



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

**APP/E2205/W/21/3284479**

**Proof of Evidence of Asher Ross MRTPI in relation to Planning**

**Appeal Under Section 78 of the Town and Country Planning Act 1990 by Wates Developments Ltd**

**FINAL 11 JANUARY 2022**

# Contents

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Introduction – Page 3
Background – Page 6
The Application / Appeal – Page 10
Planning History and Appeals – Page 13
Planning Policy – Page 19
Weight – Page 25
Planning Assessment – Page 30
The Benefits – Page 44
The Planning Balance – Page 55

## Appendices (In separate volume)

Appendix A – Experience
Appendix B – PINS EIA Direction
Appendix C – Minutes of Tenterden TC Meeting 2 March 2020
Appendix D – Standon Lane Appeal Decision
Appendix E – Lichfield’s updated Affordable Housing Statement
Appendix F – Norman Road Appeal Decision
Appendix G – Email and Plans sent to KCC
Appendix H – Designations Plan
Appendix I – Housing Monitoring 2020/2021

# 1. Introduction

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## Summary and Experience

### 1.1 Asher Ross will say:

I am a chartered member of the Royal Town Planning Institute. I have an honours degree in Town and Country Planning from University College London and a Masters degree in Land Economy from the University of Cambridge. I have practised as a town planner in both the public and private sector for nearly 20 years.

I have been a planning director at Wates Developments since June 2021. I have also been a planning director at JLL since May 2019 and am retained as a consultant at JLL (part time). Prior to this I was a director at GL Hearn and prior to that, head of office at Boyer Planning in Twickenham for circa three and a half years. I have previous experience working in local authorities and worked at the London Borough of Enfield for three and a half years (including circa one and a half years as head of planning enforcement).

I am experienced in the appraisal and assessment of development opportunities through the normal processes of development management and the development plan system and have participated in Public Local Inquiries in this connection.

I have worked on various schemes in Ashford Borough I have visited the site and its surroundings on several occasions

I have significant experience in giving evidence at public inquiries (including those decided by the Secretary of State ('SoS')). A summary of my recent experience is attached at **Appendix A**.

The evidence that has been prepared and set out in this proof of evidence has been prepared in accordance with the guidance of my professional institution, the Royal Town Planning Institute. The opinions expressed are true and my professional opinion.

## Context and Scope of My Evidence

### 1.2 I act on behalf of Wates Developments ('the Appellant') to provide evidence at this Inquiry relating to planning policy matters, compliance with relevant planning policy and the overall planning balance.

### 1.3 More specifically, my evidence will address:

- The Site and its surroundings;
- The Application and the process to date;
- The planning history of the Site and relevant nearby sites, planning decisions and their relevance to the determination of this Appeal;
- Relevant planning policies and planning guidance;
- The weight to be afforded to existing and emerging policy and guidance;

- The significance of consultation responses to the Application;
- An assessment of the scheme against the relevant policies and guidance; and
- The overall planning balance.

1.4 I will conclude that having regard to the above, the Inspector should grant consent for the Appeal Scheme subject to appropriate conditions and obligations

1.5 My evidence should be read alongside that of:

- Mr Martin Taylor on housing land supply;
- Mr Simon Jones on effects on trees;
- Mr Jeremy Smith on matters relating to landscape effects;
- Mr Neil Marshall on highways and accessibility matters;
- Mr Tim Goodwin on ecological matters; and
- Mr Richard Grady on matters relating to the sports pitches.

1.6 In addition, the Appellant will be calling the following three witnesses to address matters raised by third parties:

- Ms Gail Stoten on heritage matters; and
- Mr Clive Maynard on flooding matters.

1.7 The Appeal relates to the refusal of Ashford Borough Council to grant consent for development. The description of the development is as follows:

*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 (8.66 ha), and land to be used as formal sports pitches (3.33 ha), together with pavilion to serve the proposal and the surrounding area. Including accesses, ancillary parking, pathways, sustainable urban drainage systems and associated landscaping.*

1.8 My evidence is set out as follows:

- Section 2 – sets out the background to the Appeal;
- Section 3 – briefly describes the site and its surroundings;
- Section 4 – sets out the application / appeal proposals;
- Section 5 – provides a summary of the planning history and relevant planning appeals;

- Section 6 – sets out briefly the planning policy context;
- Section 7 – provides my assessment as to the weight to be afforded to the planning policies;
- Section 8 – provides my assessment of the computability of the appeal scheme with planning policy;
- Section 9 – addresses the benefits; and
- Section 10 – sets out my approach to the planning balance.

### Terminology

1.9 In this Proof of Evidence, I use the following terms:

- The Appellant (and previously the Applicant) for the proposed development is Wates Developments Ltd, hereinafter referred to as the ‘Appellant’.
- The Local Planning Authority is Ashford Borough Council, hereinafter referred to as ‘ABC’ or ‘the Council’.
- Tenterden Town Council is referred to as ‘TTC’ or ‘the Town Council’.
- The scheme submitted by the Applicant is referred to as the ‘Application’.
- The current appeal scheme is referred to as the ‘Appeal Scheme’.
- The site subject of this Appeal is referred to as the ‘Site’.

## 2. Background

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### Introduction

- 2.1 This planning appeal has been submitted on behalf of Wates Developments against the refusal of ABC to grant planning permission for a hybrid scheme consisting of outline planning consent for up to 145 new homes and associated infrastructure and full planning permission for change of use of agricultural land to public open space and sport facilities
- 2.2 The Application had been submitted in response to a previous application submitted to and determined by ABC in 2020. There are material changes between both applications notably, the significant reduction in the number of homes proposed, a reduction from up to 250 new homes to the scheme now before the Inspector of up to 145 homes.
- 2.3 The previous application, the evidence base behind it and the reasons why that application was refused consent are material to the determination of this Appeal.
- 2.4 Whilst my colleagues will address the specific matters relating to their evidence and any changes that have occurred between the two applications, I do want to address the general approach that has been undertaken by ABC and consultees given the bearing this has on the overall determination.

### Environmental Impact Assessment Screening

- 2.5 The first process that the Appellant undertook related to a Screening Request submitted to ABC, seeking to confirm that the development of up to 250 new homes and associated infrastructure, open space and sports facilities did not fall within the definition of Environmental Impact Assessment ('EIA') Development as set out in the EIA Regulations. That Application was submitted to ABC on 9 July 2019 and registered on 10 July 2019.
- 2.6 The Council issued a Screening Opinion on 23 August 2019 confirming that an application for up to 250 homes and associated infrastructure etc would not require an EIA. The formal response of the Council is **CD3.2**. Following this, a Screening Direction was requested from the Secretary of State, who confirmed that the development was not EIA Development (**CD 3.5**)
- 2.7 In addition, the Planning Inspectorate, on behalf of the Secretary of State, issued a Direction that the development did not constitute EIA Development (**Appendix B**).

### 250-Unit Application

- 2.8 Following this decision, the Appellant prepared and submitted a planning application which was registered under the reference 19/10788/AS. That application was referred to the Planning Committee who considered the application at their meeting on 16 September 2020. The Officer Report can be found at **CD 3.24** and an Update Sheet at **CD 3.25**.
- 2.9 The application was formally refused consent on 23 September 2020 with eight reasons for refusal quoted by the Council. The Decision Notice can be found at **CD 3.26**. I will refer to the differences between the decision on that application and the reasons for refusal now before this Inquiry later in my evidence.

- 2.10 I note that the Appellant did not appeal that refusal and decided to review the reasons for refusal, subsequently preparing and submitting the Application which is now subject of this Appeal. The landscape-led review, with significant inputs from ecology and heritage, evaluated the previous scheme and offered a new approach to the delivery of the overall masterplan.
- 2.11 In my view, this approach by the Appellant should be commended as best practice and the correct approach to delivering a suitable and sensitive masterplan that responds to matters raised by the Council and local residents.
- 145-Unit Application**
- 2.12 The Application, which is now subject of this Appeal, was submitted by Judith Ashton Associates ('JAA') on behalf of the then Applicant on 30 April 2021 and was formally registered by ABC on 13 May 2021.
- 2.13 The 13-week statutory determination period ended on 12 August 2021.
- 2.14 The Application was registered under reference 21/000790/AS.
- 2.15 Several matters were raised by consultees throughout the determination of the Application, which the Appellant sought to address through the submission of further information.
- 2.16 However, ABC would not consider this information even though it was submitted in good faith and in order to address matters. The approach of the Council in relation to this Application flies in the face of the NPPF guidance in seeking to "*approach decisions...in a positive and creative way*" (NPPF Paragraph 38).
- 2.17 Officers recommended that the Planning Application be refused for nine reasons and this was endorsed by the Planning Committee. A copy of the OR (**CD 4.27**) and Update Sheet (**CD 4.28**) are included as Core Documents.
- 2.18 Following this decision, Wates notified the Council and the Planning Inspectorate ('PINS') that an appeal will be submitted.
- 2.19 The formal decision notice was issued on 27 September 2021.
- 2.20 The Appeal was submitted on 8 October 2021.
- 2.21 PINS issued the start date letter on 28 October 2021 confirming both that the Appeal would be heard via a public inquiry and set out the timetable relating to this Appeal.

## 3. Site and Surroundings

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### Introduction

- 3.1 In this Section I provide a short description of the Site and its immediate surroundings. A fuller description can be found in the Application documents (notably the Design and Access Statement (**CD 1.2**) and Landscape and Visual Assessment (**CD 1.12**)) as well as the Officers Report ('OR') (**CD 4.27**).
- 3.2 I have set out elements that are relevant to my evidence

### The Site

- 3.3 The Site area is 23.34 hectares located adjacent to the built-up area of Tenterden. A Plan showing the Site, the key designations and the proximity of the Site to the settlement of Tenterden and its wide range of facilities is included for information as **Appendix K**.
- 3.4 The Site comprises of 14 fields / parcels of land (known as Fields F1 to F14). The fields are used for grazing, other than one field which had historically been used as a playing pitch but has not for at least ten years (see Appendix 1 of Mr Grady's evidence).
- 3.5 As set out in the OR, the field boundaries are generally enclosed by trees and hedgerows.
- 3.6 Some of the trees within the Site are subject of a Tree Preservation Order ('TPO'). A Public Right of Way ('PROW') AB12 bisects the Site running from Appledore Road at the southern edge of the Site to Woodchurch Road at the northern edge of the Site.
- 3.7 In addition, Ashford Council has sought to impose a new TPO on all trees along Appledore Road. Whilst I am not aware as to the basis of this, I note that the Council was able to find time to deal with this matter notwithstanding no prospect of any loss of the trees, yet was unable to deal with matters relating to this Appeal such as completing the Statement of Common Ground in the time set out by the Inspector.
- 3.8 I also note that an application to designate a new circular PROW, AB70, has been submitted to Kent County Council ('KCC'). Wates objected to the making of the PROW. An Inquiry to consider whether the PROW should be confirmed will take place in April 2022. The relevance of the potential making of a PROW will be addressed by the Appellant in legal submissions. I will also address the planning implications of this, whilst Mr Smith will address the landscape implications. For the purpose of this Inquiry, it is the Appellant's case that the new PROW should not be confirmed.
- 3.9 In terms of any designations, the Site has no landscape designations. The High Weald Area of Outstanding Natural Beauty ('AONB') is located to the east of the Site, whilst to the north of the Site (the other side of Appledore Road) is the Knock Wood Local Wildlife Site ('LWS'). The Tenterden Conservation Area overlaps the site boundary on the eastern edge of the Site (this element refers to the pedestrian / cycle access off Appledore Road).

### Conclusions

- 3.10 In planning terms, the Site itself is unremarkable having no specific landscape designations (other than a limited number of TPOs).

- 3.11 The proximity of the AONB and the Conservation Area to the Site are noted, however, as I will address below, the effects of development on these are not considered to be harmful by ABC.
- 3.12 In order to be able to assess the effects of the proposal on the Site and its surroundings, I now set out what the Appellant is seeking to gain consent for.

## 4. The Application / Appeal

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### Introduction

- 4.1 In this Section I set out the key parameters of the Appeal Scheme and also address the responses to the Application as well as highlighting key elements from ABC's professional Officers Report ('OR').

### The Scheme

- 4.2 The Appeal is against the Council's refusal to grant outline planning permission for up to 145 new homes of which 50% would be delivered as affordable housing and the creation of a network of roads, footways and cycleways through the Site as well as the provision of associated infrastructure which includes the provision of open space, children's play space, drainage (including Sustainable urban Drainage Systems ('SuDS')), landscape buffers and green links. A full description of what was being applied for can be found in section 5.4 of the Appellant's Statement of Case ('SoC').
- 4.3 The Appeal is also against the refusal of the Council to grant full planning permission for access details associated with the outline elements above, namely, the creation of two access points from Appledore Road and one access point on Woodchurch Road. These would provide vehicular, cycle and pedestrian access to the Site.
- 4.4 The Appeal is further against the refusal of the Council to grant full planning permission for the change of use of agricultural land to land to be used as a country park as well as community orchard. In addition, the full elements sought permission for 3.33ha of the land to be used as formal sports pitches together with an associated pavilion. The full element also sought consent for the associated infrastructure including access, parking, footpaths, SuDS and landscaping.
- 4.5 It is important to note that the outline element relates to the western part of the Site, whilst the full element relates to the eastern part of the Site. I will address the acceptability of the various elements later in my evidence.
- 4.6 In terms of the outline element, the Appellant has provided an indicative masterplan that shows a potential way of providing the proposed development within the Site. In addition, the Appellant provided an indicative mix and type of housing. Other indicative information was provided through plans and in the Design and Access Statement ('DAS'). However, as noted in the OR and in accordance with planning legislation, these matters are not for determination at this stage.
- 4.7 In addition, the outline application is clear that the proposal seeks up to 145 homes and that this is a maximum number. I will address below the linkage between the indicative masterplan and the delivery of reserved matters. However, for the purpose of this Appeal, I assume that if planning permission is granted, then a condition could be imposed that requires the reserved matters to generally accord with the indicative details provided. This does not mean that there needs to be a strict adherence to the indicative details and that flexibility can be afforded to the reserved matters. A degree of such flexibility is provided in Plans Ref 21037-RFT-00-00-ZZ-A-0002-P01 and 21037-RFT-00-00-ZZ-A-0003-P01 which seek to address a potential eventuality of Footpath AB70 being confirmed.

