PINS REF: APP/E2205/W/21/3284479

LAND BETWEEN APPLEDORE AND WOODCHURCH ROADS, TENTERDEN

CLOSING SUBMISSIONS

ON BEHALF OF THE LOCAL PLANNING AUTHORITY

Introduction

1. In our Opening Statement on behalf of the Council, we concluded by saying that the Council considers that the claimed benefits of the appeal scheme are significantly and demonstrably outweighed by the serious harm that would be caused by the proposed development to interests of acknowledged importance. While reasons for refusal numbers 6 and 9 have been resolved through negotiation on the section 106 agreement, the Council's overall conclusion remains the same – by reference to section 38(6) of the Town and Country Planning Act 1990 and applying the tilted balance, planning permission should be refused.

2. The statements of common ground set out that there is agreement on a range of issues. However, there remains much between the parties, as the Inspector has heard.[1]

[1] We make clear that the Council does not accept the criticisms made by Mr Ross in terms of process (in section 5 of his proof of evidence). As Mrs Goodyear makes clear (in her rebuttal proof), there is no basis for them. The allegation that the Council somehow acted contrary to legislation is inchoate (his table not giving any indication of any such breach). The Council has of course made its own criticisms of the Appellant's approach (see section 4 of Mrs Goodyear's proof of evidence). Neither party is making an application for costs. Both parties acknowledge that these matters will not assist the Inspector. Mr Ross in terms agreed in cross-examination that the appeal must be determined on its own planning merits.

3. As we said in introducing the case, building new houses and providing affordable homes is of course an important issue, and the Council has acknowledged a shortfall of housing land in the borough. The appeal proposal would provide up to 141 homes (including 50% affordable homes) which would therefore assist in reducing the shortfall to that degree (although the degree to which all of those homes can be provided, or at least provided within 5 years, is in doubt).

4. However, set against that, there are important and weighty issues to be considered. In particular, the appeal proposal would seriously undermine the spatial strategy in the recently adopted Local Plan and cause significant and permanent harm to the natural environment, in particular to the landscape setting of the historic settlement of Tenterden.

5. We address the main issues identified by the Inspector (in so far as they reflect the Council's reasons for refusal) as follows:
    a. The effect on the sustainable distribution of housing development in the borough (RR1)
    b. The effect on the character and appearance of the surrounding area (RR2)
    c. The effect on trees, in particular T43 and T381 (RRs 3 and 4(a))
    d. The effect on biodiversity (RR5)
    e. The effect on pedestrian access and safety (including the public right of way subject to an Order made by Kent County Council) (RR8)
    f. The 5 year housing land supply position.

The Effect of the Proposal on the Sustainable Distribution of Housing Development in the Borough (RR1)

6. The Local Plan's spatial strategy is to focus development at Ashford and its periphery, as set out in its Vision and Strategic Objectives[2] and Policies SP1 and SP2. The reasons for this are manifold (including to support regeneration in the town centre and help create new communities on the periphery of the town) and because Ashford is the most sustainable settlement in the Borough.[3] It has a large employment area of its own, high speed rail connections to London, as well as rail connections in five directions.[4] By contrast, Tenterden is less sustainable; whilst it has a range of facilities and a population size of just shy of 9,000 people, it lacks rail connections and has only one bus an hour to Ashford which takes 50 minutes (whereas it is 25 minutes' drive by car). As the Local Plan Inspector noted, Tenterden is the second largest settlement in the Borough but the population in Ashford town was about 15 times greater in 2016.[5]

7. We should note in passing here that Mr Marshall accepted in cross-examination that his view that the appeal site is in a "highly sustainable"[6] location does not find form in the Transport Assessment and was intended to be viewed in the (limited) context of a greenfield site in Tenterden. The Appellant's case should therefore not be interpreted as suggesting that Tenterden has in any way comparable sustainability credentials to those of Ashford.

8. The plan's focus on Ashford is thus based soundly in the reality of the relative sustainability of different parts of the Borough, as the Local Plan Inspector noted in his Report.[7] It is essentially a Borough of two halves: the largely urban area of Ashford, with its strong sustainability advantages, where the main focus of development is intended to be, and the remainder of the borough which is rural in character and environmentally sensitive, where there will be more limited development. The

[2] Which as Mr Ross agreed need to be read together (see also the Local Plan Inspectors' report at paragraphs 15, 20 and 29 CD2.2).
[3] See also paragraph 2.64 of the supporting text.
[4] See the Supporting Text to the Plan at 2.44 (CD2.2).
[5] CD2.2 at 34 and see also the Supporting Text to the Plan at 2.49
[6] Paragraph 8.1.1 of his proof of evidence
[7] CD2.2 at 30

strategic approach is clearly very different comparing one area with another. Mr Ross, surprisingly, could not agree with that proposition (and even said at first that they were not significantly different), but did eventually at least agree that the approaches are "different".[8]

9. Mr Ross' argument that Policy SP2 is only seeking to direct a bare majority (or 51%) of development to Ashford should, with respect, be rejected out of hand. The policy itself makes this plain when read as a whole, taking into account the actual distribution it sets down. A significant majority of the housing coming forward during the plan period is to come forward in Ashford, as seen in Table 1 and Appendix 5 of the Local Plan, which shows 76% in Ashford. To contend that there is no breach of the policy because with the proposed development there would still be over 51% of development in Ashford is, with respect, wholly misconceived.

10. Consistent with the rationale for the strategic distribution, the Local Plan generally contemplates larger developments in the Ashford area and smaller developments for the rural areas. The appeal scheme for 141 dwellings is clearly significant and strategic in nature, and in this respect is more in line with what the Local Plan intends for the Ashford area. This can best be appreciated by comparing the typical size of the allocations in Ashford with the typical size of those in the rural areas.[9]

11. Tenterden is the second largest settlement, but is not in the same league in terms of its sustainability credentials and is noted to be constrained in a number of ways, including because of the "high quality of its landscape setting".[10] It is for that reason that only 625 dwellings were to be provided in Tenterden over the plan period[11], equating to some 5% of the Borough's residual housing requirement in Table 1. The Local Plan Inspectors noted: "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

[8] In cross-examination
[9] See Appendix 4 of Mrs Goodyear's proof of evidence and appendix 5 of the Local Plan.
[10] Paragraph 2.51 of the supporting text
[11] This figure included Tenterden Gill which was approved at the time of Examination.

such as the Area of Outstanding Natural Beauty that surrounds much of Tenterden".[12] The supporting text to Policy SP2 similarly acknowledges this when it says: "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***" (our emphasis).[13] As the supporting text in the Local Plan says, referring to the TENT 1 site (an allocation in the Tenterden and Rural Areas DPD) and development at Tilden Gill Road: "no more new major development is planned in Tenterden…".[14]

12. Wates raised objections to the spatial approach at the Local Plan examination but these were not accepted by the Local Plan Inspectors. They concluded that the plan was sound in terms of directing growth towards Ashford, and there was no need to modify the approach to Tenterden.[15]

13. It can be seen from the above that the appeal proposal would far exceed what the Local Plan Inspectors confirmed was suitable for Tenterden and what the Local Plan itself contemplates (by about 24%[16]).

14. Windfalls are permitted by Policy SP2, but they must be "consistent with the spatial strategy outlined above" (as well as with other policies in the Local Plan), in order to ensure that sustainable development is delivered in a way that meets the Vision and Strategic Objectives. The proposed development is of such a scale and in such a location that it cannot reasonably be said to accord with the Local Plan strategy. Its effect would be to undermine it, not only by reducing the focus on the Ashford area but also by increasing development significantly in the environmentally sensitive rural areas of the borough, in this way contributing significantly to the unsustainable outcomes referred to in paragraph 2.66 of the supporting text.

[12] CD2.2 at 34
[13] CD2.1 paragraph 2.51
[14] Paragraph 2.51
[15] Paragraphs 33 to 35 of CD2.2
[16] As put to Mr Ross in cross-examination by reference to Table 6.2 of CD1.1.

15. The Appellant seeks to suggest that the Inspector should 'grasp the nettle',[17] acknowledge that housing delivery at Ashford is temporarily delayed due to Stodmarsh, and deliver at Tenterden to address the housing shortfall. This would not stop housing also coming forward in Ashford in due course when Stodmarsh is resolved but, at present, it is said, Policy SP2 is "not working". Additionally, the Appellant argues that the Inspector should reduce the weight afforded to the spatial strategy in light of the current lack of a five year housing land supply.

16. In respect of the first point, this would not only be a clear departure from the development plan, it would also be short-sighted given the prospective resolution of the Stodmarsh mitigation measures and enable a strategically inappropriate development to come forward on a greenfield site on the basis of a housing position which is short-lived and resolvable in a sustainable way on more appropriate sites. That is not good planning. Moreover, as Mr Ross had to accept in cross-examination, windfalls are coming forward, including in Tenterden, where there have been 226 windfalls including Tilden Gill (which is already nearly a 40% increase over and above the Local Plan allocations).

17. With regard to the weight to be afforded to Policy SP2, whilst weight is always a matter for the decision-maker, there is no legal basis arising from paragraph 11 of the NPPF for taking the approach to weight to Policy SP2 for which the Appellant contends. Paragraph 11 does not address weight. What it does is to indicate, as a matter of policy, where the tilted balance applies, which is a separate issue. Moreover, it does not change the statutory status of the development plan (see NPPF paragraph 12). By contrast, NPPF paragraph 219 does address the weight to be attached the statutory development plan policies. Due weight should be given to those policies (even if they were adopted or made prior to the publication of the NPPF) but weight must be judged according to the degree of consistency with the Framework (the closer the

[17] Mr White's words

policies in the plan to the policies in the Framework, the greater the weight that may be given).[18]

18. There can be no dispute that Policy SP2 is consistent with the policies in the Framework. In particular, in relation to windfall sites, it is consistent with NPPF paragraph 69(c) which states that plans should support the development of windfall sites through policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes. It also directs growth in a manner which seeks to achieve the objective of contributing to sustainable development (NPPF paragraph 16).

