

**Proof of Evidence of Lindsay
Goodyear BA (Hons), DipTP,
MRPTI**

**Land between Appledore Road
and Woodchurch Road,
Tenterden, Kent**

January 2022

Appeal reference: APP/E2205/W/21/3284479

Local Planning Authority Reference:
21/00790/AS



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1 QUALIFICATIONS

- 1.1 I am Lindsay Goodyear, Associate at Bell Cornwell LLP, instructed by Ashford Borough Council (the local planning authority) to present the case on its behalf.
- 1.2 I hold a Bachelor of Arts degree in Urban Studies and Planning and a Diploma in Town and Regional Planning from the University of Sheffield and am a Member of the Royal Town Planning Institute. I have worked for the past 18 years in private practice. I have a broad background in planning in development management and plan making, particularly in regard to large residential green field developments. My experience is relevant to the planning issues to be considered at the Inquiry.
- 1.3 I have visited the appeal site and Tenterden.
- 1.4 Although I act for the local planning authority, I understand that my duty to the Inspector is to assist the Inquiry to the best of my ability. I confirm that this statement has been prepared in accordance with the guidance produced by the Royal Town Planning Institute for its Members. I confirm that the views expressed in this statement are my true and professional opinions.

2 SUMMARY OF PROOF

- 2.1 The appeal proposals comprise the development of up to 145 dwellings, including 72 affordable homes, with all the necessary supporting infrastructure. The full part of the proposed development is for the change of use of agricultural land to land to be used as a country park (8.66ha), the creation of a community orchard and the provision of formal sports pitches (3.33ha), together with the construction of a pavilion building.
- 2.2 In my proof of evidence, I assess the appeal scheme against the relevant development plan policies, as the development plan is given primacy in the Planning and Compulsory Purchase Act (2004) section 38(6). As set out in the reasons for refusal, the appeal scheme is contrary to a number of development plan policies and allowing this development would result in significant harm to the strategy of the recently adopted Development Plan, harm to the setting of Tenterden and to biodiversity and public right of way AB70.
- 2.3 As was the case at the time of determination of the planning application, the Council is unable to demonstrate a 5-year supply of land for housing. In accordance with paragraph 11 of the National Planning Policy Framework 2021 therefore, the most important policies for the determination of the appeal are deemed to be out-of-date, and development proposals should be approved without delay, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
- 2.4 However, the Council has made progress to address the delay to the delivery of sites in its five year supply such that the deficit is small and likely to be short lived. As a result, I do not see a reason to allow the appeal that would be counter to the recently examined and tested development strategy and other policies in the plan (specifically SP1, SP2, SP6, HOU5, ENV3a, IMP4) which focus the majority of the growth in the Borough at the most sustainable settlement of Ashford.
- 2.5 In addition to the harm to policies of the Local Plan, the proposed development is found to result in adverse impacts to the local landscape character and setting of the town, harm by virtue of loss or degradation of habitat to two protect trees (one of which is ancient), harm to biodiversity and harm to the route of footpath AB70. These adverse impacts and the conflict with the

adopted development plan informed the reasons for refusal in the decision notice dated 27 September 2021.

2.6 I have assessed the appeal scheme and acknowledge the public benefits attributed to the appeal proposals, primarily the significant benefit of the delivery of new homes to help boost the housing land supply in the Borough. However, these benefits do not significantly and demonstrably outweigh the adverse impacts of the scheme as set out above.

2.7 My proof of evidence explores the planning policy matters and assesses the balance of public benefits versus the harm. It is supported by, and should be read in conjunction with, the other proofs of evidence by expert technical witnesses also acting on behalf of the Council:

- Landscape and visual evidence by David Withycombe BSc, MSc, MLI
- Culture evidence by Len Mayatt
- Biodiversity evidence prepared by Helen Jean Forster BSc (Hons) MCIEEM
- Rights of way evidence by Kate Beswick
- Arboriculture evidence provided by Phil Cooke

2.8 My proof of evidence concludes with the planning balance, finding that the harm caused by the proposed development would significantly and demonstrably outweigh the benefits of the proposed development.

3 INTRODUCTION

3.1 The appeal is submitted by Wates Developments Limited (the appellant) under section 78 of the Town and Country Planning Act 1990. The appeal is made against the decision of Ashford Borough Council's (ABC) to refuse a hybrid application that is made in outline for up to 145 residential dwellings and full planning permission for the change of use of land to create a country park and formal sports pitches with pavilion building.

3.2 The Inspector in the Case Management Conference Summary Note identified that main issues to be considered at the Inquiry were:

- *“the effect on the proposal on the sustainable distribution of housing development in the Borough;*
- *Its effect on the character and appearance of the surrounding area;*
- *Its effect on trees on the site (the Council indicated that it no longer objected on the grounds of the impact on the ancient oak tree ref T312);*
- *Its effect on biodiversity (including the impact of the Environment Act 2021);*
- *Its effect on pedestrian access and safety in the area (including the public right of way across the site that is due to be the subject of an Inquiry in April 2021);*
- *Its effect on community space and facilities in the area;*
- *Its effect on infrastructure in the area; and*
- *The 5-year housing land supply position. “*

3.3 This planning evidence and its appendices addresses the policy and general town planning issues arising from these main issues in the context of the Council's reasons for refusal. In accordance with the statutory test and the provisions of the NPPF paragraph 11, it addresses the principle of development taking the development plan as the starting point for decision taking.

3.4 Collectively, this evidence with reliance on technical information provided by the ABC expert witnesses identifies that in accordance with the development plan permission should be refused

and that there is material planning considerations that collectively weigh favour of refusal of the proposed development.

3.5 This planning evidence is supported by:

- Landscape and visual evidence by David Withycombe BSc, MSc, MPhil CMLI
- Culture evidence by Len Mayatt
- Biodiversity evidence prepared by Helen Jean Forster BSc (Hons) MCIEEM
- Rights of way evidence by Kate Beswick
- Arboriculture evidence provided by Phil Cooke BSc (Hons) MCIEEM

3.6 My evidence is written in the context of the Case Management Conference Summary Note and is structure as follows:

Section 4: The proposal

- The Appeal site
- The proposed development

Section 5: The Development Plan

- General provisions
- The adopted development plan
- Spatial distribution of housing in the Borough
- HOUS5
- Emerging Neighbourhood Plan
- National Planning Policy Framework
- Conclusion and non-compliance with the policies

Section 6: Main Issues

- The housing land supply position
- Reason for Refusal 1: Impact on the development strategy set out in the recently adopted Development Plan
- Reason for Refusal no. 2: The Impact on the proposed development on the strong rural edge and setting of Tenterden
- Reasons for Refusal 3 and 4: The Impact on trees
- Reason for Refusal 5: Impact on biodiversity
- Reason for Refusal 8: Impact on public rights of way
- Reason for Refusal 6: Provision of sports facilities

Section 7: The Planning Balance

- Summary of harm
- Summary of benefits
- Conclusion

4 THE PROPOSAL

THE APPEAL SITE

- 4.1 The appeal site is described in planning officer's report to committee and in Section 3 of the Statement of Common Ground (SoCG).
- 4.2 The appeal site is circa 24.34 ha of small fields, some of which are used for grazing, although on my site visit, I only noticed one field that was being grazed (F14 according to the Appellant's identification at 4.2 of their Statement of Case) and little evidence that the other fields had recently been grazed or were managed. The documentation suggests one of the fields is currently used as a sports pitch (F13), however from my site visit it appears that this field hasn't been used as a sport pitch for some time. There is a metal container in this field, presumably used at some point to store sports equipment that also appears to have not been used for some time and is in a dilapidated state. To my mind there is no evidence of recent sports use other than the metal container and a sign relating to the school who I understand used the field.
- 4.3 The fields are enclosed by tree and hedgerow boundaries, some more dispersed than others. I noted on the site visit that the site is crossed by several well walked informal paths, as well as the public right of way. The fields were being used by several members of the public. It had a strong rural feel.
- 4.4 A public right of way, footpath AB12, crosses the site on a north to south axis, forming a pedestrian connection between Appledore Road and Woodchurch Road.
- 4.5 There is an Order to record a new public right of way, reference AB70, which would provide a circular route around the interior of the site. The Order was made in December 2020, and I understand will be considered at a Public Inquiry to be held in April 2021. Further information on this is provided in Kate Beswick's proof of evidence.
- 4.6 The site adjoins the ribbon development of Woodchurch Road on its western boundary and on the southern boundary development along Beacon Oak Road and Appledore Road. This ribbon development is very distinctive in character, giving a rural feel to the approach to the town. When I visited the site, I noticed the tree lined approach to Tenterden along Appledore Road, with seemingly evenly spaced mature trees forming an avenue as you approach the town in this

direction. Both roads are relatively narrow with narrow footpaths and a dominance of grass banks and verges, again providing a rural feel to the approach to the town.

- 4.7 There are dispersed small residential cul-de-sacs off each of the approaches to the town, along Appledore Road and Woodchurch Road, where small scale development has occurred at different intervals. These do not penetrate beyond the long gardens of the houses fronting the main roads.
- 4.8 The appeal site is located on the eastern edge of Tenterden. Tenterden has no settlement boundary. It has a shopping high street and provides a range of services and facilities. I note there is a train station, but this is a leisure route.
- 4.9 The site abuts in part the boundary of the High Weald Area of Outstanding Natural Beauty (AONB), with the majority of the site's eastern edge lies in close proximity to the boundary.
- 4.10 Tenterden Conservation Area lies to the south west of the site. It directly adjoins the site on the southwestern corner (as explained in the SoCG, a very small part of the site is within the Conservation Area). There are two listed buildings in very close proximity to the site; the Grade 2 listed Stace House, a 2.5 storey dwelling located just to the south west of the appeal site and the Grade 2 listed Craythorne House, a 3 storey building located on the junction of Beacon Oak Road and Woodchurch Road.
- 4.11 The appeal site is in flood zone 1.

