**Town and Country Planning Act – Section 78**

**Town and Country Planning (Development Management Procedure) (England) Order 2015**

**Town and Country Planning (Hearing and Inquiries Procedure) (England) Rules 2013**

**APPEAL BY WATES DEVELOPMENTS LIMITED**

**Land between Woodchurch Road and Appledore Road, Tenterden, Kent, TN30 7AY**

Hybrid Application for:

1. Outline application for the development of up to 145 residential dwellings (50% affordable) including the creation of access points from Appledore Road (1 x all modes and 1 x emergency, pedestrian and cycle only), and Woodchurch Road (pedestrian and cycle only), and creation of a network of roads, footways, and cycleways through the site. Provision of open space including children's play areas, community orchards, sustainable urban drainage systems, landscape buffers and green links all on 12.35 ha of the site. (Save for access, matters of appearance, landscaping, layout & scale reserved for consideration') and

b) Full planning permission for the change of land use from agricultural land to land to be used as a country park (8.66 ha), and land to be used as formal sports pitches (3.33 ha), together with pavilion to serve the proposal and the surrounding area. Including accesses, ancillary parking, pathways, sustainable urban drainage systems and associated landscaping

**Statement of Case**

**For**

**Ashford Borough Council**

**2 December 2021**

**Local Planning Authority Reference:** 21/00790/AS

**PINS Reference:** APP/E2205/W/21/3284479

The reasons for refusal are stated in the Council’s decision notice (planning reference 21/00790/AS) dated 27th September 2021 as follows.

Reason Refusal 1

**The proposal would be contrary to policies SP1 and SP2 of the adopted Ashford Local Plan 2030. The application proposal would significantly increase the number of dwellings to be provided in Tenterden considered alongside the existing residential allocations and commitments referred to in the adopted Ashford Local Plan 2030. The scale of development that is proposed runs counter to the adopted spatial strategy enshrined in policy SP2 and would undermine the carefully considered and independently-examined and accepted approach to the sustainable distribution of housing development across the Borough to 2030.**

1.1 Ashford Borough Council’s case is outlined in the Head of Planning and Development’s report to the Planning Committee meeting dated 15 September 2021. A copy is attached as **Appendix 1**. In particular, reference is made to paragraphs 48 to 55 of the report.

1.2 Reference will be made to the adopted Ashford Local Plan (ALP) 2030 which sets out the land use planning strategy for the Borough including the strategy for housing delivery, including policies SP1 and SP2. Copies of these and the polices referred to in the decision notice 21/00790/AS are attached as **Appendix 2**

1.3 The Inspectors’ Report on the Examination of the Local Plan 2030 considered the role that Tenterden should play in meeting the housing needs. The appellant’s representations to the ALP examination in 2018 to promote both the merits of developing this site for housing and the role of Tenterden as a location for meeting a greater share of borough’s housing needs were rejected.

1.4 The scale of development proposed here runs counter to the adopted spatial strategy enshrined in policy SP2.

1.5 The scheme is not consistent with the spatial strategy for housing delivery in the borough and therefore is in conflict with policy SP2 of the ALP.

1.6 Further evidence on the application proposals in relation to the Borough’s 5 year housing land supply are provided in paragraphs 38 to 47 of the report.

1.7 The Council will refer to the following documentation in its proof of evidence.

* Representations received from Judith Ashton Associates (JAA) during the preparation of the ALP 2030 (**Appendix 3**).
* A copy of the Inspectors’ Issues and Questions in relation to the Examination of the ALP 2030 (**Appendix 4**) – Please note Issues 2, 3, 4 and 12 are pertinent to the case.
* Copies of JAA’s reps in response to Issues 2, 3 and 4 (**Appendix 5**).
* Copies of ABC’s response to Issues 2, 3, 4 and 12 (**Appendix 6**).
* Housing Topic Paper (**Appendix 7**).
* Inspectors’ Final Report on the ALP 2030 (**Appendix 8**)
* Latest 5 YHLS Position (**Appendix 9**)
* Housing Delivery Action Plan (**Appendix 10**).
* On the Affordable housing point – Issue 6 of the Inspectors’ Issues And Questions (**Appendix 11**)
* On the Affordable housing point – Ashford Borough Council’s response to Issue 6 (**Appendix 12**).

Reason Refusal 2

**The proposals would be contrary to polices HOU5, SP1, SP6 and ENV3a of the adopted Ashford Local Plan 2030 in that the proposals would involve a large scale, intensive residential development on undeveloped land forming part of a strongly rural edge that, in its undeveloped state, contributes positively to the landscape setting of the south-east side of Tenterden. The proposals by virtue of their scale, form and intensity would not sit sympathetically within the wider landscape, preserve or enhance the setting of the settlement or be consistent with local character and would result in harm to the character and appearance of the surrounding area.**

2.1 Ashford Borough Council’s case is outlined in the Head of Planning and Development’s report to the Planning Committee meeting dated 15 September 2021. In particular, reference is made to paragraphs 64 to 76 of the report.

2.2 The proposals are contrary to policies HOU5, SP1, SP6 and ENV3a of ALP.

2.3 In terms of the location and character of the site and surrounding area, the site forms part of a strongly rural edge that, in its undeveloped state, contributes positively to the landscape setting of the south-east side of Tenterden.

2.4 The character of surrounding built development comprises of mainly lower density detached and semi-detached linear ribbon development located within spacious and well landscaped grounds with large rear gardens backing onto the site.

2.5 The combination creates an edge that has a verdant, relaxed character and setting that gently manages the entrance into the town from the surrounding countryside and helps maintain Tenterden as a rural town with considerable charm.

2.6 The proposals by virtue of their scale, form and intensity would not sit sympathetically within the wider landscape, preserve or enhance the setting of the settlement or be consistent with local character and would result in harm to the character and appearance of the surrounding area

2.7 The proposals would involve a substantial level of housing development within a proposed series of intensely developed development blocks served by a network of prominent streets together with a new substantial main access to the Appledore Road.