19. The fact that there is a shortfall in housing does not preclude a conclusion that Policy SP2 is up to date and should carry full weight. Policy SP2 expressly enables the Council to address the lack of five year housing land supply by allowing windfall development that meets the spatial strategy and other policies in the plan to be brought forward. As a policy tool it is to be used to address the lack of five-year supply, and it is in no way inconsistent with the NPPF in this respect. The shortfall does not mean that the policy is out of date – the policy is there to assist in that very circumstance. In cross-examination, Mr Ross agreed that it was possible for a local planning authority not to have a 5 year housing land supply but where its policies are up to date and consistent with the NPPF as a whole. He also confirmed that he was not suggesting in this case that Policy SP2 is inconsistent with the NPPF. His point, he stressed, was that the policy was not working. But it seems to us that Mr Ross's reasoning is flawed here – it may be that there is a shortfall in the 5 year housing land supply, but that does not mean the policy is not working – it is expressly designed so that windfalls can come forward to address any shortfall. This is evident not only in the policy itself and its reference to windfalls and housing land supply, but also by reference to paragraphs 2.83 to 2.87 of

[18] This was described as the "acid test in relation to whether or not a policy is out-of-date" (i.e. the extent to which it is consistent with the Framework) (Dove J in Gladman Developments Ltd. v SSHCLG [2019] PTSR 1302 at [34]). Consistency is a question of planning judgment, or perhaps a matter of law and judgment (Bloor Homes v SSCLG [2014] EWHC 754 at [44] per Lindblom J (as he then was)).

the supporting text[19]. Mr Ross said in terms that the policy "is capable of working". But more than that – it *is* working, and it is therefore up to date and relevant – and to be accorded full weight.

20. Mr Ross's approach to s.38(6) and the tilted balance in effect seeks wrongly to apply weight in a way that favours the proposal at two stages in each exercise. It is the Council's case that full weight should be given to spatial strategy in Policy SP2 and the development's conflict with it in applying the s.38(6) test. Once that conflict with the development plan is acknowledged, the Inspector can go on to consider other material considerations, including the NPPF and the application of the 'tilted balance'. Our analysis does not mean that the shortfall in housing land supply is to be ignored. It is a material consideration in the context of 'other material considerations' and in the application of the tilted balance.

21. The Appellant has referred to an appeal decision at Oakley in Basingstoke and Deane[20] where the Inspector appears to have not given full weight to housing supply policies because the policies were considered out of date due to the lack of supply. The policies in that appeal were different and may not be comparable to Policy SP2. In any event, this is not authority for the Appellant's approach, it has not been tested in the High Court, and is, in the Council's submission, wrong. In any event, we would submit that, even if Mr Ross's interpretation is correct, considerable weight would still need to be given to Policy SP2, such that it would not in reality alter the ultimate balance.

22. In conclusion, siting such a large development in this location would harm the Local Plan's strategy as it would reduce the intended focus on Ashford and cause serious environmental harm, in particular to the landscape setting of Tenterden. Policies SP1 and SP2 are consistent with the NPPF and there is no reason why they should not be given full weight; and their breach should result in the rejection of the development.

[19] NB paragraph 2.87 which refers to the need for a review of policy only in circumstances where there is a shortfall in housing land supply which is not a short term issue. In other words, local plan policies remain up to date and workable in order "to rectify the situation".
[20] CD6.8 at para 97

23. The Appellant sought to argue that HOU5 was essentially a function of SP2 and if HOU5 is met then that would permit windfall development of this scale in Tenterden. There is no basis for such an interpretation. As Mr Ross accepted in cross-examination there is nothing in Policy SP2 to that effect. Nor is there anything in SP2 or HOU5 that says that HOU5(s) is the "main plank" of the spatial strategy, as Mr Ross also accepted.[21] The spatial strategy policies operate independently from the housing policies in the Plan, except insofar as Policy SP2 requires windfall developments to be both consistent with the spatial strategy ***and*** with other policies in the Local Plan. This scheme is neither.

24. Policy HOU5 permits a windfall development adjoining or close to the existing built-up settlement of Tenterden but only if all of the criteria (which have equal status) are met - that is a vital proviso. Mr Ross does not dispute that this policy should be afforded full weight. The proposal fails against the criteria as a result of its environmental harm. In particular, the development would not conserve and enhance the natural environment due to the inability successfully to bring forward the proposed ecological mitigation alongside a development of this scale and would not conserve biodiversity interests on the site. Further, it would fail, by virtue of its scale, form and intensity, to sit sympathetically within the wider landscape, would neither preserve nor enhance the setting of Tenterden, nor be consistent with local character. It would result in 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 reasons for these judgments are considered below, as are the breaches with other development plan policies.

The Effect of the Proposal on the Character and Appearance of the Surrounding Area

Introduction

[21] This criterion only relates to the adequacy of service provision

25. As reflected in its reason for refusal number 2, the Council considers that the proposed development would cause serious and permanent harm to the character and appearance of the area, that harm being the result of several significant, negative effects in terms of landscape and visual amenity. The objection relates to the whole development. Whilst the country park might be said to retain openness, the countryside at this important location at the edge of Tenterden would be transformed from a rural pastoral landscape to an essentially urban one because of the effect of the proposed built form (including the pavilion and car park) and intense activity.

26. There are four short submissions to be made by way of introduction to this main issue.
    a. This is not a case in which the Appellant contends that there would be no or little harm in landscape and visual amenity terms. Indeed, it is clear from the Appellant's LVA that there would be a number of significant, negative effects.
    b. Whilst there is a great deal of common ground between the Council and the Appellant, there are clear and important differences nonetheless. The Landscape Statement of Common Ground sets out a number of largely factual matters that are agreed, but the areas of disagreement are fundamental.[22]
    c. Notwithstanding the findings of the LVA, Mr Smith in his proof and oral evidence sought to play down those findings – to the point, with respect, that his judgments on those fundamental matters should not be relied upon.
    d. The evidence of Mr Withycombe should be preferred. The judgments set out in his written and oral evidence are fair and reliable.

The importance of the appeal site in landscape and visual amenity terms

27. Mr Withycombe describes and explains the value of the land in landscape and visual terms. In large part he agrees with the Appellant's LVA that the value of the site is

[22] The areas of disagreement go beyond the matters set out in paragraphs 32 to 36 of the Landscape Statement of Common Ground, as is obvious from the written and oral evidence presented to the inquiry.

largely attributable at a local or community level.[23] [24] His expert view is that the appeal site is of importance in landscape and visual amenity terms. He notes that the LVA makes no suggestion that the land might be described as a degraded landscape, and highlights: the predominantly rural character of the site; the field pattern, largely intact from the 1850s; the enclosing hedgerows; the field ponds; the distinctive mature trees (including T381); the well-used PROW AB12; and the views to the east and to the west, including of St Mildred's Church.[25] Importantly, Mr Withycombe concludes that by reference to its essentially rural character, the appeal site contributes positively and significantly to the landscape setting of Tenterden.

28. The Appellant has been quick to point out that the appeal site has no national landscape designation.[26] However, that does not mean that it has no value or even limited value in landscape and visual amenity terms. That is made entirely clear in Government policy.

29. The NPPF says that "decisions should contribute to and enhance the natural and local environment" irrespective of the lack of national designations.[27] Valued Landscapes within the meaning of paragraph 174(a) of the NPPF are not the only landscapes of value. Paragraph 174(b) in terms says that decisions must "recognise the intrinsic character and beauty of the countryside…and of trees and woodland". The NPPF therefore makes clear as a matter of Government policy that the appeal site has inherent importance as countryside. Mr Smith accepted in cross-examination that this was an important element of Government policy – yet he had not referred to it at all in his proof of evidence (or in his oral evidence in chief). He therefore has not done what the Government requires him to do, that failing being reflected in the value that he attributes to the appeal site in his proof of evidence.

[23] Paragraphs 4.14 to 4.16 of his proof of evidence
[24] It was not the Council's case that the appeal site was a "valued landscape" in the terms of paragraph 174(a) (although Mr Withycombe's independent professional view is that it is a Valued Landscape at a local level (paragraph 23 of his rebuttal proof)).
[25] In section 4 of his proof of evidence
[26] NB there are number of TPO'd trees in the western end of the appeal site and on Appledore Road (paragraph 13 of the Landscape Statement of Common Ground).
[27] Paragraph 174 of the NPPF

30. The landscape of the appeal site is also treated as important by policies in the Local Plan. Policy SP1 is consistent with the NPPF by seeking to "conserve and enhance" the natural environment including the landscape. Local Plan HOU5(e) similarly requires that developments "must conserve and enhance" the natural environment. Those requirements apply to the appeal site even though it is not the subject of any national landscape designation.

31. We note in passing here that whilst Mr Smith agreed the relevance and importance of these policies, he disagreed that "conserve" means "retain or protect from harm"; his understanding was that the policy requirements to "conserve" the landscape can be met simply by "minimising harm". That policy interpretation cannot be correct, as a matter of plain English, and because it would mean that any development would comply so long as harm was minimised i.e. lowered or mitigated as much as possible (or as Mr Smith put it "where we can"). It seems that his approach to the acceptability of the scheme was based on a lower threshold test than what is contained in the Local Plan and Government policy.

