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Our Ref: APP/U2235/A/14/2227839
Your Ref: MJW/LJ/10430

3 March 2016

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY BDW TRADING LTD, KENT COUNTY COUNCIL AND FUTURE
SCHOOLS TRUST
LAND AT BOUGHTON LANE, LOOSE, MAIDSTONE, KENT, ME15 9QL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, John Felgate BA (Hons) MA MRTPI who held a public local inquiry from 7-10 July 2015 into your client's appeal against the refusal of planning permission by Maidstone Council (the Council) for the erection of 220 residential dwellings, together with access, parking, landscaping and ancillary works, and the provision of new playing fields for the New Line Learning Academy at land at Boughton Lane, Loose, Maidstone, Kent, ME15 9QL in accordance with application reference MA/13/2197 dated 19 December 2013.
2. On 1 December 2014, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves a proposed residential development of over 10 units, in an area where a proposed neighbourhood plan has been submitted to the local authority.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's analysis and conclusions, except where stated. He also agrees with the Inspector's recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the inquiry

4. Following the close of the inquiry, the Secretary of State wrote to you, and the parties in this appeal, seeking comments on a representation dated 16 August 2015 from Kent County Councillor Brian Clark. A list of the representations received is at Annex A. In determining this appeal, the Secretary of State has taken account of all the representations listed at Annex A. Copies are not included with this letter but will

be made available on request to either of the addresses at the foot of the first page of this letter.

Policy and statutory considerations

5. In deciding these appeals, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
6. In this case, the development plan consists of the saved policies of the Maidstone Borough-Wide Local Plan (2000) (the MBWLP), the Affordable Housing Development Plan Document (2006) and the Open Space Development Plan Document (2006). The Secretary of State considers that, with the exception of MBWLP Policies T9 and T11 which are not saved, the development plan policies of most relevance to this appeal are those set out by the Inspector at IR27 – 32.
7. Other material considerations which the Secretary of State has taken into account include: The National Planning Policy Framework (the Framework); the Planning Practice Guidance (the Guidance); and the Community Infrastructure Levy (CIL) Regulations.
8. The Secretary of State has taken account of the draft Maidstone Borough Local Plan (MBLP) and the Inspector's comments on it at IR33 - 39. The Secretary of State is aware that the Council has now begun consultation under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 and that 220 dwellings remain as a proposed allocation on part of the appeal site (MBLP policy reference H1-29). Having had regard to all three limbs of paragraph 216 of the Framework, the Inspector's remarks at IR37-39, and the further progress with the MBLP, the Secretary of State attributes limited weight to the document.
9. The Secretary of State has also had regard to the emerging North Loose Neighbourhood Development Plan (NLNDP) and the Inspector's remarks at IR40-46. The Secretary of State is aware that, since the inquiry closed, the NLNDP has progressed, that it has been found to meet the basic conditions and that a referendum on it is due to be held on 3 March 2016. Having had regard to all three limbs of paragraph 216 of the Framework, the Secretary of State accords moderate weight to the NLNDP.

Main issues

10. The Secretary of State agrees with the Inspector that the main considerations in this case are those identified at IR198.

Accordance in principle with the development plan

11. For the reasons given by the Inspector at IR199 - 202, the Secretary of State shares his view that, in terms of the principle of development, the general land-use policies in the development plan are either favourable or neutral (IR203). However, he also concurs with the Inspector's analysis at IR204 – 206 and he too concludes that, as a matter of fact, the development now proposed would be contrary to Policy ENV32, and that the development's actual effect would be contrary to the policy's aims (IR207). The Secretary of State agrees with the Inspector's remarks at IR210 - 211 and he too takes the view that Policy ENV32 should not be regarded as out of date, as it is not a housing supply policy and nor does it conflict with the substance of the Framework (applying paragraph 215 of the Framework).

12. Having had regard to the Inspector's remarks at IR208, the Secretary of State agrees that, when the adopted MBWLP is looked at in the round, taking account of all the relevant policies together, the proposed development is contrary to the development plan taken as a whole (IR209).

The effects on the character and appearance of the rural fringe

13. Having given very careful consideration to the Inspector's comments at IR212 – 215, the Secretary of State shares his view that although the proposed development would cause some harm to the area's character and appearance, due to the loss of openness and rurality, this harm on its own would not be so great as to justify the refusal of planning permission (IR216).

Accessibility to local facilities

14. The Secretary of State's agrees with the Inspector's remarks at IR217 – 220 and he too concludes that the appeal site's accessibility to local facilities, by non-car modes, is adequate and that in this respect the proposed development would accord with the aims of MBWLP Policy T21 and with the Framework's core principle of focussing development in sustainable locations (IR221).

Traffic congestion

15. The Secretary of State has given very careful consideration to the Inspector's remarks about traffic congestion (IR222 – 242), including his view that the level of regularly occurring congestion in this part of Maidstone is more than usually severe (IR222). Like the Inspector (IR227), he considers that the appellants' forecasts would represent an increase in traffic in Boughton Lane, on its approach to the Swan junction, in the order of 15-30% and that, in the context of the area's existing traffic problems and the likely further growth identified by the Inspector, an increase of this magnitude would be a matter for significant concern (IR227). He also concurs with the Inspector that such an increase would be especially significant in the case of Boughton Lane, because of the complete lack of any suitable alternative access roads into or out of the area that the northern part of the Lane serves (IR228). For the reasons given by the Inspector at IR229 – 231, the Secretary of State further agrees that there is an appreciable risk that the appellants' traffic generation figures tend towards under-estimation (IR232).
16. Like the Inspector, the Secretary of State observes that, on the appellants' own figures, the likely impact on traffic conditions at the Swan junction would be severe (IR232) and that without effective mitigation, the development's impact on the highway network would be unacceptable (IR233). Having had regard to the Inspector's analysis at IR234 – 239, the Secretary of State shares his view that little reliance can be placed on the proposed highways contribution as a means of mitigation (IR237) and he too concludes that the proposed development's severe traffic impact would not be effectively mitigated (IR239). He further agrees with the Inspector (IR241) that piecemeal development on the appeal site, exacerbating existing problems rather than contributing to a workable solution, could adversely affect the delivery of a successful plan-led development and infrastructure strategy.
17. Concluding on this matter, for the reasons given by the Inspector at IR222-241, the Secretary of State concurs with his view that the proposed development would have a severe adverse impact on the highway network, in terms of congestion and inconvenience to local residents and other road users, and on the strategic transport planning of the area generally, and that this would be contrary to the aims

of paragraph 32 of the Framework (IR242) which states that where the residual cumulative transport impacts are identified as severe, development should be refused.

18. The Secretary of State has given very careful consideration to the representations submitted following the close of the inquiry. He does not consider that those representations undermine his conclusions in the preceding paragraph.

Highway safety

19. The Secretary of State has given very careful consideration to the Inspector's analysis of highway safety issues at IR243 – 254. He observes that MBWLP Policy T9 no longer forms part of the development plan. However, paragraph 32 of the Framework makes clear the importance of achieving safe and secure access to development sites and paragraph 35 of the Framework sets out that developments should be located and designed to give priority to pedestrian and cycle movements, and create safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians. For the reasons given at IR243 - 254, the Secretary of State shares the view of the Inspector (IR255) that, within the central section of Boughton Lane, adjacent to the appeal site, the proposed development would result in significant danger to pedestrians, cyclists and other road users and that, in this respect, the scheme would be contrary to paragraphs 32 and 35 of the Framework.

Five Acre Wood

20. The Secretary of State agrees with the Inspector's analysis (IR256 – 258) and conclusion that, for the purposes of this appeal, there is no proper basis for applying paragraph 118 of the Framework or any other policies that relate only to ancient woodland (IR259). Accordingly, like the Inspector, the Secretary of State considers that Framework paragraph 109 is applicable in the determination of this case and that paragraph 118 is not (IR259-260).
21. Having gone on to consider the Inspector's remarks at IR261 – 267, the Secretary of State also concludes that the proposed works affecting the wood, including the creation of an access road through it, and the provision of a footway to the school campus, and the proposed development within 15m of the wood are acceptable within the terms of paragraph 109 of the Framework (IR268).

Quality of the proposed design and layout

22. The Secretary of State agrees with the Inspector that the proposed street pattern, house designs and streetscapes would be of an acceptable quality (IR269). However, he also shares the Inspector's view that, due to a number of elements, much of the development would appear cramped, unrelieved and somewhat anonymous (IR270) and that the scheme would fail to achieve an appropriate balance between efficiency and other important design objectives (IR271). For the reasons given at IR272, the Secretary of State shares the Inspector's concerns about the quality of townscape and the residential environment within the proposed development itself. He also agrees with the Inspector that due to their siting, layout and form, the three clusters of affordable housing units would not be well integrated with the remainder of the development and that this aspect of the scheme would not accord with the Framework's aims for the creation of mixed and inclusive communities (IR274).
23. Overall, for the reasons set out by the Inspector at IR269 - 275, the Secretary of State concurs with the Inspector's conclusion that, looking at the proposed scheme

as a whole, its overall quality does not match up to the Framework's aims in respect of creating residential environments of genuinely high quality (IR275).

Other matters raised by objectors

24. The Secretary of State has given very careful consideration to the Inspector's comments about the other matters raised by objectors (IR276 – 287). For the reasons given by the Inspector, he also concludes that the issue of air quality should not weigh heavily in the present appeal (IR276). He also concurs with the Inspector's remarks at IR277 – 278 and he too attributes modest weight against the appeal to the loss of over 8 hectares of Best and Most Versatile agricultural land. In common with the Inspector and for the reasons he gives (IR279 – 280), the Secretary of State further concludes that the 66 units of affordable housing would help to meet an acknowledged need for such housing and that the proposed provision is acceptable. The Secretary of State agrees with the Inspector's remarks about the scheme's effects on local services (IR281 – 282) and, having had regard to the Inspector's comments about the North Loose Residents' Association's alternative proposals (IR283-285), he also shares the Inspector's view that significant weight should not be attached to them (IR285).

The scheme's benefits

25. The Secretary of State has taken account of the Council's evidence to the inquiry that housing land supply is agreed to be 2.1 years worth at the required annual rate (IR110). He has also taken account of paragraph 47 of the Framework which states that, to boost significantly the supply of housing, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer to provide a realistic prospect of achieving the planned supply and ensure choice and competition in the market for land. The Secretary of State has had regard to paragraph 49 of the Framework which states that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable sites. Like the Inspector (IR288), the Secretary of State considers that the appeal scheme's 220 dwellings, in a Borough with an acute shortage of housing land, and its 66 affordable dwellings, for which there is an established urgent need, are benefits which carry substantial weight.
26. For the reason given by the Inspector at IR289 – 291, the Secretary of State concludes that the new sports field would be a benefit and he too attributes moderate weight to it.
27. Having given very careful consideration to the Inspector's analysis at IR292 including his remarks that the actual amount of capital receipt which the appeal proposal would generate for Kent County Council is undisclosed and that there is no commitment that it would be used to carry out expansion and improvements at the Five Acre Wood School, the Secretary of State agrees with the Inspector that the capital receipt carries little weight. He further concludes, for the reasons given by the Inspector, that the provision of the school farm relocation land also carries little weight (IR293) and that the capital receipt for the Future Schools Trust carries only limited weight (IR294).
28. Paragraphs 18 – 22 of the Framework set out the importance of building a strong, competitive economy. The Secretary of State shares the Inspector's view (IR295)

that the proposed development would have net benefits to the local and national economy and that the economic benefits identified by the Inspector in this case would be significant and that they carry moderate weight. He also concurs with the Inspector that the New Homes Bonus carries little weight (IR296).

29. The Secretary of State agrees with the Inspector's reasoning and his finding that the claimed benefits to ecology count as neutral rather than as net benefits in this case (IR297), as do the financial contributions offered through the appellant's undertaking (IR298). For the reasons given by the Inspector at IR299 – 301, the Secretary of State also finds no basis to give any weight to the proposed transfer of land to the Boughton Monchelsea Amenity Trust.

Conditions and obligations

30. The Secretary of State has given very careful consideration to the Inspector's remarks at IR303 – 308, the undertaking provided as evidence document GD-3 and paragraphs 203 – 205 of the Framework. For the reasons given by the Inspector at IR305 – 308, the Secretary of State shares his view that the obligations are necessary and that they comply with CIL regulations 122 and 123.
31. The Secretary of State has considered the Inspector's remarks on conditions (IR309 - 314), and his suggested conditions at Annex A of the IR. The Secretary of State is satisfied that these conditions meet the tests of paragraph 206 of the Framework and comply with the guidance. However, like the Inspector (IR314), he does not consider that conditions would overcome his reasons for refusing planning permission.

Overall Planning Balance and Conclusion

32. The Secretary of State has given careful consideration to the Inspector's remarks at IR315 – 322. He has concluded (at paragraph 12 above) that the scheme is contrary to the development plan as a whole and, like the Inspector, he has gone on to consider whether there are material considerations to justify determining the appeal other than in accordance with the development plan.
33. The Secretary of State agrees with the Inspector's summary of the scheme's benefits at IR316 and he too acknowledges that the Council no longer opposes the grant of permission. He has given substantial weight to the scheme's benefits in relation to housing and affordable housing (at paragraph 25 above) and he shares the Inspector's view that the considerations identified at IR316 weigh heavily in favour of allowing the appeal and that, in addition, the development would provide a new sports field and economic benefits.
34. Turning to the scheme's drawbacks, setting aside the reference to LP Policy T9, the Secretary of State agrees with the Inspector's summary at IR317 – 318. He has concluded that the scheme would have a severe impact on the highway network in terms of congestion and inconvenience to road users (at paragraph 17 above) and that it would result in significant danger to pedestrians, cyclists and other road users (at paragraph 19 above). He agrees with the Inspector that neither of these problems would be overcome by the proposed highway contribution and nor could they be overcome by conditions (IR317). The Secretary of State has found that the scheme's overall quality does not match up to the Framework's aim to create residential environments of genuinely high quality and he shares the Inspector's view that this matter could not be overcome by any of the obligations that have been entered into and nor could they be dealt with by condition (IR318).

35. Drawing all these matters together, the Secretary of State has found that the scheme conflicts with the development plan overall. He has considered whether there are any material considerations which would justify him determining the appeal other than in accordance with the development plan but he does not consider this to be the case.
36. Given the absence of a five year housing supply and paragraph 49 of the Framework, which states that housing applications should be considered in the context of the presumption in favour of sustainable development, the Secretary of State has considered the application of paragraph 14 of the Framework to the facts of this case. However, having had regard to the Framework as a whole, and weighing in the balance the benefits and adverse impacts of the development as set out above, the Secretary of State agrees with the Inspector's conclusions at IR 321 and 322 that the benefits of this proposed development are significantly and demonstrably outweighed by its adverse impacts.

Formal Decision

37. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses the appeal and refuses planning permission for the erection of 220 residential dwellings, together with access, parking, landscaping and ancillary works, and the provision of new playing fields for the New Line Learning Academy at land at Broughton Lane, Loose, Maidstone, Kent, ME15 9QL in accordance with application reference MA/13/2197 dated 19 December 2013.

Right to challenge the decision

38. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
39. Copies of this letter have been sent to Maidstone Borough Council and North Loose Residents' Association. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Christine Symes

Christine Symes

Authorised by Secretary of State to sign in that behalf

Annex A: Correspondence received too late to be considered by the Inspector

16 August 2015	Cllr Brian Clark
12 & 30 November 2015	Jason Lewis, dha transport
19 & 30 November 2015	Richard Hunt
20 November & 2 December 2015	Jaqueline Day, North Loose Residents' Association
23 November & 2 December 2015	Roy Lane
26 November 2015	Amanda Marks, Maidstone Borough Council
15 February 2016	Mark Bailey, BDW Kent

Report to the Secretary of State for Communities and Local Government

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 7 September 2015

TOWN & COUNTRY PLANNING ACT 1990

MAIDSTONE BOROUGH COUNCIL

APPEAL BY:

KENT COUNTY COUNCIL

THE FUTURE SCHOOLS TRUST

AND BDW TRADING LIMITED

RE

PROPOSED DEVELOPMENT AT BOUGHTON LANE, LOOSE

Inquiry held between 7 – 10 July 2015

Proposed development of 220 dwellings and new school playing fields

File Ref: APP/U2235/A/14/2227839

CONTENTS

List of Abbreviations

1. PRELIMINARY MATTERS

1.1 Procedural Matters	1
1.2 The Site and its Surroundings	2
1.3 The Proposed Development	4
1.4 Planning Policy	
<u>The Development Plan</u>	
<i>The Maidstone Borough-wide Local Plan</i>	5
<i>The Affordable Housing DPD</i>	5
<i>The Open Space DPD</i>	6
<u>Emerging plans</u>	
<i>Draft Maidstone Borough Local Plan</i>	6
<i>Draft North Loose Neighbourhood Development Plan</i>	7
<u>National policy and guidance</u>	8

2. THE PARTIES' CASES

2.1 The Case for the Appellants	
<u>Submissions on policy matters</u>	9
<u>Submissions on housing</u>	
<i>General housing need</i>	9
<i>Affordable housing need</i>	9
<u>Submissions on the site's suitability</u>	10
<u>Submissions on the quality of the scheme</u>	11
<u>Submissions on the scheme's benefits</u>	
<i>Benefits to education</i>	11
<i>Benefits to ecology</i>	12
<i>Other benefits</i>	13
<u>Submissions on ancient woodland</u>	
<i>Ancient woodland status</i>	13
<i>Proposed access strip</i>	15
<i>Effects on the woodland</i>	15
<u>Submissions on traffic impact</u>	
<i>Congestion</i>	16
<i>Highway safety</i>	17
<u>Submissions on other matters</u>	
<i>Air quality</i>	18
<i>Alternative access</i>	18
<i>Sustainable development</i>	18
2.2 The Case for the Council	18
2.3 The Case for North Loose Residents' Association	
<u>Submissions on policy matters</u>	19
<u>Submissions on traffic issues</u>	

<i>Existing congestion and background traffic</i>	19
<i>Impact of the proposed development traffic</i>	20
<i>Prospects for highway mitigation</i>	21
<i>Relationship to wider transport planning</i>	21
<i>Other matters relating to traffic congestion</i>	22
<i>Highway safety</i>	22
<u>Submissions on ancient woodland</u>	23
<u>Submissions on site accessibility</u>	25
<u>Submissions on countryside impact</u>	26
<u>Submissions on the quality of the scheme</u>	26
<u>NRLA's alternative proposals</u>	27
<u>Submissions on other matters</u>	
<i>Air quality</i>	27
<i>Loss of agricultural land</i>	27
<i>Use of the sports field</i>	27
<i>Consultation with the community</i>	28
<i>Draft Local Plan procedure</i>	28
<i>Sustainability</i>	28

2.4 The Submissions by Other Interested Persons

<u>Oral submissions - supporters</u>	
<i>Cllr Ian Ellis</i>	28
<i>Cllr Steve Munford</i>	29
<u>Oral submissions - objectors</u>	
<i>Cllr Brian Clark</i>	29
<i>Cllr Ian Chittenden</i>	30
<i>Cllr Derek Mortimer</i>	31
<i>Mr Richard Hunt</i>	31
<i>Mr Roy Lane</i>	31
<i>Cllr Tony Harwood</i>	31
<u>Written representations</u>	32

3. INSPECTOR'S REASONING

3.1 Main issues	33
<u>(i): Accordance in principle with the development plan</u>	
<i>Compliance with general land use policies</i>	33
<i>Compatibility with the Southern Anti-Coalescence Belt policy</i>	33
<i>Relationship to the adopted development plan as a whole</i>	34
<i>Whether policies are out of date or inconsistent with NPPF</i>	34
<u>(ii): Effects on the character and appearance of the rural fringe</u>	35
<u>(iii) Accessibility to local facilities</u>	36
<u>(iv) Traffic Congestion</u>	
<i>Existing conditions and future traffic growth</i>	37
<i>The traffic impact of the proposed development</i>	38
<i>The proposed mitigation</i>	39

<i>The wider transport planning context</i>	40
<i>Conclusion on traffic congestion impact</i>	40
<u>(v) Highway safety</u>	
<i>Boughton Lane – northern sections</i>	41
<i>Boughton Lane – central section</i>	41
<i>Boughton Lane – south of the appeal site</i>	43
<i>Conclusion on highway safety</i>	43
<u>(vi) Effects on Five Acre Wood</u>	
<i>Ancient Woodland status</i>	43
<i>The proposed access road</i>	44
<i>Other matters relating to the woodland</i>	45
<i>Conclusions on effects on the woodland</i>	45
<u>(vii) Quality of design and layout</u>	45
<u>(viii) Other matters raised by objectors</u>	
<i>Air quality</i>	47
<i>Best and most versatile land</i>	47
<i>Affordable housing</i>	47
<i>Effects on local services</i>	48
<i>NLRA’s alternative proposal</i>	48
<i>Public consultation</i>	48
<i>Local Plan procedure</i>	49
<u>(ix) The scheme’s benefits</u>	
<i>Benefits to housing provision</i>	49
<i>Benefits of the new sports field</i>	49
<i>Benefits to educational provision</i>	49
<i>Economic benefits</i>	50
<i>Benefits to ecology</i>	50
<i>Benefits from the financial contributions</i>	51
<i>Dedication of land to BMAT</i>	51
<i>Conclusions on the scheme’s benefits</i>	51
3.2 Conditions and obligations	
<u>The undertaking</u>	52
<u>Conditions</u>	52
3.3 Overall Planning Balance and Conclusion	53
3.4 Recommendation	54
 APPEARANCES	56
INQUIRY DOCUMENTS	57
PLANS	64
ANNEX A: RECOMMENDED CONDITIONS	67

ABBREVIATIONS USED IN THIS REPORT

AQMA	Air Quality Management Area
BMAT	Boughton Monchelsea Amenity Trust
BMPC	Boughton Monchelsea Parish Council
BMV	Best and most versatile
FAWS	Five Acre Wood School
KCC	County Council
DCLG	The Department for Communities and Local Government
DfE	Department for Education
DPD	Development Plan Document
EIA	Environmental Impact Assessment
KCC	Kent County Council
MBWLP	Maidstone Borough-Wide Local Plan
MBLP	Maidstone Borough Local Plan
MUGA	Multi-Use Games Area
NE	Natural England
NLLA	New Line Learning Academy
NLNDP	North Loose Neighbourhood Development Plan
NLRA	North Loose Residents' Association
NPPF	The National Planning Policy Framework
OS	Ordnance Survey
PDL	Previously Developed Land
PPG	Planning Practice Guidance
PTDOSC	Planning, Transport & Development Scrutiny and Overview Committee
RR	Refusal Reason
SACB	Southern Anti-Coalescence Belt
SoS	The Secretary of State (for Communities and Local Government)
TA	Transport Assessment
TPO	Tree Preservation Order
TPS	Tiger Primary School

File Ref: APP/U2235/A/14/2227839

Land at Boughton Lane, Loose, Maidstone, Kent ME15 9QL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Kent County Council, the Future Schools Trust and BDW Trading Ltd against the decision of Maidstone Borough Council.
- The application Ref 13/2197, dated 19 December 2013, was refused by notice dated 29 July 2014.
- The development proposed is the erection of 220 residential dwellings, together with access, parking, landscaping and ancillary works, and the provision of new playing fields for the New Line Learning Academy

Summary of Recommendation: That the appeal be dismissed

1. PRELIMINARY MATTERS

1.1 Procedural Matters

1. The permission sought by the appellants is full planning permission for the development as described above. The Council's refusal of permission in July 2014 was for two refusal reasons (RRs)¹, relating to the effects on ancient woodland, and lack of affordable housing.
2. By a Direction issued on 1 December 2014, the appeal has been recovered for determination by the Secretary of State (SoS) himself². The reasons are that the appeal involves a proposed residential development of over 10 units, in an area where a proposed neighbourhood plan has been submitted to the local authority.
3. In a Screening Opinion dated 14 January 2015, the SoS directed that, for the purposes of the relevant Regulations³, the proposed development is not EIA development⁴.
4. On 16 April 2015 the Council's Planning Committee formally resolved not to defend RR2, and on 11 May, the Planning Referrals Committee confirmed that resolution and extended it to include RR1⁵. These decisions were communicated to the Planning Inspectorate in a letter dated 15 June⁶. At the inquiry, the Council's position was that it no longer sought to resist the grant of planning permission, subject to appropriate conditions and legal obligations.
5. Following the Council's late change of position, a request for Rule 6(6) status was made by the North Loose Residents' Association (NLRA). That request was granted on 5 June 2015. The NLRA appeared at the inquiry to oppose the proposed development.
6. The inquiry sat for four days, on 7 – 10 July 2015. I conducted an accompanied visit to the site on 10 July. I also carried out unaccompanied visits, to observe traffic conditions at different times of day, and to view the area generally, on 6, 7, 8 and 9 July.

