

Application 21/00790/AS

Outline application for up to 145 dwellings

Full application for Country Park 8.66ha, sports pitches 3.33ha, pavilion, access points

Appledore Road, Tenterden

**Proof of Evidence of
Len Mayatt**

Town and Country Planning Act – Section 78

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

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

APPEAL BY WATES DEVELOPMENTS LIMITED

Land between Woodchurch Road and Appledore Road, Tenterden, Kent,

TN30 7AY

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Introduction and Background

1. Introduction

- 1.1 My name is Len Mayatt and I am the Cultural Projects Manager at Ashford Borough Council.
- 1.2 I have thirty nine years' experience in local government, gained in working for three different councils in Kent. This experience has encompassed managing parks, open spaces, sports facilities (both indoors and outdoors), leisure centres, community services, commissioning and procurement of services, tourism/heritage/arts development and direct management of council owned facilities.
- 1.3 I am familiar with the site due to having worked for Ashford Borough Council since January 2016 and having visited the site to familiarise myself with its geography and location relative to the main town of Tenterden in light of the application under consideration.
- 1.5 The department I work for at Ashford Borough Council is responsible for the commissioning and delivery of the council's most recent Playing Pitch Strategy 2017 to 2030. I have also occasionally attended the Tenterden Town Council Sports Facilities Working Group, so have an understanding of the sporting needs for the Tenterden area. In my personal life I am a Trustee of a community arts group in Folkestone and a sports centre that is also located outside of the Ashford Borough. Having represented both of these bodies for six and twelve years respectively I have a sound understanding of the workings of community groups and Trusts.
- 1.4 I confirm that the evidence set out in this proof is true to the best of my knowledge. The opinions expressed are my own and are formed from professional judgement based on my knowledge and good practice.
- 1.5 Ashford Borough Council's Decision notice sets out Reason for Refusal 6 as follows:

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

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

2. Relevant Background

2.1 In September 2020, a previous hybrid application was submitted by the Appellant on the site, outline application for up to 250 homes, and 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), was refused and the Reason for Refusal 7 in that application was very similar to the above Reason for Refusal:

Policy IMP4 of the adopted Ashford Local Plan 2030 requires proposals that would deliver substantial community space and facilities to be supported by a clear governance arrangement. It is not clear from the application what the Land Trust's expertise is in managing sporting facilities similar to those which are proposed and how the local community would benefit from the facilities. Accordingly, the proposals are not considered to fully satisfy the requirements of policy IMP4 of the adopted Ashford Local Plan 2030;

2.2 During the previous application, the Appellant failed to confirm the Land Trust's expertise in managing similar sporting facilities and how the local community would benefit from the facilities, beyond any identified club as prime user. Accordingly, the proposals were considered not to fully satisfy the requirements of policy IMP4 of the adopted Ashford Local Plan 2030 hence the above reason for refusal.

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3. The Application Process

- 3.1 As a Service of the Council, Culture Leisure and Tourism (CL&T) work with a range of community groups, clubs and societies to help facilitate their ambitions to participate in a range of leisure, recreational and sporting activities. Those groups are either hirers of facilities, freeholders or lease/license holders themselves. Each organisation is unique, with aims and ambitions that reflect their individual circumstances and the facilities from within which they operate. Some organisations require assistance with managing the facilities they own, while others require support in developing their club or society structure and others will have different requirements again. CL&T provide help and assistance to each organisation based on their individual circumstances and challenges. However, we aim to provide that assistance in a consistent manner that helps each organisation deliver sustainable services and facilities for the groups and communities they work in.
- 3.2 CL&T comments to the appellant's proposals are based on numerous interactions with groups that either own, or use the types of facilities being proposed at Appledore Road. We are seeking to avoid the provision of facilities that do not meet the needs of the community, or are in some way inaccessible to those who need them most.
- 3.3 On 16th July 2021 the CL&T team provided comments to colleagues in Planning on the proposed application for Appledore Road as part of our normal duties to comment on applications which impact local community facilities. These comments are included within the inquiry documentation as CD 4.14. They include comments in paragraphs 1.14 to 1.23 which relate to the management and operation of the sports facilities, as the applicant had not provided detail on these elements of the application.
- 3.4 A second internal document CD 4.14 is a second internal document between Culture and Planning. Points 1.1 to 1.7 relate to information which the applicant had not addressed in their communication to Planning on 12/8/21. These points again relate to

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the management and operation of the proposed facility as well as general need for the facilities.