32. The appeal site is not merely "countryside" – it is more than that because it contains features of individual and collective worth, noted as being "key characteristics" in the local published Landscape Character Assessments. As referred to in the Ashford Landscape Character Assessment 2009, these elements are, across the whole site: a varied field pattern with smaller fields, a strong sense of enclosure from hedgerows and field ponds.[28] As Mr Smith agreed in cross-examination, they are part of the intrinsic character and beauty of this area of countryside. He also acknowledged that St Mildred's Church is a "prominent landmark feature" (i.e. the same as St Michael's Church[29]). These references to "key characteristics" should not be dismissed lightly; they enable us to define and understand the character and appearance of the landscape. They were incorporated into the Ashford Local Character Assessment SPD

[28] Page 102 of CD5.4
[29] Ibid.

2011 which is expressly referred to in Local Plan policy (enhancing its weight accordingly). Policy ENV3a(h) requires particular regard to be given to the SPD, with paragraph 9.43 of the supporting text explaining the general aim to ensure that new development does not compromise or damage landscape character but instead contributes towards enhancing the character of the Landscape Character Area in which a site is situated. That approach is entirely consistent with the NPPF and as Mr Smith agreed in cross-examination, the objective is of real importance.[30]

33. A further relevant point is that the landscape and visual amenity of the appeal site is highly valued by local people, adding to its importance. "Recreational Value" is an established factor for assessing non-designated landscapes.[31] Mr Smith agreed in cross-examination that PROW AB12 is well used. He also agreed in cross-examination that the views towards Tenterden and to the east provide significant amenity value.

34. The quality of the landscape here has also been recognised by Inspectors on appeal and in the local plan context.
    a. The Inspector in the 1989 appeal decision[32] found: that the land[33] was open countryside part of a wider rural area which warranted protection; that there was no sense of urban enclosure to disturb or even qualify that finding; that Tenterden had largely a linear form and a significant element of its character derived from the close proximity of the countryside to the heart of the town; that the church, fields and hedgerows were valuable features of that countryside; that the landscape was important to the setting of Tenterden; and that views from the footpath towards Tenterden were important and attractive.

[30] Mr Smith does not mention the SPD, and seemed unaware of it.
[31] See the page 38 of the Appellant's LVIA
[32] CD6.1B
[33] The appeal site was smaller and two fields to the west of PROW AB12.

b. The Inspector reporting on the Local Plan in 2010[34] found that the current appeal site contributed positively to Tenterden's "strongly rural setting".[35]

35. These authoritative views should carry weight and Mr Smith agreed in cross-examination that they are relevant documents to look at relating to the same land. However, the Appellant's response has been to say that the policy context has changed since those decisions, but that misses the point – the policy context may have changed but the landscape quality of the site has not. Mr Withycombe's aerial photographs[36] show that the level and extent of development on the settlement edge has not materially changed, nor the field boundaries – the main change being that the vegetation on field boundaries and site perimeters has matured.

36. All the above points support the conclusion that we invite the Inspector to reach – that the appeal site is of real importance in landscape and visual amenity terms. We invite him to reject the Appellant's attempts to play down that value.

37. There are two matters in Mr Smith's evidence which warrant specific comment in this context.

38. The first is his reluctance to describe the appeal site as forming part of a "strongly rural edge" (words appearing in the reason for refusal).[37] Mr Smith has "no doubt" that the land to the east of PROW AB12 has "strong rural characteristics" but disputes that the land to the west of the footpath can be similarly described. We make the following comments on this matter.

a. Mr Smith acknowledges that the land to the west also comprises grazed pasture with hedgerows, but concludes that it is "more influenced by the settlement edge" and consequently cannot be described as "strongly rural". He relies on two viewpoints very close to the boundaries of the properties on

[34] Paragraph 2.98 of CD2.6
[35] NB also his concern about harm to the trees on Appledore Road, "this distinctive approach to Tenterden".
[36] Appendix 3 to his main proof of evidence
[37] See paragraphs 270 to 271 of his proof of evidence.

Appledore Road and Woodchurch Road[38], which give an unrepresentative impression, as we hope that Inspector will have appreciated on his site visit.

b. Mr Withycombe agrees that there is something of a transition across the appeal site with the land to the east of the shallow ridge being more expansive, but his view is clear that the whole of the appeal site can properly be described as "part of a strongly rural edge".[39] He considers that Mr Smith in his proof of evidence has exaggerated the influence of housing on the settlement edge.[40] There is an awareness of the settlement edge but it does not exert the strong influence on overall character as asserted by Mr Smith, especially when viewed from PROW AB12. The viewpoints he refers to support his conclusion.[41]

c. Mr Smith's position on this point was confused or illogical. He considers that the TENT 1 site can be described as "largely rural" – but that judgment is surely inconsistent and incompatible with his reluctance to describe the appeal site as "strongly rural", bearing in mind the uninterrupted views of the hard settlement edge at that location.[42] The Inspector will also recall the description that he used in his oral evidence in chief for the views westwards from PROW AB12: "largely a pastoral landscape". And he will also have made a note of Mr Smith's eventual concession in cross-examination that the land to the west can reasonably be described as "largely rural".

d. It is of course a matter of judgment, but the Council is confident that the Inspector will reach the same judgment as Mr Withycombe,[43] now he has carried out his site visit.

39. The second matter in Mr Smith's evidence warranting specific comment is his reluctance to agree that site "contributes positively to the landscape setting of the

[38] Paragraph 270 of his proof of evidence (and paragraph 30 of Mr Withycombe's rebuttal proof)
[39] See section 4 of his main proof of evidence, and paragraphs 33 and 34 of his rebuttal proof.
[40] The LVA uses noticeably more muted language – "some visual influence of existing residential development" (paragraph 4.3.2).
[41] See appendix 5 to his main proof of evidence.
[42] See page 64 of Mr Smith's proof of evidence and plate VIII.
[43] And consistent with that of the Inspector in the 1989 appeal decision (CD6.1B) and that of the Local Plan Inspector in 2010 who actually used the phrase "strongly rural setting" (paragraph 2.98 of CD2.6).

south-east of Tenterden" (words appearing in the reason for refusal).[44] We make the following comments on this matter.

a. As we have noted above, Mr Withycombe is firm in his view that the whole of the appeal site plays a very beneficial and important role as part of the landscape setting to Tenterden.[45] His view chimes with the views expressed by the 1989 appeal decision Inspector and those of the 2010 Local Plan Inspector; the value of the land in this respect is also reflected in paragraph 34 of the current Local Plan Inspectors' report and paragraph 2.51 of the supporting text in the Local Plan itself.
b. Mr Withycombe was particularly concerned that the Appellant had not properly addressed this question. As he noted in his oral evidence in chief, the LVA does not address it directly; he was also clearly concerned about the way the matter was addressed in Mr Smith's proof.[46]
c. Mr Smith purports to address the question in his proof of evidence[47], but that text is not helpful to the Inspector for three reasons:
    i. He relies again on viewpoints close to the boundary on the western part of the site and on his consequent judgment about the influence of the properties along Woodchurch Road and Appledore Road. We have made comments on this above.
    ii. The only other point that he makes is his assertion that the site "makes only a minor contribution to the setting of the settlement" on the basis of "limited access".[48] With respect to him, that conclusion seems unreasonable. PROW AB12 is well-used, as he agreed in cross-examination. It does not provide "limited" access; on the contrary it provides unlimited access to the public in order that they can enjoy the pastoral countryside and in particular the attractive views towards Tenterden, with the prominent landmark Church seen above the wooded landscape. There is therefore no sensible factual premise for

[44] See paragraphs 272 to 277 of his proof of evidence.
[45] See section 4 of his proof of evidence and paragraph 34 of his rebuttal proof.
[46] See in particular paragraph 34 of his rebuttal proof.
[47] Paragraphs 272 to 277
[48] Paragraph 276 of his proof of evidence

Mr Smith's assertion. The more so since, as he also agreed, without the development the use and enjoyment of the PROW will continue with much of the existing structural vegetation (as well as the frequent views of the Church) remaining.[49]

iii. Indeed, his written and oral evidence on this issue appeared to epitomise the Appellant's attempts to play down the landscape and amenity value of the appeal site. His conclusion that "the site does form part of the landscape setting for Tenterden but [its] contribution to that role is not entirely positive"[50] is drafted to avoid a direct and fair answer to the question posed – does the site contribute positively to the landscape setting of Tenterden? His answers to questions in cross-examination made things worse, determined as he was not to answer the question simply and fairly, not even to agree that its contribution is "largely positive" – a phrase which is entirely consistent with his view, eventually given, that the land west of the footpath provides views of "a largely rural pastoral landscape". With respect to him, his evidence on this important matter was not fair or reliable.

iv. Mr Smith's purported conclusion is contrary to the clear judgments reached by previous Inspectors, and we are confident it will not be borne out on the Inspector's site visit.

The Appellant's approach to impact assessment

40. As fully set out in his evidence, Mr Withycombe accepts that the methodology adopted in the Appellant's LVA is consistent with current guidance (Guidelines for Landscape and Visual Impact Assessment GLVIA3[51]). There are however some aspects of LVA where he questions the application of the methodology and the conclusions and judgments reached,[52] and these are set out in full in his proof of evidence. In these

[49] Paragraph 4.3.4 confirms that the site would continue in its current use.
[50] Paragraph 280 of his proof of evidence
[51] CD5.5
[52] See paragraph 1.13 of his proof of evidence

closing submissions, we wish to comment on five matters of approach that have clearly influenced Mr Smith's conclusions.

