WATES DEVELOPMENTS LIMITED

SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

PUBLIC INQUIRY – 8 – 25 FEBRUARY 2022

LAND BETWEEN APPLEDORE ROAD AND WOODCHURCH ROAD, TENTERDEN, KENT

THE FINAL CLOSING SPEECH OF THE APPELLANT

Introduction – Why permission being granted is now necessary and urgent

1. The overarching context for this appeal is that there is a national crisis for the provision of housing. This is not some academic or intellectual issue but affects people now on the ground with real and profound harmful consequences.

2. It is noteworthy that the LPA accept the delivery and provision of market and affordable housing is "*an important issue*"[1] and that "*building new houses is a pressing issue facing our society today*"[2]

3. The clear difference between the parties is both accepting that this is a pressing and important issue one, the LPA, does nothing to address this issue, and the other party, the Appellant, wants tangible, practical solutions now.

[1] Paragraph 3 of LPA closing.
[2] Paragraph 113 of LPA closing.

4. The reality is that there is a desperate shortage of housing nationally and locally. This is an authority that historically has a shortfall, currently has a shortfall and the credible evidence is that it will continue to have a shortfall for another 5 years.

5. On any basis it is a lamentable performance that can only be remedied not by papers, meetings, discussions and further consideration, but by action and that action must be constituted by actually granting planning permissions now which will be delivered.

6. The position here is that if planning permission is granted up to 141 homes will be delivered by one of the leading developers in the UK.

7. 141 families, couples, individuals and children will be housed in a wonderful location in a beautiful environment with fabulous facilities on their doorstep.

8. You simply could not have a better site frankly. The inherent merits of this site have been reinforced every single day of this inquiry.

9. If this site is rejected, then one must view the future with pessimism and despondency.

10. The housing shortfall will be long term, harmful and detrimental to the most vulnerable in society.

11. As always we have heard from those who live in their own houses close to the site. They wish with some force to keep the status quo. Of course. They have a wonderful standard of living with lovely houses in a wonderful town. Their position is completely understandable, but it is not the objective approach required to meet housing need.

12. Additionally, the LPA have been shown to be dilatory in their approach to the provision of housing – no officer of this Council has come before you to address the housing need and what real steps are being taken to address the shortfall. Instead, the easy option is taken and a consultant based in Dorset comes to provide comfort on the position of the LPA in Kent. It is remarkable! In addition, no timetable is provided of any kind of how they will provide the SPD that sets out the roadmap for dealing with Stodmarsh. Even in February 2022 the position is mired in inaction and procrastination.

13. Who is actually in this authority taking housing delivery seriously? No-one. Although said to be important by the LPA in closing not one officer has come to the largest housing appeal in ABC this year to answer your questions. Not one member has told

you how they believe the housing crisis can be solved in ABC. All we have heard is how to stop the delivery of housing.

14. Frankly the failure of politicians of all political hues to grab this issue and take it seriously is appalling. This approach has been replicated in spades in Ashford Borough Council.

15. This approach can only lead to one inference – the seriousness of this issue is completely ignored by everyone in this authority. This is exactly why there is a housing crisis.

16. My learned friend is the perfect advocate for non-provision – 115 paragraphs in his closing of which only one deals with the LPA's consideration of the benefits of the proposal – paragraph 112. It encapsulates the approach – 114 paragraphs saying no in the context of a massive shortfall and one paragraph considering the benefits of housing from the LPA perspective. That is exactly why there is a housing crisis.

17. However, turn away from negativity, criticism and problems and think about what could happen if permission is granted.

18. The planning system must be more ambitious and braver than allowing the status quo to continue – it is tasked by government now with significantly boosting the supply of housing and meeting the needs of those in need of housing and particularly those most in need of housing the vulnerable, the needy and the homeless.

19. This is an incredible opportunity to make the planning system a system that provides meaningful and long-lasting solutions by providing what is needed now in the right place at the right time.

20. The Appellant proposes up to 141[3] homes (of which 50% will be affordable homes) and a country park and sports pitches, on a site adjacent to Tenterden which is the second largest settlement in Ashford BC and the only other town outside Ashford.

21. We emphasise that the appeal comprises the three elements of residential development, country park and sports pitches, because it is important not to lose sight

[3] Following an application by the Appellant at the inquiry to formally amend the description from 145 to 141, which the LPA has confirmed they do not object to.

of this when the overall impacts and benefits of this mixed-use proposal come to be considered.

22. The opposition to this appeal has mainly been focused on the residential elements of the scheme, however the provision of substantial formal and informal leisure facilities in the form of a country park and sports facilities are fundamental elements of the scheme.

23. The homes are proposed to be built on the western side of the site in an area of 12.35 hectares of development and related green space. The country park will comprise 8.66 hectares which would provide a significant area of new habitat and promote recreation. There will be 3.33 hectares of sports pitches which will comprise 5 different pitches meeting various different requirements of 1 adult football pitch and then 4 football pitches for juniors of various sizes. There will also be a new sports pavilion building of 500 square metres with 62 car parking spaces.

24. The LPA has put forward a number of reasons of refusal, but once put under scrutiny at this inquiry, these objections have been shown to be extremely weak and many concerns have fallen away during this appeal:

    i) Reason for refusal 1 is based on the Council's misunderstanding and misapplication of policies SP1 and SP2. Policies SP1 and SP2 supports development at accessible and sustainable locations, which the appeal site undoubtedly is. The scale of the proposed development is plainly proportionate to the size of Tenterden, and the quantum of development in the appeal proposal in Tenterden in no way harms the spatial strategy in the plan. The proposal does not result in any breach of SP1 and SP2, and in any event these policies are failing to deliver enough housing, resulting in a significant shortfall.

    ii) Reason for refusal 2 relates to minor and highly localised landscape and visual harm. This level of harm is incredibly light for a greenfield site and is inevitable in any greenfield development. This must be seen in the context that the LPA accepts a need to develop on greenfield sites given the urgent need for housing in the Borough through both allocations and windfalls.

    iii) Reason for refusal 3 is based on the loss of a single tree on an avenue, which will not change the overall character of the avenue and where many trees have

already been lost or removed in places and a failure to consider the vast improvement that could be made by planting replacements and additions to the current position.

iv) Reason for refusal 4 now only relates to the allegation of the deterioration of one tree, but without any substantive explanation or quantification as to how and why harm will actually be caused. In reality, there will be no deterioration.

v) Reason for refusal 5 contains an unjustified and flimsy assertion that there is an absence of certainty in relation to ecological improvements.

vi) Reason for refusal 6 has now been dealt with, by the provision of a section 106 agreement,[4] which has satisfied the LPA on the delivery and management of the sports facilities.

vii) Reason for refusal 7 has been withdrawn.

viii) Reason for refusal 8 relies on a potential public right of way which is yet to be confirmed. It is simply not a relevant consideration for this appeal, and even if it is, the public right of way can be accommodated within the proposed development.

ix) Reason for refusal 9 has also now been satisfied, by a satisfactory section 106 agreement.

