

WATES DEVELOPMENTS LIMITED

SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

PUBLIC INQUIRY – 8 – 25 FEBRUARY 2022

LAND BETWEEN APPLIEDORE ROAD AND WOODCHURCH ROAD, TENTERDEN, KENT

THE OPENING SPEECH OF THE APPELLANT

1. The Key Factual Background

- 1.1. This is a planning appeal by way of Section 78 of the Town and Country Planning Act 1990 seeking the grant on appeal to the hybrid application submitted by the Appellant to the LPA – Ashford Borough Council and refused in September 2021.
- 1.2. The site lies adjacent to Tenterden which is the second largest settlement in Ashford BC and the only other town outside Ashford [SoCG 6.1.3]
- 1.3. The appeal proposal is a hybrid application [Part Outline/Part Full]
- 1.4. The overall site area is 24.45 hectares and comprises currently 14 parcels of land [Fields F1-F14].
- 1.5. The development of housing will be on the western side of the proposal and amount to 12.35 hectares of development and related green space.
- 1.6. This is a proposal for up to 145 residential units of which 72 or 50% will be affordable housing.
- 1.7. This is a proposal for a country park of 8.66 hectares.
- 1.8. This is a proposal for 3.33 hectares of sports pitches which will comprise 5 different pitches meeting various different requirements of 1 adult football pitch and then 4 football pitches for juniors of various sizes.
- 1.9. This is a proposal for a new sports pavilion building of 500 square metres with 62 car parking spaces.

- 1.10. There will be a pedestrian and cycle access on Appledore Road.
- 1.11. There will be a more easterly all modes access on Appledore Road.
- 1.12. There will be a pedestrian and cycle access on Woodchurch Road.
- 1.13. The land is undesignated in terms of ecology or landscape designations.
- 1.14. There is one footpath AB 12 which bisects the site from the north to south.

2. Introduction

- 2.1. This LPA need, on their own admission, to urgently find land which can accommodate 664 additional homes. That is the extent of their accepted shortfall. Just reflect on that – to comply with the strict requirements of Government Policy the LPA come to this inquiry with an accepted and conceded shortfall in housing supply.
- 2.2. They simply have no solution to this shortfall whatsoever and their failure to take proper and constructive steps to find additional sites is why this appeal arises.
- 2.3. As a result of their procrastination and inactivity the market rightly has taken the initiative to meet that accepted shortfall as sought by both the NPPF and the Development Plan which accepts and indeed encourages windfall sites to emerge when required, as they now are in the light of the conceded shortfall that exists in the housing supply position in Ashford.
- 2.4. It will be the position of the Appellant that this site is simply a superb site in which to provide housing when there is an accepted shortfall.
- 2.5. It is the complete conviction of the Appellant that you simply could not get a better greenfield site to meet the desperate and compelling need for market and affordable housing in the district.
- 2.6. It is very close to the centre of the second biggest settlement in the district, there are no relevant designations on the land, there is no harm to any heritage assets or ecological assets and it is ready to be delivered immediately upon the grant of planning permission as the Appellant controls the necessary land to bring its development about.
- 2.7. Additionally, it will bring forward many important benefits – many market houses, many affordable houses, a superbly spacious development, a large country park, a state-

of-the-art pavilion and 5 sports pitches which will provide community benefit and use for many years.

- 2.8. The opposition to this appeal has mainly been focused on the residential elements of the scheme, however the provision of substantial formal and informal leisure facilities in the form of a country park and sports facilities are a fundamental element of the scheme.
- 2.9. The amount of harm that changing its use from agriculture to residential is minimal as shown by the inherent weakness of the LPA's case relating to reliance on two policies SP1 and SP2 which simply do not justify any refusal [RR1], minor and immediate landscape character and visual amenity harm [RR2], the loss of one tree [RR3], the alleged speculative allegation of deterioration to one tree [RR4], alleged absence of certainty in relation to ecological improvements [RR5], misinterpretation of IMP4 [RR6] and finally relying on a proposed PROW which is subject to significant objection [RR8]. When viewed dispassionately these concerns are not weighty and meaningful grounds of objection but makeweights in seeking to justify the refusal.
- 2.10. The LPA need to show in the light of their concession that the tilted balance does apply in this case as set out in NPPF 11 that the alleged 7 remaining impacts identified above significantly and demonstrably outweigh the benefits of the proposal – this is a heavy and onerous burden which the evidence will show does not come close to being passed on a fair and objective analysis of the evidence.

