

Statement on behalf of the Claimant

Witness: Joanne Alexander

1<sup>st</sup> Statement

Dated: 29.03.24

Exhibits: JA/1 – JA/7

IN THE HIGH COURT OF JUSTICE

IN THE MATTER OF PROSPECTIVE PROCEEDINGS

**BETWEEN:-**

**Claim No.**

**ASHFORD BOROUGH COUNCIL**

**Claimant**

**-and-**

**(1) JOHN MATTHEWS**

**(2) SAILLUS LEE**

**(3) EUGENE LEE**

**(4) NATHAN LEE**

**(5) LEWIS LEE**

**(6) PERSONS UNKNOWN**

**Defendants**

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**WITNESS STATEMENT OF JOANNE ALEXANDER MSc, BA(Hons)**

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**I, Joanne Alexander of Ashford Borough Council, Civic Centre, Tannery Lane, Ashford, Kent**

1. I make this statement in support of the Claimant's claim for an Injunction against the Defendants pursuant to s.187B of the Town and Country Planning Act 1990 (the Act). I am duly authorised by the Claimant to make this witness statement and I make it from my own information, knowledge and belief save where otherwise stated.
2. I am employed by Ashford Borough Council as Team Leader Planning Enforcement. I have been working for the Council for over 10 years as a planning professional. I have worked as a Planning Officer in Local Government for over 25 years.
3. This witness statement relates to Land known as "Land on the south side of Rosemary Lane, Smarden, Ashford" ("the Land") shown edged black on the plan at **Exhibit JA/1** which is registered with HM Land Registry under title number K803646. A copy of the register is attached as **Exhibit JA/2**. This shows the legal proprietor as 'John Matthews' of '14 Wind Hill, Charing Heath, Ashford, Kent, TN27 0BD' being purchased on 25 November 2021. Applications are pending in HM Land Registry which have not been completed against the title since 20 December 2023.
4. Ashford Borough Council is the local planning authority (the Council/the LPA) within the meaning of the Town and Country Planning Act 1990 (as amended) for an area including the Land. I make this witness statement in support of the Claimant's application for an interim Injunction, and in support of the Claimant's claim generally.
5. I have visited and therefore have knowledge of the Land.
6. The lawful use of the Land is agriculture. The Claimant's evidence is that the Land has recently been purchased and works were pre-planned and

commenced on Good Friday 29 March 2024 of the Easter weekend when it was anticipated that the Council offices would be closed. Unauthorised operational development and engineering operations were undertaken and 4 touring caravans brought on to the land in the space of a few hours on the afternoon of Good Friday and it is the Council's belief that these works have been preparatory works to facilitate the residential use of the Land, they are continuing for the stationing of at least 2 static residential caravans in addition to the four touring caravans.

7. The Claimant seeks a prohibitory Injunction to prevent the anticipated use of the Land in breach of planning control, namely to prohibit the stationing of residential caravans on the Land, and any further associated development which would facilitate the making of a material change of use.
8. The Defendants are 'John Mathews', the registered legal proprietor with HM Land Registry, 'Saillus Lee', Eugene Lee', 'Nathan Lee' 'Lewis Lee' as having an interest in the Land and 'Persons Unknown'.

### **Relevant planning history of the Land and description of the site**

9. The Land, which extends to approximately 4.5 acres is located in the open countryside for the purposes of planning, outside the confines of any settlement.
10. The lawful use of the Land is agriculture. Two planning applications have recently been refused for proposed development on the Land as detailed below.
11. The Land is located on the south side of Rosemary Lane which is an unclassified single lane. The Land is approximately 2 miles north of the village of Smarden which is the nearest settlement. Prior to the unauthorised development, the land was laid to graze having been used for the grazing of horses. It has hedgerows to all boundaries with established trees. There was

a pre-existing field access on to Rosemary Lane in what is otherwise a continuous, established roadside hedge as can be seen at **Exhibit JA/3**.

12. The Land is designated as a “priority habitat” as the site is classified as ‘traditional orchard’ which is a priority habitat under sections 40 and 41 of the Natural Environment and Rural Communities Act 2006. ‘Priority Habitats and Species’ are defined as Species and Habitats of Principle Importance included in the England Biodiversity List published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 (NERC). Advice previously obtained from Kent County Council Ecological Advice Service who advise Ashford Borough Council on ecological matters (when consulted on a previous planning application) advises that old orchard trees, or remnants of old trees, are found throughout the site. They have advised that this habitat is now becoming extremely rare and so is the specialist wildlife (usually notable/threatened invertebrates) that inhabits it and being a priority habitat, the local planning authority is obliged to maintain and enhance this habitat under the NERC Act (**Exhibit JA/4**).

13. In terms of Landscape impact, the Land is within the Smarden Bell Farmlands Landscape Character Area which is characterised by flat to gentle undulating landform, low visibility, mixed land use, varied field pattern, hedgerow enclosed pasture with oak hedgerow trees, remnant orchards, plantations, large arable fields, field ponds, traditional timber framed buildings, converted farm buildings and recent housing and static caravans. The Landscape Analysis notes that the condition of the area as ‘moderate’ and the sensitivity as ‘low’. The overall guidelines for the area are to ‘improve and reinforce’ the landscape by, inter alia, conserving the conserving the pastoral land use; improving and reinforcing intimate small scale field pattern and strong sense of enclosure; improving and reinforcing the matrix of hedgerows and mature hedgerow trees; improve enclosure methods and avoid further excessive post and wire fencing. I show an extract for the Landscape Character Area as **Exhibit JA/5**. The use of the Land as a Gypsy and Traveller site is not consistent with the Landscape Character Area and conflicts with the overall guidelines for the area.

14. Public Right of Way AW176 and AW177 run to the south of the Land. The Land will be visible during the winter months from these footpaths.

### **Planning History**

15. Two planning applications have been submitted by the First Defendant in respect of equine development.

16. On 9 February 2023 planning permission was refused under application reference PA/2022/00941 in respect of, '*Erection of stable building with ancillary store for equine related use, together with the continued use of land for the keeping of horses with associated access, yard and track with biodiversity and landscape enhancements*' **Appendix JA/6**.

17. A subsequent application seeking permission for '*erection of stable building, together with the change of use of land for the keeping of horses and associated access, yard and track with biodiversity and landscape enhancements*' was submitted however it was withdrawn by the applicant following informal officer advice that it could not be supported.

### **Report of unauthorised development**

18. On the afternoon of Friday 29 March 2024 the Claimant received a report via the Council's Contact Centre that there were digger(s) working on the land, that hardcore and cement had been delivered and was being laid and that four touring caravans had been brought on to the Land.

### **Site visit of 29 March 2024**

19. At approximately 16:00 on Friday 29 March 2024 I conducted a site visit to the Land with my colleague, Ms Hopkins. There were 4 cars and two vans parked along Rosemary Lane to either side of the entrance to the Land. The grass verges on approach were churned up. There was a large digger

working on the Land. Coloured plastic pipe was laying on the ground at the entrance to the site.