2.8 The illustrative plans show only 141 dwellings not 145 albeit it is an up to number.

2.9 Reference will be made to a 1989 dismissed appeal (ref AS/87/259 and T/APP/E2205/A/87/079807/P7) for 124 dwellings in the western corner of the application site: the findings still have relevance to the current proposals. A copy is attached as **Appendix 13**.

Reason Refusal 3

**The proposed main vehicular site access would result in the loss of a Mature Horse chestnut tree located along the Appledore Road. The tree forms a component part of the visual character of the street and its loss would be detrimental to the character of the area contrary to policies SP1, SP6 and ENV3a of the adopted Ashford Local Plan 2030 and advice in the National Planning Policy Framework. It is not considered that this detrimental impact can be adequately mitigated.**

3.1 Ashford Borough Council’s arguments are outlined in the Head of Planning and Development’s report to the Planning Committee meeting on 15 September 2021. In particular reference is made to paragraphs 77 to 80 of the report.

3.2 The mature Horse Chestnut tree to be removed by the new access forms a component part of the visual character of the street and its loss would be detrimental to the character of the area.

3.3 The tree has a good prospect of contributing to the landscape as an important component for many years to come.

3.4 This cannot be acceptably mitigated through replacement planting through a KCC CAVAT payment as this would have almost no effect for many years.

**Reason Refusal 4**

**The proposals in their current form would have a detrimental impact on the following important trees within the site:-**

**(a) T381 Ancient Field Maple. A new football pitch is proposed within its offset Buffer Zone and an incursion within its Root Protection area. The Root Protection Area and buffer zone plotting of the tree described in the application is not accepted. The associated works required for the football pitch would result in a deterioration and possible loss of this ancient tree.**

**(b) T312 veteran oak tree. The development area lies too close and does not reflect the rooting morphology of the veteran tree. The Root Protection Area and buffer zone plotting of the tree described in the application is not accepted. The proposals would result in the deterioration and possible loss of this veteran tree.**

**(c) T313 Oak. The proposed SUDs features appear to run through the Root Protection area of the tree subject to a preservation order. Insufficient detail and analysis of the impact of this feature has been provided and the construction of the SUDs will likely be detrimental to the protected tree.**

**The deterioration and possible loss of T381, T312 and T313 would amount to a deterioration of an irreplaceable habitat and harm to the visual character of the area contrary to policies SP1, SP6 and ENV3a of the adopted Ashford Local Plan 2030 and advice in the National Planning Policy Framework para 180 (c).**

4.1 Ashford Borough Council’s case is outlined in the Head of Planning and Development’s report to the Planning Committee meeting dated 15 September 2021. In particular, reference is made to paragraphs 81 to 87 of the report.

Impact of 11 a side pitch on ancient tree T381 (para 81 to 84 planning committee report)

4.2 The works associated with the proposed new 11 a side football pitch proposed in area F10would result in a deterioration and possible loss of the ancient T381 Ancient Field Maple.

Impact on ancient tree T312 (para 85 to 86 planning committee report)

4.3 For T312 veteran oak tree, the indicative residential developable layouts is too close and does not reflect the rooting morphology of the veteran tree. Root Protection Area and buffer zone plotting of the tree described in the application is not accepted. The proposals would result in the deterioration and possible loss of this veteran tree.

Impact on T313 TPO oak (Para 87)

4.4 The SUDs proposals appears to run through the RPA of this TPO oakwill likely be detrimental to the protected tree.

Reference will be made to following documents in relation to tree issues:

* 21 00790 AS Land between Woodchurch Road and Appledore Road Tenterden, Kent - Arboricultural and landscape comments.  Phil Cook – Tree Officer 16 07 2021 ( **Appendix 14**)
* SJA Trees Arboricultural Impact Report April 2021 (**Appendix 15**)
* SJA Trees Review of points raised by Tree Officer – September 2021 ( **Appendix 16**)
* BS5837:2012 Trees in relation to design demolition and construction – recommendations. (**Appendix 17**)
* Natural England & Forestry Commission Standing Advice – Ancient Woodlands and ancient trees and veteran trees: protecting them from development (**Appendix 18**)

**Reason Refusal 5**

**The proposals would not preserve or enhance biodiversity as it is considered the proposed ecological mitigation measures would be unlikely to be able to be successfully implemented alongside the scale of development for which permission is sought. The application is likely to result in loss and harm to biodiversity interests on the site contrary to policies HOU5 (e) and (f) (vi) and ENV1 of the adopted Ashford Local Plan 2030**

5.1 Ashford Borough Council’s case is outlined in the Head of Planning and Development’s report to the Planning Committee meeting dated 15 September 2021. In particular, reference is made to paragraphs 125 to 133 of the report**.**

5.2 Reference will be made policies HOU5 (e) and (f) (vi) and ENV1 of the adopted Ashford Local Plan 2030 and the NPPF. Paragraphs 179 to 182

5.3 Development should conserve and enhance the natural environment and conserve biodiversity interests on the site and or/ adjoining area. The NPPF states that planning decisions should minimise impacts on and provide net gains for biodiversity.

5.4 KCC Ecological Advice Service’s comments/objections made on the application dated 21 June and 31st August 2021 attached as **Appendix** **19** notably raise issues that the proposed habitat creation, enhancement and management is not achievable to implement the species/habitat mitigation and insufficient information has been submitted to demonstrate that the biodiversity net gain (as per the Environment Bill) proposed within the metric is achievable.

5.5 Kent Wildlife Trust’s comments/objections dated 11 June 2021 attached as **Appendix 20** on the application comment in particular that the biodiversity metric calculations provided underestimate the baseline value of the site and overestimate what would be achieved by the proposed management scheme. The application is refused on the grounds of significant measurable loss to biodiversity unless the applicant is prepared to commit to significantly amending the development masterplan or providing for a large scale scheme of offsite habitat compensation to reflect biodiversity losses.