25. On a fair view, the remaining concerns are not weighty and meaningful grounds of objection but makeweights in seeking to justify the refusal. The LPA has shown a lack of objectivity in forming many of these reasons for refusal and in continuing to pursue them.

26. The LPA need to show in the light of their concession that the tilted balance does apply in this case as set out in paragraph 11 of the NPPF that the remaining alleged impacts significantly and demonstrably outweigh the benefits of the proposal.

27. This is a heavy and onerous burden.

[4] Confirmed by the LPA at the section 106 session.

28. The evidence at this inquiry has shown that many of these alleged impacts are not adverse impacts at all. The most the LPA can realistically rely on is the inevitable localised impact from building housing on a greenfield site and the loss of a single avenue tree.

29. The closing speech of the LPA is revelatory – it can be seen that they actually only really believe there is one harm as betrayed by the closing in which specific and express emphasis is only placed on harm to countryside and the landscape setting of Tenterden in conclusion[5].

30. The benefits of the scheme are substantial and weighty, and the impacts come nowhere close to significantly and demonstrably outweighing these benefits.

Proposition 1 – The Government's overarching aim for the planning system is to see a significant boost to the supply of housing

31. The Government have the clearest objective which is to significantly boost the supply of homes.[6] That requires contemplation – the Government have an objective. That objective is academic unless real and concrete steps are taken to achieve it.

32. It can be achieved by bringing forward sufficient amount and variety of land where it is needed, that the needs of specific housing requirements are addressed and that land with permission is developed without unnecessary delay.

33. This proposal will meet all 3 of those initiatives to meeting the overarching objective.

34. This is not a policy that is speculative or recent. For 10 years now since March 2012 the Government have decided after much thought and political discussion that housing need unlike traffic need, should be met. The planning system needs to provide for 300,000 houses per annum. The planning system needs to meet the identified need here in ABC.

35. That need is huge and must not, and cannot be ignored.

[5] LPA closing paragraph 113.
[6] NPPF 60.

Proposition 2 – The LPA has a desperate need for new market and affordable housing which needs to be addressed now

36. The overarching position of the Appellant is that there is a massive requirement for housing now and in the next five years.

37. It is a need for 7,195 units which is huge on any basis even for an urban authority let alone a rural authority in Kent.

38. The Council accept without any issue that they cannot demonstrate a five-year supply of housing; the only matter in dispute is the extent of the shortfall.

39. The requirement of 7,195 units over the next five years which is agreed, subject to one point on the relevant base date and a missing three months, is made up of 3 parts – the annual requirement of 888 units, the backlog and the 5% buffer.

40. The annual requirement of 888 units as a baseline is a significant requirement as set out in the Local Plan.

41. Then the very large backlog of 2412 units which is nearly 3 years of the requirement in which the LPA have not provided those homes which should have been provided.

42. Finally, as required by national policy the 5% buffer.

43. That requirement amounts to 1,439 homes per annum which is now therefore significantly in excess of the LPA requirement established 3 years ago.

44. It is the clearest manifestation that the Local Plan is not working when within 3 years the requirement so exceeds what is set out in the development plan.

45. The LPA have sought consistently to reduce the sense of urgency and crisis by seeking to reassure you as was done in opening that it will be "short-lived and small". But that is mere words. There is no evidence that is actually the case for the following reasons:

    i) It is interesting how our scheme is alleged to be so large at 141 units that it will threaten the spatial strategy, and yet in the context of this debate the LPA seek to assert that 664 units is small.

    ii) There is no evidence that the shortfall will be short-lived.

iii) In fact, the HLS position as articulated by Mr Taylor shows it is getting worse. In the EIP report it was identified that supply stood at 5.3 years for 2018-23, then 5.12 years in 2019-24, then 4.8 years in 2020-2025[7], then now 4.54 years.[8]

iv) Thus, over the past 4 years from a position of 5.3 we are now on the LPA's own case at 4.54 years – that is a worsening and deepening shortfall on the evidence.

v) Since adoption of the LP the Council simply have not delivered the homes that Policy SP2 required or assumed nor the housing that the Local Plan trajectory assumed.[9]

vi) The LPA have now known for at least 16 months that they cannot demonstrate a 5-year HLS and in all probability longer and yet they have not done anything to close the gap. There is simply no interim policy or plan to deal with the worsening crisis. Instead, what we have is the ostrich approach encapsulated by Ms Goodyear's evidence and by the LPA's cross-examination of Mr Ross – that everything is working beautifully, and full weight should be given to SP2.

vii) If a policy is failing, then it needs to be re-assessed and re-evaluated – that is exactly what paragraph 11(d) of the NPPF seeks to do by deeming policies out of date so that permissions can be granted now.

46. The LPA also allege that the five-year period should cover 1 July 2021 to 31 June 2026.

47. The justification offered by Ms Goodyear was patently inadequate to justify this inconsistency.

48. As a point of honest, accurate and transparent accounting (the arid maths problem) – the five-year requirement and shortfall however relates to the monitoring year 1 April to 31 March.[10]

49. This creates a missing three months in the calculation – it must do!

[7] CD2.9A.
[8] CD2.9B.
[9] MT proof tables 3.2 and 3.3.
[10] CD2.7B Housing Monitoring page 2 summary.

50. The consequence of inserting a missing 3 months is that it can only inflate to the LPA's benefit the 5YHLS.

51. It simply does not include the 222 homes of accumulated target in those 3 months [888 dpa divided by 4) which must be added to the past shortfall if a 1st July position is used as the LPA suggest.

52. In terms of supply the NPPF (Annex 2 could not be clearer) that Category B sites "*should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years*".

53. "*Clear evidence*" as a test requires that evidence has to be robust and up to date, that assumptions have to be shown to be realistic, and that any material relied upon has to have evidential value. It is incumbent therefore on the LPA to show clear evidence to justify the inclusion of the site as deliverable.

54. That nettle was completely grasped by Inspector Stephens in the Alfold Appeal.[11]

55. ABC frankly relies on many Category B sites and future windfalls that require mitigation related to the Stodmarsh nutrients issue. This mitigation is a long way from being finalised. This mitigation will require significant areas of wetlands, that need to be identified before the grant of planning permission, and secondly will need to be constructed and well established over growing seasons before homes can ultimately be completed and occupied.

56. The LPA simply has not provided evidence, let alone it being clear, which shows progress towards implementation of that mitigation to allow the sites to come forward, beyond a mere asserted timetable.

57. There is no update on the wetland site acquisition necessary which should have frankly already occurred.

58. The LPA can provide no evidence as to how and when the SPD is being progressed, despite it be due to being adopted in mid 2022. It was also highly pertinent and revealing that Ms Goodyear could not provide any timetable to the Inquiry for its production. When is it and when will it be provided? One can only speculate.

[11] CD 6.24.

59. Therefore, you simply have no evidence that the wetland mitigation strategy is remotely achievable at the scale necessary and in the timescales set out.