20. On approaching the Land, I could see that a substantial amount of hardcore had been laid from the entrance of the Land with Rosemary Lane, running approximately 30 metres in to the land. It appeared to me that the access had also been widened. The large digger was working, laying the hardcore that had been brought on to the Land. A further hardsurfaced trackway was in the process of being laid at 90 degrees to the entrance track, running to the west. This was approximately 20 metres in length.
21. On entering the Land I was approached by a gentleman and three children. I asked if he was the owner of the Land, introducing myself and my colleague. He confirmed that he was Saillus Lee, that he was a Romany Gypsy and that the Land had '*been owned by a lady who sold it to a guy who was going to sell it to a traveller*'. He confirmed that he and his sons had bought the Land, later confirm that this had been 3 or 4 months ago and that it was now owned by 4 gentleman – Saillus Lee and his 3 sons – Eugene Lee, Nathan Lee and Lewis Lee.
22. Later in the conversation we were joined by a gentleman I understood to be Eugene Lee.
23. They confirmed that they had submitted a planning application yesterday evening via a planning agent, Alison Heine, which was for the siting of 4 static caravans and a utility building as well as hardsurfacing and during our conversation I was shown a sketch on a mobile phone of the intended layout of the site. This showed four pitched with mobile homes branching off the trackway being laid which runs west at 90 degrees from the access trackway.
24. They confirmed that the site was to be occupied by their one extended family – Saillus Lee and his 3 sons – Eugene Lee and his wife who have three children aged 8 years old, 6 years old and 3 years old; Nathan Lee and his

wife/partner and their two children aged 6 years old and 3 years old; and Lewis Lee and his wife/partner who was pregnant.

25. They asserted that they had come from a large site in Lenham Road in the adjoining Borough of Maidstone, where they had been 'doubling up' on pitches. Eugene explained that he had been there for about 3 months, having had to vacate a site he had occupied in Wealden following the refusal of planning permission and an appeal.
26. I enquired about any medical or health needs and they confirmed that one of the children – Nathan Junior – had ADHD and did not speak. During my visit, I noted at least 5 children running around the site and it was evident to me that Nathan did have difficulties speaking and communicating.
27. I could see that three of the four touring caravans were connected to gas bottles, whilst the fourth was laying at a slant.
28. They confirmed that the hardsurfacing had been commenced earlier that day and that the 4 touring caravans had been brought on to the land that same day. They confirmed that two static caravans were on their way to the Land, having been purchased from Rye.
29. It was evident to me that the works and timing had been pre-planned over the Easter Bank Holiday weekend when it is thought that Council offices were closed and that no action could/would be taken.
30. I advised on a number of occasions that all work should cease, that no further works should be carried out and that no further caravans – touring caravans or static caravans/mobile homes - should be brought on to the Land. They confirmed that it was their intention to stay on the Land. When asked, they confirmed that they would be occupying the touring caravans that evening. They were aware that the Council could take enforcement action, could get a Court Order but unaware whether this could happen before the next working day, i.e. Tuesday, after the Eastern Bank Holiday. When asked what my intention was, I confirmed that the Council would consider its position.

31. I asked the gentleman if I could take photographs of the site, not including the children, however it was asserted that he would rather I did not. I show the photographs of the Land which I had taken on approach as **Exhibit JA/7**. We thanked the gentlemen and left the Land at approximately 16:35 hours.

### **Works preparatory to residential use of the land**

32. It was clear to me that there had been significant unauthorised ground works, operational development and engineering operations carried out on the Land in breach of planning control. Extensive hardsurfacing had been laid and plastic piping was present at the entrance to the land. It was clear that there had been significant pre-planning and considerable expense already spent in carrying out the unauthorised works up to the point of my site visit. I was in no doubt in concluding that the Land was being prepared for imminent unauthorised residential use. Four touring caravans were on the Land and it was confirmed that two static caravans/mobile homes were to arrive imminently. I concluded that the hardsurfaced trackway was to provide vehicular access into and through the Land, branching off to the west to accommodate the static caravans/mobile homes. I therefore have real concerns that the Land is being prepared for the imminent stationing of further caravans for residential caravans and that the Land will be put to residential use.

33. Planning permission is required for the deposition of the material on the Land to create hardsurfacing and for the excavation of the Land. This is operational development and engineering operations as defined by Section 55 of the Town and Country Planning Act 1990 (as amended) and is unauthorised. The stationing of a residential caravan and any residential use of the Land amounts to the making of a material change of use of the Land and is also development as defined by Section 55 of the Town and Country Planning Act 1990 (as amended).



34. Paragraph 59 of the National Planning Policy Framework 2021 is clear that effective enforcement is important as a means of maintaining public confidence in the planning system and that local planning authorities should act proportionately in responding to suspected breaches of planning control. In this instance, the Council believes that a Court Order is proportionate in responding to the suspected breaches of planning control and to effectively apprehend the suspected breach of planning control. I believe the works on the Land constitute development in their own right and furthermore are intended to facilitate the residential use of the Land in breach of planning control.

### **The need for an injunction**

35. The Planning Practice Guide provides as follows:

*Injunction:050*

*How does a Local Authority decide whether seeking an injunction to restrain a breach of planning control is appropriate?*

*The PPG states that 'in deciding whether it is necessary or expedient to seek an injunction, local planning authorities may find it helpful to consider whether:*

- *they have taken account of what appear to be **relevant considerations**, including the personal circumstances of those concerned;*
- *there is **clear evidence that a breach of planning control has already occurred, or is likely to occur;***
- ***injunctive relief is a proportionate remedy in circumstances of the particular case;** a local planning authority can apply for an injunction whether or not it has exercised, or proposes to exercise, any of their other powers to enforce planning control. However, proceedings for an injunction are the most serious enforcement action that a local planning authority can take because if a person fails to comply with an injunction they can*

*take be committed to prison for contempt of court. Additionally, once an injunction has been granted, it cannot be discharged except where there has been a significant change if circumstances a local planning authority should generally only apply for an injunction as a last resort and only if there have been persistent breaches of planning control over long period and/or **other enforcement options** have been, or **would be ineffective.**'*

(My emphasis)

36. The Claimant considers it necessary and alternatively expedient for this application to be made, having regard to the matters set out above as it believes there are reasonable grounds that the Land is being prepared for residential use in breach of planning control. Additionally, breaches have already occurred (laying of hardstanding, excavation of land) and it is considered necessary to ensure they do not progress further to enable the residential occupation of the Land.
37. The Claimant has carefully considered its options in respect of the Land and the information and evidence to hand. Other enforcement options available to the Claimant include issuing a Stop Notice. However, whilst the action the Claimant could take for the breach of a Stop Notice is criminal proceedings, these proceedings are lengthy, and the only penalty is financial. The Claimant could issue an enforcement notice, but this would not be effective against anticipated breaches and so would not prevent residential occupation. Furthermore, there is an appeal process against an enforcement notice and, in the Council's experience, it could take years to exhaust the appeals process. If the enforcement notice was eventually upheld the only sanction for breach is a fine following criminal proceedings. In the circumstances, and given the anticipated breach of planning control, the Claimant considers that an injunction is the most effective option and that it is proportionate.