41. First, Mr Smith says that all green field developments will result in some degree of harm.[53] However, he was right to accept in cross-examination that such a statement should not affect a landscape and visual impact assessment. Impacts, their nature and extent, are specific to the site/development being assessed (as the GLVIA3 makes clear[54]).[55] Moreover, this is not a case where the Appellant has carried out any comparative assessment in Tenterden or elsewhere, so the argument goes nowhere.

42. Secondly, there are a number of references to housing land supply issues in Mr Smith's proof of evidence.[56] Such issues should not affect an assessment of landscape and visual impact impacts. They are irrelevant to the LVA methodology. As he accepted in cross-examination, whilst the need for and benefits of the provision of housing are issues relevant to the planning balance, they are not a matter for him, nor a matter that should have influenced his assessments of impacts.

43. Thirdly, Mr Smith says that in relation to the scale of the development the proposals include "only 145 homes" or a 4% increase in the population of Tenterden. However, this is not a landscape or visual amenity point, as he agreed in cross-examination. The point is of no help in assessing the impact of the proposed scheme on the landscape setting of Tenterden at this location.

44. Fourthly, Mr Smith says that the appeal scheme is a "dramatic" reduction in the number of units and thus overall density compared to the 250 dwelling scheme. However, that is of little relevance where, as here, the development area changes little and densities in each parcel remain high. In cross-examination, Mr Smith confirmed that the development area (west of PROW AB12) of the earlier scheme was

[53] E.g. paragraph 213
[54] Paragraph 6.42 of CD5.5
[55] See also paragraph 6.8 of Mr Withycombe's proof of evidence.
[56] E.g. paragraphs 70 and 156

about 5.41 ha and that for the appeal scheme is about 5.25 ha (and only a 5% increase in open space) – there has been no "dramatic" reduction or benefit in this respect (as can be seen at a glance in the DAS[57]). In any event, consideration of the previous proposal or of changes since that proposal are of no real value here – the Inspector will be considering the merits of the scheme before him.

45. Fifthly, Mr Smith says that the LVA "does not take into account the positive attributes of the appeal proposals" and "the proposed masterplan would result in an attractive, safe and distinctive place to live". However, positive attributes *are* taken into account in the LVA[58], and the conclusions reached regarding impacts and effects, as he accepted in cross-examination (albeit apparently not as fully as he would have liked).[59]

Landscape Impacts

46. The first thing to note is that the LVA concludes that there would be major/moderate negative landscape effects in terms of individual elements and features and overall character. It also concludes that there would be moderate negative landscape effects to aesthetic/perceptual aspects and other individual elements and features. As we stressed above, the Appellant's own LVA concludes that there would be significant harm caused in landscape and visual amenity terms. These would be permanent and seriously adverse effects to the landscape pattern of enclosed pasture fields and settlement edge, to key characteristics described in the published Landscape Character Assessment studies, to the perception of the landscape currently enjoyed so much by local people and to key views towards St Mildred's Church. There would also be the loss of an important avenue tree on Appledore Road (to which we return under a separate heading below).

[57] Page 35 of CD1.2
[58] E.g. Table E2 views 5, 7 and 8 (and see 5.5.1 and 5.6)
[59] See also paragraph 25 of Mr Withycombe's rebuttal proof.

47. Mr Withycombe concludes fairly and reliably that the allegations of harm in the Council's reason for refusal number 2 are soundly based.[60]

48. In particular, he concludes that the proposed development to the west of PROW AB12 is indeed "large scale and intensive". This can be appreciated simply by looking at the illustrative masterplan, with houses and flats proposed at close quarters. Density comparisons can be helpful but only where they properly take account of local context. The local context here is set by Woodchurch Road and Appledore Road, the distinctive linear approach to Tenterden, where densities are 10-12 dph on Woodchurch Road and 15 dph on Appledore Road. All the proposed residential development parcels are significantly more dense than these. Furthermore, the illustrative masterplan indicates that the development comprises a series of setback development pods with prominent outward facing streets that is out of keeping with the low density inear form of the surrounding development.[61] The DAS[62] shows the nearest parcels to the settlement edge at densities of 40-45 dph, 30-35 dph off Appledore Road, and 20-25 dph to the east. The comparisons put forward by Mr Smith[63] do not assist at all. The circumstances at TENT 1, on which Mr Smith placed considerable reliance, are completely different. That site is adjacent to the town centre where there are many existing terraced houses and streets of relatively high density (as the Inspector will have noted on his site visit).[64] The development at Tilden Gill Road is also of no help, as it adjoins an estate mainly comprising semi-detached dwellings.[65]

49. Mr Withycombe also concludes that the proposed development "would not sit sympathetically within the wider landscape". His assessment is careful and objective, focusing correctly on the strongly rural setting of Tenterden at this location. Mr Smith responds to this by explaining that the landscape and visual amenity impacts of the

[60] See in particular sections 7 and 8 of his main proof of evidence.
[61] Contrary to HOU5(f)
[62] Page 44 of CD1.2
[63] See paragraph 268 of his proof of evidence.
[64] Paragraph 3 of Mr Withycombe's rebuttal proof
[65] Ibid.

scheme are mainly focussed on the appeal site.[66] This response "misreads" the reason for refusal (there is nothing between the experts as to the geographical extents of the impacts of the scheme). The Appellant has been at pains to stress that the impacts are "localised" – but this does not mean that they are not significant or seriously adverse.[67]

50. He also concludes that the proposed development "would not preserve or enhance the setting of the settlement". Instead, it would radically alter the settlement edge to one of a more defined, prominent and exposed residential settlement edge. The scheme would result in the loss of an area of open countryside which is an intrinsic part of the important landscape setting to Tenterden.

51. This is contrary to Policies HOU5, SP1, SP6 and ENV3a of the Local Plan and paragraph 174 of the NPPF which require decisions to contribute to and enhance the local environment and recognise the intrinsic character and beauty of the countryside.

52. These effects are profound and permanent. Of particular concern is the impact on users of PROW AB12. The Council hopes that the site visit will have been useful to the Inspector, and revealed to him just how important the landscape setting to Tenterden is at this location.

53. The PROW is well used, as agreed. It is also agreed that it provides a valuable amenity for local people. It provides attractive views to the east and to the west – in particular over a "largely rural pastoral landscape" with a number of open or glimpsed views towards St Mildred's Church.

54. The proposed development would completely change the experience currently enjoyed by walkers. Whilst there would be open views to the east for some of the way alongside the country park, the pleasant views to the west would be replaced by "very

[66] See paragraphs 279 to 283 of his proof of evidence.
[67] See paragraph 35 of Mr Withycombe's rebuttal proof.

noticeable houses in the fore and middle ground"[68]. Whilst the illustrative design has allowed for three so-called "vistas" towards the church, these views will be short lived as walkers move along the right of way, and be dominated by the houses and residential paraphernalia on either side of the "vista" sometimes very close indeed.[69] To the south of the footpath the proposed pavilion would (at 7m to ridge) bear down upon walkers at a very close distance, the car park and the activity associated with the sports pitches also adding to the harsh environment that would be their new experience. There is no getting away from it, the effect would be transformational, the pleasure that local people currently get from the intrinsic character and beauty of this part of the countryside would be gone forever.

55. But more than this, the appeal proposals threaten yet more harm. Mr Smith claims[70] that there would be "ample space to accommodate AB70" at the western end of the site. However, it is abundantly clear that this would not be the case. The illustrative layout does not accommodate the proposed route of the PROW, and the plans produced by Mr Ross (at a very late stage)[71] to show how it might be possible to accommodate it, only serve to demonstrate the problems that would arise. The impacts in LVA terms would clearly be in excess of those recorded for AB12, as Mr Smith confirmed in cross-examination. In short, there would be "no experience at all of a rural pastoral landscape", a proposition that he accepted in cross-examination.

The Impact of the Development on Trees

Reason for Refusal number 3 and T43

56. Amongst other adverse landscape and visual impacts, the proposed development would cause the loss the mature Horse Chestnut tree T43 on Appledore Road.

[68] Paragraph 5.5.1 of the LVIA CD1.12
[69] See the photomontages in the LVIA.
[70] See his proof of evidence at paragraph 134.
[71] Appendix G to his proof of evidence

The Importance of T43 and Impact of its Loss:

57. This Horse Chestnut tree is important. As Mr Cook explained, supported by the evidence of Mr Withycombe, it has individual and collective value. It is a healthy mature tree of good height and canopy. Its scale and standing are evident in views of its trunk and canopy from near to and further away. Its collective value is also very evident, since it is a component part of the historic avenue of trees on Appledore Road that is now the subject of a TPO. Its loss would be serious in both respects: the loss of its intrinsic character and beauty[72]; the harm to the coherence of the avenue and the distinctive[73] character and appearance of Appledore Road.

58. The Appellant has sought to play down its importance and the impact of its loss. Mr Jones and Mr Smith made a number of contentions, on which we comment as follows.
    a. First, Mr Jones hints at a limited life expectancy on the basis of some evidence of leaf miner in the canopy. However, he acknowledges that this is minor in extent. As he notes, "there is no evidence of imminent decline or death". Mr Cook considers that there is no evidence to support Mr Jones supposition.[74] It is in any event to be noted that Mr Jones concludes that the tree could survive for another forty or fifty years.[75]
    b. Secondly, Mr Jones asserts that the tree "is visible only in short range views".[76] However, this is factually incorrect, as Mr Cook explains[77]. The site visit will have demonstrated that the tree occupies a prominent position on the outside of a corner and is visible in short and long range views.
    c. Thirdly, Mr Jones suggests that other trees nearby limit the contribution that T43 makes to the avenue. That too is not borne out by what is on the ground. As Mr Cook explained during the round table session, the tree, and importantly

[72] Paragraph 174(b) of the NPPF
[73] See the comment of the Local Plan Inspector in 2010 at paragraph 2.98 of CD2.6.
[74] Paragraph 7 of his rebuttal proof
[75] Paragraph 4.47 of his proof of evidence
[76] Paragraphs 4.5.1 and 4.5.4 of his proof of evidence
[77] Paragraph 8 of his rebuttal

the vertical accent of its trunk, provide an important contribution to the pattern and composition of the trees in the avenue.

d. Fourthly, whilst Mr Jones accepts that the removal of the tree would create a gap, he contends that the gap would not be contrary to what he describes as "the existing fragmented avenue feature".[78] That contention is to mischaracterise the avenue – the Inspector will have seen that its original design is still intact. The gap caused would be very significant in near and far views, eroding the cohesion of this section of the avenue, especially bearing in mind that the tree is one of a historic pair.[79] Mr Jones accepted during the round table session that the landscape character of the avenue remains a defining and legible feature on the approach into Tenterden. It retains a strong avenue character and T43 is an integral part of that avenue.