- 4.8 In terms of the access details, these are set out in the Transport Assessment ('TA') (**CD1.8**) and associated plans. The highway authority, KCC, does not object to the provision of the accesses and there is no reason for refusal relating to the technical delivery of these.
- 4.9 In terms of the development on the eastern side of the Site, this constitutes two separate elements. The first is the delivery of 8.66ha of open space in form of country park and community orchard. The second element is the provision of sport pitches and pavilion as well as associated infrastructure.
- 4.10 These are both integral elements of the Appeal Scheme and the details relating to these have been provided in full, rather than the outline status of the residential element. Whilst the opposition has mainly concentrated on the residential element, the provision of the major leisure facilities is a fundamental element of the application.
- 4.11 I note that both the Application Form (**CD 1.29**) as well as the OR (**CD4.27**) refer to the 8.66ha of open space as a country park. Whilst I note that the formal requirement for an accredited country park is for an area of minimum area of 10ha<sup>1</sup>, this is for formal accreditation and there is no reason why the term country park cannot be used as part of this Appeal. As such, and in accordance with the OR, I refer to the 8.66ha area as being a 'country park'.
- 4.12 As the OR notes the key objective for this area includes enhancement of biodiversity and provision of informal space. In addition, as set out in the OR, the proposal would "*enhance the sites landscape structure*" and "*lost boundaries would be restored, existing ponds and watercourses retained, and enhanced*". Other features include informal paths to connect with the PROW, interpretation boards, community trails and orchard. The country park is proposed as a 'dark sky' environment with no external lighting.
- 4.13 I will address the weight to be afforded to the provision of the country park, however, it is clear in my mind that this is a significant positive benefit that weighs heavily in favour of the grant of consent.
- 4.14 Moving onto the second element located in the eastern part of the Site and which is subject of the application for full planning permission, this encompasses the sports pitches and pavilion.
- 4.15 In terms of the sports pitches, these comprise five separate pitches:
- 1 x 11 a side Adult football pitch;
  - 1 x 9v9 junior pitch;
  - 1 x 7v7 mini soccer pitch; and
  - 2 x 5v5 mini soccer pitches.
- 4.16 In terms of the pavilion building, this would provide circa 500sqm internal floorspace and would provide the following facilities:
- Changing rooms;
  - Physio and first aid room;

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<sup>1</sup> <https://www.gov.uk/guidance/get-accreditation-for-your-country-park>

- Club room;
- Meeting rooms;
- Office;
- Kitchen;
- Storage; and
- Toilets.

4.17 In addition, in order to serve the pitches and pavilion, parking is provided.

4.18 Again, whilst I address the overall weight that should be afforded to these facilities below, it is clear in my mind that significant positive weight should be afforded to these proposals.

### Conclusions

4.19 Whilst the principal purpose of the Appeal Scheme is the provision of market and affordable homes, the Scheme would also include other uses, some of which are to mitigate the effects of the development, whilst others will be of benefit to the wider local community.

4.20 The weight to be afforded to these will be addressed later in my evidence.

4.21 In order for the Inspector to come to a judgement about the acceptability of the Appeal Scheme, they would have to consider the planning history of the Site and previous judgements made in relation to it, and I now move to consider that.

## 5. Planning History and Appeals

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### Introduction

- 5.1 There is both recent and more dated planning history for the Site which does require some consideration as to the effect this has both in terms of the decision to be made by the Inspector, but also in relation to the Council's approach to the assessment of the Site and its consistency in approach.
- 5.2 Furthermore, there are recent decisions in Tenterden and wider in Ashford that are relevant to the decision-taking process.
- 5.3 The first of these is an application and appeal from 1987/88 for 124 new homes on part of the Site subject of this Appeal.
- 5.4 The second is the more recent application by the Appellant for development of up to 250 new homes.
- 5.5 In terms of recent appeals in Ashford Borough, I refer to three recent decisions that set out several observations made by the Inspectors deciding those specific cases. I acknowledge that each decision has to be decided on its own merits, however, such observations are material to the determination of this Appeal

### 1989 Appeal Decision (CD6.1)

- 5.6 A previous application and appeal on part of the Site was refused consent for 124 new homes. The OR notes (paragraph 75) the comments made by the Inspector in that appeal. The comments mainly relate to the character of the Site and the interaction of development with both the town and the wider countryside.
- 5.7 The OR notes that the "*findings still have relevance to the current proposals*".
- 5.8 I beg to differ. There has been a significant change both in terms of development in Tenterden and also in terms of planning law and policy that renders that decision having very limited weight in the overall planning balance.
- 5.9 I recall that this decision was issued prior to even the advent of the Town and Country Planning Act 1990 (as now amended) and certainly well before the issuing of the National Planning Policy Framework ('NPPF'), which has created a radical change to the way of calculating housing need. It was also well before the current ALP was adopted.
- 5.10 In terms of the appeal, I note that the first appeal decision allowed consent for the development, but this was quashed in the High Court and a second inquiry held where an inspector came to a different view.
- 5.11 My colleagues address the appeal decision in terms of the effects on their specialist areas. I address the relevance in planning terms. In my view, other than the significant changes in terms of national policy and legislation, there is a clear local planning policy difference between the situation then and now.
- 5.12 The two key differences are: 1. The housing land supply position and the tilted balance; and 2. The difference in policy approach to delivery of homes outside settlement boundaries.

- 5.13 The Inspector notes that “*there are strong objections deriving from structure and local plan policies*”. However, no such objections apply now as Local Plan Policy HOU5 specifically and positively supports development outside settlement boundaries, including those in Tenterden.
- 5.14 As so the “special presumption” applied at the time, this does not go anywhere close to the tilted balance in the NPPF.
- 5.15 Overall, in planning terms, I consider that the overall approach in the 1989 appeal has very limited bearing on this Appeal.

### 250-Unit Scheme

- 5.16 The Appeal Scheme subject of this Appeal was developed by Wates in response to the previous concerns by ABC in relation to a scheme that proposed development of up to 250 new homes on the Site. In general terms, the schemes are relatively similar in that the housing development is proposed for the land to the west of footpath AB12 whilst the leisure facilities are located to the east of the footpath.
- 5.17 However, there are material changes between the two schemes, which, at the time, Wates considered had overcome the objections of ABC to the larger scheme.
- 5.18 In the event, ABC has not agreed with Wates and refused the scheme which is subject of this appeal.
- 5.19 However, I consider it pertinent for this decision to set out for the Inspector the approach of the Council to the previous decision, how the Applicant sought to address these matters and the position of the Council now in relation to the reduced scheme.
- 5.20 The previous application sought permission for up to 250 new homes of which 40% would have been affordable, and associated infrastructure. The leisure facilities proposed on the eastern side of the footpath are generally the same as the Appeal Scheme.
- 5.21 The application was submitted on 20 December 2019 and given reference 19/01788/AS.
- 5.22 The application was reported to ABC’s Planning Committee on 16 September 2020 with a recommendation for refusal on eight grounds. The application was refused on 23 September 2020.
- 5.23 Below I set out as a table the reasons for refusal and how they relate to the current Appeal or how they have been addressed by the Applicant:

Reason for refusal No	Issues	Addressed / current appeal	My conclusions
1	Contrary to SP1 and SP2. Significant increase in number of dwellings in Tenterden contrary to spatial strategy	The same reason for refusal has been imposed	Even though the 2 <sup>nd</sup> application significantly reduced the number of homes proposed, there was no change of judgement from the Council as to whether the reduced number of

			homes would overcome this reason for refusal. Neither was there any consideration of the changing housing land supply situation
2	Large scale, intensive residential development would not sit sympathetically within the wider landscape and result in harm to character and appearance of surrounding area	Whilst in general terms the same reason for refusal has been imposed, there are subtle differences. The 2 <sup>nd</sup> decision sets out that the proposals <b>by virtue of their scale, form and intensity</b> would be harmful. These specific areas were not set out in the 1 <sup>st</sup> decision	The reason for refusal does not reflect the significant reduction in built development proposed and the reduced ‘intensity’ of development
3	Loss of two mature trees on Appledore Road due to access	The scheme has been amended to remove this access	This reason for refusal has fallen away
4	Loss of mature tree along Appledore Road	This reason for refusal is reflected in RF3 albeit, there is greater detail now in terms of the type of tree and expansion of the RfR to include Policy ENV3a which was not part of the Council’s original reason for refusal	There has been no change to this element of the scheme and the Appellant accepts the loss of this Horse Chestnut tree, albeit it is the Appellant’s view that the loss is not as significant as alleged and mitigation measures compensate for its loss
5	Quantum of development would allow minimum levels of amenity and privacy and sufficient car parking spaces	The reduction in the number of units allows for these matters to be addressed.	This reason for refusal has fallen away
6	Ecological mitigation unlikely to be implemented alongside	Whilst a similar reason for refusal is advanced by the Council it now refers to	The Council appears to accept that the quantum of development is now

	the quantum of development	the <b>scale of development</b> rather than the quantum previously set out	not a constraint to delivery of ecological benefits, but now prays in aid of the scale of development as being an obstacle.
<b>7</b>	Governance of substantial community space and facilities	The Council’s concern related to the experience of the Land’s Trust and how the local community would benefit from the proposals. The Council’s RfR now significantly expands on this seeking to have an issue with matters such as general need, community provision and engagement etc	This RfR has significantly expanded from the previous RfR even though the proposal has not materially altered.
<b>8</b>	Lack of Unilateral Undertaking	Whilst this RfR is generally similar to the 1 <sup>st</sup> one, significant additional information has been added (including new policies) such as matters of self and custom-built development and accessibility standards	The RfR has been expanded from the 1 <sup>st</sup> RfR, albeit the Appellant is confident that an agreed S106 can be provided to overcome this RfR

5.24 Having regard to the above, it is clear as to why the Applicant at the time considered that a reduced scheme which amended some aspects (such as removal of the western access on Appledore Road) would likely find some favour with the Council. Indeed, the Appellant sought to address all the reasons for refusal by providing further information and amending the scheme to specifically overcome the points made by the Council.

5.25 The Appellant, when considering the amended scheme which is subject of this Appeal had due regard to The Town and Country Planning (Development Management Procedure)(England) Order 2015 and in particular Article 35(1)(b) which states “*where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision*”.

- 5.26 As the Inspector will no doubt note, and as has been articulated by my colleagues, the approach of the Council has been contrary to the requirements set out in the legislation. This is most unsatisfactory.
- 5.27 The Council now advances several new reasons for refusal and has amended its case on several of the ones relating to the Site even though there have been no material changes in circumstances (the only difference in circumstances is the proposed footpath – which the Appellant in any case considers to be not relevant to this Appeal).
- 5.28 I address this matter below.

#### Wye College (CD 6.7)

- 5.29 This recent appeal decision decided by Inspector Prentis, a very experienced PINS Inspector, consisted of three elements. It is not material to this Appeal to consider all the elements of that appeal. However, several observations from Inspector Prentis on housing matters and location for development are pertinent to this Appeal.
- 5.30 Appeal B consisted of a scheme for 40 homes outside the settlement boundary of Wye. In paragraphs 40 to 45, the Inspector considers whether the proposal would comply with Policy HOU5 which relates to windfall proposals outside settlement boundaries. The Inspector notes that “*the Council does not object to the principle of residential development at this site*” (paragraph 40). He then goes on to assess the suitability of the site against the criteria set out in Policy HOU5. He does the same assessment in relation to Appeal C which related to the provision of a further 20 homes (paragraph 53). Again, as confirmed in paragraph 46, the Council did not object to the principle of residential development at the site.
- 5.31 So, to be clear as to the Council’s position in that case, the Council had no objection in principle to delivery of an additional 60 homes at Wye, a settlement of circa 2,500 residents (i.e. a third of the size of Tenterden) and within the AONB, and wholly accepted that there was no breach of either Policy SP1, SP2 or HOU5 in relation to delivery of that quantum of housing.

#### Oakengates (CD 6.6)

- 5.32 This appeal decision from 16 July 2021 granted consent for a retirement scheme in Tenterden. Whilst the majority of the decision is not relevant to this Appeal (given that it was brownfield land), the Inspector concluded that the retirement scheme complied with the policies of the development plan. There was no objection in principle from the Council on the basis of Policies SP1 and SP2 to the increase of housing in Tenterden.
- 5.33 In terms of housing land supply, the Inspector notes (paragraph 47) that it is common ground between the parties that the Council cannot demonstrate a five-year housing land supply and the appeal falls to be determined under paragraph 11 of the NPPF. The Inspector also notes that the development would have economic and social benefits in delivering housing supply as well as making a contribution towards affordable housing.

#### Tilden Gill (CD 6.3)

- 5.34 This appeal decision from 2016<sup>2</sup> does predate the adoption of the ALP however does have relevance to this determination as to the situation relating to housing land supply and overall delivery of housing strategy

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<sup>2</sup> APP/E2205/W/15/3032575

in Ashford Borough is similar. In that case, consent was granted on appeal for 100 new homes outside the settlement boundary of Tenterden. In that case the Inspector concluded that the Council could not demonstrate a five-year housing land supply (paragraph 66).

- 5.35 The Inspector notes that the development would not comply with “*Core Strategy policy CS6, TRSDPD policy TRS2 or Local Plan policy GP12 which apply policies of restraint to rural areas*” (paragraph 73) and that “*Those policies of restraint are justified by a balancing policy of extra growth in and around the town of Ashford itself, which the Council has not succeeded in delivering, so there is currently inadequate justification for continuing their application*”.
- 5.36 As such, the Inspector came down firmly in favour of the grant of consent

### Conclusions

- 5.37 This Appeal relates to a resubmitted application for up to 145 new homes and associated infrastructure as well as significant leisure facilities. A 1989 appeal decision refused consent for 124 new homes on part of the Site albeit this was under a significantly different planning regime and therefore has limited bearing on this decision.
- 5.38 A more recent decision by ABC refused consent for a significantly larger scheme of up to 250 new homes. Eight reasons for refusal were advanced by the Council as to why permission should not be granted for that application. Several of those reasons for refusal fell away due to changes to the scheme.
- 5.39 However, the Council’s approach to the determination does not appear to have either reflected the significant change in the nature of the scheme, nor the legal requirements of the Development Management Procedure Order, with additional reasons for refusal alleging harm where none existed previously. Furthermore, the decision does not reflect the changing housing land supply situation.
- 5.40 Nevertheless, we are where we are and this Appeal will be determined in accordance with planning policy, an area which I now move on to address.

## 6. Planning Policy

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### Introduction

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) sets out that planning decisions should be made in accordance with the provisions of the development plan unless material considerations indicate otherwise.