THE PROPOSED DEVELOPMENT

- 4.12 The proposed development is a hybrid application, part submitted in outline and part in detail.
- 4.13 The outline element is for the residential part of the development comprising up to 145 dwellings, including 72 affordable homes with all the necessary supporting infrastructure. The full part of the proposed development is for the change of use of agricultural land to land to be used as a country park (8.66ha), the creation of a community orchard and the provision of formal sports pitches (3.33ha) together with a pavilion building.
- 4.14 The appeal proposals are described in the report to planning committee (CD4.27) paragraphs 11 to 32 and in the Statement of Common Ground (SoCG) section 2, Appeal Proposals.

SITE PLANNING HISTORY

4.15 The planning history of the appeal site is detailed in the SoCG, section 4. I have set out below relevant aspects to the case.

4.16 It is relevant to note that planning permission was refused at appeal in 1989 for 124 dwellings on the western part of the appeal site (reference 87/00259/AS; the appeal Inspector's decision is included as CD 6.1b). I note that the decision was originally made to grant consent, but this was taken to the High Court and quashed and that, when the appeal was reconsidered it was ultimately refused. Whilst the planning policy context has changed in that time (although I note there was five-year supply short fall), and I acknowledge the decision is dated, and related to a smaller parcel of land, it is relevant to this case. In regard to the character of the area and landscape setting of the town, Mr Withycombe's proof of evidence explains that *"the level and extent of development at the settlement edge appears to have changed little since 1990* (see paragraph 2.8 of Mr Withycombe proof for full explanation). Therefore, I think the following comments made by the Inspector in dismissing the appeal remain relevant today:

"...the Council argues that although the site is bordered by housing on Woodchurch Road and Appledore Road, there is no sense of urban enclosure. I agree with that conclusion." (paragraph 12, CD 6.1b).

"Tenterden has a largely linear form and it appears to me that a significant element in its character derives from the close proximity of the countryside to the heart of the town. The Local Plan is in my view rightly concerned to protect this aspect of its character which I consider would be damaged were the appeal proposal permitted" (paragraph 14, CD 6.1.b).

Concluding that

"...the development would result in a significant intrusion into the countryside" (paragraph 16, CD 6.1.b).

4.17 I note that the above appeal was original considered in 1989 (CD6.1a) and whilst the Inspector allowed the development, that Inspector also acknowledged the visual effect on the setting of Tenterden and whilst he drew the conclusion the proposed development *"would not seriously*

harm the overall character and appearance of the area” he added “though this might not be the case if development were to extend across the fields I have mentioned” (paragraph 9). The fields mentioned are “from the public footpath there would be two fields between the hedge boundary of the proposed new housing” (paragraph 9), my interpretation of that comment is that it relates to the fields to the west of public footpath AB12, which are proposed to be development in this appeal scheme.

4.18 Since that refusal, the site has been promoted at different stages in the local plan process and to date has not been successfully allocated for development. I have highlighted some relevant conclusions from that site promotion below:

4.19 The site was considered as an omission site for the Tenterden and Rural Sites Development Plan Document (which was adopted 2010), the Local Plan Inspector concluding:

“TENT18, the land north of Appledore Road, is located behind frontage development on Woodchurch Road and Appledore Road, I recognise that the landform would preclude wider views of the site from the east. However, the site forms a wedge of countryside characteristic of the urban form of Tenterden as a small market town in a strongly rural setting, which would be eroded on development. Access to the Appledore Road is possible via an existing opening but there is little firm evidence that in the creation of the access, a possible mini roundabout and visibility splays, roadside trees important to this distinctive approach to the town would not be harmed. A gateway feature could be created at the access and the mini-roundabout would introduce an element of traffic calming, but I do not see these as justification for allocation” (paragraph 2.98 of the Inspector’s report dated 29 September 2010, my emphasis, CD 2.5)

4.20 Whilst I accept the conclusions which were drawn in relation to the allocation of sites in the plan at that time, I think the points raised which I have emphasised above regarding character remain pertinent to the consideration of this appeal.

4.21 The site was then promoted at the Local Plan 2030 examination in 2018. It was not allocated in that plan but promoted for development. I refer to the site’s promotion and Inspector’s conclusions in detail in section 6 and for brevity have not repeated that information here.

- 4.22 An application for a screening opinion was made in 2019 (reference: 19/0007/EIA/AS) and the screening Direction was issued by the Secretary of State on 30 October 2019 confirming that EIA was not required for the up to 250 home development proposed.
- 4.23 The appeal site was subject to a previous Hybrid application (reference 19/01788/AS) made in outline for 250 dwellings and associated infrastructure, and full planning permission for the change of use of the land from agriculture to country park and land to be used for formal sports pitches.
- 4.24 The application was refused by Ashford Borough Council on 23 September 2020. The reasons for refusal are set out in the Statement of Common Ground.
- 4.25 I understand from Ashford Borough Council (in their Statement of Case paragraph 10.2) that there was no pre-application engagement made by the Appellant between applications 19/01788/AS and 21/00790/AS in the 8-month intervening period.
- 4.26 During the course of the appeal application, the Council made the Appellant aware of issues that had been raised in particular by technical consultees that needed a further response.
- 4.27 The 13 week determination period for the application expired on 12 August 2021. An extension of time request was sent to the appellant's agent on 6 August 2021 (appendix 1) it outlined the following reasons for the request:
- Request from KCC PROW and Access email 30 July with regards to AB70 route.
 - Further information requested by KCC Flood and Water Management letter dated 23 July 2021.
 - Any further response to ABC landscape officer's comments sent 21 July 2021.
 - Further information requested by KCC Ecological Advice service letter dated 21 June (KWT letter 11 June 2021) with site meeting with applicant's ecologist pending.
 - Further information requested by ABC Culture, Tourism and Leisure comments sent 19 July 2021.

- Any further responses KCC Heritage comments 1 July 2021.

4.28 An extension was requested until 22 September 2021 to allow for the possibility of the appeal scheme's submission to the Council's 15 September 2021 planning committee meeting. The appellant did not agree to any extension of time. The application was submitted to the Council's 15 September 2021 planning committee meeting where it was refused by members.

5 THE DEVELOPMENT PLAN

GENERAL PROVISIONS

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

THE ADOPTED DEVELOPMENT PLAN

- 5.2 The development plan documents containing policies relevant to this appeal are:
- Ashford Local Plan 2030, adopted February 2019
 - Kent Minerals and Waste Local Plan (2016)
 - Kent Minerals and Waste Early Partial Review (2020)
- 5.3 A summary of the relevant development plan policies to the appeal is provided in the SoCG.
- 5.4 There is an emerging Neighbourhood Plan in Tenterden. It was published for consultation in June 2021. It is at an early stage of preparation and whilst it is a material consideration it is not part of the development plan for the site.

SPATIAL DISTRIBUTION OF HOUSING IN THE BOROUGH AND THE CONFLICT WITH THE SPATIAL STRATEGY

- 5.5 Ashford Local Plan 2030 was adopted in 2019. Policy SP1 and SP2 set the strategic approach towards development in the Borough. SP1 sets the strategic objectives of the plan to deliver the Local Plan's Vision. The Vision identifies Ashford (the town) as the main focus for development and notes that Tenterden will continue to serve as a principal rural service centre for the south-western part of the Borough, *"accommodating development of a suitable scale, design and character"* (the Vision, Local Plan page 8).
- 5.6 Policy SP1 identifies *"strategic objectives"* to deliver the vision and *"core principles"* for the plan. The Core Principles include:

"b. To conserve and enhance the Borough's natural environment including designated and undesignated landscapes and biodiversity and promote a connected green infrastructure"

network that plays a role in managing flood risk, delivers net gains in biodiversity and improves access to nature; ”

“d. To create the highest quality design which is sustainable, accessible, safe and promotes a positive sense of place through the design of the built form, the relationship of buildings with each other and the spaces around them, and which responds to the prevailing character of the area;”

- 5.7 The proposal does not meet these requirements in SP1, as discussed below and in detail in section 6 of my proof in regard to reason for refusal number 2 due to the environmental sensitivities and suitability of the site
- 5.8 Following on from the Vision and the strategic objectives identified in SP1, Policy SP2 provides the strategic approach to housing delivery, setting the target of 13,118 new dwellings to be delivered in the Borough in the period 2018 to 2030.
- 5.9 SP2 is clear that the focus of development is Ashford (the town), stating: *“the majority of new housing development will be at Ashford and its periphery, as the most sustainable location within the Borough”*. The scale of development in rural areas, where Tenterden is located, being commensurate with the settlement and the sensitivity of the site, the policy stating: *“development in rural areas will be of a scale that is consistent with the relevant settlement’s accessibility, infrastructure provision, level of service available, suitability of sites and environmental sensitivity”*. The plan makes new land allocations to deliver housing growth, 82% (4,872 homes) of the new allocations are at Ashford and the remaining 17% (1,017 homes) in the rest of the Borough, demonstrating the focus of the strategy.
- 5.10 The proposed development is not allocated in the plan and would therefore fall within the ‘windfall’ category of SP2 which is required to be *“consistent with the spatial strategy and consistent with other policies”* in the Local Plan. The proposed development is strategic in size and in my view would conflict with the clear strategy and focus of the plan to direct development toward the main settlement of Ashford and limit development in more environmental sensitive rural areas. It would harm the strategy as the proposed development would reduce the focus from the most suitable settlement in the Borough, Ashford whilst also cause harm by developing land at Tenterden that would cause harm to its landscape setting, conflicting both of the two strands of the spatial strategy. As addressed and explained below, the proposed development

is also contrary to other policies in the Local Plan and for both reasons would not accord with the requirements for windfall housing development set out in SP2. It is relevant to note the supporting text to this policy specifically discusses Tenterden stating:

“The high quality of Tenterden’s landscape setting and its intrinsic historic character are factors that suggests that new development in the town should be limited, phased and very carefully planned” (paragraph 2.51, CD 2.1).