60. Every month that passes the shortfall gets worse.

61. Further the LPA provide no evidence on a site-by-site basis as to how sites will be delivered and when.

62. Ms Goodyear placed huge reliance on second-hand account of discussions held with developers – that is simply not clear evidence.

63. In contrast, Mr Taylor shows in Appendix 2 of his evidence that the lack of progress is patently clear on a site-by-site basis.

64. Those sites therefore should be removed. They are not justified for inclusion and therefore we commend Mr Taylor's Scenario 1 to you which means the LPA has a terrible supply position of 2.75 years and a vast shortfall of 3,236 homes.

65. Even if the mitigation for Stodmarsh was to come forward it is inevitable that there would be delays. This is Mr Taylor's Scenario 2 which would result in a housing supply of 3.57 years and a shortfall of a significant 2,061 homes.

66. There is finally no evidence that TENT1B will come forward based on the lukewarm letters from the agent. Still no real timetable is provided, no timetable for the application, its grant and construction and it must be right to conclude that there is not any certainty on its delivery.

67. In summary:

    i) There is a 5-year HLS shortfall.

    ii) The LPA accept that.

    iii) There is no compliance with a fundamental requirement of Government policy in the paragraph 74 of the NPPF which is mandatory – namely, that the LPA should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five year's worth of housing.

iv) That failure must have consequences – otherwise there is no incentive or penalty for non-compliance. The most important policies are thus deemed out of date, and rationally full weight cannot be given to the spatial policies that have failed to deliver sufficient housing.

v) It is the Appellants strong position that actually the position is that there is less than 3 years supply. That requires only one thing – additional windfalls coming forward now.

Proposition 3 – The proposal will bring forward substantial and weighty benefits

68. The appeal scheme will bring forward numerous benefits, as were explained by Mr Ross.

69. Benefit 1 – the provision of market housing adjacent to the second most sustainable settlement in the Borough. In light of the Government's imperative to boost the supply of housing and taking into account the LPA's worsening housing land supply position, this benefit should be given significant weight.

70. Benefit 2 – the provision of affordable housing of appropriate mix. The Appellant is providing 50% affordable housing, which exceeds policy requirements and far exceeds the delivery of affordable housing in previous developments in the Borough (which equates to only 15% of total homes delivered in 2020-21). Mr Ross explained his view that this benefit should be given more than significant weight.

71. Benefit 3 – the provision of a significant country park. This really is a sizeable benefit to the whole local community, who have no lawful access to this land currently. Even if AB70 is confirmed, the country park will provide an improvement far and away better than the public access new footpath would afford, and the prospect of AB70 being confirmed does not justify any reduction in the weight to be given to the country park. This benefit should be given significant weight.

72. Benefit 4 – the provision of sports facilities which should be given significant weight. As will be addressed further below, there is an accepted need for sport facilities in Tenterden, and the sport facilities provided by the appeal scheme are ideal to meet these requirements. Significant weight should be afforded to this benefit.

73. Benefit 5 – the avoidance of other harmful effects. Whilst the avoidance of other harmful effects may not usually be given weight, the particular circumstances of this

case justify it. The urgent need for housing means housing will need to be delivered somewhere, and this is a site which avoids the harms of Stodmarsh and is in the ideal location to provide housing in Tenterden which is not located in the AONB and is accepted not to cause any harm to the AONB (which was the reason given for limited new development in Tenterden in the Local Plan). This should be given moderate weight.

74. Benefit 6 – the economic benefits that will be forthcoming. Mr Ross explained that both the levels of employment and investment associated with the building out of the permission, and the long-term benefits of increased jobs and increased local spend of £2m per annum, should be given significant weight. The huge benefit that this increased local spend will bring is reinforced when one considers the number of vacant units there are in Tenterden currently.

75. Benefit 7 – the environmental benefits that will be forthcoming should be given moderate weight. In particular, this involves biodiversity net gain, which well exceeds the 10% indicated in the Environment Act 2021 (which is not even yet law). Mr Goodwin's evidence of this net gain and refuting the reason for refusal relied on by the LPA in this regard, is addressed further below. As Mr Smith explained, there will also be landscape benefits, which go beyond that required for mitigation – which should be given limited weight.

76. Benefit 8 – as explained in the evidence of Mr Maynard, there will be a reduction in surface water leaving the site with the construction of a positive drainage strategy and the reduction of flood risk. This should be given significant weight.

77. Benefit 9 – the social benefits that will be forthcoming from the housing and sports facilities and open space should be given some weight.

78. Benefit 10 – finally, the highways enhancements which go beyond mitigation of the scheme, including speed reduction on Appledore Road and a safer crossing route of Woodchurch Road, should be afforded limited weight.

79. Cumulatively those matters must require significant weight to be attached to them. We also take the view that adding the benefits up cumulatively is a completely valid and appropriate exercise as shown by the Inspectors at Oakley and Leybourne notwithstanding Ms Goodyear's refusal to partake in such an exercise.

Proposition 4 – There are a large number of matters not in dispute

80. Section 3.10 of our Opening set out the substantial number of matters which are not in dispute with the LPA (we would refer the Inspector back to this section), and these have remained not in dispute throughout the inquiry.

81. They indicate without question how fundamentally suitable the site is for development because there is no issue with the LPA relating to:

    i) Air Quality.
    ii) Noise.
    iii) Residential amenity within the site
    iv) Residential amenity out with the site.
    v) Flooding and Drainage.
    vi) Sustainability.
    vii) Highway safety and capacity.
    viii) Archaeology.
    ix) Heritage.
    x) Loss of agricultural land.
    xi) Housing mix.
    xii) Open space provision.

82. Moreover, the amount of agreement has increased throughout the inquiry as already touched on, with the concerns in a number of reasons for refusal 6 and 9 being met (as well as parts of reason for refusal 4 and all of reason for refusal 7 being withdrawn).

Proposition 5 – There will be no breach of policies SP1 and SP2 [RR1]

83. The Allegation made is incredibly ambitious on its face – that the grant of planning permission would harm the spatial strategy set out in the development plan when making provision for 141 units in the second biggest settlement in the district.