6.2 In this case, it is agreed between the parties that the relevant development plan consists of only one document, namely:

- The Ashford Local Plan 2030 adopted February 2019 ('ALP')<sup>3</sup>.

6.3 Relevant material considerations include:

- The National Planning Policy Framework (2021);
- The National Planning Practice Guidance;
- The emerging Neighbourhood Plan; and
- Supplementary Planning Documents.

### Development Plan

6.4 The ALP was adopted in February 2019. It was submitted to the Planning Inspectorate in December 2017 and was examined under the 2012 version of the NPPF.

6.5 **Policy SP1** sets out the strategic objectives which would assist in the delivering the 'vision' set out in the Plan. These are core principles that planning applications are expected to adhere to. Generally, the more detailed policies in the ALP expand and provide specific methods of meeting these strategic objectives.

6.6 In terms of housing need in the period 2011 to 2030, paragraph 2.11 confirms that the needs of Ashford Borough are 14,934 new homes and around 45% to 50% of these should be affordable housing.

6.7 Paragraph 2.13 confirms that a market signals uplift of 13% was included, which means that the overall Objectively Assessed Need ('OAN') was 16,872 which equates to 888 new homes per annum.

6.8 Paragraphs 2.32 to 2.36 refer to windfalls and their contribution to the overall housing land supply in Ashford Borough. They set out that the NPPF, at the time, allowed windfalls to be taken into account. The data showed that windfall housing delivery averaged 167 new homes per annum and that this level will continue and may well be exceeded. Three reasons why this may occur are set out including (inter alia): the NPPF's presumption in favour of sustainable development; and the Local Plan's proposed windfall policy being more permissive than the equivalent policy in previous development plans.

6.9 Overall, windfalls would contribute around 2,000 new homes in the period 2018 to 2030.

6.10 Paragraphs 2.49 to 2.51 consider housing development at Tenterden. The ALP recognises that Tenterden is the second largest settlement and its only other town which plays a main rural service centre role for much of the south-western part of the borough. The ALP notes that development at Tenterden is

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<sup>3</sup> The Kent Mineral and Wates Local Plan is part of the development plan, but is agreed to not be material to this Appeal determination

constrained by the High Weald AONB and the Conservation Area. Whilst traditionally the town has been the focus of relatively small-scale growth, recent plans have identified increased levels of development for Tenterden. Paragraph 2.51 notes that the *“high quality of Tenterden’s landscape setting and its intrinsic historic character are factors that suggest that new development in the town should be limited...”*. Therefore, on this basis no more major development was planned in Tenterden itself. The existing allocations and completion of the masterplanned southern extension to the town could fulfil the town’s development needs over the Plan period.

- 6.11 Paragraph 2.60 confirms that the final strand relating to the promotion of sustainable development within the borough is its phasing and delivery and paragraph 2.61 correctly sets out the requirement for authorities to maintain at least a five-year housing land supply.
- 6.12 Paragraphs 2.64 and 2.65 address the overall approach to delivery of sustainable development in Ashford Borough with Ashford being allocated 4,872 new homes and 1,017 in the rural areas as well as a further 216 allocations in the neighbourhood plans (equating to 1,233). Paragraph 2.66 confirms that *“any significant divergence from this broad approach, i.e. transferring major housing growth from Ashford to the rural parts of the borough should be avoided”*. The ALP considers that such an approach would result in an unsustainable model of development.
- 6.13 Paragraphs 2.76 to 2.82 address the shortfall in the ALP that had been accumulated at its time of adoption and which was 2,462 new homes. The Plan suggested rectifying this shortfall in the period up to 2025, thus adding a further 352 new homes per annum to the OAN of 888 new homes per annum. This approach, as suggested by the ALP would mean that there would not be a need for further development in the rural areas.
- 6.14 Paragraphs 2.83 to 2.87 refer to addressing any future housing shortfall. Paragraph 2.85 is clear that there should not be significant substitutions of housing numbers from Ashford to the rural parts of the borough.
- 6.15 However, paragraph 2.86 notes that if the housing land supply occurs as a result of non-delivery in Ashford, the variances in policy emphasis between the two planning areas will need to be weighed accordingly alongside the need to improve housing land supply and meeting housing needs.
- 6.16 Paragraph 2.87 confirms that if a significant housing shortfall becomes apparent and this is not a short-term issue, then the Council will seek to implement the review of the Local Plan earlier than expected.
- 6.17 **Policy SP2** draws all the above into one policy. In term of windfalls, the Policy confirms that this will *“be permitted where it is consistent with the spatial strategy outlined above and is consistent with other policies of this Local Plan, in order to ensure that sustainable development is delivered”*.
- 6.18 **Policy SP6** relates to the promotion of high-quality design and sets out that development proposals need to set out a positive approach to specific design criteria.
- 6.19 Chapter 4 of the ALP addresses Tenterden and the villages. The first part of the Chapter addresses the allocation TENT1B (the Tenterden Southern Extension). The Plan recognises that the whole site is a unique opportunity to create an extension outside of any designated landscape areas. The Plan recognises that the entire site is located within easy walking distance of the town and could bolster the successful and vibrant economy.

- 6.20 Overall, **Policy S24** allocates the site for around 225 dwellings. No other allocations are proposed in Tenterden, albeit previous allocations such as TENT1 have continued to deliver post the adoption of the ALP.
- 6.21 Moving onto affordable housing, the ALP (paragraph 6.2) confirms that the Strategic Housing Market Assessment established that around 50% of all future housing in the borough should be delivered as affordable. However, it is also noted that this figure is unlikely to be delivered on the ground, mainly due to the housing markets' inability to deliver it.
- 6.22 Paragraph 6.17 confirms that policy seeks to maximise the provision of affordable housing to meet identified needs. This is reflected in **Policy HOU1** which confirms that the provision being no less<sup>4</sup> than the area specific requirements. For Tenterden, the total affordable housing requirement is a minimum of 40%.
- 6.23 Paragraph 6.54 confirms that new housing outside boundaries may also make a positive contribution to meeting housing needs across the borough. Paragraph 6.57 sets out that in order to assess proposals, the scale of development would be a major factor to bring into the equation. For larger scheme, the ALP confirms that good accessibility to local services and facilities will be of particular importance.
- 6.24 **Policy HOU5** confirms that proposals adjoining or close to the existing built-up confines of various settlements will be acceptable. Tenterden is identified as one of these settlements. Six criteria are identified including reference to scale of the settlement, that the site is within easy walking distance of basic day to day services, can have safe access, located to maximise use of public transport, walking and cycling whilst conserving and enhancing the natural environment and heritage assets. In addition to these criteria, high quality design is required. Furthermore, given that the Site is located within the setting of the High Weald AONB it would also need to demonstrate that it is justifiable in terms of national policy.
- 6.25 In terms of transport and highways, parking standards for housing developments can be found at **Policy TRA3(a)** whilst standards for non-residential standards at **TRA3(b)**.
- 6.26 **Policy TRA5** relates to planning for pedestrians and how developments demonstrate safe and accessible movement routes will be delivered. **Policy TRA6** relates to provision of cycling and includes cycle parking standards.
- 6.27 Moving onto environmental policies, **Policy ENV1** states that proposals that conserve or enhance biodiversity will be supported. The Policy generally seeks to protect international, national, and local biodiversity assets.
- 6.28 **Policy ENVa** refers to landscape character and design and sets out specific criteria which developments should have particular regard to. The Policy does set out that these criteria should be considered proportionately, according to the landscape significance of the Site.
- 6.29 **Policy ENV5** seeks to protect important rural features such as ancient woodland, public rights of way and other local historic or landscape features. **Policy ENV6** sets out that proposals for new development should contribute to an overall flood risk reduction and that permission will not be granted where

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<sup>4</sup> My emphasis

development would lead to unacceptable risk of flooding on the site or elsewhere. **Policy ENV9** requires all development to include suitable sustainable drainage systems ('SuDS').

- 6.30 In terms of community facilities, **Policy COM1** sets out that infrastructure and facilities required to meet needs should be provided and secured through S106 and / or CIL. **Policy COM2** sets out the requirement to deliver the overall quantum of new recreation, sport, play and open space provision. In terms of the rural areas, the Policy sets out that provision should be delivered in a way that helps maintain, enhance, and potentially expand existing facilities.
- 6.31 **Policy IMP4** relates to the management of facilities. It notes that the Council's preferred position in recent times has been to not adopt new community space and facilities and that this remains the case. The Council favours stewardship models, which take various forms. The Council accepts that the exact model will be dependent on local circumstances, the stewardship functions transferred, the extent and type of assets and type of financial arrangements. The Policy also accepts that private management company solutions might be considered acceptable. In terms of management and finances, the policy sets out a requirement for financial contributions to cover at least a ten-year period.
- 6.32 In terms of governance, the Policy sets out that proposals for schemes that will deliver substantial community space and facilities, need to be supported by a governance strategy which needs to be agreed by the Council. This strategy should set out what facilities are to be delivered, by when, and how they will be managed over time to an acceptable standard.

#### Tenterden Neighbourhood Plan (CD 2.4)

- 6.33 Tenterden neighbourhood Plan ('TNP') is at its very early stage of preparation. The weight that I consider should be afforded to this Plan is set out below. In this Section, I set out the policies of the Plan that I consider are relevant to the determination of this Appeal.
- 6.34 I note that Ashford Council does not refer to any breach of neighbourhood plan policies in its reason for refusal.
- 6.35 **Policy TEN NP1** relates to the protection of landscape character and includes elements such as the conservation and enhancement of the AONB, retention of landscape character and maintaining tranquillity and distinctive views.
- 6.36 **Policy TEN NP2** seeks to allocate numerous sites as Local Green Space ('LGS') and apply Green Belt policies to those sites.
- 6.37 Other relevant policies are **TEN NP7** (non-designated heritage assets), **TEN NP15** (site for recreation open space), **TEN NP16** (historic routeways), and **TEN NP17** (public rights of way).

#### Material Considerations

National Planning Policy Framework

- 6.38 The latest version of the National Planning Policy Framework ('NPPF') was published by the Government in 2021 and is a significant material consideration in the determination of this appeal. The key notion of the NPPF is ensuring the delivery of sustainable development and the application of this in the decision-taking process. Paragraph 11 of the NPPF is of particular importance. This requires decision takers to approve development that accord with an up-to-date development plan without delay. Where the policies

of the development plan which are most important for the determination of the application are out-of-date then permission should be granted unless significant and demonstrable harm can be identified that outweighs the benefits or specific policies indicate that planning permission should be refused.

- 6.39 Paragraph 14 addresses the presumption in the context of neighbourhood plans. All the four criteria need to be met. In this case, there is no neighbourhood plan in place, so this paragraph does not apply.
- 6.40 Paragraph 48 sets out the cases where weight may be afforded to emerging plans. In this case there is an emerging neighbourhood plan, and I will address the weight that could be afforded to this below.
- 6.41 Paragraphs 49 and 50 relate to prematurity. The Council has not set out that the approval of the Appeal Scheme would be premature.
- 6.42 Paragraph 60 sets out that *“To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay”*.
- 6.43 Paragraph 74 is concerned with councils being able to demonstrate a deliverable five-year housing land supply. Where an authority cannot demonstrate such a supply footnote 8 confirms that the most important policies are automatically out of date.
- 6.44 Paragraph 81 sets out that *“Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development”*.
- 6.45 Paragraph 98 confirms that *“Access to a network of high quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities, and can deliver wider benefits for nature and support efforts to address climate change”*. Paragraph 99 sets out circumstances where existing open and recreational space can be developed, whilst paragraph 100 sets out that decisions should protect and enhance public rights of way.
- 6.46 Chapter 11 sets out the requirement to make the best use of land. Paragraph 120 confirms that planning decisions should encourage multiple benefits from both urban and rural land *“taking opportunities to achieve net environmental gains – such as developments that would enable new habitat creation or improve public access to the countryside”*.
- 6.47 Chapter 12 addresses well designed places. Paragraph 126 confirms that *“Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities”*. Paragraph 130 sets out several criteria against which development schemes should be assessed in terms of design. Paragraph 131 considers the effects of development in terms of trees. It sets out that *“decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible”*.

- 6.48 Paragraph 174 confirms that “*Planning...decisions should contribute to and enhance the natural and local environment by a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan); b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland...*”.
- 6.49 Paragraph 180 addresses the effects of development on biodiversity and considers that “*development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists*”.
- 6.50 Chapter 16 addresses the historic environment. Paragraph 199 sets out that “*When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be)*”. Paragraph 203 addresses non-designated heritage assets.
- 6.51 Finally, paragraph 219 addresses the issue of local plans adopted prior to the issuing of the NPPF and confirms that “*existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)*”.

### Conclusions

- 6.52 Various policies exist both at development plan level and in national and local guidance that will affect how the decision on this Appeal is made. The policies have to be considered against the context that the Council accepts that it does not have a five-year housing land supply so that the most important policies are considered to be out-of-date.
- 6.53 I move to my view on the weight to be afforded to the policies next.

## 7. Weight

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### Introduction

- 7.1 The matter of weight to be afforded to policy is an important aspect. This is because any breach or compliance with such a policy would be affected by the weight that policy attracts. A breach of a policy that only has limited weight would not weigh heavily against the grant of consent. Conversely, compliance with an up-to-date policy could weigh significantly in favour of the grant of consent.
- 7.2 Various terminologies are used across the planning spectrum to identify weight to be afforded to policies (as well as the weight to be attributed to benefits and harms). I use the following terminology across my evidence:

Weight
Significant
Moderate
Limited
None / neutral

- 7.3 The matter of weight that can be afforded to development plan policies can be found in two places in the NPPF. The first is in the application of paragraph 11, where the most important policies are considered to be out of date if there is no five-year housing land supply. This is the case here.
- 7.4 The second location in the NPPF that addresses weight is paragraph 219.
- 7.5 I note that paragraph 48 also allows weight to be afforded to emerging plans. In this case, the Tenterden Neighbourhood Plan is at its very early stage of preparation, and I address the weight that I consider can be afforded to it below.
- 7.6 I now move on to consider the relevant policies in the development plan. First, I address the most important policies and then other relevant policies.

### Most Important Policies

- 7.7 The RfR set out several policies that are, according to the Council, breached by the proposals. It is my view that these generally constitute the most important policies for the determination of this appeal. I do, however, accept that some of these (such as the ones referring to the provision of a S106) are not, the most important policies, and thus, whilst relevant, are not addressed below.

