



Tuesday 17th August 2021
543/A3/JJA

The Town Clerk,
Tenterden Town Council,
The Town Hall,
24 High Street,
Tenterden,
Kent
TN30 6AN

By Hand and Email

Dear Sirs

Re: Tenterden Neighbourhood Plan 2013–2030 Regulation 14 - Pre-Submission Draft Representations on behalf of Wates Developments Limited Land between Appledore Road and Woodchurch Road Tenterden.

I write with reference to the above. As you will be aware, I act for Wates Developments Limited who have an interest in the land between Appledore Road and Woodchurch Road Tenterden, known locally and within the Reg 14 draft Tenterden Neighbourhood Plan as 'Limes Land'.

Having reviewed the Reg 14 draft Tenterden Neighbourhood Plan, hereafter referred to as the Reg 14 TNP, and associated supporting documents, in particular the Appendix 1 Design Code, Biodiversity Topic Paper, Built Up Confine's Topic Paper, Heritage Topic Paper, Landscape Topic Paper, Local Greenspace Topic Paper, Routeways Topic Paper, and Sports And Recreation and Open Spaces Topic Paper; and mindful of the advice in the NPPF(2021), NPPG and the basic conditions test as set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004; these representations comment upon why in our opinion the Reg 14 TNP does not meet the basic conditions identified in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990. There are in our opinion three basic conditions that the Reg 14 TNP fails to meet:

- a) it does not comply with National Planning Policy as set out in the NPPF.
- d) it will not contribute towards the achievement of sustainable development; and
- e) it does not comply with the aims and objectives of the development plan.

Furthermore, significant legal flaws have been identified in the plan, as set out in the accompanying opinion from Landmark Chambers – see appendix A.

1 Background

- 1.1 The land which Wates have an interest in is situated on the north of Appledore Road and south of Woodchurch Road, to the northeast of Tenterden. It extends to 24.34ha (60.15 acres) and comprises 14 parcels of land (Fields F1 – F14). As set out in the photograph below. The majority of the fields are used for occasional grazing, and one (F13) is currently an underutilised sports pitch.



Plan identifying field numbers on land between Appledore Road and Woodchurch Road Tenterden.

- 1.2 The Reg 14 TNP looks to:
- a) Allocate the Limes Land – Fields F1 – F12 as a Local Green Space – Reg 14 TNP policy TEN NP2 – site D refers.
 - b) Allocate fields F13 and 14 as a site of recreational open space – Reg 14 TNP policy TEN NP15 refers.
 - c) Identify a number of non-designated heritage assets as falling within the extent of the site, including ridge and furrow cultivation plots, a Drove Way and Gallows Green – Reg 14 policy TEN NP7 refers.
- 1.3 The Reg 14 TNP also encompasses a number of generic policies such as TEN NP1 (Protection of Landscape Character), TEN NP3 (Conserve and Enhance Biodiversity), TEN NP4 - Design of New Development and Conservation, TEN NP16- Historic Routeways, and TEN NP17 - Public Rights of Way, which in our opinion impact upon Wates interests.
- 1.4 In the context of the above the Tenterden Neighbourhood Plan Group will be aware that there is a current application with Ashford Borough Council for the development of the Wates Land (21/00790/AS refers) for:
- 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 orchard, sustainable drainage

systems, landscape buffers and green links all on 12.35 ha of the site. (Matters for approval: Access)

And

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 drainage systems and associated landscaping.

2 Failure to comply with National Planning Policy as set out in the NPPF

A) Policy TEN NP2 - Local Green Spaces.

2.1 Paragraphs 101-103 of the NPPF 2021 are clear:

'101. The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period.

102. The Local Green Space designation should only be used where the green space is:

a) in reasonably close proximity to the community it serves;

b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and

c) local in character and is not an extensive tract of land.

103. Policies for managing development within a Local Green Space should be consistent with those for Green Belts.'

2.2 Furthermore Planning Practice Guidance makes it clear at paragraph: 007 Reference ID: 37-007-20140306, that:

'Designating any Local Green Space will need to be consistent with local planning for sustainable development in the area. In particular, plans must identify sufficient land in suitable locations to meet identified development needs and the Local Green Space designation should not be used in a way that undermines this aim of plan making.'

2.3 And at paragraph: 015 Reference ID: 37-015-20140306 that:

'There are no hard and fast rules about how big a Local Green Space can be because places are different and a degree of judgment will inevitably be needed. However, paragraph 100 of the National Planning Policy Framework is clear that Local Green Space designation should only be used where the green area concerned is not an extensive tract of land. Consequently blanket designation of open countryside adjacent to settlements will not be appropriate. In particular, designation should not be proposed as a 'back door' way to try to achieve what would amount to a new area of Green Belt by another name.'

2.4 The Reg 14 TNP, through policy TEN NP2 identifies 14 spaces around Tenterden that it recommends should be protected as Local Green Spaces. This includes Area D as identified on Map 7 of the Reg 14 TNP, which encompasses fields 1 to 12 as identified above and is referred to as Limes Land.



Extract of Map 7 of the Reg 14 TNP – June 2021

- 2.5 With regards to point (a) of paragraph 102 of the NPPF (2021), there is no doubt that the proposed Local Green Space at Area D is reasonably close to the community it serves.
- 2.6 However, the supporting case for responding to the requirements of point (b) of paragraph 102 are far less clear. Whilst this land may be special to the local community, the test is that it must be **demonstrably** special, and several potential tests are set out:
- i) In relation to the **beauty** of Area D, it is important to note first of all that the site is not within either a landscape or a landscape-related designation; in this context it is notable for example that despite the relative proximity of the High Weald AONB the boundary of this designation has never been extended to include Area D. In relation to the scenic quality of the site, the evidence base fairly states at page 21 of the Local Greenspace Topic Paper that “*ribbon residential development ... adjoins the north-west and south-west boundaries*”; and yet when the “beauty” of the site is described at page 22 there is no mention of the influence of this ribbon development upon the character of Area D. A full landscape and visual assessment of the site carried out by experienced chartered landscape architects at SLR in association with planning application 21/00790/AS has identified that housing on Appledore Road and Woodchurch Road is prominent across the western end of Area D, and this reduces the scenic quality, remoteness, and tranquillity of this part of the site. It is only to the east of the low, north-south ridge that crosses Area D (along which footpath AB12 runs) (fields F8 – 12) that the influence of the settlement edge on character diminishes, and instead there are visual connections with the High Weald AONB.