3. Propositions advanced by the Appellant supporting the granting of permission

- 3.1. This opening speech takes the form of the following 15 propositions advanced by the Appellant in this appeal.
- 3.2. Proposition 1 – The Government's overarching aim for the planning system is to see a significant boost to the supply of housing
 - 3.2.1. This authority has a massive annual housing requirement of 1439 houses every single year. Taking into account the requirement and the backlog means that they need to build 7195 houses to meet their identification of need.
 - 3.2.2. That is not the Appellant alone saying that but the agreed position.

- 3.2.3. So for all those that do not wish to see housing built here need to realise that the planning position is that there is a huge requirement of 1439 houses that this authority need to provide every single year.
- 3.2.4. That is the need that exists.
- 3.2.5. The requirement to boost housing is even more pertinent and pressing when an LPA has on its own admission an accumulated backlog to rectify by 2025 in addition to that annual need (policy SP2) and only 4.5 years supply (although the Appellant is of the view the shortfall is even more severe and pressing).
- 3.2.6. The simple point is that any Local Planning Authority is tasked with identifying and providing enough housing to show that it can meet its 5-year requirement.
- 3.2.7. They can only identify 6,531 houses on their own case. That amounts to a highly significant shortfall of 664 units.
- 3.2.8. Mr Taylor will show that the shortfall is actually much greater and lies between 3,959 units to 5,134 units.
- 3.2.9. That shortfall of between 2.75 years to 4.54 years needs to be addressed now, not in the future but now.
- 3.3. Proposition 2 – Providing housing is neither greedy or evil but a force of good and brings benefit to many
- 3.3.1. The planning system repeatedly hears from those who have and not from those who have not got homes. This is an authority with an acute need for both market and affordable homes
- 3.3.2. Seeking to provide new homes for people to live in is not evil or wrong or harmful but seeks to meet a fundamental human aspiration for human contentment and security.
- 3.3.3. Most of us benefit from that contentment and security and take it for granted but the truth is that this country in the past 30 years has completely failed to provide enough homes for people to live in with the consequence that there are now major issues of affordability and availability and the provision of housing mainly for the young and those on a lower income. Two groups which should be looked after particularly in any compassionate society.

3.3.4. As a result of that failure the Government signalled a sea change in policy with the publication of the NPPF 1 in March 2012 which sought a significant boost to the supply of housing. That has been reiterated in the amended versions of the NPPF 2, 3 and now 4.

3.3.5. Therefore, it is clear that the overarching planning policy aspiration is to build significantly more homes, with the Government estimating a requirement of 300,000 units per annum of which Ashford's contribution is 1,439.

3.4. Proposition 3 – Wates has a track record for delivery

3.4.1. The Appellant is a nationally renowned house builder and developer.

3.4.2. They have a track record of success and delivery.

3.4.3. The only impediment to the development remaining is the grant of planning permission.

3.4.4. If planning permission is granted then the development will be delivered.

3.5. Proposition 4 – The LPA has a desperate need for new housing which needs to be addressed now

3.5.1. This proposal will bring forward at least 70 market housing units which will make a meaningful and important contribution to the housing shortfall.

3.5.2. The LPA accept even on their case that there is a massive hole in their supply of 664 units which is very significant.

