the current

¹⁴ <https://rtw-cinema-site.co.uk/>

¹⁵ See minutes under [item FC76/21 Question 1](#) from Councillor Pound and response from Councillor Scott (Appendix 12)

¹⁶ 22/01547/ENVSCR, see [online records here](#)

AL/RTW1 wording in the SVP), and represents a mere 12.5% of the commercial floorspace (total) of the 2018 permission.

5.21 Further, we note that there is significant local interest in this site from residents and Councillors, and at the Full Council meeting on 23 February 2022 the Council passed a motion¹⁷ resolving unanimously *“That this Council considers the preparation of a robust “Meanwhile Use” planning policy for major developments in the Local Plan and Royal Tunbridge Wells Town Centre Plan. This consideration will occur through the Planning Policy Working Group and Royal Town Centre Plan Working Group and through formal engagement and consultation with businesses, residents and statutory consultees”*¹⁸. There has been a public call through “Alliance”, a local group of Independent Councillors for ideas, and we understand these to include uses like open space, market stalls, drive in cinema, performance / entertainment space. It therefore plain that the community and town would prefer commercial and community uses on this site, and therefore the reduction in such space as envisaged by the RV screening request may not be well received.

5.22 In conclusion, whilst there is an extant planning permission on the site, it has to date failed to deliver. We discuss below a key reason for this, but even if this allocation is retained, we consider that the site yield can be no more than 108 units without further compromise to the aspirations of the AL/RTW1 Policy in the SVP for a mixed scheme including a cinema and other facilities.

Q9. Is the allocation developable within the plan period?

5.23 Given the history of the site, and that it has sat undeveloped for 22 years, we are doubtful that the site will come forward for the quantum of development envisaged by the Council in the near future. We refer above to the succession of owners in recent years who have all failed to deliver a development on this site. Whilst we note that the pre-commencement conditions imposed on permission 19/01869/FULL have all been discharged and that permission has been confirmed as implemented, by virtue of a LDC issued in Mar 2021 ([21/00369/LDCEX](#)) it is very doubtful that the scheme as permitted can be delivered. We can find no evidence of a viability appraisal being undertaken for this allocation as part of the SLP.

¹⁷ Appendix 14 [Motion presented by Cllr Sankey to 23.02.2022 TWBC Full Council](#)

¹⁸ See Appendix 12, Item FC83/21 (pg 17)

- 5.24 In 2017, a Tunnel Report was prepared by COWI UK Ltd for the owners Prime Finance (Tunbridge Wells) SARL limited (Appendix 15). The Tunnel Report recognises that the weakness of the tunnel is an issue for development on the AL/RTW1 allocation and recommends that shallow foundations are used above the tunnel and that loads above the tunnel should be no greater than existing. It also recommends piled foundations adjacent to the tunnel should be no closer than 3m and possibly sleeved (which apparently would help spread any load) and says that the tunnel condition will be inspected before and after the work.
- 5.25 The Structural Summary¹⁹ at Paragraph 5 sets out foundation details above the tunnel and state that “Network Rail have confirmed they are satisfied with this methodology”. At paragraph 7 it concludes that “The proposal has been discussed in principle with James Fazakerley (Network Rail South East Senior Construction Manager) and he is familiar with the site. **Network Rail are satisfied with the initial structural methodology adopted subject to final review of the detailed drawings, reports and calculations.** Detailed conditions surveys will be carried out on all properties adjacent to the site prior to any construction. Monitoring of the tunnel will be carried out by a Network Rail Surveyor before and during the works”.
- 5.26 The Network Rail response²⁰ to the 2017 application does not seem to provide any comfort that works can proceed, instead leaving it for the developer to provide construction details and agree with Network Rail.
- 5.27 Accordingly it is likely that the unknowns around what Network Rail’s requirements will be and the potential cost risk if there was to be tunnel damage as a result of construction on the site has rendered schemes unviable. The tunnel serves the mainline railway into London from Tunbridge Wells and runs up from the South Coast at Hastings. Should the tunnel be out of service for even a day, this would be devastating. We consider that aside from the cost of repairing the tunnel should that be necessary as a result of development, if it meant trains could not run then there would potentially be significant compensation due to the rail operator. Further, it is possible that finding insurance for the construction works and development would be extremely difficult. Therefore, even if Network Rail agree to a construction plan, the developer will still need to have contingency and insurance in place in the event of damage to the tunnel / rail operations.

¹⁹ Appendix 16 – BWM Structural Design Summary to application 17-02262-FULL

²⁰ Appendix 17

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5.28 As such, we consider that this is a significant barrier to the delivery of development on site and we consider that the failure of the plan to robustly assess the viability of this allocation is unsound.

5.29 Whilst CESL would like to see this prominent site put to a beneficial use, the Council should be realistic about what is achievable having regard to constraints, and develop a robust and viable strategy for the site through its Local Plan. Policy AL/RTW1 fails to achieve this because it is not supported by evidence that addresses the constraints of the site.

[AL/RTW15 – LAND AT SHOWFIELDS ROAD AND ROWAN TREE ROAD](#)

Q10. What is the justification for the proposed allocation and mixed of uses?

Q11. Is the allocation developable within the plan period?

Q12. How has existing on-site wastewater infrastructure been considered? Is the allocation deliverable?

Q13. What impact will the proposed allocation have on existing community facilities and how will the policy provide for the effective enhancement and improvement of facilities?

5.30 CESL have no comments regarding this site.