Policy	Policy objective	My Assessment	My Conclusion
<b>SP1</b>	Strategic objectives	This is an all-encompassing policy that sets out the strategic objectives for the Plan and provides context for more specific policies that are found elsewhere in the Plan. The objectives are very general and generally conform with the policies of the NPPF	Full weight
<b>SP2</b>	Strategic approach to housing delivery	This Policy sets out the strategic and more detailed approach to housing delivery both in terms of the overall requirement and general distribution, allocations, windfalls as well as the addressing the historic undersupply. Given that the Council accepts that there is no policy compliant housing land supply this strategy is failing to deliver, in terms of housing land supply, past supply and overall delivery against the target.	Given the lack of a five-year housing land supply as well as the continued challenges in meeting delivery rates and failure against the Local Plan targets, only limited weight can be afforded to this policy and any conflict with it.
<b>SP6</b>	Promoting high quality design	This Policy sets out general design criteria against which proposals will be assessed. As such, it complies with the general thrust of the NPPF in seeking to delivery high quality design. Certain elements	Full weight

		of the Policy only relate to detailed applications and would not relate to outline applications	
<b>HOU5</b>	Residential windfall development in the countryside	The Policy is sets out the ability to develop land outside settlement boundaries and include specific criteria to be met as part of that process.	Full Weight
<b>TRA5</b>	Planning for pedestrians	The Policy is consistent with the NPPF	Full weight
<b>ENV1</b>	Biodiversity	The Policy is consistent with the NPPF	Full weight
<b>ENV3a</b>	Landscape character and design	The Policy is consistent with the NPPF	Full weight
<b>ENV6</b>	Flood risk	The Policy is consistent with the NPPF	Full weight
<b>IMP4</b>	Governance of community space and facilities		Full weight

7.8 Overall, I conclude that the majority of the policies referred to in the Decision Notice as the Appeal Scheme not complying with, should be afforded full weight. However, Policy SP2 can only be afforded limited weight.

7.9 In addition to the above policies, the OR (**CD 4.27**) provides a list of numerous other policies that are relevant to the determination of the Appeal and the Appeal Scheme complies with these. I address compliance with these and the weight to be afforded to this later in my evidence.

#### Tenterden Neighbourhood Plan

7.10 As noted, paragraph 48 of the NPPF sets out that weight may be given to emerging policies. The NPPF sets out three criteria against which any such policies should be assessed.

<b>NPPF Criteria</b>	<b>Assessment</b>	<b>Conclusion</b>
<b>the stage of preparation of the emerging plan (the more advanced its</b>	The TNP is at a very early stage of preparation. The Plan has yet to be submitted to the Council,	Very limited if any weight

<p><b>preparation, the greater the weight that may be given)</b></p>	<p>Regulation 16 consultation is yet to be undertaken, let alone the examination and referendum processes. Indeed, at the time of writing this proof, the results of the Regulation 14 consultation are as yet unknown. This points to very limited, if any, weight being afforded to the emerging plan</p>	
<p><b>the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given)</b></p>	<p>The Appellant (and assumed, many others) have objected to the draft TNP as proposed. As it is unclear as to any solutions to these objections, there are numerous and significant unresolved objections that undermine any weight that can be afforded to the TNP</p>	<p>Very limited if any weight</p>
<p><b>the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)</b></p>	<p>It is plainly clear from Wates' objection to the draft TNP (<b>CD2.4B</b>) that there is significant and critical divergence between the proposed policies and the policies of the NPPF.</p>	<p>Very limited if any weight</p>

- 7.11 Overall, I conclude that the TNP should be afforded, at best, very limited weight in the decision-taking process. Indeed, it is my view that given the significant inconsistencies between the TNP and the NPPF on various matters as well as inconsistencies between the draft TNP and the ALP, that, at this stage, **no weight** should be afforded to the emerging TNP or any potential conflict with it.
- 7.12 I note that the OR considered that limited weight can be afforded to the policies of the TNP. However, this conclusion was based on one of the criteria identified above (“*due to the stage of preparation*”) and did not assess the TNP against the level of unresolved objections and consistency with the NPPF. As such, it is my view that the conclusion of Officers was incorrect and non-compliant with the requirements of the NPPF.
- 7.13 Third parties, and the OR refer specifically to Policy TEN NP2 which relates to the designation of the Site (and numerous others) as Local Green Space. Of course, the Site is not designated as such, and will not be such designated until, and if, the TNP is formally made. As such, no weight can be afforded to the proposal to designate the Site as LGS.

## Conclusions

- 7.14 It is agreed between the parties that the Council cannot demonstrate a five-year housing land supply. As such, and in accordance with paragraph 11d of the NPPF, there are two implications. The first is that the presumption in favour of sustainable development applies (the so called ‘tilted balance’). The second is that the most important policies for the determination of the Appeal are rendered out-of-date.
- 7.15 This does not mean that the policies are given no regard in the decision-taking process (indeed, this would be an erroneous approach that undermines the plan-led system) but that the policies have to be tested against the NPPF and in particular the need to maintain a healthy five-year housing land supply.
- 7.16 In this case, I have concluded that general thrust of the majority of the policies that the Council alleges a breach of can be afforded full weight in the decision-taking process. However, Policy SP2, which sets out the overall requirement and distribution of housing is clearly failing, and this can only be afforded limited weight.
- 7.17 In terms of the TNP, this is at a very early stage of preparation and using the NPPF tests in para 48 demonstrates that no weight should be afforded to the policies of the emerging TNP.
- 7.18 Given the above conclusions, I now move on to assess the scheme against the relevant policies.

## 8. Planning Assessment

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### Introduction

8.1 In this Section of my Proof, I will assess the Appeal Scheme against relevant policy and guidance. I will also address other matters that have been raised by the Inspector in the Case Management Conference Note as well as matters raised by respondents to the appeal notification and not addressed by my colleagues.

8.2 My Evidence will specifically address the following points as set out in the Council's reasons for refusal:

*“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”;* (RfR1) and

*“the proposal fails to consider or acceptably incorporate the AB70- footpath within the scheme”* (RfR8)

### Assessment against Local Plan

8.3 As noted, several policies in the ALP are relevant to the determination of the Appeal. I address these each in turn.

8.4 In terms of assessment against the remaining policies, these are addressed by my colleagues and I defer and adopt their conclusions.

#### Policy SP1

8.5 Whilst Policy SP1 is referred to in the Council's reasons for refusal, it does not, to my mind lead to any additional test in terms of distribution of housing. The Inspector has identified the main matter as being *“the effect of the proposal on the sustainable distribution of housing development in the Borough”*.

8.6 Policy SP1(a) sets out a core principle that planning permissions are expected to adhere to, including *“To focus development at accessible and sustainable locations which utilise existing infrastructure, facilities and services wherever possible and makes best use of suitable brownfield opportunities”*.

8.7 However, this core principle is further developed in Policies SP2 and HOU5 (particularly HOU5a and HOU5b).

8.8 As such, it is my view that if the Inspector find in favour of the Appellant in terms of those two policies, by inference, there would be compliance with SP1.

#### Policy SP2

8.9 The first RfR has two elements to it, and I propose to take this in stages and address each element of the Policy.

8.10 The first sentence of Policy SP2 sets out that the overall housing requirement for the period 2018 to 2030 is 13,118 and that additional housing sites are proposed to provide choice and competition in the market. Table 1 of the ALP sets out the sources of delivery across the Plan period, equating to 13,544 new homes (including a small buffer of 426 new homes). Mr Taylor addresses the matter of housing land supply in his

evidence. Whilst this demonstrates that the Council's housing land supply position is worse than it itself concedes, there are two major matters that have, and continue to affect delivery across Ashford Borough.

- 8.11 The first of these relates to the issues surrounding the effects of development on the Stodmarsh SPA/SAC/SSSI and the second to the improvements to the A28 Chart Road. The first issue has had a significant effect on the grant of planning permissions in the area affected so that there is significant delay in bringing forward many of the schemes that the Council relies on. This clearly would have a knock-on effect in terms of longer delivery times which are likely to lead to some of the assumptions made by the Council on delivery rates being incorrect. This matter is likely to push some of the development proposed to be delivered by 2030 to a period beyond that.
- 8.12 The second issue relates to the A28 improvements which have been put on hold by the County Council<sup>5</sup>. KCC have noted that the project is currently postponed until 400 units are occupied in Chilmington Green. The Council, in its Five Year Housing Land Supply Position Statement 2021 to 2026 confirms that no additional homes over 400 can be considered as deliverable before 2026. Therefore, it is clear in my mind that the assumption that Chilmington Green will deliver 2,500 new homes by 2030 cannot be sustained. I consider that at best, 200 dwellings per annum would be delivered in the period 2026 to 2030, equating to an overall delivery of 1,200. This is a shortfall of 1,300 homes against the overall housing requirement.
- 8.13 Overall, it is my view that the delivery of housing requirement as set out in Table 1 will not be achieved. As such, the Council's approach to housing delivery is already undermined and cannot be considered as a sound approach.
- 8.14 Moving onto the second sentence in the Policy, this confirms that the overall housing requirement will be met through commitments, allocations, and suitable windfalls. The Appeal Scheme is considered to be a windfall site and therefore would fall within the broad scope set out in this part of the Policy. As to whether the Appeal Scheme is suitable, this would be a matter of judgement for the decision-taker. It is the Appellant's view that the Appeal Scheme does constitute a suitable windfall scheme that would contribute to both meeting the five-year housing land supply requirement and the wider requirement across the ALP period.
- 8.15 The third sentence sets out that the majority of the new housing development would be in Ashford and its periphery. It would appear that this is one of the Council's main, in-principle, objections to the grant of consent. In the Council's mind the delivery of 145 new homes in Tenterden would undermine the entire ALP approach to the distribution of housing.
- 8.16 To my mind, this assertion by the Council is hard to sustain and I set out two principal reasons why this cannot be the case. The first relates to the wording of the Policy itself. This requires the majority of new housing to be in Ashford and its surroundings. The delivery of 145 homes at Tenterden would not change this. The majority of housing would still be in Ashford and its surroundings.
- 8.17 The Application was supported by a Planning Statement ('PS') (**CD 1.1**) prepared by Judith Ashton Associates. This sets out that "*Policies SP1 and SP2 of the adopted development plan allow for the development of sites such as the application site subject to compliance with Policy HOU5*" (Executive

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<sup>5</sup> <https://www.kent.gov.uk/roads-and-travel/road-projects/planned-road-projects/a28-chart-road-improvement-scheme#tab-1,2,3>

Summary bullet point h)). I agree with this approach to the reading of the Local Plan. Policy HOU5 provides the criteria against which windfall sites would be assessed.

- 8.18 As the PS sets out (paragraph 6.2.1) “*Policy SP2 of the ABLP<sup>6</sup> sets out the strategic approach to housing delivery*”. I agree with this statement – Policy SP2 is a strategic policy rather than a specific policy that addresses detailed matters. The PS, in paragraphs 6.2.53 to 6.2.62 reflects on the relationship between Policy SP2 and HOU5. In particular, Table 6.2 demonstrates clearly that even with the 145 new homes in Tenterden, the overall the strategy remains Ashford centric. As such, I cannot see how the Council can allege any breach of Policy SP2.
- 8.19 The second reason why the Council’s position cannot be sustained relates to the extremely minor quantum of development proposed by the Appeal Scheme when compared to the overall housing requirement. As noted above, the overall housing requirement in the period 2018 to 2030 is over 13,000. 145 homes amount to just over 1% of the total requirement in that period. When considering the entire ALP requirement (16,872 new homes) this reduces to less than 1% of the total requirement across the Plan period.
- 8.20 To my mind, a housing scheme that comprises less than 1% of the total requirement for a council over a plan period, cannot be regarded as to have a significant and substantial effect on the overall operation of a spatial strategy. As such, given that the majority of housing will continue to be delivered at Ashford and given the very limited scale of the Appeal Scheme, I cannot find any conflict with this element of Policy SP2.
- 8.21 Moving onto the fourth sentence, this sets out that “*Development in the rural areas will be of a scale that is consistent with the relevant settlement’s accessibility, infrastructure provision, level of services available, suitability of sites and environmental sensitivity*”.
- 8.22 It is recognised, and hopefully not a matter between the parties, that Tenterden is the most sustainable settlement in the rural area<sup>7</sup>, consisting of the only other town in Ashford Borough and having a vibrant and sustainable centre with retail and employment opportunities. As such, if any settlement is to accommodate further development, Tenterden must be the first port of call for such development. In terms of scale, the TNP notes that the 2011 census identified that Tenterden had 3,622 homes in 2011 in which 7,735 residents lived (2.14 residents per dwelling as an average). Since then, 334 dwellings have been completed which means that the overall quantum is 3,956<sup>8</sup>. 145 new homes would comprise around 3.5% of the total number of homes in Tenterden. Even with TENT1B (255 homes) the overall numbers would be 400 homes, which is only slightly more than delivered in the period between 2011 and 2021. As such, to my mind, the scale of development is not out of kilter with recent allocations and permissions and with the scale of development experienced and proposed at Tenterden.
- 8.23 The Council’s SoC refers to numerous matters that related to the Examination of the ALP, including representations submitted by the Appellant and the Inspector’s Report. Whilst I recognise that the Site was not allocated in the ALP, any deliberations that were associated with the promotion of the Site

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<sup>6</sup> Ashford Borough Local Plan

<sup>7</sup> The Council state in its SoC “The Council will argue that although Tenterden is the second most sustainable settlement, it is nonetheless a rural settlement.”

<sup>8</sup> This is slightly more than the estimate in the Lichfield Report of 3,900, but reflects the latest data including the 2020/21 completions

through the ALP etc are of very limited weight, given that we now have a formally adopted Local Plan. It is my judgement that there would no breach of Policy SP2 having regard to the specific wording of the Policy.