¹ Main file – buff sub-folder

² Main file – blue sub-folder

³ The Town & Country Planning (Environmental Impact Assessment) Regulations 2011

⁴ Main file – blue sub-folder

⁵ Doc.BG-17 (Planning Referrals Committee minutes)

⁶ Main file – blue sub-folder

7. At the inquiry, the appellants called five witnesses. Four of these witnesses submitted proofs of evidence, which are referenced in the attached list of inquiry documents. The fifth, Mr Jason Lewis, gave evidence orally in relation to traffic matters⁷.
8. The NLRA was represented by five spokespersons⁸. Of these, Mr Osborne presented an individual proof of evidence, and three other witnesses⁹ spoke in support of the group's collective written submissions. Mr Southgate did not give evidence, but assisted with questioning and discussions. Mr Curtis Barkel submitted a proof of evidence¹⁰ but did not appear at the inquiry, and I have treated his proof as a written submission.
9. It was agreed that closing submissions should be made in writing. Submissions were received from the appellants and NLRA. The Council opted not to make any closing submission.
10. Towards the end of the inquiry, a late written representation was received from Dr Philip Sansum, with regard to the issue of ancient woodland¹¹. I allowed the parties to make further written responses on that matter, after the deadline for closing submissions. Such responses were made by the appellants and NLRA¹².
11. At the inquiry, the appellants tabled a unilateral legal undertaking¹³. The undertaking provides for affordable housing and various financial contributions. The Council confirmed that they are content with the undertaking.

1.2 The Site and its Surroundings

12. The appeal site comprises two distinct parts¹⁴. The eastern section is an arable field of about 12 hectares, forming part of Boughton Mount Farm. The western part, of about 7 ha, is a school sports field attached to the New Line Learning Academy (the NLLA).
13. The eastern arable field is flat and largely featureless, except for hedged boundaries and a small strip of linear woodland in the north-eastern corner. The western sports field has some individual trees within it, and mature tree belts along its eastern, southern and south-western boundaries. Along its western boundary lies Five Acre Wood, which is identified as Ancient Woodland¹⁵, and is the subject of a Tree Preservation Order (TPO)¹⁶, made in 2002.
14. Immediately to the north of the sports field is the NLLA educational campus¹⁷, containing the NLLA itself, the Tiger Primary School (TPS), and the Five Acre Wood School (FAWS). The NLLA is an Academy secondary school and 6th form college, for pupils aged 11-18. The TPS, which was set up under the Free

⁷ Mr Lewis's qualifications and experience are set out in a separate note at Doc. AP-11

⁸ As set out in the list of Appearances

⁹ Mr Carter, Mrs Day and Mr Moore

¹⁰ Doc NL-12 (Mr Barkel's proof)

¹¹ Doc. OP-11 (Dr Sansum's letter)

¹² Docs. AP-15 and NL-23 (final comments of the appellants and NLRA in response to Dr Sansum)

¹³ Doc. GD-3 (the undertaking)

¹⁴ Best seen on Plan DHA/6273/01 (Location Plan)

¹⁵ As defined on Natural England's MAGIC (Multi-Agency Geographic Information for the Countryside) database of Ancient Woodlands (Docs. AP-2A/Apx 2, and AP-3A/Apx 2); and recorded on Map 4 of the Ancient Woodland Inventory for Maidstone Borough (Doc. CD-5)

¹⁶ TPO No. 17 of 2002, dated 9 May 2002 (Doc. AP-3/Apx 5)

¹⁷ Outlined in blue on the Location Plan

Schools initiative, takes younger children of up to 11 years. Both of these schools are sponsored and managed by the Future Schools Trust, a registered charity. More detail on the educational aims and philosophy of the FST schools is given in the evidence of Sir Nick Williams, the Trust's Chief Executive¹⁸. The FAWS is a special needs school, run by Kent County Council (KCC), for children with learning difficulties including physical and sensory impairments and autistic spectrum disorder (ASD).

15. To the north of the school buildings, but still within their campus, there is the NLLA's educational farm, which is used for a variety of teaching purposes by all three schools. To the south is the existing NLLA sports field, which is also used by the Primary School children, and by sports clubs within the local community. In the central part of the site are the NLLA's two all-weather multi-use games areas (MUGA's). Also within the campus there is the FST's own day nursery, and various other buildings used independently, including a gym and a Baptist Church.
16. Both the NLLA and TPS have recently moved into new buildings on the site, which have been built during the last few years. Both have yet to reach full capacity, and this additional capacity is expected to be taken up over the next 5 years or so. The NLLA's planning permission¹⁹ also includes permission for a Studio School, which will offer vocational training within the Free Schools programme; this has yet to be started. The FAWS has planning permission for extensions and refurbishment, which will increase its capacity²⁰. This will require the relocation of the existing school farm onto the present appeal site, for which planning permission has also been granted²¹.
17. Skirting the western boundary of the appeal site and the school campus is Boughton Lane. The section running northwards from the school's northern entrance²² is of a reasonable standard, with footways. This joins the A229 Loose Road, at a traffic-light controlled staggered cross-roads with Cripple Street, known locally as the Swan²³ junction, about 650m north of the appeal site. The remainder of Boughton Lane is rural in nature, with restricted width and mostly with no footways. To the south, it runs through open countryside, passing through the small village of Boughton Monchelsea, to connect with the B2163 Heath Road, about a mile and a half from the appeal site.
18. To the west of the appeal site is the built-up area of North Loose, which is essentially a suburb of Maidstone, centred on Loose Road, where there are local shops and various other facilities. To the east of the site are the residential areas of Shepway, Parkwood, and the Mangravet estate, with a Morrisons supermarket and other local facilities centred on the A274 Sutton Road. In this area there is also the extensive Kent Police HQ complex and training centre. To the north, the two main roads converge at the A229/A274 Wheatsheaf junction, beyond which is the main urban area of Maidstone. To the south is open country, which is criss-crossed by a network of narrow lanes, some being single-track.

¹⁸ Doc.AP-4 (Sir Nick Williams' proof) – chapters 2 and 3

¹⁹ Doc. BG-18 (NLLA planning permission)

²⁰ Doc AP-4/Apx 3 (planning permission for FAWS expansion)

²¹ Doc. BG-23 (planning permissions for relocation of the school farm)

²² The exit is the more southerly of the School campus's two access gates

²³ After the nearby pub of that name

19. A public footpath runs through the appeal site from north to south, between the eastern and western fields (Footpath No. KB26), and continues north to the Mangravet recreation ground, and on via Pheasant Lane (which is closed to through traffic) towards the Wheatsheaf. Two other public rights of way also run along the site's southern boundary, from Boughton Lane to Pested Bar Road (KM98); and part of the eastern side, from Pested Bar Road to the south-eastern corner of Camp Way (KB27)²⁴. On the west side of Boughton Lane, there are two short footpath connections to Eddington Close and Leigh Avenue, which provide potential short-cuts for pedestrians and cyclists, via Norrington Road, through to Loose Road.

1.3 The Proposed Development

20. The proposed residential development of 220 dwellings would be located on the existing school playing field²⁵. The development would include a range of open market properties from 2-bedroom 'FOGs' (flat over garage) to 5-bedroom houses, and affordable units from 1 to 3 bedrooms²⁶. In total, 154 of the units would be for the open market, and 66 (30%) would be affordable. The affordable housing would be grouped together in three clusters²⁷.
21. The housing development would be served by an internal road system with two points of access from Boughton Lane. One of these accesses would involve punching a road link through Five Acre Wood²⁸, but the remainder of the woodland would largely be retained, as would the other existing boundary trees.
22. A buffer zone is proposed between the woodland and the edge of the built development. A peripheral footpath route would be provided within this buffer zone. Two additional areas of informal amenity space would be created within the site, within which three of the larger individual trees would be retained.
23. Of the eastern field, about 8.65 ha would be developed to provide a replacement sports field for NLLA. This would include an athletics track, cricket pitch, rugby pitch, a rounders pitch and two 10m-square training grids; plus two senior football pitches which could double as four junior or mini-pitches, and two further mini-football pitches.
24. It was confirmed at the inquiry that the remaining 3.5 ha of the eastern field, which is shown hatched on the submitted layout, would be used for the relocation of the school farm. Planning permission for that use already exists²⁹.

²⁴ Footpaths and bus stops shown at Doc. AR-4 (Dec 2103 Transport Assessment) para 3.1.6;

NOTE: There is some inconsistency regarding the numbering of the peripheral footpaths in some of the submitted documents

²⁵ Seen most conveniently on the Site Layout plan, Drawing No.2084-09C

²⁶ Schedule 001C (plans folder)

²⁷ 'Affordable Strategy' plan, Drawing No 2084-19C

²⁸ Plan No 6723-SK01-P1 (Proposed Access)

²⁹ Doc. BG-23 (Planning permission for relocation of the FAWS school farm)

1.4 Planning Policy

The Development Plan

The Maidstone Borough-Wide Local Plan (the MBWLP)

25. The MBWLP³⁰ was adopted in December 2000, and was intended to cover the period to April 2006. However, some policies were saved by the SoS in 2007.
26. The proposals map defines the boundary of the Maidstone urban area. The western portion of the appeal site (the existing school playing field) is included within the urban area boundary.
27. The eastern arable field is outside the urban boundary, and thus in the countryside. Policy ENV28 states that development in the countryside will be confined to certain categories. These include open air recreation. Additionally, where development in the countryside is permitted, the policy also seeks to ensure that it protects the area's character and appearance, the amenities of surrounding occupiers, and wildlife resources.
28. The whole of the appeal site is also included within the Southern Anti-Coalescence Belt (the SACB), which is a broad area of countryside and other open land uses, between North Loose and the Shepway/Parkwood area. Policy ENV32 states that development within the SACB which would significantly extend the existing built-up areas, or which would consolidate existing development, will not be permitted.
29. Proposals for development on open spaces within the urban area are subject to Policy ENV22. Paragraph 3.67 makes it clear that this includes school playing fields. The policy states that in dealing with such proposals, regard is to be paid to the effects on the local landscape and townscape. Policy ENV23 seeks to avoid the net loss of sport and recreation space, but does not prevent development where replacement facilities are provided, as in the appeal scheme.
30. The Plan's transport policies include a number which are designed to ensure that new development is well-located and well-served from a transport point of view. In particular, Policy T21 seeks to ensure that new development is located and designed so as to provide a choice of modes of transport. In the case of housing, this means having good, close access to public transport, and safe and convenient pedestrian connections. This is supported by Policies T9 and T11, which set out more detailed requirements in these respects.

Affordable Housing Development Plan Document (DPD)

31. The Affordable Housing DPD³¹ was adopted in December 2006. Policy AH1 states that, on developments of 15 dwellings or more, the Council will seek a minimum of 40% affordable housing, except in exceptional circumstances. The policy also requires the affordable units to be integrated with the open market housing. The DPD is supported by an independent Economic Viability Report³².

³⁰ Docs BG-1 and BG-2 (the MBWLP written statement and Proposals Maps)

³¹ Doc. BG-5 (Affordable Housing DPD)

³² Doc. CD-11 (P Brett Assocs: Local plan Viability Testing)

Open Space DPD

32. The Open Space DPD³³ was also adopted in December 2006. Policy OS1 states that, on all developments of 10 dwellings or more, there will be a requirement for open space provision in accordance with the standards set out in the DPD's appendix. These standards set out the required provision per 1,000 population, for different types of open space in eight categories. The policy goes on to say that where it is impractical or inappropriate to provide the required open space on site, a financial contribution may be accepted instead.

Emerging Plans

Draft Maidstone Borough Local Plan

33. In September 2011, the Council carried out public consultation on a draft Core Strategy. That plan contained proposed broad locations for development, but no site specific allocations, as these were to be dealt with through a separate Development Delivery DPD. Following this initial consultation, in August 2012, the Council carried out a further public consultation on proposed strategic site allocations³⁴. The appeal site was not included in these.
34. In 2013, the Council opted to combine the Core Strategy and the Development Delivery DPD, into a replacement Local Plan. In March 2014, the draft Maidstone Borough Local Plan (MBLP) was published for further consultation. For the period 2011-31, the plan seeks to provide for an overall housing need of 19,600 dwellings, of which only 4,200 are already built or permitted³⁵.
35. Under draft Policy H1, the western part of the appeal site is identified as proposed housing site H1(23), with an approximate capacity of 220 dwellings. Amongst the site-specific requirements set out in Appendix A, the development should be designed to complement the semi-rural character of the location, retain existing trees and hedges, reserve a 15m-wide buffer around Five Acre Wood, provide open space or appropriate contributions, and make improvements to Boughton Lane and to its junction with Loose Road³⁶.
36. Draft Policy DM24 proposes that the target rate for affordable housing, on the urban periphery, should be 30%³⁷.
37. The next steps in the MBLP process were considered at a series of Committee meetings, on the 20, 22 and 28 January³⁸, and Cabinet meetings on 2 and 4 February 2015³⁹. Appendix A to the officers' report⁴⁰ contains a summary of the objections received. In the case of the appeal site, there were 15 objections, relating to issues including traffic, safety, character and appearance, lack of local facilities, the effects on ancient woodland, impact on the countryside, urban sprawl and air pollution.

³³ Doc. BG-6 (Open Space DPD)

³⁴ Doc. BG-3 (Draft Core Strategy - strategic site allocations)

³⁵ Doc. BG-4 (Draft MBLP), para 4.3

³⁶ Doc. BG-4 (Draft MBLP): Policy H1, p47; and Appendix A, p206

³⁷ Doc. BG-4 (Draft MBLP), Policy DM24, p103

³⁸ Docs. BG-11 – BG-14 (Planning, Transport and Development Overview and Scrutiny Committee (PTDOSC) papers)

³⁹ Docs BG-15 and BG-16 (Cabinet papers re draft MBLP, as above)

⁴⁰ Doc. BG-11 (officers' report on MBLP objections – p.82)

38. As far as the appeal site is concerned, the Cabinet's resolution⁴¹ was that the proposed housing allocation on the NLLA sports field should proceed to Regulation 19 consultation. In other words, the proposed allocation for 220 dwellings should be retained in the draft plan. As at the date of the present inquiry, the Council's intention was to publish a revised version of the full draft plan in August 2015, for further public consultation under Regulation 19, and thereafter to submit the plan for examination in Spring 2016.
39. Having regard to its early stage, and the number of objections received to date, it seems to me that the draft MBLP's proposals for the appeal site carry only limited weight at the present time.

The draft North Loose Neighbourhood Development Plan

40. A Neighbourhood Planning Area for North Loose was designated in December 2012, and a Neighbourhood Forum was approved in May 2013. The draft North Loose Neighbourhood Development Plan (NLNDP)⁴² was first published for consultation under Regulation 14⁴³ in May 2014. It was then submitted to the local planning authority, and was publicised under Regulation 16 in January 2015. Following the discovery of a procedural error, the Regulation 14 consultation was repeated in May-June 2015.
41. Draft Policy HWT A7 seeks to preserve green spaces, for reasons of quality of life, air quality, biodiversity and health. The appeal site is identified as existing or possible future playing fields, to which this policy is intended to apply.
42. Policy GSSR1 seeks to maintain and enhance green corridors. The appeal site is identified as lying within one of these. The stated purposes of the green corridor in this location are to maintain a continuous link to the countryside, to provide for open recreation, and as a buffer around ancient woodland. An exception is provided for essential infrastructure, but not for any other forms of development.
43. Policy GSSR2 seeks to protect and improve certain specified open spaces and ancient woodlands. The appeal site is again identified as a current or future open space, and Five Acre Wood is identified as one of the ancient woodlands. The open spaces are to be protected for their value to leisure, recreation, education, biodiversity, green lungs, sustainable drainage, and visual attraction. The woodlands are required to be protected by a 15m buffer.
44. With regard to housing, the NLNDP does not allocate any sites for development, but recognises that sites within the plan area may be allocated through the emerging MBLP. In the case of the present appeal site, if the site is developed, paragraph 52 seeks to ensure that consideration is given to the impact on the woodland, pollution and traffic congestion. In this context, the plan refers also to draft Policies HWT A 2, which seeks improvements in air quality, and HWT A3 which seeks to ensure that traffic congestion is not worsened.
45. An objection to the draft NLNP was made by Ward Homes (part of BDW Trading Ltd) in February 2015, on the grounds that the plan fails to allocate any new

⁴¹ Docs. BG-15 (Cabinet minutes – p8); and BG-16 (Record of Decisions – 8th unnumbered page)

⁴² Doc. BG-7 (draft NLNDP, undated)

⁴³ Of the Neighbourhood Planning (General) Regulations 2012

housing sites, despite an acknowledged need⁴⁴. It appears that other representations were received, but the number and nature of these are not before the present inquiry.

46. The NLNDP is now awaiting further Regulation 16 publicity, before being submitted for examination. It is understood that minor amendments are to be made before the plan is re-advertised, but that these are not intended to fully address the Ward Homes objection. In view of the stage that it has reached, and the existence of at least one unresolved objection, it seems to me that the weight that can be attached to the draft plan is limited.

National Policy and Guidance

47. Relevant national policy and guidance is found in the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG). The following references are all to the NPPF.
48. The NPPF seeks to promote sustainable development. The achievement of this aim requires consideration of the inter-linked social, economic and environmental dimensions. Pursuing sustainable development involves seeking positive improvements in the quality of the environment and in the quality of life; this includes improving the conditions in which people live, work and travel, and also widening the choice of homes (paragraphs 6-9).
49. There is also a presumption in favour of sustainable development. Amongst other things, this means that where the development plan is out of date, permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits (14).
50. The core planning principles include: plan-led growth; proactively driving and supporting development to deliver the homes and other development that are needed; high-quality design; recognising the countryside's intrinsic character and beauty; conserving and enhancing the natural environment; and focussing development in sustainable locations (17).
51. With regard to transport, decisions should take account of opportunities for sustainable transport modes; safe and suitable access for all; and cost-effective improvements to the transport network, to limit significant impacts. However, permission should only be refused on transport grounds where the cumulative residual impacts would be severe (32).
52. In relation to housing, the aim is to boost the supply significantly. Housing applications should be considered in the context of the presumption. In addition, where the local authority cannot demonstrate a five-year supply, relevant policies for the supply of housing should not be considered up to date (47 and 49).
53. Permission should be refused for development of poor design, which fails to take opportunities for improving the quality of an area and the way it functions (64).
54. Concerning education, a positive approach should be taken to the needs of schools, and great weight should be given to the need to expand or alter them (72).

⁴⁴ Doc. AP-1A/Apx 2 (Ward Homes' objection to NLDP)

55. With regard to sport and recreation, access to high quality opportunities is seen as making an important contribution to health and well-being. Existing spaces such as playing fields should not be built on unless, for example, the loss would be replaced by equivalent or better provision in a suitable location (73 - 74)
56. With regard to the natural environment, the planning system should aim to conserve, contribute and enhance. Where significant harm cannot be avoided, adequately mitigated, or compensated for, then planning permission should be refused. In the case of ancient woodland, development resulting in the loss or deterioration of irreplaceable habitats should be refused unless the need for, and benefits of, the development in that location clearly outweigh the loss (109 and 118).

2. THE PARTIES' CASES

2.1 The Case for the Appellants

Submissions on policy matters

57. For the appellants, it is argued that the appeal proposal is fully in accordance with the development plan and other relevant planning policies⁴⁵.
58. In the case of MBWLP Policy ENV32, the SACB, it is contended that the proposed scheme would meet the policy's aims because it would not cause any actual coalescence.

Submissions on housing

General housing need

59. For the appellants, it is argued that there is an accepted need for housing, both locally and nationally⁴⁶. Although the Council's assessment of the overall objective need has reduced slightly from the figure in the draft MBLP, down to 18,560 dwellings, based on the August 2014 Addendum to the Strategic Housing Market Assessment (SHMA), that is still a very large requirement, and most of it remains yet to be identified, either through the local plan, or otherwise.
60. In terms of deliverable sites for the next 5-year period, the Council's own figure represents only 2.1 years' supply⁴⁷. This is said to amount to a shortfall of around 2,500 dwellings for the required period⁴⁸.
61. Very significant weight should be attached to this general need for housing, as evidenced by other appeal decisions, including some determined by the SoS⁴⁹.

Affordable housing need

62. The appellants also contend that a significant part of the Borough's housing shortfall relates to the affordable sector, and in this case the need is particularly acute⁵⁰. The SHMA indicates that the annual net need for new affordable

⁴⁵ Mr Woodhead's proof (Doc. AP-1) paras 6.3.3 -6.3.4

⁴⁶ Mr Woodhead's proof (Doc. AP-1) paras 7.2.2 - 7.2.12

⁴⁷ Statement of Common Ground, para 6.3.7 (Doc. GD-1)

⁴⁸ Mr Woodhead's proof (Doc. AP-1) para 6.5.1

⁴⁹ Mr Woodhead's Appendices 4, 5 and 6 (Doc. AP-1A)

⁵⁰ Mr Woodhead's proof (Doc. AP-1) paras 7.2.20 - 7.2.24

dwelling is running at 322 dwellings per annum, but the actual delivery is expected to average only around 250 p.a. By year 2031, this is projected to lead to an overall shortfall of some 5,800 affordable housing units. The appeal scheme would provide 66 affordable units, to make up part of this deficit. The mix of sizes and tenures of the proposed affordable units is agreed with the Council.

63. It is argued that significant weight should be attached to this, over and above the general housing need. In this context, reference is made to an appeal decision in Wychavon DC, where the benefits of providing affordable housing (albeit with an element of care) were held to outweigh the harm to an AONB, even though there was no shortfall in the land supply for general housing⁵¹.
64. Although the 30% provision in the appeal proposals is less than that required under the Affordable Housing DPD, it is argued that it is in line with the emerging MBLP⁵². That is seen as a reasonable approach, because the DPD is now of considerable age, and its evidence base is no longer up to date. Whereas the MBLP takes account of new, independent evidence on the viability of providing affordable housing in Maidstone, which justifies the lower percentage⁵³. The 30% now proposed is accepted by the Council, and is in line with decisions made by the Council on a number of other sites in Maidstone.

The appellants' submissions on the site's suitability

65. The appeal site's western field is within the Maidstone urban area boundary. It was identified as a potential housing site through Strategic Housing Land Availability Assessments (SHLAAs) in 2009 and 2013. It is now proposed as an allocated housing site in the emerging MBLP⁵⁴, and the Council has resolved to take the site forward when the draft plan proceeds to the next stage⁵⁵. In the appellants' view, this shows the site's suitability for the proposed development.
66. In addition, it is argued that development on the western field would have no adverse landscape or visual impacts. It is also contended that this part of the site is previously-developed land (PDL), in terms of the definition in the NPPF.
67. The appeal site is directly adjacent to schools catering for all ages. On the same campus are also facilities for the public, including the gym, nursery and church. On Loose Road, around the Swan junction, there is a parade of convenience shops, a new Sainsburys Local⁵⁶, a chemist, a bank, a doctors' surgery, a bowls club, the Swan pub, and bus services. These are within about 800m from the site⁵⁷. Additional bus stops are also available at other locations along Loose Road, including at the junctions with Norrington Road and Paynes Lane, which are only just over 600m from the site⁵⁸. There are also various other facilities along this southern part of Loose Road, including two more pubs, a hairdressers',

⁵¹ Doc. AP-7 (appeal decision – Broadway, Wychavon DC)

⁵² Mr Woodhead's proof (Doc. AP-1), paras 7.3.8 – 7.3.40

⁵³ Doc. CD-11 (Viability Testing report – P Brett Assocs)

⁵⁴ Doc. BG-4 (draft MBLP) Appendix A, pp206-208

⁵⁵ Doc. BG-15 (Cabinet minutes) p8

⁵⁶ The Sainsburys store has been under construction but is understood to be opening shortly

⁵⁷ Facilities and distances shown diagrammatically at Doc AP-1A/Apx 7 (DHA Transport Report) – internal Appendix G

⁵⁸ Bus services are summarised in Table 3.2 of the Transport Assessment (Doc. AR-4); and stopping places are shown at para 3.1.6 of the same report

a dentist's, and Loose Primary School, which can be reached via the footpath link to Eddington Close.

68. To the east of the appeal site, around Sutton Road, there is the larger Morrisons store, and various other shops and services, more schools, and sources of employment including the two Police sites. All of these are accessible via the southern footpath route, No. KM98, and Lansdowne Avenue. The distances are mostly within about 1km⁵⁹. Children's play and recreational open space are available at the Mangravet recreation ground, which can be reached by the central footpath, KB26. The undertaking provides for a financial contribution of £100,000 for improvements to these footpaths, including new all-weather surfacing; and also a further contribution of around £346,000 to improve off-site open spaces, including Mangravet recreation ground. These facilities would therefore be both accessible and adequate to serve the development.
69. Maidstone town centre is only a little over half an hour away on foot, and is easily accessible by bus or bicycle.

The appellants' submissions on the quality of the proposed scheme

70. The appellants contend that the proposed residential development would be of the highest quality⁶⁰. The scheme has been conceived by a highly regarded local architectural practice. The housing designs and layout pay proper regard to the Kent vernacular. The density is appropriate for the area, and would make good use of the site. The developers, Ward Homes, have won RTPI awards for some of their other recent developments.
71. The total amount of amenity space and green space within the site would be 10,491 sq m (1.05 ha)⁶¹. This includes the two central greens, the peripheral strip along the southern and south-eastern boundaries, including the tree belts in this area, and also most of the proposed woodland buffer zone, but it excludes the designated area of the woodland itself.

