

APPELLANT: Wates Developments Limited

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

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

ASHFORD BOROUGH COUNCIL REF: 21/00790/AS

**APPEAL STATEMENT
BY
KENT COUNTY COUNCIL**

Contents

Introduction	2
Regulation 122 Assessment	7
Contributions sought	8
Summary and Conclusions.....	15
Appendices.....	16

Introduction

1.1 Kent County Council (“KCC”) makes these representations in its role as the statutory authority responsible for community learning, youth, libraries and adult social care.

1.2 The applicant submitted an application for permission for the following development:-

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

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

1.3 The planning application the subject of this appeal was refused by way of a decision notice dated 27 September 2021 issued by Ashford Borough Council for the following reasons:-

1. The proposal would be contrary to policies SP1 and SP2 of the adopted Ashford Local Plan 2030. The application proposal would significantly increase the number of dwellings to be provided in Tenterden considered alongside the

existing residential allocations and commitments referred to in the adopted Ashford Local Plan 2030. The scale of development that is proposed runs counter to the adopted spatial strategy enshrined in policy SP2 and would undermine the carefully considered and independently-examined and accepted approach to the sustainable distribution of housing development across the Borough to 2030.

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

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

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

(a) T381 Ancient Field Maple. A new football pitch is proposed within its offset Buffer Zone and an incursion within its Root Protection area. The Root

Protection Area and buffer zone plotting of the tree described in the application is not accepted. The associated works required for the football pitch would result in a deterioration and possible loss of this ancient tree.

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

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

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

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

6. Policy IMP4 of the adopted Ashford Local Plan 2030 requires proposals that would deliver substantial community space and facilities to be supported by a clear governance strategy which will need to be agreed with the Council. This strategy will need to set out what facilities are to be delivered and by when, and how they

will be managed over time to an acceptable standard. The proposals have not provided sufficient information regarding general need, community provision, community engagement and management of the sport, community and open space facilities. Accordingly, the proposals are not considered to fully satisfy the requirements of Policy IMP4 of the adopted Ashford Local Plan 2030.

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

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

encouraging journeys by foot.

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

1.4 None of the reasons for refusal relate to the planning obligations that KCC is seeking.

1.5 This statement does not deal with Highways matters as is relevant to the proposed development or contributions related to Highways. The Highways Authority will submit an appeal statement separately.

1.6 KCC will negotiate a planning obligation with the Appellant; if a planning obligation is offered and KCC considers that the planning obligation will overcome their objections to the planning application, they will notify the Inspector accordingly.

1.7 KCC's initial response to the Borough Council in respect of the planning application was by letter dated 24 May 2021 ("Request Letter") and is attached to this statement as **Appendix 1**.

1.8 KCC provides the information below to assist the Inspector with their assessment under Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) ("CIL").

Regulation 122 Assessment

2. KCC considers that the tests are met in the following ways:

- (i) Necessary as there is no spare capacity available to meet the demand generated by the development and pursuant to KCC's Growth and Infrastructure Framework and guidance in the National Planning Policy Framework.
- (ii) Directly related as the occupiers of the new development will use the facilities and the facilities to be funded will be available to them.
- (iii) Fairly and Reasonably related in scale and kind considering the extent of the development and because the amount of the contribution is based on demand generated by the Development.

Contributions sought

2.1 The following section sets out the legislative and policy drivers for the provision of County Council's services, together with details of the contributions sought and the proposals for the expenditure of the contributions collected. The legislative context is relevant because it sets out the duties upon and powers available to KCC. The relevant policies are set out in National and KCC policy documents, plans and programmes. They are material because they represent the official position of the Government and the County Council as service providers.

2.2 Policies COM1 ('Meeting the Community's Needs') and IMP1 ('Infrastructure Provision') of the [Ashford Local Plan 2030 \(adopted February 2019\)](#) ("Ashford Local Plan") confirm that Ashford Borough Council will continue to seek financial contributions through the use of s106 Agreements to secure the delivery of infrastructure where it is justified to do so in line with the NPPF and The Community Infrastructure Levy Regulations 2010 (as amended). This refers to infrastructure and facilities required to meet the needs generated by new development such as education and community (including youth).