The majority of the site does not therefore pass the test for beauty.

- ii) In relation to **tranquillity**, the evidence base states that the “*site is shielded from noise sources by adjoining ribbon development and provides a tranquil environment...*”¹. However the effects of noise from Woodchurch Road and Appledore Road is not entirely contained by the adjacent housing and is audible across the western part of this site (fields 1- 7). The evidence base also ignores the noise which emanates from the housing itself, with rear elevations and gardens backing on to the site both to the north-west and south-west.

¹ See page 23 of the Local Greenspace Topic Paper

The western part of the site in particular is not, therefore, tranquil.

- iii) In relation to the historic significance of Area D this has been examined by Pegasus and RPS. They have concluded that the site contains no designated heritage features and that whilst the landscape does exhibit time depth and coherence, with minimal historic boundary loss, the presence of historic hedgerows and other historic landscape features would not preclude development of the site. The landscape is a non-designated heritage asset as recorded within the Kent Historic Environment Record and does not meet any criteria for statutory designation. There is likewise no evidence to suggest the presence of archaeological remains within the site which would meet criteria for statutory designation.

With regards to built heritage, an assessment has been made as part of Wates current planning application of any contribution that Area D makes to the Conservation Area, which abuts area D to the west, and the Grade I listed Church of St Mildred located within the conservation area, through setting. Whilst there are some distant views to the Church of St Mildred from within area D, they do not allow an appreciation of the architectural detail of the tower, nor the situation of the church within the historic core of Tenterden, nor its topographic situation. As such, Area D is not considered to make any specific contribution to the heritage significance of the Church above facilitating distant views from this general area. The peripheral glimpses of the westernmost part of the site that are possible in views along approaches to the Conservation Area between modern residences are not considered to contribute to the heritage significance of the asset through setting.

Three other Listed buildings lie in the vicinity of Area D: Stace House, Craythorne and Doveden, which are all Grade II Listed. Doveden now faces on to modern development on the opposite side of Woodchurch Road and Area D, which lies beyond, is not considered to contribute to its significance through setting. Likewise, Craythorne faces south-east towards development on the opposite side of Woodchurch Road, and partial and filtered views of Area D beyond which would be seen in the context of existing residential development are not considered to contribute to the heritage significance of Craythorne through setting. With regards to Stace House, the 1843 tithe map records that Stace House and most of Area D were once in shared ownership, but this connection has now been severed. Area D has since been physically separated by intervening modern dwellings and their gardens, as well as a dense cluster of trees at the western corner of the area. The site is no longer legible as part of the historic wider agricultural estate of Stace House, and it does not illustrate the domestic function of the Listed building. The orientation of the Listed building is such that there are no designed views towards the site. The intervening modern residential plots and the trees at the western corner of the site largely screen incidental views of the site from the Listed building and its curtilage. Area D makes no contribution to the heritage significance of Grade II Listed Stace House through setting.

Given the above the site does not pass the test for historic significance.

- iv) In relation to the **recreational value** of Area D, page 23 of the Local Greenspace Topic Paper states that the site is used for “*dog walking, rambling, running, photography, bird watching, cycling, picnics, pond dipping and occasional ballooning*”. But in reality the only legal access across the site is on footpath AB12, which passes in a roughly north to south orientation across the centre of the site: all other access to other parts of the site is therefore not permitted. Whilst Kent County Council have made an order to recognise a claimed circular footpath within the site, this has been strongly contested by the landowners, tenants and by Wates and is currently with the Secretary of State for determination and is therefore by no

means certain. **The recreational value of the site is therefore limited to walkers on footpath AB12.**

- ii) The “**richness of its wildlife**” has been assessed by professional ecologists Ecology Solutions. They have noted that the site contains no designated ecological features of any description. The Reg 14 TNP evidence for Biodiversity does not identify the site as containing Ancient Woodland, a Local Wildlife Site or private nature reserve, more importantly it does not identify any of Parcel D land as containing priority habitat including good semi-improved grassland. From the supporting information on biodiversity for the neighbourhood plan, it can be concluded that the site is not rich in wildlife. These findings are supported by the results of the ecological surveys that have been carried out on behalf of Wates and submitted in support of their application.

The features within the site have also been assessed and none of the habitats or species are of any importance above the context of the site itself, these include only the mature trees and some of the hedgerows. The site also contains populations of Great Crested Newts and Common Reptiles. Taken together these features could not be described as ‘demonstrably special’ in terms of its ‘richness of wildlife’. All of these features can be successfully retained and enhanced by any carefully designed development scheme which could also deliver biodiversity gains.

Given the above the site does not pass the test for richness of wildlife.

- 2.7 In summary it is concluded that Area D does not meet any of the criteria set out at point (b) of NPPF paragraph 102.**
- 2.8 In relation to paragraph (c) of paragraph 102, which requires that the site is “**not an extensive tract of land**”, the evidence base states that Area D is 20.26ha in extent, covering nearly all of the land between the settlement edge in this location and the AONB to the east, and spanning between housing on Appledore Road and Woodchurch Road, fields F1 – F12 as identified above.
- 2.9 The NPPF and Planning Policy Guidance do not specify a maximum size for a Local Green Space, but examiners have provided a clear indication of what they consider to be extensive when reviewing draft neighbourhood plans: for example:
- i. The Blackwell Neighbourhood Plan Examiner’s Report dated October 2014 concluded that proposed allocations of land at Farleigh Fields, comprises at least 19 hectares and Moor Lane Fields, comprising at least 32 hectares were extensive tracts of land such that their allocation would conflict with national government guidance. Extract attached at appendix B.
 - ii. The Sedlescombe Neighbourhood Plan Examiner’s Report dated January 2015² reviewed the proposed designation of land measuring approximately 4.5ha as Local Green Space. The examiner observed that “*it stretches across an area of open land which I consider can only be described as extensive*” and concluded that “*there is no substantive evidence to demonstrate that Street Farm is not an extensive tract of land*”. The proposed allocation was removed from the Plan. Extract attached at appendix C.