The appellants' submissions on the scheme's benefits

Benefits to education

72. The proposed new sports field would be larger than the one that it would replace, and would accommodate more pitches. It would also be properly laid, levelled and drained. In these respects it would be of superior quality to the existing. As a result, the appellants contend, the NLLA would no longer have to use external facilities to stage home games, or to run activities such as its football academy. Instead, it would be able to host all of its own events, and potentially some external ones.
73. The pupils of NLLA and Tiger School would benefit from having greater opportunities to participate in sport, and having improved facilities would give them a better chance to attain higher standards. This ties in with the FST's educational philosophy, in that sport, fitness, and a healthy lifestyle are seen as important elements in child development and learning⁶². There would also be

⁵⁹ As above

⁶⁰ Mr Woodhead's oral evidence-in-chief

⁶¹ Doc. AP-10 (Open space areas plan, tabled by Mr Woodhead)

⁶² Sir Nick Williams, in oral evidence

increased opportunities for shared use by community groups. It is argued that this combination would be likely to increase the rates of participation in sport and outdoor activities, to the benefit of the community's health, all-round education, and general well-being⁶³.

74. In this context, attention is drawn to two Government's publications: '*Creating a Sporting Habit for Life – a New Youth Sport Strategy*' (January 2012), which seeks to build on the impetus of the 2012 Olympic games, to increase sports participation amongst 14-25 year olds⁶⁴; and '*The Social Impacts of Engagement with Culture and Sport*' which identifies positive links between sport and educational outcomes⁶⁵. It is also argued that this element of the proposed development would assist towards meeting KCC's corporate aspirations for the future of education in the county, as set out in '*Bold Steps for Kent – the Medium Term Plan*'⁶⁶.
75. In addition, the proposed development is seen as the key to the expansion of both the FAWS and the school farm. Although planning permission for both of these developments has already been granted⁶⁷, the FAWS extension would require land currently occupied by the farm; and the new farm site is dependent on the proposed housing development⁶⁸. And in addition, it is said that the capital receipt from the proposed housing development would enable KCC to provide the necessary funding for the FAWS development⁶⁹.
76. Furthermore, it is said by the appellants that the proposed housing development would also produce a capital receipt for FST, which would have dual benefits for education and the public purse⁷⁰. Firstly, it is said that this would enable the Trust to repay a Government loan of £4.2m from the Department for Education (DfE), for the construction of the new TPS building, and that without this development, there is no obligation on the Trust to repay that debt⁷¹. And secondly, it is said that the capital receipt is needed to enable FST to complete the fitting out of the TPS for its full 2-form entry capacity⁷².
77. And on top of these benefits, the submitted legal undertaking⁷³ provides for substantial financial contributions to other local schools. Primary School contributions totalling almost £1.25m would be paid towards the second phase of the new school being built at the Langley Park development on Sutton Road. And a secondary education contribution of around £440,000 would be put towards the expansion of Maidstone Grammar School, at Barton Road.

Benefits to ecology

78. Irrespective of its age and status, the appellants argue that Five Acre Wood is currently in decline, due to long-term neglect⁷⁴. At one time, the woodland

⁶³ Sir Nick Williams' proof of evidence (AP-4) paras 6.3.1 – 6.3.23

⁶⁴ Mr Woodhead's proof (Doc. AP-1) paras 6.4.12 – 6.4.13; and Sir Nick Williams' proof (AP-4) paras 6.1.15 – 6.1.7

⁶⁵ Sir Nick Williams' proof (AP-4) paras 6.1.8 – 6.1.10

⁶⁶ Doc. AP-1A/Apx 8 (KCC Medium Term Plan)

⁶⁷ Docs AP-4/Apx 3 and BG-23 (planning permissions for expansion of FAWS and relocation of the school farm)

⁶⁸ Sir Nick Williams' proof of evidence (Doc. AP-4) paras 6.4.1 – 6.4.10

⁶⁹ Mr Woodhead's proof (Doc. AP-1) para 7.2.31 (1)

⁷⁰ Sir Nick Williams' proof of evidence (Doc. AP-4) paras 5.1.11 – 5.1.12

⁷¹ Sir Nick Williams – proof of evidence (Doc. AP-4) para 7.1.1 (5); and confirmed in oral evidence in reply to Inspector's questions

⁷² Mr Woodhead's proof (Doc. AP-1) para 7.2.31 (2)

⁷³ Doc. GD-3 (the undertaking)

⁷⁴ Mr Forbes-Laird's proof (Doc. AP-3) para 3.3.6

appears to have been managed by traditional coppicing of the hazel and sweet chestnut stands, but this has not been practised for some time. As a result, the delicate balance between light penetration and shade has been upset, and ground flora have been suppressed by the re-closure of the tree canopy⁷⁵. The general and widespread threat to woodlands, resulting from lack of active management, is recognised in other published works⁷⁶.

79. The appellants suggest that the development now proposed would provide the opportunity to introduce a sensitive, long-term management regime, to reverse the present decline. This could include the re-introduction of coppicing, and the phased removal of non-native species such as sweet chestnut and cherry laurel.
80. It is also suggested that the development could incorporate additional encouragement for faunal species, including bat roosting boxes, bird nesting boxes, and hibernacula for reptiles and invertebrates⁷⁷.

Other benefits

81. The appellants contend that the development would have economic benefits for the area, in the form of construction jobs, supply chain effects, household expenditure, training and skills, and the Government's New Homes Bonus.
82. In addition to the education contributions referred to above, the undertaking also provides for contributions to highway and footpath improvements, adult social care, community learning, healthcare, libraries, open space enhancements, and youth services. The total value of all the financial contributions, including education, would be over £3m. It is suggested that all of these have benefits for the existing community.
83. Also, it is said that BDW Trading Ltd has entered into an agreement with the Boughton Monchelsea Amenity Trust, to the effect that, if planning permission were granted for the proposed housing, a further 98 acres of land would be transferred to the Trust, for public use, effectively at no cost⁷⁸.

The appellants' submissions on ancient woodland

Ancient woodland status

84. Although Five Acre Wood is identified as ancient woodland in Natural England's (NE's) database⁷⁹, the appellants argue that there is no evidence to support that designation. The definition in the NPPF glossary is land that has been wooded continuously since at least 1600 AD. In the present case, the earliest cartographic evidence as to the existence of Five Acre Wood is the Tithe Map for Loose Parish, which dates only from 1840, and the Ordnance Survey (OS) First Edition County Map of 1870 (also known as the Epoch 1 series), which is based on survey information from 1865-67. These sources are therefore far too recent to provide any evidence as to whether the woodland in question existed at the relevant date⁸⁰.

⁷⁵ Mr Baxter's proof (Doc. AP-2) paras 5.8.7 – 5.8.15, and 5.9.1 – 5.9.6

⁷⁶ Docs CD-27 ('Keepers of Time'); and AP-2A/Apx 9 (Aspect Ecology review of woodland restoration)

⁷⁷ Mr Baxter's proof (Doc. AP-2) paras 5.8.16 – 5.8.22; and AP-2A/Plan AB8 (ecological enhancements plan)

⁷⁸ Mr Woodhead's proof (Doc AP-1) para 7.4.25; and Mr White's closing submissions (Doc AP14) para 15.8

⁷⁹ Doc. AP-2A/Apx 2 ('MAGIC' ancient woodland database)

⁸⁰ Mr Forbes-Laird's proof (Doc. AP-3) paras 6.1.1 – 6.1.4; and Appendix JFL13 (AP-3A/Apx 13)

85. A number of earlier historic maps exist for this part of Kent, spanning the period 1768 – 1821, and these are identified in the local Ancient Woodland Inventory⁸¹. None of these depicts any woodland at the location where Five Acre Wood now stands⁸². Some of these earlier maps were highly detailed, and many other small woodlands of a similar size were shown. These include the draft OS field sheets, which were prepared by highly trained military surveyors and are regarded as a very accurate source. There is therefore no cartographic evidence that the wood existed before 1840. None of the explanations offered by NE is borne out by analysis⁸³. In the appellants' view there can be no other explanation than that Five Acre Wood did not exist when these pre-1840 maps were drawn.
86. The appellants point out that the date 1840 comes shortly after the introduction of the Tithe Commutation Act in 1836, which led to many new woodlands being planted⁸⁴. It is argued that this adds to the likelihood that Five Acre Wood originates from that period.
87. The appellants contend that the method adopted by NE for designating ancient woodland is flawed, because it relies too heavily on inadequate desk-based evidence⁸⁵, and this needs to be backed-up by 'ground-truthing'. It is noted that in those cases where the authors of the Maidstone Inventory carried out their own surveys or observations, this led to a high proportion of those sites being deleted⁸⁶, but Five Acre Wood was not included in these surveys⁸⁷. The appellants' team have carried out their own ground-truthing on site, using the indicators developed by Professor Ian Rotherham⁸⁸. Although the presence of vascular plants and old coppice stools was noted, these could be equally consistent with secondary rather than ancient woodland⁸⁹. No evidence was found that provides conclusive or reliable proof that Five Acre Wood is ancient.
88. Reference is made to correspondence with NE⁹⁰, in which the latter state that ancient woodland status will be reviewed only where there is incontrovertible evidence to the contrary. In the appellants' view this sets the barrier for any challenge unrealistically high, in that it requires a level of proof that cannot be met, and far exceeds the evidence on which the designation itself is based⁹¹. Support for this view is drawn from reports and documents published by Professor Rotherham, and by the Parliamentary Office of Science and Technology (POST), and others⁹². The approach taken by Natural Resources Wales, NE's equivalent body, and by the Inspector in a planning appeal in Haslemere, are said to provide further support in this regard⁹³.
89. It is argued that the proper test should be based on the balance of probability. In the case of the appeal site, it is suggested that this balance does not support the designation of Five Acre Wood as ancient woodland.

⁸¹ Doc. CD-5 (Ancient Woodland Inventory for Maidstone Borough, Aug 2012)

⁸² Mr Forbes-Laird's proof (Doc. AP-3) paras 6.2.1 – 6.2.11; and Appendix JFL13 (AP-3A/Apx 13)

⁸³ Mr Forbes-Laird's proof (Doc. AP-3) paras 6.4.1 – 6.7.2; and Appendices JFL14 & 19 (AP-3A/Apxs 14, 19)

⁸⁴ Mr Forbes-Laird's proof (Doc. AP-3) paras 6.2.9 – 6.2.10

⁸⁵ Mr Forbes-Laird's proof (Doc. AP-3) chapters 5 and 6

⁸⁶ Doc. CD-5 (Ancient Woodland Inventory)

⁸⁷ Mr Forbes-Laird in oral evidence

⁸⁸ Mr Forbes-Laird's proof (Doc. AP-3) sections 5.3 and 6.3; and Appendix JFL8 (AP-3A/Apx 8)

⁸⁹ Mr Forbes-Laird's proof (Doc. AP-3) section 6.3; and Mr Baxter's proof (AP-2) chap. 3 and Appendix 1 (AP-2/Apx1)

⁹⁰ Mr Forbes-Laird's Appendices JFL15- 18 (AP-3A/Apxs 15-18) - NE correspondence

⁹¹ Mr Forbes-Laird's proof (Doc. AP-3) paras 5.2.7 and 6.8.4 – 6.8.5

⁹² Mr Forbes-Laird's proof (Doc. AP-3) paras 5.2.3 – 5.2.6

⁹³ Mr Forbes-Laird's proof (Doc. AP-3) paras 5.1.4; and CD-20 (Haslemere appeal)

90. The late submissions of Dr Sansum on all of the above matters are also rebutted⁹⁴.

The proposed access strip

91. When the NLLA development was built, around 5 years ago, a temporary site access was provided for construction vehicles, passing through Five Acre Wood. To create that access, a section of the wood was cleared. Consent for those works was granted under TPO procedures⁹⁵. The temporary road had a tarmac surface⁹⁶. The new western access road which is proposed as part of the present appeal proposals, would follow the same line and utilise the same strip of cleared land through the wood⁹⁷.
92. A soil investigation carried out for the appellants in October 2014 found that the soil within the area of the former temporary access was significantly different from that of the woodland on either side, in terms of its type, chemical composition, depth, colour and degree of compaction⁹⁸. In particular, the soil within the access area was found to be alkaline in nature, in contrast to the strongly acidic soil of the remainder of the woodland; and it contained a high proportion of contaminative and deleterious materials such as building wastes; and it was found to be heavily compacted. The appellants say that it is clear from this that the soil of the access strip is not native to the site but has been imported, and is clearly of a poorer quality, unsuited to the reinstatement of the original woodland in this area⁹⁹.
93. Although some re-planting and re-growth has taken place within the access area, this is limited in stature and density. The appellants contend that this is in part a reflection of the poorer growing conditions. And in any event, this means that the value of this disturbed area, both visually and as a wildlife habitat, is lower than that of the main woodland. The appellants suggest that, irrespective of the status of the main woodland, this strip should not be considered as ancient.

Effects on the woodland

94. The appellants contend that the land-take required for the proposed western access would be slightly less than the area disturbed by the previous temporary road. Consequently, there would be no actual loss of the original woodland.
95. Furthermore, it is argued that eventually the woodland canopy above the new road would re-close¹⁰⁰, and at ground level, a relatively narrow roadway would not present a barrier to wildlife. The wood would thus return to providing a continuous habitat. In any event, the road corridor would take no more than around 3% of the area currently designated as ancient woodland.

⁹⁴ Doc.AP-15 (rebuttal of Dr Sansum's submissions)

⁹⁵ Doc. NL-10.12 (TPO consent)

⁹⁶ Mr Baxter's proof (AP-2) para 3.17

⁹⁷ Plan No. 6723-SK01-P1 (proposed western access road)

⁹⁸ Doc. AP-3/Apx 6 (T O'Hare Assocs soil report)

⁹⁹ Mr Forbes-Laird's proof (Doc. AP-3) chap. 7; and Mr Baxter's proof (AP-2) chaps. 3 and 4

¹⁰⁰ Mr Baxter's proof (Doc. AP-2), para 5.7.13; and Appendix (Doc. AP-2A) Plan AB4, and Photograph examples at AB6

96. In addition, the proposed layout would incorporate 15m-wide buffer zones between Five Acre Wood and the nearest new houses. The appellants contend that this would accord with the mitigation recommended by NE and the Forestry Commission¹⁰¹. Although there would be some development, such as footpaths, within the buffer zone, a similar approach has been approved elsewhere¹⁰². Moreover, 'ecotone' planting within these areas would protect and enhance the woodland's biodiversity and habitat value¹⁰³.

The appellants' submissions on traffic impact

Congestion

97. The appellants calculate that the proposed residential development would generate around 94 vehicle movements in the morning peak hour, 108 in the early-afternoon (end of school) period, and 118 in the evening peak¹⁰⁴. The trip generation rates used to produce these numbers are based on survey data from comparable developments within the 'TRICS' database. Of this generated traffic, it is estimated that 73% would route to or from the north, towards Maidstone town centre, and the remaining 27% would go south via Boughton Monchelsea¹⁰⁵. This directional split is based on Census data. All of these trip generation and distribution assumptions have been accepted by KCC Highway Officers¹⁰⁶.
98. The north-bound traffic would amount to around 70-85 additional vehicles in each peak hour period, or less than one and a half vehicles every minute. At the Swan junction, the existing peak-hour flows through the junction as a whole, as recorded in three surveys over the period 2011-14, ranged between 1,800 – 2,150 vehicles per hour¹⁰⁷. The traffic from the development now proposed would therefore represent an increase of no more than about 3-4 per cent.
99. Looking specifically at the junction's Boughton Lane arm, here the same numerical increase would represent a larger percentage, in the region of 15%-30%, depending on the time of day¹⁰⁸. It is also acknowledged that queuing already occurs on this arm. However, the appellants argue that, during a typical 'green phase' on Boughton Lane, of 15-30 seconds, the whole of the queue is usually discharged, or nearly so, within a single cycle of the traffic signals¹⁰⁹. The additional traffic resulting from the proposed development would only amount to about two extra cars for every signal cycle. If necessary, it is said, this could easily be accommodated by a small adjustment to the signal timings, especially given the capabilities of the 'MOVA' technology that is already installed there¹¹⁰.

¹⁰¹ Doc. CD-19 (Standing Advice for Ancient Woodland)

¹⁰² Mr Baxter's Appendix (Doc. AP-2/A) Appx 12 – buffer zone in approved development North of Loose Road

¹⁰³ Mr Baxter's proof (Doc. AP-2) paras 5.8.3 – 5.8.6; and AP-2A/Plan AB7 (buffer zones specification)

¹⁰⁴ Docs AR-4 (Dec 2013 Transport Assessment) Table 4.9; and AP1A/Appx7 (June 2015 Transport Report) Table 4.5

¹⁰⁵ The 2013 Transport Assessment (Doc AR-4) paras 4.2.6 – 4.2.12; and 2015 Transport Report (AP1A/Appx7) section 4.6

¹⁰⁶ Doc. NL-9.3 (KCC consultation response, 5 March 2014)

¹⁰⁷ The 2013 Transport Assessment (Doc AR-4) Table 6.3; and 2015 Transport Report (AP1A/Appx7) Table 4.1

¹⁰⁸ The 2013 Transport Assessment (Doc AR-4) Table 6.3

¹⁰⁹ Doc. AR-4 (the 2013 Transport Assessment) - Appendix D: Boughton Lane Signals Survey

¹¹⁰ Doc. AR-4 (the 2013 Transport Assessment), paras 6.8 – 6.10; and Doc. AP1A/Appx7 (the 2015 Transport Report) paras 5.2.8 and 5.19 – 5.2.20

100. In addition, the appellants contend that much of the congestion that occurs now at the Swan junction is because of traffic tailing back from the Wheatsheaf. Without that problem, and the resulting blocking of exit routes, it is said that the 'Linsig' modelling shows that the Swan junction would work satisfactorily, and the development now proposed would not overload it¹¹¹.
101. The issues at both the Swan and Wheatsheaf junctions are being looked at as part of the A229 corridor study that is being pursued jointly by the Borough and County Councils¹¹². Funding for that study is already in place, and potential highway improvements have already been identified, such as moving a bus stop further from the Swan traffic lights, creating a lay-by to free up carriageway space, and restricting the use of Cranbourne Avenue. These kind of small-scale measures could make a significant difference¹¹³.
102. The S.106 undertaking entered into by the appellants provides for a substantial contribution of £660,000 to off-site highway works¹¹⁴, and this would go a long way towards implementing whatever recommendations emerge from the A229 study. The Highway Authority has confirmed that it is happy with the contribution from this proposed development, and that it expects to receive further contributions from other planned developments in the area.
103. Aside from the junctions, it is argued by the appellants that the number of vehicles that would be added to the network is well within the link capacity of Boughton Lane itself, even allowing for future traffic growth and other committed developments, including spare capacity and unimplemented permissions at the school campus¹¹⁵.
104. Overall, it is contended that the development's traffic impacts would be adequately mitigated by the highway and transport-related contributions in the undertaking.

Highway safety

105. A short section of new off-site pedestrian/cycleway route would be needed alongside Boughton Lane, from the site access, to join the existing footway at the School's southern entrance. However, this could be provided within land controlled by KCC and FST¹¹⁶.
106. The 30mph speed limit on Boughton Lane would also need to be moved further south, beyond the proposed southern access to the development. But the highway Authority has no objection to this, and the undertaking provides for an agreed sum to cover the necessary costs.

¹¹¹ Doc. AP1A/Appx7 (the 2015 Transport Report) paras 4.7.2 – 4.7.3, 5.2.7, and 5.2.17 – 5.2.22

¹¹² Doc. AP-1A/ Appx7 (the 2015 Transport Report) – Appendix H, Maidstone Joint Transportation Board paper

¹¹³ Mr Lewis's oral evidence

¹¹⁴ Doc. GD-3 (the S.106 undertaking)

¹¹⁵ Doc. AR-4 (the 2013 Transport Assessment), paras 6.2 – 6.3; and Doc. AP1A/Appx7 (the 2015 Transport Report) paras 6.1.29 – 6.1.32

¹¹⁶ In connection with this proposed new foot/cycle path, the appellants refer to the plan at Doc. AR-4/Appendix J; however, this appears to show the existing path between the School campus's two access points

The Appellants' submissions on other matters

Air quality

107. Matters relating to air quality have been considered by the appellants, and the conclusion is drawn that the proposed development would not result in any significant or unacceptable impacts in this respect¹¹⁷.

Alternative access

108. The possibility of an alternative or additional road access to the east has been investigated, and discussions held with the Police Authority's Estates Officer. However, the appellants do not wish to pursue this any further, because the expected ransom payments and extra construction costs would be likely to make the scheme in its present form unviable¹¹⁸. There would also be impacts on the landscape and open countryside. In the appellants' view there is no need to consider such an alternative, because the proposed access from Boughton Lane is satisfactory.

Sustainable development

109. The appellants submit that the proposed development would have social, economic and environmental benefits, and would accord with the development plan and NPPF, and therefore would constitute sustainable development.

2.2 The Case for the Council

110. The Council no longer wishes to oppose the grant of planning permission. The Council's position is now as set out in the Statement of Common Ground¹¹⁹. Its change of position results from new evidence submitted by the appellants after the date of refusal, together with the adverse housing land supply situation, which is agreed to be 2.1 years' worth at the required annual rate.
111. With regard to Five Acre Wood, the Council sees no reason to disagree with the wood's designation as ancient woodland. However, the Council accepts that the part that would be affected by the proposed access road has already been damaged, and indeed that damage occurred before the designation took place. The Council therefore considers that the scheme now proposed would not cause any significant further loss or deterioration of its habitat¹²⁰.
112. The Council considers all of the requested contributions and obligations to comply with the relevant CIL regulations¹²¹. The justifications in relation to Regulation 122 are set out in the consultation responses of the various service providers, including the relevant Borough and County Council departments and the NHS¹²², and specific projects have been identified for which each contribution would be needed¹²³. The Council also confirmed at the inquiry that, in so far as any of the contributions would be 'pooled' for the purposes of regulation 123, none would exceed the limit of 5 such contributions, in accordance with that regulation¹²⁴.

¹¹⁷ Doc. AP-13 (Air quality report)

¹¹⁸ Doc. AP-9 (Note on alternative access)

¹¹⁹ Doc. GD-1 (Statement of Common Ground)

¹²⁰ Mr Atkinson's opening statement (Doc. CO-2)

¹²¹ Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010

¹²² Consultation responses in the Questionnaire File

¹²³ Miss Marks' proof (Doc. CO-1) paras 7.4 – 7.12

¹²⁴ Miss Marks' oral evidence

2.3 The Case for North Loose Residents' Association

Submissions with regard to policy matters

113. NLRA argues that the appeal proposal would conflict with MBWLP Policy ENV32, relating to the SACB, and a number of policies in the emerging GNP, including Policy GSSR2 relating to the protection of open spaces and ancient woodlands¹²⁵.

NLRA Submissions with regard to traffic issues

Existing congestion and background traffic

114. NLRA argues that the appellants' assessments understate the amount of traffic on the local network, both existing and future. The Association carried out its own traffic counts in October 2012, November 2014, and January 2015¹²⁶. It is submitted that these show much higher levels of background traffic flows than are suggested in the appellants' Transport Assessment (TA). It is also contended that the results show a significant increase between these two dates, resulting partly from the development and occupation of the new buildings for NLLA and TPS. As a result, it is suggested that the TA figures are out of date.
115. At the Swan junction, it is argued that there is already chronic and severe congestion. The NLRA's surveys show that the junction as a whole currently has to cope with 1,650 vehicle movements an hour during the morning peak hours of 07.00 to 10.00; and 1,700 movements an hour in the afternoons between 15.00 – 18.00¹²⁷. Further surveys were also taken in June 2015, between 06.00 – 07.00, and 19.00 – 20.00, which show levels of around 1,000 and 1,300 vehicles per hour even during these periods¹²⁸. It is submitted that this shows that peak traffic conditions in the area now extend to a total of eight hours a day. On this basis, NLRA contends that the Swan junction is already over-loaded. They also believe that this view is shared by a senior KCC Cabinet Member with responsibility for transport matters¹²⁹.
116. On Boughton Lane, NLRA's survey in 2012 showed the lane was carrying around 3,100 vehicle movements over the course of a day¹³⁰. During the morning peak hour of 08.00 – 09.00 alone, the 2-way flow is over 400 vehicles an hour¹³¹. This, combined with the congestion at the Swan, results in daily queuing which often extends all the way from the traffic lights back to the School entrance. Existing residents have no alternative routes, except for the potential rat-run through Paynes Lane, Berwyn Grove/Pear Tree Lane, and Norrington Road, none of which are suited to taking extraneous traffic.
117. On top of this existing traffic, NLRA draws attention to the continuing growth in pupil numbers on the school campus. The new NLLA and TPS buildings are filling up but are not yet full, and both NLLA and FAWS have permission for further development. Overall, NLRA suggests that the campus has capacity for

¹²⁵ NLRA Closing Statement (Doc. NL-22) paras 6.1 and 6.5

¹²⁶ Doc. NL-9 (NLRA Traffic proof) – pp 7-9, Tables 1 and 3

¹²⁷ Doc. NL-9 (NLRA Traffic proof) – p10, and Table 3

¹²⁸ Doc. NL-9 (NLRA Traffic proof) – p11

¹²⁹ Doc. NL-9.12 (letter from Helen Grant MP)

¹³⁰ Doc. NL-2 (NLRA submission 13 Feb 2014)

¹³¹ Doc. NL-9 (NLRA Traffic proof) – Diagram A

over 500 more pupils, and this will mean a large number of extra vehicles in the morning and afternoon peaks. NLRA's surveys have counted over 1,100 vehicle movements to and from the school campus in the morning peak¹³²; and that is with the campus at only two-thirds of its full capacity. NLRA contends that the expected future school growth is nowhere near being accounted for in the appellants' figures¹³³.