Mitigation:

59. Mr Smith contends that mitigation would be adequate, and prays in aid the CAVAT payment that KCC Highways has required. Mr Cook was most concerned about this contention:[80]

    a. The tree would be permanently lost from its specific location, such that there can be no adequate direct mitigation for this loss.

    b. Any replacement trees would require 20-30 years to have any meaningful amenity presence in the wider avenue context.

    c. In any event, the feasibility of delivery is not established. Whilst the payment can be secured by legal obligation, there can be no certainty of delivery. As Mr Cook understands the position, no approach has been made to KCC Highways to assess the feasibility of what the Appellant has in mind. Nor is there is any

[78] Paragraph 4.57 of his proof of evidence. The Inspector is requested to note that, as Mr Cooke explained at the round table session, the viewpoint from Photo Plate 6 is not particularly representative of the avenue and is asked to consider the cohesion of the avenue as a whole. It is accepted that not all of the original trees remain but, for a 150 year old avenue, then fact that 58% of them do remain is positive and any further losses should be halted. The avenue still reads in its intended form.

[79] See paragraph 9 of Mr Cook's rebuttal proof.

[80] See paragraph 6.5 of his proof of evidence and paragraphs 11 to 14 of his rebuttal proof.

evidence before the inquiry to demonstrate what could be achieved along the avenue. The only certainty is that the mature Horse Chestnut T43, one of a historic pair, will be lost and a significant gap will be created at this important section of the avenue.

60. The loss of T43 would fail to conserve or enhance the Borough's natural environment, contrary to Policy SP1(b) and would also fail to respond to the prevailing character of the area by harming the character of the Woodchurch Road avenue of trees, contrary to Policy SP6(d). It would not amount to a 'positive response' to the character of the avenue, whose sense of place and distinctiveness would be negatively affected, contrary to Policy SP6(a). The Appellant's scheme does not demonstrate particular regard for the composition of the trees as landscape characteristics, contrary to Policy ENV3a(b). There is also policy conflict with the NPPF paragraphs 131 and paragraph 174(b).

Reason for Refusal number 4 and T381

61. There is also the loss of Field Maple T381.

The Importance of the Tree:

62. As Mr Cook explained,[81] this is a highly valuable specimen tree. It is an "ancient" tree, and that is agreed between the parties.[82]

63. As an "ancient" tree and "irreplaceable", it is accorded the following protection, as set out in paragraph 180(c) of the NPPF:

> "development resulting in the loss of deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused,

[81] Section 8 of his proof of evidence
[82] See the Appellant's Tree Survey Schedule CD1.13.

unless there are wholly exceptional reasons and a suitable compensation strategy exists"

64. In the Appellant's Tree Survey the tree was described as:

> "Ancient, lapsed, coppiced stool; multi-stemmed from specimen; member of a row of field boundary trees that together make a significant feature of the landscape; essential component of the group within it stands; of ecological, cultural and historic value, of high quality and moderate landscape value; of long term potential".

65. Notwithstanding this clear acceptance that the tree is "ancient", but no doubt with the strong policy test set out in Government policy in mind, Mr Jones in his proof of evidence[83] makes the suggestion that the above ground part of the tree is not "irreplaceable". This suggestion has no sound basis, and we make the following short comments on it.
    a. The coppiced stump of T381 is part of the above ground part of the tree and would have possessed all of the dormant buds that now form the bulk of T381. It is the same tree that formed part of a managed hedge for many years but at some point in its life attained a stem diameter of 810m – it is still extant.[84]
    b. No such distinction (between the above ground part of an Ancient tree and the below ground part of an Ancient tree) is made in the NPPF, in Government and The Natural England/Forestry Commission Standing Advice – Ancient Woodland, Ancient Trees and Veteran Trees[85] or in Trees in Relation to Design, Demolition and Construction Recommendations[86].
    c. As Mr Cook informed the inquiry during the round table session, the authoritative work by Lonsdale devotes a whole section to the management of lapsed coppice.

[83] Paragraph 5.3.10
[84] Paragraph 15 of Mr Cook's rebuttal proof
[85] CD5.8B
[86] CD5.7

d. The "suggestion" made by Mr Jones is not one that was made in the Appellant's Tree Survey, which clearly accepted that the tree was "irreplaceable".[87] It is clearly an afterthought.

The necessary protection and buffer zone:

66. There is a critical point of principle at stake here. It relates to the interpretation of the Government's new Standing Advice. The Appellant contends, in short, that the buffer zone recommendation is only a starting point and allows for flexibility and "morphing".[88] This is a fundamentally incorrect interpretation, as Mr Cook explained. We make the following points in relation to this issue.
    a. Ancient trees are "exceptionally valuable".[89]
    b. For that reason, there is bespoke advice in relation to their protection in the Standing Advice.
    c. In particular, the Standing Advice gives bespoke advice in relation to root protection zones i.e. buffer zones. The advice in relation to buffer zones is different from that for root protection areas for other trees contained in BS 5837, and clearly not to be read across. Ancient trees are a special case, warranting their own specific guidance on this issue. The use of the term "buffer zone" is deliberate, indicating an intention to provide separation between the development activity and the Ancient tree, so as to ensure that no harm will occur.
    d. Mr Jones points to the use of the word "should" rather than "must" in the Standing Advice, allowing, he says, for "divergence" – his morphing. However, read fully and fairly, the Government's advice does nothing of the sort.
        i. It says that the "size and type of buffer zone should vary depending on…". There is no reference to permitting a change of shape, and the only reference is to larger (not smaller) buffer zones.

[87] See in particular paragraph 7.2.8 of CD1.13.
[88] Paragraph 5.5.6 et seq. of Mr Jones' proof of evidence
[89] See the Standing Advice under the heading "Ancient trees" and consistent with paragraph 180(c) of the NPPF.

ii. The recommendations say clearly that buffer zones "should" (i.e. denoting an obligation, not "may") be "at least 15 times larger than the diameter of the tree" and that this "will create a ***minimum*** root protection area" (our emphasis) i.e. "to avoid root damage".

iii. The context makes clear that this is a fixed minimum requirement, because of the exceptional importance of Ancient trees. For example, it says that the buffer zone should consist of semi-natural habitats (which a sports pitch is not), and gardens should not be within a buffer zone.

e. If Mr Jones were right in his interpretation, Ancient trees would not receive the special protection that policy and guidance obviously intends.

f. It is very telling that Mr Jones was not able to present to the Inspector any appeal decision or any authoritative document to support his interpretation. The most obvious reason for this is that the argument is not supportable.

67. Mr Cook's interpretation is the correct one, and should be relied upon. However, even if Mr Smith's erroneous interpretation does not assist the Appellant in seeking to demonstrate that damage would not be done to this Ancient tree. As Mr Cook pointed out that the root analysis undertaken by the Appellant attached to Mr Smith's proof of evidence reveals that roots extend out to at least 12m distance – the evidence actually supports the need to retain a circular 12m buffer zone in order to "create a minimum root protection area".

Impact of construction, use and maintenance of the sports pitch:

68. BS5837 explicitly recommends that "no construction, including the installation of new hard surfacing, occurs within the RPA of a veteran tree"[90]. The raising of soil levels as proposed would constitute part of the construction of the sports pitch. The Standing Advice, the bespoke advice for Ancient trees, is clearly more strict again. What is being contemplated by this proposal is not "a semi-natural habitat" – the impact of low

[90] Paragraph 7.4

intensity grazing is not in the same order, a sports pitch requiring significant inputs and mechanised maintenance (and very much at odds with Lonsdale's intention[91]).

69. The construction of the sports pitch within the RPA of T381 is not supported by the Standing Advice and would be a deterioration of the irreplaceable habitat of the that tree, contrary to NPPF paragraph 180(c). The Appellant provides no "wholly exceptional reasons" to justify this, nor any "suitable compensation package". The proposal would also conflict with Policies SP1(b) and SP6(a) of the Local Plan.

The Effect on Biodiversity (including the impact of the Environment Act 2021)

70. The Council does not allege that it would be impossible to deliver enhancements to biodiversity within the site and neither does it question the ecological baseline of the site or the surveys undertaken. However, the Appellant has failed to demonstrate that it would successfully deliver the claimed ecological benefits in the long term and thus the proposals would fail to preserve or enhance biodiversity.