² See Sedlescombe Neighbourhood Plan Examiner’s Report dated January 2015

- iii. The Alrewas Neighbourhood Plan Examiner's Report dated August 2015 concluded that two sites of 2.4ha and 3.7ha respectively comprised extensive tracts of land in relation to the size of the village and that there was no compelling evidence to demonstrate why the sites were demonstrably special to the local community. Again the proposed allocation was removed from the Plan. Extract attached at appendix D.
- iv. The Tatenhill Neighbourhood Plan Examiner's Report dated November 2015 concluded that at 9.2 and 4.3 hectares respectively, sites to the north and south of Branston Road, proposed to be designated as Local Green Space through the NP, constituted extensive tracts of land, and instructed their removal from the draft NP, as their inclusion failed to meet the basic conditions. Extract attached at appendix E.
- v. The Oakley and Deane Neighbourhood Plan Examiner's Report dated December 2015 concluded that a proposed Local Green Space designation on a site of just over 5 hectares was excessive and therefore contrary to national planning policy. Extract attached at appendix F.
- vi. The Brixworth Neighbourhood Plan Examiner's Report dated July 2016, concluded at paragraph 4.63 that three proposed Local Green Space designations measuring 22.5ha, 7.2ha and 2.7ha in size respectively (LGS1, LGS2 and LGS3) were extensive tracts of land and deleted as proposed designations from the draft NP. Extract attached at appendix G.
- vii. The Faringdon Neighbourhood Plan Examiner's Report dated August 2016 at paragraph 7.92 in commenting upon a 5.6 hectares Local Green Space designation at Humpty Hill, concluded that whilst the land at Humpty Hill met most of the criteria set out in paragraph 77 of the NPPF to be designated as a local green space '*the Plan has failed to demonstrate that it is not an extensive tract of land. In order to be identified as a local green space any parcel of land needs to meet all the factors concerned. On this basis I recommend that Humpty Hill is deleted from the list of proposed local green space*' Extract attached at appendix H.
- viii. The Canterbury City Council Local Plan Inspectors Report dated June 2017 concluded at paragraphs 345 – 351 that an area of about 4.26ha, covering 1.17km of the coastal area of West Beach between Whitstable Harbour and the West Beach Pavilion Caravan Park was inappropriate for designation as a Local Green Space because of the size. Extract attached at appendix I.

2.10 The Reg 14 TNP does not address the issue of compliance with part C of paragraph 102 of the NPPF. There is no substantive or compelling evidence presented to demonstrate that land at Appledore Road (Limes Land) is not an extensive tract of land.

2.11 **In our opinion the proposed designation of over 20ha of land would certainly be considered to be extensive, and on this basis Area D does not meet the requirements of point c of paragraph 102 of the NPPF.** This position is supported by the legal opinion from Landmark Chambers – see paras 9 – 23 in particular.

2.12 In order to be designated as an area of Local Green Space the land at Appledore Road needs to pass all 3 of the criteria set out in paragraph 102 of the NPPF. For the reasons set out above we do not believe the proposed designation meets criterion b and c of paragraph 102 of the NPPF. Policy TEN NP 2 (D) thus fails criterion a of the basic conditions identified in paragraph 8(2) (a) of Schedule 4B to the Town and Country Planning Act 1990 as applied to Neighbourhood Plans by section 38A of the Planning and Compulsory Purchase Act 2004 as it does not comply with National Planning Policy as set out in the NPPF. For this reason alone we believe the proposed designation of the land at Appledore Road to be flawed. There is however also the matter of compliance with the development plan and the sites contribution

towards the achievement of sustainable development to consider – as set out in sections 3 and 4 below.

- 2.13 **In summary it is concluded that Area D does not meet any of the criteria set out at paragraphs 101 and 102 of the NPPF. It thus fails basic condition criterion a, and its proposed designation as a Local Green Space should be deleted from the plan.**

B) Policy TEN NP7 – Non-Designated Heritage Assets

- 2.14 The NPPF (2021) defines a heritage asset in appendix 2 (Glossary) as:
‘A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including local listing).’
- 2.15 Paragraphs 189 – 208 of the NPPF (2021) set out the criteria for considering development that impacts upon heritage assets. Paragraph 203 of the NPPF sets out how non-designated heritage assets should be considered. It states:
‘The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.’
- 2.16 The identification of non-designated heritage assets within a site/ adjacent to it thus has the potential to have serious implications for the site’s future development potential. It is thus not surprising that paragraph 31 of the NPPF (2021) advises that:
‘The preparation and review of all policies should be underpinned by relevant and up-to-date evidence. This should be adequate and proportionate, focused tightly on supporting and justifying the policies concerned, and take into account relevant market signals.’
Or that paragraph: 040 Reference ID: 18a-040-20190723 of PPG states:
‘There are a number of processes through which non-designated heritage assets may be identified, including the local and neighbourhood plan-making processes and conservation area appraisals and reviews. Irrespective of how they are identified, it is important that the decisions to identify them as non-designated heritage assets are based on sound evidence. Plan-making bodies should make clear and up to date information on non-designated heritage assets accessible to the public to provide greater clarity and certainty for developers and decision-makers. This includes information on the criteria used to select non-designated heritage assets and information about the location of existing assets.’
- 2.17 Having regard to the above we note that Policy TEN NP7 states that:
‘Proposals should take into account the effect on the significance of a non-designated heritage asset identified in Appendix 2 and wherever possible seek to protect the asset.’
- 2.18 The supporting text states that:
‘An assessment of non-designated heritage assets within the Parish has been undertaken drawing on Local Heritage Listing, Historic England Advice Note 7 and based on existing published material. Using the following criteria, a list of non-designated heritage assets has been identified:
- *Social and community value*
 - *Archaeological Interest*
 - *Historical Association*