5.6 It is considered that the proposals would not preserve or enhance biodiversity and instead would be likely to result in harm to biodiversity interests on the site. It has not been shown that this harm can be adequately mitigated on site.

Reason for refusal 6

**Policy IMP4 of the adopted Ashford Local Plan 2030 requires proposals that would deliver substantial community space and facilities to be supported by a clear governance strategy which will need to be agreed with the Council. This strategy will need to set out what facilities are to be delivered and by when, and how they will be managed over time to an acceptable standard. The proposals have not provided sufficient information regarding general need, community provision, community engagement and management of the sport, community and open space facilities. Accordingly, the proposals are not considered to fully satisfy the requirements of Policy IMP4 of the adopted Ashford Local Plan 2030**.

6.1 Ashford Borough Council’s case outlined in the Head of Planning and Development’s report to the Planning Committee meeting dated 15 September 2021. In particular, reference is made to paragraphs 121 to 124 of the report.

6.2 Policy IMP4 of the adopted Ashford Local Plan 2030 requires proposals that would deliver substantial community space and facilities are required to be supported by a governance strategy which will need to be agreed with the Council.

6.3 The council raised a number of issues with the appellant during the application which were not addressed including the general need, community provision, community engagement and management of the proposed sports, community and open space facilities.

Reason for refusal 7

**The proposals are contrary to Policy ENV6 of the adopted Ashford Local Plan and advice in the National Planning Policy Framework as they have not demonstrated they contribute to an overall flood risk reduction, that the site itself would not be at an unacceptable risk of flooding and that there would be no increase in flood risk elsewhere. It has also not been shown that the flood risk mitigation measures would have no adverse spatial implications for the development proposals in terms of delivering the scale and type of development proposed.**

7.1 Ashford Borough Council’s case is outlined in the Head of Planning and Development’s report to the Planning Committee meeting dated 15 September 2021. In particular, reference is made to paragraphs 134 to 137 of the report.

7.2 Since the refusal of planning permission, KCC Flood and Water Management have provided further advice on the proposals based on further information provided by the appellant which was not able to be assessed at the time of the decision. This appears to have addressed their previous concerns. If suitable conditions can be agreed with appellant, then this reason for refusal will be withdrawn by the Council.

Reason for refusal 8

**An Order has been made to record a new footpath AB70 within the site that is subject to a forthcoming Planning Inquiry. The proposals fail to show the impact of the scheme on the AB70 footpath within the site or any acceptable diversion to it, if it is approved by the Secretary of State. The AB70 footpath would clearly have a significant impact on the spatial layout of the development that is proposed and change the dynamic of the footpath experience itself to that of passing through a built up residential area rather than a series of fields as at present. The proposals are therefore contrary to policies SP1 and TRA5 of the adopted Ashford Local Plan 2030 and National Planning Policy Framework advice. The proposal fails to consider or acceptably incorporate the AB70 footpath within the scheme. It therefore does not demonstrate how safe and accessible pedestrian access and movement routes will be delivered and connect to the wider movement network and proactively, connect with and enhance public rights of way whenever possible, encouraging journeys by foot**

8.1 Ashford Borough Council’s case is outlined in the Head of Planning and Development’s report to the Planning Committee meeting dated 15 September 2021. In particular, reference is made to paragraphs 113 to 120 of the report.

8.2 Reference will be made policies SP1 and TRA5 of the adopted Ashford Local Plan and the National Planning Policy Framework in particular paragraphs 104 -113.

8.3 KCC provided PROW and access comments dated 7 May 2021 (**Appendix 21**).

8.4 There is an Order to record a new public footpath AB70 circulating the site which was made in December 2020.

8.5 As an objection was received, the Order has been submitted to the Secretary of State for determination at a forthcoming inquiry. It is understood the inquiry is to be held on 6th and 7th April 2022.

8.6 The appellant has been requested to show the actual route on the masterplan to confirm this but has not provided this information.

8.7 The route in particular passes right through the residential area. It would clearly be likely to have a major impact on the scheme with a knock-on impact on layout, the quantum of development, typology mix and the ability provide a high quality design.

8.8 It would change the dynamic of the footpath experience itself by routing a substantial portion through a built up residential area rather than a series of fields as per the present situation.

8.9 In the event that a diversion of AB70 is required, no proposed viable alternative route has been shown in case planning permission is granted.

Reason for refusal 9

**In the absence of a unilateral undertaking, the proposal fails to secure the mitigation that is necessary to satisfactorily meet the additional infrastructure impacts and needs that would be generated by the development, and self- and custom-built development and accessibility standards, and, therefore, the proposal is contrary to Policies IMP1, HOU1, HOU6 and HOU14 of the Ashford Local Plan 2030**

9.1 Ashford Borough Council’s case is outlined in the Head of Planning and Development’s report to the Planning Committee meeting dated 15 September 2021. In particular, reference is made to paragraphs 152 to 154 of the report.

9.2 Policies IMP1, HOU1, HOU6 and HOU14 of the Ashford Local Plan 2030 are of relevance as per the reason for refusal.

9.3 Planning obligations would be expected in a section 106 planning obligation agreement.

9.4 If a section 106 planning obligation agreement can be agreed with the appellant as part of the appeal, then the Council will withdraw this ground of refusal.

**Ashford Borough Council’s response to certain matters in the appellant’s to certain matters in the appellant’s statement of case**

The council will address the appellant’s case fully in evidence, but it is hoped that responses to some matters will assist the Inspector at this stage.

**10 Section 2.0 Background to Appeal**

10.1 Paragraph 2.3 The appellant states:

*“The appeal scheme was prepared to address the reasons for refusal cited in respect of Wates earlier application for up to 250 dwellings on this site and with 2 points of access (all modes) off Appledore Road”.*

10.2 There were no pre-application discussions between the appellant and Ashford Borough Council from the refusal of the first planning application dated 23rd September 2020 to the submission of the second application subject to this appeal on 30 April 2021.