I conclude that the proposed development is therefore contrary to the SP2, the strategic approach to housing delivery.

HOU5 RESIDENTIAL WINDFALL DEVELOPMENT IN THE COUNTRYSIDE

5.11 Notwithstanding the conflict with SP1 and SP2, I now examine the proposed development against the requirements of HOU5 Residential Windfall Development in the Countryside. This policy enables windfall development, specifically *“adjoining or close to the existing built-up confines”* of the settlements listed in the policy. The list includes Tenterden, Ashford and 23 other settlements. The policy allows development provided all six criteria are met:

“a) The scale of development proposed is proportionate to the size of the settlement and the level, type and quality of day to day service provision currently available and commensurate with the ability of those services to absorb the level of development in combination with any planned allocations in this Local Plan and committed development in liaison with service providers;

b) The site is within easy walking distance of basic day to day services in the nearest settlement, and/or has access to sustainable methods of transport to access a range of services;

c) The development is able to be safely accessed from the local road network and the traffic generated can be accommodated on the local and wider road network without adversely affecting the character of the surrounding area;

d) The development is located where it is possible to maximise the use of public transport, cycling and walking to access services;

e) The development must conserve and enhance the natural environment and preserve or enhance any heritage assets in the locality; and,

f) The development (and any associated infrastructure) is of a high quality design and meets the following requirements:

i) it sits sympathetically within the wider landscape,

ii) it preserves or enhances the setting of the nearest settlement,

iii) it includes an appropriately sized and designed landscape buffer to the open countryside,

iv) it is consistent with local character and built form, including scale, bulk and the materials used,

v) it does not adversely impact on the neighbouring uses or a good standard of amenity for nearby residents,

vi) it would conserve biodiversity interests on the site and / or adjoining area and not adversely affect the integrity of international and national protected sites in line with Policy ENV1.”

5.12 I have examined the areas of conflict with this policy below and in detail in section 5 in relation to the reasons for refusal.

Extent of the compliance with the criteria of HOU5

Criterion a)

5.13 Tenterden is the second settlement in the hierarchy and recognised in the Vision as being the rural service centre serving the south-west part of the Borough. Whilst it can accommodate growth and meets this aim, this is a separate issue from whether growth should be directed to Tenterden in terms of the strategy for growth set out in SP1 and SP2.

5.14 In terms of the ability of services to absorb the development, I understand the Appellant will enter a S106 / Unilateral Undertaking, that is being discussed with the Council, and that on the basis it is agreed and would address fully these issues, I consider that the development would provide the contributions necessary to expand services required so the development can be considered to be ‘absorbed’ and meet this criterion.

Criterion b)

5.15 I note the appellant has provided a table, 3.1 in the Transport Assessment (TA, CD1.8), that supported the planning application and sets out the distance of the site to services and facilities. The measurements are described as from the closest site access point, so in most cases properties will be further than the stated distance from the edge of the site. The TA explains that there is a range of day-to-day services within the Manual for Streets 'Walkable neighbourhood' of 800m distance walking distance of the site. I noticed that most of these are at the upper range of the limit (750-800m), however there is a wider range of services and facilities in the next category, within 1600m (at which distance table 3.1 state 80% of trips are on foot) on balance, and on the basis of no objection (subject to condition) from Kent County Council Highways, I conclude that this criterion is met.

Criterion c)

5.16 There is no objection (subject to conditions) to the appeal scheme from Kent County Council Highways and Transportation services to the proposed development and therefore this criterion is met.

Criterion d)

5.17 As noted above, on balance, there is a range of services and facilities within walking and cycling distance of the site. I note that again that Kent County Council Highways and Transportation services raised no objection subject to conditions on this question.

5.18 The TA (CD1.8) also provides information on public transport (Section 3.5 page 21). I note from this statement and my site visit that there are bus stops within a short walk of the site and a proposal for a new bus stop on Woodchurch Road. The TA details the routes, and whilst I did not see a bus on either Appledore Road or Woodchurch Road during my site visit, I understand from the information presented table 3.2 of the TA that there is a range of services, although I note the TA references journey time to Ashford by bus as being 50 minutes (paragraph 3.5.6 of the TA, CD1.8), compared to approximately a 25 minute drive, so whilst it is possible to access by public transport I would question how attractive this bus service is to residents if they have the choice to use a private motor vehicle.

- 5.19 There is no main line railway station at Tenterden (the station provides access to a leisure route). Therefore, access to main line rail services is further afield, with stations at Ashford and Headcorn, both over 14km from the site (paragraph 3.5.6 and 3.5.7 of the TA, CD1.8) providing services into London. Appledore Station is closest to the site, 9km to the east and provides a rail service between Brighton and Ashford (TA, CD1.8, paragraph 3.5.8). I note other smaller settlements in the Borough also have access to the main line, such as Appledore, Pluckley and Hamstreet.
- 5.20 The appeal site is located where it is possible to access services via various modes of transport as listed in the policy requirement. Whilst some of those modes are not as attractive as others, the site does have reasonable walking and cycling access to the town and there was no objection from Kent County Council Highways and Transportation Services, and therefore on this basis I consider this criterion is met.

Criterion e)

- 5.21 Kent County Council's Ecological Advisor objected to the proposed development on the grounds that the application provided insufficient information to demonstrate that there would not be a harm to biodiversity. I am not a qualified ecologist but my evidence is supported by the proof of evidence of Ms Forster, who raises concern about the impact of the proposed development on biodiversity due in large part to the lack of information to demonstrate that the proposed high quality habitat creation and enhancements can be achieved to ensure there is no biodiversity loss. These concerns mean this criterion is not met, equally there is conflict with SP1 b) and d) referred to above.

Criterion f)

- 5.22 My evidence is support by the evidence of Mr Withycombe, Mr Cook and Ms Forster, all of whom identify harmful impacts in relation to the proposed development and the setting of the Tenterden and the biodiversity interests of the site, and therefore there is inherent conflict with the requirements of criterion f, and equally SP1 b) as reference above.
- 5.23 In addition, the proposed layout is not consistent with the local character and surrounding built form. Whilst I recognise that appeal relates to an outline application (in respect of this element), I have no evidence before me that the proposed development can be delivered in a manner that would be consistent with the local character and especially given the site constraints that will

need to be accommodated in a layout (as explained further in section 6, reason for refusal 2). I am unable to see how the proposed development will pass this test and therefore the proposal does not meet the criterion f) iv), and SP1 d), and as a result SP2, reference above.

5.24 As such the proposed development is contrary to a number of the criteria of this policy.

FURTHER RELEVANT DEVELOPMENT PLAN POLICIES

SP6 Promoting High Quality Design

5.25 SP6 requires *“development proposals must be of high-quality design and demonstrate a careful consideration of and a positive response to”* a series of criteria, including *“character, distinctiveness and sense of place”*.

5.26 As discussed above, and in detail in section 5, the design of the proposed development has not responded positively to the area, this is supported by Mr Withycombe’s evidence and Ms Forster’s evidence in regard to impact on the landscape and ecology. The infilling of the countryside wedge that has a strong relationship between the settlement, connecting it to its rural context, wider countryside and the AONB. This connection will be lost, and the character eroded by the proposed development, failing this policy test. There will be harm to protected trees, which will further impact on the character, distinctiveness and sense of place. As a result, the development proposals will be contrary to SP6, and on these grounds, as discussed above also SP1 b) and d), as set out in reasons for refusal 2, 3 and 4 and as a result SP2.

ENV1 - Biodiversity

5.27 This policy states that:

“Proposals for new development should identify and seek opportunities to incorporate and enhance biodiversity. In particular, development should take opportunities to help connect and improve the wider ecological networks” and *“Where harm to biodiversity assets cannot be avoided, appropriate mitigation will be required in line with a timetable to be agreed by the Local Authority”*.

5.28 My evidence is supported by the evidence of Ms Forster KCC Ecology Services who has raised concern, as detailed in their proof of evidence, that the proposed development will not result in the biodiversity net gain the Appellant’s anticipate and that the direct loss of neutral grassland,

trees and rush pasture as a result of the development could be amplified by inappropriate and insufficient management. Ms Forest concludes that the *“proposed development is likely to result in a decline or loss of the quality of the habitats on site which may consequently result in likely harm the species present”* (paragraph 41) . As a result, the proposed development will be contrary to policy ENV1 (as well as HOU5 e and fiv), SP1 b) and as a consequent SP2).