38. The landscape is open countryside within the 'Smarden Bell Farmlands' Landscape Character Area and has the characteristics as outlined at paragraph 13 above. The Landscape Analysis notes that the condition of the area as 'moderate' and the sensitivity as 'low' and the overall guidelines for the area are to improve and reinforce the landscape. More importantly, this is a 'priority habitat' as set out at paragraph 12 above. Such habitat is now becoming extremely rare as is the specialist wildlife (usually notable/threatened invertebrates) that inhabits it and being a priority habitat, any significant adverse impact should be avoided.
39. The use of the Land for residential purposes and further facilitating operational development which goes hand and hand with the anticipated use such as the laying of hardsurfaced trackways and bases, the insertion of septic tanks, domestic fencing etc., together with the associated domestic paraphernalia in disregard of planning control is highly likely. The use of the Land for residential occupation is without justification and would result in significant visual harm to this attractive, open part of the countryside and would represent an incongruous form of development in the landscape. The anticipated development would change the site's character by introducing urbanising elements which would be at odds with its rural character and would be harmful to the landscape's appearance at this point. There is no agricultural justification for any of the works currently carried out on the Land.
40. Rosemary Lane is a narrow single track rural lane subject to the national speed limit of 60 miles per hour (being a single carriageway). Whilst there was a previous field access existed serving the agricultural land, the access appears to have been widened. A substantial hardsurfaced track has been laid which can clearly accommodate a greater number and a larger type of vehicle. National planning policy within the National Planning Policy Framework at paragraph 114, in considering development proposals, notes that in assessing sites for development, it should be ensured that any significant impacts from development on highway safety can be mitigated and at paragraph 115 notes that development should only be prevented or refused on highways safety grounds if the impact on highway safety is

unacceptable. There is no evidence before the Council to suggest that this access is safe and can comply with required visibility splays and as such, poses a tangible highway safety concern contrary to policy.

41. The Land is remote from any settlement and is not served by any public transport modes. The lane is narrow and without any pavements. As such, it is significantly detached from local services and in a location with poor accessibility thus the Land represents an unsustainable location for potential residential use. The potential residential use of the Land is contrary to policy SP2 of the Development Plan which sets the strategic approach to housing delivery, focusing on Ashford and other settlements within the district. Policy HOU5 of the Development Plan provides further context to sites within the countryside. It strictly limits the type of residential development allowable. None of its exceptions are obvious in this case and thus no policy support could be derived from HOU5.

42. The National Planning Policy Framework provides Government policy on planning matters. Paragraphs 180 - 194 of the National Planning Policy Framework address 'Conserving and enhancing the natural environment', stating that the intrinsic character and beauty of the countryside and the enhancement of the natural and local environment should be protected and enhanced. Further, the landscape setting is identified at paragraph 135 as an important consideration of a well-designed place. The protection and enhancement of the countryside and landscape is endorsed by Development Plan Policy, with the Strategic Objectives Policy (SP1) identifying a number of strategic objectives which form the basis of the Local Plan policy framework, as well as providing the core principles that planning applications are expected to adhere to, with criteria (a) referring to the requirement to focus development at accessible and sustainable locations; and (b) referring to the conservation and enhancement of the Borough's natural environment including designated and undesignated landscapes.

43. Policy ENV3a of the Development Plan addresses Landscape Character and Design identifying the importance of all proposals have particular regards to

identified landscape characteristics so as to ensure that any new development does not compromise or damage landscape character but instead contributes towards enhancing the character of the Landscape Character Area in which it is located. Policy ENV5 addresses 'Protecting Important Rural Features' noting that all development in rural areas of the Borough shall be protected and, where possible, enhance, inter alia, landscape features that help to distinguish the character of the local area. I am of the view that the anticipated residential use of the Land would be contrary to planning policy.

44. Policy ENV1 addresses 'Biodiversity'. The preamble to this policy refers to the aim of the Local Plan in supporting the aims and objectives of the Kent Biodiversity Strategy as they relate specifically to the Biodiversity Opportunity Areas (BOAs) of the Borough to ensure that the priority habitats and species of each BOA are conserved and enhanced in new development. The policy states that proposals should conserve or enhance biodiversity; new development should identify and seek opportunities to incorporate and enhance biodiversity; and proposals should safeguard features of nature conservation interest and should include measures to retain, conserve and enhance habitats, including BAP (Priority) habitats, and networks of ecological interest. It also states that development should avoid significant harm to locally identified biodiversity assets as well as priority and locally important habitats and protected species.

45. Paragraphs 185 - 188 of the NPPF addresses 'Habitats and biodiversity', stating that priority habitats should be conserved, restored and enhanced.

46. I am of the view that the anticipated development would result in further unauthorised development and the residential use of the Land which has and will have a significant impact on the landscape and visual amenity of this part of the countryside and the priority habitat will not be conserved, restored or enhanced contrary to planning policy and there are no material considerations which would indicate otherwise. In addition, the intensified use

of the access would endanger highway safety. It is unlikely that officers would support granting planning permission were a planning application to be forthcoming.

47. It is important to take into account the Human Rights issues, especially Article 8 (Right to respect for private and family life) and Article 1 of the First Protocol (Right to enjoy property), relevant to this development. It is considered that the assessment and considerations in this statement represent an appropriate balance between the rights of the landowner (to enjoy their land subject to reasonable and proportionate controls by a public authority) and the wider public interest.

48. The application for an Injunction could be interpreted as an interference with the rights of a property owner to use his property as he sees fit and the right to private and family life as set out in Article 8. Such interference is permitted by the Convention if it is in the general interest, but the interference must be 'proportionate', which means that it must not be in excess of what is needed to prevent harm to the general interest. The Council considers this application proportionate in all the circumstances.