84. It is the strong view that this allegation is completely without foundation for the following reasons:

    i) Factor 1 - The spatial strategy particularly as articulated in SP 2 must have reduced weight when it is failing and not providing enough housing. It is ironic that the LPA identify harm to a spatial strategy which has failed throughout its

life. Not once since February 2019 has the spatial strategy worked and met the LP's housing requirement.

ii) Factor 2 – SP1 is simply not and will never be a development management policy. It sets out some broad principles which the LPA intend to seek compliance with. That is all it does.

iii) Factor 3 – The only real requirement of SP 1 is to focus development on accessible and sustainable locations "*wherever possible*" so even that requirement is not mandatory but however it is complied with as accepted by Ms Goodyear in XX.

iv) Factor 4 – On a fair and reasonable reading it simply does not support a contention that all housing must be in Ashford. That is simply not what the policy says or even intended. There is an explicit acceptance that the rural areas will take a share of housing as reflected in HOU 5.

v) Factor 5 – It is agreed by Goodyear that HOU5 (a) to (d) is met and therefore the LPA's position is that the site is in an accessible and sustainable location.

vi) Factor 6 – There is no wording in either policy which requires any site to be the "most' sustainable or accessible or some form of sequential approach should be implied into it as developed by CHW QC. That purely seeks to bolster a weak case but nothing more. It is also revelatory that nowhere has the LPA shown a comparative approach to any other application for windfall development showing that it is the "most" sustainable.

vii) Factor 7 – It is also agreed without any hesitation that Tenterden is the second largest and sustainable settlement in ABC. It has nearly 9,000 residents and nearly 4,000 properties so it's expansion by 141 units would be proportionate and acceptable. It is noteworthy that the LPA clearly felt the provision of 225 units at TENT 1B was proportionate, acceptable and sustainable. Tilden Gill was not considered a windfall in the LP [Paragraph 16 of LPA closing is wrong]. It was a extant permission. See CD 2.1 – appendix 5.] So to contend that a development that is materially smaller would not be proportionate, is not credible.

viii) Factor 8 – SP 2 is correctly out of date because of the accepted LPA position on HLS. This is a policy which should have delivered 1240 new homes per annum [3720 overall requirement] since 2018 but has only actually delivered 2,714 homes. Therefore the policy has only provided 72.9% of the housing it should have in its first three years. It is a failing and hopeless policy frankly. It only has one job which is to ensure provision of enough housing and by any criteria or assessment it has been and will continue to be a disaster. It does not do what it should do. If a strategy is failing, then the starting point must be to reduce weight. It is genuinely remarkable that the LPA ask you to give full weight[12] to a policy which is failing by common consent and agreement by both parties. Of course in law it is open to you to conclude full weight can be applied to it but that would be a bizarre judgment because it would completely neutralise the effects of paragraph 11 of the NPPF when the Government clearly want weight to be reduced in most if not all cases to policies that are most important if there is not a 5-year HLS. In the Goodyear world not having a 5-year HLS has no effect whatsoever on the approach to the most important policies which like in this case are then deployed by her with full weight and used to justify refusing housing which is trying to meet the shortfall. The shortfall would simply never be addressed in the Goodyear approach. In contrast the aim of Government is quite clearly to make it materially easier to get housing permissions IF there is non-compliance with the 5-year HLS position as recognised by the Oakley and Leybourne Inspectors. Do not be seduced by the argument that the policies are different – in detail yes but intent no – they are housing strategy policies, found to be out of date by reason of non-compliance with showing a 5 year HLS and therefore the weight must be reduced to them. Otherwise if the approach of the LPA is taken how would a shortfall be met – just think about the LPA case if endorsed – how would one meet a shortfall if full weight is given to restrictive policies deployed to refuse housing windfall applications as the LPA seek to do here. It would simply not be met.

ix) Factor 9 – SP 2 allows the requirement to be met three ways – committed sites, allocations and windfalls. The policy in terms allows windfalls. It is common ground that this is a windfall [Goodyear XX and OSoCG 6.14 and 6.15] in both

[12] Paragraph 19 and 20 of LPA closing.

NPPF and development plan terms. How it can then be suggested that the site is contrary to the spatial strategy when that is accepted is mystifying and utterly illogical.

x) Factor 10 – That key component of the spatial strategy – windfalls – is currently dormant because of Stodmarsh. No windfalls have been granted in Ashford since July 2020 and none can be granted until the SPD dealing with Stodmarsh emerges and NE has given their full sign off.

xi) Factor 11 – What the policy actually requires is that the majority of development be in Ashford which Ms Goodyear accepted was 51% of housing. That is what the policy actually requires. It is surprising therefore that the LPA close on the basis that contention should be rejected out of hand.[13] You must reject the determination of CHW QC to impose a much higher percentage into the policy. It simply is not there, has not been stated to be there in one POR we have seen or any appeal decision. It has no basis and no precedent of any kind for that gloss to be added.

xii) Factor 12 – The agreed position is that when one considers commitments/allocations and windfalls and pp granted for this development 75% of new housing would still be in Ashford and its surrounds. So even if you impose the CHW QC gloss it still would not lead to any breach of the policy.

xiii) Factor 13 – The test of whether a windfall is appropriate is set out in terms in SP2 which requires consistency with the spatial strategy and consistency with other policies. We say for the reasons stated above we are overwhelmingly compliant with the spatial strategy and also consistent most importantly with HOU 5.

xiv) Therefore, in conclusion the provision of a housing development in the second most sustainable location in the borough is completely compatible with SP1 and a windfall scheme of appropriate scale in a sustainable and accessible location would wholly comply with SP2.

[13] Paragraph 9 of LPA closing.

xv) For those reasons the contention that there would be harm to the spatial strategy is completely without foundation.

xvi) But finally, do consider what is the harm that would occur even if you endorsed the concerns of the LPA. It is noteworthy that the only spatial policy harm alleged is "*it would reduce the intended focus on Ashford*"[14]. This is simply wrong. It would not. It would mean a tiny % just over 1% of housing diverted from the main settlement to the second main settlement with still 75% of the housing being in the main settlement. This is a wholly artificial and empty concern frankly and yet again should never ever have been contended by the LPA. It is not a credible ground of objection when one actually properly scrutinises the policies themselves.

Proposition 6 – The landscape and visual impacts are minor and highly localised [RR2]

85. There is a large measure of common ground between the landscape witnesses, Mr Smith and Mr Withycombe:

i) It is agreed that the site has no landscape designation, and there is no allegation of harm to the AONB or the Conservation Area.

ii) There is also agreement with the methodology in Mr Smith's LVA for the scheme, and on his identification of landscape and visual receptors.

iii) Crucially, there is also broad agreement with Mr Smith's judgments on landscape and visual impacts of the scheme within the LVA (see tables D4 and E3 within the LVA at CD1.12). Therefore it cannot be properly contented that the harm would be serious [see LPA closing paragraph 25]. The levels of harm simply do not justify those conclusions.

iv) Both witnesses accept that the landscape and visual impacts are restricted to the appeal site itself and its immediate locality. Therefore the closing of the LPA needs clarification in paragraph 25 – It would harm the site and that which lies within 100 metres of the site. That is a critical and accurate clarification.

[14] Paragraph 21 of LPA closing.

v) Mr Smith states that all greenfield residential development will result in at least localised landscape and visual harm, and Mr Withycombe agrees that this will often be the case.[15]

vi) The difference between the witnesses lies in how their judgments are interpreted and applied in assessing overall effect.

vii) It is Mr Smith's expert evidence and his overall judgments that should be preferred. He is the only witness to actually carry out a GLVIA-compliant assessment.

viii) Mr Withycombe has no methodology, assessment or process which is in any way comparative and therefore must be given less weight when the opposite view is supported by a GLVIA-compliant assessment.