ENV3a – Landscape Character and Design

5.29 Policy ENV3a sets a series of tests to ensure development has regard to the area’s landscape characteristics. It states:

“All proposals for development in the borough shall demonstrate particular regard to the following landscape characteristics, proportionately, according to the landscape significance of the site:

- a) Landform, topography and natural patterns of drainage;*
- b) The pattern and composition of trees and woodlands;*
- c) The type and composition of wildlife habitats*
- d) The pattern and composition of field boundaries*
- e) The pattern and distribution of settlements, roads and footpaths*
- f) The presence and pattern of historic landscape features;*
- g) The setting, scale, layout, design and detailing of vernacular buildings and other traditional man made features;*
- h) Any relevant guidance given in the Landscape Character SPD;*
- i) Existing features that are important to and contribute to the definition of the local landscape character shall be retained and incorporated into the proposed development; and*
- j) Any non-designated, locally-identified, significant landscape features justified in a Parish Plan or equivalent document.”*

5.30 My evidence is supported by Mr Withycombe’s landscape evidence and assessment of the appeal scheme and concludes that the proposed development will be contrary to ENV3a (as well as HOU5, SP6, SP1 and SP2 as referenced above). It is also supported by Mr Cook’s evidence regarding the harmful impact on protected trees and Ms Forester’s evidence in regard to ecology have summarised the salient points of his assessment in section 5 and for brevity do not repeat them here. The evidence demonstrates that the proposed development would have an adverse impact on the landscape characteristics of the site, and is therefore contrary to this policy.

IMP4 Governance of Public Community Space and Facilities

5.31 Policy IMP4 relates to the governance of public community spaces and facilities and relates to the provision of the sports facilities. The policy requires applications for substantial community space and facilities to be *“supported by a governance strategy”* that is agreed with the Council. The policy requires the Governance strategy to set out *“what facilities are to be delivered and by when, and how they will be managed over time to an acceptable standard”*.

5.32 My evidence is supported by evidence from Mr Myatt, that sets out the Council’s position and concerns in regard to the governance of the sports facility provided. Mr Myatt concludes that due to the lack of information in regard to the Governance strategy, the sports pavilion and sports pitches would not meet the requirements of IMP4 and as such the proposed development is contrary to this policy.

ENV13 Conservation and Enhancement of Heritage Assets

5.33 Policy ENV13 states that:

“...development will not be permitted where it will cause loss or substantial harm to the significance of heritage assets or their settings unless it can be demonstrated that substantial public benefits will be delivered that outweigh the harm or loss”.

5.34 The appeal site abuts Tenterden Conservation area (a very small section is within the conservation as described the SoCG) and is in close proximity to several listed buildings as detailed in the description of the site and the SoCG paragraph 3.5.

5.35 Due to set back of the development, the proposals are unlikely to result in significant harm to the setting of the conservation area or the nearby listed buildings and therefore the development is not contrary to this policy.

TRA5 Planning for Pedestrians

5.36 TRA5 requires development proposals to:

“...demonstrate how safe and accessible pedestrian access and movement routes will be delivered and how they will connect to the wider movement network. Opportunities should be proactively taken to connect with and enhance Public Rights of Way whenever possible, encouraging journeys on foot”.

5.37 There is a public right of way crossing the site and an Order to create a public right of way that forms a circular route around the site. My evidence is supported by the evidence of Ms Beswick, Kent County Council’s Rights of Way Improvement Plan Officer. I will not repeat her evidence here, however she concludes that the route of AB70 has not been fully considered within the proposed development and it has not been demonstrated how the route can be successfully accommodated within the development. In its current form she considers it to have a significant impact on public users’ safety and the design and layout of the proposed development. As a result, it has not been satisfactorily demonstrated that the development can be delivered without impact to AB70, and as such the proposed development is contrary to this policy.

EMERGING NEIGHBOURHOOD PLAN

5.38 Whilst not referenced in the reasons for refusal, the emerging Neighbourhood Plan will eventually form part of the development plan and so I have considered it in this context.

5.39 The emerging Neighbourhood Plan is at a very early stage in the preparation. However, a plan has been prepared and was published for its first round of consultation in June 2021 and covers the appeal site.

5.40 The Neighbourhood Plan provides a vision for the area up to 2030. The plan identifies the built-up confines of Tenterden (map 2 page 19 of the Consultation Version of the plan). The appeal site is located outside the built confines of the settlement and shown as a protected local green space (referred to as D Limes Land). The policy suggests these green spaces should have

protection akin to the Green Belts as defined in the NPPF. Part of the appeal site, adjoining Appledore Road, is also identified as a site for recreation open space.

- 5.41 The emerging NP also includes policy TEN NP1 which seeks to protect the setting of the AONB, retain the distinctive landscape features of Woodchurch Undulating Farmlands (as defined on map 4 to include the site) and maintain dark skies and tranquillity of the area.
- 5.42 The plan has not been through an examination process to test the soundness of the policies contained within it and therefore, in accordance with the NPPF, I give it limited weight in the decision-making process. The proposed development would clearly be contrary to the policies referenced above but in my view given the stage of the plan, this harm can only be given little weight in the planning balance.

NATIONAL PLANNING POLICY FRAMEWORK

- 5.43 The National Planning Policy Framework (NPPF) sets out Government policy for England and is a material planning consideration for the determination of the appeal. Whilst the NPPF should be considered in its entirety, in relation to the Council's case for dismissing this appeal the following paragraphs and sections are most relevant:
- 5.44 Section two of the NPPF sets out the government's aim for the planning system to contribute to the achievement of sustainable development (paragraph 7), paragraph 8 sets out the three aspects of sustainable development: economic objectives, the social objectives and the environmental objectives.
- 5.45 Paragraph 11 sets out the presumption in favour of sustainable development. For decision making that is described in the paragraph as meaning:

"c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing development proposed; or

ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole”.

- 5.46 In reference to d), footnote 8 confirms that that this includes *“applications involving the provision of housing in situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites”* (NPPF, footnote 8).
- 5.47 An assessment of the weight to be applied to those Local Plan policies of most relevance in the determination of this appeal is provided in section 5 in the context of the reasons for refusal. The weight to be applied to the policies is one of a balancing exercise, considering the extent of the short fall and the consistency with the Framework.
- 5.48 It should be noted that paragraph 12 and 47 confirms that *“the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making”*. Paragraph 48 confirms the weight to be given to relevant policies in emerging plan, this is only relevant here in regard to the emerging Neighbourhood Plan.
- 5.49 Section 5 sets out the Government’s objective to *“significantly boost the supply of homes”* (paragraph 60) and paragraph 74 requires *“local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies”*, providing detail about that calculation in paragraph 75.
- 5.50 Section 9 of the NPPF set out the policy position in relation to the promotion of sustainable transport. Paragraph 105 requires that *“significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes”*.
- 5.51 Section 12 focuses on design highlighting that *“the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve”* and that *“good design is a key aspect of sustainable development”* (paragraph 126). Paragraph 130 requires planning decision to meet a series of design objectives, including ensuring that developments:

- *“a) will function well and add to the overall quality of the area”*
- *“b) be visually attractive as a result of good architecture, layout and appropriate and effective landscaping”*
- *“c) are sympathetic to local character and history, including the surrounding built environment and landscape setting”*

5.53 Section 15 requires planning decision to *“contribute to and enhance the natural and local environment”* by responding to a series of criteria, including *“b) recognising the intrinsic character and beauty of the countryside and recognising the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, a and of trees and woodland”* and *“d) minimising impacts on and providing net gains for biodiversity”* (paragraph 174). Paragraph 180 requires planning authorities to refuse planning permission where *“significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated or, as a last resort, compensated for”* and *“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 reasons and a suitable compensation strategy”* with footnote 63 providing an example for *“wholly exceptional reasons”* of infrastructure projects *“where the public benefit would clearly outweigh the loss or deterioration of habitat”*. .

CONCLUSIONS AND NON-COMPLIANCE WITH POLICY

- 5.52 Planning law requires that the determination of planning application should be made in accordance with the development plan unless material considerations indicate otherwise (section 38(6) of the Planning and Compulsory Purchase Act (2004)).
- 5.53 The development plan has only recently been adopted (February 2019), and there is inherent conflict between the appeal scheme and the strategy of the plan regarding policy SP1 and SP2.
- 5.54 Due to the site’s sensitive location at the edge of this rural settlement and the local landscape role this area of land plays in the strong rural identify of Tenterden the proposed development would cause harm to the character of the local area, landscape and protected trees also be contrary to policies SP1, SP2, HOU5, SP6, and ENV3a, in accordance with the reasons for refusal.

Due to the loss of the trees, sensitivity of the site, the design approach would not sit sympathetically within the landscape and would be contrary to SP1 b) and d), SP6, HOU5 and ENV3a.

- 5.55 There is no evidence that the site can be delivered without impact on proposed public right of way AB70 and as such it is contrary to SP1 and TRA5.
- 5.56 Without further information on the governance strategy for the sports pitches and pavilion building, their delivery can not be guaranteed and there is conflict with IMP4.
- 5.57 The policies in the development plan are consistent with the NPPF, and whilst there is an acknowledged lack of a five-year Housing Land Supply (HLS), the degree of consistency with the NPPF allows these policies to be attributed great weight in the decision-making process.
- 5.58 The lack of five-year HLS resulting in the presumption in favour of sustainable development being engaged. The 'tilted' planning balance and the weight attributed to the policies (and for that matter harm from the proposed development) is detailed in section 7 of my proof.