- *Designed Landscape Interest*
- *Landmarks*
- *Group Value*
- *Age or rarity*

- 2.19 An appendix is included within the Reg 14 TNP which lists 48 non-designated heritage assets and gives a brief description of each asset. In addition, the Evidence document on Heritage provides some context on assets chosen, in the form of more general background on thematic areas such as *Farming and Farmsteads* and *Routeways*.
- 2.20 What is not provided either in the Reg 14 TNP or the Evidence document on Heritage is a rigorous assessment of proposed individual assets against the criteria set out in the Pre-Submission Plan and reproduced as bullets above, and why particular examples have been included on the list of non-designated assets, but others omitted.
- 2.21 Furthermore, no information has been provided as to how assets were initially identified for potential selection. For example, an area of ridge and furrow is identified within the area known as Limes Land, but were all areas of ridge and furrow initially considered? If so where is the associated evidence to explain what was considered and why/ what was discounted and why.
- 2.22 The list of criteria set out above is reproduced in the Heritage Evidence document, and it is stated that '*Each proposed heritage asset has been assessed as meeting the criteria for one or more of these assessment factors*', but this is not evidenced in the document.
- 2.23 As such, the selection process is not transparent, and there is insufficient justification for the identification of the assets as non-designated heritage assets.
- 2.24 Historic England Guidance on Local Listing, Local Heritage Listing: *Identifying and Conserving Local Heritage Historic England Advice Note 7* (Second Edition) of 2021 requires not just that selection criteria are provided but there should be a rigorous stage of assessment which evaluates the suitability of the assets for the local heritage list. The guidance states: *To qualify for local heritage listing nominated assets will need to meet the requirements of the selection criteria, and national planning policy.*
- 2.25 This document also advocates indicating in the published list the criteria under which heritage assets have been included (paragraph 58). This is not evidenced in the Reg 14 TNP or the associated Heritage evidence base, and so the list of non-designated heritage assets is in our opinion unjustified.
- 2.26 Furthermore there are inconsistencies within the Evidence Document and Geographical Focus. Appendix 3 of the evidence base identifies a large number of farms and farmsteads in the vicinity of Tenterden settlement as collectively representing a non-designated local heritage asset. The appendix also states that '*These sites have not been individually assessed by the Neighbourhood Plan.*' This is clearly anomalous and brings into question the rigorousness of the selection and assessment process as:
- There is no consistency between the evidence base and the list of non-designated assets in the Reg 14 Plan which does not include this group of farms as a non-designated heritage asset.

- This suggests a clear skew towards urban areas and their immediate periphery if no assessment has been made of these potentially historic structures and their landholdings.

2.27 Another issue with the suggested list is that the potential assets are not illustrated in terms of their location or extent. As such, any potential designation would be poorly defined and lead to confusion over identification and extent/ assessment of impacts thereon. Not even a grid reference is provided.

2.28 Furthermore with regards to individual assets, there is a lack of evidence to support specific assertions in some instances, including:

- Proposed Asset 14 – Drove Way on Limes Land. This is asserted to be 8th-century or earlier and Jutish, but no evidence for this is provided or referenced.
- Proposed Asset 43 Gallows Green. Extensive documentary evidence carried out by RPS and provided to inform the Wates application has determined that this lay outside of the Limes Land, rather than within it as stated in the description in the Reg 14 Plan. The RPS report that supports the Wates application explains that Gallows Green was an area of roadside waste, as is typical of ‘greens’ in the High Weald, which was gradually enclosed. The name ‘Gallows Green’ applied to a place, comprising a series of dwellings which encroached onto the green during the post-medieval period. Georeferenced historic map regression clearly demonstrates that the location of the gallows and green lay outside the current site boundary and has already been built on. No evidence is provided or referenced within the Reg 14 plan/ the evidence base to support the Neighbourhood Plan’s assertion that Gallows Green falls within the area known as Limes Land.

2.29 In summary, the list of Non-designated Heritage Assets given in the Reg 14 TNP has not been rigorously or objectively compiled, with no linking of assets back to stated criteria for designation, inconsistency between the evidence base and the Reg 14 plan itself, and the skewing of the list to urban and peripheral areas. Furthermore, elements on the list have not been defined in their location or extent. As the identification of the alleged assets is not robust, they should not be defined as Non-Designated Heritage Assets under the terms of the NPPF.

2.30 Policy TEN NP7 and the associated list of ‘Non-Designated Heritage Assets’ is in our opinion in direct conflict with the aims and objectives of the NPPF. They thus fail basic condition criterion a of paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 and should be deleted from the plan. This position is supported by the legal opinion from Landmark Chambers – see paras 33 – 38 in particular.

C) Policy TEN NP15 – Site for Recreation Open Space

2.31 The Policy identifies “Land at Appledore Road” as being allocated for “additional sports pitches to serve the needs of the town”. The supporting text suggests that the Land at Appledore Road can be a replacement for the pitch currently situated at the Recreation Ground as the Town Council are keen to “broaden the purpose” of the Recreation Ground which would “result in the need to relocate” the adult football pitch at that site. The supporting text also acknowledges that the Ashford Playing Pitch Strategy (PPS) identifies the Appledore Road site as a Playing Field to be protected, albeit noting it is not formally available for public use.