86. Mr Smith was also a reliable and credible witness. He fairly explained that his advice to the Appellant was that he would not support the previous larger proposal for 250 units, and he advised a number of changes be made to produce the current scheme. Importantly, the Appellant conscientiously listened to him. The result is this landscape-led appeal scheme, which Mr Smith was able to strongly influence – together with a multi-disciplinary team with the architects, ecologists, and heritage experts.

87. The appeal site is one of the few areas around Tenterden that is not constrained by landscape-related designations. Mr Smith explained that the condition and character of the appeal site varies. He acknowledged that the eastern part of the site has little influence from the existing settlement edge of Tenterden. Though he notes that the site is contained by a low ridge on the east which limits visibility of development on the site.

88. The rural character and condition of the site materially diminishes at the western part of the site, which is enclosed by the settlement edge on two sides, and is influenced by views of houses, garden boundaries and by lighting and noise. The nature of this boundary in the western part of the site, which comprises fences and vegetation at the rear of properties, with no formal public access, does not currently contribute to the

[15] Paragraph 34 of the Landscape SoCG.

setting of Tenterden positively, and the contribution of the scenic quality of the appeal site towards the setting of the settlement clearly reduces at the west of the site.

89. The proposed new homes would be located within this western area where there is already a clear sense of being on the settlement edge. The masterplan for the scheme, which Mr Smith was integral in designing, assisted by three-dimensional computer modelling,[16] ensures that the design of the massing is appropriate in relation to this settlement edge. The masterplan is focussed on conserving and enhancing landscape character and views, including ensuring that key views towards St Mildred's from footpath AB12 can be retained.[17] Mr Smith explained the proposed masterplan would result in an attractive, safe and distinctive place for future residents to live.

90. The location of development within the site, together with this masterplan, means that the landscape character effects of the development are overall minimal, and the visual effects would be localised and contained.

91. As mentioned above, Mr Withycombe broadly agreed with Mr Smith's judgments on landscape and visual impacts of the scheme within the LVA, namely:[18]

    i) Of the twelve landscape receptors there are only two categorised as a major/moderate negative effect, which are the highly localised receptors (the pasture fields at the western end of the site and the character sub-area at the western end of the site). It is accepted that some views towards St Mildred's would be screened resulting in a moderate negative effect, but many views will still be retained due to the broad greenways and open spaces within the development; and there would also be positive effects for the eastern part of the site and the hedgerow network.

    ii) As to visual receptors the highest level of visual effect will be on users of footpath AB12, and residents immediately adjacent to the site (though for many residents the negative effects will reduce over time). The visual effects would be highly localised, in particular as illustrated by the ZTV.[19]

[16] Even though the residential element is in outline only.
[17] See the photomontages in the LVA.
[18] See tables D4 and E3 within the LVA at CD1.12.
[19] Which is based on a worst-case scenario.

92. As is common ground between the witnesses, all greenfield developments will inevitably result in at least localised landscape and visual harm. The Council accepts it does not have a five-year housing land supply, and on this basis, it will be necessary to develop greenfield sites in Ashford.

93. This puts Mr Withycombe's position into context – which he described as an "*in principle*" objection to development on the site, and a need to "*go back to the drawing board*".[20] Once it is acknowledged that greenfield development is required on windfall sites, you could not get a better greenfield site for development than the appeal site.

94. The appeal site is one of the few areas around Tenterden that is not constrained by landscape or landscape-related designations. In addition, given that the appeal scheme involves development on a greenfield site, the agreed audit of landscape and visual effects above, which are highly localised, is incredibly light. There would be no effect on the wider landscape, and it is agreed that there would be no significant effects on the AONB.

95. The proposed development would conserve and enhance the setting of the settlement in compliance with policies HOU5, SP1, SP6[21] and ENV3a, providing a more permeable edge to the settlement, ensuring good informal surveillance across open spaces and greenways, increasing recreational access to the site and retaining and incorporating keys features of the local landscape into the proposals.

96. Accordingly, the highly localised landscape and visual impacts do not justify refusal of planning permission and should be given little weight in the planning balance.

Proposition 7 – The loss of single tree T43 is not a significant impact

97. The removal of a single tree T43 from the avenue on Appledore Road would be required in order to provide the necessary sight lines at the new site access. Mr Jones' thorough arboricultural impact assessment determined that this was the least harmful position for the site access.

98. There is important context in which to properly assess the effect of the loss of this single avenue tree, both in terms of arboriculture impact and landscape and visual impact:

[20] Both are statements from Mr Withycombe during his oral evidence to the inquiry.
[21] Although this policy is fundamentally concerned with detailed design matters.

i) Mr Jones explained that, on examination of the history of the avenue, over time the cohesion of the avenue trees on Appledore Road has been eroded, with trees in places having been lost or removed, creating gaps in the pairings.

ii) Taking the avenue as a whole, there were originally 84 trees, and there are now only 49; and of the 42 pairs of trees, only 13 now remain complete and six pairs are absent.

iii) Incidentally, the section of avenue where T43 is being removed is an area of relatively denser tree cover, meaning that T43 is viewed in the context of a number of other trees of comparable and slightly greater height. Indeed, it is one of the least visible trees on the avenue.

iv) Finally, Mr Smith also explained that the character of the streetscape is one of a suburban streetscape, fronted by 20th century housing, with signage and street lighting, together with trees at irregular centres and of differing species, ages and conditions.

99. Taking this into account, Mr Jones' evidence was that T43 is not a vital component of this already fragmented avenue feature and its removal will not adversely affect its already reduced uniformity and cohesion. This is particularly so given that the location of T43, means that its removal will be less noticeable. Mr Jones noted that the making of a TPO does not itself add value to T43,[22] though he reasonably questioned the legitimacy of the Council's approach in having allowed the loss of a great number of trees on the avenue already, and yet imposing a TPO in the lead up this appeal.

100. Moreover, Mr Jones explained that the proposed mitigation will more than make up for the loss of this single avenue tree. The Appellant has agreed to pay £35k to Kent County Council,[23] which is a substantial amount. Whilst there may be no requirement on KCC to spend this on replacement trees close to T43, the correspondence with KCC indicates that their intention would be to spend this money on replacement trees in the vicinity. Mr Jones recorded that this sum equated to the establishment and management of 34 or 35 trees. Added to this is also the planting of new community orchards, the country

[22] Mr Jones fairly did not dispute the merits of the TPO.
[23] Calculated on the CAVAT system.

park and the planting of more trees across the site. Taken together, these substantial arboricultural gains far outweigh the impact resulting from the loss of one avenue tree.

101. As to landscape and visual effects on the street and wider area, Mr Smith similarly expressed that the loss of T43 would be from an irregular pattern of trees, seen in the setting of a 20th century streetscape. He recognised that in landscape and visual terms there would be a localised minor and negative impact, but that this would not change the overall balance and character of views along Appledore Road, particularly when viewed sequentially. On this basis the character of the streetscape would be conserved.