### **The Remedy sought**

49. The Claimant seeks an interim injunction in the following form to prevent the Defendants and/or persons unknown:

1. In relation to the Land known as "Land on the south side of Rosemary Lane, Smarden, Ashford" registered at HM Land Registry under Title Number K803646 (the Land) as shown edged black on the attached plan, the Defendants whether by themselves or by instructing, encouraging or permitting any other person must not use the Land or carry out works to the Land in breach of planning control and, in particular, must not:

- i. Allow the use of the Land for human habitation or residential occupation or any other purpose in breach of planning control;
- ii. Bring onto the Land any additional caravans and/or mobile homes for the purpose of human habitation or residential occupation or any other purpose in breach of planning control;
- iii. Bring /erect/install any buildings or structures on the Land for the purposes of human habitation or residential occupation or any other purpose in breach of planning control;
- iv. Bring onto the Land any portable structures including portable toilets and any other further items and paraphernalia for purposes associated with human habitation or residential occupation or any other purpose in breach of planning control;
- v. Bring onto the Land any further waste materials and/or hardcore and/or like materials for any purpose, including the further creation/laying of hardstandings or hard surfaces, in association with the use of Land for the stationing of caravans and/or mobile homes for the purpose of human habitation or residential occupation or any other purpose in breach of planning control;
- vi. Carry out any further works in relation to the formation of paths, roadways or any works including the provision of sewerage, water and electricity infrastructure associated with the use of caravans and/or mobile homes for the

purpose of human habitation or residential occupation or any other purpose in breach of planning control;

- vii. Carry out any further works to the Land associated with or in preparation for its use for stationing caravans/or mobile homes or for the erection of a building and/or any structure for human habitation or residential occupation or any other purpose in breach of planning control;
- viii. Undertake any further development on the Land as defined in section 55 of the Town and Country Planning Act 1990 without the express grant of planning permission.

#### **APPLICATION WITHOUT NOTICE**

50. This application is being made without notice to the named Defendants. This is because if notice is given, the Defendants would not be prevented in the interim from continuing to undertake further operational development such as the completion of the hardsurfacing and/or the bringing on to the Land of further residential caravan or taking up of residential use. In my experience, by their very nature, a residential caravan can be brought on to Land and stationed, being put to a residential use within hours regardless of whether hardsurfacing or any other infrastructure is in place. A significant amount of pre-planned preparatory work has been carried out on the Land displaying a blatant and total disregard for the planning process and the intent to carry on regardless. This has been carried out over a Bank Holiday weekend when the Council offices are closed and in the hope that no action will be able to be taken until after the Bank Holiday period, Whilst the extent and detail with which the unauthorised works to date has been executed shows detailed pre-planning, I am firmly of the view that the static caravans that were confirmed to be purchased and on their way to the site will arrive imminently. Significant financial resource to assist with accomplishing what the Claimant firmly believes is to occupy the Land, ignoring the planning application process and



regardless of the resultant numerous breaches of planning control. The Claimant is of the view that providing the Defendants with notice would provide them with time to bring the further caravan on to the Land and allow occupation of the Land immediately and regardless of any other works being carried out and the Claimant's experience is that it is then a lengthy process to secure cessation of unlawful residential occupation.

51. It is submitted that it is proper to apply for this Order without notice.

Experience shows that if residential occupation is taken up efforts to secure compliance with an enforcement notice will be time-consuming. Continued damage to the Land and to the environs would be inevitable. This is a sensitive site. An Injunction Order granted now, without notice, only to maintain the status quo, and before the Defendants can complete the operational development and take up the residential occupation of the site will deal effectively with any further risks to the environs.

## **PERSONS UNKNOWN**

52. With regard to the Second, Third, Fourth and Fifth Defendants, I am aware of the guidance of the Supreme Court in *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2023] UKSC 47 and the Council is of the view that this is justified as:

- (i) There is a compelling justification for the remedy. This includes consideration of the obligation/duty to provide sites for Gypsies and Travellers [190], Needs assessments, planning policy, other statutory powers available and bylaws. Ashford Borough Council has an up to date Local plan which was adopted less than 5 years ago and contains policy HOU16 specifically for Traveller Accommodation., Planning applications should comply with policy Hou16 and the development on the Land is contrary to planning policy and other statutory powers are not effective;
- (ii) There are adequate procedural safeguards in both the application and the draft order including an obligation to take all reasonable steps to draw

the application and any order made to the attention of those likely to be affected by it and to provide generous provision for liberty to apply to have the injunction varied or set aside;

- (iii) The Council has considered any matter which a newcomer might raise to oppose the making of the order;
- (iv) The order has clear geographical limits as outlined on the plan attached and temporal limits – there is a Return Date;
- (v) It is just and convenient that an injunction be granted for the reasons set out in this witness statement.

The Land is registered to the First Defendant with HM Land Registry. The inference is that the land has been sold to the Second, Third, Fourth and Fifth Defendants who will occupy the Land with their respective partners/spouses. I have no evidence of who those wives/partners are or if there are others who may occupy the Land or do works on the Land.

## **ALTERNATIVE SERVICE**

53. The Claimant therefore also applies for an Order for service of any Injunction Order the Court may grant by way of the alternative method set out in the draft attached hereto.

54. There is an urgent need to serve any Order granted to restrain further breaches of planning control. It is the Claimant's experience that Orders served in the manner proposed are effective in bringing such Orders to the attention of the Defendants and also its servants or agents.

## **CONCLUSIONS**

55. Ultimately the injunction is being sought to prevent any further works from being undertaken and to apprehend the anticipated breach of planning control by preventing the stationing of further residential caravans on the Land and the carrying out of any further unauthorised facilitating

development. Whilst there are other options available to the Council, such as an enforcement notice, this would not have immediate effect, would not prevent the occurrence of the anticipated unauthorised development and is likely to result in a lengthy appeal time table and would not prevent further works at the site. In the circumstances, it is considered that there is sufficient evidence of an intended breach of planning control that cannot now be effectively restrained or apprehended by any means other than an injunction.

56. For the reasons stated herein, the Claimant contends that it is necessary and expedient to restrain the Defendants in the manner sought in the draft Order.

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



Signed: .....

Date: .....29 March 2024.....