- 8.24 As to the suitability of the Site and the environmental suitability, these are matters of judgement for the decision-taker. If the Inspector concludes that the Appellant's case on these matters is correct, then I can see no breach of this element of the Policy. Indeed, I consider that the Policy supports further growth in the more sustainable locations in the rural area, and the most sustainable of these is Tenterden.
- 8.25 In terms of windfalls, the Policy states that "*Windfall housing development will be permitted where it is consistent with the spatial strategy outlined above and is consistent with other policies of this Local Plan, in order to ensure that sustainable development is delivered*".
- 8.26 The Council, in its SoC, appears to allege that "*the appeal proposal goes beyond constitutes windfall in the context of Tenterden*". This is a bizarre allegation in light of the acknowledgement of the Council that windfall is not defined in the ALP. There is nothing in Policy that sets out any criteria for size / locations of windfalls. Indeed, the ALP definition of windfall is "*Sites which have not been specifically identified as available in the Local Plan process. They normally comprise previously-developed sites that have unexpectedly become available*". As the Council point out in numerous places in its SoC, this Site was not allocated in the ALP.
- 8.27 Further to this, the Town Council sought formal legal advice on the definition of windfalls. The Minutes of the Town Council Planning Committee meeting held on 2 March 2020 (**Appendix C**) confirm the following: "*Cllr. Mrs. Walder reported that Councillors had seen and read the advice received from the Barrister on the definition of a windfall site, however, although the result is disappointing, it has provided clarity. Cllr. Mrs. Walder also reported that Ashford Local Plan 2030 appears to have been designed not to have limitation of number or size of sites under the windfall policy.*"
- 8.28 As such, any allegation that the Site cannot be considered as windfall is inconsistent with the ALP and legal advice. Table 1 of the ALP confirms that Tilden Gill (at 100 units) is considered as a windfall and I cannot see why this would not apply to the Appeal Scheme.
- 8.29 The Council considers that the Appeal Scheme is not consistent with the spatial strategy and therefore, the Appeal Scheme does not comply with this element. However, this approach cannot be sustained in light of the above assessment, the housing land supply position, and the position of the Council itself since the adoption of the ALP.
- 8.30 Indeed, in the objection of Tenterden Town Council as set out in the OR, they note that "*Since the adoption of the local plan, 101 windfall dwellings have been permitted in Tenterden. Tent1A is also providing an additional 5 dwellings, making a total of 106. Tenterden's contribution to windfall is therefore proportionate and fair*".
- 8.31 The Council's allegation of breach of SP2 itself (rather than HOU5 in relation to the principle of development) cannot be supported in light of the facts of the failing and worsening housing land supply position, the acknowledgement of the challenges that Stodmarsh has and the continued and increased reliance on windfalls across the entirety of the Borough.

- 8.32 The Housing Monitoring Report 2020/21 (**Appendix I**) illustrated this clearly. In 2020/21, 877 homes out of the 1,088 delivered were delivered in Ashford. This equates to 80.6% of all total completions. However, only 74% of all total completions were delivered on allocated sites, with 26% of completions on windfall sites. This demonstrates the fact that the current strategy identified in the Local Plan is failing. This failure can be seen starkly in the monitoring data that compares allocations versus windfall delivery. In 2020/21, the allocations underdelivered against the target by **477** new homes, whilst the windfalls only slightly exceeded their target by 64. Overall, the target set for this monitoring year has been missed by over 400 new homes.
- 8.33 The reliance of the Council on windfalls finds even greater support in the Five Year Housing Land Supply Position Statement 2021 – 2026. Whilst Mr Taylor addresses the deliverability of the sites and whether the now alleged worsening housing land supply position can be supported, I note that there is increased importance on the provision of windfalls as part of the overall housing land supply.
- 8.34 In the past three years (i.e. from when the ALP sought to address the housing land supply position), windfalls delivered 799 new homes and over 1,000 new homes have been granted planning permission. Indeed, windfalls form a significant part of the Council's future housing land supply. Totting up all the windfalls in Table 2 leads to 1,597 new homes projected to be delivered from windfalls over the next five-year period. This equates to nearly a quarter of all new homes to be delivered in Ashford Borough. As such, it cannot be the Council's case that the delivery of the Site as a windfall would be contrary to the overall strategy, given that this strategy increasingly is seeking to rely exactly on such sites.
- 8.35 Overall, I conclude that there is no breach of Policy SP2.
- Policy HOU5
- 8.36 There has to be recognition that there is a clear link between Policy SP2 and HOU5. Policy HOU5 is a clear and positive policy. It sets out that proposals adjoining or close to existing built-up confines **will be acceptable**. There are several criteria which any scheme would need to adhere to.
- 8.37 I would point out two key observations. Firstly, Tenterden is included as a suitable settlement. If the overall strategy had sought to exclude windfall developments outside the settlement of Tenterden, then this settlement would not have been included as a positive location for additional development outside the settlement confines. As such, there cannot be any doubt that the ALP positively identifies Tenterden as a suitable location for additional windfall development.
- 8.38 Once, this has been established, then HOU5(a) address the main plank of the effects on the spatial strategy - the effects on the settlement. No allegation is advanced by the Council that this element of the Policy is breached. Indeed, the OR positively supports the compliance of the proposals not only with HOU5(a) but also HOU5(b). Paragraph 157 of the OR confirms this. Therefore, the Council accepts that the scale of the development is proportionate to the size of the settlement. This means that there is no objection to the 145 new homes adjacent to the settlement of Tenterden.
- 8.39 I note that the Council in its SoC sets out that the proposal is contrary to HOU5 and other policies. However, from my reading of the Council's case, this objection relates to matter such as landscape and biodiversity, rather than an in-principle objection.

- 8.40 Policy HOU5 sets out a positive presumption in favour of the grant of consent for developments such as the Appeal Scheme if the six criteria are met. In terms of criteria (a) to (d), these do not form any part of the Council's case. Whilst I do note that third parties have raised questions on compliance with these, the Council does not object on this basis.
- 8.41 Therefore, the Council's case must accept that the Appeal Scheme's "*scale of development proposed is proportionate to the size of the settlement and the level, type and quality of day to day service provision currently available and commensurate with the ability of those services to absorb the level of development in combination with any planned allocations in this Local Plan and committed development in liaison with service providers*" and that it "*is within easy walking distance of basic day to day services in the nearest settlement, and/or has access to sustainable methods of transport to access a range of services*".
- 8.42 Having regard to the above, it is clear that the Council's alleged case that there would be any harm to the spatial strategy, falls away.
- 8.43 Drawing these points together, I conclude:
1. There is no objection to further windfall permissions in Ashford Borough;
  2. Indeed, the Council is positively seeking to rely on such developments;
  3. There is a positive support for additional windfalls outside settlement confines;
  4. There is specific positive support adjacent to Tenterden; and
  5. There is no objection in terms of the number of homes at Tenterden.
- 8.44 Overall, when coming to this clear conclusion based on the correct reading and interpretation of planning policy, it is clear that the Council's allegation of any breach of Policy SP2 is misguided.
- 8.45 Therefore, it is my view that there is no breach of Policy SP2, and the Appeal Scheme complies with the provisions of both this Policy and Policy SP1 (so far as it relates to the matters addresses above).
- 8.46 Furthermore, I consider that by accepting that the proposal complies with HOU5(a) and HOU5(b), the positive presumption that applies in that Policy supports the grant of consent.

### The Footpath

- 8.47 The Council alleges that the failure to include the non-made / potential Footpath AB70 breaches Policies SP1 and TRA5. My colleagues address the potential effects on landscape and pedestrian safety, if this matter is one that the Inspector considers is relevant to the determination of this Appeal.
- 8.48 The Appellant will set out in legal submissions as to why the Council's position in relation to the footpath is wrong.
- 8.49 However, if the Inspector concludes that the footpath is relevant to the determination of this Appeal, I have to consider whether there would be a breach of planning policy and, if so, whether this should weigh against the grant of consent, and if so, are there any mechanisms such as conditions and / obligations that could rectify this situation so that the Appeal Scheme would be acceptable in planning terms.

- 8.50 In doing so, I start with assessing the approach of the Council in the OR. I then consider the reason for refusal and the relevant conditions. I finally, in relation to this matter, exercise my planning judgement to conclude as to the weight to be afforded to this matter.
- 8.51 In terms of the OR, this is addressed in paragraphs 116 to 120. What appears to the Council's main case is that it wants to see where the potential Footpath AB70 will go both through the full element of the scheme and the outline. In addition, the OR seeks "*an alternative acceptable diverted route can be provided without impediment*".
- 8.52 In relation to the first point made by the Council, and whilst I confine myself to planning matters only, I am reminded that it is a criminal offence to obstruct a footpath and that the highway authority can demand that the obstruction is removed and can remove it themselves and recover the cost. It is clear that the Appellant would not deliver this scheme in a way that would cause a criminal offence and the proposal does not lead to any obstruction to the footpath should it be confirmed on its current proposed alignment.
- 8.53 In terms of the effects of the footpath on the full element of the scheme, there is no allegation from the Council that the footpath would be obstructed and indeed, as the OR sets out, it is likely to go through the southern car park to the football pitches and through the country park. Therefore, the footpath can be accommodated on its potential alignment. If a diversion is preferred, this would be subject to a separate application and discussion with KCC which the Appellant would be more than willing to do following the grant of consent and the conformation of the footpath (if this happens). The mechanism already exists within planning law to reflect this change, should it occur.
- 8.54 In terms of the outline element of the scheme, as is plainly clear, that the matters set out in OR are plainly unevicenced. The OR appears to suggest that the confirmation of the footpath would "*clearly be likely to have a major impact on the scheme with a knock-on impact on layout, the quantum of development, typology mix [sic] and the ability provide [sic] a high quality design*".
- 8.55 As set out in the DAS, the LVIA and the evidence of my colleagues, the proposed scheme is of very high-quality reflecting and enhancing the character of the area. Whilst the indicative masterplan does not reflect the potential footpath, there is sufficient flexibility to accommodate the footpath and deliver on the Appellant's aspirations for the Site. Of course, all the matters highlighted above as being concerns to the Council would be subject of the reserved matters application and are not matters for determination at this Appeal.
- 8.56 The Appellant, on 20 December 2021, wrote to KCC regarding this matter providing two, without prejudice plans. The email and plans can be found at **Appendix G**. The first provided a plan showing how footpath AB70 could be accommodated on its proposed alignment through the area where only outline consent is sought. The second shows a potential diversion of the footpath. No response from the witness was received. On 6 January 2022, Judith Ashton sought to gain a response from the relevant witness (Kate Beswick). Notwithstanding being the witness engaged to address the matter of the right of way, Ms Beswick's response was "*I was advised by ABC before Christmas that they will be responding to your email. No doubt you will do so*".

- 8.57 The Appellant has, in good faith and without prejudice, sought to narrow down matter and address these with the designated witness, Ms Beswick. To date no response has been received from Ms Beswick, although a response has been received from Ashford Council.
- 8.58 The OR seeks to request a diverted route now. This of course is a wholly unreasonable request. Not only is there no footpath to divert, but if there is to be such a diversion, that would be subject to a further process which is beyond the scope of this Appeal. Nevertheless, and without prejudice, we have provided a plan showing a potential diversion route.
- 8.59 In my planning judgement, the potential confirmation of Footpath AB70 can be addressed either through the imposition of conditions and / or processes under separate legislation (if there is a preference to divert the route once planning permission is granted). I cannot see any planning impediment to the grant of consent.
- 8.60 The Council's SoC further supports my view that there is no impediment to granting consent on the basis of an unmade footpath. The condition suggested by the Appellant is a reasonable response to a matter which will not be determined until after the determination of this Appeal. As noted in the Council's SoC, it is KCC's usual practice to request that the routes are shown. However, in this case, there is no route to be shown as the footpath has not been confirmed. Requesting the Appellant to show a non-existent footpath cannot be supported. As the condition suggested by the Appellant would overcome any objection, this insistence by KCC and the Council is manifestly unreasonable.
- 8.61 The Council, in its reasons for refusal relies on Policies SP1 and TRA5. The Council has not set out which elements of Policy SP1 it considered are breached by the Appeal Scheme but having reviewed the Policy I cannot see any element of the Policy that is relevant to the Council's case. The proposals will provide enhanced footpaths throughout the development and would be a significant increase over the very limited access to the Site that is currently enjoyed by the local residents. In terms of the outline element of the scheme, this can easily accommodate any footpath alignment or diversion to meet KCC's requirements. If the footpath is confirmed on its current proposed route, then the scheme could either accommodate the footpath on its definitive route or any other route that KCC consider more beneficial. There is no breach of Policy SP1 in relation to this element.
- 8.62 As to Policy TRA5, Mr Marshall addresses the matter of safety (which does not appear in the Council's SoC). However, there can be no doubt that the proposals will enhance the wider public rights of way and offer greater connectivity. What we have to recall is the condition currently on the ground. We have Footpath AB12 that goes from Appledore Road (and does not connect to any other public footpath) to Woodchurch Road and then down Knockwood Road where it terminates. At the junction with Summer Close it meets AB13 which provides a path through Knock Wood and then to the wider countryside.
- 8.63 As to the potential footpath AB70, this goes from nowhere to nowhere in a circular fashion. The only legal way of accessing that potential footpath is from AB12. Therefore, to my mind, these two footpaths are not high-quality footpaths on par with long distance footpaths such as the High Weald Landscape Trail, which now runs straight through the development of Church View (TENT1A) and also through the land designated for development as TENT1B. They are not also as important as footpath AB36 which is now affected by the development of Appledore Green (the Tilden Gill Appeal).

8.64 As such, it is my view that the Appellant’s plan will not only enhance the footpaths but also provide greater accessibility to them. Mr Smith addresses the view from the footpath and concludes that this would not be dissimilar to other proposals elsewhere and not out of character with other footpaths. Clearly there would be change, but this would not affect the ability to use the footpaths, and with the overall enhancements, the experience would not be materially diminished.

8.65 Therefore, in accordance with the view of my colleagues, I conclude that policies SP1 and TRA5 are not breached.

**Assessment against Neighbourhood Plan**

8.66 As I have noted above, it is my view that the draft TNP should be afforded little if no weight in the decision-taking process. In coming to that view, I am supported by the very recent decision of Inspector Mrs J A Vyse in the Standon Lane<sup>9</sup> decisions. In that case, she noted (paragraph 6) that “*Whilst the parishes of Stanton under Bardon and Bagworth and Thornton are working together to prepare a Neighbourhood Plan, preparation is still at an early stage. A Regulation 14 (pre-submission) consultation took place in Spring this year, with the Council’s subsequent response raising a range of comments and queries, including the need for further changes and modifications to secure required conformity. Its early stage means that the emerging Neighbourhood Plan policies can be afforded little, if any, meaningful weight in my determination of this appeal*”.

8.67 In the case of this Appeal, we have not even arrived at the stage that was alluded to in Inspector Vyse’s decision, as we are yet to see any responses to the Regulation 14 consultation. Therefore, it is plainly clear that the draft TNP should not be afforded any weight in the decision-taking process.

8.68 As such, I do not propose to assess the Appeal Scheme against such policies.

**Third Party Representations**

8.69 11 separate representations were submitted to the Planning Inspectorate. Some of these consisted of numerous separate matters.