102. Mr Smith also noted that the CAVAT value payment could be used to re-establish most of the missing avenue trees along Appledore Road. Even on the basis of conservative growth rates, which Mr Withycombe did not dispute, such trees would become a positive feature in the street scene at a relatively early stage.

103. It follows that in relation to both arboriculture and landscape and visual matters, the character of the streetscape would be conserved, and the distinctiveness and sense of place would not fundamentally change, in accordance with policies SP1 and SP6. Further, as set out in policy ENV3a, the proposals would demonstrate particular regard to the pattern and composition of the avenue trees on Appledore Road. The loss of this tree does not justify refusal of planning permission and should be afforded little weight in the planning balance.

Proposition 8 – There will not be any material harm to T381 [RR4]

104. Mr Jones' clear evidence, following extensive and thorough assessment was that the location of the sports pitch will not result in deterioration of this tree let alone it's loss.

105. It is noteworthy that in closing the LPA allege the proposal will lead to its loss[24] but that simply does not reflect the evidence.

106. This is entirely consistent with the LPA's own position on the previous 250-unit proposal, where the LPA did not raise this issue as a concern even though the relationship between this tree and the proposed sports pitch was identical.

[24] Paragraph 61 of the LPA closing.

107. Mr Jones explained in his evidence that the British Standard root protection area (RPA) and veteran tree buffers are layout design tools to help in assessing how close proposed development might be sited to existing trees, without the necessity of having to carry out extensive root investigation works. They are a starting point, not the end point. He explained that the correct approach is *not* to consider how close development can be sited to a tree to avoid deterioration on the basis of design tools that only predict the *possible* root extents if root investigation works have provided clear; ignoring evidence of the *actual* root distribution and density. Government guidance recognises that the size and type of buffer zones should vary depending on the scale, type and impact of the development.[25]

108. In order to test whether the 'one size fits all' RPA and veteran tree buffer are appropriate with regard to T381. Mr Jones and his team undertook extensive root and soil investigations, including soil testing, digging trial pits and ground radar surveys, to determine the actual locational root distribution and density of T381 and its relationship to the proposed sports pitch. These investigations show that the roots are asymmetrical, extending predominantly north and south, and on this basis, it is clear that the RPA and veteran tree buffer should be morphed to accurately reflect this.[26]

109. Following this, Mr Jones then assessed that the impact of construction of the sports pitch and use of the sports pitch would not cause any harm or deterioration to T381. There will not be any root severance, no excavation is proposed (other than removal of existing turf) and there will not be any construction of buildings or areas of hard surfacing. The compaction caused by mowing (which can be done with light machines) would be no greater than tractors that could be used currently; and the footfall of spectators would not be materially different from the compaction caused by sheep on the fields over recent times. The evidence clearly demonstrates that there is no risk of harm to this tree, and certainly no deterioration.

110. In contrast to Mr Jones' thorough and pragmatic evidence, Mr Cook alleged that harm would be caused to T381, but he could not come up with any substantive explanation as to exactly why harm would be caused. He relied on compaction from spectators and

[25] Paragraph 5.5.10 of Mr Jones' Proof of Evidence.
[26] A morphed RPA, based on actual root density and distribution, would extend 12m north and south and 8m west and east, resulting in an RPA incursion of 23m², the equivalent of 7.5% of the total RPA of 305m²; see paragraph 5.11.2 of Mr Jones Proof.

mowing, however for the reasons given by Mr Jones this does not stand up to scrutiny. Mr Cook appeared to place reliance on the standards, ignoring the consequences of the sound evidence of the actual root distribution and density.

111. When pressed in the roundtable session, Mr Cook accepted that it was difficult for him to quantify why this would actually result in harm. In reality, this is the very highest the LPA can put their case on this issue, and it is nowhere near sufficient to properly allege deterioration.

112. It follows that there is no deterioration of an irreplaceable habitat and no harm to the visual character of the area as alleged in reason for refusal 4, and this does not amount to any material objection against the appeal scheme.

113. Moreover, the LPA does not appear to be convincingly contending that there is loss or deterioration of an irreplaceable habitat as per paragraph 180(c) of the NPPF.[27] Although there appears an inconsistency in the LPA position because of the LPA closing asserts that NPPF 180 [c] is breached.[28] However there is no attempt in the closing to assert the tilted balance should be disengaged! This position is baffling, confusing and inconsistent. The clear position was articulated by Ms Goodyear that the tilted balance was in operation and again no attempt was made in cross-examination to challenge Mr Ross's comment that there was no allegation that 180 [c] was engaged.

114. It follows that properly looking at the evidence rather than closing submissions it can be said legitimately that LPA is right not to pursue this argument, as there patently would not be loss or deterioration of an irreplaceable habitat in this case.

Proposition 9 – There will be meaningful and tangible ecological improvement

115. This is a reason of refusal that should never have been imposed or continued with. It was utterly without justification and its weakness was completely betrayed by Ms Forster in cross-examination. She came within an inch of giving it up because she could see finally, when finally tested on the LPA's position, that it simply was not justified.

[27] Ms Goodyear confirmed in cross-examination that she did not allege the tilted balance was disapplied for any reason. Mr Ross stated in examination-in-chief that he understood the LPA was not alleging that paragraph 180(c) of the NPPF was engaged in this appeal, and he was not challenged on this in cross-examination.
[28] Paragraph 69.

116. The fundamental contention appears narrow and speculative – that the proposed ecological mitigation will not be delivered. That is reiterated in the LPA's closing.[29]

117. On an objective level this is peculiar because Ms Forster was not able to identify anywhere else in Kent where this concern was in reality one that had come to pass. There was not one case where ecological mitigation has not been delivered in the way proposed in one single planning application. There is therefore simply no history or evidence of any issue of this nature across the county.

118. On a subjective level, this is also peculiar, taking into account the site itself and that there was no real concrete evidence as to why this might happen.

119. This is a site with no designation whatsoever for ecology, not even on a local level, as accepted by Ms Forster.

120. Based on a recognised ecological hierarchy looking at international, national, regional and local the appeal site sits at the lowest level of ecological interest – i.e. site level only.

121. There is much agreement between the Appellant and the LPA. It is common ground that the survey information is comprehensive, appropriate and proportionated [see paragraphs 6 and 7 of the Ecology SoCG]. The survey material provides a baseline suitable to make a good assessment of the proposals [Ms Forster's Proof, para 15 and paragraph 20 of the Ecology SoCG]. Further, with regard to protected species the proposed mitigation and enhancements are appropriate, proportionate and the efficacy is well established [ESoCG, paragraph 6].

122. Therefore, the only remaining issue is whether the BNG can actually be achieved.

123. Before considering that, it is agreed between the parties that there is no local policy in the development plan requiring a specific % increase. It was also accepted that the provisions of the Environment Act are not yet a requirement i.e. the 10% BNG.

124. There is only one relevant BNG exercise – that of Mr Goodwin.

[29] Paragraph 70.

125. It is also noteworthy that only one of the three parts of the exercise is actually challenged as well. Ms Forster readily accepted the very significant benefits identified for watercourses and hedgerows. The only debate was in relation to proposed habitat.