71. This is a site which has ecological potential but the Appellant's proposals areoverly ambitious. They are aiming to achieve a biodiversity net gain of 14.98% whilst, at the same time, losing 6.71ha out of 20ha of neutral grassland to built development.[92] Furthermore, significant areas of habitat to be created are inevitably categorized as 'poor' by contrast with these areas' existing 'moderate' or 'fairly poor' condition e.g. domestic gardens and the football pitch.[93]

72. It is not in dispute that the Appellant needs to achieve a BNG of at least 10% in order to comply with the direction of travel of Government legislation, and in particular the emerging statutory requirements under the Environment Act 2021. Mr Goodwin,

[91] See paragraph 9.9 of Mr Cook's proof of evidence.
[92] See Mr Goodwin's Table 1 on p. 39 of his proof.
[93] See the table at p. 19 of Mr Goodwin's Appendices. And note that the creation of these 'poor' habitats is in the context of site which current is host to a wide range of species of both flora and fauna as set out in the bullet points at para 13 of Ms Forster's proof and amplified in oral evidence.

despite appearing at one point in his oral evidence to resile from his written position, made clear (at least in his proof) that the proposals seek to "resonate" with the Government's direction of travel on the environment.[94] The relevant Regulations imposing a legal requirement to deliver at least 10% BNG under the Environment Act 2021 are likely to come into force in 2023. Although Mr Goodwin has referred to another Inspector's decision[95] where the Inspector says that, for the time being, even a 1% net gain is policy compliant, that is not consistent with the delivery of a high-quality scheme with scope for a margin of error. Furthermore, as Mr Goodwin accepted, the BNG metric is "only a tool" and only one aspect of biodiversity.[96] There is certainly no policy requirement to utilize it (indeed, Mr Goodwin suggested that many ecologists will not use it at all). He agreed that the Inspector is required to reached an overall judgment as to whether, given the significant losses, there would be measurable net gains to ecology as a result of the scheme.[97] Whilst this therefore needs to be looked at in the round, the critical point is that there can be no dispute that, given the extent of the proposed losses of natural areas, the BNG and the overall judgment on the success of the proposals relies on a ***very significant*** enhancement to what remains – hence the importance of being confident that the proposals wouldwork and that the long term maintenance would also be successful.

73. Ms Forster set out her serious concerns about the ability of the Appellant to deliver the claimed improvements. In essence, the scheme is very tight and there would be no "wiggle room", as Mr Goodwin accepted.

74. In summary, Ms Forster's concerns, which must be considered cumulatively, are as follows:

    a. Inevitably, larger areas of grassland would be lost than anticipated through the construction footprint. Mr Goodwin's Plans ECO3 and ECO4 have taken no account of the inevitability of a wider land take and show habitat

[94] See final bullet of his proof at 3.6 and para 4.30.
[95] See his para 4.29: Ref: APP/Y/3940/W/21/327.
[96] He also agreed that it is "not the be all and end all".
[97] In the light of NPPF paras 174(d) and 180, plus para 179(b) which relates to plan making, but is still relevant here.

enhancement areas very tight to the edge of the built areas. It is true that there would be a conditioned Construction and Ecological Management Plan; but it is unrealistic to think that the construction vehicles would not impact on any of the grassland areas.

b. Given that the residential development part of the site is in outline, the whole layout could change (especially if, for example, footpath AB70 needs to be accommodated) and the reserved matters approval (which would be based on a number of factors, not just ecology) could well result in additional losses.

c. Recreational pressure could significantly impact on the quality of habitat within the site and has not been accounted for. The country park is a "recreational resource of an informal nature"[98] and users would have the opportunity to walk wherever they like. As Mr Goodwin's Photo 11[99] shows, even where there is a path with a hard surface, the grassland surrounding it becomes short either through mowing or people walking off the side of the path. On the appeal site itself, the evidence of use of the contested footpath AB70 is apparent through the trampling over the grass. Furthermore, residents within the scheme would want to take the most direct desire line to the country park and sports facilities. Some or many would likely not walk round a prescribed longer route in order to protect the ecological areas. This pressure is acknowledged in Mr Goodwin's table[100] where he notes that directional mown pathways would be cut around the boundary areas. These "soft" pathways would be used to maintain foot traffic to dedicated areas and "discourage" (note: not prevent) residents from walking over meadow grassland "on a frequent basis". That is all well and good, but the fact that such soft pathways are considered necessary is an indicator of the inevitable recreational pressure. There is also the added pressure of car parking which might take place on verges and other areas of grassland.

d. There would be further management conflicts in the enhancement of the grassland due to the creation of areas of scrub (where grass would need to be

[98] Mr Goodwin's words in correspondence with the Council in his Appx at p. 134
[99] Appx at p. 148
[100] See his Appx at p. 20.

killed off around the proposed plants to enable them to establish) and also conflicts between flora and fauna management e.g. the inability to cut grass due to reptiles.

75. In essence, the BNG metric has taken a 'best case scenario' which is unrealistic (the absence of any footpaths from the calculation in itself shows that it would inevitably be lower). No-one has produced an alternative calculation. The Council appeared to be criticised for this, but it is for the Appellant to prove its case. Mr Goodwin confirmed in answers to the Inspector that he had carried out some kind of sensitivity test on the calculations taking into account the footpaths (which he said resulted in a 2% drop in the BNG) but this was not disclosed to the inquiry and so incapable of scrutiny, for example to see exactly which paths were included. The proposed footpath AB70 reflects local residents making their own route around the site and it is more than possible that that sort of activity would occur again, further 'chipping away' at the proposed net gain. The Inspector has no sensitivity test or range before him such that he can be confident that, once Ms Forster's concerns are factored in, there would still be BNG at all, in accordance with the metric or otherwise.

76. The draft LEMP[101] belies the challenge of the ongoing maintenance of these habitats with regular grass cuttings and wildflower meadow establishment. The Council does not take issue with ongoing management in light of the withdrawal of Reason for Refusal 6, but it is clear that the enhanced and new habitats would take some time to establish.

77. Overall, in forming a judgment, given the extent of the losses to the existing species-rich habitat, it cannot be said – with the best will in the world to enhance what is left – that there will be overall improvement. Thus, the proposals would fail to preserve and enhance biodiversity, contrary to policies HOU5(e) and (f)(vi) and ENV1 of the Local Plan.

[101] CD1.14

The Scheme's Effect on the Public Right of Way that is due to be subject to an Inquiry in April 2022

78. The following matters are (or must logically be) common ground:

a. Kent County Council have made an order[102] to record the route of AB70 as a public right of way on the definitive map, having satisfied themselves there is sufficient evidence that there is a reasonable allegation that the rights subsist, which is the statutory test in s. 53(3)(c)(i) of the Highways Act 1981.

b. There has been one objection to the making of the Order (by the Appellant in this appeal)[103] which has triggered a requirement for confirmation by the Secretary of State. An inquiry will take place in April of this year, by which time it is likely that this appeal will have been determined. The outcome of this appeal will, however, have no bearing on whether the Inspectorate confirms the route, since the test for recording of the right of way is based on the evidence of long-user and has nothing to do with the desirability of a footpath or the impact on, or of, development proposals.

c. It is not for this Inspector to pre-determine the likely outcome of the confirmation process. However, it must be presumed that there is at the very least a realistic prospect that the order will be confirmed.[104]

d. If the footpath is confirmed, it would be impossible for the developer to deliver the illustrative masterplan, since the route would be physically obstructed by built development, which would be unlawful.

e. In December 2021, the Appellant (after having been asked to provide this by the Council prior to the application's determination) for the first time produced two revised masterplans which rearranged the scheme (for 141 houses) in a way which does not physically obstruct the route of AB70.[105] We will comment on the implications of that below, since they are not agreed.

[102] CD4.6
[103] CD4.6c
[104] Although Ms Beswick gave her view that there is in fact a high degree of likelihood that the order will be confirmed.
[105] At Appx G of Mr Ross's proof of evidence

f. If the footpath is confirmed, the scheme at reserved matters stage will either have to accommodate the route in some way or provide for a diverted footpath which would be incorporated into the site. This is possible but, to date, no positive incorporation of a diversion has been shown to be achievable by the Appellant.

79. The Council's position is that, whilst layout is a reserved matter, it is aware, as the Inspector will be, that at the time of consideration of reserved matters, no condition can be imposed through that process which fundamentally alters the outline planning permission. Thus, one of the critical concerns is that the Council should not be put in a position of being legally obliged at some point to grant reserved matters on the basis of a scheme that has dire consequences that should have been taken account of at outline stage. This is why the failure of the Appellant to show any acceptable layout accommodating the footpath or incorporation of a diversion is entirely relevant to the principle of the development. We do not suggest, as Mr White pointed out, that this goes to any policy requirement. But it is a matter of common sense that the impact of the PROW must be taken account as a material planning consideration at the outline stage: (a) because it has implications on layout which might be very significant and pertain to the principle of other harms, and (b) because of impact, for example landscape and visual impact, and also because of the implications in terms of the amenity of the right of way itself and the amenity of future occupiers of the scheme. To be clear, the Council's position is that, as a matter of law, the prospect of the PROW must be taken into account.

80. The Appellant's position, however, is that the PROW is not a material consideration, at least at this stage. It argues that these matters can be resolved at the reserved matters stage and it will work with Kent County Council to provide the best reserved matters application that will accommodate the footpath, if it is confirmed. That is, with respect, wishful thinking. The Appellant has failed to prove that these matters are indeed capable of satisfactory resolution. Thus, permission should be refused because, otherwise, the Council will be put in the invidious position of being

compelled to approve a layout at reserved matters stage, knowing that it would have harmful consequences, but being powerless to refuse it.