8.70 In this Section, I address those that are relevant to planning matters. My colleagues address all others.

8.71 In the table below, I have provided a summary of the key issues and have not addressed every matter.

<b>Respondent</b>	<b>Matters raised</b>	<b>My response</b>	<b>Conclusions</b>
<b>Mr Alan Brooks</b>	Loss of open space to enjoy; used as pasture land; impact on traffic, parking and facilities	Greenfield land will inevitably be needed to meet housing need, including in Tenterden. The site is grazed, but there is no objection from the Council to this loss. No KCC objection in terms of effects on traffic	Comments noted, but none that introduce any matter that has not been addressed by the Appellant / accepted by the Council or KCC

<sup>9</sup> Appendix D

		and parking. S106 will mitigate effects on facilities	
<b>Mr Keith Hammond</b>	Impact on Ivy Court Surgery; drainage; traffic calming; traffic access and egress	In terms of the effects on the GP surgery, NHS has requested a S106 contribution of £125k to address the effects of the development on GP provision. In terms of drainage this is addressed by Mr Maynard and Mr Marshall addresses highway matters	Comments noted, however, none of the matter raised have led to sustained objections by any statutory consultees
<b>Mr Richard Mansfield (Tenterden Nature Recovery Partnership)</b>	Raises matters relating to landscape, arboriculture and biodiversity	These are addressed by the relevant Appellant's witnesses	
<b>Mrs Joanne Phillips</b>	Tenterden has been significantly altered; disused sites should be used; limited people cycle; touch too far to walk into town	Whilst historically there has been limited development in Tenterden, it is accepted that recently more development has been taking place / supported. The appeal scheme would accord with this overall trend. Brownfield land should be preferred, but in Ashford Borough there is a need to meet needs on greenfield land. Better cycling provision will lead to more people cycling, thus reducing reliance on private car	The comments are noted. The main thrust of these is also acknowledged, however, given the severe housing need and challenges in terms of both market and affordable housing, there is a need for sustainable greenfield sites, such as the appeal site
<b>Mr Albert Poole</b>	Numerous comments including heritage, trees, construction noise, increase in number of	The specific technical matters have been addressed by the relevant experts. In terms of	The comments are noted and all technical matters are addressed. In terms of privacy matters, this is

	homes, no engagement / privacy	matters such as privacy, the Council is satisfied that the development would be sufficient distance away to ensure that there is no significant harm. Matters such as construction noise would be addressed through a construction management plan	a matter that the Council is satisfied on. If permission is granted, then this could be subject of further consultation as part of the reserved matters.
<b>Mrs Samantha Reed</b> <b>Limes Land Protection Group</b>	Substantial harm; discrepancies; impact on ancient and veteran trees; release of carbon; increase in flood risk; impact on historic landscape; majority of development should take place in Ashford	In my evidence I address the matter of distribution of housing and conclude that the majority of new housing will be provided at Ashford in accordance with the adopted strategy. In terms of the carbon release, the scheme would provide EV chargers, high quality broadband and other sustainability measures to be secured via condition. The Energy and Sustainability Statement ( <b>CD 1.19</b> ) confirms that the Appellant will go beyond the minimum policy requirements	The comments are noted, however, the allegation of discrepancies and incorrect information is refuted. Overall, the development would be sustainable and would assist meeting housing need in a sustainable manner
<b>Richard Harvey</b>	Road safety; housing need; schools and medical services	In terms of road safety and effects on infrastructure, Ashford Borough and KCC are content that the Appeal would be acceptable. In terms of housing numbers, I accept that Tenterden is a location	I note the comments made, however, as I have commented, it is my view that housing development in Tenterden is and should be supported.

		<p>where additional housing is being proposed and delivered. I do not accept the proposition that this has meant that Tenterden has met its needs over the medium to long term as it does need to assist in meeting wider housing needs</p>	
<p><b>Shrubcote and Tilden Gill Residents Group</b></p>	<p>Transport issues; impact on biodiversity; impact on Tenterden as a community; no need for greenfield; develop in Ashford on brownfield land</p>	<p>In terms of greenfield vs brownfield, I note that Ashford’s overall strategy is reliant on greenfield land. As such, the Appeal complies with this general approach in Ashford generally and particularly in Tenterden. In terms of brownfield, I note that brownfield land in Ashford cannot currently come forward for development and I refer to the very recent appeal decision at <u>Land off Norman Road and Romney Marsh Road, Ashford</u><sup>10</sup> where permission for 234 windfall housing units was refused.</p>	<p>I note the comments made particularly in terms of the effect on Tenterden and its community. However, there is a need for additional housing, and in particular affordable housing across Ashford. To my mind, this development would further enhance Tenterden as a suitable and sustainable place to live.</p>
<p><b>Tenterden Town Council</b></p>	<p>Non-adherence to Ministerial Statement; Non-compliance with HOU5; direction of travel</p>	<p>I have addressed my view on HOU5 above. In terms of the 16 December 2020 Ministerial Statement and other ministerial statements referred to, it is clear that these do not change Government</p>	<p>I note the comments, however, disagree that there is any breach of planning policy / legislation or any other statements</p>

<sup>10</sup> APP/E2205/W/20/3256388 and appended as **Appendix F**

		policy as set out in the NPPF. What they also clearly acknowledge is the need to meet housing need and deliver the homes that people need after years of under-delivery. There is no policy that restricts development to brownfield land and indeed, Ashford’s housing policy is fully reliant on greenfield land to meet needs	
<b>Cllr John Crawford</b>	Various breaches of planning policies	These are addressed by the relevant Appellant’s witnesses	

**Further Information**

- 8.72 ON 22 December 2021, PINS forwarded to the Appellant further information sought to be relied on by objectors to the Appeal Scheme. These included an updated number of windfalls that have been granted consent, now at 114. This is not materially different.
- 8.73 What appears to be the objectors’ case is that Tenterden has met its fair share both in terms of allocations and windfalls. What this data shows is that Tenterden can accommodate more development without any significant harm to its function as a highly sustainable settlement. What is also clear from this data is the very limited provision of affordable housing in Tenterden. Since 2019, according to this data, only two developments could provide affordable housing. In terms of the development of 49 units, this refers to the Oakengates Appeal (CD 6.6). As the Inspector will note from that decision that no affordable housing was provided on-site as part of that development and that contributions were accepted. This is because that scheme is to provide retirement housing only.
- 8.74 As to the other scheme (19/01206) this, in fact, has not been granted planning permission and its decision is still pending over a year from a resolution to grant. Other alleged new developments are resubmission of lapsed permissions, so would have already been considered as part of Tenterden’s housing land supply (such as 21/01391 which replaced 18/01431) whilst others are repeated (such as 21/00269 which appears twice).
- 8.75 The Lichfields Affordable Housing Update (**Appendix E**) sets out the local affordable housing need. Other than reliance on TENT1B, no solution is offered by either ABC or the Town Council to address this serious matter. I note that there has been no progress on TENT1B at all.

- 8.76 Other information provided relates to the Neighbourhood Plan, the Ministerial Statement and disagreement on the overall planning balance. I have addressed these matters elsewhere and do not wish to repeat my views on these here.
- 8.77 Information also provides a brief 'History of the Appeal Site'. Whilst this is very interesting, it has very limited, if any relevance to this appeal determination. In the first case, each application / appeal has to be determined on its own merits and whilst previous conclusions may be material, they are not definitive. In addition, the document itself provides evidence of changes in assessments. The note alleges<sup>11</sup> that in 1996 an appeal was refused on the basis of harm to the setting of the conservation area. However, now, there is no allegation from ABC or the heritage team of any such harm. As to the sustainability of the Site, this again is not a view shared by ABC.
- 8.78 Overall, I conclude that the additional information does not change my view that planning permission should be granted for the Appeal Scheme. Indeed, in terms of the provision of affordable housing, it supports my view.

### Conclusions

- 8.79 In this Section of my Proof, I have assessed whether the Council was right in considering that the Appeal Scheme did not comply with Policies SP1 and SP2 in terms of spatial distribution and also whether there was any breach of Policy SP1 (and TRA5) in relation to the footpath.
- 8.80 I have concluded that it is clear that there is no breach of any of these policies and that the Council's case cannot be supported when considering the relevant policies.
- 8.81 I have also addressed the views of third parties (where relevant to planning matters) and have not found any breach of development plan policies within their representations.
- 8.82 Indeed, it is my opinion that the development plan policies offer support for the grant of consent, most notably HOU5 (but also HOU1 in terms of affordable housing).
- 8.83 In coming to a decision on this Appeal, the Inspector will have to consider the benefits of the grant of consent, and I move to these next.

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<sup>11</sup> No information is provided on this appeal and it does not appear on ABC's portal

## 9. The Benefits

### Introduction

- 9.1 There are, of course, significant benefits to be generated by granting consent for the Appeal Scheme. This is set out in the Appellant's SoC. This is also acknowledged in the OR.
- 9.2 However, before moving onto my assessment of the benefits of the Appeal Scheme, I will first consider the approach taken by Inspectors in recent appeal decisions. In this case, I am referring to two recent appeal decisions granted for the Appellant in which I appeared as a planning witness. Whilst these appeals are not located in Ashford Borough, they reflect similar type of development in similar locations and being proposed by the same Appellant. As such, I consider these to be useful guidelines for the Inspector in terms of the approach undertaken by fellow inspectors.

### Appeal Decisions

- 9.3 Whilst each appeal has to be determined on its own merits, consistency in approach is important for sound decision taking. In two recent appeals, Inspectors have set out their views on the benefit and weight to be afforded to these:

<b>Benefit</b>	<b>Leybourne (CD6.9)</b>	<b>Oakley (CD 6.8)</b>
<b>Delivery of market housing</b>	Very substantial weight	Significant
<b>Delivery of affordable housing</b>	Very substantial weight	Significant
<b>Countryside open space</b>	Moderate	Limited
<b>Ecological enhancement</b>	No weight	Reasonably significant
<b>Construction benefits</b>	Moderate	Significant
<b>Longer-term economic benefits</b>	Moderate	Significant
<b>Early delivery</b>		Limited
<b>Overall benefits of development</b>	Very substantial	Significant

- 9.4 As I have noted, I am not inviting the Inspector to adopt one or other inspectors' views about the benefits as each case must be decided on its own merits. However, I will seek to make the case that the grant of consent for the Appeal Scheme will lead to significant benefits that weigh heavily in favour of the grant of consent.

- 9.5 Inspector Ware in the Norman Road appeal considered that “*The scheme offers benefits in highways, social and economic terms. Some of these, most notably the provision of market and affordable housing in an area with demonstrable housing need, are very significant benefits. Others, for example the widening of the flood plain and storage capacity, are more limited benefits*”.
- 9.6 The approach of the Inspector in that case generally supports my approach to the consideration of benefits.
- 9.7 The Appellant, in the SoC identified 16 benefits that are associated with the Appeal Scheme. I address these below (albeit, I have grouped some into separate categories to avoid duplication and repetition).

### Market Housing

- 9.8 There is no doubt in my mind that the provision of market housing adjacent to the second most sustainable settlement in Ashford Borough and in light of the five-year housing land supply must be afforded significant benefit.
- 9.9 The OR provides no indication as to the approach of the Council in terms of the delivery of such housing either whether the Council is right, or the Appellant is right in terms of the five-year housing land supply.
- 9.10 Paragraph 60 of the NPPF sets out that “*To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed*”.
- 9.11 In terms of local policy, Policy SP2 sets out a housing target to be met over the Plan period. However, this is not a maximum number of homes and exceeding this would not lead to any conflict with the Policy.
- 9.12 The Inspector in the recent appeal decision at Oakley afforded the provision of market housing significant weight even though on the Council’s case, it could demonstrate 4.83 year of housing land supply.
- 9.13 We now know that the Council’s housing land supply position is worsening and that this is likely to continue for some time. Indeed, it is very worrying that consent for only 845 new homes has been granted in 2020/21, well below even the standard requirement, let alone the requirement plus the significant shortfall accumulated since the commencement of the ALP.
- 9.14 I cannot see any reason why the provision of market housing, in this case, should not be afforded **significant weight** in favour of the grant of consent.

### Affordable Housing

- 9.15 The OR approach to the provision of affordable housing is astonishing, incorrect and displays a total lack of understanding of both the Council’s own policy in the Local Plan as well as wider planning policy.
- 9.16 The Appellant is proposing to deliver 72 units out of the 145 (circa 50% if 145 new homes are ultimately delivered) as affordable.
- 9.17 The OR notes the following “*The applicant has stated that the additional provision of affordable housing from 40% to 50% should be given significant weight in the planning balance when determining the application i.e. in favour of granting planning permission. I do not consider this is justified. The Council*

*cannot require this higher level of affordable housing provision in policy terms as part of any section 106 agreement attached to a planning permission”.*

- 9.18 In terms of the Policy itself, **Policy HOU1** sets out the following “*The Council will require the provision of affordable housing on all schemes promoting 10 dwellings or more (and on sites of 0.5 hectares or more), with provision being not less than the area specific requirements set out in the following table”.*
- 9.19 The table indicates that for schemes in Tenterden, the total housing requirement is 40% of all housing proposed.
- 9.20 The preamble to Policy HOU1 provides context for the Policy. It confirms the then NPPF test of local plans having to meet the full, objectively assessed need for market and affordable housing. It then sets out that the Strategic Housing Market Assessment (‘SHMA’) set out that 50% of all new housing in Ashford Borough should be delivered as affordable in order to meet this full need. However, it is noted that such delivery would not be viable.
- 9.21 In terms of Tenterden, paragraph 6.11 sets out “*Rest of Borough includes the villages and rural area covering the wards of: Saxon Shore; Wye; Downs North; Downs West; Charing; Weald North; Weald Central; Biddenden; Rolvenden and Tenterden West; Tenterden South; St Michaels; Tenterden North; Isle of Oxney; the northern area of Boughton Aluph and Eastwel; the western area of Weald East and; the southern area of Weald South. This area has the potential to support higher levels of affordable housing, and it is proposed that development within this area will provide a **minimum**<sup>12</sup> of 40% affordable housing, with 3/4 of this provided as affordable home ownership products, and 1/4 affordable/social rent”.*
- 9.22 As such, a fair reading of the Policy which requires **no less than** and the reasoned justification specifically requiring a **minimum of 40%** demonstrates that provision of more than 40% affordable housing in Tenterden is fully policy compliant and that such provision should be afforded greater weight than just meeting the minimum.
- 9.23 Whilst the OR is correct in that the Council cannot **require** more than 40% of the units to be affordable their assertion that “*There is no mention of additional affordable housing provision being a factor in proving further weight to justify a development and to do so would be to create a precedent”* is plainly wrong. The provision of affordable housing above the bare minimum and in light of the Council’s own evidence that 50% of all new housing should be affordable, must be afforded greater weight.
- 9.24 However, the total misunderstanding of the OR as to the correct policy does not end here. The OR continues to state that approving the Appeal Scheme “*could also impact on wider viability issues of the development on its implementation if granted planning permission”*. This assertion in the OR is without any basis whatsoever. The Appellant has not provided a viability assessment and, indeed, does not need to as it is proposing to deliver all the benefits associated with the Appeal Scheme (of which there are many and addressed by me later) as well as a policy-exceeding 50% of the new homes as affordable. There is simply nothing before the Council that provides any evidence for this false and incorrect assertion.
- 9.25 This is symptomatic of the approach of this Council. A developer wishes to provide policy-exceeding levels of affordable housing, yet this is rejected by the Council. This is scarcely believable that a Council, in

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<sup>12</sup> My highlight

today's day and age, would be refusing additional affordable housing. But this is exactly what ABC proposed to do as set out in the final and damning conclusion to this section "*I do consider this to be a ground of refusal as the Council would simply only enter into a section 106 agreement for a lesser amount of 40% affordable housing as per the policy requirement established in the ALP 2030*".