10.3 Paragraph 2.4 The appellant states:

*“It should be note that during the determination of the previous application (19/01788/AS) only Tenterden Town Council, ABC Cultural Services officer, ABC tree officer and KCC Ecology, opposed the development”*

10.4 This not correct as there was the following objections to planning application 19/01788/AS:

* Ashford Borough Council Ward Member.
* Kent Wildlife Trust.Tenterden and District Residents Association
* Weald of Kent Preservation Society
* Tenterden and District Residents Association
* Appledore Parish Council.
* Orlestone Parish Council
* Warehorne Parish Council.
* Neighbours: Approximately 350 objections.
* There were 5 letters in support.

10.5 This are listed in consultation section of the Planning Officer’s report on the first application 19/01788/AS to the Council’s Planning Committee dated 16th September 2020 (Appendix 22)

10.6 Also in paragraph 2.4 table 1 Summary of Statutory Consultee Responses on this application (21/00790/AS) not all the consultee comments have been included in particular

* NHS Kent and Medway Group (CCG). Comments
* Ramblers' Association, Kent Area, object
* Weald of Kent Protection Society: object
* Kent Wildlife Trust: object
* CPRE object
* Neighbours: Approximately 270 letters of objection. A petition with approximately 260 names also objected
* There were 2 letters in support

10.7 This are listed in consultation section of the Planning Officer’s report on the application to the Council’s Planning Committee dated 15th September 2021.

10.8 In paragraph 3.1 the appeal 87/00259/AS for 124 dwellings and garages on the western part of appeal site is a material consideration and should be given weight in view of the inspector’s comments when dismissing the appeal as to its impact on the character of the area. The comments are pertinent today despite the decision being made 30 years ago. It should also be noted the inspector came to this decision despite not being satisfied the council could demonstrate a 5 year land supply and that the applicant should have a special presumption in favour of housing development.

10.9 It is not accepted the Landscape and Visual Assessment and Heritage Statement submitted with the appeal scheme have overcome the objections to the appeal scheme.

10.10 Paragraph 3.2 shows there has been planning permission and allocation for large scale housing allocations in Tenterden.

. 10.11 In paragraph 4.3, in addition to mentioning the existing PROW, the order by KCC for the new footpath AB70 which is to be determined at the forthcoming inquiry by the Secretary of State is not mentioned. This is highly relevant to the appeal and is a ground of refusal.

**11 The surrounding area**

11.1 In paragraph 4.8 the majority of surrounding dwellings are two storey. There is the occasional bungalow, 2.5 storey dwelling and two of the nearest listed buildings are three storey: that is Craythorne House and Dovenden.

**12 The Appeal Scheme**

12.1 In paragraphs 5.16 and 5.18, the new footpath AB70 to be determined at the forthcoming inquiry is probably likely to travel through the southern car park area of the 11 a side football pitch and through field boundaries of the country park which relates to the full detailed part of the scheme. The appellant has failed to show this route on the masterplan/detailed plans.

**13 The Illustrative Masterplan**

13.1 With regard to paragraph 5.22, the Illustrative Masterplan shows up to 141 dwellings and does not reflect the actual maximum dwellings applied for which is 145. It is not clear how the densities have been calculated and these will be influenced by whether it is the developable area or other non-developable areas surrounding. The masterplan clearly shows much more concentrated development than the surroundings. The flatted block area with large courtyard parking in particular are not a feature of the surrounding area.

13.2 With regard to paragraph 5.23 the Design and Access Statement shows one flat block as 2.5 storeys albeit these are illustrative as topologies are not set at this stage.

13.3 With regard to paragraphs 6.1 and 6.2, the Development Plan for Ashford Borough comprises the Ashford Local Plan 2030 (adopted February 2019), the Chilmington Green AAP (2013), the Wye Neighbourhood Plan (2016), the Pluckley Neighbourhood Plan (2017), the Rolvenden Neighbourhood Plan (2019) and the Kent Minerals and Waste Local Plan (2016) as well as the Kent Minerals and Waste Early Partial Review (2020).

13.4 The Tenterden Neighbourhood Plan has been out to consultation and is at an earlier ‘Regulation 14’ stage in the process towards adoption.

13.5 With regard to paragraph 6.3, policy TR3A (residential parking) is not a ground of refusal. Polices TRA5 and ENV6 are mentioned in the ground of refusal.

**14 Reason for refusal 1: That the scale of development proposed runs counter to the adopted spatial strategy enshrined in policy SP2 and would undermine the independently examined and accepted approach to the sustainable distribution of housing development across the Borough to 2030**.

14.1 Paragraphs 7 to 7.4.4 in relation to Development Plan / Housing Supply and Delivery Matters. Adopted Local Plan background to case being made by the Appellant

14.2 Wates Development Limited, made several representations throughout the preparation stages of the Local Plan 2030, which included challenging Policy SP2 in the context of promoting the allocation of the appeal site for a residential development of approximately 200 homes.

14.3 Wates Development Limited also appeared at the Examination hearings to make further representations in person. Issues 2, 3, 4 and 12 of the ‘Inspectors’ Issues And Questions’ (I & Qs) relate, see further below.

14.4 Both ABC and Wates Development Limited submitted responses to the Inspectors I & Qs. Taking these into consideration the Inspectors Report on the ALP concludes:

14.4.1 Issue 1 (formerly Issue 2 of the I & Qs) - ***Are the vision and strategic objectives for Ashford sound having regard to achieving sustainable development?***

* The vision was found sound.

14.4.2 Issue 2 (Issue 3 of the I & Qs) - ***Are the strategic objectives and the strategic approach to the distribution and location of housing and economic development sound, having regard to the needs of the Borough and national policy? Has the Local Plan been positively prepared?***

* Committed development in Tenterdenis 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.