(i) Community Learning

(a) KCC provides community learning facilities for further education. KCC's policies are set out in its Interim Strategic Statement [Setting the Course – Kent County Council's Interim Strategic Plan \(December 2020\)](#).

(b) The provision of community learning facilities is supported by Ashford's adopted Local Plan 2030 Policy COM1, which provides that infrastructure and facilities required to meet the needs generated by new development

including community space shall be provided as the community is established.

- (c) KCC require a contribution of **£16.42 per dwelling** to mitigate the impact of the development on these services. The contribution will be put towards new equipment and resources for the new learners at Tenterden & Ashford Adult Education Centres (AECs). The current adult participation in both District Centres and Outreach facilities is in excess of current service capacity, as shown in Appendix 2, along with cost of mitigation.

(ii) Libraries

- (a) KCC is the statutory library authority. The library authority's statutory duty, found in section 7 of the Public Libraries and Museums Act 1964, is to provide 'a comprehensive and efficient service'.
- (b) National Guidance relevant to this service can be found in:
- [Building Better Libraries for the Future \(updated 2017\)](#)
 - [Libraries as a statutory service \(July 2019\)](#)
 - [Libraries Deliver: Ambition for Public Libraries in England 2016 to 2021](#)
 - [Government Policy on Archives](#) (1999)
- (c) County Council policy drivers are contained in the Kent County Council Interim Strategic Statement [Setting the Course – Kent County Council's Interim Strategic Plan \(December 2020\)](#)
- (d) The development will generate additional clients and library users and additional resources are required to cope with this additional demand. The

Library Service is a universal non-discriminatory service statutorily required to be available to all.

(e) The impact of this proposal on the delivery of the County Council's services is assessed in **Appendix 2**.

(f) There is an assessed shortfall in provision: both overall borrower numbers are in excess of current capacity, and bookstock locally of just 734 items per 1000 population in Ashford District which is well below the County average of 1134 and below both the England and total UK figures of 1399 and 1492 respectively.

(g) To mitigate the impact of this development, the County Council will need to provide additional bookstock for the new borrowers generated by this development.

(h) The County Council therefore requests **£55.45 per dwelling** to address the direct impact of this development to meet the additional demand upon the local Library service which will be generated by the people residing in these Dwellings. The contributions will be applied towards additional services, resources and bookstock for Tenterden library.

(iii) Youth Service

(a) KCC has a statutory duty to provide youth services pursuant to section [507B of the Education Act 1996](#), which requires KCC, so far as reasonably practicable, to secure sufficient educational leisure-time activities for the

improvement of young persons' well-being and sufficient facilities for such activities for persons aged 13 to 19 and certain persons aged 20 to 24.

- (b) KCC also is required to comply with the statutory guidance issued by the government entitled [Working Together to Safeguard Children](#), which requires KCC to safeguard and promote the welfare of children, to assess their need and provide help through an inter-agency working.
- (c) The provision of community learning facilities is supported by Ashford's adopted Local Plan 2030 Policy COM1, which provides that infrastructure and facilities required to meet the needs generated by new development including youth shall be provided as the community is established.
- (d) To accommodate the increased demand on KCC youth services the County Council therefore requests **£65.50 per dwelling** towards additional resources for the Ashford District Youth service.

(iv) Social Services

- (a) Social Care provides countywide support to older people, people with physical or sensory impairments, people with learning disabilities, and people with mental health problems. The Directorate's overall objective is to support and promote independence by helping the people of Kent to live safely and independently in their local communities.
- (b) Social Care operates in the context of national Government and the County Council aspirations and works closely with District Councils. It builds upon

Government publications over the last few years, particularly the Health and Social Care Act 2011 and the Equality Act 2010.