# EXHIBIT LIST

**JA/1** - Plan of the Land

**JA/2** - HMLR title and plan – K803646

**JA/3** - Google Earth and Streetscene

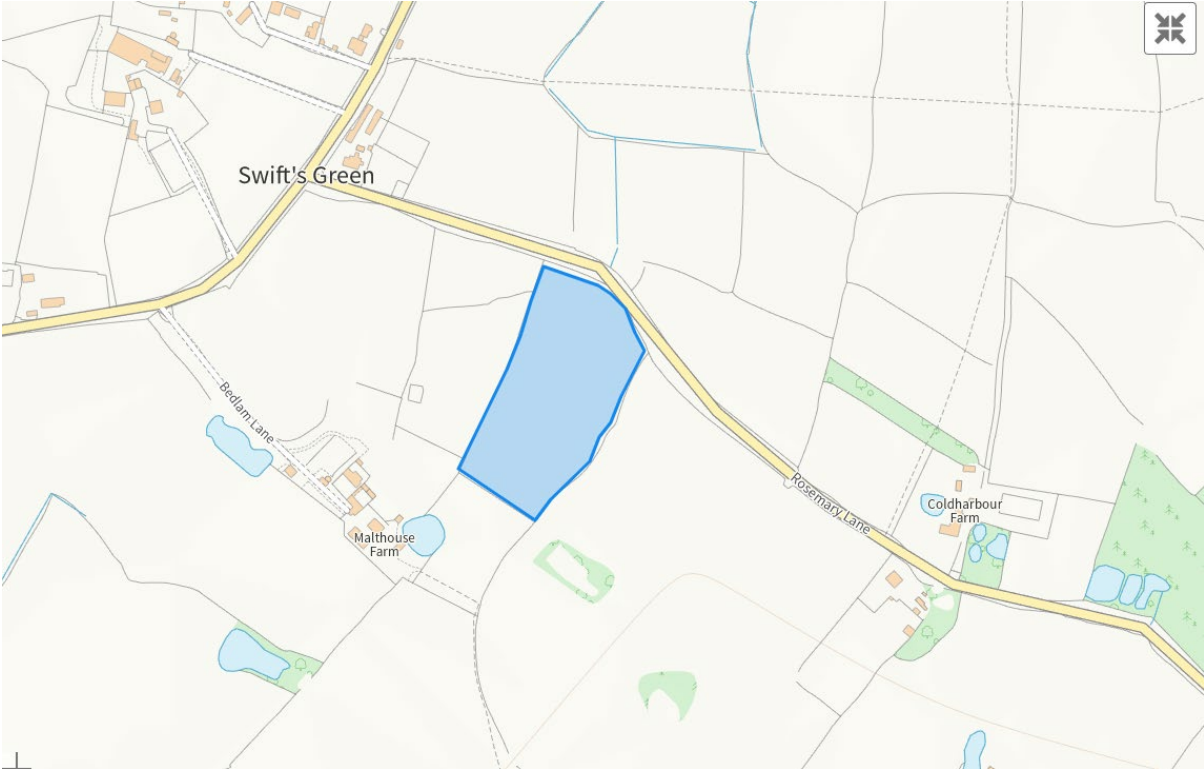
**JA/4** - KCC Ecological Advice Service

**JA/5** - Smarden Bell Farmlands Landscape Character  
Area extract

**JA/6** - Decision Notice PA/2022/00941

**JA/7** - Site Visit Photographs 29.03.24

# Exhibit JA/1

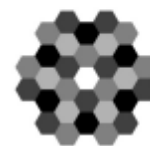


# ***EXHIBIT JA/2***

The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

Applications are pending in HM Land Registry, which have not been completed against this title.



## Official copy of register of title

Title number K803646

Edition date 26.11.2021

- This official copy shows the entries on the register of title on 20 DEC 2023 at 09:20:39.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 29 Mar 2024.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- This title is dealt with by HM Land Registry, Nottingham Office.

### A: Property Register

This register describes the land and estate comprised in the title.

KENT : ASHFORD

- 1 (27.10.1999) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being land on the north and the north west side of Bedlam Lane and land on the south side of Rosemary Lane, Smarden, Ashford.
- 2 (26.04.2018) A new title plan based on the latest revision of the Ordnance Survey Map has been prepared.

### B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

#### Title absolute

- 1 (26.11.2021) PROPRIETOR: JOHN MATTHEWS of 14 Wind Hill, Charing Heath, Ashford, Kent TN27 0BD.
- 2 (26.11.2021) The value stated as at 25 November 2021 was £80,000.

#### End of register



**These are the notes referred to on the following official copy**

The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from HM Land Registry.

There is an/are application(s) pending in HM Land Registry and if we have only completed the mapping work for a pending application affecting the title concerned, such as a transfer of part:

- additional colour or other references, for example 'numbered 1', may appear on the title plan (or be referred to in the certificate of inspection in form CI), but may not yet be mentioned in the register
- colour or other references may also have been amended or removed from the title plan (or not be referred to in form CI), but this may not be reflected in the register at this stage.

This official copy is issued on 29 March 2024 shows the state of this title plan on 20 December 2023 at 09:20:39. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).

This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

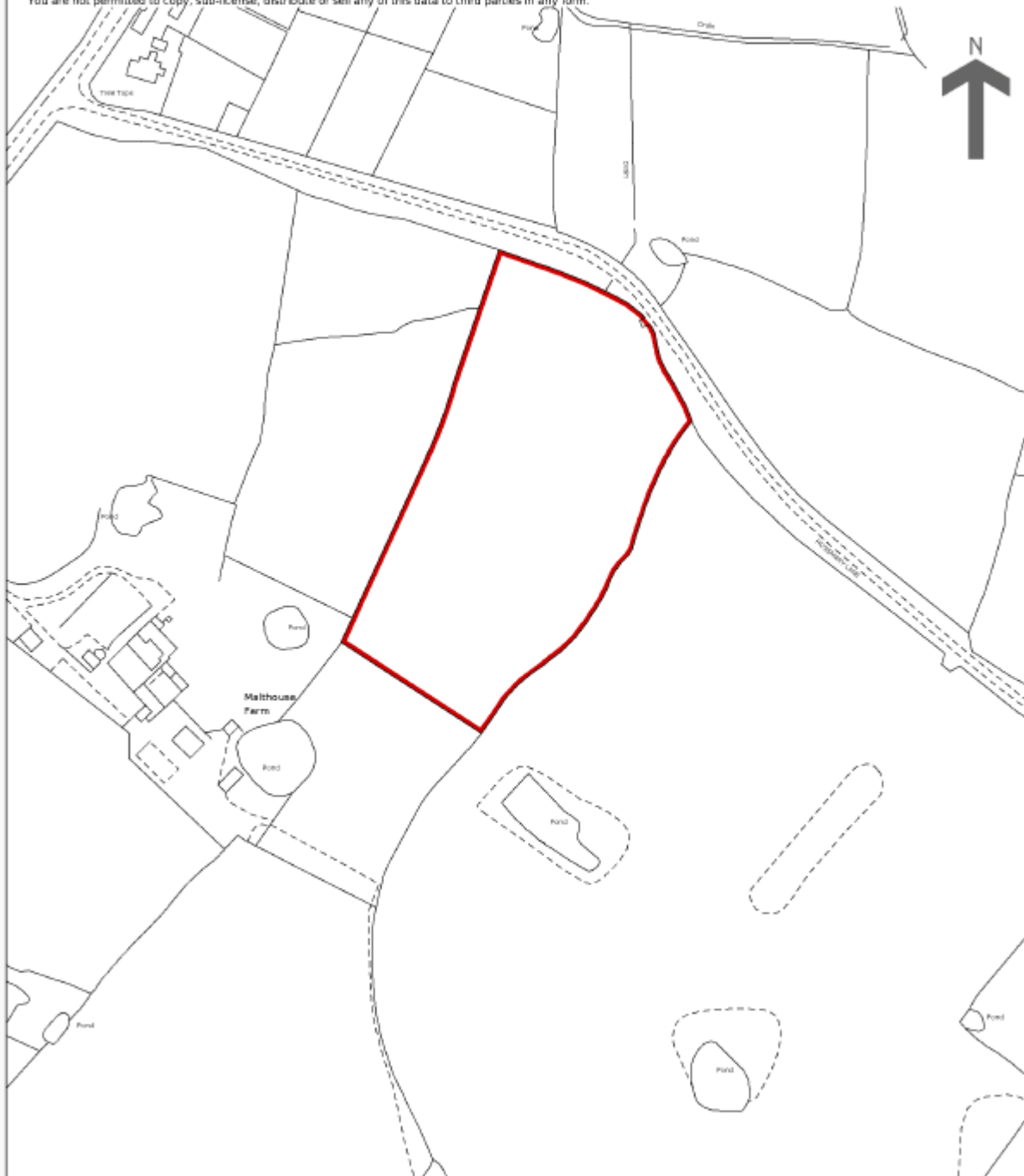
This title is dealt with by the HM Land Registry, Nottingham Office .