- 3.5 To date (10/01/22) the applicant has not provided sufficient information to enable the Council to assess whether the proposal meets the requirements of IMP 4
- 3.6 CL&T submitted comments internally to ABC Legal Services, attached as Cultural Comments Appledore Rd Nov 21 word document (dated 30/11/21). This document repeated eight points previously made in the documents referenced above and sought clarification of the outstanding issues of ownership and management. Unfortunately, the appellant has not provided adequate evidence to demonstrate that these points are satisfactorily addressed
- 3.7 As noted in sections 1.0 and 2.0 above, part of the Borough Council's reason for refusal of both of the applicant's applications has been inadequate information as to how the proposed sports facilities would be managed, who would own them, who would use them and how the community would benefit from them. Without this information, the Borough Council is unable to assess the viability or suitability of this element of the application.

4. The Proposal (Ownership & Management)

- 4.1 Paragraph 7.5.70 of the Appellant's Statement of Case notes that the "identity" of the Estate Management Body would be confirmed prior to Commencement of development. This does not deal with the Council's request for details required on governance. As noted above, the appellant's original 2020 application as well as the most recent application have failed to fully address the question of facility ownership, management and community use.
- 4.2 Paragraph 7.5.63 of the Appellant's Statement of Case notes that the facilities would provide a home for Tenterden Town Football Club and Tenterden Tigers as referenced in the Council's Playing Pitch Strategy 2017 to 2030 CD 2.11 but to this date the

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Appellant had been unable to confirm if and how discussions with these clubs are progressing. As there are two football clubs seeking a home ground in Tenterden, it is important to understand whether those clubs will be accommodated within the proposal. If they are not, then who will use those facilities? If the two clubs referenced in the Council's Playing Pitch Strategy 2017 to 2030 are not accommodated in the facility, the Appellant ought to provide an explanation as to why they are not accommodated and the implications of that for the two main clubs and remaining potential users. The Council needs to reach a level of understanding on the likelihood of those clubs being accommodated at the proposed facilities or what alternative use is proposed to be made of them.

- 4.3 Paragraph 7.5.65 of the Appellant's Statement of Case notes that the Sports Hub has been designed with Community Stewardship in mind. The Appellant provided a draft Operator Appointment Plan at Appendix 10 of the Appellant's statement of case. As the appellant's Statement of Case still does not clarify who the owners, managers and users of the proposed facilities would be, the Borough Council remain unable to assess the deliverability of the application.

Appendix 10

- 4.4 Appendix 10 (section one) states the Freeholder could be an Estate Management Body (EMB) or a community organisation. Also the freehold could be awarded by the EMB or the developer. This latter options suggests an EMB would not be required. The appellant has been asked to clarify which option it is proposing as this question was originally raised as part of CL&T's documents PDF Culture 21 00790 Appledore Rd V1 CD 4.14 and PDF Culture 21 00790Appledore Rd V2 and still remains unaddressed.
- 4.5 Section two reminds the reader that ABC Local Plan Policy IMP4 allows for consideration to be given to a range of potential operators/owners. ABC has sought but not received clarity on which model is being proposed to meet the needs of the local community.