- 9.26 As I understand the OR, the Council proposed that the provision of a fully compliant provision of 50% affordable housing was a **reason for refusal** and that the Council would not entertain entering into a S106 agreement providing more than 40% affordable housing.
- 9.27 This is a shocking conclusion and one which is wholly contrary to the Council's own Policy and reflects the approach of the Council to delivery of additional housing in a sustainable location.
- 9.28 As to my approach to the delivery of affordable housing, I consider that the delivery of affordable housing, in light of the identified significant need for such housing should, in general terms, be afforded significant weight. This follows the approach of recent inspector decisions where the provision of a minimum policy compliant level of affordable housing has been afforded the highest level of benefit.
- 9.29 However, in this case the policy does not set out a maximum level of affordable housing, and the Appellant has committed to deliver an extra 10% of affordable housing, over and above the minimum requirement. This over-provision is supported by the approach in the Policy.
- 9.30 Whilst the provision of 40% affordable housing should be afforded significant weight, the willingness of the Appellant to provide in excess of this bare minimum must be afforded greater weight in the planning balance.
- 9.31 As such, I consider that the provision of affordable housing should be afforded **more than significant weight**.
- 9.32 In coming to this view, I note the recent data published by the Council in relation to the delivery of affordable housing in the Borough and the simply dire situation that the Council finds itself in. The principal reason for this can be found in the Council's own evidence in terms of deliverability and what type of housing has been delivered in Ashford Borough. As I have stated, windfalls are proving to be a major aspect of delivery, which has a knock-on effect on affordable housing delivery. Windfalls of under 10 units do not require provision of affordable housing, neither do flattened developments in Ashford Town.
- 9.33 The consequences of this are clear. In 2020/21 the Council delivered only 165 affordable homes. Whilst this is better than previous years, in percentage terms, this is a worrying trend. The delivery of 165 affordable homes equates to only around 15% of the total homes delivered. This against the evidence base in the Local Plan that 50% of all new housing should be delivered as affordable.
- 9.34 Furthermore, as Housing Monitoring Report confirms, only 32 affordable homes were granted consent either in full or reserved matters applications in 2020/21. Whilst I accept that some affordable homes would be delivered through outline consents for major developments, these homes will take time to come forward. As such, it is highly likely that the provision of affordable housing will reduce rather than increase.

- 9.35 For a Council which states that “*the provision of affordable housing is a priority of the Council*”<sup>13</sup> to not afford the more than significant weight that I have afforded this benefit would be perverse.
- 9.36 The Planning Application was supported by a Local Housing Needs Statement produced by Lichfields (**CD 1.4**). This has been updated by Lichfields to provide up to date data on the affordable housing crisis in Ashford Borough and is included as my **Appendix E**.
- 9.37 They conclude that the up-to-date data shows:
- The backlog of affordable housing need at the Borough wide level is worse than anticipated in the LAHNA as of 2020/21, owing to the delivery of only 153 affordable homes across Ashford (roughly half of need), in the most recent year;
  - Rental affordability in Tenterden remains worse than across Ashford as a whole, with rents in Tenterden continuing to be higher than the upper quartile equivalent for the Borough as a whole; and
  - Updated Housing Register data shows a significant increasing trend in the number of households living outside Tenterden who want to live in Tenterden. The number of households in Tenterden on the Register also increased slightly between 2019/20 and 2020/21.
- 9.38 Their Update concludes (paragraph 3.14) that “*The appeal scheme would go a significant way to meeting these significant, and worsening, affordable housing needs in the District and Tenterden*”. I agree with this assessment.
- Open Space**
- 9.39 The Appeal Scheme will deliver a significant amount of open space, both in terms of a more formal Country Park but also further incidental open space. The quantum of open space far exceeds the levels required to mitigate the effects of the development and is therefore a wider benefit to the local community.
- 9.40 In terms of open space to be provided on site, this will consist of:
- Country park – 8.66ha;
  - Equipped play space – 0.17ha; and
  - Amenity green space in and around the proposed housing development – 6.93ha
- 9.41 The ABC Culture, Tourism and Leisure response to the planning application (**CD 3.21**) addresses the requirements. Paragraph 1.1 sets out that at 145 dwellings, informal/natural public open space is required at 0.7ha. In terms of the minimum size of informal public open space must be 0.25ha. In terms of play space, this is required at 0.17ha.
- 9.42 Therefore, in terms of the play space and the amenity space within the housing development, this is to mitigate the effects of the development and I do not afford this weight in the overall planning balance.
- 9.43 However, the provision of a new country park must be regarded as a positive element that weighs in favour of the grant of consent. I note that currently there is no public access to this area. However, should

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<sup>13</sup> Housing Monitoring Report Section 4

Footpath AB70 be confirmed, then limited public access would be afforded, however, this access would be on the footpath itself and would not allow any diversion from it into the wider countryside. The provision of the country park with its numerous walks and natural areas would have a wider benefit.

- 9.44 I do note that Tenterden does have numerous public open spaces in its vicinity, however, none of these are extensive in nature to what is proposed. I am also, in a way, encouraged by the local residents who want Footpath AB70 confirmed. Whilst the legalities of this are for another place, it is clear that the residents wish to walk and exercise in this area. The country park will provide an improvement over and above even if Footpath AB70 is confirmed.
- 9.45 Policy COM2 of the ALP states “*In the rural area, provision should normally be delivered in a way that helps maintain, enhance and potentially expand existing facilities at the settlement where the development is proposed,*”. The proposal will enhance and expand the facilities at Tenterden and is supported by local planning policy.
- 9.46 Given the nature of the proposal, the size of the area proposed, and the policy support it is my view that the provision of the country park should be afforded **significant weight** in favour of the grant of consent.

### Sports Pitches

- 9.47 My colleague, Mr Grady, has addressed both the management and need for the playing pitches and I defer to him in terms of the evidence that he has provided.
- 9.48 The OR’s approach to the delivery of the sports pitches does not allocate any benefit to the provision of the sport pitches. Instead, it suggests that the proposals are contrary to Policy IMP4 of the ALP.
- 9.49 IMP4 relates to the management of facilities, rather than the need for them. I accept that if there is no need for such facilities, then the weight that can be afforded to these benefits would be very limited indeed.
- 9.50 However, as Mr Grady sets out in his evidence, there is evidenced need for the facilities and the Appellant has responded positively to this need. As such, there is documented need for the facilities and the provision of these would be a wider public benefit that can be afforded positive weight in the planning balance. Indeed, the TNP notes that “*there is a shortage of sports pitches serving the town*” (page 13). This is also manifested in the TNP in draft Policy TEN NP15.
- 9.51 As to the management of these facilities, this appears to be the main objection of the Council. However, the Appellant is confident that it has set out a robust and deliverable regime that would manage these playing pitches to the wider public benefit.
- 9.52 The Appellant acknowledges that the wider community is not willing to engage with the Appellant in relation to these aspects, however, this appears to be due to opposition to the housing element of the scheme rather than any opposition to the provision of the sports pitches themselves.
- 9.53 The Appellant believes that once consent is granted for this scheme, that the provision of the playing pitches and their future management will be addressed in a positive and constructive manner so that the identified need is met.
- 9.54 As such, it is my view that any criticism against the Appellant in this matter is not justified.

- 9.55 Overall, I conclude that the sports pitches will be delivered to meet identified wider needs and that their future management is fully secured. I note that this element of the scheme is provided in full (rather than outline), and that early delivery of these pitches is secured as part of the suggested conditions.
- 9.56 Therefore, having regard to the above, I consider that the delivery of these should be afforded **significant weight** in favour of the grant of consent.

#### Avoidance of wider effects

- 9.57 The delivery of the Appeal Scheme would not involve any development in the AONB, nor would it have any impact on the Stodmarsh SPA/SAC/SSSI. As such, it would not interfere with European designated sites, something which developments in the Ashford area cannot be considered to abide by.
- 9.58 The Council notes that bespoke solutions are being considered for some of these developments, however, currently there is no solution to address this situation which has been approved by Natural England. As such, there continues to be significant uncertainty about the effects of developments on Stodmarsh, something which the Appeal Proposal avoids.
- 9.59 The Appeal Scheme also avoids effects on the AONB. I note that in terms of Tenterden, the ALP sets out the main reasons why no further strategic housing development was allocated for Tenterden. The ALP sets out (paragraph 2.50) that *“Development at Tenterden is constrained by the High Weald AONB which surrounds it on three sides, and a high quality, well-preserved Conservation Area in its heart that gives Tenterden its distinctive character”*.
- 9.60 In addition, paragraph 2.51 states that *“The high quality of Tenterden’s landscape setting and its intrinsic historic character are factors that suggest that new development in the town should be limited, phased and very carefully planned”*.
- 9.61 In this case, the Appeal Scheme is not located in the AONB and neither is there any allegation of harm to the AONB and / or its setting (Policy ENV3b is not referred to or relied on by the Council as a reason for refusal). Neither is there any allegation of any harm to heritage assets by the Council.
- 9.62 The Scheme also avoids any harm to designated heritage assets, notably in this case, the Tenterden Conservation Area.
- 9.63 Therefore, the reasons why Tenterden did not accommodate any further significant development do not apply to the Appeal Scheme and therefore its development is positive in the way that it avoid these harmful effects.
- 9.64 Given the challenges in Ashford of delivering new homes, I consider that the avoidance of harm to the AONB, Stodmarsh or to Tenterden Conservation Area or any designated heritage assets should be afforded **moderate weight** in favour of the grant of consent.

#### Landscape enhancements

- 9.65 The Appeal proposals will provide various elements of landscaping, not all of which should be considered as wider benefits. A significant amount of landscaping is provided in the western part of the Site in order to mitigate the wider effects of the development and / or provide good quality design principles that

would enhance the future residential development. For the avoidance of doubt, I do not consider that these are wider public benefits.

- 9.66 I therefore concentrate on elements of the proposal that would offer a wider landscape benefit.
- 9.67 In terms of the benefits, these can be identified on the Country Park Landscape Masterplan and in the Landscape and Visual Appraisal. This confirms that, in landscape terms, *“The Open Woodchurch Undulating Farmlands, to the east of the footpath, would experience moderate / minor and positive effects, due to the creation of extensive new habitats and the provision of a new areas [sic] of informal recreation”* (page 30).
- 9.68 Therefore, there would be landscape benefits from the proposal that weigh in favour of the grant of consent. I note that the Landscape and Visual Appraisal also sets out that there would be landscape and visual harm, principally on the western side of the Site, however, this is inevitably with any greenfield development.
- 9.69 However, not every greenfield development provides landscape enhancements and improvements, something that this proposal does.
- 9.70 Given the conclusion above, it is my view that the landscape enhancement should be afforded **limited weight** in the overall planning balance.

#### Ecological enhancements

- 9.71 The Council allege that the development would not preserve or enhance biodiversity and that this would be contrary to Policies HOU5 and ENV1 of the Local Plan. My colleague, Mr Goodwin addresses this reason for refusal.
- 9.72 He concludes that not only is the reason for refusal not supported by the evidence provided by the Appellant, but that the Appeal Scheme would provide ecological enhancements, both in a qualitative and quantitative approach.
- 9.73 His conclusions are that the development would lead to Biodiversity Net Gain (‘BNG’) across the Site. His view is that this would be in excess of the 10% set out in the Environment Act 2021 (which is not yet in force). The ALP, Policy SP1 sets out that development should provide a net gain in terms of biodiversity, however, does not specify any minimum requirement. Policy ENV1, which addresses biodiversity, also does not set out a minimum requirement. Mr Goodwin, in his evidence sets out the levels of BNG and confirms that this is for habitats it’s a +14.98%, for hedgerows it’s +52.26% and for ditches it’s +44.72%.
- 9.74 A such, currently, in order to comply with legal and policy requirement, there is only a need to deliver a limited gain. The Development will provide significantly in excess of this.
- 9.75 This should be regarded as a wider public benefit that weighs in favour of the grant of consent. However, the level of net gain is not so significant that I afford it significant weight. My view is that overall gain would be of **moderate** weight.
- 9.76 Mr Goodwin also highlights other ecological benefits that would arise from the grant of consent. Overall, his conclusion is that ecological terms, the benefits would be significant. However, I have applied my

judgement to these benefits and conclude that in the wider planning balance, moderate weight should be afforded to the wider suite of ecological enhancements.

### Highway, Transport and Access enhancements

- 9.77 Most of the proposed works and contributions associated with the Appeal Scheme are there to mitigate the effects of the development and therefore are not wider public benefits that weigh in favour of the grant of consent.
- 9.78 The position at this inquiry (and indeed, in relation to both planning applications) is that the highway authority, Kent County Council does not object to the proposals on highway safety terms and considers that the proposals would be acceptable in highway terms.
- 9.79 The proposal will lead to improved access to the Site for pedestrians and cycle users, however, these will mostly relate to the proposed users of the Site. However, the proposal will include a new access and crossing of Woodchurch Road at a safer location than exists now, and this would have a wider public benefit. I consider that these improvements should be afforded **limited** weight in the planning balance.
- 9.80 The proposal includes measures to reduce speed on Appledore Road and whilst this would have some benefit, in my view this would be **limited**.
- 9.81 Of a wider benefit is the provision of two new / improved bus stops on Woodchurch Road, which would benefit the wider public using these facilities.
- 9.82 Overall, I consider that the majority of the works associated with the transportation would be mitigation. However, the provision of two new / improved bus stops, the speed reduction along Appledore Road and the safer crossing route of Woodchurch Road are wider public benefit to which I afford **limited weight**.