6 MAIN ISSUES

THE HOUSING LAND SUPPLY POSITION

- 6.1 The Council published its Five-Year Housing Land Supply (HLS) Update in November 2021. It covers the five-year period from April 2021 to March 2026 (CD2.9b). The Update concludes (Table 3 on page 15) that the Council has a 4.54-year housing land supply (HLS).
- 6.2 In the Update the Council provides evidence to demonstrate a robust approach to assessing the deliverability of sites. Sites, identified by the NPPF as category b sites (Glossary, page 66) have clear reasons for their inclusion within the supply.
- 6.3 At the time of writing, I have reviewed the Appellant's statement submitted with the application that challenged the housing land supply position dated April 2021 (CD 1.5). It should be noted that the Appellant's report was based on Ashford's Housing Land Supply Update dated July 2020, and since then the November 2021 Update has been published (CD2.9b). The grounds used by the Appellant to challenge the five-year supply on can be summarised as:
- the impact of Stodmarsh on the delivery of development,
 - the delivery of S24 Tenterden Southern Extension Phase B, and
 - the evidence to demonstrate that windfall development which is proposed will be delivered.

As a result they reach a position that there is a 3.31 year supply.

- 6.4 I have reviewed the Council's latest HLS update and noted that several sites in the supply are affected by Natural England's advice in relation to Stodmarsh. However, the Council has made significant headway in progressing interim measure in regard to mitigation required in regard to Stodmarsh as set out in their most recent HLS Update (November 2021 CD2.9b). The Council has provided an updated position statement on the work they have undertaken to date and this is provided for the Inspector at appendix 2.
- 6.5 In regard to S24 Tenterden Southern Extension Phase B, the November HLS update confirmed that *"Progress being made to submission of planning application for site. Phase 1 (Tent1a) is almost complete in 2021. No overriding constraints to deliver of development. Taking into*

account timescales for preparation and determining application and the sale of land, part of development is deliverable within the five year period” and as such includes 150 dwellings in the supply (table A4 page 28 and 29). Appendix 3, contains a letter form the landowner’s agent confirming that master planning work and technical studies are underway, and they hope to start pre-application discussions with Ashford Borough Council in the coming months.

- 6.6 The Council has also provided me with the delivery rates for Tent1A, which is the site immediately to the north of S24 and demonstrates that in that location delivery has exceeded 150 dwellings in just over two years.

Table 1: Delivery rates for Tent1A

2017/18	20 dwellings
2018/19	112 dwellings
2019/2020	86 dwellings
2020/2021	12 dwellings

- 6.7 I consider this to be clear evidence that S24 is deliverable in the five-year period.
- 6.8 In regard to windfall development, the Council has included 300 dwellings in the supply which are anticipated to be windfall sites. These are expected to come forward in years 4 and 5 to avoid double counting with existing permissions. I agree with this approach.
- 6.9 The Council has provided evidence to demonstrate windfall delivery. This includes tables A9, A10 and A11 of their statement (CD 2.9b) which shows a consistent rate of windfall delivery over 150 dwellings per year in the last seven years. They have also provided details of current applications that may provide the windfall supply in years 4 and 5 of the delivery period (tables A6a and A7). These applications in the system amount to 587 dwellings currently without planning permission and 741 dwellings with outline permission or subject to approval of the S106 or Stodmarsh mitigation. The Council is not asserting that all these sites will be approved or will come forward to delivery in the time frame, but is using this information to demonstrate

there is significant potential windfall delivery in the planning system. I acknowledge that there is not evidence that all of these sites are deliverable (in terms of the NPPF deliverable definition, page 66) but consider there to be enough dwellings in the planning system to demonstrate that maintaining at least 150 dwellings a year from windfall sites, in years 4 and 5, is achievable. I consider this evidence, coupled with the Council's Local Plan policies enabling appropriate windfall development, "*compelling evidence*" required by paragraph 71 of the NPPF to demonstrate that this is a reliable source of supply is provided in the form of "*historic windfall delivery rates and expected future trends*" by means of the applications with the potential to contribute to delivery of the windfall allowance (paragraph 71).

- 6.10 As a result, the supply remains as set out in the Housing Land Supply Update, November 202, as 4.54 years (CD2.9b).
- 6.11 As the Council is unable to demonstrate a five-year supply of housing in the Borough, the tilted balance, as set out in paragraph 11d) of the NPPF is engaged as part of the determination of this appeal. That is that the "*policies which are most important for determining the application are out-of-date*", as footnote 8 confirms that "*for applications involving the provision of housing in situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites*" (paragraph 11d) and footnote 8).
- 6.12 In such circumstance the NPPF directs decision making to "*grant permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole*". An assessment of the weight to be applied to those Local Plan policies of most relevance in the determination of this appeal is provided below in the context of the reasons for refusal.
- 6.13 The weight to be applied to the policies is one of a balancing exercise, considering the extent of the short fall and the consistency with the NPPF.
- 6.14 I now address the reasons for refusal in this context.

REASON FOR REFUSAL 1: IMPACT ON THE DEVELOPMENT STRATEGY SET OUT IN THE RECENTLY ADOPTED DEVELOPMENT PLAN

- 6.15 The local plan vision is focused on the main settlement in the Borough, Ashford, where the intention is to support the regeneration of the town and the creation of new communities on

the periphery of the town. The Vision recognises Tenterden as the principal rural service centre that can accommodate *“development of a suitable scale, design and character”* (The Vision, page 8).

- 6.16 In this case, it is important to consider the context of Ashford, the town. It is recognised in the plan as having excellent connections by road and rail to London, there is the high speed railway connection to London and it is located on the strategic road network, with three junctions on to the M20. By comparison, Tenterden is around 25 minutes travel by car to Ashford. Ashford’s high level of connectivity to London means there is out-migration from London to Ashford. Significantly, that in turn is taken into account in the Objectively Assessed Housing Need for the Borough with an uplift included to take account of this and other market signals (paragraph 2.13, CD 2.1). In my view this is a key component of the strategy and provides the rationale for the focus at Ashford.
- 6.17 As well as excellent transport connections, Ashford also has *“an extensive and varied range of jobs, shops and leisure and recreational facilities”* (paragraph 89 of the Housing Topic Paper 2017, CD2.20). The Local Plan Inspector noted that *“because of its status as the principal settlement in the Borough, its road and rail transport links, employment opportunities and other facilities the strategy emphasising Ashford town as the main location for growth is a sound one.”* And that *“the SA highlights the clear advantages of this focus”* (paragraph 30).
- 6.18 Paragraph 2.38 of the Local Plan 2030 (CD 2.1) confirms that historically Ashford, the town, has also been the focus for growth in the Borough with only *“limited growth”* at Tenterden and the main villages in the borough and this position continues in the recently adopted plan. Paragraph 2.40 confirming that *“strategic spatial objectives of the previous approach are sound in planning terms and represent a policy approach that clearly resonates with the NPPF and its desire to deliver sustainable development”* (paragraph 2.40). The scale of the development proposed would run counter to this strategy.
- 6.19 Whilst the appeal site is at Tenterden, it is fundamental to the strategy to consider the role and function of Ashford. It is my view that the conflict with the role of Ashford (the town) and the pattern of development is a significant harm, as development would be directed to less sustainable and more environmentally sensitive areas, therefore that harm should be afforded great weight and I will go on to explore this further below.

- 6.20 The Vision is reflected in the strategic policies, SP1 Strategic Objectives, leading through to SP2 providing the Strategic Approach to Housing Delivery. During the examination of the plan this strategy and approach was assessed against other strategies in the Sustainability Appraisal (CD2.39). The Sustainability Appraisal report (paragraphs 3.8.19 to 3.8.29) provides an overview of the findings of the assessment against the objectives. The report concludes that the alternatives that focused most growth in or around Ashford (the town) had the most beneficial effects in regard to the SA objectives, and on balance, alternative 4.2, which sought to focus the majority of development in and around Ashford (the town) supported by proportionate growth in Tenterden, rural service centres and other villages, was the preferred strategy.
- 6.21 I note that the Local Plan Inspector considered the *“criticism that insufficient consideration has been given to the role that rural area should play”* and found *“no failings in the SA in these respects as it adequately considered a more rural-focussed growth option”* (paragraph 15 CD2.2) and that *“overall the SA has sufficiently evaluated the reasonable alternatives and is suitable comprehensive, satisfactory and legally compliant”* (paragraph 20). The Inspector went on to conclude that *“the vision and strategic objectives reflect the economic, social and environmental dimensions of sustainable development set out in the NPPF. Therefore, the ALP has the achievement of sustainable development at its heart and the vision and strategic objective are accordingly sound”* (paragraph 29).
- 6.22 Strategic policy SP2 sets out the strategic approach to housing delivery, identifying that this will be met through *“committed schemes, site allocations and suitable windfall proposals”* (my emphasis). In recognition of Ashford’s role as the main settlement in the Borough, the policy focuses the majority of housing in / around the town (82% or 4,872 dwellings of the 5,889 allocated in the plan). It is very clear that the policy and entire strategy of the plan is seeking to steer the majority of growth to Ashford, which can offer the best access to services and facilities, and by helping to reduce the need to travel is consistent with paragraph 104 of the NPPF and the conclusions of the Sustainability Appraisal.
- 6.23 SP2 states that in rural areas development will *“be of scale that is consistent with the relevant settlement’s accessibility, infrastructure provision, level of services available, suitability of sites and environmental sensitivity”*. The policy proposes 1,017 dwellings in rural area, 17% of the dwellings allocated through the plan. The rural approach is significantly different to the approach at Ashford, the policy wording of the strategy itself being more restrictive, recognising

that in rural areas development must be of a scale that is consistent to the suitability of the site as well as the *“environmental sensitivity of the area”*.