118. In the same vein, NLRA points to the potential effects of the new Sainsburys store which is about to open, and a large number of sites which are currently proposed for development in the draft MBLP. These include a total of around 1,500 dwellings planned at the villages of Marden, Staplehurst, Coxheath and Boughton Monchelsea, which lie to the south of Loose and would be likely to feed traffic into the Swan and Wheatsheaf junctions, and a further 3,000 or so proposed dwellings in the A274 corridor¹³⁴. Some of these sites are already permitted or under construction.

Impact of the proposed development traffic

119. NLRA draws attention to the formal consultation response on the appeal proposal, sent by KCC as Highway Authority on 5 March 2014¹³⁵. That letter stated that there was concern over the 73%:27% directional split assumed in the appellants' TA, and the transport officer's view was that a 'much higher' proportion would head north, because of the poor quality of the route to the south. As a result of this, the officer considered that in the submitted TA, the development's impact was understated. NLRA concurs with this assessment.
120. The KCC letter went on to confirm that the congestion at the A229 (Swan) junction was seen as critical, and that any further traffic generation would exacerbate this, causing further delays. In the worst case scenario, the KCC letter envisaged that the additional loading on the junction could be up to 100 – 120 vehicles in each peak hour, which would be an increase of 30% and 50% respectively over the existing the morning and evening peak flows. NLRA points out that these levels would be around 40-45% higher than suggested in the TA. However, the Association's own estimates are that the numbers would be higher still.
121. With regard to the appellants' impact figures, NLRA contends that these are underestimated because, amongst other factors, the TA under-represents the number of user-generated pedestrian phases. This is said to be due to the fact that the analysis in Appendix D of the TA is limited to Boughton Lane, and ignores the number of multi-directional pedestrian phase 'calls' from the junction's other arms¹³⁶.
122. Attention is drawn to the wording that appears in the Planning Officer's report with regard to the proposed contribution towards strategic highway improvements. The report states that the sum of £3,000 per dwelling is necessary to mitigate against the development's "severe impact" on congestion and highway safety¹³⁷.

¹³² Mr Carter's oral evidence

¹³³ Docs NL-9 (NLRA Traffic proof) – p9; and NL-9.9 (note on school places and planned developments)

¹³⁴ Doc. NL-9 (NLRA Traffic proof) – p12, and Table 2; and doc. NL-6 (NLRA submission Dec 2014), p5

¹³⁵ Doc. NL-9.3 (KCC letter 5 March 2014)

¹³⁶ Doc. NL-9 (NLRA traffic proof), p8

¹³⁷ Doc. BG8 (Planning Officer's report), paras 8.72 and 10.01

123. Consequently, NLRA submits that the proposed development would have a severe impact on traffic congestion and delays in Boughton lane and at the Swan junction traffic lights.

Prospects for highway mitigation

124. NLRA submits that although the Highway Authority is prepared to accept a financial contribution to mitigate the development's impact, the Authority itself admits that there is little prospect of any mitigation being effective. In the letter of 5 March 2014¹³⁸, referred to above, KCC's transport officer states that it is unlikely that more 'green' time would be given to the Boughton Lane arm, because the priority at the Swan junction is to maximise capacity on the major road. The letter also says that any capacity improvements that could be achieved would be likely to be minor, and would not prevent further delays for existing residents and school traffic.
125. In addition, NLRA points also to two further letters from KCC, in respect of a proposed development at Cripple Street¹³⁹. The letters state that the KCC Signals Team have considered options for potential capacity improvements to the Swan junction but have been unable to identify any that would be worthwhile. In particular, there is little scope to adjust the phasing or timings any further. Consequently it is felt to be inappropriate to seek contributions towards a joint study of the Swan junction.
126. This last comment ties in with the fact that, in relation to the present appeal proposal, KCC as Highway Authority initially sought a similar contribution for such a study, and this was seen as providing part of the mitigation package which justified their acceptance of the scheme from a transport point of view¹⁴⁰. But KCC has since dropped that request. NLRA draws the inference that it is now clear that nothing useful can be done.
127. In the light of these comments, NLRA notes that the appellants propose no solution at all for the Swan junction, save for an adjustment to the signal timings, and even that has already been ruled out by the Highway Authority.

Relationship to wider transport planning

128. The NLRA draws attention to the apparent lack of any agreed overall transportation strategy for the emerging local plan proposals, of which the present appeal proposals form part. In this context, particular attention is drawn to a letter from KCC's Corporate Director for Transport, to the Borough Council's Chief Executive, regarding the draft local plan proposed site allocations¹⁴¹. In that letter, KCC expresses the view that the local plan proposals would have an unacceptably severe impact on the transport network, the travelling public, and the local economy. The letter states that the transport evidence base is incomplete, including traffic modelling work, and until that work has been completed, it will not be possible to determine the nature of the mitigation required, or the viability of proposed sites. An agreed infrastructure delivery plan is also said to be lacking.

¹³⁸ Doc. NL-9.3 (KCC letter 5 March 2014)

¹³⁹ Docs NL-9.5 and 9.7 (KCC letters re Cripple St, 29 Oct and 4 Dec 2014)

¹⁴⁰ Doc. NL-9.3 (KCC letter 5 March 2014)

¹⁴¹ Doc. NL-11.11 (KCC letter 19 January 2015 re local plan allocations)

129. In this context, NLRA also refers again to the earlier letter of 5 March 2014¹⁴², in which the transport officer refers to KCC's 'great concern' about the difficulty of creating an overall transport strategy for the development envisaged in the emerging local plan. The Association also produces a note from the same transport officer, intended as part of a meeting note, which states that, as at April 2014 at least, KCC did not have any agreed overall transport strategy¹⁴³.
130. These are echoed in the Borough Council's officer report, which states that KCC does not have any strategic highways plan, nor any strategic study for what can be accommodated at the Swan junction¹⁴⁴.

Other matters relating to traffic congestion

131. NLRA argues that the position taken by KCC as Highway Authority, in not objecting to the proposed development, is inconsistent. The Authority's letter of 5 March 2014¹⁴⁵ identifies impacts that are clearly unacceptable and appear to have no solution, and yet the Highway Authority concludes that the development should go ahead. In this context the Association also draws attention to an email dated 11 June 2015 from KCC's head of transportation, which seeks to explain the Authority's decision by stating that NPPF paragraph 32 prevents authorities from objecting to schemes on the grounds of worsening existing congestion¹⁴⁶. NLRA say this indicates that the Highway Authority's position has been driven by a fear of costs rather than achieving a satisfactory outcome.
132. NLRA also contend that the Planning Officer's report on the application misrepresented the Highway Authority's consultation response, by reporting that KCC state that improvement works to reduce delays at the Swan can be accommodated within the junction¹⁴⁷. It is argued that this comment does not properly reflect the contents of KCC's consultation response, and that the Planning Committee may have been misled by this.

Highway safety

133. NLRA's principal concerns regarding safety relate to the unimproved part of Boughton Lane, which is almost the whole of the Lane from the school campus entrance southwards, including the section adjacent to the site itself. It is argued that the Lane is narrow and winding, with numerous sharp bends, and no footways. This is regarded as potentially dangerous for any increase in usage either by vehicles or by pedestrians and cyclists.
134. The point is made by NLRA that the appellants rely on 27% of all vehicles from the development going south, and this would increase traffic levels on this section of Boughton Lane substantially.
135. It is argued that the most dangerous section of the Lane is that adjacent to the site itself, where there is a series of blind bends close together, and where the danger would be increased by introducing the two proposed new accesses,

¹⁴² Doc. NL-9.3 (KCC letter 5 March 2014)

¹⁴³ Doc. NL-9.10 (KCC email from P Rosevear, 17 April 2014)

¹⁴⁴ Doc. BG-8 (report to Planning Committee 24 July 2014, para 8.49)

¹⁴⁵ Doc. NL-9.3 (KCC letter 5 March 2014)

¹⁴⁶ Doc. NL-9.13 (T Read email, 11 June 2015)

¹⁴⁷ Doc. BG-8 (report to Planning Committee 24 July 2014, para 8.49)

increasing the level of activity around this area. Although alternative routes are proposed within the site, some pedestrians and cyclists would still be likely to travel along this section of road, and the mixing of traffic here would increase the danger. Although it is proposed to extend the 30mph limit, speeds would be difficult to enforce. Any widening or other safety measures would be likely to destroy the Lane's attractive rural character.

136. Particular concern is expressed by NLRA regarding the need for pedestrians and cyclists to reach the footpath link to Eddington Close, opposite the site's south-western corner. A dedicated connection to this route is proposed within the development, but this would require users to cross Boughton Lane at its most dangerous point, on the inside of the bend, with little visibility in either direction¹⁴⁸.
137. Attention is drawn to the agricultural cold store and fruit packing operation at Boughton Mount Farm, to the south of the appeal site. This is said to generate large numbers of lorries on Boughton Lane, increasing the dangers¹⁴⁹.
138. To the north of the school campus, where footways do exist, NLRA points out that these are mostly narrow.
139. It is argued that, as a result of the increased queuing at the Swan junction, there would be more rat-running through Paynes Lane and other residential side-streets, bringing safety and amenity issues. Paynes Lane is seen as a particular concern, because it has no footways, and is too narrow for vehicles to pass, but is also another likely pedestrian route from the proposed development to Loose Road.
140. At the Swan junction itself, it is argued that the additional delays to traffic would result in drivers taking more risks due to frustration.

NLRA submissions on ancient woodland

141. NLRA sees Five Acre Wood as an invaluable landscape feature and an irreplaceable natural habitat. The ways in which ancient woodlands are of value to the community are identified in NE's Standing Advice¹⁵⁰, and NLRA fully supports that view.
142. The process through which Five Acre Wood was designated as ancient woodland is robustly described in the Inventory¹⁵¹, and needs no further justification. The appellants' own survey which found 16 species of vascular plants, which are indicators of ancient woodland, lends further weight to the designation¹⁵². The fact that the wood was not designated before 2012 is only because of the change of the size threshold, to include woodlands of less than 2ha for the first time.
143. The proposed scheme would cut a swathe right through the middle of the woodland. In NLRA's view, this would damage it irreparably. Not only would it mean the direct loss of part of the wood itself, but it would also open the

¹⁴⁸ Mr Carter, in oral evidence

¹⁴⁹ Mr Osborne's proof (Doc. NL-7) para 6.2

¹⁵⁰ Doc. CD-19 (NE Standing Advice) para 4.8.1

¹⁵¹ Doc. CD-5 (Maidstone Ancient Woodland Inventory)

¹⁵² Doc. AP-2A/Apx 1 (Mr Baxter's botanical survey)

remainder up to impacts from noise, fumes, light pollution, not to mention people and domestic pets. The woodland's shape and size already make it particularly vulnerable to such influences, but the fragmentation now proposed would leave the residual areas even more fragile. NLRA submits that the loss of connectivity at ground level would restrict the migration of ground-dwelling invertebrates and fauna, and the likely management regime for trees adjacent to a highway would prevent aerial connectivity¹⁵³.

144. Although the proposed access strip was disturbed during the construction of the NLLA, NLRA believes that the original topsoil was saved and re-laid when the site was reinstated. It is also understood that the subsoil was protected during the building works, using a 'Cellweb' mesh, and that the temporary access road was constructed using approved no-dig techniques. NLRA contends that these measures were set out in the Arboricultural report¹⁵⁴ which supported the application for TPO consent, and were referred to in the officer's delegated report¹⁵⁵, and were required by a planning condition¹⁵⁶. Mr Beavis, the former project manager for the contractors Carillion, has confirmed that this condition was complied with¹⁵⁷. And even if it was not, a failure to comply with such a condition would be the responsibility of at least two of the present appellants, and therefore this could not amount to a justification for causing further destruction now.
145. In addition, it is pointed out that the Inventory specifically states that the ancient woodland designation includes any temporary clearings, which are regenerating back to woodland¹⁵⁸. NLRA contends that this is the case here, as trees and other vegetation within the access strip are re-growing from their base. In the circumstances, it is argued that the access strip is as much part of the ancient woodland as any other part of it.
146. NLRA submits that additional harm to the ancient woodland would be likely to be caused by the proposed off-road foot/cycleway connection to the school campus entrance. This would run along the edge of the woodland, and there is no evidence that it could be achieved without causing further tree losses.
147. Although the proposed scheme claims to provide 15m buffer zones around the woodland, NRLA highlights the fact that these would be encroached upon by private gardens and communal pathways¹⁵⁹. The NE advice stipulates that buffers should be kept clear of such uses, and allowed to develop into semi-natural habitat¹⁶⁰. There is no support in the advice for widths of less than 15m, and indeed it is said that larger buffers may be required. In this context, the NRLA also points out that in an appeal decision at Bolnore Village, the SoS endorsed a minimum width of 15m¹⁶¹. The Woodland Trust, in its consultation response on the present appeal scheme, advocates a buffer of 30m¹⁶².

¹⁵³ Doc. NL-12 (Mr Barkel's proof/written statement) paras 4.7.8, 4.7.11 and 4.7.12

¹⁵⁴ Doc. NL-10.11 (Arboricultural report 28 Oct 2008)

¹⁵⁵ Doc. NL-15.3 (officer's report on the TPO application)

¹⁵⁶ Doc. NL-10.12 (TPO consent TA/0153/08)

¹⁵⁷ Doc. NL-10.13 (A Beavis email)

¹⁵⁸ Doc. CD-5 (Maidstone Ancient Woodland Inventory), section 2.2.2

¹⁵⁹ Layout plan No 2084-10C

¹⁶⁰ Doc. CD-19 (NE Standing Advice) para 6.4

¹⁶¹ Doc. CD-30 (Bolnore appeal decision): SoS para 21, IR para 13.92

¹⁶² Doc. NL-10.7 (Woodland Trust letter)

148. Furthermore, whilst the appellants claim the benefit of the opportunity for improved management of the woodland, the NRLA points out that no actual management plan is offered for consideration. It is also noted that the appeal site does not cover the whole of the designated ancient woodland; it draws a line across it, which takes in about 0.45 ha but excludes a further 0.24ha of the designated area. It is suggested that this leaves a lack of clarity as to how a holistic management regime would be secured¹⁶³.
149. Attention is drawn to the objections by the respective landscape and ecology officers of both the Borough and County Councils, for reasons reflecting many of the above concerns¹⁶⁴. Similarly, NRLA draws support from the Haslemere appeal decision, where the Inspector found even a small loss of ancient woodland to be unacceptable¹⁶⁵.

NLRA submissions on site accessibility

150. NLRA submits that the appeal site is poorly connected to the urban area. From the centre of the proposed housing development, the distance to the nearest bus stops and other facilities at Loose Road is over 860m, and from the furthest dwellings, it would be more like 1,200m. Although the appellants say the distances are less than this, it is argued that their measurements are unrealistic, being taken either from the site access or as-the-crow-flies. The MBWLP definition of good accessibility is 200m in urban areas, and 400m elsewhere. On any basis, the appeal site cannot meet these standards.
151. NLRA has established that the bus company Arriva will not run buses to the appeal site, because buses would have to double back¹⁶⁶. Boughton Lane does not lend itself to being incorporated into a loop, because of the lack of any suitable connections to Loose Road, other than the single point of entry at the Swan junction.
152. The range of facilities available at Loose Road is seen as limited. A wider range is available at Sutton Road, but in the present appeal scheme, accessibility in that direction is poorer still: the distance is greater, the footpaths are through open countryside, and the connection to Lansdowne Avenue relies on a gated access at the end of Pested Bar Road, which is not always open.
153. The nearest play space for children is at Mangravet recreation ground, but that requires a long walk, via little-used paths, which is an unsuitable location for young children and mothers¹⁶⁷.
154. Consequently, NLRA contends that the surrounding area lacks permeability, and the appeal site is effectively isolated from important facilities and the public transport network. Future residents would thus be car-dependent¹⁶⁸.

¹⁶³ Doc. NL-12 (Mr Barkel's proof/written statement) paras 2.3 and 5.3 – 5.6

¹⁶⁴ Docs NL-19 and NL-20 (MBC Landscape Officer); and Doc. NL-10.9 (KCC Landscape Officer)

¹⁶⁵ Doc. CD-20 (Haslemere appeal)

¹⁶⁶ Doc. NL-11.17 (Arriva email)

¹⁶⁷ Doc NL-14 (NLRA's Position Statement) section 3.8

¹⁶⁸ Mr Osborne's proof (Doc. NL-7) paras 4.17 and 5.8

NLRA submissions on countryside impact

155. NLRA submits that the appeal site occupies a highly sensitive location on the edge of the built-up area. The character of the site and its surroundings are mainly rural. Built development as proposed would be prominent in views from the south, and would appear to intrude into an area of open countryside¹⁶⁹. It is therefore argued that the effect would be to urbanise this part of the site and the adjacent section of Boughton Lane.
156. In addition, the whole site lies within the MBWLP's Southern Anti-Coalescence Belt (SACB) and one of the draft NLNDP's green corridors. NLRA argues that the area protected by these policies fulfils an important role as an open gap within the urban area. Built development would encroach into these important strategic countryside areas and erode the separation between communities. Even the proposed new sporting facilities, it is argued, would weaken the countryside setting in this location¹⁷⁰.

NLRA submissions on the quality of the scheme

157. NLRA contends that the density of the proposed scheme, at 35-40 dph, is too high, and that the number of 3- and 2½-storey buildings proposed is too high for the semi-rural location. It is also argued that there would be insufficient open space within the site¹⁷¹. Together, these features would result in a cluttered and cramped development, at odds with the character and appearance of the North Loose area¹⁷².
158. In terms of design, it is suggested that the proposed house types pay insufficient regard to the local Kentish vernacular. They are seen as unsympathetic 'anywhere' housing, lacking individuality and character¹⁷³. The layout would put houses too close to the important boundary trees in many areas.
159. The location and grouping of the affordable housing is criticised by NLRA, on the grounds that these dwellings would be arranged in enclosed groups, tucked away behind the open-market housing, and separated from it. They would also be on the periphery of the site, at the furthest distances from buses and other facilities. It is said that this would discourage interaction and fail to promote social cohesion¹⁷⁴.
160. In addition, it is argued that the layout as a whole is excessively inward-looking, so that the whole development would appear to turn its back on the area's existing community. It would also turn away from the adjoining public footpaths, particularly footpath KB26, thus missing an opportunity to improve the surveillance and security of that route¹⁷⁵. This adds to the impression of a scheme lacking in social or physical integration¹⁷⁶.

¹⁶⁹ Mr Osborne's proof (Doc. NL-7) para 5.5

¹⁷⁰ Mr Osborne's proof (Doc. NL-7) para 4.22

¹⁷¹ Mr Osborne's proof (Doc. NL-7) paras 5.12, 5.13

¹⁷² Doc NL-14 (NLRA's Position Statement) sections 3.2 – 3.4, and 3.8

¹⁷³ Mr Osborne's proof (Doc. NL-7) para 5.13

¹⁷⁴ Mr Osborne's proof (Doc. NL-7) paras 5.11, 5.13; and Doc NL-14 (NLRA's Position Statement) para 3.3.3

¹⁷⁵ Doc NL-14 (NLRA's Position Statement) para 3.3.2

¹⁷⁶ Mr Osborne's proof (Doc. NL-7) para 4.14

NLRA's alternative proposals

161. If housing were to be built anywhere on the appeal site, NLRA contends that it should be on the eastern field, with road access from Sutton Road, via Lansdowne Avenue¹⁷⁷. This is seen as making better use of the site and much better use of highway capacity, avoiding the safety and congestion problems of Boughton Lane and the Swan junction. It would have a greater potential housing capacity, and would give occupiers easier access to a wider range of facilities. The ancient woodland would be left untouched.
162. Although access rights would need to be negotiated with Kent Police, they have stated that they are open to discussion¹⁷⁸. Whilst the appellants have held one meeting with the Police Estates Officer, matters have evidently gone no further¹⁷⁹. There was apparently no discussion about financial matters, so the effect on the scheme's viability cannot yet have been explored. There may also be the potential to link the development with the Police training ground, which already has a resolution to grant permission for housing.
163. NLRA argues that as long as their potentially better option has not been eliminated, it would be wrong to contemplate allowing the present less satisfactory scheme to go ahead.

NLRA submissions on other matters

Air quality

164. There is concern about the development's effects on air quality. The area around the Wheatsheaf junction is a designated Air Quality Management Area (AQMA)¹⁸⁰. Pollution levels there are said to be more than 50% above the recommended level. The Swan area is also seen as being at risk. It is argued that adding to the traffic volumes in those areas would create a serious health hazard.

Loss of agricultural land

165. The eastern field is graded as agricultural land mainly in Grade 3a and some Grade 2¹⁸¹. It is therefore classified as 'best and most versatile' (BMV), and an important national resource. It is argued that the NPPF seeks to protect such land where possible.

Use of the sports field

166. With regard to the proposed new sports field, it is argued that the School's existing sports pitches often appear to be under-used, and the case for needing a larger one has not been made. Sport England regards the existing facilities as adequate. The new facilities would be further from the school buildings, with the furthest being over 800m away, or up to a 10-minute walk for younger children¹⁸². This would introduce practical problems in terms of the extra time needed during the school day, and it could act as a disincentive

¹⁷⁷ Raised initially in NLRA's February 2014 submission (Doc. NL-1), and elaborated on in all subsequent submissions

¹⁷⁸ Doc. NL-11.6 (Kent Police email)

¹⁷⁹ Doc. NL-11 (NLRA 'Communication' proof) p1

¹⁸⁰ Mr Osborne's proof (Doc. NL-7) para 4.13; and Doc. NL-6 (NLRA Dec 2014 submission) p5

¹⁸¹ Doc. BG-8 (officers' report) paras 8.26 – 8.29

¹⁸² Mr Osborne's proof (Doc. NL-7) paras 5,4, 6.6

to casual or extra-curricular use. And although the FST says that there will be increased opportunities for community use, there is no firm commitment to this. These issues reduce the benefits to pupils and to the community at large.

Community consultation

167. Although the appellants held an exhibition for the local community, the emphasis of the event was mainly on the proposals for the new school, with few details of the residential element¹⁸³. The NRLA feels strongly that this was unfair to those who might be affected. Subsequently, NRLA has tried to engage in a positive dialogue with the appellants, and some meetings have taken place, at the Association's initiative, but members feel that their suggestions have not been properly considered. As a result, it is argued that the present scheme is not the best or the most suitable that could be achieved for the site. This is reflected in NRLA's survey results¹⁸⁴ and the petition of 1,500 signatures against the development.

Draft Local Plan procedure

168. Although it has been resolved that the appeal site should remain amongst the draft MBLP housing allocations at the next stage, NRLA contends that the site was never debated in Committee like the other proposed allocation sites. Debate was curtailed because of the present appeal¹⁸⁵. That is why the site is not mentioned in the minutes of any of the three the PTDOSEC meetings in January 2015¹⁸⁶, and the subsequent Cabinet minutes deal with the site only briefly. The Council's intention to allocate the site for development should therefore carry less weight than it otherwise would.

Sustainability

169. In the light of all the harm that the development would cause, and the shortcomings of the site and of the proposed scheme itself, the NLRA submits that the proposal cannot amount to sustainable development.

2.4 The Submissions by Other Interested Persons

Oral submissions - supporters

Councillor Ian Ellis

170. Cllr Ellis is a member of the Boughton Monchelsea Parish Council (BMPC), and a trustee of the Boughton Monchelsea Amenity Trust (BMAT). The trust is a registered charity, established in 1984, whose aim is to provide amenity land for the benefit of the community. Cllr Ellis confirms that BMAT holds a legal agreement with Ward Homes, to the effect that, if planning permission is granted for the appeal scheme, the developer will hand over 98 acres of land at Boughton Mount Farm, at effectively nil cost¹⁸⁷.
171. The future use of the land has not yet been decided. It could become public open space, or it might remain agricultural, but with the creation of a network

¹⁸³ Doc NL-11.1 (exhibition leaflet)

¹⁸⁴ Doc. NL-11.2 (NRLA survey results); and petition in Questionnaire folder

¹⁸⁵ Docs. NL-14 (NRLA Community consultation proof) para 2.3.2; and NL-22 (closing submissions) para 6.3

¹⁸⁶ Docs. BG-12, 13 and 14 (PTDOSEC minutes)

¹⁸⁷ Shown coloured blue on the plan at Doc. OP-3; and confirmed in a letter and plan from Gill Turner Tucker solicitors, dated 30 June 2015 (written representations – red sub-folder to main file)

of new pedestrian and cycle routes for the public. The Trust already owns around 200 acres of land within the parish, and has options and agreements on around a further 200 acres, including the Boughton Mount land. The options and agreements are all contingent upon planning permissions for housing development¹⁸⁸. Ultimately the Trust's aim would be to create a country park, with a fully worked-out master plan.

172. Cllr Ellis states that the agreement with Wards depends on achieving a minimum of 220 dwellings. If permission is granted for any number less this, BMAT will lose its right to exercise their option.