### Drainage

- 9.83 A further benefit of the scheme is the reduction in surface water that would be leaving the Site at various times and thus improving water conditions downstream.
- 9.84 KCC, in its response dated 23 July 2021 confirmed that *“The construction of a positive drainage system will result in a reduction of surface water peak flows to the outlets in Appledore Road. In controlling surface water flows from impermeable surfaces to 4 l/s/ha there will be a reduction in final outflows; therefore, the final outcome is expected to provide a significant benefit to surface water flows downstream”*
- 9.85 The formal drainage strategy will be subject to condition and this therefore would be secured as a wider public benefit.
- 9.86 Given the view of the statutory consultee, **significant weight** should be afforded to this benefit.
- 9.87 In addition, as Mr Maynard confirms that off-site works along Appledore Road would lead to further enhancements and the reduction of flood risk along Appledore Road. This further enhancement confirms my overall position of significant weight to be afforded to these benefits.

### Economic Benefits

- 9.88 Paragraph 81 of the NPPF states that “*Significant weight should be placed on the need to support economic growth and productivity*”. In terms of economic benefits, these are separated into two: short term construction benefits; and longer-term local spend and jobs.
- 9.89 In terms of benefits during construction, the Tenterden Growth and Community Services Assessment (**CD 1.6**) prepared by Lichfields provides a robust assessment of the significant benefits that would occur locally. This is also replicated in the Appellant’s SoC (Table 7). Without wishing to repeat data found elsewhere, the headlines are impressive. Over the build period, the proposal will support 103 Full Time Equivalent (‘FTE’) direct construction jobs and 156 FTE indirect jobs. Overall, the construction jobs would equate to an additional £17.8m Gross Value Added (‘GVA’). This is a significant input into the economy, particularly at a time when the economy has suffered due to the covid pandemic.
- 9.90 Whilst these figures are impressive, I do note that that they are limited to the build period, which, in this case is likely to be three to four years. Nevertheless, given the levels of employment and investment associated with the grant of consent, this must be a **significant benefit** in favour of the grant of consent.
- 9.91 However, the economic benefits do not end there, and further benefits would be associated with the operation of the development once it has been completed. Again, based on the Lichfields Assessment, the development could support the creation of 23 FTE jobs and local spend of approximately £2m per annum. I note that some of the objectors have queried these figures, however, they are based on robust information that is underpinned by data from the ONS and other nationally recognised data sets.
- 9.92 In terms of the local spend, this would assist in maintaining and enhancing Tenterden’s vitality and viability. In considering this, I note that the Inspector’s Report into the ALP noted the following: “*House prices are more expensive than the Borough average and also increasing more quickly in value. However, there is no evidence that the vitality and viability of shops and services have suffered as a result and the town appears to be thriving*” (paragraph 35).
- 9.93 Whilst Tenterden has fared well, it is clear the there is some impact on the vitality and viability of the centre. On my site visit on 9 December 2021, I noted 10 vacant shop units, including some larger units within the core of the centre. This does demonstrate some weakness of the centre. In coming to my conclusion that the centre is perhaps not performing as well as it did in 2018 when the Local Plan Inspector considered the centre, I am supported by the view of the Limes Land Protection Group who note that “*Over 200 houses have been built at Tent 1a, yet shops have still continued to close in the town*”.
- 9.94 Whilst objectors consider that the Site is not withing easy walking distance of the town centre, this is not supported by either Ashford Borough or KCC. The Transport Assessment sets out the distances from the Site to various facilities, demonstrating the sustainable nature of the Site.
- 9.95 As such, it is my view that the long -term benefits associated with granting consent would be significant and tangible. Overall, in accordance with the NPPF, I accord the economic benefits **significant weight** in favour of the grant of consent.

### Conclusions

- 9.96 Significant benefits would arise from the grant of consent for the Development. These were not acknowledged in the OR. Indeed, the Council in its SoC only refers to benefits once when it states, “*In relation to 5YRHLS, the Council will argue that the benefits of permitting the scheme would not outweigh the*

*harm*". Firstly, as I address below, the Council's case is totally wrong. Paragraph 11d of the NPPF requires the harm to significantly and demonstrably outweigh the benefits, not the other way around. This proves that the Council's approach to this determination is wholly incorrect and contrary to the NPPF.

9.97 Secondly, in order to come to a view as to whether the harm significantly and demonstrably outweighs the benefits, you must come to a view as to what the benefits are and what weight should be afforded to them. This is something that the Council simply disregarded. As such, it is hard to see how this amounts to a reasonable judgement by the Council.

9.98 I have considered all the benefits that would arise from the grant of consent. Overall, it is my view that the overall cumulative weight to be afforded to the benefits is **significant**. In coming to this view, I am supported by the three recent inspector decisions in Leybourne, Oakley and Norman Road.

9.99 As to the individual benefits, for ease of reference, I set out below the benefits in tabular form.

<b>Benefit</b>	<b>Weight</b>
<b>Market Housing</b>	Significant
<b>Affordable housing</b>	More than significant
<b>Open space</b>	Significant
<b>Sport pitches</b>	Significant
<b>Avoidance of other effects</b>	Moderate
<b>Landscape enhancements</b>	Limited
<b>Ecological enhancements</b>	Moderate
<b>Highway, transport and access enhancements</b>	Limited
<b>Drainage enhancements</b>	Significant
<b>Economic benefits</b>	Significant

9.100 Overall, there are numerous and significant benefits that would arise should consent be granted. Against this, on the Appellant's case, some harms can be identified.

9.101 The requirement in planning law is to consider whether the development accords with the provisions of the development plan and also to consider material considerations and I move onto this assessment next.

## 10. The Planning Balance

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### Introduction

- 10.1 In this Section, I will set out my view as to whether the planning balance weighs in favour or against the grant of consent. In coming to this view, I rely on the evidence provided by my colleagues and I adopt their conclusions.
- 10.2 Section 38(6) requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. Non-compliance with some development plan policies does not mean that a scheme cannot be in accordance with the development plan as whole.
- 10.3 It is agreed between the parties that the ‘tilted balance’ applies to the determination of this Appeal, in that significant and demonstrable harm must be identified.
- 10.4 It is the Appellant’s case that the Appeal Scheme complies with the provisions of the development plan when considered as a whole. As such, permission should be granted without delay. Only in the case where the Inspector does not agree with the evidence of my colleagues, then the presumption in favour bites.
- 10.5 In such a case, the Inspector will need to consider the balance of the significant benefits against any harm, and that such harm **significant and demonstrably** outweighs these benefits.

### Principle of Development

- 10.6 The Council’s approach to the principle of development is confusing and unarguable.
- 10.7 It is my view that the principle of development is firmly established and fully accords with the provisions of the development plan.
- 10.8 In the first place, the ALP specifically allows developments such as the Appeal Scheme. Sites adjacent to the most sustainable settlements form an integral element of the housing delivery in Ashford Borough over the Plan period. This is not a Local Plan that restricts any development outside settlements boundaries, but positively encourages such developments to come forward in order for the Council to be able to demonstrate housing delivery over the Plan period.
- 10.9 As such, it cannot be reasonably argued that there is an in-principle objection to the Appeal Scheme.
- 10.10 The argument of the Council further is undermined by the lack of a five-year housing land supply. Whilst this also engages the presumption in favour of the grant of consent, it requires that the Council sets aside the most important policies and those that are restricting development to the detriment of such supply.
- 10.11 The Council’s approach does nothing of the kind. Indeed, the OR carries out no such assessment and seeks to disregard this avenue. The OR assessment in *(a) The application proposals in relation to the Borough’s 5 year housing land supply*<sup>14</sup> does not carry out the correct balance and double counts other factors that weigh (in the Council’s view) against the Appeal Scheme. The assertion in the OR (para 47 – page 149) that “*In my view, the proposed development would result in a number of unacceptable adverse*

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<sup>14</sup> Page 147

*impacts. These are outlined in more detail in the report below. The modest deficit in housing land supply is insufficient to outweigh these adverse impacts and therefore to outweigh the harm caused by the development”* totally flies in the face of Government national policy which requires both the Council to boost the supply of housing and to maintain a five-year housing land supply. It also flies in the face of the application of paragraph 11d of the NPPF in that the presumption in favour of the grant of consent should be the starting point (see NPPF para 11 – “granting consent unless”). It is this failure of the OR to correctly apply the NPPF test that undermines the entirety of the Council’s approach to the determination.

- 10.12 Had the Council applied the correct approach to the determination as required by the NPPF, then the interaction between the Application and the five-year housing land supply (and its own approach in requiring windfall sites to deliver the overall housing requirement) would have led it to the inevitable conclusion that there is no in-principle objection to the grant of consent for the Appeal Scheme.
- 10.13 As noted elsewhere, and based on my colleagues’ evidence, the overall conclusion is that the Appeal Scheme does comply with the provisions of the development plan when considered as a whole. As such, there is no question in my mind as to the acceptability of the principle of development.
- 10.14 However, if the Inspector does not agree with me and the evidence of my colleagues, then the tilted balance applies to the determination of the Appeal.

#### Harm

- 10.15 The Appellant accepts that there will be some harm and that this needs to be balanced against the benefits. The harms that I have identified relate to landscape harm and loss of trees.
- 10.16 In terms of the loss of trees, the Appellant accepts that the access onto Appledore Road will lead to the loss of five trees, including a Horse Chestnut (tree 43). The other trees are Hornbeams (40,41,42 and 45)
- 10.17 The Appellant has accepted this position and has agreed mitigation payment based on the Capital Asset Valuation of Amenity Trees (‘CAVAT’) criteria. The Council’s allegation appears to be that this mitigation cannot be accepted as “*this would have almost no effect for many years*”.
- 10.18 As the evidence of Mr Jones sets out, that is not the case, as the mitigation payments can be used to satisfactorily mitigate the effects of the loss of the tree.
- 10.19 The Council refers to Policies SP1, SP6 and ENV3a in relation to this harm. None of these policies specifically refer to the loss of trees and any policy presumption against such loss.
- 10.20 In terms of the NPPF, paragraph 131 does set out that planning decisions should “*ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible*”.
- 10.21 The Appeal Scheme proposes to retain all existing trees where possible, but it is accepted that in order to secure a safe access the trees outlined above will be removed. The Appeal Scheme will meet all requirements of the NPPF policy in this regard.
- 10.22 Therefore, having regard to the above, whilst there would be some tree loss, this will be mitigated to a satisfactory level and there would be no specific breach of planning policy. Indeed, as Mr Smith and Mr

Jones set out in their evidence, in the medium to long term, the proposal could lead to enhancements. Given this position, I consider that the loss of T43 is **neutral** in the overall planning balance.

- 10.23 As Mr Jones also sets out, other trees would be lost across the Site however the number of new trees would exceed those lost. Overall, I do not consider this to be a harmful effect and consider this to be **neutral** in the overall planning balance.
- 10.24 As to landscape harm, the Appellant accepts that the harm to the western side of the Site would be major to moderate and permanent. However, this would occur with every greenfield development and given that planning policy acknowledges that such sites would be required to meet the housing requirement, this, in itself, does not weigh heavily against the grant of consent.
- 10.25 As to the wider effects, the LVA confirms that these would be minor.
- 10.26 Overall, I conclude that the landscape and visual effects of the development should be afforded **limited** weight against the grant of consent.
- 10.27 As Mr Smith sets out in his evidence, his view is that the Appeal Scheme would comply with Policies SP1, SP6, HOU5 and ENV3a. I agree with his conclusions. As such, there is no breach of planning policy in relation to the effects of landscape.

#### Compliance with the Development Plan

- 10.28 On the Appellant's case, the Appeal Scheme complies with the provisions of the development plan when considered as a whole. This would be subject to appropriate conditions and obligations that would address matters such as the footpath, sports facilities, tree mitigation etc.
- 10.29 S38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) sets out that decisions should be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. If the Inspector agrees with the Appellant that the Appeal Scheme accords with the provisions of the development plan, then permission should be granted unless material consideration indicate otherwise. In this case, it is my view that there are no material considerations that indicate that a decision should not be made in accordance with the provisions of the development plan.
- 10.30 However, if the Inspector disagrees with the Appellant and considers that there is a breach of the development plan (when considered as a whole) then it is my view that paragraph 11d of the NPPF is a significant material consideration that may (this is a matter of judgement for the Inspector) overcome any objection.

#### The Tilted Balance

- 10.31 The so-called tilted balance will only come into play should the Inspector not agree with the Appellant's case of compliance with the development plan.
- 10.32 In this case, it is not disputed by the parties that the Council cannot demonstrate a five-year housing land supply, thus engaging the tilted balance. Footnote 7 can disapply the application of the tilted balance however, the Appellant considers that none of these applies to this determination. It would appear that the Council considers that the presumption may be disappplied due to the effects on veteran trees,

however, this is unclear in either the OR or the Councils SoC. It is my view that the tilted balance applies to the determination.

10.33 The application of the tilted balance requires the balancing of the harms against the benefits, with the harms significantly and demonstrably outweighing the benefits. Clearly, the greater the weight to be afforded to the benefits, the greater the harms need to be.

10.34 For ease of reference, I have set out below my view on harms and benefits:

<b>Matter</b>	<b>Benefit / harm</b>	<b>Weight</b>
<b>Market Housing</b>	Benefit	Significant
<b>Affordable housing</b>	Benefit	More than significant
<b>Open space</b>	Benefit	Significant
<b>Sport pitches</b>	Benefit	Significant
<b>Avoidance of other effects</b>	Benefit	Moderate
<b>Landscape enhancements</b>	Benefit	Limited
<b>Ecological enhancements</b>	Benefit	Moderate
<b>Highway, transport and access enhancements</b>	Benefit	Limited
<b>Drainage enhancements</b>	Benefit	Significant
<b>Economic benefits</b>	Benefit	Significant
<b>Landscape</b>	Harm	Limited
<b>Loss of trees</b>	Benefit / Harm	Neutral

10.35 Having regard to the above, I am of the firm view that should the Inspector conclude that the Appeal does not comply with the provisions of the development plan and that the tilted balance applies, the balance weighs heavily in favour of the grant of consent. As such, material considerations would indicate that, in this case, permission should be granted.

**Conclusions**

10.36 As such, I respectfully request that the Appeal be allowed subject to appropriate conditions and obligations.

Wates 