126. Ms Forster asked for all the material including the Excel files from Ecology Solutions and clearly did not seek to do an alternative exercise. None was placed before the inquiry by KCC.

127. Mr Goodwin explained that the exercise that is before you is precautionary in terms of the classification of the grassland currently and the condition assessment.

128. The bottom line is there was no evidence of any kind that the proposal would lead to a negative in BNG. There was simply no exercise of any kind where that was shown.

129. That should be and is actually the end of the matter.

130. Additionally, Ms Forster could put no figure although asked repeatedly for one on what she said the loss would actually be without full ecological enhancement as proposed by the Appellant.

131. There is simply no evidence whatsoever that the 14.98% gain in habitat would be wiped out.

132. It was also material that Mr Goodwin's professional judgment was that even if her concerns were made out it would only reduce the BNG by 1 or 2% (as explained by Mr Goodwin in cross-examination).

133. It is also true that the BNG metric does not take into account enhancements for protected species like the Bats, GCN and Dormice which would all benefit from the appeal proposals.[30]

134. It follows that you can actually conclude there will be a net gain in Hedgerows by 52.26% [unchallenged], Ditches and Watercourses by 44.72% [unchallenged] and the Habitats by 14.98 [challenged but not actual identification by what degree].

[30] See Goodwin Proof, para 9.40, fourth bullet.

135. Finally, it is worth reflecting that the only concerns relate to some concerns on enhancement measures not being delivered. However, Ms Forster put her concerns no higher than "unlikely" or "may not".[31]

136. The simple point is what is being sought is not difficult, not ambitious and not likely to be threatened by the concerns of recreational pressure identified by the LPA.

Proposition 10 – There will be an improvement in the quantity and quality of sports facilities and the proposals for suitable delivery and management are more than appropriate [RR6].

137. The LPA has confirmed that the section 106 agreement meets their concerns relating to this reason for refusal. That should be an end to the matter.

138. Nevertheless, it is worth spending a moment examining this issue in Closing, not least because of the significant benefits that will be delivered by the sports provision as an intrinsic part of the appeal scheme and the benefit of provision will favour of the grant of consent.

139. There is complete agreement between the Appellant, the LPA and Sport England that there is a need for extra playing pitches within Tenterden, and that the proposed development (including sports pitches and pavilion) would fulfil the demand for playing pitches and ancillary facilities.[32]

140. This need stems not only from the need for replacement sports provision on the site and demand generated from the proposed development, but significantly from the local need within Tenterden itself. As Mr Grady's evidence shows, there is a relative paucity of sports pitches in Tenterden, and a clear and obvious need for more sports pitches from the existing sports teams in Tenterden – particularly evidenced by the fact that Tenterden Tigers, the town's largest football club, cannot play in the town.

141. This clear need to meet existing shortfalls is supported by the position of Sport England, the Town Council's Sports Review and the LPA's own Playing Pitch Strategy. Again, this is a matter of common ground, which was confirmed by Mr Mayatt for the LPA at the round table discussion.

[31] Ms Forster Proof, para 6, and para 17 and 36
[32] See the Sports SoCG, and the LPA's Playing Pitch Strategy.

142. Reference has been made by the LPA on alleged insufficient information provided by the Appellant as to community engagement. Mr Grady detailed the Appellant's attempts at engagement with the sports clubs, which was constructive at first. Indeed, the range of pitches and pavilion were based on the clubs own designs, and Mr Grady has produced letters of support.[33] However, there has plainly been an element of local pressure not to engage until after the appeal,[34] and this is epitomised by the Sports Review minutes dated 19 January 2022 where it was agreed to wait until after a decision has been made on this appeal before enquiring about pitches on the appeal site.[35] If these sports facilities are built, they will be used. There can be no reasonable doubt on this issue.

143. The Appellant agrees that there should be a governance strategy for the delivery and management of the facilities, and this has been provided to a more than sufficient level of detail by the Appellant. The Appellant has provided a detailed feasibility study, plans of the proposed sports pitches and pavilion, and a maintenance report,[36] prepared by specialists. These facilities would be funded and delivered by the developer. As explained by Mr Grady, Sport England has confirmed that these are of an appropriate level of detail for this stage in the development of the project.

144. As to the management of the facilities, the Appellant maintains that the appropriate level of detail had been provided at this stage, having full regard to policy IMP4. Policy IMP4 does not state the management arrangements must be developed in detail prior to the grant of planning permission, and the approach taken by the LPA to the appeal proposals is not one they have taken elsewhere. The Appellant's approach is completely in line with Mr Grady's wealth of experience, and indeed, the LPA cannot point to one example where this approach has gone wrong.

145. At any rate, it has now been confirmed that the LPA are satisfied that the section 106 agreement sets out a clear framework for the appointment of an operator moving forwards, with appropriate triggers and restrictions to the delivery of residential development until the sports elements have been brought forward. There is a clear need

[33] See Cllr Mike Carter correspondence at Appendix 11 of Mr Grady Proof; and email correspondence at CD6.25.
[34] The clubs have requested that their correspondence not be included as evidence in this appeal and the Appellant has complied with this request.
[35] CD 8.36.
[36] CD1.7.

and clear interest in the sports facilities in the local area, and there is no reasonable prospect that the facilities will not be used.

146. Accordingly, the proposals are entirely in compliance with the requirements of policy IMP4, and there can be no legitimate objection to the proposals on this basis. Moreover, the level of benefits that the appeal scheme will secure for sports provision are significant.

Proposition 11 – The proposed footpath AB70 is not a relevant consideration for a decision at this stage, and in any event, it can be accommodated within the scheme if required [RR8]

147. The straightforward position is that potential footpath AB70, which may or may not be confirmed at a point in the future, is not a material consideration for the Inspector's decision at this appeal.

148. Not one case of law or any appeal decision has been produced by the LPA where anyone has said it should be. Where is the legal basis for this contention? There simply is none.

149. Where is there one appeal decision where an Inspector has endorsed the allegation of harm relating to an outline scheme and its effect on a proposed footpath which has outstanding objections to its confirmation by a very well-resourced and determined objector.

150. Where is there any policy in national guidance where such a position is stated?

151. Where is there any policy in the development plan where it is said potential PRoW should be material considerations – nowhere.

152. Where is there any policy in any ABC SPD saying that either.

153. Where is there any POR where ABC have taken a comparative approach?

154. The answer to every question is a negative of course.

155. This reason of refusal is promoted in a complete vacuum of legal and policy support.

156. There is none.

157. To give this weight in the planning balance would be without justification in law and practice.

158. Whether or not footpath AB70 will be confirmed will be determined by a public inquiry due to take place in April 2022, and it is the Appellant's strong contention that the footpath will not be confirmed.

159. However, regardless of the likelihood or otherwise of the footpath being made, the simple fact is that it has not been confirmed as at today's date and will not be at the date of the Inspector's decision.[37] It is currently non-existent. It follows that whether or not the proposed development will have an effect on this unmade footpath is not a relevant matter a decision-maker can take into account at this stage.