- 2.32 Paragraphs 98 and 99 of the NPPF 2021 are clear:
- 98. 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. Planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities (including quantitative or qualitative deficits or surpluses) and opportunities for new provision. Information gained from the assessments should be used to determine what open space, sport and recreational provision is needed, which plans should then seek to accommodate.*
- 99. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:*
- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*
 - b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
 - c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.*
- 2.33 Both the Appledore Road site and the recreational site are identified as existing venues, to be protected in ABC's PPS. It would therefore be inconsistent with paragraph 99 of the NPPF to look to use the Appledore Road as a replacement for the pitch that will be lost at the Recreation Ground if it is redeveloped for alternative recreational purposes.
- 2.34 In the context of the above we note that in its recent planning application for development at the Recreation Ground (Ref: 21/00724/AS), the Town Council attempted to argue that the pitch at that location was "redundant"³ and that alternative provision has been made via the 3G pitch at Homewood School⁴. No attempt was made to argue that the Recreation Ground pitch would be replaced at Appledore Road.
- 2.35 Acting in its role as a Statutory Consultee on the Recreation Ground proposals, Sport England objected to the application because "*it is not considered to accord with any of the exceptions to Sport England's Playing Fields Policy or with Paragraph 97 of the NPPF*".⁵ The key issues were:
- The identification of the Recreation Ground pitch in the Ashford PPS which, in common with all football pitches in Ashford Borough, should be protected unless suitable equivalent or better replacements are provided.
 - The erroneous statement relating to the disuse of the Recreation Ground Pitch and its continued availability for public use as stated on the Tenterden Town Council website.
 - The attempt to use the pre-existing 3G pitch at Homewood School as retrospective mitigation for the loss of the grass pitch at the Recreation Ground.
- 2.36 Appledore Road is a pre-existing facility, identified in the PPS as a site to be protected and listed as operational on the Sport England Active Places Power website. Consequently, Sport England is highly likely to reach the same conclusion as above, were the Town Council to alternatively attempt to use that site as mitigation for development at the Recreation Ground.

³ Redevelopment of the Tenterden Recreation Ground – Planning and Heritage Statement Paragraph 3.6.

⁴ Redevelopment of the Tenterden Recreation Ground – Planning and Heritage Statement Paragraph 7.7.

⁵ Para 97 of the NPPF 2019 is now Para 99 of the NPPF 2021.

2.37 To look to designate the land at Appledore Road for additional sports pitches to serve the needs of the town when it is an existing facility protected under policy COM2 of the ABLP and ABC's PPS, would actively conflict with the aims and objectives of the ABLP, Sport England Policy Exceptions, and paragraph 99 of the NPPF. Policy TEN NP15 thus fails criterion a of the basic conditions identified in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 as it does not comply with National Planning Policy as set out in the NPPF. Furthermore it fails criterion e of the basic conditions identified in paragraph 8(2) (a) of Schedule 4B to the Town and Country Planning Act 1990 as it does not comply with the ABLP. If the Reg 14 TNP wishes to allocate a site to meet the shortfall arising from the redevelopment of the existing facility at the recreational ground it needs to look elsewhere. If it wishes to protect the existing facilities at Appledore Road it should do so under policy TEN NP14 – see comments below

D) Policy TEN NP16 – Historic Routeways

2.38 Policy TEN NP16 concerns historic routeways and states:
The alignment of historic routeways within Tenterden Parish should be maintained. Proposals should not result in an unsympathetic change to the character of a historic routeway.

2.39 The inclusion of this policy in the Reg 14 TNP appears at odds with other policy on heritage (TEN NP7), as it identifies many routes as historic routeways yet none of these are identified through the Neighbourhood Plan's own mechanism for identifying potential non-designated heritage assets.

2.40 Considering that the routeways are not identified within the plan's own system for identifying heritage assets that merit consideration in the planning system, to identify another group of elements of purported historic interest and attempt to relate restrictive policy to them is unreasonable.

2.41 As the elements identified in Policy TEN NP16 are neither Designated Heritage Assets nor Non-designated Heritage Assets, there is no basis for using them to restrict development within the policies of the NPPF (2021). As such, Policy TEN NP16 is in conflict with the NPPF and fails basic condition criterion a of paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990

E) Policy TEN NP17: Public Rights of Way

2.42 Policy TEN NP17 states that the "*character and biodiversity of existing public rights of way ... will be protected and enhanced, including within new development*". The target for this policy is stated to be "*no net loss of length, character and biodiversity of Public Rights of Way*".

2.43 Paragraph 174 of the NPPF 2021 states that "*planning policies and decisions should contribute to and enhance the natural and local environment*", and 174 (b) states that "*the intrinsic character and beauty of the countryside*" should also be recognised. Paragraph 100 of the NPPF states that "*planning policies and decisions should protect and enhance public rights of way and access, taking opportunities to provide better facilities for users, for example by adding links to existing rights of way*".

- 2.44 The NPPF therefore requires policies and decisions to protect and enhance the landscape, and also protect and enhance rights of way. Notably the NPPF does not require an enhancement of “*character and biodiversity*” along rights of way; instead it talks in paragraph 100 of retaining the rights of way themselves, and adding to these with new links and facilities.
- 2.45 In this context it is important to note that all developments will result in at least a localised change to character, and if a right of way passes through or next to such an area of development then users of that right of way will also experience that change in character. That is what has happened for walkers on AB36 and AB35A, which pass around the Redrow development at Tilden Gill, and that is what has also happened for users of footpath AB31, which passes through the allocated development of up to 475 new homes at TENT1. But such changes in character are not a “loss” in character, but a necessary change in character which can also result in improvements.
- 2.46 In the context of paragraph 174 of the NPPF, the changes that result from developments such as these are localised, with some degree of landscape harm, some conservation of key characteristics, also some enhancement of character. In contrast, TEN NP17 accepts no change/loss of character to a right of way, even if it passes through a new development.
- 2.47 In the context of paragraph 100 such developments often retain the rights of way, provide new links and also provide new facilities such as seating or interpretation. Such developments thus comply with paragraph 100 of the NPPF, and yet they would not comply with TEN NP17 as they would not protect and enhance both character and biodiversity.
- 2.48 In summary TEN NP17 does not comply with paragraphs 100 and 174 of the NPPF it thus fails basic condition criterion a of paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990. This however can, we believe be rectified by redrafting. It is thus suggested that policy TEN NP17 be amended to state: “*the intrinsic character/beauty (and biodiversity) of existing rights of way should be recognised. New development should, where possible, contribute to and enhance character/beauty of rights of way*”. The target for this policy should also be amended to refer to “*no significant change to the character of rights of way*”.