Councillor Steve Munford

173. Councillor Munford represents Boughton Monchelsea on both the Borough and Parish Councils¹⁸⁹. He supports the development because of the benefits that it would provide, including the BMAT land, the new sports field, the contributions to highway improvements, footpaths, and primary school places, and enabling the planned improvements to the FAWS and the school farm. He agrees that the proposed housing is needed.
174. Cllr Munford knew Five Acre wood when it used to be coppiced, so the trees themselves are not old. He also saw the soil being removed to create the former construction access. Consequently, he sees limited value in the section that would need to be removed.
175. Although there would be some increase in traffic, Cllr Munford believes this will occur anyway, because of the need for housing. Here the location next to a school campus should help to reduce the traffic generation somewhat.

Oral submissions - objectors

Councillor Brian Clark

176. Cllr Clark represents the Loose area on both the Borough and County Councils¹⁹⁰. In his view, the development would urbanise the green wedge between Loose and Parkwood, causing coalescence, loss of openness and a loss of rural character. These impacts would in his view be contrary to planning policies in both the adopted and emerging Local Plans, the draft Neighbourhood Plan, and the NPPF.
177. It is argued by Cllr Clark that the proposed scheme would be over-intensive for the location, and there is a lack of open space to soften it. The affordable housing clusters would be isolated and poorly integrated, and would fail to meet the policy requirement in the adopted DPD. The traffic would have a severe impact on congestion and safety, due to the poor standard of Boughton Lane, especially to the south.
178. With regard to the ancient woodland, it is further argued that the designation should be supported. The Inventory is an authoritative piece of work, and nothing has been produced to disprove its conclusions. If the woodland has suffered neglect, or has been damaged by construction works, the

¹⁸⁸ Doc. OP-4 (BMAT plan): BMAT land coloured green, proposed housing sites hatched red

¹⁸⁹ Doc. OP-2 (Cllr Munford's notes)

¹⁹⁰ Doc. OP-5 (Cllr Clark's statement)

responsibility lies with certain of the present appellants. Conditions were put in place on the NLLA and TPS planning permissions that sought to ensure the wood's future protection and management.

179. The proposed new sports field would be larger than the existing, and would have potential benefits to pupils. But Cllr Clark believes that similar arguments were made in 2008, when the NLLA development was applied for. Better use could have been made of the existing sports field, as proposed in FST's 2008 application, but the layout then proposed has never been implemented¹⁹¹. There is therefore no certainty that the benefits of the new facility would be fully realised.
180. Cllr Clark agrees with NLRA that debate on the proposed allocation of the appeal site in the draft MBLP was restricted to avoid prejudicing the present inquiry. Consequently the site has not been examined to the same extent as the other draft allocations.

Councillor Ian Chittenden

181. Cllr Chittenden is a local member on both the Borough and County Councils¹⁹². The Councillor shares the concerns of NLRA and Cllr Clark regarding the process by which the allocation of the appeal site in the draft MBLP was dealt with at the PTDOSEC in January 2015 and subsequent Cabinet meeting. He suggests that the site's inclusion in the draft plan should have very limited influence on the present appeal.
182. With regard to traffic, Cllr Chittenden argues that the delays at the Swan junction are primarily a function of the signal timings, but these have already been fine-tuned to give the best possible performance, and there is now no further capacity that can be released in that way. It is argued that the situation will get worse, because several major developments are planned in the villages to the south. The total number of these envisaged in the draft local plan is over 2,000, but more importantly, around 580 of these are already permitted. In the Councillor's view, the appellants' TA greatly underestimates the amount of committed development and its effects.
183. Although a financial contribution is provided for, it is argued that there is no identified solution that this money can be applied to. Attention is drawn to South Maidstone Action for Roads and Transport (SMART), a campaign group which has published proposals for improvements¹⁹³, but these have yet to be tested or accepted by the Highway Authority.
184. Regarding the ancient woodland, it is stated that this is highly valued by the local community. The buffer zone proposed is seen as inadequate. The works in connection with the previous temporary access were closely controlled. Although the soil in that area may be different from the remainder of the wood, that does not necessarily mean that it is not the original, nor that it cannot support continued regeneration.

¹⁹¹ Doc. OP-5/ Apx 3 (NLLA 2008 application - sports pitch layout)

¹⁹² Doc. OP-6 (Cllr Chittenden statement)

¹⁹³ Doc. OP-8 (SMART leaflet)

Councillor Derek Mortimer

185. Cllr Mortimer is a Borough Council ward member for North Loose, and a member of the NLNDP steering group and the SMART team. Traffic is seen as the major issue. At times there is continuous queuing on the A229 through Loose and South Maidstone for over 4 miles. There is fear that the development now proposed would produce gridlock. No positive solution has been identified by any of the parties.
186. Air quality is also seen as a significant concern. The site is believed to be within an AQMA, and the local level is already on the limit for NO₂ and diesel particulates.
187. Concerns are also expressed with regard to the quantity and location of the affordable housing, and the procedure through which the site's allocation in the next stage of the draft local plan was determined.

Mr Richard Hunt

188. Mr Hunt is a resident of North Loose of over 30 years' standing. Over that time the area has deteriorated greatly in his view, due to traffic growth and the associated congestion, fumes, dust and dirt. Short journeys now take around half an hour. The disruption to travel is becoming intolerable.
189. Mr Hunt is also concerned about the impact of the proposed development on other services, including the sewerage system, and GP doctor provision. In his view, the situation requires a complete halt to further building until solutions have been put in place.

Mr Roy Lane

190. Mr Lane is a resident of Boughton Monchelsea. He considers that urban sprawl is altering the character of the area. In his view, the proposed scheme is too dense for the appeal site, especially with the number of proposed buildings of more than two storeys. There is also too little affordable housing proposed.
191. The present level of traffic congestion restricts the ability of residents to travel, lengthens their working day, and causes stress. The area has become so notorious that delivery companies are reluctant to visit, especially in the afternoons. Congestion at the Wheatsheaf forces vehicles to look for other routes. But the rural fringe is typified by narrow country lanes, such as Boughton Lane, and also Pested Bar Road where there is nowhere for vehicles to pass.
192. The Boughton Mount Farm fruit packing business has worsened this, with its large lorries. Sometimes these overturn or get stuck, causing complete blockages. Emergency services have difficulty getting through. Conditions for pedestrians and cyclists are very dangerous. But there is little prospect of any bus service along Boughton Lane because of the lack of turning opportunities or routing options.

Councillor Tony Harwood

193. Cllr Harwood is a member of the Borough Council's planning committee. He is particularly concerned about the threat to Five Acre Wood. Ancient woodland is seen as an irreplaceable resource. Kent has a high proportion of the

national total. The appellants' own surveys show the presence of numerous indicator species, both floral and faunal. Some of these are seldom found outside of ancient woodlands.

194. The proposed layout would put development close to the ancient woodland, and in time, this would be bound to have adverse effects on the habitat and its ecological balance. It is argued that the best way to counter that threat would be by means of a buffer zone with sympathetic planting and management, but in the appeal scheme, the buffer would be too narrow and would be encroached upon by development. This would make it much less effective.
195. With regard to the BMAT land, it is submitted that the biodiversity value of this arable farmland is very limited. Its potential use by the public would therefore be a lesser benefit than the protection of the existing ancient woodland, despite the difference in size.

Written Representations

196. The written representations cover similar issues to those discussed above. The letter from Mr Paul Thomas¹⁹⁴ supports the proposed development in principle, but raises concerns about traffic levels, and seeks solutions in the form of new roads and links that are outside the scope of the present proposals, or what could reasonably be achieved through conditions or obligations. The remaining representations are against the appeal proposals. The main grounds for objection are traffic congestion, highway safety, damage to the ancient woodland, loss of open countryside, and perceived shortcomings of the proposed design and layout.
197. Dr Sansum states in his letter¹⁹⁵ that he was formerly the project officer responsible for the Maidstone Ancient Woodland Inventory, but he is writing now as a private individual and as an independent ecologist. He submits that the earlier historical maps, prior to the Tithe Map, cannot be relied on as evidence that Five Acre Wood did not exist before then. He contends that the way the wood is depicted on that map is consistent with it being semi-natural rather than planted, and that in this particular area the theory that it might have originated at that time because of changes in the Tithe laws does not fit with what actually happened in this particular area. Dr Sansum points to the evidence from Mr Baxter's botanical survey, and argues that the finding of 16 indicator species suggests that the wood is highly likely to be ancient. He also contends that it is not uncommon for any woodland to contain within it small patches of disturbed ground, such as that at Five Acre Wood where the access road is now proposed, and that such areas are part and parcel of the woodland and contribute to its diversity.

¹⁹⁴ Doc. OP-10 (P Thomas letter)

¹⁹⁵ Doc. OP-11 (Dr Sansum's letter)

3. INSPECTOR'S REASONING¹⁹⁶

3.1 Main Issues

198. In the light of all the evidence and submissions before me, the main issues in the appeal seem to me to be as follows:

- i) Whether, in principle, the proposed development would accord with the relevant policies of the development plan, taken as a whole;
- ii) The effects of the proposed development on the character and appearance of Maidstone's rural fringe;
- iii) Whether the appeal site is an appropriate location for the development, having regard to considerations of accessibility to local facilities;
- iv) The development's effects on traffic congestion;
- v) The effects on highway safety;
- vi) The effects on Five Acre Wood;
- vii) The quality of the proposed scheme's design and layout;
- viii) Other matters raised by objectors;
- ix) And the weight to be given to the scheme's benefits.

(i) Accordance in principle with the development plan [25-30, 57-58, 113]

Compliance with general land-use policies [25-27, 29]

199. Section 38(6) of the 1990 Act requires that the starting point for the decision is the development plan. For this purpose, the relevant policies are those of the adopted MBWLP.
200. With regard to the appeal site's western field, where the proposed housing development would be located, this part of the site is within the boundary of the urban area. In general, there is no policy objection to housing development in that area.
201. The loss of the existing playing field has to be considered against Policies ENV22 and ENV23. However, ENV23 is satisfied, because the scheme makes provision for a replacement facility elsewhere within the site. In the case of Policy ENV22, a judgement may be required as to the effects on the townscape, but in terms of the principle of development, the policy does not give rise to any in-principle objection.
202. Turning to the eastern field, where the new sports pitches would be located, that part of the site is in the countryside, but open air recreation is one of the types of development allowed in that area by Policy ENV28.
203. Thus far, therefore, in terms of the principle of the development, the policies of the development plan are either favourable or neutral.

Compatibility with the Southern Anti-Coalescence Belt policy [28]

204. However, that is not the end of the matter, because in this part of the Maidstone fringe there is also Policy ENV32, which provides for the Southern

¹⁹⁶ In this section, the numbers in square brackets refer to earlier paragraphs of this report

Anti-Coalescence belt (the SACB). The whole of the appeal site is included within this area. The proposed development would significantly extend the existing built-up area. It would also consolidate the development pattern to the east of Boughton Lane, where at present there are the school buildings but little else. It would narrow and urbanise the remaining open countryside in the area. All of these are the types of effect that Policy ENV32 seeks to prevent.

205. I accept that, to some extent, the wedge-shaped portion of the SACB between North Loose and Parkwood seems to play more of a role in separating neighbouring parts of the urban area, rather than any smaller rural settlements. But nevertheless, at its southern end, immediately beyond the appeal site, this wedge broadens out into the more open countryside around Boughton Monchelsea. This part of the SACB therefore plays an important role in preserving the separation of that village from Maidstone. To my mind, development on the appeal site would reduce this separation, at least in visual terms if not also physically.
206. I note the view expressed in the Planning Officer's report¹⁹⁷, and adopted by the appellants, that the proposed development would not conflict with Policy ENV32's underlying aims. But that view is not shared by NLRA and other objectors. And in any event, I must form my own view, based on my own reading of the policy itself and its context within the MBWLP.
207. For the reasons that I have explained, I find as a matter of fact that the development now proposed would be contrary to Policy ENV32. I also consider that the development's actual effect would be contrary to the policy's aims.

Relationship to the adopted development plan as a whole

208. The proposed development would therefore accord with some of the relevant policies, including ENV23 and ENV28, and would conflict with only one, ENV32. However, the question of overall compliance is not a mathematical one. The SACB boundary has been drawn in such a way that in places it overlaps with other policies. If compliance with those other policies were sufficient to outweigh Policy ENV32, the effectiveness of the SACB would clearly be undermined. In my view, this could not have been the intention. Rather, for Policy ENV32 to fulfil its purpose, it must have been intended to outweigh other policies within the area to which it applies.
209. It therefore seems to me that, when the adopted MBWLP is looked at in the round, taking account of all of the relevant policies together, the proposed development is contrary to the development plan.

Whether any relevant policies are out of date or inconsistent with NPPF

210. It has not been argued by any party that any of the policies identified above are out of date or inconsistent with the NPPF. The adopted MBWLP is old, but its saved policies still have statutory force, and have not become out of date simply because of the passage of time. Given the shortage of land for housing [34, 59-60, 110], the MBWLP's housing policies are out of date, but I agree with the parties that Policy ENV32 is not such a policy. Neither am I aware of any other reason why the SACB should be considered inconsistent with the NPPF,

¹⁹⁷ Doc.BG-8 (Officers' report) para 8.02

and indeed it seems to me that its aim of protecting the identity of rural settlements is broadly in line with the NPPF's core principle of taking account of differing areas' roles and character.

211. Neither of the emerging draft plans at Borough or neighbourhood levels proposes a designation equivalent to the SACB, and ultimately it is anticipated that the policy will be superseded. But at present, for the reasons that I have already given, the emerging policies carry limited weight [39, 46]. It follows that, in the meantime, the weight which attaches to the existing policies is unaffected.

(ii) The effects on the character and appearance of the rural fringe [66, 155, 176, 190]

212. The appeal site lies on the edge of the urban area. It is open in nature. At present this part of Boughton Lane and the surrounding footpaths have an attractive and distinctive rural or semi-rural character [13, 17, 19, 155-156]. The development of the western field for housing would change its character completely. The present sense of openness would be lost, and this part of the site would take on a fully built-up appearance. With the eastern field developed as a sports ground, whilst the land would remain open, its pastoral nature would be lost. Consequently, to a greater or lesser degree, the whole of the site would become more urbanised.
213. Although the site boundaries are screened to some extent by Five Acre Wood, and by other existing tree belts and hedgerows, the development would be clearly visible at the two access points, and in intermittent views from elsewhere along Boughton Lane and the footpaths adjoining the site. Whilst little change is proposed to the Lane itself, its present rustic charm would be compromised by the obvious changes to its immediate surroundings. The footpaths would also undergo significant change, with the introduction of hard surfacing [68], as well as built development alongside. Both Boughton Lane and the footpaths would become busier, with people and vehicles or bicycles. Overall therefore, the area's rural character would be considerably diminished.
214. These effects would be contrary to the aims of MBWLP Policies ENV28 and ENV22, in so far as these seek to protect the character and appearance of the countryside and the townscape respectively [27, 29].
215. However, these impacts have to be considered in the context of the Borough's unmet housing needs [34, 59-60, 110]. If those needs are to be met, it seems inevitable that some fairly large greenfield sites will be needed. Although the appeal site and its surroundings are pleasant, the area has no special environmental designations (not counting the SACB which is purely a policy tool, and the ancient woodland, which I consider elsewhere). Neither is the site particularly prominent. In the case of the western field, although the site is currently open, that part of it is already in an urban land use, and as the appellants point out, it is technically PDL. In terms of its intrinsic landscape quality and visual amenity value, there is nothing in particular about any part of the appeal site that would justify giving greater protection to this site than most other areas of urban fringe countryside. Whilst the NPPF seeks to ensure that the countryside's character is recognised, it also gives particular emphasis to the importance of meeting housing needs [50, 52].

216. In the circumstances, although the proposed development would cause some harm to the area's character and appearance, due to the loss of openness and rurality, I conclude that this harm on its own would not be so great as to justify the refusal of planning permission.

(iii) Accessibility to local facilities [67-69, 150-154]

217. North Loose forms part of the main urban area of Maidstone, and the appeal site is on the edge of that area. The western field, where the proposed housing development would be located, is directly adjacent to schools for all ages [14-16]. It is also reasonably close to the facilities in Loose Road, which include a modern convenience store, a doctors' surgery, an alternative primary school, and bus services [18, 67]. Most of these facilities are within about 1km from the centre of the development, and some are significantly less. In these respects, the site is conveniently located.
218. Undoubtedly NLRA are right in saying that not everyone is either willing or able to walk even this far, but for most people these distances in themselves are unlikely to be an obstacle. For properties in the furthest corners of the site, the distances may be increased by up to a further 200m or so, but that is the same on any large site. Realistically, it is unlikely that the borough's housing needs can be satisfied entirely on sites better located than the appeal site in terms of proximity to a range of facilities.
219. I acknowledge that the facilities available in Sutton Road are more difficult to reach, especially on foot. Although these facilities are in some respects better or more numerous than those at Loose Road [18, 68, 152], the walking or cycling routes via Footpaths KM98 and KB27, or via KB26 and through the Mangravet recreation ground, are far from ideal for any kind of regular journeys. Even with the benefit of the proposed new surfacing, these paths are isolated, lacking in surveillance or potential refuges, and as such they offer little by way of safety or security for users. There is also an unresolved question regarding the gated access at Pested Bar Road, through which there is apparently no public right of way [152]. However, the development now proposed does not need to rely on access via these unsatisfactory routes because, for the reasons that I have explained, the facilities at Loose Road are an adequate and accessible alternative, closer to the site.
220. In the present proposals, there are some specific detailed matters which have a bearing on the question of accessibility, as well as on some of the other main issues that I have identified. Firstly there is an issue with regard to ensuring that the connecting routes to Loose Road, and to the NLLA entrance, for pedestrians and cyclists, are free from highway dangers [136]. Secondly there is a potential issue regarding the effects on the woodland, arising from the proposed new pathway alongside part of Boughton Lane [146]. However, to my mind, these are practical matters, rather than ones of principle. There is also a particular issue regarding access to children's play facilities. The nearest such facility is at Mangravet recreation ground, which can only be reached via Footpath KM98. For the reasons given earlier, this seems to me unsatisfactory for this type of facility, likely to be used frequently by mothers and young children. However, there is no reason why provision for children's play could not be made within the development itself, so again this is an issue that is capable of resolution. In so far as these matters touch upon other issues, I return to them elsewhere in my report.

221. I conclude that the appeal site's accessibility to local facilities, by non-car modes, is adequate. In this respect the proposed development would accord with the aims of MBWLP Policy T21 and with the NPPF's core principle of focussing development in sustainable locations.

(iv) Traffic congestion [97-104, 114-132, 175, 182-183, 185, 188, 191]

Existing conditions and future traffic growth

222. I saw on my various visits that traffic congestion on the main roads through the southern part of Maidstone is quite heavy. That in itself is not an uncommon situation in an urban area, but even by those standards it seems to me, from my observations, that the level of regularly occurring congestion in this part of the town is more than usually severe.
223. On Loose Road, I saw that lengthy and slow-moving traffic queues tend to build up approaching the Swan and Wheatsheaf junctions, and that at times these become effectively grid-locked due to the sheer volumes funnelling into these junctions from different directions, resulting in exits becoming blocked. At the Swan junction, these conditions have a knock-on effect on Boughton Lane, where traffic is especially heavy around school times, and in the mornings and mid-afternoons, traffic can queue from the traffic lights all the way back to the school entrance, around 400m. Moreover, I saw that these conditions were not confined to the main peak hours, but tended to persist for lengthy periods at other times, including in the early morning and evening.
224. The occurrence of serious congestion in the area is not disputed by the appellants [99], and indeed there is some evidence of it within their own TA¹⁹⁸ and June 2015 Transport Report¹⁹⁹, as well as in the surveys conducted by NLRA [114-116]. In so far as there are some differences between the survey results, it seems to me that these are likely to reflect their respective timing, with the continuing take-up of new school places at the NLLA and TPS having an increasing effect over the last few years. Whilst I am mindful of the fact that my visits were concentrated into a single week, and conditions may vary, I am reassured to some extent, in that my overall impression, albeit unquantified, was of conditions not dissimilar from those described by NLRA.
225. Equally, there can be little doubt that by the time any development at the appeal site could start to be occupied, traffic levels will have continued to grow. There is spare capacity yet to be filled at the NLLA and TPS [117], and it appears that permission for the present appeal proposal might also trigger the implementation of the existing permission for the expansion of FAWS [16, 75]. There are also major housing developments currently under way along Sutton Road, and other permissions have evidently been granted in the Loose and Parkwood areas [118]. Although the NLLA development contributed to the signalisation of the Swan junction, that improvement has now taken place, and any benefit has already been gained. I am not aware of any further measures yet to be implemented in connection with any of the other developments that are already permitted or under way.

¹⁹⁸ Doc. AR-4 (December 2013 TA, chapter 4

¹⁹⁹ Doc. AP-1A/ Apx 7 (June 2015 Transport Report), chapter 4

226. The present appellants should not be expected to provide mitigation for pre-existing problems, nor for the effects of other developments. But nonetheless, it seems to me that it would be wrong to ignore the fact that the proposed development, if permitted, would take place against a background congestion level which is likely to be even worse than that which exists now.

The traffic impact of the proposed development

227. As noted earlier in this report, the appellants' forecasts would represent an increase in traffic in Boughton Lane, on its approach to the Swan junction, in the order of 15-30% [99]. Assuming for the moment that these figures are accepted, in the context of the area's existing traffic problems, and the likely further growth identified above, it seems to me that an increase of this magnitude would be a matter for significant concern.
228. And more than that, to my mind it would be especially significant in the case of Boughton Lane, because of the complete lack of any suitable alternative access roads into or out of the area that the northern part of the Lane serves. Clearly, those residents whose homes are accessed from Boughton Lane depend on it for essential journeys. Many others also use the Lane for access to the school campus as their place of work or study. This is therefore a route where reasonable freedom of movement is desirable and necessary. Based on my observations of the existing peak-hour conditions, it seems to me that an increase of 30%, or even 15%, would be likely to interfere with traffic movements to a degree that would be unacceptable for a road of this nature and function. Indeed, for anyone with an essential need to travel by car at the worst affected times, it would not be an exaggeration in my view to say that the situation would be likely to come close to being intolerable.
229. Even if this were the full extent of the development's impact, it seems to me that on this basis its impact would be likely to be severe. However, that is not necessarily the full extent, because the appellants' figures are not wholly unchallenged. In terms of actual numbers, it is said that the increase would be around 70-85 vehicles in each of the peak hours [98]. At the inquiry, objectors expressed some scepticism about these figures, but did not bring any counter-evidence. In these circumstances, I have some hesitation in departing from the position which is supported by the technical evidence. Yet I find myself unconvinced, for two reasons.
230. Firstly, although the trip generation rate is said to be derived from TRICS data [97], the overall rate is around 0.5 peak hour trips per dwelling, and less than this in the morning peak. This appears unusually low, especially for a development of mainly private, family-sized housing, where there seems a high likelihood that many households would have two or more breadwinners. I recognise that it is not at all uncommon for actual measured trip generation rates to be less than those expected by objectors. But to my mind, on this particular site, such a low rate seems more than usually at odds with popular perception. That does not make the appellants' assumptions wrong, but it seems to me that in these circumstances a great deal rests on the choice of comparator sites from the TRICS database, and the quality of the evidence justifying their selection in preference to others. In the present case that evidence is not before the inquiry.

231. Secondly, I agree with NLRA and KCC's highways officer that the north-south assignment split of 73%:23% is questionable **[97, 119]**. To the south of the site, there are no major employment centres within 15-20 miles, whereas to the north are Maidstone and the main motorway and railway commuting corridors. I appreciate that the appellants' percentage split is derived from Census data. But it appears that, out of the trips that have been assumed to route southwards, the majority are bound for destinations for which Boughton Lane would not appear to be the most natural route: destinations such as Ashford, Tunbridge Wells, Tonbridge & Malling, and Parkwood²⁰⁰. I accept that some traffic might take a more circuitous route to avoid the congestion at the Swan junction, but if so, that is a further indicator of the existing problems, rather than the underlying pattern of demand. Consequently, it seems to me that the assumption of a 73/27 split has the effect of masking the likely full extent of the development's impact.
232. For these reasons, I conclude that there is an appreciable risk that the appellants' traffic generation figures tend towards under-estimation. However, this merely reinforces the view that I have already stated above, which is that even on the appellants' own figures, the likely impact on conditions at the Swan junction would be severe.
233. In any event, it is not disputed that the level of traffic increase predicted would need to be accompanied by some form of mitigation **[99-102]**. To my mind, this acknowledges that, without effective mitigation, the development's impact on the highway network would be unacceptable.

The proposed mitigation

234. The undertaking provides for a strategic highway improvements contribution of £3,000 per new dwelling **[102]**. That is a substantial sum of money. However, even with that funding available, it appears that there is currently no agreed plan as to how the situation at the Loose Road junctions could or should be dealt with.
235. The appellants' proposal regarding adjustments to the signal timings is contradicted by the Highway Authority **[99, 124, 125]**. The suggested minor changes relating to the positioning of bus stops and lay-bys, and entry to Cranbourne Avenue **[101]**, have apparently been made known to the Authority, but as yet there is no sign that any will be supported. Neither is there any evidence that they would be effective. Although a joint study of the A229 corridor is taking place, it has yet to produce any recommendations or proposals, and there is no certainty that it will deliver a solution.
236. Whilst the Highway Authority does not object to the proposed development, subject to receiving the agreed financial contribution, all of the evidence points to the fact that the Authority has not been able to identify any effective means of mitigating the development's impact **[124-127]**. I appreciate that the proposed contribution is intended as a step towards securing such mitigation. But for that to carry weight, there would need to be a realistic prospect that a solution would emerge to which the contribution could be applied. Here, there is no evidence that such a prospect exists at present.