* 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 role as a principal rural service centre as set out at paragraph 3.8 of the Vision.

14.4.3 Issue 4 ***Is the housing requirement justified and has it been calculated in accordance with national policy and guidance?***

* The methodology undertaken to arrive at figures follows that prescribed in the PPG on Housing and Economic Development Needs Assessments.
* Subject to modifying the figure for the housing requirement for the entire plan period to increase it by 752 units the housing requirement will have been calculated in accordance with national policy and guidance and is justified.

14.4.4 Issue 9 *(formerly Issue 12 of the I & Q’s****) Are the site allocations justified and deliverable or developable within the plan period having regard to any constraints and consistent with national policy? Is there sufficient detail on form, scale, access and quantum?***

* With regard to Tenterden and S24 the principle of development is sound and consistent with the overall spatial strategy.

**15** In Summary, in the context of Tenterden, the Council considers that a development of 145 homes should be considered strategically. The strategic allocation of this site for a relatively similar scale of development has been debated at length during the examination of the ALP 2030. Given the relatively short time frame since adoption (2 years), the Council will argue that the merits of the case put forward during examination still apply.

1. In order to illustrate this point further and address the issue of proportionality in a strategic context, the Council intend to provide a table that looks at committed growth across rural site allocations.
2. The Council acknowledge that since examination of the ALP, the issue of Stodmarsh has arisen and the Council’s current position regarding 5YHLS has changed. These are material considerations. However, the Council will argue that aside from these, nothing significant has changed since matters related to SP2 were debated at Examination. The Council will therefore argue that the adopted spatial strategy should continue to be afforded significant weight.
3. In relation to 5YHLS, the Council will argue that the benefits of permitting the scheme would not outweigh the harm.

**19 Policies SP1 and SP2**

19.1 Ground of Refusal 1

*“The proposal would be contrary to policies SP1 and SP2 of the adopted Ashford Local Plan 2030. The application proposal would significantly increase the number of dwellings to be provided in Tenterden considered alongside the existing residential allocations and commitments referred to in the adopted Ashford Local Plan 2030.The scale of development that is proposed runs counter to the adopted spatial strategy enshrined in policy SP2 and would undermine the carefully considered and independently-examined and accepted approach to the sustainable distribution of housing development across the Borough to 2030”.*

* 1. It is alleged by the appellant that “*compliance with Policy HOU5 means that the proposal does not, and indeed could not, run counter to the adopted spatial strategy enshrined in policy SP2”*.
  2. Amongst other things Policy SP2 states “*Windfall housing development will be permitted where it is consistent with the spatial strategy outlined above* ***and*** *is consistent with other policies of this Local Plan, in order to ensure that sustainable development is delivered”.* The appeal proposal is considered to be contrary to HOU5 **and** other policies in the Plan, the Council will therefore maintain that the development fails to accord with spatial strategy enshrined in SP2.
  3. The Council will argue that although Tenterden is the second most sustainable settlement, it is nonetheless a rural settlement. Furthermore, the constraints together with the nature and type of infrastructure in place differ significantly to the Ashford Urban Area. The scale of development across Tenterden needs to reflect that context.
  4. Expanding upon the issues set out in the previous paragraph, the Council will seek to demonstrate that alongside existing residential allocations and committed development, the appeal proposal goes beyond what constitutes windfall in the context of Tenterden (NB windfall is not defined in the ALP) and represents an unacceptable scale of development.
  5. In order to illustrate this point further the Council intends to reference to the scale of development allocated across other rural settlements.
  6. The Council will conclude by maintaining that the appeal proposal would therefore undermine the spatial strategy.
  7. The Council will reiterate the points raised 1 with regard to this site being considered in a strategic context.

**20 Stodmarsh**

20.1 Whilst the appellant does not, in their Statement of Case, directly reference Stodmarsh, the appellant clearly attributes under-supply of housing land and housing under-delivery, as the appellant sees it, at least in part to problems that have arisen as a result of Natural England’s Advice on Nutrient Neutrality. The Council has a number of points to make in this respect, as follows:

* + 1. Ashford’s Local Plan was adopted in February 2019. Natural England issued its Nutrient Neutrality Advice for new developments in the Stour Catchment in November 2020. The Council does not believe it is appropriate to abandon its plan-led strategy of focusing sustainable development on Ashford because of a temporary interruption to delivery which is not of its making. The right thing to do is to tackle the problems which have arisen as a result of Natural England’s Advice, not to resort to accepting development in locations which are not affected by that Advice and which do not form part of the strategy for accommodating growth.
    2. The Council is taking proactive steps to deliver a solution to the Stodmarsh issue, principally through seeking to acquire land to deliver new wetlands, which is the optimal solution to addressing the problem. A Nutrient Mitigation Strategy was approved by the Council’s Cabinet on 29th July 2021. Elements of, and progress with the implementation of the Strategy can be shared with the Appeal Inspector, and will form part of the Council’s evidence. It is difficult to see how the Council could be more proactive in its efforts to find solutions to the problem.
    3. The Council’s current five year housing land supply of 4.54 years takes account of the Stodmarsh issue by factoring in a realistic and deliverable timeframe for granting consent for applications which currently cannot be determined. The Council’s latest Five Year Housing Land Supply Position Statement (November 2021) details the approach taken, and indicates that the Stodmarsh impediment is not as significant as the appellant suggests. The Council acknowledges that it might not be in a position to submit a planning application for a wetland by January 2022 (as suggested in the latest Five Year Housing Land Supply Position Statement), but this ought not to delay determination of any application, which would anyway need to wait until Summer 2020 and for the completion of associated ecological survey work.
    4. The appellant has not acknowledged that larger schemes can deliver on-site solutions to address the Stodmarsh issue. No significant delays to delivery are expected on some larger sites, where nutrient mitigation can be delivered independently of strategic solutions. Whilst smaller scale developments may be dependent on strategic solutions being put in place, smaller scale housing can typically be delivered quickly, soon after consent is granted, and pent up demand is likely to drive delivery. In summary, many proposals which are currently undetermined remain deliverable within 5 years because there remains time to secure permission for wetlands and for them to become operational
    5. There is recognition in the NPPF that environmentally sensitive areas should not be the locations in which development should be located if there is under-delivery in locations judged to be suitable for development through the plan-making process. In other words, the lack of a five year housing land supply does not necessarily result in the application or engagement of the presumption in favour of sustainable development irrespective of all other considerations - housing supply shortfall does not outweigh all other factors when determining planning applications. Areas of the Borough that are not impacted by Natural England’s Nutrient Neutrality Advice should not be the locations to pick up any slack in delivery, and it is not the role of ad-hoc applications to determine or dictate planning strategy. In other words, the answer to a temporary issue with delivery is not to deliver anywhere and everywhere. That would not be a plan-led approach.
    6. Natural England’s Advice came ‘out of the blue’, a year and a half after the adoption of Ashford’s Local Plan. The Council’s strategy is to seek to rectify the issues the Advice has raised in a considered way, that does not involve abandoning its planning strategy which was judged to be sound at Examination and which therefore commands authority and community buy-in. The Council believes the serious commitment it has made to address the issue through the development of a Mitigation Strategy which will provide a strategic solution to the problem should be given time to come to fruition, and that some flexibility over delivery should therefore be shown before the planning strategy is allowed to overtaken by opportunistic and speculative development. Despite all the challenges, land supply in Ashford remains close to five years, and housing delivery is racing ahead (see below).