3.5.3. The Appellant takes the view that the need is much greater as will be set out by Mr Taylor.

3.5.4. On either case there is a desperate and immediate need to provide more housing.

3.5.5. If that need is not met there will be material harm to those who need housing.

3.6. Proposition 5 – The LPA has a desperate need for new affordable housing which needs to be addressed now

3.6.1. There is an established and agreed acute and immediate need for further affordable housing.

3.6.2. The SHMA identified a need for 368 affordable housing units per annum.

- 3.6.3. Over the past 10 years only 1,326 AH units have been delivered or 133 per annum which is woefully below the need identified in 2014.
- 3.7. Proposition 6 – The development plan readily acknowledges that sites such as this can come forward to meet housing need
- 3.7.1. This development plan identifies through Policy HOU5 that proposals adjoining or close to built-up confines will be acceptable.
- 3.7.2. The LPA accept that this site fulfils this criterion.
- 3.7.3. In principle therefore the LPA identify in their development plan that the appeal site can be considered as an appropriate location for housing subject to compliance with six criteria.
- 3.7.4. It will be the case for the Appellant that those criteria are met by this proposal.
- 3.8. Proposition 7 – This site is highly sustainable and in complete compliance with the Government’s objectives for alternative means of transport to the private car
- 3.8.1. The site is remarkably close for a greenfield site to the centre of Tenterden.
- 3.8.2. The centre is within a comfortable, safe and attractive walk and cycling distance.
- 3.8.3. Buses can be caught in good proximity to the site opening up access to Ashford and the train services that run from there.
- 3.8.4. The centre has a significant range of services and shops. It has a comprehensive offer of facilities.
- 3.8.5. It is rare to find a site so well positioned to offer meaningful and real alternatives for residents to the use of the private car.
- 3.9. Proposition 8 – In accordance with NPPF 11 the tilted balance applies and the LPA need to show that the alleged impacts significantly and demonstrably outweigh the benefits
- 3.9.1. The tilted balance is intended to work when an LPA does not have a 5-year supply.
- 3.9.2. It is intentionally meant to bring about the grant of planning permission for residential development where there is inadequate supply.
- 3.9.3. That is exactly the position here.
- 3.9.4. It is meant to make it easier for developers to get permission.

3.9.5. It also requires a credible planning balancing exercise and not an artificial and false exercise where impacts are exaggerated and given absurd weighting to justify refusals which do not stand scrutiny.

3.10. Proposition 9 – Many important matters are not in dispute with the LPA

3.10.1. The site is not included within a landscape or landscape-related designation.

3.10.2. There is no harm alleged by reason of air quality.

3.10.3. There is no harm alleged by reason of noise

3.10.4. There is no harm alleged by reason of residential amenity to any adjacent residents.

3.10.5. There is no harm alleged by reason of residential amenity to any prospective residents of the development.

3.10.6. There is no harm alleged by reason of design

3.10.7. There is no harm alleged by reason of archaeology

3.10.8. There is no harm alleged by reason of heritage to either any listed buildings or NDHA or any conservation area impact.

3.10.9. There is no harm alleged by reason of foul or surface drainage.

3.10.10. There is no harm alleged by reason of flooding.

3.10.11. There is no allegation that the ground conditions found at the site preclude its development.

3.10.12. There is no allegation that the highways impacts on the local network is unacceptable.

3.10.13. There is no allegation that the site is not sustainably located.

3.11. Proposition 10 - The proposal will bring forward material benefits:

3.11.1. Benefit 1 – Market Housing of appropriate mix and provision which should be given significant weight.

3.11.2. Benefit 2 – Affordable housing of appropriate mix and provision which should be given very significant weight.

- 3.11.3. Benefit 3 – The provision of a significant country park which should be given significant weight.
- 3.11.4. Benefit 4 – The provision of sports facilities which should be given significant weight.
- 3.11.5. Benefit 5 – The avoidance of other harmful effects should be given moderate weight.
- 3.11.6. Benefit 6 – The economic benefits that will be forthcoming should be given significant weight.
- 3.11.7. Benefit 7 – The social benefits that will be forthcoming from the housing and sports facilities and open space should be given some weight.
- 3.11.8. Benefit 8 – The environmental benefits that will be forthcoming should be given moderate weight.
- 3.12. Proposition 11 – The alleged harms will be shown not to be weighty or material in the overall planning balance.
- 3.13. Alleged Harm 1 – breach of two policies SP1 and SP 2 [RR1]:
 - 3.13.1. It is simply not accepted that either policy is breached by this proposal.
 - 3.13.2. In any event neither policy is intended to be a development control policy frankly.
- 3.14. Alleged Harm 2 - Minor and immediate landscape character and visual amenity harm [RR2]:
 - 3.14.1. The LPA need greenfield developments which will inevitably involve harm to character and visual amenity, but the amount here is incredibly localised.
 - 3.14.2. Both witnesses only identify harm to the site itself or almost immediately next door to the proposal. Its area of visual intrusion is small and proportionate.
 - 3.14.3. It must also be recognised that this site has no landscape designation.
- 3.15. Alleged Harm 3 - the loss of one tree [RR3]:
 - 3.15.1. One tree will be lost on Appledore Road alone.
 - 3.15.2. That avenue has already lost many of its trees.