3 Failure to Comply with the Aims and Objectives of the Development Plan

A) Policy TEN NP2 - Local Green Spaces.

- 3.1 The Ashford Brough Local Plan was adopted on 21st Feb 2019. Paragraph 3.26.1 of the ABLP advises that the overall Housing Target for the Borough between 2011 and 2030 is 16,872 dwellings. Factoring in completions since 2011, the residual requirement is 13,118 between 2018 and 2030. The overall breakdown of this is set out below.

Objectively assessed need	16,872
Delivered since 2011	3,754
Residual requirement (2018-30)	13,118
Extant commitments (previously allocated sites with permission)	3,064
Extant windfalls*	875
Chilmington Green	2,500
Future unidentified windfalls	1,000
Local Plan Allocations	5,889
Neighbourhood Plan Areas	216
TOTAL	13,544
Contingency buffer	426

3.2 Having regard to the above Policy SP2, in setting out the Strategic Approach to Housing Delivery identifies a housing requirement of 13,118 net additional dwellings for the Borough between 2018 and 2030. Whilst the majority of the residual requirement is provided for through extant commitments, and the proposed allocations, Policy SP2 also provides for windfall development, and in doing so makes it clear 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.'

3.3 Policies HOU3 and HOU5 proceed to identify those circumstances where windfall development within the built up areas of certain settlements and the countryside would be appropriate. Policy HOU5 - Residential windfall development in the countryside states:

*'Proposals for residential development **adjoining or close to the existing built up confines** of the following settlements will be acceptable:*

Ashford, Aldington, Appledore, Bethersden, Biddenden, Brabourne Lees/Smeeth, Challock, Charing, Chilham, Egerton, Great Chart, Hamstreet, High Halden, Hothfield, Kingsnorth, Mersham, Pluckley, Rolvenden, Shadoxhurst, Smarden, **Tenterden** (including St Michaels), Wittersham, Woodchurch and Wye.*

Providing that each of the following criteria is met:

- a) the 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;*
- b) the site 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;*
- c) the development is able to be safely accessed from the local road network and the traffic generated can be accommodated on the local and wider road network without adversely affecting the character of the surrounding area;*
- d) the development is located where it is possible to maximise the use of public transport, cycling and walking to access services;*
- e) conserve and enhance the natural environment and preserve or enhance any heritage assets in the locality;*
- f) the development (and any associated infrastructure) is of a high quality design and meets the following requirements: -*
 - i) it sits sympathetically within the wider landscape,*
 - ii) it preserves or enhances the setting of the nearest settlement,*

- iii) it includes an appropriately sized and designed landscape buffer to the open countryside,
- iv) it is consistent with local character and built form, including scale, bulk and the materials used,
- v) it does not adversely impact on the neighbouring uses or a good standard of amenity for nearby residents,
- vi) It would conserve biodiversity interests on the site and /or adjoining area and not adversely affect the integrity of international and national protected sites in line with Policy ENV1.

Residential development elsewhere in the countryside will only be permitted if the proposal is for at least one of the following: -

.....

Where a proposal is located within or in the setting of an AONB, it will also need to demonstrate that it is justifiable within the context of their national level of protection and conserves and enhances their natural beauty.

Policy HOU10 will also be applied to relevant garden land applications.'

- 3.4 Policy SP2 of the ABLP thus provides for windfall development, and policies HOU3 and HOU5 of the ABLP provide the mechanism for delivering windfall development i.e. they provide for residential development adjoining or close to the existing built up confines of Tenterden subject to compliance with a number of criteria.
- 3.5 By looking to designate the land at Appledore Road (Limes Land) as a Local Green Space the Reg 14 TNP is effectively looking to undermine the aim and objectives of the ABLP when it comes to the delivery of suitable windfalls pursuant to policy HOU5. With the exception of Old Knockwood (LGS – C) which is 10.9ha, land at Turners Field (LGS – E) which is also 10.9ha, Coombes Field (LGS – F) which is 8.78ha and land at Westwell park (LGS – J) which is 7.7ha, and the land at Appledore Road, all the other proposed Local Green Spaces are less than 5ha, and in many cases less than 1ha. Of the 5 larger sites, 2 are within the AONB (LGS E and F), 2 are designated LWS (LGS C and E), and only 2 (LGS D and J) are relatively unfettered by landscape or ecology designations. Both have however been the subject of planning applications/ are the subject of applications/ pre app discussions, which leads one to wonder about the premise behind the proposed Local Green Space allocations. As set out in paragraph 101 of the NPPF the designation of land as Local Green Space should not prejudice sustainable development or investment in sufficient homes, and other essential services.
- 3.6 The designation of the land at Appledore Road (Limes Land) as a Local Green Space clearly conflicts with the aims and objectives of policies SP2 and HOU5 of the ABLP as it effectively looks to prevent the site being considered for development despite its proximity to the town and the towns position within the settlement hierarchy within Ashford Borough. Thus criterion e of the basic conditions identified in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990. Furthermore it prejudices plan making beyond the plan period. We say this because of the fact Tenterden is the second largest town in the borough and as such, when the ABLP is reviewed, it is not unrealistic, if this site has not already obtained planning permission for its development, to suppose that further development may need to be identified in the town to help meet the boroughs housing needs.
- 3.7 The enclosed plan (appendix J) shows the location of the proposed areas of LGS relative to the main designations in and around Tenterden. It is very obvious from this plan that the

'Lime Land' is one of the least constrained sites adjacent to the built-up area of the town. Allocating one of the least constrained sites adjacent to the town in the Reg 14 TNP as a Local Green Space would prejudice the borough's ability to properly consider reasonable alternatives and could well result in an allocation which will not be capable of enduring beyond the end of the plan period. This would effectively conflict with the aims and objectives of paragraph 101 of the NPPF and paragraph 7 of the PPG and result in a plan that fails basic condition a as identified in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990.