**21 Deliverability, Five Year Housing Land Supply and Housing Delivery Test**

21.1 In relation to paragraph 7.2.2 in the appellant’s Statement of Case, the Council considered the points made by the appellant when determining the application, and reiterates its position that:

21.1.1 The appellant’s determination of what is not deliverable is inconsistent with the definition of ‘deliverable’ in Annex 2 to the NPPF, which states that “To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years

21.1.2 The appellant’s conclusion that any housing shortfall against the requirements is significantly worse than set out by the Council is unsubstantiated and erroneous. The Council’s most recently published Five Year Housing Land Supply Position Statement (November 2021)[ confirms that, whilst it remains the case that the Council is unable to demonstrate a five year housing land supply, the alarmist portrayal of the situation put forward by the appellant bears no resemblance to the reality.

21.1.3 Whilst the requirements of the Housing Delivery Test (HDT) were not met in 2019-20, resulting in the requirement for a Housing Delivery Action Plan to be put in place, and the application of a 5% housing land supply buffer to the five year housing land supply figure, the Council points out that its most recently published Five Year Housing Land Supply Position Statement (November 2021) indicates that it has significantly ‘over-provided’ housing over the course of the last year. The Council notes also that the Government’s intention is to apply a four month adjustment to the housing requirement figures for 2020-21 to take account of pandemic induced disruption to housing delivery, as explained by the Housing Minister in a Written Statement to Parliament dated 6th September 2021. In this context, the level of over-provision is likely to be considerable when the Government publishes the results of this year’s HDT measurement (publication of the HDT measurements is expected in January / February 2022).

21.1.4 The Council contends that the appellant has painted an overly pessimistic picture of delivery and deliverability. The Council continues to deliver housing at pace (delivery in 2020-21 was the best in a decade), and sites remain deliverable in terms of the NPPF Annex 2 definition, despite current Stodmarsh-related difficulties (referenced above).

21.1.5 It must also be reiterated that housing supply shortfall does not outweigh all other factors when determining planning applications.

**22 b) The Impact of the Proposed Development on the Landscape Character of the Area**

22.1 With regard to paragraphs 7.5.5, of the appellant’s statement of case reference is made to the submitted LVA.

22.2 Para 7.5.6 also notes that the LVA concludes that there a moderate/minor positive effect on the Network of hedgerows, with ponds and mature trees. This conclusion is largely based on the fact that the bulk of the network of existing hedges will be retained. The Arboricultural Implications Report identifies that 46 individual trees and up to fifteen groups wholly or partially removed. Paragraph 7.5.23 of the Appellant’s SOC indicates that this represents around 10% of the tree cover on the site. The Officer’s report identifies specific concerns associated with the loss of Trees T381, T312 and T313.

22.3 As set out above the LVA identifies a number of major/moderate adverse effects as a consequence of the development. Para 7.5.6 of the Appellant’s SOC states The LVA goes on to explain that major/moderate landscape effects resulting from the proposed development would be focused on the western end of the appeal site, where new homes would be introduced to the enclosed pasture fields; and that all other landscape effects would be moderate or less.

22.4 The Council will present evidence to substantiate the conclusions that the proposed development will cause harm to landscape character and appearance and the setting to Tenterden and to contest other matters in relation to trees and Footpath AB70. Nothing is presented in the LVA to indicate how the identified harm will be mitigated. There is little or no evidence as to how the LVA has informed the design process, with the exception of judgements that there will be greater harm to land west of the footpath and therefore this is where development should be located. If the land west of the footpath is deemed to be less sensitive or susceptible change the logical conclusion should be that development of the land would have a less harmful effect. There seems to be confusion in the assessment methodology mainly with reference to the assessment of sensitivity and how this informs the assessment of effects.There is no mention of the design and layout and how it fits into context.

**23 (c) The impact of the loss of the trees to accommodate the eastern site access on the visual character of Appledore Road**

23.1 With regard to paragraph 7.5.19, the Council does not agree with the analysis of the T43 horse chestnut tree that is proposed to be removed by virtue of the new vehicular access to the Appledore Road.

23.2 This a very significant landscape component of the avenue that guides the transition into Tenterden along the Appledore Road from the south.