- 3.15.3. The Section 106 agreement will give the LPA significant money to plant many more trees.
- 3.15.4. Overall comparing current to proposed, the Avenue will be enhanced and much improved if planning permission is granted.
- 3.16. Alleged Harm 4 - the alleged speculative allegation of deterioration to one tree [RR4]:
- 3.16.1. This issue simply did not trouble the LPA previously in the context of the 250-unit scheme.
- 3.16.2. In any event it is not accepted there will be any deterioration.
- 3.16.3. The only proposal is the creation of a sport pitch along its western side.
- 3.16.4. The only real change is removal of soil and potential compaction but it is not believed there is any real harm because the root structure there is not critical or will lead to its deterioration.
- 3.16.5. That will be the evidence of Mr Jones.
- 3.17. Alleged Harm 5 - alleged absence of certainty in relation to ecological improvements [RR5]:
- 3.17.1. The Appellant proposes meaningful and tangible ecological improvement which is not even that ambitious or particularly out of the ordinary.
- 3.17.2. This ground really should be withdrawn. It is flimsy in extreme and seems to allege a lack of confidence in what is proposed.
- 3.17.3. But why?
- 3.17.4. There is no evidence brought forward by Ms Forster of anywhere in Kent where the fear has been realised.
- 3.17.5. There is no evidence of why this proposal will not bring forward the improvements relied on by Mr Goodwin who is one of, if not the, foremost ecologist working in the UK currently.
- 3.17.6. The LPA's concerns could apply to any ecological improvement scheme ever proposed. It really is that poor and speculative.
- 3.18. Alleged Harm 6 - misinterpretation of IMP4 [RR6]

- 3.18.1. This is also a ground of objection that should be removed.
 - 3.18.2. There is simply no breach of the policy relied on.
 - 3.18.3. It is perfectly normal that recreation facilities are proposed and the exact details of who will take them on is left post-development.
 - 3.18.4. Again nothing is proposed here out of the ordinary.
 - 3.18.5. Again, the LPA cannot point at one example where this has gone wrong in Ashford or even Kent. This reason for refusal again reflects the lack of fairness the LPA has displayed in dealing with this application/appeal.
- 3.19. Alleged Harm 7 - finally relying on a proposed PROW which is subject to significant objection [RR8].
- 3.19.1. This is also a ground of objection that should never have been contended.
 - 3.19.2. The PROW has no status in practice or law whatsoever prior to its confirmation.
 - 3.19.3. It is nothing more than an aspiration at the moment.
 - 3.19.4. Wates intend to object to its confirmation in the strongest terms.
 - 3.19.5. It is simply not a material consideration currently that a PROW might exist in the future.
 - 3.19.6. In any event even if you conclude it is a material consideration it is utterly inconsequential because the development can completely accommodate the proposal if confirmed. There is simply not a point of objection here.
- 3.20. **Proposition 12 – The level of objection is only a material consideration if valid and weighty planning considerations are identified**
- 3.20.1. There is some objection from those who currently have houses.
 - 3.20.2. It is an irony of those who object that they seek to stop others having the benefit of which they fight so strongly to protect.
 - 3.20.3. In any event, the level of objection here is found in most planning applications involving greenfield development.

3.20.4. The question is whether they raise any issues that require consideration in the planning balance in addition to the issues raised by the LPA.

3.20.5. The Appellant says not with justification. Most of the additional issues such as drainage, flooding, traffic and amenity concerns were considered by consultees and considered not to amount to justifying weight in the planning balance.

3.21. Proposition 13 – The LPA never fairly or objectively considered the application

3.21.1. The LPA were determined to refuse this application from the start.

3.21.2. The Appellant is convinced understandably that they have never got a fair crack of the whip by an LPA determined to not address the housing crisis it faces in the most sustainable locations.