HM Land Registry  
Official copy of  
title plan

Title number **K803646**  
Ordnance Survey map reference **TQ8744SW**  
Scale **1:2500**  
Administrative area **Kent : Ashford**



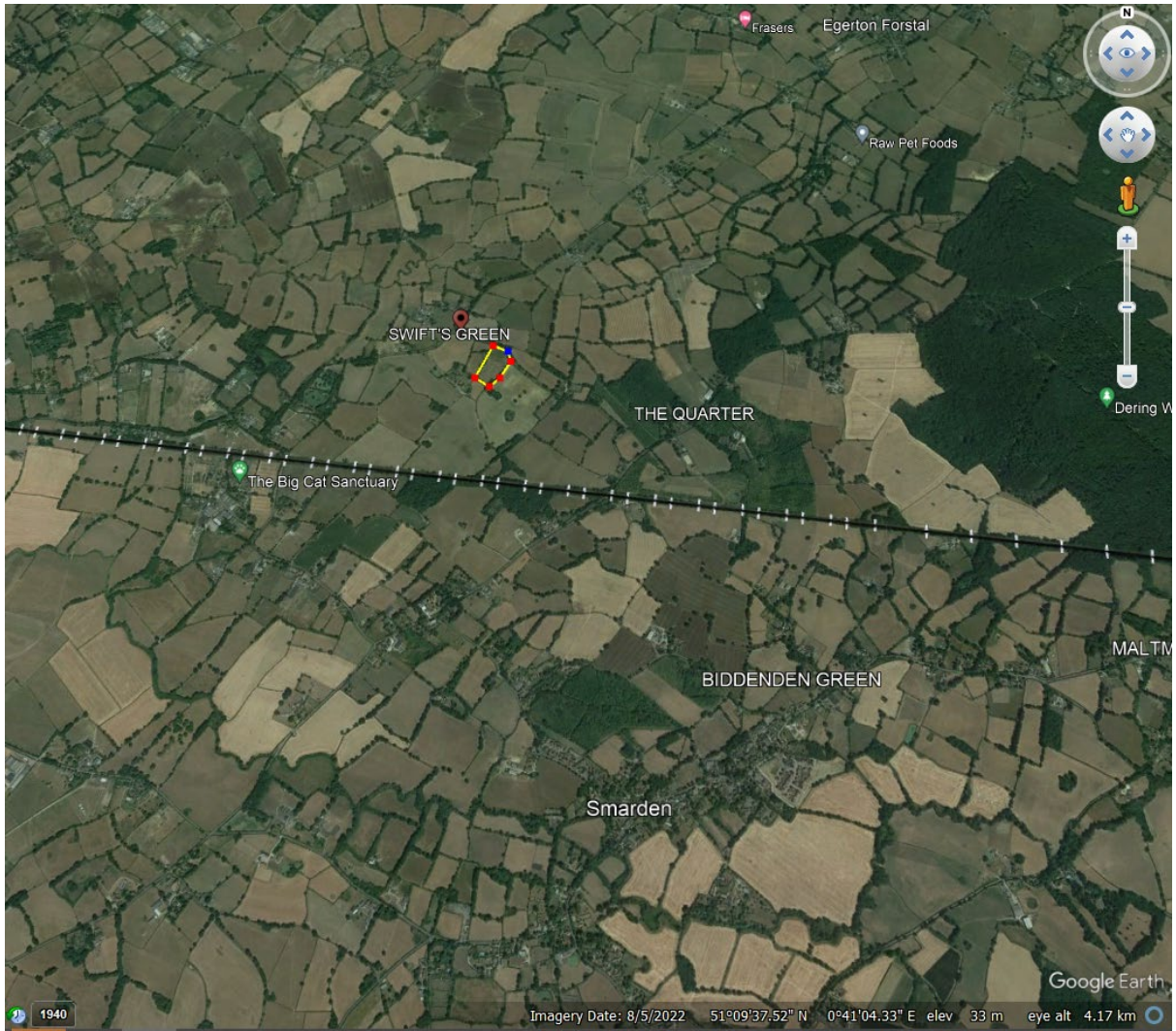
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# ***Exhibit JA/3***







# ***Exhibit JA/4***



## ECOLOGICAL ADVICE SERVICE

**TO:** *Olawale Duyile*

**FROM:** *Luke Wallace*

**DATE:** *19 October 2022*

**SUBJECT:** *22/00941/AS / The land to the South of Rosemary Lane*

---

*The following is provided by Kent County Council's Ecological Advice Service (EAS) for Local Planning Authorities. It is independent, professional advice and is not a comment/position on the application from the County Council. It is intended to advise the relevant planning officer(s) on the potential ecological impacts of the planning application; and whether sufficient and appropriate ecological information has been provided to assist in its determination. Any additional information, queries or comments on this advice that the applicant or other interested parties may have must be directed in every instance to the Planning Officer, who will seek input from the EAS where appropriate and necessary.*

---

We previously commented on this proposal on 12<sup>th</sup> July 2022. Below is a repeat of this advice which still applies.

We have reviewed the ecological information submitted in support of this application (which is not viewable on the planning portal at the time of writing) and advise that additional information is sought from the applicant prior to determination of the planning application.

### **Traditional Orchard Priority Habitat**

The site is classified as 'traditional orchard'; a priority habitat under section 40/41 of the NERC Act 2006. From the aerial imagery available to us, we can see that old orchard trees, or remnants of old trees, are found throughout the site.

This habitat is now becoming extremely rare and so is the specialist wildlife (usually notable/threatened invertebrates) that inhabits it. Being a priority habitat, the local planning authority is obliged to maintain and enhance this habitat under the NERC Act.

As such, we advise that every effort is undertaken to retain the trees, especially as 'standing deadwood', for the benefit of biodiversity and to retaining this valuable habitat. Whilst the heavily grazed grassland around the living/dead fruit trees will not be especially high in biodiversity value, the trees will have relatively high biodiversity value.



We advise that a strategy is produced that will ensure trees are retained in-situ wherever possible, with any trees that do need be removed kept on-site (ideally as *standing* deadwood). Ideally no lighting would be introduced with this development (which could negatively impact deadwood invertebrates) and newly planted fruit trees (as indicated on the site plans) would be of local varieties and in keeping with the habitat.