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- 4.6 Section three introduces Freeholder Responsibilities. In order for the council to assess the suitability of the proposal and whether or not it is likely to benefit the local community, if the appellant provided draft Heads of Terms for a Freehold transfer to a potential owner and draft Heads of Terms for a management agreement with an operator it would assist the Council in considering the deliverability of the appellant's proposals for management and ownership of the proposed facilities. Furthermore, if the appellant or freeholder is to seek assistance in the process of appointing an operator from the Local Authority as suggested by the appellant, then if they could confirm exactly what their requirement will be of ABC, when assistance will be required and what specific information it requires from ABC, the Borough Council may then be in a position where it can begin to assess the suitability of a proposal. However, that level of information has yet to be submitted in any of the document provided by the appellant.
- 4.7 Section Four Operator Responsibilities again suggests alternative levels of responsibility. However, the appellant has failed to describe which option it is proposing and therefore the Authority is unable to consider its suitability in accordance with policy.
- 4.8 Section Five Appointment Process. The general principles referred to here are reasonable. However, the appellant is advised to extend the submission period, especially if a new local community group is the preferred chosen option for owning or managing the facility. From experience, it is not unusual for a full twelve months to be required to create a new community group and for them to be fully registered with the Charity Commission if they are to seek charitable status. Furthermore, If Covid is still present in our community that again may necessitate an extension to this period to allow organisations to gather information from potentially depleted workforces and/or volunteers. It is not clear whether the appellant has allowed a period for interviews to be held with bidders and what the cost/quality split will be for bidders to bid against. This level of detail is required to enable the council to determine whether the proposals are sound and are deliverable in real terms.

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Community Use Agreement

- 4.9 Paragraph 7.5.66 of the Appellant's Statement of Case notes that a Community Use Agreement would also be used to secure access to the playing fields based on the Sport England template for Community Use Agreements for the type of proposed facility where schools are then main user and/or landowner.
- 4.10 It is understood the local school 'Homewood' will not be using the proposed pitches. It must be confirmed whether a Sport England Community Use Agreement still forms the basis of how the community will access the facilities or whether the Appellant will be developing an alternative format. In order to better understand the rationale behind the Appellant's proposals, the appellant is requested to confirm why the school will not be using the proposed facilities and to confirm who will be using the proposed facilities.
- 4.11 Sport England (SE) have not objected to the proposed facilities as long as their 4 Recommendations are enacted. We support those recommendations. However, while SE have recommended that use for the facilities should not commence until a community use agreement has been approved by the LPA, details of who the owners, operators and users of the facilities would be at this stage to ensure the whole package would be fit for purpose and meet the needs of the local community, is required. In short, the Appellant is still required to establish the need as per previous requests from CL&T listed above and throughout this document and has failed to do so.
- 4.12 The appellant has suggested a process by which an operator may be chosen by consideration of the Community Facilities Operator Appointment Criteria (CFOAC). Therefore, these comments relate solely to the future operator of the facility.
- 4.13 The criteria set out in the CFOAC are reasonable as a very basic framework and appear to set out the basis for questions to be submitted to the potential operators. However, they are brief and not detailed. Nor do they contain any description of how any submission will be assessed, scored or weighted if necessary to achieve a well-

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balanced outcome. It does not contain any information on how the operator will occupy the facility (e.g, leasehold, freehold, license, full repairing terms or not, length of occupation, responsibility for insurances, liability for utilities or capital investment). The CFOAC does not describe who will assess submissions, or how those assessors will be chosen. There is no mention of any key users or clubs that may need to be accommodated within the facility. Before this approach can be sanctioned as being fit for purpose, far more detail from the Appellant is required that addresses these shortcomings.

Estate Management Company

4.14 The Appellant has suggested a community based organisation may be appointed to manage or even own the proposed facilities. Such a body is an acceptable principle as outlined in Policy IMP4. It is assumed such a body would consist of local community volunteers who provide their time free of charge and as a qualifying body be able to apply for specific grants to deliver specific services. Such a model could lead to lower operating costs passed on to the end user and services that are based on strong local knowledge. However, such a body may lack resilience or strong financial backing, they may also lack all of the necessary skills to manage such a facility from the outset and need a period of training and development to establish themselves. The Appellant needs to confirm if this approach is proposed and who the proposed community representatives will be, along with their existing skill base.

4.15 The Appellant has also noted the sports pitches could be operated by way of an Estate Management Body. Again, this may also be an acceptable model as outlined in Policy IMP 4. However, there is no detail to accompany this. The appellant has not described the financial operating model of such a body. It is assumed it could be a commercial organisation with paid staff and overheads to manage, which in turn could lead to a higher 'usage fee' to the end user. Such a body may be in a position to deliver a well-serviced and professional process to the management and operation that carries with it a consistent delivery model for the end user but the appellant needs to confirm how

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such a body would be structured and how their business plan for operating the proposed facilities would be structured. Without clarity on which option is being proposed and how the option presented will be managed the Council is not in a position to determine the suitability of proposals.