160. Crucially, Ms Goodyear agreed that policy TRA5 only bites where there is actually a public right of way, which the potential AB70 is not. Ms Goodyear thus agreed that policy TRA5 cannot apply at this point in time.[38] On this basis, in reality the LPA has given up the substance of this reason for refusal.

161. In any event, even if this were a relevant matter to take into account (which it is not), it does not give rise to any reason to refuse to grant permission for the appeal scheme.

162. There is a large measure of common ground on this topic:

    i) Ms Beswick, from Kent County Council, agreed at the round table session that if permission is granted for the appeal scheme, this will not prevent AB70 from being confirmed at the rights of way inquiry in the future.

    ii) She also confirmed that if permission is granted for the appeal scheme and AB70 is confirmed, the route of AB70 can be accommodated within the appeal scheme and it will not be obstructed.

    iii) If a diversion is preferred, Ms Beswick agreed that it would be possible to divert the route to accommodate it the western part of the appeal site.

[37] Based on expected decision timescales. If there is a material change in the position on potential AB70 before the Inspector's decision, then further representations may need to be made to address this.
[38] Her answers in cross-examination.

iv) Mr Ross confirmed that the Appellant would be more than willing to engage in this separate application to divert the route, in discussion with KCC, if this becomes necessary. This is exactly the approach KCC endorsed with TENT1.

163. It transpires that KCC's concern (adopted by the LPA) is an extremely narrow one. Namely, that the proposed alignment shown by the Appellant, in Appendix G of Mr Ross' Proof, through the proposed development would not be a sufficiently satisfactory route. This does not give rise to a reason to refuse to grant permission for the appeal scheme.

164. Mr Marshall explained that the proposed alignment of AB70 would provide a safe environmental for pedestrians. The potential routing of AB70 through the proposed country park car park is not unusual. This would be a low-speed environment and consistent with scenarios common to such facilities elsewhere in Tenterden and the Borough. The appeal scheme will provide new opportunities for journeys by foot in accordance with policy TRA5, and will certainly not discourage journeys on foot in any way.

165. Mr Smith addressed the experience of using potential AB70. His evidence demonstrated that at the western end of the proposed footpath, the existing settlement edge is already a noticeable element in the majority of views. The residential development would provide attractive views along greenways, as well as long views towards St Mildred's. there would also be positive changes to views at the eastern end of the site, within the new country park.

166. Further, in any event, as Mr Ross explained, the residential part of the scheme is in outline. The potential confirmation of AB70 can be dealt with as a matter of detail at reserved matters. In addition, as mentioned above Ms Beswick confirmed that if AB70 is made, it would be possible to accommodate the route with a diversion to the western part of the appeal site.

167. On this basis, patently there is no breach of policy and no substantive objection on this matter. Primarily, the unmade footpath is not a material consideration for a decision on this planning appeal. Alternativity even if it is relevant, it is possible to accommodate the footpath within the appeal site, either on its proposed alignment or with a diversion if that is preferred.

Proposition 12 – The additional matters raised by third parties do not give rise to any material objection

168. Although not matters of dispute between the main parties, the Appellant has presented expert evidence on heritage, historic landscape, highway safety, accessibility, drainage and flood risk. These matters were comprehensively and diligently addressed by the Appellant's witnesses.

169. Ms Stoten carried out a thorough analysis of designated heritage assets (and the non-designated 13-15 Appledore Road) in the surrounding area. She found that the proposed development would not cause any harm to the heritage significance of these assets through changes in setting. This is in line with the lack of objection from the LPA and Historic England.

170. In addition, she concluded that she is fully satisfied that the site of the gallows, of concern particularly to Mr Poole, was outside of the appeal site. This is a conclusion agreed upon by four experts.[39] Ms Stoten also explained that there will be no overall harm to the heritage significance of archaeological remains or historic landscape features.

171. Mr Marshall explained that there were no transport or highways reasons to preclude the development, which is agreed by the local highway authority. The local highway network will be able to safely accommodate the increases generated by the development, background growth, and other potential developments in the area; and where necessary appropriate mitigation measures have been agreed.

172. As to matters of sustainability and accessibility, Mr Marshall demonstrated that the appeal site is located in a highly sustainable location to provide genuine and realistic opportunities to travel by modes of transport other than the private car to a wide range of facilities. This reflects Tenterden's role as a principal rural service centre and as the second most sustainable settlement in the Borough. The site is well located to encourage future residents to use public transport facilities, which will be further improved by way of additional bus infrastructure. There is full accordance with national and local planning policy on these issues. There is no allegation from KCC that this is

[39] In addition to Ms Stoten herself – Dr Cook and Mr Hawkins from RPS, and the officer at KCC.

an unsustainable location,[40] and there is no allegation by the LPA that the site is not in a sustainable location and indeed the LPA accept that the appeal scheme complies with policy HOU(a) (b) and (c).

173. Finally, as to drainage and flood risk, a full flood risk assessment was provided with the application and the LPA is now satisfied that reason for refusal 7 has been addressed and it has been withdrawn. Mr Maynard explained that the appeal scheme, which includes SuDs features and together with appropriate conditions, will safely manage surface water runoff, and there will be no greater flood risk both on the site and in the surrounding area. Again, there is total compliance with policy on this issue.

Proposition 13 – On a proper application the appeal scheme is in accordance with the development plan, and material considerations further indicate that permission should be granted

174. All of the evidence at the inquiry demonstrates that the appeal proposals are in compliance with the development plan. It is noteworthy that Ms Goodyear did not carry out a proper assessment of the development plan in her evidence, not considering the development plan as a whole including the policies that, even on her evidence, were complied with. Her exercise was materially deficient and worthless.

175. It is axiomatic that on any balance if you only consider and weigh harm there can only be one conclusion of course. However, that approach was even more remarkable when she readily accepted there were 24 policies which supported the grant of consent or were not breached and yet their place in her balance was utterly ignored. It summed up her partial approach throughout her evidence which was to ignore anything which might be a benefit or in the Appellants favour.

176. As explained by Mr Ross, the decision in accordance with the development plan when considered as a whole, is to grant planning permission.

177. Material considerations further support the grant of consent. In particular the operation of the tilted balance in paragraph 11(d) of the NPPF is overwhelmingly in favour of the scheme. The minor harms relied on by the LPA come nowhere close to

[40] Section 6.4 of the Overarching Statement of Common Ground.

significantly and demonstrably outweighing the substantial and weighty benefits of the appeal scheme.

178. On this basis, we ask you to allow the appeal, literally transform materially the lives of many and give them a home for many years in which to enjoy and therefore grant planning permission.

179. That outcome would be completely justified after 12 days scrutiny at this public inquiry.

180. We commend in the strongest terms the proposal to you.

25 February 2022

SASHA WHITE QC and ANJOLI FOSTER

LANDMARK CHAMBERS.