- 6.24 This is demonstrated in appendix 4, of my proof, which contains a table setting out the rural sites allocated in the plan, this illustrates the size of the strategic rural allocations in the plan in many instances is considerably below the maximum 145 homes proposed here. Indeed, 20 of the 23 allocations are for developments of 50 units or less. It also illustrates that in the first four years of the plan period (2018 to 2021) there has been significant progress to deliver a substantial proportion of these allocations, with 20 of the allocations benefiting from live planning application or planning permission.
- 6.25 It is also recognised in the support text to the strategy, in relation to Tenterden. The supporting tests highlight succinctly the *“environmental sensitivity”* of the area, describing Tenterden as *“an attractive, historic town”, that is “constrained by the High Weld AONB” and “a high quality, well-preserved Conservation Area”* (paragraph 2.49 and 2.50). In respect of its *“environmental sensitivity”* the supporting text confirms that *“traditionally, Tenterden has been the focus of relatively small-scale ‘organic’ growth which has been usually more on a village-type scale than the scale of allocations at Ashford”* (paragraph 2.50). Paragraph 2.51 concluding that *“the high quality of Tenterden’s landscape setting and its intrinsic historic character are factors that suggest that new development in the town should be limited, phased and very carefully planned”* (paragraph 2.51). This is a very different role to Ashford, and clear supports the strategy that reflects a Borough of two-halves.
- 6.26 Based on this information, and the key role Ashford, the town, plays in the settlement hierarchy in the Borough, I draw the conclusion that the application for up to 145 dwellings is strategic in nature, in the context of Ashford Borough, and would detract from the Ashford centric focus of the strategic policies of the plan. I note the delays to development at Ashford due to Natural England’s advice about Stodmarsh, but I also see the progress the Council has made to unlock development from this temporary restriction and therefore do not see this as a reason to undermine the recently examined, sustainable strategy of the Local Plan.
- 6.27 SP2 allows windfall development, which in table 1 ‘The Overall Housing Profile’ (page 11), includes a windfall contribution of 1,000 dwellings towards the objectively assessed need. Critically, windfall development must meet two tests, that is in line with the spatial strategy set

out above, but recognising that rural areas are more constrained by environmental sensitivities, and consistent with other policies in the Local Plan.

- 6.28 Windfall sites are defined in the Local Plan as *“sites which have not been specifically identified as available in the Local Plan process. They normally comprise previously-developed sites that have unexpectedly become available”*. The definition provides no indication as to the scale of windfall development; however, SP2 provides a clear approach, only permitting windfall development that is consistent with the spatial strategy and other policies in the plan.
- 6.29 Table 1 of the Local Plan (page 14) (the overall housing profile) demonstrates how the objectively assessed need for housing will be delivered, identifying 5,889 local plan allocations (of which 82% are at Ashford) and 1,000 homes from unidentified windfalls as a source. That windfall allowance is spread across the whole Borough and in accordance with the distribution of SP1 and SP2, the majority of the windfall development should be at Ashford to ensure consistency with the spatial strategy. To give some context to the level of windfall development expected, 1000 dwellings across the borough in the years 2018 to 2030, would equate to 84 dwellings per annum (rounded up to the nearest whole number).
- 6.30 The Council has provided me with a table demonstrating the windfall developments that have been approved in the Borough during the plan period (appendix 5). Across the whole Borough these equate to 1,148 net dwellings approved and specifically in Tenterden this equates to 226 net dwellings, over the initial almost 4 years of the plan period. Whilst these homes have not been delivered, this demonstrates that SP2 has been successful in delivery and even though the allocation at Tenterden has yet to be brought forward there are sufficient planning permissions at the settlement to deliver new homes.
- 6.31 In my view, the strategic approach is very clear that this is a Borough of two halves, with two aspects to the spatial strategy. Ashford, the central, well-connected focus and the reason for additional growth, and the remainder of the Borough which is rural in character and environmental sensitivity where development should be of a scale that reflects its character and environmental sensitivity but also provides a balance to ensure rural communities continue to prosper. This is the purpose the strategy reflects, and the approach that should be taken to windfall development, as clearly set out in SP2.

- 6.32 The strategy is clear and was tested at Examination of the Local Plan in 2018. Judith Ashton Associates (JAA) represented the appellant at the Examination of the plan and challenged the role Tenterden had to play in the delivery of development. The on the of issue 3, relating to the strategic distribution of housing, where the Inspector had the following questions as issues to address: *“Are the strategic objectives and the strategic approach to housing delivery and economic development delivery in terms of the distribution and location sound having regard to the needs and demands of the Borough, National policy and Government objectives and the evidence based and preparatory process? Has the Local Plan been positively prepared?”*.
- 6.33 In their statements to the Examination JAA raised questions as to whether a *“reasonable level of growth in Tenterden”* was delivered by the plan (paragraph 3.1.3 JAA response to Matter 3, CD 2.16a) identifying and suggesting options for growth based on the existing population of the town and demographic analysis provided by Lichfield’s (paragraphs 3.1.5 to 3.1.14) and considered the ability of the town to accommodate additional growth, including the allocation of the appeal site (paragraphs 3.1.15 to 3.1.19, JAA Response to Issue 3, appendix 2.16a).
- 6.34 The Inspector’s Report on the Examination of the plan, dated 2 January 2019 (CD 2.2), responds to the JAA promotion of the site and Tenterden, I have extracted key commentary from his report below that is relevant:

“Tenterden is the second largest settlement in the Borough but the population in Ashford town was about 15 times greater in 2016. Taking existing commitments and proposed allocations into account some 625 dwellings would be provided in Tenterden over the plan period. This equates to some 5% of the Borough’s residual housing requirement in Table 1. This is not a precise ‘fit’ with the size of the town compared to the Borough as a whole but consideration has to be given to constraints such as the Area of Outstanding Natural Beauty (AONB) that surrounds much of Tenterden.

In general terms the population of Tenterden has not grown since 2002 compared to growth across the Borough of some 21%. This has led to ageing households. House prices are more expensive than the Borough Average and also increasing more quickly in value. However, there is no evidence that the vitality and viability of shops and services have suffered as a result and the town appears to be thriving. Therefore, it is not essential for the growth strategy to be changed to favour Tenterden in order to arrest potentially serious economic or social

consequences. The distribution of development enshrined in the ALP should allow Tenterden to perform its roles as a principal rural service centre as set out in paragraph 3.8 of the Vision.” (paragraphs 34 and 35 CD2.2).

- 6.35 In line with the Inspector’s conclusion on the merits of directing more growth towards the town, there was no modification to the approach for Tenterden and the appeal site was not allocated in the plan. In my view, the Inspector was clear that the more limited distribution of development at Tenterden was appropriate, clearly recognising its role, function and landscape setting, in essence its ‘environmental sensitive’, along with the role of Ashford in delivering the most sustainable pattern of growth.
- 6.36 In my view, the appeal scheme does not accord with the provisions of SP1 and SP2 and the pattern for growth set out by the strategic polices in the plan. I consider that up to 145 dwelling on this site, in addition to existing allocations and commitments at Tenterden would not be in accordance with the clear and recently tested strategy set out in SP2 and that the proposed development in this rural area is not in accordance with the focus of the plan and the strategy.
- 6.37 As the local plan Inspector highlights (paragraph 34. CD 2.2), growth at Tenterden is not simply a case of looking at the size of the town in comparison to Ashford and allocating a proportionate level of housing growth. Growth needs to take into account the sites suitability and the ‘environmental sensitivities’ of the area. It relates to the role, function and setting of the town, which, has been considered by the Inspector at the Local Plan Examination, who determined Tenterden would deliver appropriate growth as set out in the plan and did not see the need or justification to allocate the appeal site for development.
- 6.38 Taken the above into account, I conclude that the scale of the development proposed is contrary to the Local Plan strategy. Undermining this recently examined strategy would cause significant harm to the approach.
- 6.39 In addition, to the harm caused as the proposed development is contrary to policy, is the harm by means of reducing the focus from the most sustainable settlement of Ashford and undermining the objectives of SP1 and SP2 to reduce environmental harm, particularly in the most sensitive areas of the Borough and Tenterden. As detailed in the following sections, there is also other harm, due to the suitability and sensitivity of the site (and resulting conflict with HOU5, SP6 and ENV3a).

6.40 The Council is unable to demonstrate a five-year supply of land for housing and as such the housing policies of the Local Plan are out of date, specifically SP2. However, weight can still be afforded to these policies, particularly SP1, SP2 and by reference in SP2 to other policies HOU5, SP6 and ENV3a. Even though the Council is currently unable to demonstrate a five-year housing land supply, the harm carries significant weight. This weight is a balancing exercise and depends on the extent of the short fall. In this case I give the policy full weight as it has been recently examined and tested, is consistent with the NPPF and that progress is being made to address the shortfall in terms of the impact of Stodmarsh on the HLS position. As a result, reason for refusal number 1 is fully justified.

REASON FOR REFUSAL NO. 2: THE IMPACT ON THE PROPOSED DEVELOPMENT ON THE STRONG RURAL EDGE AND SETTING OF TENTERDEN

6.41 As discussed in section 4, the proposed development is contrary to policies HOU5, SP1, SP6 and ENV3a due to the harmful impact on the character of the site and the surrounding area.