- (c) KCC require a contribution of **£146.88 per dwelling** towards extra care accommodation within the Borough.

- (d) In accordance with The Ministry of Housing, Communities and Local Government guidance *Housing for older and disabled people* June 2019, KCC requests that all dwellings within the development are built as wheelchair adaptable homes to Part M4(2) of the Building Regulations to ensure they remain accessible throughout the lifetime of the occupants to meet any changes in the occupant's requirements.

3.4 All KCC contributions should be index linked by the BCIS General Building Cost Index from April 2020 to the date of payment (Apr-20 Index 360.3). April 2020 is the date of the last review of County Council costs to be applied for CIL compliant contributions. It is for this reason that KCC requests that the contributions be index linked from April 2020 to the date of payment.

CONDITIONS

Fibre to the Premises Broadband

4.1 Ashford Local Plan 2030 policy EMP6 – Promotion of Fibre to the Premises (FTTP) states that FTTP is considered to be essential infrastructure and vital to the delivery of sustainable development. All qualifying development is required to deliver FTTP. Qualifying development includes residential schemes promoting 10 dwellings or more.

4.2 The Department for Culture, Media and Sport ('DCMS') requires fibre to the premise/gigabit capable fibre optic connection for all. Broadband connectivity is now considered the given fourth utility by Householders and essential to ensure new homes are future proofed and sustainable. DCMS have recently carried out a consultation entitled ['New Build Developments: Delivering gigabit-capable connections'](#), and the [voluntary agreement between BT Openreach and the Home Builders Federation \('HBF'\)](#) brokered by the government in February 2016, are both to ensure connectivity through 'fibre-based' broadband installation in new housing.

4.3 Furthermore, the NPPF at paragraph 114 provides:-

“Advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. Planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre broadband connections. Policies should set out how high quality digital infrastructure, providing access to services from a range of providers, is expected to be delivered and upgraded over time; and should prioritise full fibre

connections to existing and new developments (as these connections will, in almost all cases, provide the optimum solution)."

4.4 , KCC therefore requests that the following condition be part of any planning permission granted on appeal:-

"Broadband

Before development commences details shall be submitted for the installation of fixed telecommunication infrastructure and High Speed Fibre Optic (minimal internal speed of 1000mb) connections to multi-point destinations and all buildings including residential, commercial and community. The infrastructure installed in accordance with the approved details during the construction of the development, capable of connection to commercial broadband providers and maintained in accordance with the approved details.

Reason: *To provide high quality digital infrastructure in new developments as required by paragraph 114 NPPF and Ashford Local Plan 2030 policy EMP6."*

Summary and Conclusions

5.1 It is the County Council's case that the above contributions comply with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and are necessary to mitigate the impacts of the proposed development on the provision of those services for which the County Council has a statutory obligation. A failure to make adequate provision for necessary community infrastructure would be contrary to Government policy (NPPF) and unless the Appellant's agreement or undertaking to provide the necessary community infrastructure contributions is forthcoming then the County Council considers that the appeal should be dismissed on the basis of a failure to provide the required contributions.

5.2 The Appellant is not being asked to contribute to any project which addresses existing need but a proportionate contribution to the provision of additional capacity and equipment to meet the needs arising from the occupants of the new development alone.

5.3 Should the Appellant submit a signed Unilateral Undertaking or negotiate a planning obligation by agreement under section 106 of the Town and Country Planning Act 1990 (as amended), which KCC considers would overcome what would otherwise be planning objections to the development, the Inspector will be so advised. This is without prejudice to the wider considerations of whether the proposed development is acceptable in its own right.

For further assistance the Appellant or his legal advisor is welcome to contact Ms Nagla Stevens - by email to nagla.stevens@invicta.law or via post to Invicta Law, Priory Gate, 29 Union Street, Maidstone, ME14 1PT quoting reference PH/KEN001:098545.

Appendices

1. Letter dated 24 May 2021
2. Communities Assessment
3. Social Care requirement