81. By way of example, Mr Davies, who is the planning case officer, and Ms Beswick, the Rights of Way Improvement Plan Officer for Kent County Council, explained during the round table session the harmful implications of the revised layouts provided in December 2021 in more detail. The December 2021 revised plans appear to have changed the layout in a way which cuts back one development pod in terms of size. There is no explanation of the impact of the changes, for example on flooding matters and unit size. Thus there is inherent uncertainty as to what will, ultimately, be able to be delivered. Furthermore, the route itself, which is shown to be surrounded by residential development (although not actually physically obstructed), is wholly unsatisfactory. Unlike a position where a scheme is designed at the outset to take account of a route and consider constraints and opportunities, this route runs to the rear of houses, avoiding active frontage, and posing a crime and vandalism risk. It runs very close to dwellings, seeming to cut off rear gardens and cross parking areas. This would be unattractive, to say the least, in terms of the experience for the users of the right of way (as we have explained above) and would also damage the quality of the dwellings themselves by introducing overlooking. There has been no attempt whatsoever to place the footpath in a Green Corridor, as requested by Ms Beswick, nor any attempt to show a suitable diversion outside the residential developments and any relationship with SUDS and landscaping features.

82. The Appellant sought to rely on the approach to footpath AB32 in the TENT1 scheme which runs through the housing. However, TENT1 is obviously a much more urban setting and much denser. Prior to any development, AB32 was a tarmacked surface over scrub land. There is little green space on the site itself and the route took into account the particular constraints and opportunities of that site. Furthermore, the scheme was approved several years ago now, in 2014, and the focus on providing high quality routes is now much greater.

83. It is very telling that the Appellant has failed to be able to provide a simple plan, which the Council has asked for all along, showing a properly incorporated route or diversion which would be a high quality, accessible route and sense of place. That was, and remains, a perfectly reasonable request. The fact that the Appellant has failed to provide any satisfactory plan, we submit, can only be because there are real doubts that it is possible, certainly if the scheme is to ultimately deliver the number of houses (even now) being proposed. Consequently, there could well be significant effects further down the line in terms of the spatial layout and number of houses that can actually be delivered on the site and / or the resulting typologies, for example, in many more flats and fewer houses.

84. It is unacceptable to grant outline planning permission in circumstances where the Appellant has failed to show that any of these matters are even capable of resolution at reserved matters stage. It also casts doubt about the scale of housing delivery that can be prayed in aid as a benefit of the scheme and adds further weight to the landscape harm.

Housing Land Supply

85. As is agreed in the Housing Statement of Common Ground, the Council's most recent five year housing land supply position is set out within the 'Five Year Housing Land Supply Update July 2021'[106] (November 2021) and the five year requirement is agreed to be 7,195 homes. The Council's position is that, as is confirmed in that document, it can demonstrate 4.54 years of supply. The Appellant has sought to argue that this figure should be reduced, essentially on the following three bases (in the order followed in the housing round table session):
    a. The most recent monitoring period captured a 15 month rather than a 12 month period
    b. The impact of Stodmarsh on deliverable sites
    c. Delivery of sites, e.g. S24 Tenterden

[106] CD2.9B

86. We will consider each in detail below.

The Monitoring Period

87. The monitoring period was delayed in 2020 - 2021 by 3 months due to the exceptional circumstance of the Covid pandemic lockdown, which prevented officers travelling to carry out the exercise[107] and, instead, adopted a 1 July 2021 base date (rather than the 1 April date used in previous years). As a consequence, the Appellant has argued that the Council has not 'captured' the gap between 1 April and 1 July 2021 period and has artificially inflated the monitoring period (and consequently the delivery figures) by 3 months.

88. As Mrs Goodyear explained at the round table session, and as was confirmed in the Council's clarification note to the inquiry,[108] the Council monitors supply annually at a fixed point, rather than monthly (in accordance with Government policy and guidance). In the future, the period will revert to the 1 April to 31 March monitoring dates and thus the five year calculation will revert back to the traditional timeframes. Consequently, one of the monitoring years will only cover a 9 month period of housing completions. For the reasons given in the Council's clarification note, it would be wholly inappropriate to in effect retrospectively alter the housing land supply calculation undertaken to reflect a longer 15 month monitoring year at this point in time. In any event, even in practical terms, the disputed three month period was at the height of the pandemic in early 2020 when construction and general housing industry activity was virtually stagnant. Any 'gain' arising from using a 15 month period on this occasion would be negligible. The supply figure of 6,531 is thus robust.[109]

89. Notwithstanding this clear and logical explanation, the Appellant continues to contest the Council's published approach, and has made a number of unsupported allegations

[107] See Housing Land Supply Statement appended to CD7.24 dated 25 January 2022.
[108] CD8.59
[109] As recorded on p. 14 of CD2.7B

of deliberate inflation, as suggested in the Lichfields response note.[110] There is nothing dubious or covert in the Council's approach which derives entirely from the context and the practical implications of the pandemic. The Appellant's argument on the grounds of generic statistics suggests an approach that the Council should somehow be disadvantaged at a time when house building was stagnant across the country. In any event, and is common in such circumstances, their alternative approach is inconsistent with the NPPF and PPG by introducing a requirement to keep pace with housing delivery every month.

The Impact of Stodmarsh on Deliverable Sites

90. In July 2020, Natural England issued water quality advice which affects planning applications in parts of the district, in particular around Ashford, to ensure that new development does not cause any further deterioration of the water quality at Stodmarsh Nature Reserve near Canterbury. The consequence is that a number of housing developments are on hold until a mitigation strategy is adopted. The Council has acknowledged this and reflected potential delays in delivery terms in its supply figures e.g. by placing Stodmarsh-affected sites in year 4 and 5 of the period.

91. The 'Stodmarsh' sites form the vast majority of the sites which Mr Taylor has argued should fall outside the 5 year period entirely (scenario 1) or be delayed so that only part of the housing is delivered (scenario 2) (see the table in the Housing Statement of Common Ground).

92. The Council has made significant headway in progressing interim measures in response to the Stodmarsh issue, as set out in its most recent HLS update[111] and its updated position statement attached to Mrs Goodyear's proof of evidence[112]. A number of the sites are able to include their own mitigation measures on-site and developers are keen to move applications forward, even if they cannot be determined

[110] CD8.60
[111] CD2.9B
[112] Appendix 2

at the moment, as Mrs Goodyear informed the inquiry. However, beyond this, the Council is taking proactive steps to deliver a solution at a borough level i.e. its own 'Stodmarsh Mitigation Strategy'.[113] The Council has set out a timeline within the Five Year Housing Land Supply Position Statement.[114] The SPD is due to be adopted this summer[115] and discussions are ongoing with landowners to progress the purchase of mitigation sites following the Council's agreement in July 2021 to pursue land acquisition for the creation of strategic wetlands. "This has involved actively approaching the landowners of a number of sites located within the optimal areas of the river corridor. In a number of cases this has led to detailed discussions that have progressed significantly, including preliminary wetland designs".[116] The Position Statement acknowledges that "a delay of 3 years for delivery of housing, which is ready for occupation, has been factored into the calculations to take account of the time required for preparing and implementing the Borough Mitigation Strategy".[117]

93. As Mrs Goodyear explained, developers are working on s.106 agreements to make sure that everything is place so that as soon the SPD is adopted, these sites can move forward. In the light of this, Mr Taylor appeared to accept that his scenario 1 (no housing on these sites during the 5 year period) could not be tenable in all cases.

94. In terms of the acknowledged potential delays, the Council has reflected this by putting the delivery in years 4-5 or 5 as per the table in the Statement of Common Ground. This is realistic and deliverable.

95. For these reasons, the issue can reasonably be regarded as temporary and short-lived; the Inspector can have confidence that the sites will be delivered within the 5 year period.

[113] As well as a strategic level in combination with other Kent Councils (see the report from the Head of Planning Control at Canterbury City Council at appendix 14 of Mr Taylor's evidence)
[114] CD2.9B
[115] See table at p. 11
[116] Appendix 2 to Mrs Goodyear's evidence. Obviously, confidentiality applies at this stage.
[117] Paragraph 3.45 on p. 11

96. Turning to the individual sites discussed, in relation to VC14 Elwick Road Phase 2, there is already a reserved matters application for the site which is likely to go to Planning Committee on 16 March this year. There is no reason why, once the SPD is adopted this summer, that site cannot come forward as predicted.

97. S16 Waterbrook has an outline planning permission and the applicant is looking to develop onsite wetlands to develop their own solution. Discussions are ongoing with the case officer. S28 Charing – Northdown Service Station and S29 Charing – Land South of Arthur Baker are currently subject to a reserved matters application. The reserved matters application for S55 – Land adjacent to Poppy Fields is to be taken to Planning Committee in March or April of this year and would look for a resolution to grant subject to the SPD.

98. As can be seen, all of these applications are subject to a grant of outline planning permission and are progressing to reserved matters or already have reserved matters approval. Given the progress made, and the timing of the delivery of the Borough-side Stodmarsh mitigation, there is "clear evidence" that housing completions will begin on site within five years (in accordance with the definition of "Deliverable" in the NPPF).

99. In terms of the major allocations with no planning permission, S1 Commercial Quarter (Tannery Lane) is subject to an outline application which Planning Committee resolved to grant. The s.106 agreement is in progress and, from discussions between the landowner and developer, it is clear that the developer are taking on the site and building it out once the Stodmarsh mitigation is in place. S2 Land North East of Willesborough Road is providing its own on-site mitigation and is subject to a live hybrid application for determination imminently. It is clear that the developer is committed to the scheme since they have put time and money into providing the wetland planning application. S3 Court Lodge, S4 Land North of Steeds Lane and S5 Land South of Pound Lane are subject to outline planning applications for determination. They are also proposing to address the mitigation themselves on-site

and the case officer has said they are confident the applications will be resolved this year.

100. S8 Lower Queen's Road is subject to discussions with Natural England regarding on-site mitigation and it is hoped to take the application to an early March Planning Committee meeting. In their application, the applicant has said that they intend to be onsite within a year of securing their outline application. S13 Former Ashford South School is no longer in use as a school and the landowner is intending the market the site for residential development in the early part of this year with an application submitted by the end of the year.