6.42 Specifically, Criteria f) of HOU5 requires the development to be a high quality design that *“sits sympathetically within the wider landscape, ii) preserves or enhanced the setting of the nearest settlement, iii) it includes an appropriately sized and design landscape buffer to the open countryside, iv) it is consistent with local character and built form, including scale, bulk and the materials used, v) it does not adversely impact on the neighbouring uses or a good standard of amenity for nearby residents, vi) it would conserve biodiversity interests on the site and / or adjoining area and not adversely affect the integrity of international and national protected sites in line with Policy ENV1”*.

6.43 In my view, the proposed development would not sit sympathetically within the landscape and would neither preserve nor enhance the setting of Tenterden. I have read Mr Withycombe’s proof of evidence and agree with his description of the site and his assessment that the appeal site contributes to the landscape setting of Tenterden. I would agree with his assessment that the appeal site forms *“an important transitional area from settlement edge to the wider AONB”* (4.13.5 Mr Withycombe Proof of Evidence).

6.44 I also agree with the Tenterden and Rural Site Allocations Development Plan Document Inspector, who noted the character of the area and the importance the site plays in connecting the town to the countryside and embedding the settlement in its rural context. The form of the

development in this area is very much linear development and filling in the gap between Woodchurch and Appledore Road would be incongruous with the character of the area and harm this linear form of development and the character of the setting of the town. As such the criterion of HOU5 f) is not met.

6.45 The appeal proposal would fundamentally change the linear character of the approach to the town and the strong rural context. As highlighted in the planning history, the 1989 appeal Inspector noted that: *“Tenterden has a largely linear form and it appears to me that a significant element in its character derives from the close proximity of the countryside to the heart of the town. The Local Plan is in my view rightly concerned to protect this aspect of its character which I consider would be damaged were the appeal proposal permitted”* (paragraph 14, CD 6.1.b). The Inspector concluded that that *“the development would result in a significant intrusion into the countryside”* (paragraph 16, CD 6.1.b) and I consider that this conclusion is true of the Appeal proposal before us today.

6.46 My evidence on this aspect of the appeal scheme is supported by the evidence provided by Mr Withycombe. I do not wish to repeat the assessment in his Proof of Evidence (PoE) but in brief terms I note his views below:

- The appeal site contributes substantially to the character of the landscape setting of Tenterden and is an integral part of the settlement pattern, forming a wedge of countryside extending to the centre of the Town;
- He agrees with the SLR LVA that accompanied the planning application that identifies permanent major/moderate adverse effects to the overall character and elements and features of the western land parcel, and notes that the LVA provides no indication to how this harm could be mitigated;
- In his assessment of the landscape value, he concludes that there are a number of physical attributes that would lead him to conclude the appeal site should be assessed as a valued landscape;
- Whilst the proposal will retain landscape features, the function and relationship of these features as part of the wider countryside will be lost and therefore the Appeal proposals

would not protect or enhance the landscape of the appeal site and would be contrary to paragraph 174 of the NPPF;

- The proposed development will be prominent in views west from AB12. This change will impact users of footpath AB12 and that will be the dominating influence of development bordering the path;
- The experience of users of AB12 and AB70 would be transformed from one of a route through opened countryside to that of a route running hard against an exposed settlement edge (AB12) and through residential development (AB70);
- The conclusions of the 1989 Inspector remain relevant to this application, particularly the proposed development would *“appear as a substantial intrusion into the views of Tenterden”* and *“this would clearly be detrimental to the character and appearance of the area”*;
- Densities remain high and are more akin to urban schemes as opposed to those which might reasonably be expected to be located in rural settlement edge locations, resulting in a transformation of the wooded, transitional settlement edge to a harsh settlement edge following footpath AB12;
- The proposed development would substantially alter the overall settlement pattern;
- Concluding that the proposed development would not conserve or enhance the natural environment of the Borough because it would not sit sympathetically within the wider landscape and would cause substantial harm to the character and appearance of the settlement edge and therefore are contrary to HOU5, SP1, SP6 and ENV3a;
- And concluding in regard to trees the loss of T43 would impact the avenue character of Appledore Road and the gap created could not be mitigated due to the location of the access and any loss of mature trees on the appeal site would erode the landscape and visual character and appearance of the avenue character of Appledore Road;
- The loss of mature trees on the application site would result in the erosion of the landscape and visual character and appearance of the site. T381 is a mature, multi-stemmed field maple, and if lost, would result in significant loss of an important

landscape feature, that should be afforded great protection as stated in paragraph 180 of the NPPF;

- 6.47 As described throughout my evidence, it is my view that the appeal site provides a valuable contribution to the setting of the Tenterden and forms an important transitional relationship between the wider countryside and AONB and the settlement. This is confirmed by Mr Withycombe's proof of evidence, and whilst I am not a qualified landscape witness, I agree with his assessment and conclusion that *"the Appeal site performs an important function as one of the wedges of countryside which extend into the heart of the town. As such it forms an important part of the landscape and green infrastructure and landscape setting to the Tenterden."* (Paragraph 4.13.9 Mr Withycombe's Proof of Evidence).
- 6.48 The NPPF states *"the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve"* and confirms that *"good design is a key aspect of sustainable development"* (paragraph 123), supporting the aims and objectives of HOU5 f) and SP6. The built form shown on the illustrative master plan fails to reflect the linear character of this part of the town. Whilst I accept detail is to be determined at a later stage, given the level of onsite constraints that will restrict the location of development and the number of dwellings proposed, from the information before me, I can only conclude that built form proposed would fundamentally change this character, failing to meet the tests of the NPPF and the policies of the Local Plan.
- 6.49 The form and density of the development parcels, as set out in the Design and Access Statement that accompanied the application, would comprise a series of development parcels separated by open space, which seems to me to create a dis-jointed place that is unlike the surrounding linear form of the settlement, with that is predominated by back-to-back gardens / properties. The Design and Access Statement shows a series of flat blocks in the western part of the site (page 40, CD 1.2 part 2) and notes the flats are proposed to be 2.5 storey (page 39 CD 1.2 part 2), again this type and intensity of development, with its associated hard surfaced parking courts, appears out of character to the neighbouring streets.
- 6.50 The development parcels in the illustrative layout appear dominated by highway, with the internal loop road and cul-de-sacs in each parcel and whilst set in significant open space, cumulative, the impact of the design would be substantially different in form and character to

the existing linear form of the approach to the town via Appledore Road and Woodchurch Road. Whilst I appreciate the detail is illustrative at this stage, the design and access statement and illustrative layout should be used at the outline stage to evidence how the proposed development will respond positively to the site and its setting. My view is cumulative, that these concerns and the on-site constraints will result in a layout that would impact on the character and appearance of the area, and, without evidence to the contrary, leads me to the view that the proposed development is out of character with the area.

- 6.51 The impact on specific trees is considered in Mr Cook's Proof of Evidence which concludes that the loss of the tree T43 and the degradation of the habitat of T381 and its possible loss, will also have a harmful impact on the character and appearance of the area. The NPPF recognises that *"planning policies and decision should contribute to and enhance the natural and local environment"* (paragraph 174) and that *"development resulting in the loss of deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused"* (paragraph 180 c). The loss and harm to these trees is contrary to the requirement of the NPPF, and which is consistent with policies HOU5, ENV3a and SP6 of the Local Plan.
- 6.52 The proposed access onto Appledore Road will result in the loss of T43 to accommodate viability plays. I note and agree with Mr Withycombe in his Proof of Evidence where he described this avenue of trees as *"an important and coherent feature ... which defines the character of Appledore Road as it enters the settlement"* (paragraph 4.11). The avenue of trees is now protected by a TPO.
- 6.53 Mr Withycombe provides a helpful summary of the impact on trees from the proposed development on the landscape, as also set out in Mr Cook's Proof of evidence as:

"I agree with the evidence presented by Mr Cook relating specifically to the impact the development would have on trees. The mature hedgerow trees are an important characteristic of the Appeal Site and any losses would erode the rural character and appearance of the site. T381 is a mature, multi-stemmed field maple and if removed as a consequence of the proposals would represent a significant loss of an important landscape feature."

I also agree that the horse chestnut proposed for removal on Appledore Road (SLA T43, TPO T18) is an integral part of the avenue character along the route. Although variable in age and

character, the TPO Plan (TPO 15, 2021) shows that the avenue remains largely unbroken along the entire length of the route through the residential areas into Tenterden. It is an important landscape feature which defines the character of Appledore Road through the residential areas. The avenue is under active conservation and management as evidenced by the recent tree planting to infill gaps along the route. The removal of T43 would erode the avenue character, creating a substantial gap in the otherwise unbroken line of trees on this part of Appledore Road, which could not be replaced due to the location of the access road.” (paragraphs 6.4 and 6.5 Mr Withycombe’s Proof of Evidence).

- 6.54 Having reviewed the proposals, taking account of the illustrative nature of much of the material but also noting that site constraints will limit the form of the development, I conclude that the impact of the appeal scheme on the character and appearance of the area will be harmful.
- 6.55 The conclusion that the effect on the character and appearance of the area is harmful results in policy conflict with SP1, SP6, HOU5, ENV3a and SP2, by virtue of the harm to this environmentally sensitive site, as explained above. I see no reasons why the development proposals’ conflict with these policies should be given anything less than full weight. Whilst the policies restrict housing development, they seek to ensure development meets the high standards of design and I see no inconsistency with the NPPF’s approach in this regard as it is a facet of sustainable development that the needs for housing are balanced with the interests of the environment. As a result, reason for refusal number 2 is fully justified.