Both Models

- 4.16 In an email dated 16/12/2021 the appellant's solicitor noted that a mixture of the two models could be used. This may be acceptable in principle but the appellant has not described how they would see a mix of those proposals working. Do they mean one as Owner and one as Operator? Or do they have a different splitting of responsibilities in mind? For clarification, it is normal to have one such organisation as lead and the other as secondary to avoid confusion or duplication of responsibilities. It is important to address these issues now to understand how the facilities would be run, how the community would access them as we would not want to see the new facilities left unused as either too expensive, poorly designed or not meeting the needs of the local community in some way.
- 4.17 Either model can potentially work but, as outlined above, the Appellant has been unable to describe which option they are proposing to use and how that appointment will be made which means it cannot be determined which will be in the best interests of the community. They are leaving all details for a later date and hoping they will be appropriate. Clarity of direction is required at this stage to assure ABC the proposal is fit for purpose and will meet the requirements of the end user. The appointment of an owner, an operator and/or a management company can be completed post application approval. However, the appellant has left too much undefined in their proposal to establish if the proposals are fit for purpose and meet the requirements of Policy IMP4.
- 4.18 Further the Appellant is not clear on the timing of the provision. For this to be an added benefit to the community it cannot be contingent on occupation of the residential part of the planning application. It ought to be provided before occupation of that but

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currently, according to s106 negotiations, the Appellant wishes to tie this to occupation of 50 dwellings.

5 Policy & Guidance

- 5.1 Policy IMP4 is clear in that proposals that will deliver substantial community space and facilities are required to be supported by a governance strategy which will need to be agreed with the Council. This strategy will need to set out what facilities are to be delivered and by when, and how they will be managed over time to an acceptable standard. Proposals which adopt a community stewardship model of governance will be supported. No model has been chosen and the details relating to either option have not been produced for the Council to consider. The proposals are lacking and therefore clearly conflict with Policy IMP4.

6. Summary and Conclusions

6.1 Ownership of the open spaces and sports facilities – in order for the Council and now the Inspector to determine whether the proposed scheme will assist the council in facilitating the ambitions of ABC's Playing Pitch Strategy 2017 to 2030 and provide facilities that will benefit the local community, it is essential that the Appellant confirms which of the options they have cited in their Draft Operator Appointment plan is their proposed delivery mechanism.

6.2 Maintenance of the facilities. As per point 1 above, although potentially worthy options have been put forward for consideration, it is not clear at this stage who will be responsible for maintaining the facilities and managing bookings etc. This level of detail is necessary to enable the Council to determine whether the scheme will in fact benefit the local community.

6.3 Tenterden Tigers (junior FC) and Tenterden Town FC As the appellant has cited these clubs will benefit from the proposed development throughout their

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submission and both clubs have been cited in the Playing Pitch Strategy 2017 to 2030 as seeking suitable facilities to play from on a permanent basis, the Council is keen to understand exactly how they will be incorporated into the delivery of the scheme. Will the clubs be able to use the facilities as their 'home ground' and participate in the management of the facility, or will they be considered the same as any other hirer. It would be remiss of the authority to not determine whether these worthy clubs are to be accommodated in a satisfactory fashion in the proposed development. Can the appellant confirm at what stage negotiations are with both clubs and when they aim to have a draft agreement for the Borough Council to view in relation to their involvement with the facility.

6.4 Community Use Agreement. The appellant has confirmed the school will not be using the site. (email from Andrew Morgan D A C Beachcroft to Carissa Humphreys ABC 9/12/21) Can the appellant please confirm on what basis and number of days the facility will be made available at reasonable cost to the remainder of the community to use. Also, the appellant has yet to confirm whether they will continue with the proposal to introduce a Community Use Agreement and facilitate a Management Board to oversee use of the facility.

6.5 Pitch Loss. The applicant has not clarified the point regarding overall pitch loss and replacement with reference to the unrelated and separate Tenterden Recreation Ground application 21/00724/AS. In order for the Council to assess the appellant's application, the relationship between these two applications needs to be clarified by the appellant.

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