The strategy, which should have input from/produced by a professional ecologist, should also identify if the construction of the barn and access/yard would impact protected species. This information should be provided prior to determination of the application, in alignment with paragraph 99 of ODPM 06/2005.

We also highlight that under section 40 of the NERC Act (2006), paragraph 174 of the NPPF (2021) and the Environment Act (2021), biodiversity must be maintained and enhanced through the planning system. Additionally, in alignment with paragraph 180 of the NPPF 2021, the implementation of enhancements for biodiversity should be encouraged.

The replacement of grassland (and possibly trees) for hardstanding and a building constitutes a loss of biodiversity in absence of compensation. Therefore, the strategy must also clearly state how this loss would be offset.

Our comments will be available for revision upon receipt of this information.

If you have any queries regarding our comments, please do not hesitate to get in touch.

**Luke Wallace**  
**Biodiversity Officer**

# ***Exhibit JA/5***

# Ashford Landscape Character Assessment



June 2009

**JACOBS**



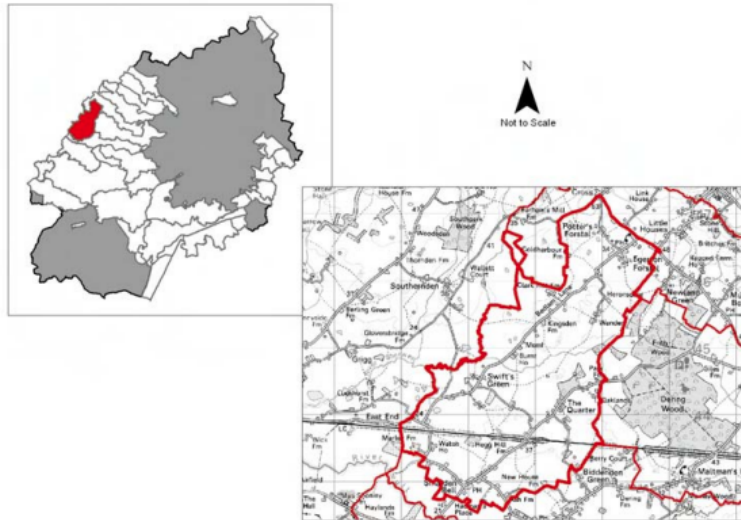
**Ashford**  
best placed in Britain

## 22. Smarden Bell Farmlands

### Key Characteristics

- Flat to gently undulating landform
- Low visibility
- Mixed land use
- Varied field pattern
- Hedgerow enclosed pasture with oak hedgerow trees
- Remnant orchards
- Plantations
- Large arable fields
- Field ponds
- Traditional timber framed buildings
- Converted farm buildings
- Recent housing and static caravans

### Landscape Description



The geology predominantly comprises Weald Clay, with some Large 'Paludina' Limestone to the north and some ribbons of Sandstone in Weald Clay. Drifts of Alluvium line the River Sherway which flows across the area, and there are scatterings of 2<sup>nd</sup> Terrace River Gravel. Soils are loam to clay. The landform is flat to gently undulating.

There is a mixture of arable land and smaller scale pasture, segregated by a regular framework of hedgerows, which provide a strong sense of enclosure. A few small broadleaf woodland blocks are scattered sparsely through the area, and a small remnant orchard is located along Rosemary Lane. Recent plantations off Bell Road add to the extent of tree cover, low visibility and sense of enclosure. Field ponds are scattered throughout the farmland, and the River Sherway winds its way across the landscape. The meandering course of the river, vegetated in some parts and open in others, creates non rectilinear field boundaries where fields stretch to its edge.

Individual properties, groups of traditional houses, converted farm buildings and farmsteads with large agricultural barns are scattered along the roads. Egerton Forstal





comprises a significant amount of densely populated, semi detached, recent housing, which is often clad with exposed aggregate concrete. Some static caravans are situated within the area, which provide contrast to the larger and more traditional buildings. Roads follow a north east to south west pattern, many of which are ancient old drovers' routes leading to the High Weald. Bell Road forms a busy route which supports some recent land use changes, including field segregation with post and wire fencing. A railway line crosses the landscape, although its wooded route is not easily discernible from the surrounding landscape.

### **Condition**

The traditional small scale field pattern set within a regular hedgerow framework provides a degree of continuity throughout the landscape. However, some agricultural intensification and other recent developments and changes to the landscape inflict an element of fragmentation on the traditional Wealden pattern. Large barns, recent housing which does not respect the local vernacular, inappropriate and excessive fencing methods and alien conifer screening belts are visually detracting. Whilst the hedgerows, woodland blocks (many of which are ancient), ponds and the River Sherway provide a good ecological framework and some woodland and meadows are designated as Local Wildlife Sites, agricultural intensification weakens connectivity. Whilst much of the built development respects the local vernacular, recent housing and large agricultural barns detract from the sense of place. Overall, the landscape is in moderate condition.

### **Sensitivity**

Where it remains intact, the traditional field pattern, pastoral land use and hedgerow framework provides strong local distinctiveness and continuity throughout the landscape. Whilst much of the built development respects the local vernacular, recent housing and large agricultural barns detract from the sense of place. There is low visibility throughout the landscape owing to the flat to gently undulating landform and the strong framework of hedgerows, plantations and small woodland blocks. Overall the landscape has a low sensitivity.



## Guidelines

The overall guidelines for the area are to improve and reinforce the landscape:



- Conserve the pastoral land use
- Improve and reinforce intimate small scale field pattern and strong sense of enclosure
- Conserve field ponds
- Improve and reinforce matrix of hedgerows and mature hedgerow trees
- Improve enclosure methods and avoid further excessive post and wire fencing
- Plant new hedgerow oaks to reinforce this characteristic feature
- Resist further agricultural intensification
- Conserve vernacular timber framed and converted buildings

## Landscape Analysis

<b>Condition:</b>	<b>Moderate</b>
Pattern of elements:	Coherent
Detracting features:	Some
Visual unity:	Coherent
Cultural integrity:	Variable
Ecological integrity:	Moderate
Functional integrity:	Coherent

<b>Sensitivity:</b>	<b>Low</b>
Distinctiveness:	Distinct
Continuity:	Historic
Sense of place:	Moderate
Landform:	Insignificant
Extent of tree cover:	Intermittent
Visibility:	Low

Condition	good	REINFORCE	CONSERVE & REINFORCE	CONSERVE
	moderate	IMPROVE & REINFORCE	CONSERVE & IMPROVE	CONSERVE & RESTORE
	poor	IMPROVE	RESTORE & IMPROVE	RESTORE
		low	moderate	high
		<b>Sensitivity</b>		

**Guidelines: Improve and Reinforce**

# ***Exhibit JA/6***

09 February 2023

Miss P Gale  
Kent Design Studio Ltd,  
The Workshop,  
Rose Cottage Farm,  
North Street,  
Biddenden, Ashford,  
TN27 8BA