²⁰⁰ Doc. AR-4 (2013 TA), Appendix H –Traffic Distribution

237. Evidently, the Highway Authority has been actively seeking such a solution for some time, but in view of the lack of any positive outcome, this only increases my concern. The Authority chose not to appear at the inquiry, nor to make any direct written representation (although KCC was represented in its other role, as one of the appellants). However, I have had regard to the various highway officer letters and reports tabled in evidence by the other parties²⁰¹, and I am satisfied that these give me sufficient information from which to understand the Highway Authority's position. In the circumstances, it seems to me that little reliance can be placed on the proposed highways contribution as a means of mitigation for the proposed development.
238. The only other mitigation proposed is in the form of the submitted travel plan²⁰². The measures proposed there, although valuable and worthy of encouragement, seem to me unlikely to affect the development's traffic generation to any significant extent. The appellants do not contest this view.
239. I conclude that the proposed development's severe traffic impact would not be effectively mitigated.

The wider transport planning context

240. Given the lack of an agreed strategic transport plan for Maidstone as a whole [128-130], it is likely that the present appeal site will not be the only one of the proposed housing sites in the draft MBLP to be affected by traffic issues. There is a case to be made that the solution to the Borough's housing needs should not have to wait until the transport strategy has been resolved. However, the counter-argument is that decisions made in a transport planning vacuum risk missing the opportunity to achieve the best overall solution.
241. I acknowledge the frustration of holding back development when housing is clearly needed. But the transport situation in Maidstone clearly cries out for a coordinated approach to housing and infrastructure. In this case, piecemeal development on the appeal site, exacerbating existing problems rather than contributing to a workable solution, could adversely affect the delivery of a successful plan-led development and infrastructure strategy. These considerations reinforce the conclusions arrived at above.

Conclusion on traffic congestion impact

242. For the reasons explained, I conclude that the proposed development would have a severe adverse impact on the highway network, in terms of congestion and inconvenience to local residents and other road users, and on the strategic transport planning of the area generally. This would be contrary to the aims of NPPF paragraph 32.

(v) Highway Safety [105-106, 133-140, 192]

243. The highway safety issues relate principally to the standard of Boughton Lane, and its suitability to serve the proposed residential development. For the

²⁰¹ Most conveniently found together at Docs. NL-9.3, NL-9.5, NL-9.6, NL-9.7, NL-9.8, NL-9.10 and NL-9.13

²⁰² Doc. AR-4 (2013 TA), Chap. 7 – Travel Plan

majority of its length, the Lane is clearly not of the standard that would normally be required for a development of 220 dwellings.

Boughton Lane - northern sections

244. To my mind, the only part of Boughton Lane that would normally be considered adequate, in terms of width and geometry, is the section from the Swan cross-roads to the School campus' northern entrance. This section has footways on both sides, albeit narrow in places, until it reaches Paynes Lane, and then on one side only, up to the school. The lack of two full-width footways on this section is not ideal, but is not unduly dangerous.
245. The next section of the Lane is the 150m or so length that runs between the School's northern ('in') and southern ('out') gates. This section reduces to around 5m in width. This presumably reflects the fact that school-related traffic between the two access points is one-way only. With the development now proposed, this would change, in that not only would the traffic volume on this section increase, but the additional traffic would flow in both directions. The width and alignment here are such that two cars travelling at low speed can pass without difficulty, but when larger vehicles are involved, the width is tight and considerable care is needed. On the western side, garden walls and hedges come right up to the carriageway, further reducing any room for error. For cyclists, these conditions would be unpleasant and sometimes dangerous, but I saw that most cyclists seem to use the footway on the eastern side. Given that there is also a wide grass verge on this side, there is enough space for shared use by cyclists and pedestrians. On balance, whilst this second section of Boughton Lane is less than ideal for the volume of traffic, conditions here are not so dangerous that they justify refusal on those grounds.

Boughton Lane – central section

246. The most serious problems would arise in Boughton Lane's central section, the stretch of 450m or so that runs from the School exit, along the frontage of the appeal site, until it takes a 90-degree right-hand turn towards Boughton Monchelsea. In this section, the Lane's width reduces further, to around 4.5m or less in places. There are no footways, cycle lanes or verges, and for the most part the edges of the carriageway are tightly contained by woodland and hedgerows on both sides. The alignment becomes more tortuous, with a series of sharp bends close together. These conditions make passing hazardous. The proposed housing development would have both of its access points within this section. The development would generate additional vehicular, pedestrian and cycle flows, accompanied by turning and crossing movements of various kinds. To my mind, taking access to a development of this size from a road of such a poor standard would create significant dangers.
247. In theory, by providing two access roads as proposed, vehicular and pedestrian movements could be largely contained within the site, avoiding this section of Boughton Lane. But in practice, it seems unlikely that the movement pattern would conform in this way. For example, the external route via Boughton Lane might well be seen as a more attractive one for leisure walking; and for vehicles, the internal routes through any development may be affected by on-street parking. For any number of reasons, some users on might choose Boughton Lane in preference to the routes provided through the site, resulting in an increase in usage, and increased mixing of different types

of user. That increase in usage, with inadequate width for additional vehicular traffic, and no provision to separate pedestrians or cyclists, would in my view be dangerous, for the reasons described above.

248. In addition, as NLRA point out, particular danger would arise from the desire line created by the existing footpath link to Loose Road, via Eddington Close [136]. This footpath would be likely to be well used, because from most parts of the site, it would offer the shortest route to the nearest bus stops, and to facilities in the lower part of Loose Road such as the Loose Primary School, the Walnut Tree pub, the hairdressers' and the dentist's [19, 67]. The proposed scheme recognises the importance of this link, by proposing a pedestrian path within the development, that would emerge at the site's south-western corner directly opposite the existing footpath. This arrangement would accord closely with the desire line, but would require pedestrians to cross Boughton Lane at its most dangerous point, where visibility is at its most limited. Omitting the path within the site, or moving it to any other point, would leave pedestrians needing to walk along the road carriageway to reach the footpath. Neither of these options would be any safer.
249. On the northernmost part of this section of the Lane, it is proposed to install a segregated pedestrian/cycle path, connecting with the existing footway at the School exit [105]. I will comment on the effects of this on the woodland in due course, but suffice to say for now that there is no doubt in my mind that, if the development were to go ahead, this proposed new foot/cycleway would be essential. However, this would only deal with about 100m. For the great majority of this central section of Boughton Lane, there is no proposal to provide any similar facility, or to introduce any other safety measures, except for extending the 30mph speed limit [106]. The latter would be of some benefit, but would not overcome the key problems of visibility, width and separation.
250. In many similar situations, a range of possible solutions would be available, by way of traffic calming, traffic management, road improvements, or further segregated routes, and indeed the possible scope for such measures was discussed at the inquiry. However, no obvious answers emerged. Any traffic calming measures would themselves have to meet stringent safety requirements, including adequate visibility on the approaches; here, those might be difficult to meet. In general terms, most of the potential solutions would appear to require the loss of woodland, and other trees and hedgerows, together with engineering works or other alterations to the carriageway itself. All of these could have significant adverse effects on the area's character and appearance, and on its ecology and biodiversity.
251. Apart from the new footpath referred to above, no proposals of any kind are before the inquiry, nor have any apparently been considered by the appellants or the Highway Authority. As things stand therefore, it is not possible to assess the likelihood that an acceptable scheme could be delivered. I have considered carefully whether these concerns could be overcome by imposing a Grampian-style condition, but since there is no evidence that such a condition could be satisfied, it would not be reasonable to impose one.
252. I am conscious that these safety issues were not identified as a problem by KCC as Highway Authority, but I have no information as to the reasons, and

cannot speculate on this. However, safety issues have been raised by third parties, throughout the application and appeal, and I am satisfied that the appellants have had the opportunity to respond to those issues.

Boughton Lane – south of the appeal site

253. For completeness, the remainder of Boughton Lane, south of the proposed development, is typical of a country lane. This section of the road is not of a standard suitable for large volumes of traffic, but it appears adequate for its existing level of usage. No information is before me as to the existing traffic flows, but the appellants describe this section as lightly trafficked.
254. The appeal proposal would add to the existing level, and indeed, the appellants' forecast is that 27% of all traffic to and from the site would travel that way [97]. If that proves correct, either because of congestion problems elsewhere, or for any other reason, then the numbers of vehicles would potentially be significant for a road of this nature. However, for the reasons given earlier [232], I think it unlikely that this forecast would be borne out if the issues at the Swan junction were resolved, and those issues are likely to weigh more heavily in the planning balance. Consequently, although the concerns raised about this section have not been fully answered, I consider it unnecessary to pursue this point further here.

Conclusion on highway safety

255. I conclude that, within the central section of Boughton Lane, adjacent to the appeal site, the proposed development would result in significant danger to pedestrians, cyclists and other road users. In this respect the scheme would be contrary to MBWLP Policy T9, which aims to ensure safe and convenient pedestrian access; and NPPF paragraphs 32 and 35, which seek safe and suitable access for all, and to minimise conflicts between traffic and other road users.

(vi) Five Acre Wood [84-96, 111, 141-149, 174, 178, 184, 193-194, 197]

Ancient Woodland status

256. Five Acre Wood is identified as Ancient Woodland in the local Inventory, and on the 'MAGIC' Database [13]. Both of these systems are either maintained or endorsed by Natural England, which is the Government agency with special responsibility for such matters. However, there is no statutory procedure for the designation of Ancient Woodlands, and therefore the inclusion of a site in either the Inventory or the Database does not amount to such a designation. Rather, it is an indication that a woodland may be ancient. This is effectively acknowledged by NE in the comments of one of its officers, where it is stated that, "*whilst every effort has been made to make this revision as accurate as possible, the Inventory is still regarded as provisional*"²⁰³.
257. In the case of Five Acre Wood, although the woodland is 'provisionally' identified as ancient, there is no evidence to that effect. The earliest mapped evidence dates from 1840, whereas the accepted definition requires continuity of woodedness since 1600 [84-85]. Although the appellants' survey found 16 vascular species, which are possible ancient woodland indicators [142], NE

²⁰³ Doc. AP-3A (Mr Forbes-Laird's appendices) , Apx 15 – email from T Mills, NE, dated 23 March 2015

again acknowledges that such evidence is normally used only for the purposes of confirmation, in situations where there is already other evidence from historic mapping²⁰⁴. That is not the case here.

258. It is evident that a good deal of work has gone into the production of the Maidstone Inventory. That work has involved not only painstaking research and analysis, but also an important element of expert judgement by experienced professionals. But for all that, there is no map-based evidence before this inquiry that shows any basis for believing Five Acre Wood to date back to 1600. If any such evidence existed, I can see no reason why it would not have been revealed during the course of Mr Forbes-Laird's lengthy correspondence with NE on this matter²⁰⁵. When challenged on such a matter, it seems to me that it is incumbent upon NE to disclose any such evidence. The arguments presented by NE in that correspondence, and indeed by Dr Sansum subsequently [197], suggest merely that ancientness cannot be ruled out. In the absence of any underlying evidence of a positive nature, this is not enough.
259. I make no recommendation as to whether Five Acre Wood's status should be changed, in terms of either the Inventory or the MAGIC database. Those are matters for the bodies responsible for those systems. But for the purposes of this appeal, I see no proper basis for applying paragraph 118 of the NPPF or any other policies that relate only to ancient woodland.
260. Nevertheless, the Wood is evidently long established, and thus still has considerable value, both as a landscape feature and a wildlife habitat. As such, I have borne in mind NPPF paragraph 109 which aims to contribute to and enhance the natural and local environment in various ways, including by recognising the benefits of ecosystems, and minimising impacts on biodiversity.

The proposed access road

261. There is no dispute as to the fact that the strip of land where the new western access road is proposed has been considerably disturbed in the recent past.
262. The contention that the soil from this area was stored during the NLLA construction works and then re-laid [144] may or may not be correct, but the borehole sample results show that the soil composition now is clearly inferior to the undisturbed woodland on either side [92].
263. Equally, the alternative argument that this shows that planning conditions must have been breached during those works [144], is not borne out by the evidence. As far as I can see, none of the relevant planning permissions or consents contains any specific requirements in that respect²⁰⁶. If any further commitments were entered into, they are not documented in the evidence produced to this inquiry. And even if that were so, it is difficult to envisage any action, that could still be taken now, which could restore this part of the woodland to its original condition.

²⁰⁴ Doc. AP-3A (Mr Forbes-Laird's appendices) , Apx 17 – letter from E Goldberg, NE, dated 16 March 2015

²⁰⁵ Doc. AP-3A (Mr Forbes-Laird's appendices) , Apxs 15-18 – correspondence with NE

²⁰⁶ Docs. BG-18, BG-21, NL-10.11 and NL-10.12 (the NLLA temporary access)

264. Consequently, these arguments are academic. There is no question that if housing is permitted, this would clearly be the best position for one of the accesses, so that damage to the remaining woodland could be minimised, whether it is ancient or not. The only issue now is whether the creation of such an access would cause unacceptable harm to the woodland. Given the wood's lack of proven antiquity, and the lack of mature vegetation within this disturbed area, I can see no reasonable objection to the provision of an access road in the position now proposed.

Other matters relating to the woodland

265. If Five Acre Wood had been shown to be an ancient woodland, then there would have been good grounds for requiring a full 15m buffer zone between it and the proposed development. In the scheme now proposed, that zone would incorporate front gardens, pathways and the like, which would be contrary to NE's Standing Advice. But since the wood has not been shown to be ancient, that requirement does not apply. In the circumstances, the partial buffer proposed is acceptable.
266. It was evident on my visit that the new footway/cycleway that is proposed from the site to the school's southern gate would need to cut into the woodland by a few metres. Although the effects of this are not detailed on any of the submitted plans, to my mind this would be a better option than removing the existing hedge that bounds this part of the woodland. Given the lack of proven ancient woodland status, I can see no clear objection to creating a pathway in this way. Such works would have some adverse effects on the wood, but these would be outweighed by the benefits to highway safety.
267. For the avoidance of doubt, my finding on this matter does not alter my earlier conclusion with regard to the more general highway safety issues [251-252]. Although it is possible that part of the solution to that issue might lie in the extension of the proposed off-road foot/cycleway, involving the removal of more of the woodland, there is no evidence to suggest that this on its own would solve the safety problem. Nor is there any evidence as to how extensive the additional clearance would need to be, and what effect this would have visually. My conclusion with regard to the proposed new foot/cycleway is confined to the proposed connection to the school campus.

Conclusions on effects on the woodland

268. For the reasons given above, I conclude that Five Acre Wood should not be treated as ancient woodland for the purposes of this appeal. This being so, the proposed works affecting the wood, including the creation of an access road through it, and the provision of a footway to the school campus, and the proposed development within 15 m of the wood, seem to me acceptable, within the terms of NPPF paragraph 109.

(vii) Quality of the proposed design and layout [70-71, 157-160, 177, 190, 196]

269. The proposed layout provides for a street pattern that would be reasonably clear and legible, whilst also avoiding excessive blandness. The proposed house designs are restrained and yet attractive. The mainly linear arrangement of the dwellings along the street frontages, as proposed, would create coherent streetscapes. These aspects of the proposed scheme would be of an acceptable quality.

270. However, there are also a number of elements that detract from the scheme's quality. Firstly, the layout appears rather over-intensive. This is due to a combination of factors. The spacing between the dwellings, and between terraces and groups of linked units, would in most cases be minimal; the set-back of the buildings from the edges of the streets would be equally so; and the narrowness of some of the streets themselves would exacerbate this effect. Throughout the scheme, there is a lack of variation in the ways that buildings would address the street. And although two smallish central open spaces are proposed, for the most part the scheme lacks any feeling of openness or space. As a result, it seems to me that much of the development would appear cramped, unrelieved and somewhat anonymous.
271. I appreciate the desirability of making efficient use of the land, and certainly the scheme now proposed would do that. But the NPPF also seeks to ensure that developments add to the overall quality of the area, create attractive and comfortable environments, and establish a strong sense of place²⁰⁷. My concern is that the appeal scheme would fail to achieve an appropriate balance between efficiency and these other important design objectives.
272. On the issue of open space, the Council raises no issue with regard to the appellants' measurements and calculations [71], or the scheme's compliance with the relevant DPD standards [32]. In strict mathematical terms, these figures may be correct. But the majority of what the appellants identify as open space comprises a fairly narrow margin around the site's southern and western edges. In the context of the layout now proposed, open space provided in this way would be scarcely visible from within the site itself, and thus would fail to make any useful contribution to its townscape or visual environment. I appreciate the reasons for locating open space in this peripheral area: there are important trees there that are to be retained, and part was also intended as the buffer zone around the woodland. I also note that the undertaking provides for the sum of £346,500 to off-site open space enhancements. But these are not good reasons for failing to achieve an acceptable quality of townscape, and a good residential environment, within the development itself.
273. In addition, I have some other concerns. On the eastern side of the development, the proposed accesses to Footpath KB26 would be narrow and uninviting. The houses along this boundary would turn their backs to the path, thus missing the opportunity to make it a more secure and attractive route to the Recreation Ground. In my view, this consideration outweighs the NLLA's desire to keep development away from their proposed new sports field. In some areas on all three of the site's treed boundaries, houses are proposed rather close to those trees, risking future pressures for felling or pruning. And within the centre of the site, two large freestanding Hybrid Poplars are proposed for removal²⁰⁸, although they are amongst the few distinctive landscape features that exist within the body of the site itself. I note the reasons, in that this particular species tends to be short-lived, and to drop branches²⁰⁹. But in the context of a site which is otherwise largely featureless, it seems to me that the unnecessary loss of mature and attractive trees would

²⁰⁷ NPPF paragraph 58

²⁰⁸ Identified as trees T60 and T61 in the Arboricultural Survey (Doc. AR-9)

²⁰⁹ Mr Forbes-Laird, oral evidence in response to Inspector's questions

be better avoided, especially where they could be incorporated into an enlarged open space provision.

274. Finally, I turn to the criticisms made by NLRA and others regarding the affordable housing **[159, 177, 187]**. I find myself in agreement with the thrust of those arguments. Due to their siting, layout and form, the three clusters of affordable units would not be well integrated with the remainder of the development, and would be clearly identifiable as separate and different from the private housing. This would not accord with the NPPF's aims for the creation of mixed and inclusive communities²¹⁰.
275. These flaws in the quality of the proposed scheme are of varying degrees of seriousness. Individually some would not justify refusal of planning permission if there were not also other substantial objections. But in the light of my conclusions on some of the preceding issues, that is not the case here. Looking at the proposed scheme as a whole, I conclude that its overall quality does not match up to the NPPF's aims in respect of creating residential environments of genuinely high quality.

(viii) Other matters raised by objectors

Air quality [107, 164, 186, 188]

276. There is evidently an existing problem with air quality in the area around Loose Road. This is undoubtedly a significant issue. The proposed development would exacerbate the existing problems. But equally, any other development to the south of Maidstone, feeding onto the A229, would have a similar impact. In the light of the Borough's housing needs, it is unlikely that this area can be protected from all further development on this ground. Whilst I sympathise with the objections, I do not consider that this issue should weigh heavily in the present appeal.

Loss of best and most versatile land [165]

277. The proposed development would result in the loss of 8.65 ha of agricultural land, mostly of grade 3A and some grade 2. Both of these grades are included within the category of 'best and most versatile' (BMV) land. NPPF paragraph 112 states that the economic and other benefits of such land should be taken into account, and that poorer quality land should be used in preference.
278. However, in the present case, this must be weighed against the acknowledged need for housing. Much of the agricultural land in the area appears to be of a similarly high quality. In the circumstances, I give the loss of BMV land only modest weight.

Affordable housing percentage [187,190]

279. The 30% affordable housing proposed would not accord with the DPD adopted in 2006, which requires 40% **[31]**. However, it would accord with the reduced provision required in the emerging draft MBLP **[36]**. Although the emerging plan has not yet reached the stage where it can attract significant weight, it is nevertheless more up to date than the DPD, particularly in the light of the

²¹⁰ NPPF paragraph 50

significant changes that the housing market has undergone since 2006. The draft MBLP is also supported by viability evidence.

280. The 30% would amount to 66 units, which would help to meet an acknowledged need. The 66 units are provided for in the legal undertaking. The Council's original objection relating to the amount of affordable housing was withdrawn before the start of the inquiry. In all the circumstances, I conclude that the proposed provision for affordable housing is acceptable.

Effects on local services [189]

281. I note the concern of some local residents, including Mr Hunt who spoke at the inquiry, regarding the pressures on GP services and local infrastructure such as drainage and sewerage. However, there have been no objections to the proposed development from the organisations responsible for providing those services²¹¹, and nor are the objections backed by any technical evidence.
282. The appellants acknowledge that further work is needed to establish the most suitable means of dealing with foul sewage, in consultation with Southern Water²¹². If permission were granted, this could be covered by a condition. There is no reason to suppose that a technical solution could not be found. The undertaking provides for a contribution to local healthcare services.

NLRA's alternative proposal [108, 161-163]

283. NLRA's suggested alternative scheme is not before the inquiry, but that does not mean that it is completely irrelevant. Given my conclusions thus far, the ultimate decision on the appeal scheme is likely to be one that has to balance conflicting considerations, for and against. In that situation, it may be relevant to consider whether there are realistic alternatives.
284. On the face of it, the NLRA suggestion of providing access from the east, onto Sutton Road, is not without merit. The fact that this would involve land in separate ownership does not mean that such a scheme could not be viable. From the evidence available, it does seem that this option has not yet been explored with any vigour.
285. However, this is not enough for me to judge whether the alternative is realistic or not. The suggested eastern access has apparently not even been defined on any plan, let alone designed to the point where it could be tested in terms of its practicality or its impact. For these reasons, I am unable to give any significant weight to the NLRA alternative scheme.

Public consultation [167]

286. I note NLRA's dissatisfaction with the public consultation carried out by the appellants. Early and effective engagement with the public is encouraged by the NPPF. But the planning application and appeal were also subject to the statutory consultation procedures, which includes notifying local residents, and there is no suggestion that these procedures have not been carried out. And a large number of the public have made their views known, either through written representations, or by speaking at the inquiry. In the circumstances, I

²¹¹ Doc. BG-8 (officers' report)

²¹² Doc. AR-13 (Flood Risk Assessment), paras 3.8.2 and 6.1.5

am satisfied that everyone who might have wanted to comment has had the opportunity to do so, and that I am fully appraised of their views.

Local plan procedure [168, 180]

287. I note the concerns expressed by NLRA and other objectors regarding the procedure by which the decision was taken to include the appeal site as an allocated site in the next version the draft MBLP. However, the decision has been taken, and any concerns about that process are matters for the Council. In any event, for the reasons stated earlier, I have given limited weight to the draft MBLP [39].

(ix) The scheme's benefits [72-83, 166]

Benefits to housing provision

288. The proposed development would provide 220 dwellings, in a Borough with an acute shortage of housing land [59-60, 110]. It would also include 66 affordable dwellings, for which there is an established urgent need. These would be a considerable benefit. I therefore give the benefits to housing provision substantial weight.

Benefits of the new sports field

289. The appeal scheme would also provide a new sports field for NLLA. This would be a benefit, because it would be larger than the existing one; and providing the laying-out was carried out to a high standard, it would be capable of providing a facility of higher quality too [72-74].

290. However, it would be wrong to over-state these differences. From my observations, the existing field has some problems with wear, and drainage is said to be an issue, but its condition and quality appear to me no worse than average. There appears no reason why the existing surface could not be improved if necessary, although this would require investment. The size would amount to an increase of nearly 40%, which would be an appreciable difference, but it is not clear to what extent size has been a limiting factor in the past. As NLRA point out, the location of the new facilities would be slightly less convenient, and this could reduce the flexibility for impromptu activities [166]. Any increase in community use would be a particular benefit, but no commitment has been entered into in that respect.

291. Overall, I consider that the new sports field should be given moderate weight, but no more than this.

Benefits to educational provision

292. The proposed development would provide a capital receipt to KCC, which it is said could be used to carry out the planned expansion and improvements at FAWS [75]. The development would also provide the necessary land for the relocation of the school farm, which is evidently a prerequisite for the FAWS expansion. To that extent, these would be potential benefits. However, for these to carry any significant weight, it seems to me that there would need to be some form of commitment that if the present appeal is allowed, the FAWS project would then go ahead. Whereas, in fact there is no such commitment.

Indeed, KCC declined to give any verbal guarantees, except that the money would be ring-fenced to education²¹³. Whilst I accept that the receipt of monies to the public purse could in some circumstances be a material consideration, in this case I am not convinced that it is, particularly as there is no clear link to any planning purpose. And in any event, the actual amount involved is undisclosed, which makes it impossible to gauge how much weight should be ascribed to it. I therefore consider that the capital receipt to KCC carries little weight.