REASON FOR REFUSAL 3 AND 4: THE IMPACT ON TREES

- 6.56 My evidence is support by Mr Cook’s evidence and Mr Withycombe’s evidence in regard to the impact of the development on protected trees and the landscape value of those trees.
- 6.57 I understand from Mr Cook’s evidence that there are two trees which are will be lost (T43) and suffer a degradation of habitat or possible loss (T381) as a result of the proposed development.
- 6.58 T43 is a mature Horse Chestnut that forms part of an avenue of trees and provides a distinctive feature along the approach to Tenterden by Appledore Road. The loss of T43 would have an adverse impact on the avenue character of Appledore Road and the gap created could not be mitigated due to the location of the access. This avenue of trees is a key component of the

character of the area, and it would be eroded by the loss of this tree, causing harm in itself, and harm by reason of being contrary to policy SP1, SP6 and ENV3a of the Local Plan.

- 6.59 T381 is an Ancient Field Maple and Mr Cook's proof of evidence explains that the tree would have a deteriorated habitat that is likely to result the possible loss of the tree due to the raising of the soil to create the sports pitch. This tree is described as a significant landscape feature by Mr Withycombe, which I would agree, and its decline would be harmful to the character and appearance of the area, conflicting with policies SP1, SP6 and ENV3a of the Local Plan, which I consider above should be given full weight. As a result, reasons for refusal 3 and 4 (in reference to T43 and T381) are fully justified.

REASON FOR REFUSAL 5: IMPACT ON BIODIVERSITY

- 6.60 My evidence is supported by the evidence of Ms Forester, Kent County Council's Ecological Advice Service. The reason for refusal relates to Kent County Council's objection to the proposed development on the grounds that there is insufficient information to determine the quality of the grassland and it is likely, due to the high-quality grassland on site that the mitigation proposed, in particular the management plan, would not be sufficient to address the impact of the proposed development resulting in biodiversity loss. Ms Forester concludes that insufficient evidence has been provided to demonstrate mitigation is achievable and that the proposed creation of a high-quality habitat and enhancements required would be achievable.
- 6.61 As a result, the proposed development is contrary to policies HOU5 e) and f) vi) and ENV1 of the Local Plan and reason for refusal number 5 is fully justified.

REASON FOR REFUSAL 8: IMPACT ON PUBLIC RIGHTS OF WAY

- 6.62 My evidence is supported by the evidence of Ms Beswick. Ms Beswick's evidence raises concern about the impact of the development of the Order made to confirm footpath AB70. I understand from Ms Beswick's evidence that Kent County Council consider there is a strong case for the Order for the footpath to be confirmed. The appellant has recently provided an updated illustrative layout identifying the impact of the scheme on AB70, however, this has not resolved Ms Beswick's objection. The proposed development would have a significant impact on this proposed footpath AB70, changing the character and experience of the route. Ms Beswick raises concern that the development could have a significant impact on public user safety and the design and layout of the scheme. Mr Withycombe has assessed the impact of the proposal on

the route from his perspective assuming that it would be in place and concluded that there would be *“an obviously detrimental effect on the character and appearance and outwards views from the footpath”* (paragraph 7.6, Mr Withycombe’s PoE). To date a suitable diversion to the route has not been identified by the Appellants, without this detail Kent County Council are unable to remove their objection, because it has not been demonstrated that the Appeal proposals can be delivered without impact on the public right of way, as such the policy tests set out in TRA5 can be met.

6.63 As a result, the proposal is contrary to policies SP1 and TRA5 of the Local Plan, and reason for refusal number 8 is fully justified.

REASON FOR REFUSAL 6: PROVISION OF SPORTS FACILITIES

6.64 My evidence is supported by the evidence of Mr Myatt. In his evidence, he demonstrates why the Council has not been provided with sufficient information to meet the requirements of Policy IMP4 of the Local Plan. In his evidence he confirms that the lack of information in regard to governance makes the proposed development contrary to IMP4. This also limits the weight of the benefit to be attached to the sport pitches and pavilion, as without an acceptable Governance strategy there is no guarantee that the facilities will be available to the public and therefore form that public benefit. In conclusion, and with reference to Mr Myatt evidence, I conclude that this reason for refusal is justified.

7 PLANNING ASSESSMENT AND BALANCE

THE BENEFITS

- 7.1 The Council is unable to demonstrate a five-year housing land supply and I therefore give the provision of market and affordable housing substantial beneficial weight in consideration of the appeal scheme.
- 7.2 Also weighing in favour of the proposed development are the benefits for the local economy of the construction jobs created during the development and the increased population of the town which will support local businesses. These economic and social benefits in my opinion carry limited beneficial weight, given the recent Local Plan Inspector's comments that "*there is no evidence that the vitality and viability of shops and services have suffered as a result and the town appears to be thriving. Therefore, it is not essential for the growth strategy to be changed to favour Tenterden in order to arrest*" (CD2.2)
- 7.3 The proposed development will create a formal country park, community orchard and provide sports pitches with a pavilion building. The site is already well used by members of the public with a variety of well-trodden walking routes crossing the site. Whilst some of these routes are informal, AB12 is a public right of way, and if confirmed AB70 will also fall into this category, as such I have reduced the benefit of the country park accordingly and given it moderate beneficial weight. The sports pitches will not be lit and would be a grassed surface, limiting their use in the winter months. There has been no end user identified for the pavilion building or the sports pitches and there is no governance strategy to confirm by when and how the facility will be managed. I therefore give this element of the appeal scheme limited beneficial weight. The community orchard is a social and environmental benefit that I give limited beneficial weight.
- 7.4 The provision of new areas of public open space as part of the development is a benefit to new and existing residents, to which I give limited beneficial weight. The new bus stop on Woodchurch Road and traffic calming measures along Appledore Road are benefits, but also requirements of the development to mitigate its impacts to which I therefore give limited weight. Delivery of energy efficient homes highlighted by the Appellant as a benefit, which I give limited weight as all new housing has to meet increase energy efficiency standards and sustainability credentials as set out in building regulations.

THE HARM

- 7.5 The proposed development is contrary to the Local Plan policies SP1, SP2, HOU5, SP6, ENV1, ENV3a and IMP4 due to the sites' environmentally sensitive location on the edge of the Tenterden, position in regard to the development strategy and the impact on trees, landscape and visual character, biodiversity, footpath AB70 and the lack of sufficient details about the Governance of the sports pitches and pavilion building. The scheme is therefore contrary to the development plan when taken as a whole.
- 7.6 As discussed above, whilst the Council is unable to demonstrate a five-year supply of land for housing, this shortfall is not significant and is likely to be short lived. The policies in the development plan accord with the policies in the NPPF, indeed the plan itself has been recently examined. Given the primacy of the development plan, I conclude that the policies in the development plan should maintain full weight in the decision-making process. The harm in terms of the conflict with those policies, I attribute substantial weight in the planning balance. In addition to being contrary to the policies in the Local Plan, the proposed development has been found to result in significant adverse impacts to the local landscape character and the setting of the town. The adverse impacts relating to landscape and setting informed the reason for refusal. The substantial harm to the character and appearance of this of the environmentally sensitive area in my opinion carries substantial adverse weight in the planning balance.
- 7.7 In addition, this harm generates harm to the spatial strategy of the plan, reducing the focus on Ashford and increasing development in the environmentally sensitive rural areas. I give this harm substantial weight in the planning balance.
- 7.8 The harm to two protected trees and their loss (T43) and degradation of habitat and possible loss (T381) will significantly affect the landscape character and the approach along Appledore Road to the town. I give the harm to these trees substantial adverse weight in the planning balance.
- 7.9 The Appellant has failed to provide sufficient information to demonstrate either that or how the proposal can accommodate the PROW (AB70) and that there will be no adverse impacts on route. Given the Order to make the footpath has been challenged but as yet is unresolved but

taking into account harm to confirmed public right of way AB12 I give this harm moderate weight in the planning balance.

- 7.10 Whilst I acknowledge this was not a reason for refusal, there is conflict with the emerging Neighbourhood Plan, however this is at such an early stage I can only attribute limited weight to that harm at this stage.

CONCLUSION

- 7.11 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the Development Plan unless material considerations indicate otherwise. As I have set out in Sections 5 and 6, the development is contrary to the Development Plan.
- 7.12 The lack of a five-year HLS is a material planning consideration, and results in the policies relating to the housing are out-of-date and the NPPF paragraph 11(d) advocates that permission should be granted unless the adverse impacts *“significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole”* (paragraph 11d, NPPF).
- 7.13 Balanced against the acknowledged benefits of the proposed development are the adverse impacts to the Local Plan strategy and the character and appearance of the area, harm to protected trees, harm to biodiversity and the adverse impact on the PROW. When these considerations are taken together and weighed in the balance, the identified benefits do not outweigh the identified harm.
- 7.14 I consider that these adverse impacts would significantly and demonstrably outweigh the benefits identified and conclude that the presumption in favour of sustainable development does not justify granting planning permission, and in line with the Council’s decision, the reasons for refusal are justified and the appeal should be dismissed.

APPENDIX

Appendix 1: Extension of time request dated 6 August 2021

Appendix 2: Stodmarsh Position Statement dated 11 January 2022

Appendix 3: Letter from Batcheller Monkhouse dated 11 January 2022

Appendix 4: Rural Site Allocated in the Plan

Appendix 5: Windfall development