23.3 A tree of this maturity cannot also be adequately mitigated and will be lost forever.

23.4 The loss of the tree is another cumulative detrimental visual impact resulting from the scheme.

23.5 With regard paragraph 7.5.20, T43 clearly forms a component part of the visual character of Appledore Road, it is a Category B tree that, along with the other trees within the avenue marks itself as an important constituent. The appellant’s analysis is predicated on one tree in many not being an important loss. However, they almost all have equal importance and erosion of the avenue needs to be resisted in order that it is not further denuded and suffers further loss of character. The Council’s evidence can show that the removal of the tree will have an impact and leave a gap that will not be mitigated. The fact that a one-hundred year old avenue does not display a uniformity does not lessen its considerable amenity and landscape impact.

**24 (d) That the proposals would have a detrimental impact on trees 381, 312 and 313, which would amount to a deterioration of an irreplaceable habitat and harm to the visual character of the area**

24.1 With regard 7.5.26, the Council will demonstrate that the buffer zone as proposed for T381 by SJA are not appropriate as they are drawn and justified in a way that is not consistent with Natural England Standing Advice.

24.2 With regard to 7.5.29, the Council rejects the assertion that it is confused by the difference between RPA and Buffer Zone, it is clear as to the difference. The Council can demonstrate that it is the principles of the application of this by the appellant’s arboricultural consultant that gives rise to the apparent confusion.

24.3 The Council will present evidence to show that the morphing of the buffer zone of T381 is not supported within Natural England Standing Advice. As per the NE Standing advice, enhancing biodiversity and reducing impacts to ancient trees are two core decision principles, offsetting the buffer zone in this case ensures that the impact of the adjacent sports pitch is minimised. If the buffer zone is not morphed and drawn as a circle centred on the stem of T381 there is a significant incursion and that this is not acceptable in terms of the NE Standing Advice or BS5837:2012 as the sports pitch may be deemed construction. Examples of ancient Field Maples are quite rare and this example should be given every opportunity to possess a fully centred buffer zone.

24.4 The tree is ancient by virtue of its stool diameter which following coppicing 40-60 years ago has regrown from the dormant buds into semi-mature stems. Whilst over that period of its regrowth the stool has largely rotted, it is likely that the original root system funded the regrowth and that this has still extant today as the structural support for the feeding roots. It is accepted that the silted ditch will have more recently provided opportunities for the rooting system, but it is also likely that the ditch did form a physical barrier that will have defined the rooting morphology.

24.5 In any event, no evidence has hitherto been presented by SJA to demonstrate the rooting morphology to support their case, this is especially important with ancient and veteran trees and as such the present plans represent a ‘deterioration’ of the habitat contrary to NPPF para 180(c).

24.6 In the Council’s view, there was no confusion as to what was proposed; there was an oversight from the applicant that was subsequently addressed. The shape of the buffer zone is being morphed to include more of the hedgerow and is not supported by the Council as outlined in the response to 7.5.29 above. The Lonsdale citation addressing the potential acceptability of …“very low-intensity use”…of an RPA may be an interpretation that does not fit his intended frame. The Council does not support either a buffer zone or RPA being within a sports pitch context as there are operations that do not accord with an interpretation of ‘low-intensity’. The use of heavy machinery (even with grassland tyres) causes compaction, the maintenance of sports turf suitable for winter activities relies on an intensive programme of works to retain a good quality surface – this is not low-intensity let alone ‘very low-intensity’.

24.7 The Council objects to the raising of the surface level within the RPA and buffer zone in the context of the ultimate use which it does not consider to be ‘very low-intensity’. The Council requires an evidence-based approach to the morphing of any RPA and that this should also take account of the NE/FC Standing Advice in terms of reducing impacts and enhancing biodiversity. The morphing of Buffer Zones is not supported by Natural England Standing Advice.

24.8 By its very nature, planning is a process of evolution whereby material facts and interpretation inform reappraisals of matters, in addition the 2019 application was a separate application that was withdrawn. For the reasons set out above in response to 7.5.29 the Council objects to the morphing of the buffer zone and impacts within the RPA of T381 as it represents a deterioration of the habitat contrary to NPPF para 180(c) and NE/FC Standing Advice for Ancient and Veteran Trees.

**25 (e) That the proposals would not preserve or enhance biodiversity as the proposed ecological mitigation measures would be unlikely to be able to be successfully** **implemented alongside the quantum of development for which permission is sought . Paragraphs 7.5.41 -7.5.53**

25.1 Paragraph 7.5.47 of the SOC suggests that the proposals are sufficient to mitigate impact but as detailed above insufficient information has been submitted to demonstrate that this is achievable.  No plans were submitted as part of the current planning application to demonstrate that the habitat creation/enhancement detailed within the BNG metric could be implemented within the site when taking in to consideration usage of the site (e.g. car parking/desire lines/recreation).

25.2 Paragraph 7.5.45 of the SOC has detailed that *the site comprises semi-improved grassland of varying quality, all of which is considered to be herb species-poor and as such of limited biodiversity value* – however the information submitted with the planning application assessed the grassland as containing neutral and acid grassland both of which are priority habitats within the Kent Biodiversity Strategy and therefore cannot be considered to have limited biodiversity habitat – this is further supported by Paragraph 84 of the Government Circular (ODPM 06/2005)) which highlights that Impacts to habitats of principal importance / BAP priority habitats are: “Capable of being a material consideration in the…making of planning decisions.”

* 1. The following documents are also provided in support of the case

**Appendix 23.** Map1,2,3 Habitat plan with reference to planning application ref 19/01788/AS submission.

**Appendix 24** Biodiversity net gain principles

**Appendix 25** Good practice principles for development

**Appendix 26** Ecological enhancements using green infrastructure and waterbodies within new development

**26 (f) That the proposals have not provided sufficient information regarding general need, community provision, community engagement and management of the sport, community and open space facilities.**

26.1 Ownership of the sports facilities and open spaces (pitches, clubhouse and associated grounds). Appendix 10 Draft Operator Appointment Plan (RG/1119/2021) (paragraphs 1.2 to 1.4) submitted by the applicant, provides options for an Estate Management Body or a community organisation who could be awarded the freehold and ultimate responsibility for the site. Furthermore, it is suggested that operation of the facilities could be combined under one organisation or separated to different potential users. It is not possible at this stage to whether the proposal is satisfactory, as it is not clear which option is being proposed, or how a decision will be reached on choosing the final solution. The applicant does not appear to have clarified what criteria will be used to award the freehold/maintenance responsibilities to an organisation as part of their appointment process.