Civic Centre  
Tannery Lane  
Ashford  
Kent TN23 1PL  
01233 331111  
[www.ashford.gov.uk](http://www.ashford.gov.uk)

**NOTIFICATION OF DECISION OF THE LOCAL PLANNING AUTHORITY  
TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)**

**Case Reference**      **22/00941/AS**

**Site Address**            **The land to the South of Rosemary Lane known as, The Old Orchard,  
Rosemary Lane, Ashford, TN27 8PF**

**Proposal**                **Erection of a stable building with ancillary store for equine related use,  
together with the continued use of land for the keeping of horses with  
associated access, yard and track with biodiversity and landscape  
enhancements**

**DECISION: Planning Permission is REFUSED for the following reasons:**

**Refusal Reasons:**

- 1      An identified justifiable need cannot be demonstrated for the proposed development in this location. In the circumstance, the proposal represents an inappropriate and unsustainable development within the open countryside, prejudicial to the Development Plan's spatial strategy, contrary to policy SP1 of the adopted Ashford Local Plan 2030, the NPPF and the provisions of the adopted Stables, Arenas and other Horse Related Development Supplementary Planning Document 2014
  
- 2      The proposal would, by reasons of its scale, isolated location, visibility from several viewpoints (the surrounding open fields and the public highway) appear obtrusive and insensitive to the defining characteristics of the rural setting, contrary to policies SP1, SP6 and ENV3a of the adopted Ashford Local Plan 2030 and the relevant NPPF provisions.
  
- 3      The application site is a priority habitat, which is extremely rare and so is the specialist wildlife (usually notable / threatened invertebrates) that inhabits it. Being a priority habitat, the local planning authority is obliged to maintain and enhance this habitat under the Natural Environment and Rural Communities (NERC) Act. The replacement of grassland (and possibly trees) for hard-standing and a building constitutes a loss of biodiversity. Therefore, in the absence of a clear strategy that clearly outlines a compensatory provision and suitable management plan, the proposal is in direct conflict with policies ENV1, ENV3a and ENV5 of the adopted Ashford Local Plan 2030 and the NPPF.



## Informatives:

- The following drawings and documents have been marked as refused as part of this determination

Description	Date
4079_01 - Site Location and Existing Block Plans (4079_01)	10 June 2022
4079_02B - Proposed Block Plan ()	16 September 2022
4079_03C - Proposed Stables ()	16 September 2022
REV A - Revised Planning Statement ()	16 September 2022

- In accordance with paragraph 38 of the NPPF, Ashford Borough Council (ABC) takes a positive and proactive approach to development proposals focused on solutions. ABC works with applicants/agents in a positive and proactive manner by; offering a pre-application advice service, as appropriate updating applicants/agents of any issues that may arise in the processing of their application where possible suggesting solutions to secure a successful outcome, informing applicants/agents of any likely recommendation of refusal prior to a decision and, by adhering to the requirements of the Development Management Customer Charter.

In this instance, the applicant was informed/ advised how the proposal did not accord with the development plan, that no material considerations are apparent to outweigh these matters and provided the opportunity to amend the application or provide further justification in support of it. The applicant/agent was informed of the council's concerns and how they could be overcome but amendments were not received.

## Signed



Simon Cole  
Assistant Director - Planning and Development

## REFUSAL OF PLANNING PERMISSION NOTES

### Appeals

If you are unhappy with the disclosed Decision to refuse permission, you may appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990. Any appeal must be made within 6 months of the date of decision, or 6 months from the expiry of the period which the LPA had to determine the application. If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate at least 10 days before submitting the appeal. You can notify the Planning Inspectorate via email at:-([inquiryappeals@planninginspectorate.gov.uk](mailto:inquiryappeals@planninginspectorate.gov.uk)). Further details are available on [www.gov.uk](http://www.gov.uk) However, if an enforcement notice has been served for the same or very similar development within the previous 2 years, the time limit is: 28 days from the date of the LPA decision if the enforcement notice was served before the decision was made yet not longer than 2 years before the application was made. 28 days from the date the enforcement notice was served if served on or after the date the decision was made (unless this extends the appeal period beyond 6 months). NB – the LPA determination period is usually 8 weeks (13 weeks for major developments and 28 days for non-material amendment applications). If you have agreed a longer period with the LPA, the time limit runs from that date. The necessary form is obtainable from the Planning Inspectorate,

Customer Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN or by telephoning on:-0303 444 5000 or via their website: [www.planning-inspectorate.gov.uk/pins/index.htm](http://www.planning-inspectorate.gov.uk/pins/index.htm) A longer period for the giving of notice of an appeal may be allowed by the Planning Inspectorate but normally asks what special circumstances there are which excuse the delay in giving notice of an appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the Borough Council.

### **Beneficial Use**

If permission to develop land is granted subject to conditions, whether by the Borough Council or by the Secretary of State and you, as owner of the land, claim that it has become incapable of reasonable beneficial use, you may serve on the Borough Council a Purchase Notice requiring the Borough Council to purchase your interest in the land in accordance with the provision of Part IV of the Town and Country Planning Act 1990. Before following this course of action it is suggested that you seek the advice of a Planning Consultant or a Solicitor.

29.03.24 – JA & CH – Land on the south of Rosemary Lane, Smarden

## ***Exhibit JA/7***

29.03.24 – JA & CH – Land on the south of Rosemary Lane, Smarden



Approaching Land heading east of Rosemary Lane with the plastic piping visible to right and the entrance to the Land beyond the piping

29.03.24 – JA & CH – Land on the south of Rosemary Lane, Smarden



Approaching Land heading east of Rosemary Lane with the plastic piping visible to right and the entrance to the Land beyond the piping

29.03.24 – JA & CH – Land on the south of Rosemary Lane, Smarden



On Rosemary Lane looking through front boundary hedge with digger visible beyond

29.03.24 – JA & CH – Land on the south of Rosemary Lane, Smarden



On Rosemary Lane looking through front boundary hedge with digger visible beyond

29.03.24 – JA & CH – Land on the south of Rosemary Lane, Smarden



On Rosemary Lane looking west with front boundary to left hand side



29.03.24 – JA & CH – Land on the south of Rosemary Lane, Smarden



Standing on Rosemary Lane at the western side of the entrance to the Land with plastic piping visible

29.03.24 – JA & CH – Land on the south of Rosemary Lane, Smarden



On Rosemary Lane to western side of the entrance which has been widened and hardcore laid with plastic piping on verge



At the entrance to the Land from Rosemary Lane looking south into the Land with where the access has been widened and a hardsurfaced trackway leading into the Land beyond the gates

29.03.24 – JA & CH – Land on the south of Rosemary Lane, Smarden



Looking south into the Land along the hardsurfaced trackway with the digger working on a further hardsurfaced trackway which runs at 90 degrees to the west



Digger working on the hardsurfaced trackway leading in to the western part of the Land with the four touring caravans visible adjacent to the western boundary of the Land