- 3.8 The above is supported by the legal opinion from Landmark Chambers – see in particular paragraphs 24 – 30.
- 3.9 **In summary it is concluded that Area D does not comply with the aims and objectives of the ABLP and as such it fails basic condition criterion e of paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990. Its proposed designation as a Local Green Space should be deleted.**

B) Policy TEN NP1: Protection of Landscape Character

- 3.8 Paragraph (d) of this draft policy states that proposals for development outside of the built-up area of Tenterden will only be supported where it would "*maintain the dark skies and low level of light pollution around Tenterden*".
- 3.9 It is important to note in this context that the adopted Ashford Local Plan (see paragraph 9.46, page 276) identifies that the area around Woodchurch, to the east of Tenterden is an "*intrinsically dark landscape*", and that the land around Tenterden itself is excluded from the proposed Dark Sky Zone (see Map 7, page 277). Nevertheless, policy ENV4 of the ABLP requires that all development proposals should provide the minimum light levels appropriate for each purpose, and there is also the requirement to observe Ashford's Dark Skies SPD (2014).
- 3.10 The CPRE has also mapped the dark skies across England, with the help of landscape architects LUC. The interactive map produced by CPRE/LUC shows dark skies as blue and purple areas, with radiance levels of 0.5 NanoWatts/cm²/sr or less; in contrast, areas which do not have dark skies are shown with green, yellow, or orange colours. As **Plate I**, below illustrates, many areas around Tenterden have moderate levels of radiance and thus cannot be accurately described as having dark skies.
- 3.11 It is therefore clear, based upon both the Ashford BC evidence and that prepared by the CPRE, that the landscapes immediately surrounding Tenterden do not have dark skies – they are, more accurately, between zone E2 (rural) and E3 (suburban). It is still important in this context to minimise lighting levels, but this can be achieved by observing the design guidance set out at section 6.0 of the ABC Dark Skies SPD.
- 3.12 As drafted paragraph d of policy TEN NP1 does not accord with policy ENV4 of the ABLP and thus fails basic condition criterion e of paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990. This however can, we believe, be rectified by redrafting. It is thus suggested that paragraph d of policy TEN NP1 be amended to state that **proposed developments** *maintain the low level of light pollution around Tenterden, in accordance with the Ashford Borough Council Dark Skies SPD*

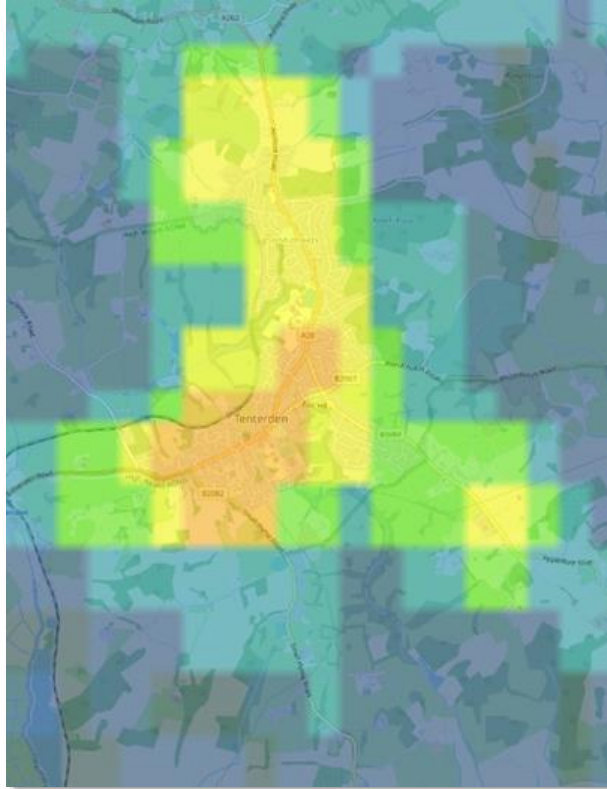


Plate I CPRE Dark Skies Map for the Tenterden area shows that some areas around the settlement (shown in green and yellow) do not, as a matter of fact, have dark skies.

C) Policy TEN NP14 – Protection of Sports and Recreation Grounds

- 3.13 The proposed protection offered to sports and recreation grounds within policy TEN NP14 is broadly consistent with the NPPF, Sport England Policy Exceptions and policy COM2 of the ABLP.
- 3.14 However, the identification of existing provision to be protected is in our opinion flawed, and arguably selective, due to the failure to map the existing football pitch at Appledore Road. This is despite the Ashford Playing Pitch Strategy (PPS) identifying it as a site to be protected⁶ and the Reg 14 TNP acknowledging the recommendations of the PPS in the preamble to policy TEN NP14.
- 3.15 Consequently, for reasons of consistency with the PPS and policy COM2 of the ABLP, the scope of Policy TEN NP14 should be expanded to specifically offer protection to the Appledore Road site (Field F13 as identified above), unless replacement provision is made that is of equivalent quantity and quality and in a suitable location; and Map 19 amended accordingly. If no such amendment is made policy TEN NP14 will not comply with the aims and objectives of policy COM2 of the ABLP and will fail basic condition criterion e of paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990.

⁶ Page 61 of the PPS.

4 Failure to Contribute Towards the Achievement of Sustainable Development

A) Policy TEN NP2 - Local Green Spaces.