26.2 Responsibility for maintaining the facilities and letting them to clubs and users. As in paragraph 1 above. Options for maintaining the site are provided but it is not clear who will have that responsibility or how they will be chosen.

* 1. Previous requests to confirm who the named club that has agreed to use the football facilities is remain unanswered. Reference is made in the applicants submission to clubs such as Tenterden Tigers and Tenterden Town Football Club. However, it is not clear whether they will be playing a role in managing, or using the site and whether they have committed to using the facilities once they are completed.
  2. There is no breakdown of usage split between school use and what will be club/community use. Therefore, it is not possible to ascertain if the facilities will be dominated by school use or what percentage of time will be made available to wider community use. It is noted that the applicant has referred to use of a Sport England based Community Use Agreement, which is well received. However, without knowing who the freeholder and/or operator will be it is not possible to understand how school and community use will be split and enforced and by whom.

26.5. The Borough Council needs to be advised of the need and resource required for it to be represented on the proposed management committee to oversee the Community Use Agreement (Appendix 11 – Draft Community Use Agreement) The Borough Council would not normally sit on such boards unless there are exceptional circumstances, as it does not play a role in local management of facilities that it is not landlord for.

26.6. The applicant has not provided clarification on the response from consultation with Tenterden Tigers, Tenterden Town Football Club and other sports clubs. What was the outcome of the consultation and what will be there involvement, if any, in the future?

26.7. The applicant has not clarified the point regarding overall pitch loss and replacement with reference to the unrelated and separate Tenterden Recreation Ground application 21/00724/AS. Has the applicant reached an agreement with Tenterden Town Council who own the Recreation Ground that materially affects this application?

26.8. The applicant is asked to provide more detail on the timing of the provision of the facilities as outlined in the draft S106 agreement. It is essential that there is no gap in provision for the community during the construction and delivery phase.

**27 (g). That the proposals have not demonstrated they contribute to an overall flood risk reduction, that the site itself would not be at an unacceptable risk of flooding and that there would be no increase in flood risk elsewhere. It has also not been shown that the flood risk mitigation measures would have any no adverse spatial implications for the development proposals in terms of delivering the scale and type of development proposed**

27.1 The council has made comments above on this ground of refusal

**28. (h). That the proposals fail to show the impact of the scheme on the AB70 footpath within the site or any acceptable diversion to it, if is approved by the Secretary of State; that footpath AB70 would clearly have a significant impact on the spatial layout of the development that is proposed and change the dynamic of the footpath experience itself by passing through a built up residential area rather than a series of fields as at present; that the proposal fails to consider or acceptably incorporate the AB70 footpath within the scheme; and that it therefore does not demonstrate how safe and accessible pedestrian access and movement routes will be delivered and connect to the wider movement network and proactively, looks to connect with and enhance public rights of way whenever possible, encouraging journeys by foot**

28.1 7.5.83 (h) – 7.5.85 – the condition proposed is not acceptable as Reserved Matters is usually the stage at which the technical approval is given by KCC PROW (surface details, position of signage, crossings details etc.). This is usually requested as a PROW Scheme of Management to incorporate the construction period as well as operational period. The alignment of a route and any necessary diversion is essential at the earliest stages of planning to avoid conflict with PROW legalisation and processes which may lead to a delay in any work commencing. Hence it is our usual practice to request PROW routes are shown on Masterplans and any alternative routes are considered.

**29 (i) That in the absence of a unilateral undertaking, the proposal failed to secure the mitigation that is necessary to satisfactorily meet the additional infrastructure impacts and needs that would be generated by the development**

29.1 The council has made comments above on this ground of refusal

**30 Comment on representations received from interested people at application stage**

30.1 The representations received on the application were outlined in the Report of the Head of Planning and Development to the Planning Committee 15th September 2021

30.2 The representation were summarised in the report’s consultation section. These were commented on in the assessment section paragraphs 38 to 163 on the following topics. (a) The application proposals in relation to the Borough’s 5 year housing land supply, (b) The application proposals in relation to the Borough’s strategic approach to housing development , (c) The location of the site in relation to the level, type and quality of day to day service provision currently available and accessibility to those services, (d) The impact of the scheme on the character and appearance of the surrounding area, (e) The impact on neighbouring uses and residential amenity, (f) The impact on the surrounding road network and highway safety, (g) The Impact on public rights of ways within the site, (h) The governance arrangement for the country park, sports pitches and pavilion, (i) The impact on ecology, (j) Flooding and drainage issues, (k) Ground contamination, (l) Archaeology (m) Affordable housing provision and section Section 106 planning obligation.

30.3 The assessment dealt with objections to the scheme but were not considered to justify a refusal.

**31 Conditions which the Council would be prepared to accept and provide the reasons for suggesting these.**

31.1 Without prejudice to the Council’s case, a list of suggested conditions

* Standard outline and full planning permission time implementation
* Highway conditions as outlined in Kent Highway comments dated 20 May 2021
* KCC Flood and Water Management conditions suggested in their letter dated 30 November 2021
* Southern water conditions comments 11 June 2021
* KCC Heritage conditions comments 1 July 2021
* ABC Environmental Protection comments on application on Electric car charging, Contamination (Land or groundwater) investigation, Reporting of Unexpected Contamination, Code of Construction Practice
* Details and samples of Materials
* Landscaping details and implementation

31.2 These will be discussed further with the appellant