101. Progress is being made towards the submission of a planning application (which pre-application discussions having commenced) for S19 Conningbrook Residential Phase 2 and, taking into account timeframes for the determination of the application, sale, commencement and first completions, part of the site is considered for delivery during the five year period. An outline planning application was submitted in December 2021 for S20 Eureka Park and will provide the Stodmarsh mitigation onsite. The former B&Q site will also provide an additional 216 dwellings which have a resolution to grant permission subject to completion of the s. 106 agreement including Stodmarsh mitigation. The property developer (ABC Property Company) expects delivery on this site as soon as Stodmarsh is resolved.

Other Delivery of Sites e.g. S24 Tenterden

102. Progress is also being made on the submission of a planning application for S24 Southern Extension Phase B. Mr Taylor raised the issue of a covenant on the land. However, as Mrs Goodyear explained, the landowner has confirmed that the covenant is not an issue[118] and progress is being made with initial feasibility and master-planning work.

[118] See her Rebuttal Appx R5.

103. We do not propose to set out the details of all of the smaller sites in closing in the remainder of the table in the Statement of Common Ground. The position is there to see. Essentially, the Council can show that there are planning applications in progress (including in some cases reserved matters approval) or cases where permission has been granted subject to s.106 agreements being agreed. There are delays because of Stodmarsh but there will be appropriate mitigation coming forward. Indeed, Mr Taylor accepted that: "no doubt there will be a solution that comes forward".

104. Mr Taylor's concerns seemed to focus on the fact that he did not know exactly what that solution would be in each case and how long it would take to implement and allow the houses to be built. However, with regard to the relevant policy on 'deliverable' the NPPF does not provide a closed list.[119] With regard to the further guidance in the PPG and the reference to "clear evidence"[120], it is clear that the list is non-exhaustive and a judgment is needed about whether, for example "firm progress" is being made for the main test in the NPPF.[121] The Council's officers who informed Mrs Goodyear regarding the deliverable sites are the ones involved in producing the Stodmarsh SPD and in the discussions with the developers about these sites and their mitigation measures. Several developers who are delivering their own on-site mitigation have worked up full plans for that mitigation. Having invested in that, they cannot consider the costs to be prohibitive. The Council's officers have the experience and knowledge to advise how quickly these sites can be delivered and their instructions – which are also published in the Five Year Housing Land Supply Position Statement – should be taken in good faith. There is nothing to be drawn from the fact that the particular officers were unable to attend the round table session due to being on annual leave as it was half-term (contrary to the unkind and unsupported suggestion made by Mr White) and Mrs Goodyear was perfectly able to advise the

[119] See the Secretary of State's consent order in the case of East Northamptonshire Council v SSHCLG Claim No. CO/917/2020 (at Mr Taylor's Appendix 3).
[120] Ref ID 68-007-20190722 as quoted in para 2.5 of CD2.9B
[121] The cases to which Mr Taylor refers in this appendices do not alter the interpretation of add to what is required.

Inspector from her own knowledge and experience and with instructions from the Council were necessary.

105. It would be wrong to reduce the extent of windfalls from coming forward[122], as Mr Taylor sought to. Many windfalls will not be in the Stodmarsh area. And to the extent that they are, they can come forward as the Stodmarsh issue is being resolved and within the 5 year period. The Council can demonstrate a consistent rate of windfall delivery of over 150 dwellings per year over the last seven years.[123] This should give the Inspector future confidence.

Conclusions on Housing Land Supply

106. Overall, the Appellant is unduly pessimistic about the impact on timing arising from the acknowledged effect of the need for Stodmarsh mitigation. The Council has built delay into its delivery position and has done so in a realistic, clear and transparent way. Its delivery figure of 2,772 should be preferred. Mr Taylor's scenario 1 delivery figure of only 200 dwellings from these sites is, with respect, untenable and his scenario 2 also falls far short of what is realistically achievable. Accordingly, as per the Council's published Position Statement, the Inspector is invited to accept a housing supply of 4.54 years which equates to an actual shortfall of 664 units over that period.

107. In light of the above, the lack of a five year housing land supply – whilst present and likely to remain ongoing at least until the Stodmarsh issues are resolved – is small and will be resolved in the near future. There is clearly a huge interest in building houses, particularly in the Ashford area, and the Council are facilitating delivery wherever possible. Indeed, the Housing Delivery Test has recently been published and demonstrates that the Council is exceeding its delivery requirement, one of only three authorities within Kent to do so.[124] The contribution of this scheme is thus not critical

[122] 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 s. 106 or Stodmarsh mitigation (see tables A6a and A7 of CD2.9B).
[123] See tables A9, A10 and A11 of CD2.9B.
[124] See Mrs Goodyear's rebuttal proof of evidence at 1.25 and Table 2.

to addressing the shortfall. There are, and will, be other significant schemes within the Borough which will deliver the housing on more suitable sites.

108. Furthermore, it is unclear whether Wates are in fact able to delivery these houses promptly, should permission be granted. As we have addressed elsewhere, there are serious concerns about the impacts of the potential confirmation of PROW AB70 and how this will affect the layout of the development, which is perhaps the most striking example of the uncertainty surrounding the form in which the final scheme will take. In addition, as the Council has set out in its recent note to the inquiry on the consequences of the s.106 provisions, there are key triggers now agreed which restrict delivery and occupation. The timetable risks delivering, at best, only 71.92 dwellings (or half of the scheme) within the next 5 years. Both of these matters pose real risks to the contribution that this scheme would made to the housing supply position and the weight to be afforded to the contribution of homes should accordingly be reduced.

109. We have recently received the 'Response of Appellant to the Council's note on delivery'. It is necessary only to make the following short comments:

a. It is clear that the Appellant accepts that there are risks to delivery;
b. The text in relation to the 5 year monitoring period repeats arguments already addressed above;
c. The Council does not share the Appellant's optimism in relation to: a. the sports field provision (e.g. weather dependent); b. the Secretary of State's approval process (which is not a mere "formality", as described by the Appellant - it might take considerable time and would be unpredictable); c. the discharge of pre-commencement conditions (which would involve considerable work); and d. the delivery of housing (including affordable housing which is at a level here which does not warrant an increased delivery rate);
d. The comments in the conclusions about weight are of course fallacious. This is scheme is being assessed against the current 5 year period. The timing of delivery is firmly linked to the question of weight, not least because of

temporary nature of the current delays caused in large part by the Stodmarsh issue.

Overall balance and conclusion

110. Mr Ross's approach to the setting out of the benefits is highly structured. There is no criticism of this in principle, but it should not be considered as some sort of mandatory requirement. There is nothing in law, policy or guidance that says so, nor do the two decisions letters say so. Moreover, a heavily structured approach would tend towards oversimplification bearing in mind that the exercise is essentially one of planning judgment where a single adjective will inevitably cover a range of degrees of weight. The criticism levelled at Mrs Goodyear for not attaching a single adjective to reflect the overall cumulative weight to the benefits and harms was therefore of some surprise, to say the least. Mrs Goodyear's approach was perfectly clear. Having looked at all the benefits and harms she properly applied the tilted balance, with its own built-in adverbs, to reach her overall judgment.[125]

111. Her conclusion is not only transparent, it is also reasonable and fair.

112. She rightly gives substantial weight to the benefits in terms of the provision of 70 market homes, albeit obviously less substantial now that it is clear that delivery would be uncertain and delayed. She also rightly gives substantial weight to the provision of 71 affordable housing (taking into account the addition of the additional Z houses above the policy requirement). These are the main benefits of the scheme. Others should carry less weight, and some limited or very limited weight. Mr Ross's judgments on weight should be rejected for the reasons that she gave in her written and oral evidence.[126] Of particular note of course is that Mr Ross gives only "limited"

[125] See section 7 of her main proof of evidence and paragraph 1.42 et seq. of her rebuttal proof.
[126] The Inspector is also invited to note that, in cross-examination, Mr Ross said that he had not made any reduction in weight in relation to the benefit of provision of the country park on the basis of current public access along footpath AB12; nor had he made any reduction to the benefit of sports facilities on the basis of no lighting and restricted use due to the effects on the grass of inclement weather. On any common sense view, that must be wrong.

weight to the harm to the landscape – in the light of the evidence, this is not a tenable judgment (and contrary to the Appellant's own LVA). We submit that Mrs Goodyear's judgment is to be preferred to that of Mr Ross.

113. What is critical to have in mind in this case is this. The main benefit in terms of the provision of housing to contribute to the housing land supply is of course a valuable one, but it is intended to meet a temporary deficiency. Building new houses is a pressing issue facing our society today and the Government has recognised this with policy support, in particular the triggering of the 'tilted balance'. But decision-makers should not be distracted by the need to plan for new housing in the general sense, and thus overlook the unacceptable negative impacts on the environment of a particular proposal in a particular place. The main harm in this case, other than that to the spatial strategy of the up to date Local Plan, is to the environment. In particular, the harm to the countryside and landscape setting of Tenterden is serious and permanent. The damage will persist even when the Council meets its housing targets. And that is simply not sustainable planning.

114. The adverse impacts would significantly and demonstrably outweigh the benefits of the scheme. The proposed development would not accord with the statutory development plan and there are no material considerations to indicate that planning permission should be granted – indeed, they indicate the opposite.

115. Accordingly, we invite the Inspector to dismiss the appeal and refuse planning permission.

CRAIG HOWELL WILLIAMS QC

ANNABEL GRAHAM PAUL

Francis Taylor Building

Inner Temple

London

EC4Y 7BY

25 February 2022