- 4.1 The land at Appledore Road (Limes Land) is situated within a highly sustainable location within walking distance of Tenterden town centre. Tenterden itself is the second largest town in Ashford borough. The site is unfettered by any landscape, ecology, or heritage designations. It is in effect an ideal location for consideration for future growth. As such, and for the reasons set out in section 3 above, the proposed designation of the land at Appledore Road (Limes Land) as a Local Green Space (site D) would in our opinion conflict with the aims and objectives of achieving sustainable development and thus basic condition criterion d of paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990. The sites proposed designation as a Local Green Space should be deleted.

5 Points of Clarity

- 5.1 In addition to our points above about compliance with the basic conditions, we also have a number of comments on the substance of/ wording of a number of policies contained in the Reg 14 TNP – as set out below.

A) Policy TEN NP1: Protection of Landscape Character

- 5.2 Paragraph (f) of this draft policy states that development should “*maintain the tranquillity of the area*”. However, there is no evidence provided to support the assertion that the NDP area is tranquil. In reality some areas around the settlement are influenced by noise from the settlement and roads.
- 5.3 To this end we note that CPRE have produced a tranquillity map for England, which is based upon objective noise measurements. The mapping outputs from this study are not as detailed as for the Dark Skies project, but nevertheless they still provide a clear sense of where the most tranquil areas are. As **Plate II**, below, illustrates, the areas generating the most noise are shown in red, and the most tranquil are shown as green. On Plate II the main red area is Ashford, and Tenterden shows as a thin arc of red to the south-west of Ashford. What is particularly notable is that areas of orange and yellow extend far from this red arc, with orange and yellow areas particularly following main roads.
- 5.4 Given the above we would suggest that paragraph f of policy TEN NP1 be amended to state that **proposed developments should minimise noise and preserve areas of tranquillity where these occur**. It is recommended that the policy cross refers to the CPRE tranquillity map as an evidence base.

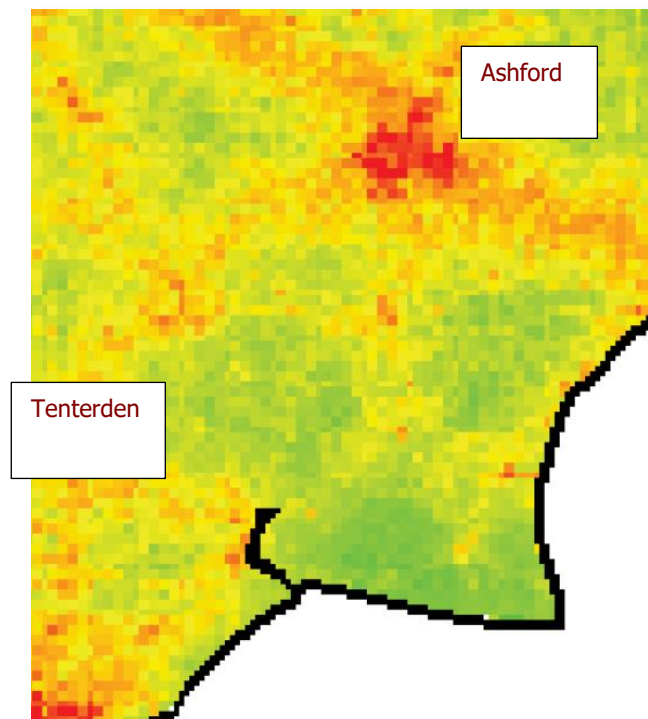


Plate II: Extract from the CPRE Tranquillity Map for the Ashford and Tenterden Area. The plan shows that noise from roads and the urban areas influences a significant area around the settlement.

6 The Background Paper on Strategic Environmental Assessment (SEA)

- 6.1 The Legal Opinion from Landmark Chambers highlights legal flaws in the Neighbourhood Plans approach to SEA – see paras 39 – 44, which again demonstrate failure to comply with the basic conditions set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990. The flaws in the Neighbourhood Plans approach to SEA need to be addressed before it progresses to Reg 16. As however said flaws could fundamentally change the plans approach to certain issues it may well be that a further Reg 14 consultation will be necessary to ensure compliance with the due process. The Town Council/ Neighbourhood Plan Group need, in our opinion, to give this matter much greater priority than they appear to have to date.

7 Conclusions

- 7.1 The Reg 14 TNP fails to comply with the basis conditions a, d and e as set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004 in many respects. Furthermore, significant legal flaws have been identified in the plan, as set out in the accompanying opinion from Landmark Chambers. The plan should thus be the subject of major review and redrafting before it progresses to Reg 16. If at Reg 16 the plan has not fully addressed the issues raised above/ in the attached then I am advised to put the Town Council on notice that Wates will consider initiating legal proceedings.

Yours sincerely

Judith Ashton

JUDITH ASHTON
Judith Ashton Associates

Enclosures:

- Appendix A Legal Advice from Landmark Chambers on the legality of the Tenterden Neighbourhood Plan 2013-2030 Regulation 14, pre-submission draft
- Appendix B Extracts from the Blackwell Neighbourhood Plan Examiner's Report - October 2014
- Appendix C Extracts from the Sedlescombe Neighbourhood Plan Examiner's Report - January 2015
- Appendix D Extracts from the Alrewas Neighbourhood Plan Examiner's Report - August 2015
- Appendix E Extracts from the Tatenhill Neighbourhood Plan Examiner's Report - November 2015
- Appendix F Extracts from the Oakley & Deane Neighbourhood Plan Examiner's Report - December 2015
- Appendix G Extracts from the Brixworth Neighbourhood Plan Examiner's Report - July 2016
- Appendix H Extracts from the Faringdon Neighbourhood Plan Examiner's Report - August 2016
- Appendix I Extracts from the Canterbury City Council Local Plan Inspectors Report - June 2017
- Appendix J SLR – Tenterden Designations Plan

Cc. Rio Daniel Wates Developments Limited