293. As regards the provision of the land for the school farm, this will only be needed if the FAWS expansion goes ahead. There is no suggestion that the farm needs to move for any other reason, or that its relocation would have any other benefits. It follows from the above that, in the absence of any clear linkage to the development now proposed, the provision of the relocation land also carries little weight.
294. The appeal scheme would also produce a capital receipt for FST, and it is said that this would be used to repay a Treasury loan, and to complete the fitting-out of the TPS [76]. With regard to the loan, it is said that, if the NLLA land is not sold, the loan need never be repaid²¹⁴. I have no reason to doubt any of this information, but again there is no formal commitment, and no documentary evidence. The repayment of the loan to the public purse would have some public benefit, but apparently not to the School itself or to the local area. With regard to the TPS, it is not clear to what extent any works remain to be carried out. To all intents and purposes, the building appears complete, and no other evidence has been put forward. Again, I see no proper basis on which to give these matters anything more than limited weight.

Economic benefits

295. The proposed development would have net benefits to the local and national economy, in terms of investment and employment in construction, and would boost local spending [81]. On a scheme of this size, these economic benefits would be significant. Bearing in mind the NPPF's aims to build a strong, competitive economy²¹⁵, I give these benefits moderate weight.
296. Although there would also be an injection of additional funding to the area through the New Homes Bonus, this would be redistributive rather than a net benefit, and I therefore give this element little weight.

Benefits to ecology

297. Granting permission for the development would potentially create an opportunity to secure ecological enhancements and an improved management regime for Five Acre Wood [78-80]. However, in the absence of any specific proposals or undertakings, these works would have to be secured by condition, and their extent would be limited by the test of reasonableness. As such, I cannot assume that they would extend beyond mitigation for the development's own impacts. In any event, given my findings on the status of the woodland, the benefit attaching to any enhancement is somewhat less

²¹³ As stated by the appellants' Counsel, in response to questions from the Inspector

²¹⁴ Sir Nick Williams, oral evidence

²¹⁵ NPPF paragraphs 18-22

than if it were proven to be ancient. Consequently these matters count as neutral rather than as net benefits.

Benefits from the financial contributions

298. Similarly, although the undertaking provides for various other financial contributions **[68, 77, 82, 102]**, these too are required to be essentially mitigatory in nature. Any obligation which goes beyond what would be necessary to make the development acceptable in planning terms cannot be taken into account as a reason for granting permission, and indeed if any are found to go beyond that, they are effectively dis-applied by the undertaking's own terms²¹⁶. However, the evidence of both the appellants and the Council is that all of the proposed contributions are necessary **[112]**, and there is no evidence that any would have significant benefits over and above making the development acceptable. Consequently these again count as neutral factors rather than net benefits.

Dedication of land to BMAT

299. The transfer of a large tract of land beyond the appeal site to BMAT would increase the possibility that, at some time in the future, that body might be able to realise its vision of providing a country park, or other facilities in the countryside, for the local community **[83, 170-173]**. This is a worthy aim, and from Cllr Ellis's comments at the inquiry, I am in no doubt as to the Trust's strength of purpose in pursuing it. And whilst the agreement between BMAT and Ward Homes was not produced to the inquiry, I have no reason to doubt that it does exist, and that its terms are broadly as described.

300. However, there is nothing before the inquiry that provides any certainty that the outcome would in fact be as intended. Firstly, the agreement between the parties is said to be in the nature of an option, but there appears to be nothing that binds BMAT to exercise that option. Secondly, although BMAT is presumably required to act in accord with its stated charitable aims, I can see nothing that binds them to any specific actions in respect of this land. Thirdly, there is no planning permission for any development that might be proposed by BMAT on the transferred land. And fourthly, although the option agreement has apparently been in place for many years, BMAT appears as yet to have no overall plan, and no clear idea of how this land would fit in with such a plan.

301. In all the circumstances, I can find no basis on which to give any weight to the proposed transfer of land to BMAT.

Conclusions on the scheme's benefits

302. From the above, I conclude that the proposed scheme's principal benefits would be the provision of the affordable and open-market housing, the provision of the new sports field, and the economic benefits that I have identified.

²¹⁶ Clause 3.1 of the Undertaking (Doc. GD-3)

3.2 Conditions and obligations

The undertaking

303. The undertaking provides for affordable housing and various financial contributions, including those noted earlier, to highways and footpath improvements, education, open space and other infrastructure **[68, 77, 82, 102]**.
304. The relevant legal tests relating to planning obligations are contained in Regulations 122 and 123 of the CIL Regulations. Obligations must be necessary to make the proposed development acceptable in planning terms; and should be directly related to the development, and fair and reasonable in scale and kind. Where relevant, obligations must also fall within the pooling provisions.
305. The Council has produced evidence showing how the contributions in this case are considered to comply with these regulations **[112]**. No party has disputed this evidence. Based on the Council's evidence and reasoning on these matters, I find no reason to disagree.
306. In the case of the contributions to highway improvements and off-site open space, these would offer at best only partial mitigation for the harm that I have identified in respect of traffic matters and the lack of on-site open space **[243, 273]**. These contributions would therefore not make the development acceptable. But nonetheless, for the avoidance of doubt, if the appeal were to be allowed, the partial mitigation that they would provide would in my view still be necessary.
307. Similarly, with the exception of the affordable housing, I have found that none of the other obligations would weigh in the planning balance as anything more than neutral **[299]**. But this does not prevent them from being necessary, or from complying with any of the other relevant tests.
308. I am therefore satisfied that Regulations 122 and 123 are complied with.

Conditions

309. In the event that planning permission were to be granted, conditions similar to those on the Council's draft list²¹⁷ would be needed in respect of commencement, materials, boundary treatments, external finishes, landscaping and landscape management, tree retention, hard surfacing, levels, lighting, access, drainage, the travel plan, facilities for electric vehicles, waste storage, archaeology, construction management, ecology, and approved plans (draft conditions Nos 1-10, 12-14, 16- 19, 23, 24, 26, 28-30, 33, 35-37).
310. Of these, in the case of Condition 8, concerning tree retention, it was agreed that such a condition should be worded to incorporate a positive obligation to retain all trees and hedges unless otherwise approved. Condition 13, relating to the provision of parking areas, would be better expressed as a requirement for a phased scheme of provision. No 19, regarding the proposed new pedestrian/cycleway, should be expressed in 'Grampian' form. With regard to Condition 37, an updated list of the relevant plans is appended to this decision.

²¹⁷ Doc. GD-2 (draft conditions)

311. Turning to the other proposed conditions, Nos 20-22, relating to the new sports field, would be better combined and simplified, and the timing made less onerous. A requirement for further details and a phasing plan would suffice. Condition 31 relating to works within the vicinity of trees would be better as part of the tree retention condition (No 8); and if my finding on the question of ancient woodland status is accepted, it is no longer necessary to refer specifically to a buffer zone.
312. Proposed Conditions Nos 11 (large scale details) and 25 (meter cupboards etc) seem to me to impose an unnecessary degree of control over minor details, and Nos 15 (delivery of materials) and 19 (wheel washing) are insufficiently related to planning considerations. Given my earlier conclusion on the matter of air quality [277], Condition 27 (emissions) seems unlikely to be effective. Condition 32 (PD rights) is unreasonable. No 34 (lighting and biodiversity) duplicates others proposed. I recommend that none of these be imposed.
313. In addition to those on the draft list, for the reasons discussed earlier [221], I consider that there should also be a requirement for the provision of an equipped children's play area within the site, in accordance with details to be submitted and approved.
314. I have adapted the Council's draft list of conditions to incorporate the comments I make above and "final" conditions are at Annex A. However, for the avoidance of doubt, in my view none of these proposed conditions would overcome the harm that I have previously identified.

3.3 Overall Planning Balance and Conclusion

315. The proposed development would conflict with the adopted development plan, in that it would be located within the Southern Anti-Coalescence Belt, where it would significantly reduce the gap between Maidstone and the village of Boughton Monchelsea, contrary to saved Policy ENV32. Section 38(6) requires that the appeal is determined in accordance with the development plan unless material considerations indicate otherwise.
316. Against this, Maidstone Borough has an acknowledged shortfall in its 5-year housing land supply. There is therefore an urgent need for more land to be released, and for more housing to be delivered, including affordable housing. The appeal scheme would make a significant contribution in this respect. The site is identified as a proposed housing allocation in the emerging draft local plan, and the Council no longer opposes the grant of permission. The harm caused to the character and appearance of the countryside and the surrounding area would be limited, and accessibility by non-car modes of transport would be adequate. These considerations weigh heavily in favour of allowing the appeal. If there were no other material considerations, it seems to me that these factors would be sufficient to outweigh the conflict with development plan policy. And in addition, the development would provide a new sports field and economic benefits.
317. But on the other hand, the proposed development would have a severe impact on the already chronic traffic congestion on the A229, around the Swan and Wheatsheaf junctions. It would also result in serious highway safety problems on Boughton Lane, with particular danger to pedestrians and cyclists due to the likelihood of their mixing with vehicular traffic on a narrow, winding lane.

The safety issue in particular also gives rise to a further conflict with the development plan, in terms of saved Local Plan Policy T9. Neither of these problems would be overcome by the proposed highway contribution, and nor can they be overcome by conditions, because there is at present no identified solution that would resolve the issues.

318. In addition, the scheme would fail to achieve a sufficiently high quality of development, because of its largely unrelieved and monotonous layout, its lack of open space within the body of the site, its poor relationship to the important Footpath KB26, and to existing trees, and its lack of inclusivity with regard to the affordable housing. Again, these issues would not be overcome by any of the obligations that have been entered into. Nor could they be dealt with by condition, given that the application is for full permission, and the details are thus largely fixed.
319. As a housing proposal, the appeal falls to be considered in the light of the NPPF's presumption in favour of sustainable development. But the issues and the harm that I have identified do not sit well with the concept of sustainability. Although the scheme would have some benefits in terms of the social and economic dimensions, it would also have some serious drawbacks, both social and environmental.
320. Applying the formula in NPPF paragraph 14, the development would not accord with the development plan, and the plan is neither absent nor silent. Its housing policies are out-of-date, but neither ENV32 nor T9 are amongst those. Given the area's unmet need, the provision of housing carries substantial weight; and the other identified benefits, although less weighty in themselves, are over and above this. But the severe harm to traffic conditions, and to highway safety, are weighty matters in their own right. So too is the scheme's lack of quality. These are all matters to which the NPPF gives weight.
321. Weighing up the harm against the benefits, as paragraph 14 requires, it seems to me that the added congestion around the Swan junction would potentially make traffic conditions intolerable, with severe restrictions on movement at some times of the day. That kind of impact would go well beyond mere inconvenience. And worse still, because of the highway safety issue, I have little doubt that lives would be put at risk. The effects of a poor layout would be less dramatic, but nonetheless, securing an acceptable residential environment is important. Although the NPPF seeks to boost housing supply and meet needs in full, it does not seek to do so irrespective of all else.
322. Consequently, paying regard to the NPPF as a whole, it seems to me that the benefits of this proposed development are significantly and demonstrably outweighed by its likely adverse impacts. I therefore conclude that the proposal would not be sustainable development, and should be refused.

3.4 Recommendation

323. I recommend that the appeal be dismissed.
324. In the event that this recommendation is not accepted, and planning permission is granted, I recommend that the conditions at Annex A be imposed.

John Felgate

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Giles Atkinson, of Counsel	Instructed by Mr John Scarborough, Head of the Mid-Kent Legal Services Partnership
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He called:

Miss Amanda Marks	Principal Planning Officer
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FOR THE APPELLANT:

Mr Sasha White, QC	Instructed by BDW Trading Ltd
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He called:

Sir Nick Williams	CEO, The Future Schools Trust
Mr Julian Forbes-Laird, BA(Hons), MICFor, MRICS, MEWI, MArborA, Dip Arb (RFS)	Forbes-Laird Arboricultural Consultancy
Mr Alistair Baxter, BA(Hons), MA(Oxon), MSc, CEnv, MCIEEM	Aspect Ecology
Mr Jason Lewis	DHA Transport
Mr Matthew Woodhead, BA(Hons), BTP, MAUD, MRTPI	DHA Planning

FOR THE NORTH LOOSE RESIDENTS' ASSOCIATION:

Mr Sean Carter	NLRA Chairman and local resident
Mrs Jacqueline Day	NLRA Secretary and local resident
Mr Guy Osborne	Local resident
Mr Alan Moore	Local resident
Mr David Southgate	Local resident

OTHER INTERESTED PERSONS WHO SPOKE AT THE INQUIRY:

Cllr Derek Mortimer	Borough Council member
Cllr Brian Clark	Borough and County Council member
Cllr Steve Munford	Borough Councillor and member of Boughton Monchelsea Parish Council
Mr Richard Hunt	Local resident
Mr Roy Lane	Local resident
Cllr Ian Ellis	Parish Councillor and Trustee of the Boughton Monchelsea Amenity Trust
Cllr Tony Harwood	Borough Council member
Cllr Ian Chittenden	Borough and County Council member

INQUIRY DOCUMENTS

APPLICATION DOCUMENTS (blue folders Nos 1 - 4)

PLANS, SCHEDULES & CORRESPONDENCE (folders 1 & 2)

Correspondence	Bundle of application correspondence - contained in blue folder No 1
Schedules	Schedules of house types, areas and heights – blue folder No 1
Plans	Layout plans, landscaping, street elevations - blue folder No 1
	House type plans - blue folder No 2

REPORTS (folders 3 & 4)

AR-1	Planning Statement – DHA Planning
AR-2	Design & Access Statement
AR-3	Statement of Community Involvement – DHA Planning
AR-4	Transport Assessment and Travel Plan – Project Centre
AR-5	Affordable Housing and Contributions Statement – DHA Planning
AR-6	Viability Commentary – DHA Planning
AR-7	Code Level 4 Analysis – Julia Lanchberry
AR-8	Ecological Assessment – Aspect Ecology
AR-9	Arboricultural Survey – Tree Fabrik
AR-10	Archaeological Desk-Based Assessment – CGMS
AR-11	Method Statement for Magnetometer Survey - CGMS
AR-12	Detailed Magnetometer survey - CGMS
AR-13	Flood Risk Assessment – Banners Gate
AR-14	Site Utilities Appraisal - TDS
AR-15	Desk Study and Ground Investigation – Hydrock

BACKGROUND DOCUMENTS (blue folders Nos 5 and 6)

POLICY DOCUMENTS (folder No 5)

BG-1	Maidstone Borough-wide Local Plan, adopted December 2000
BG-2	As above – Proposals Maps
BG-3	Maidstone Core Strategy – Strategic Site Allocations, December 2012
BG-4	Maidstone Borough Local Plan – Reg. 18 Consultation, March 2014
BG-5	Affordable Housing DPD, adopted December 2006
BG-6	Open Space DPD, adopted December 2006
BG-7	North Loose Neighbourhood Development Plan

COMMITTEE REPORTS (folder No 6)

BG-8	24 July 2014 Planning Committee – re: appeal application (Officers' report)
BG-9	24 July 2014 Planning Committee – re: appeal application (Update report)
BG-10	24 July 2014 Planning Committee – re: appeal application (Minutes)
BG-11	20 January 2015, PTDOS Committee – re: Local Plan proposed site allocations (agenda/officers' report)
BG-12	20 January 2015, PTDOS Committee – re: Local Plan proposed site allocations (Minutes)
BG-13	22 January 2015, PTDOS Committee (adjourned from 20 Jan – pt. 2) – re: Local Plan proposed site allocations (Minutes)
BG-14	28 January 2015, PTDOS Committee (adjourned from 20 Jan – pt. 3) – re: Local Plan proposed site allocations (Minutes)

BG-15	2 and 4 February 2015, Cabinet - re: Local Plan proposed site allocations (Minutes)
BG-16	4 February 2015, Cabinet - re: Local Plan proposed site allocations (Record of Decisions)
BG-17	11 May 2015 Planning Referrals Committee – re: reconsideration of the appeal application (Minutes)

PLANNING HISTORY (folder No 6)

BG-18	MA/08/1700: New academy school buildings etc - approval notice, dated 7 Nov 2008
BG-19	TA/0136/08: Tree works to facilitate temporary access – delegated report, dated 6 Jan 2009
BG-20	TA/0136/08: Tree works to facilitate temporary access – refusal notice, dated 14 Jan 2009
BG-21	TA/0153/08: Tree works to facilitate temporary access – Arboricultural report accompanying application, dated 28 Oct 2008
(see NL-10.11)	TA/0153/08: Tree works to facilitate temporary access – Arboricultural Implications report dated 19 Nov 2008
BG-22	TA/0153/08: Tree works to facilitate temporary access – delegated approval report, dated 9 Jan 2009
(see NL-10.12)	TA/0153/08: Tree works to facilitate temporary access – approval notice, dated 14 Jan 2009
(see AP-4/Apx 3)	MA/14/504946: Five Acre Wood School - extensions and refurbishment – approval notice, 21 April 2015
BG-23	MA/15/501363: Five Acre Wood School – relocation of school farm, and erection of buildings – approval notice, 18 May 2015; and related plans

CORE DOCUMENTS (blue folder No 7)

CD-1	(Omitted - duplicated elsewhere)
CD-2	Plan: interpretation of Local Plan proposals map
CD-3	(Omitted - duplicated elsewhere)
CD-4	NPPF
CD-5	Ancient Woodland Inventory for Maidstone Borough, August 2012
CD-6	Refusal notice (appeal scheme)
CD-7 – CD-10	(Omitted - duplicated elsewhere)
CD-11	Maidstone Local Plan Viability Testing - Peter Brett Associates, April 2013
CD-12 – CD-18	(Omitted - duplicated elsewhere)
CD-19	Standing Advice on Ancient Woodland – Natural England, April 2014
CD-20	Appeal decision – North Side Copse, Haslemere (APP/Y9507/A/12/2173809)
CD-21	DHA letter dated 29 January 2015
CD-22 – CD-24	(Omitted - duplicated elsewhere)
CD-25	SoS decision – Hermitage Quarry, Aylesford (APP/W2275/V/11/2158341)
CD-26	'Indicators of Ancient Woodland: the Use of Vascular Plants' – F Rose, April 1999
CD-27	'Keepers of Time' : Policy Statement for England's Ancient and Native Woodlands - DEFRA and the Forestry Commission, 2005
CD-28	(Omitted - duplicated elsewhere)
CD-29	Forbes-Laird Consultancy advice note, dated 29 January 2015
CD-30	SoS decision – Bolnore Village scheme, Haywards Heath (APP/D3830/A/05/1195898)
CD-31	Written Ministerial Statement, 6 Sept 2012

GENERAL INQUIRY DOCUMENTS (blue folder No 8)

GD-1	Statement of Common Ground, dated 16 June 2015
GD-2	Agreed draft list of conditions, with appellants' comments
GD-3	Signed unilateral undertaking
GD-4	S.106 Schedule: Policy Context and CIL summary for obligations

COUNCIL'S CASE (blue folder No 8)

CO-1	<u>Amanda Marks</u> – proof of evidence, with attached appendices comprising:
Apx 1	Planning Referrals Committee, 11 May 2015 – re: reconsideration of the appeal application Minutes)
Apx 2	Maidstone Borough Local Plan – reg. 18 Consultation, March 2014 (extract)
Apx 3	Affordable Housing DPD, adopted December 2006
Apx 4	(not used)
Apx 5	Maidstone Local Plan Viability Testing – Peter Brett Associates, April 2013
Apx 6	Maidstone Integrated Transport Strategy, August 2012
Apx 7	Maidstone Joint Transportation Board, 15 April 2015 – officers' report re: A229 corridor study
Apx 8	KCC letter dated 28 March 2014
Apx 9	Local Plan policy ENV26
Apx 10	Maidstone Infrastructure Delivery Plan
Apx 11	Open Space DPD, adopted December 2006
Apx 12	Draft conditions list (superseded by GD-2)
CO-2	Opening submissions by Mr Atkinson

APPELLANTS' CASE (blue folders Nos 9 and 10)

APPELLANTS' PROOFS OF EVIDENCE

AP-1	<u>Matthew Woodhead</u> – proof of evidence (planning)
AP-1A	Mr Woodhead's Appendix – separate bound volume comprising:
Apx 1	Appeal site planning history (schedule)
Apx 2	DHA representation on NLNDP
Apx 3	Woodcock Holdings Ltd v. SoS & Mid-Sussex DC: [2015] EWHC 1173 (Admin)
Apx 4	SoS decision – Sandbach (APP/R0660/A/10/ 2140255)
Apx 5	Appeal decision – Wincanton (APP/R3325/A/12/ 2170082)
Apx 6	SoS decision – Rothley (APP/X2410/A/13/ 2196928)
Apx 7	Transport Report – DHA Transport, June 2015
Apx 8	'Bold Steps for Kent' – Medium Term Plan: KCC, Dec 2010
Apx 9	Sport England consultation response, dated 17 April 2014
Apx 10	Bridge Nursery site, London Rd – Officers' report, Sept 2014
Apx 11	Cripple Street site, N Loose – Officers' report, Dec 2014
Apx 12	Land North of Sutton Road, Otham – officers' report, Feb 2014
Apx 13	Langley Park site, Sutton Rd – officers' report, Feb 2014
Apx 14	Hermitage Lane site – officers' report
AP-2	<u>Alistair Baxter</u> – proof of evidence (ecology)
AP-2A	Mr Baxter's Appendix – separate bound volume comprising:
Plans	Plans & Photographs, numbered AB1 – AB9
Apx 1	Woodland Botanical Survey – Aspect Ecology, May 2015

Apx 2	'MAGIC' Ancient Woodland database – the appeal site's designation
Apx 3	Bat Survey – Aspect Ecology, June 2015
Apx 4	Review of the site's woodland status – Aspect Ecology, June 2015
Apx 5	UK Biodiversity Action Plan – Priority Habitat description for 'lowland mixed deciduous woodland'
Apx 6	Ancient Woodland Assessment Guide – The Forestry Commission & Natural England
Apx 7	Further review of potential effects on ancient woodland – Aspect Ecology, June 2015
Apx 8	Buffer design advice (various extracts)
Apx 9	Review of woodland restoration and management – Aspect Ecology, June 2015
Apx 10	Review of planning policy and appeal decisions re ancient woodland – Aspect Ecology, June 2015
Apx 11	Consultation responses - KCC ecology and the Woodland Trust
Apx 12	Approved layout for N of Sutton Rd development, showing footpaths within buffer
AP-3	<u>Julian Forbes-Laird</u> – proof of evidence (woodland)
AP-3A	Mr Forbes-Laird's Appendix – separate bound volume, comprising:
Apx 1	The author's qualifications and experience
Apx 2	'MAGIC' Ancient Woodland database – the appeal site's designation
Apx 3	Tree Survey (western half of proposed housing site)
Apx 4	Tree Survey plan, showing proposed development superimposed
Apx 5	TPO No 17 of 2002
Apx 6	Soil Investigation report – Tim O'Hare Associates, October 2014
Apx 7	'The Ancient Woodland Concept as a Practical Conservation Tool': E Goldberg et al, 2007
Apx 8	'A Landscape History Approach to the Assessment of Ancient Woodland' – Prof. Ian. Rotherham, 2011
Apx 9	'The Identification of ancient woodland demonstrating antiquity and continuity': P Graves et al, 2009
Apx 10	Ancient Woodland – Post Note, June 2014
Apx 11	Natural Resources Wales – website information on ancient woodland, Feb 2015
Apx 12	Woodland Trust website information, Jan 2015
Apx 13	Historic mapping compilation, 1768 – 1856
Apx 14	Historic maps comparative detail assessment
Apx 15	Email correspondence with Natural England
Apx 16	Mr Forbes-Laird's letter to Natural England, 5 Feb 2015
Apx 17	Natural England letter, 16 March 2015
Apx 18	Mr Forbes-Laird's letter to Natural England, 19 March 2015
Apx 19	Figure Ground Plan of small woodlands on historic maps
AP-4	<u>Sir Nick Williams</u> - proof of evidence (educational matters); with bound-in appendices comprising:
Apx 1	Phasing plan for provision of new sports facilities
Apx 2	Sport England consultation response, dated 17 April 2014
Apx 3	Planning permission for Five Acre Wood School extensions and refurbishment – 21 April 2015 (MA/14/504946)
Apx 4	Planning permission for New Line Learning Academy school farm – 18 May 2015 (MA/15/501363)

OTHER DOCUMENTS TABLED BY THE APPELLANTS DURING THE INQUIRY (folder No 10)

AP-5	Opening submissions by Mr White
AP-6	Government response to the CLG Select Committee inquiry into the operation of the NPPF, Feb 2015
AP-7	Appeal decision – Broadway, Worcs (APP/H1840/A/14/2224292)
AP-8	'Timeline' list of consultation meetings
AP-9	Note regarding NLRA's alternative access proposal via Police Authority land (by Mr Woodhead)
AP-10	Plan and schedule of open space areas (tabled by Mr Woodhead)
AP-11	Mr Lewis' qualifications and experience
AP-12	Aerial photographs of key junctions, tabled by Mr Lewis
AP-13	Air Quality report – SLR Consultants, July 2015
AP-14	Mr White's closing submissions
AP-15	Final comments by Mr Forbes-Laird, received 24 July 2015, in response to Dr Sansum's letter

NLRA DOCUMENTS (blue folder No 11)

NLRA OBJECTIONS

NL-1	Objection to planning application, dated February 2014
NL-2	Submission dated 13 February 2014
NL-3	Submission dated 24 April 2014
NL-4	Comments on revised details, 2 July 2014
NL-5	Objection dated September 2014
NL-6	Objection statement dated 19 Dec 2014