3.22. Proposition 14 – On a proper application of the development plan it will be shown that the proposal complies with the development plan overall

3.22.1. The development plan will be shown overall to be complied with when one considers the relevant policies set out in the SoCG.

3.22.2. In particular, the spatial strategy set out in policies SP1, SP2 and HOU5 seeks to rely on windfall sites outside settlement confines (which applies even more strongly given the housing shortfall currently) and there is positive support for new housing adjacent to Tenterden as a highly sustainable settlement. The scale of the proposed development is also plainly proportionate to the size of Tenterden.

3.22.3. This will be addressed in detail by Mr Ross, whose evidence will show that the LPA's allegation that the appeal scheme will undermine the spatial strategy is simply not correct.

3.22.4. The appeal scheme is in complete compliance with the spatial strategy.

3.22.5. As will be demonstrated by the evidence. there would be no breach of policy in relation to biodiversity (HOU5 and ENV1), the provision of community space and facilities (IMP4) and in relation to the provision of potential new footpath AB70 (if that is even considered a relevant consideration in the appeal). To the extent that there is minor localised landscape visual impact and loss of a tree, these must be

considered against the landscape and trees enhancements that the scheme will bring, and these will not result in material harm in relation to policy.

3.22.6. The decision in accordance with the development plan as a whole is to grant planning permission for the proposed development (in accordance with s.38(6)). Material considerations further support the grant of permission.

3.22.7. The Neighbourhood Plan is not part of the development plan and is still in its early stages. Thus, it should be afforded little, if any, weight as a material consideration.

3.23. Proposition 15 - The evidence will show that planning permission should be granted for the proposal at the end of the inquiry

3.23.1. Overall, this is an appeal which should be allowed.

3.23.2. The proposal complies with the up to date aspects of the development plan and, in particular, the appeal complies with the strategic aims of the LP.

3.23.3. As such, the proposal benefits from the Section 38(6) presumption in favour of development the development plan, which supports approval.

3.23.4. Further, the other material considerations further weigh in favour of the grant of permission.

3.23.5. It is agreed that the Council is suffering from a housing shortfall and they cannot demonstrate a 5YHLS. The Government imperative in such a case is that the planning balance is tilted in favour of granting permission.

3.23.6. The benefits of the proposal are significant and weighty.

3.23.7. The alleged impacts do not withstand scrutiny, and are far from constituting impacts which significantly and demonstrably outweigh the benefits of the proposal.

SASHA WHITE QC and ANJOLI FOSTER

Landmark Chambers

8 February 2022

APPENDIX 1 – CHRONOLOGY

- 1987 – Application made for 124 dwellings.
- 7 October 1987 – LPA refuse planning permission
- 28 July 1988 – Planning permission granted on appeal but subsequently quashed by order of the High Court.
- 28 October 1989 – Planning permission refused on appeal.
- March 2012 – NPPF 1 published.
- 2014 – Planning Permission granted at Tilden Gill Road.
- 2014 – Planning permission granted for 250 dwellings at Tent 1A.
- May 2017 – Playing Pitch strategy published.
- July 2018 – NPPF 2 published.
- 21 February 2019 – Ashford Borough Local Plan adopted.
- 23 February 2019 – NPPF 3 published.
- 23 August 2019 – LPA determine no EIA required for 250 unit scheme.
- 30 October 2019 – Secretary of State also concludes no EIA required for 250 scheme.
- 23 September 2020 – LPA refuse previous application for 250 units.
- December 2020 – KCC make order to record new footpath AB 70.
- 30 April 2021 – Appeal scheme submitted to the LPA [
- 14 May 2021 – Appeal scheme validated by the LPA.
- 23 June 2021 – Reg 14 Tenterden NP published for public consultation for 8 weeks.
- 24 July 2021 – NPPF 4 published.
- 12 August 2021 – 13 week determination period expires without determination of the application by the LPA.
- 15 September 2021 – LPA consider
- November 2021 – LPA Publish 2021-2026 HLS position identifying 4.54 years supply of housing.
- April 2022 – Proposed public inquiry into Footpath AB 70.