NLRA PROOFS AND APPEAL STATEMENTS

NL-7	<u>Guy Osborne</u> – expert witness report
NL-8	Guy Osborne – summary
NL-9	<u>Traffic proof of evidence</u> , accompanied by a bundle of appendices, comprising:
NL-9.1	Apx 1 PINS' guide to taking part in an inquiry
NL-9.2	Apx 2 Extract from BG-8, report to 24 July 2014 Planning Committee (re: appeal application)
NL-9.3	Apx 3 KCC consultation response dated 5 March 2014
NL-9.4	Apx 4 Transport Assessment and Travel Plan – Project Centre, Dec 2013 (also at AR-4)
NL-9.5	Apx 5 KCC letter re Cripple St site, dated 4 Dec 2014
NL-9.6	Apx 6 Email correspondence from KCC re Postley Rd site
NL-9.7	Apx 7 KCC letter re Cripple St site, dated 29 Oct 2014
NL-9.8	Apx 8 KCC letter re draft Local Plan site allocations, dated 20 Jan 2015
NL-9.9	Apx 9 Email re school capacities and housing proposals, Jan 2015
NL-9.10	Apx 10 Email from P Rosevear of KCC, re TRACE meeting, April 2014
NL-9.11	Apx 11 MBC 'housing sites running totals'
NL-9.12	Apx 12 Letter from the Rt Hon Helen Grant MP, to KCC, 27 May 2015
NL-9.13	Apx 13 Email from Mr Tim Read, KCC Highways, 11 June 2015

NL-10		<u>Ancient woodland evidence statement</u> , accompanied by a bundle of appendices, comprising:
NL-10.1	Apx W1	NPPF extract
NL-10.2	Apx W2	Extract from the Ancient Woodland Inventory for Maidstone Borough, August 2012 (CD-5)
NL-10.3	Apx W3	Protection for ancient woodland through appeal decisions – Forestry Commission website
NL-10.4	Apx W4	Extract from DHA statement of case, Oct 2014
NL-10.5	Apx W5	Further extract from the Ancient Woodland Inventory for Maidstone Borough, August 2012 (CD-5)
NL-10.6	Apx W6	Extract from DHA Design & Access Statement (AR-2)
NL-10.7	Apx W7	Woodland Trust consultation response, dated 8 July 2014
NL-10.8	Apx W8	Extract from BG-8, report to 24 July 2014 Planning Committee (re: appeal application)
NL-10.9	Apx W9	Extract from KCC consultation response, 27 Feb 2014
NL-10.10	Apx W10	Extract from DHA Planning Statement (AR-1)
NL-10.11	Apx W11	Marishal Thompson arboricultural implications report, accompanying application TA/0153/08 for tree works, 28 Oct 2008
NL-10.12	Apx W12	Tree works to facilitate temporary access (TA/0153/08) - approval notice, dated 14 Jan 2009
NL-10.13	Apx W13	Email from Andrew Beavis of Carillion Building, 1 July 2014
NL-11		<u>Statement on communication with the public</u> , accompanied by a bundle of appendices, comprising:
NL-11.1	Apx A1	DHA public consultation leaflet for New Line Learning Academy
NL-11.2	Apx A2	NLRA public opinion survey results
NL-11.3	Apx A3	NPPF extracts
NL-11.4	Apx A4	Letter from Barratt Homes, dated 4 Nov 2014
NL-11.5	Apx A5	Letter from Paul Carter CBE of KCC, to Helen Grant MP, 25 March 2015
NL-11.6	Apx A6	Email from Kent & Essex Police Estates Services, 26 April 2015
NL-11.7	Apx A7	Leaflet from Cllr Chris Garland
NL-11.8	Apx A8	NLRA submission dated 24 April 2014 (also at NL-3)
NL-11.9	Apx A9	Population forecasts for Maidstone wards
NL-11.10	Apx A10	Extract from Maidstone Borough-wide Local Plan, 2000 (BG-1)
NL-11.11	Apx A11	KCC letter re draft Local Plan site allocations, dated 19 Jan 2015 (duplicate of NL-9.8)
NL-11.12	Apx A12	Extract from KCC consultation response, 27 Feb 2014
NL-11.13	Apx A13	Extract from Loose Road Character Area SPD, Dec 2008
NL-11.14	Apx A14	NPPF extract
NL-11.15	Apx A15	Extract from Maidstone Borough-wide Local Plan, 2000 (BG-1)
NL-11.16	Apx A16	NPPF extract
NL-11.17	Apx A17	Email from Arriva bus company, 19 August 2014
NL-11.18	Apx A18	NLRA representation on school farm application, 18 March 2015
NL-12		Written submission by Curtis Barkel, arboricultural consultant
NL-13		NLRA summary of evidence
NL-14		NLRA Position Statement, 23 June 2015
NL-15		NLRA email dated 2 July 2015, enclosing:
NL-15.1	Enc. 1	Photograph of Five Acre Wood, 22 June 2015
NL-15.2	Enc. 2	Appeal decision – Bearsted Road (APP/U2235/W/15/3002874)
NL-15.3	Enc. 3	TA/0153/08: Tree works to facilitate temporary access – delegated approval report, dated 9 Jan 2009

OTHER DOCUMENTS TABLED BY NLRA AT THE INQUIRY

NL-16	Ancient Woodland – Post Note, June 2014 (also at AP-3A/Apx 10)
NL-17	Ofsted report on NLLA, 15 June 2015
NL-18	Letter from the Rt Hon Helen Grant MP, to KCC, 6 July 2015
NL-19	Landscape Officer's consultation response, 18 Feb 2014
NL-20	Landscape Officer's consultation response, 10 July 2014
NL-21	NLRA leaflet, June 2015
NL-22	NLRA closing statement
NL-23	NLRA final comments dated 23 July 2015, in response to Dr Sansum's letter

DOCUMENTS SUBMITTED BY OTHER INTERESTED PERSONS (blue folder No 11)

REPRESENTATIONS MADE BEFORE THE INQUIRY

Bundle of individual letters to the Council, at application stage, including petition with approx. 1500 signatures (in Questionnaire file)
 Bundle of individual letters to PINS, at appeal stage (main file - red sub-folder)

DOCUMENTS TABLED DURING THE INQUIRY

OP-1	Letter from Kevin Overton, local resident, dated 30 June 2015
OP-2	Cllr Munford – speaking notes
OP-3	Mr Ellis – plan of land optioned by BMAT
OP-4	Mr Ellis – plan of all land owned or optioned by BMAT
OP-5	Cllr Clark – statement, with bound-in appendices:
Apx 1	Quoted extracts from appeal decision re site at Horseshoes Lane, Langley (APP/U2235/A14/2226963)
Apx 2	Aerial photo
Apx 3	Proposed playing fields layout plan for application MA/08/1700 (new academy school buildings etc, 2008)
Apx 4	Lease plan of Five Acre Wood School expansion, and commentary
Apx 5	Extract from draft NLNDP, and commentary
Apx 6	Title plan form 1955 conveyance
Apx 7	Title plan form 1949 conveyance
Apx 8	Commentary on NPPF Review re ancient woodland
Apx 9	Note on neighbourhood planning and Government select committee
Apx 10	Photographs of rush-hour traffic in Loose
OP-6	Cllr Chittenden – statement, with bound-in appendices:
Apx 1	Draft local plan allocations south of Boughton Lane junction
Apx 2	KCC consultation response dated 5 March 2014
Apx 3	Natural England letter, 16 March 2015
Apx 4	Email from Andrew Beavis of Carillion Building, 1 July 2014
Apx 5	TA/0153/08: Tree works to facilitate temporary access – delegated approval report, dated 9 Jan 2009
Apx 6	Extracts from Marishal Thompson arboricultural report, accompanying application TA/0153/08 for tree works, 19 Nov 2008
Apx 7	Landscape Officer's consultation responses, 18 Feb and 10 July 2014
OP-7	Cllr Chittenden – abridged statement
OP-8	South Maidstone Action for Roads and transport ('SMART') – proposals, Spring 2015 (tabled by Cllr Chittenden)
OP-9	'Some facts and figures to cause concern' – SMART (Cllr Chittenden)
OP-10	Letter from Mr Paul Thomas, local resident, dated 8 July 2015
OP-11	Letter from Dr Philip Sansum, BSc, PhD, re ancient woodland status, dated 7 July 2015

PLANS

Drawing Number	Description	Scale
FOLDER 1		
DHA/6723/01	Site Location Plan	1:1250
6723-SK01-P1(1)	Proposed Access	1:500
2084-001	Location Plan & Development Boundary	1:1000
2084-002	Existing Site Plan and Topography (survey plan)	1:1000
2084-09-C	Site Layout with Playing Field	1:1000
2084-10-C	Site Layout - Ground Floor Plan	1:500
2084-11-C	Site Layout - Roof Plan	1:500
2084-12-C	Refuse Collection Strategy	1:500
2084-13-C	Building Heights Strategy	1:500
2084-14-C	Parking Strategy	1:500
2084-15-C	Accommodation Mix Strategy	1:500
2084-16-C	Adoptable & Management Area Strategy	1:500
2084-17-C	Boundaries, Fences and Walls	1:500
2084-18-C	Access Strategy	1:500
2084-19-C	Affordable Strategy	1:500
2084-20	Street Elevations - Section A-A, B-B & C-C	1:200
2084-21	Street Elevations - Section D-D, E-E & F-F	1:200
2084-22	Street Elevations - Section G-G & H-H	1:200
2084-23	Street Elevations - Section I-I, J-J & K-K	1:200
2084-24	Street Elevations - Section L-L & M-M	1:200
2084-25	Street Elevations - Section N-N & O-O	1:200
2084-26	Entrance arrangement sketch	1:100
D1977L.100.A	Site Context	1:2500
D1977L.101.A	Landscape General Arrangement Plan	1:500
D1977L.102.A	Landscape Masterplan	1:500
D1977L.110.A	Tree Removals Plan	1:500
FOLDER 2		
2084-29	House Type A Floor Layouts	1:100
2084-30	House Type A Elevations (sheet 1 of 2)	1:100
2084-31	House Type B Floor Layouts	1:100
2084-32	House Type B Elevations (sheet 1 of 2)	1:100
2084-33	House Type B Elevations (sheet 2 of 2)	1:100
2084-34	House Type C Floor Layouts	1:100
2084-35	House Type C Elevations (sheet 1 of 2)	1:100
2084-36	House Type C Elevations (sheet 2 of 2)	1:100
2084-37	House Type D Floor Layouts	1:100
2084-38	House Type D Elevations (sheet 1 of 2)	1:100
2084-39	House Type D Elevations (sheet 2 of 2)	1:100
2084-40	House Type E Floor Layout	1:100
2084-41	House Type E Elevations - Brick/Tile finish	1:100
2084-42	House Type E1 Floor Layout	1:100
2084-43	House Type E1 Elevations - Render finish	1:100
2084-44	House Type E2 Floor Layout	1:100
2084-45	House Type E2 Elevations - Brick/Tile finish	1:100
2084-46	House Type E3 Floor Layout	1:100

2084-47	House Type E3 Elevations - Brick/Tile finish	1:100
2084-48	House Type F Floor Layouts	1:100
2084-49	House Type F Elevations - Brick finish	1:100
2084-50	House Type G Floor Layout	1:100
2084-51	House Type G Elevations - Brick finish	1:100
2084-52	House Type G Elevations - Render finish	1:100
2084-53	House Type H Floor Layout	1:100
2084-54	House Type H Elevations - Brick finish (1 of 2)	1:100
2084-55	House Type H Elevations - Brick finish (2 of 2)	1:100
2084-56	House Type H Elevations - Render finish (1 of 2)	1:100
2084-57	House Type H Elevations - Render finish (2 of 2)	1:100
2084-58	House Type H1 Floor Layout	1:100
2084-59	House Type H1 Elevations - Brick finish	1:100
2084-60	House Type H1 Elevations - Render finish	1:100
2084-61	House Type I Floor Layout	1:100
2084-62	House Type I Elevations - Brick finish	1:100
2084-63	House Type I Elevations - Render finish	1:100
2084-64-A	House Type J Floor Layout	1:100
2084-65-A	House Type J Elevations - Brick finish	1:100
2084-66-A	House Type J Elevations - Render finish	1:100
2084-67	House Type K Floor Layout	1:100
2084-68	House Type K Elevations - Brick finish (1 of 2)	1:100
2084-69	House Type K Elevations - Brick finish (2 of 2)	1:100
2084-70	House Type K Elevations - Render finish (1 of 2)	1:100
2084-71	House Type K Elevations - Render finish (2 of 2)	1:100
2084-72	House Type L Floor Layout	1:100
2084-73	House Type L Elevations - Brick finish (1 of 2)	1:100
2084-74	House Type L Elevations - Brick finish (2 of 2)	1:100
2084-75	House Type L Elevations - Render finish (1 of 2)	1:100
2084-76	House Type L Elevations - Render finish (2 of 2)	1:100
2084-77	House Type M Floor Layout	1:100
2084-78	House Type M Elevations - Render finish	1:100
2084-79	House Type N Floor Layout	1:100
2084-80	House Type N Elevations - Brick/Tile finish (1 of 2)	1:100
2084-81	House Type N Elevations - Brick/Tile finish (2 of 2)	1:100
2084-82	House Type N Elevations - Render finish (1 of 2)	1:100
2084-83	House Type N Elevations - Render finish (2 of 2)	1:100
2084-84	House Type O Floor Layout	1:100
2084-85	House Type O Elevations - Brick finish (1 of 2)	1:100
2084-86	House Type O Elevations - Brick finish (2 of 2)	1:100
2084-87	House Type O Elevations - Render finish (1 of 2)	1:100
2084-88	House Type O Elevations - Render finish (2 of 2)	1:100
2084-89	House Type P Floor Layout	1:100
2084-90	House Type P Elevations - Brick/Tile finish (1 of 2)	1:100
2084-91	House Type P Elevations - Brick/Tile finish (2 of 2)	1:100
2084-92	House Type P Elevations - Render finish (1 of 2)	1:100
2084-93	House Type P Elevations - Render finish (2 of 2)	1:100
2084-94	House Type Q Floor Layout	1:100
2084-95-A	House Type Q Elevations - Brick finish (1 of 2)	1:100
2084-96-A	House Type Q Elevations - Brick finish (2 of 2)	1:100
2084-97-A	House Type Q Elevations - Render finish (1 of 2)	1:100
2084-98-A	House Type Q Elevations - Render finish (2 of 2)	1:100
2084-99	House Type R Floor Layout	1:100

2084-100-A	House Type R Elevations - Brick finish (1 of 2)	1:100
2084-101-A	House Type R Elevations - Brick finish (2 of 2)	1:100
2084-102-A	House Type R Elevations - Render finish (1 of 2)	1:100
2084-103-A	House Type R Elevations - Render finish (2 of 2)	1:100
2084-104	House Type R1 Floor Layout	1:100
2084-105-A	House Type R1 Elevations - Brick finish (1 of 2)	1:100
2084-106-A	House Type R1 Elevations - Brick finish (2 of 2)	1:100
2084-107	House Type S Floor Layout	1:100
2084-108	House Type S Elevations - Brick finish (1 of 2)	1:100
2084-109	House Type S Elevations - Brick finish (2 of 2)	1:100
2084-110	House Type T Floor Layout	1:100
2084-111-A	House Type T Elevations - Brick finish (1 of 2)	1:100
2084-112-A	House Type T Elevations - Brick finish (2 of 2)	1:100
2084-113-A	House Type T Elevations - Render finish (1 of 2)	1:100
2084-114-A	House Type T Elevations - Render finish (2 of 2)	1:100
2084-120	Car-port 1a. - Plans & Elevations	1:100
2084-121	Car-port 1b. - Plans & Elevations	1:100
2084-122	Car-port 1c. - Plans & Elevations	1:100
2084-123	Car-port 1d. - Plans & Elevations	1:100
2084-124	Garages 1e. - Plans & Elevations	1:100
2084-125	Garages 1f. - Plans & Elevations	1:100
2084-126	Garages 1g. - Plans & Elevations	1:100
2084-127	Garages 1h. - Plans & Elevations	1:100
2084-128	Car-port 2a. - Plans & Elevations	1:100
2084-129	Car-port 2b. - Plans & Elevations	1:100
2084-130	Car-port 2c. - Plans & Elevations	1:100
2084-131	Car-port 2d. - Plans & Elevations	1:100
2084-132	Garages 2e. - Plans & Elevations	1:100
2084-133	Garages 2f. - Plans & Elevations	1:100
2084-134	Garages 2g. - Plans & Elevations	1:100
2084-135	Garages 2h. - Plans & Elevations	1:100
2084-136	Garages 2i. - Plans & Elevations	1:100
2084-137	Garages 2j. - Plans & Elevations	1:100
2084-138	Car-port 3a. - Plans & Elevations	1:100
2084-139	Car-port 3b. - Plans & Elevations	1:100
2084-140	Car-port 3c. - Plans & Elevations	1:100
2084-141	Garages 3d. - Plans & Elevations	1:100
2084-142	Car-port 4a. - Plans & Elevations	1:100
2084-150	Apartment GF Plots 161-172 & 201-212	1:100
2084-151	Apartment FF Plots 161-172 & 201-212	1:100
2084-152	Apartment SF Plots 161-172 & 201-212	1:100
2084-153	Apartment Front Elevation Plots 161-172 & 201-212	1:100
2084-154	Apartment Rear Elevation Plots 161-172 & 201-212	1:100
2084-155	Apartment Side Elevations Plots 161-172 & 201-212	1:100
2084-156 A	Apartment GF Plots 188-196	1:100
2084-157 A	Apartment FF Plots 188-196	1:100
2084-158 A	Apartment SF Plots 188-196	1:100
2084-159 A	Apartment Front Elevation Plots 188-196	1:100
2084-160 A	Apartment Rear Elevation Plots 188-196	1:100
2084-161 A	Apartment Side Elevations Plots 188-196	1:100

Annex A – Recommended Conditions

1. The development hereby permitted shall be commenced not later than three years from the date of this permission.
2. No part or phase of the development shall be commenced until written details and samples of the materials to be used on the external surfaces of the proposed buildings in that phase have been submitted to the local planning authority and approved in writing. These details and samples shall include the colours of the external finishes to all areas of external rendering. Thereafter, the development shall be carried out using only the materials and colours thus approved.
3.
 - (i) Notwithstanding the submitted proposals, no part or phase of the proposed development shall be commenced until a detailed scheme of boundary treatments has been submitted to the local planning authority and approved in writing. The scheme shall include full details of the fencing, walling, and other boundary treatments to be used on the individual plot boundaries, and around the proposed new sports field, and any such treatments to be provided elsewhere within the site, including within or around the public and communal areas.
 - (ii) No new dwelling shall be occupied until the boundary treatments relating to that particular plot have been provided in accordance with the scheme and details thus approved.
 - (iii) The proposed sports field shall not be brought into use until new boundary fencing has been erected around it in accordance with the scheme and details thus approved.
 - (iv) Throughout the remainder of the site, no boundary treatments shall be erected other than in accordance with the scheme and details thus approved.
 - (v) The boundary treatments provided in accordance with this condition shall thereafter be retained and maintained in good order, or shall be replaced with others of a similar type and height.
4.
 - (i) No development shall take place until a landscaping implementation plan has been submitted to the local planning authority and approved in writing. The plan shall include a phased timetable for the implementation of all of the proposed planting, seeding, turfing and other hard and soft landscaping works shown on the submitted plans. The landscaping shall be carried out in accordance with the timetable thus approved.
 - (ii) Thereafter, within a period of 5 years from the completion of the development, any trees or plants which die or are removed or become seriously damaged or diseased for any reason shall be replaced in the next available planting season, with others of the same size and species.
5.
 - (i) No development shall take place until a tree and hedgerow protection scheme has been submitted to and approved in writing by the local planning authority. The scheme shall show all existing trees and

hedgerows on or adjacent to the site, and should identify those for removal, in accordance with Plan D1977L.110.A. All other existing trees and hedgerows shall be retained unless otherwise agreed with the local planning authority.

(ii) The scheme shall also contain details of measures for the protection of those trees and hedgerows to be retained, before, during and after the construction of the development. These measures shall include protective fencing, and such fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought on to the site, and shall remain in place until otherwise agreed by the local planning authority. Nothing shall be stored or placed in any area fenced in accordance with this condition, and the ground levels within those areas shall not be altered, nor shall any excavation be made.

(iii) No retained tree shall be cut down, uprooted or destroyed, nor be topped, lopped or pruned other than in accordance with the approved details. Any works which may be thus approved shall be carried out in accordance with BS 5837(2012).

(iv) Within a period of five years from the completion of the development, if any retained tree is removed, uprooted or destroyed or dies, replacement planting shall be carried out in accordance with details to be approved by the local planning authority.

6. No new dwelling shall be occupied until a landscape management plan for the whole site has been submitted to the local planning authority and approved in writing. The plan shall include detailed proposals for the management and maintenance of all of the proposed public or communal open space areas, and details of the proposed arrangements for such management and maintenance to be financed in perpetuity. Thereafter, the open space areas shall be managed and maintained in accordance with the details thus approved.

7. Notwithstanding the previously submitted details, no development shall take place until full details of the surfacing materials proposed for all access roads, parking and turning areas, pathways, kerbs and crossing points have been submitted to the local planning authority and approved in writing. The details to be submitted shall also include a phased timetable for the completion of these works. Thereafter, the surfacing of these areas shall be carried out using only the materials thus approved, and in accordance with the approved timetable.

8. No development shall be commenced until full details of the existing and proposed ground levels and finished floor levels have been submitted to the local planning authority and approved in writing. Thereafter, the development shall be carried out in full accordance with the levels thus approved,

9. No new dwelling shall be occupied until a scheme of external lighting has been submitted to the local planning authority and approved in writing. The lighting scheme shall provide for the illumination of the access roads, parking areas, footways and cycleways, to meet the needs of public safety, whilst also having regard for the need to minimise the effects on wildlife, and shall also include a phased programme for implementation. Thereafter, the proposed

lighting shall be installed, operated, maintained and retained, in accordance with the details thus approved.

10. No development shall be commenced until a highway phasing scheme has been submitted to the local planning authority and approved in writing. The highway phasing scheme should contain details as to the timing of provision of the proposed site accesses, estate roads, footways, cycleways, and parking and turning areas shown on the submitted plans, so as to ensure that no new dwelling is occupied until the relevant facilities serving that dwelling have been constructed and made available for use. These facilities shall thereafter be provided in accordance with the details and phasing thus approved.

11. (i) No development shall be commenced until a detailed scheme of foul and surface water drainage has been submitted to the local planning authority and approved in writing. The drainage scheme shall include a phased programme of implementation, so as to ensure that no new dwelling shall be occupied until the relevant foul and surface water drainage infrastructure serving that dwelling has been installed and brought into use. The required drainage infrastructure shall be installed in accordance with the details and phasing thus approved.

(ii) The drainage scheme shall also include details of the proposed arrangements for the future management and maintenance of the foul and surface water drainage systems. Thereafter, the drainage systems and infrastructure shall be managed and maintained in accordance with these approved details.

12. The Travel Plan contained within the submitted Transport Assessment shall be implemented in full, in accordance with the timescales proposed within that document. Monitoring reports on the implementation of the required measures shall be provided to the local planning authority at intervals of no more than 6 months, from the start of the development, until 2 years after the occupation of the last dwelling.

13. No new dwelling shall be occupied until a new combined footpath and cycleway route has been provided, from the proposed western site access, to the existing southern entrance to the New Line Learning Academy site, in accordance with a detailed scheme to be submitted to the local planning authority and approved in writing. Thereafter, the new footpath and cycleway shall be retained and kept available for public use, and shall be maintained in a good and safe condition at all times.

14. No development shall be commenced until a phasing scheme for the proposed new sports field has been submitted to the local planning authority and approved in writing. The scheme shall set out detailed proposals as to the works required for the proposed sports field, including preparation, drainage and seeding; and the timing of its provision in relation to the proposed housing development. The new sports field shall be laid out and made available for use in accordance with these approved details, and thereafter shall be retained and used only for the purposes of outdoor sports and recreation.

15. No new dwelling shall be occupied until a scheme has been submitted to the local planning authority and approved in writing, for the provision of facilities for the recharging of electric vehicles. The scheme shall include details of the

location of the required facilities, their electrical specification, and the timing of provision. The said facilities shall thereafter be provided in accordance with the approved details.

16. No dwelling shall be occupied until provision has been made for the storage of household waste and recyclables, pending collection, in accordance with details to be submitted to the local planning authority and approved in writing. The facilities thus provided shall thereafter be retained and kept available for the purposes of waste storage.

17. The proposed new sports field shall not be used on any day outside the hours of daylight, nor outside the hours of 08.00 – 22.00, whichever is the shorter.

18. No development shall be commenced until a programme of archaeological work has been implemented, in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

19. No development shall be commenced until an ecological mitigation scheme has been submitted to the local planning authority and approved in writing. The scheme shall provide for the protection of existing wildlife and habitats during and after construction, and the long-term enhancement of the site's biodiversity value, including a phased timetable for the required works. The development shall be carried out in full accordance with the ecological scheme and timetable thus approved.

20. No dwelling shall be occupied until an equipped children's play area has been provided within the site, in accordance with details to be submitted to the local planning authority and approved in writing.

21. Except where these conditions require otherwise, the development shall be carried out in full accordance with the approved plans listed on pages 64-66 of the Inspector's Report, dated 7 September 2015.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.