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31 March 2023

Dear Richard

**23/500899/OUT: Outline application for the erection a building for storage and distribution (Class B8 use) with a floorspace up to 10,788sqm (Gross External Area), ancillary offices, associated car parking, HGV parking, landscaping and infrastructure (All matters reserved except for access)**

### **Land North Of The A20 Ashford Road Hollingbourne Kent**

Thank you for your consultation on the above application. The following comments are on behalf of the Kent Downs AONB Unit and as such are at an officer level and do not necessarily represent the comments of the whole AONB partnership. The legal context of our response and list of AONB guidance is set out at Appendix 1 below.

The application site lies in the setting of the Kent Downs AONB, by virtue of its proximity to the AONB (less than 600m to the north) and the fact that the site is visible in views from the Kent Downs escarpment. The application should therefore be tested against the purpose of the AONB designation, to conserve and enhance the natural beauty of the AONB, in line with paragraph 176 of the NPPF.

The primary legislation relating to AONBs, which underpins national planning policy, is set out in the Countryside and Rights of Way Act 2000. Section 85 of this Act requires that in exercising any functions in relation to land in an AONB, relevant authorities, which includes local authorities, shall have regard to the purpose of conserving and enhancing the natural beauty of the AONB. This is known as the 'Duty of Regard'.

Under the Countryside and Rights of Way Act, local authorities are required to prepare an AONB Management Plan which must "formulate the policies for the management of the AONB and for carrying out their functions in relation to it". The Kent Downs AONB Unit produces a Management Plan on behalf of the local authorities within the AONB. The Management Plan has been formally adopted by the local authorities in Kent in which the AONB occurs, including Ashford Borough Council. The national Planning Policy Guidance confirms that Management Plans can be a material consideration in planning decisions.

#### **Enhancing landscapes and life in the Kent Downs**

The Kent Downs AONB Joint Advisory Committee (JAC) promotes and co-ordinates the conservation and enhancement of the Kent Downs AONB. Funding is provided by DEFRA, Kent County Council and the local authorities of Ashford, Bromley, Canterbury, Dover, Gravesham, Medway, Maidstone, Sevenoaks, Shepway, Swale and Tonbridge & Malling. Other organisations represented on the JAC include Natural England, the Environment Agency, Country Land and Business Association, National Farmers Union, Kent Association of Parish Councils and Action with Communities in Rural Kent.

Anglesey  
Arnside and Silverdale  
Blackdown Hills  
Cannock Chase  
Chichester Harbour  
Chilterns  
Clwydian Range  
Cornwall  
Cotswolds  
Gower  
Cranbourne Chase and  
West Wiltshire Downs  
Dedham Vale  
Dorset  
East Devon  
Forest of Bowland  
Howardian Hills  
High Weald  
Isle of Wight  
Isles of Scilly  
**Kent Downs**  
Lincolnshire Wolds  
Llyn  
Malvern Hills  
Mendip Hills  
Nidderdale  
Norfolk Coast  
North Devon  
North Pennines  
North Wessex Downs  
Northumberland Coast  
Quantock Hills  
Shropshire Hills  
Solway Coast  
South Devon  
Suffolk Coast and Heaths  
Surrey Hills  
Tamar Valley

The new Kent Downs Management Plan, Third Revision 2021 to 2026 has recently been adopted, replacing the 2014 to 2019 Management Plan. The Management Plan sets out the policy for the conservation, enhancement and management of the AONB in a series of aims, actions and Principles. It can be downloaded at:

<https://explore-kent-bucket.s3.eu-west-1.amazonaws.com/uploads/sites/7/2021/11/16141210/The-Kent-Downs-AONB-Management-Plan-2021-2026-Adopted.pdf>

The following principles from the Management Plan are considered to be of particular relevance to the current application:

**MMP2** The Kent Downs AONB is a material consideration in plan making and decision taking, and so local authorities will give a high priority to the AONB Management Plan vision, aims, principles and actions in Local Plans, development management decisions, planning enforcement cases and in taking forward their other relevant functions.

**SD8** Ensure proposals, projects and programmes do not negatively impact on the distinctive landform, landscape character, special characteristics and qualities, the setting and views to and from the Kent Downs AONB.

The National Planning Policy Framework (NPPF) paragraph 176 requires great weight to be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. A recent Appeal decision has confirmed that where a proposal is outside of an AONB, the effect on views outside of the AONB, but gained from within the AONB would result in NPPF paragraph 176 being relevant.<sup>1</sup>

Amendments to the NPPF in July 2021 included reference to setting now being incorporated '*...while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.*'

Advice on how to approach development within an AONB setting is expanded on in the nPPG at [Paragraph: 042 Reference ID: 8-042-20190721](#). This advises:

*Land within the setting of these areas often makes an important contribution to maintaining their natural beauty, and where poorly located or designed development can do significant harm. This is especially the case where long views from or to the designated landscape are identified as important, or where the landscape character of land within and adjoining the designated area is complementary. Development within the settings of these areas will therefore need sensitive handling that takes these potential impacts into account.*

The setting of the AONB from the escarpment of the Kent Downs has enormous value. It was a principal reason why the AONB was designated in this area. The importance of setting has been supported by the Planning Inspectorate in several recent dismissed appeal decisions. These include a proposed housing development at Harrietsham and commercial developments at Waterside Park, adjacent to Junction 8

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<sup>1</sup> Appeal Ref: APP/G1630/W/20/3256319 Land off Ashmead Drive, Gotherington

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of the M20 near Maidstone and therefore of particular relevance to this application. In respect of the appeal at Harrietsham, the Inspector concluded that "*the unacceptable effects of the proposal on the landscape character of the area, including its SLA categorisation and its position at the edge of the AONB significantly and demonstrably outweigh the benefits that would arise from the proposal*". (APP/U2235/W/15/3119223).

In respect of the Waterside Park appeals it was concluded that "considerable environmental harm would result from the loss of this area of countryside to development through the combined impact on the landscape setting of the AONB and the heritage assets. The developments would fail to protect the setting of the AONB and therefore also conflict with the aims of Section 85 of the Countryside and Rights of Way Act 2000". (APP/U2235/A/14/2224036 & APP/U2235/A/14/2229271).

Further guidance on Setting is provided in the Kent Downs AONB Units adopted [Position Statement on Setting](#).

The Maidstone Local Plan (adopted 2017) also recognises the importance of AONB setting, advising at para 4.110

*'The foreground of the AONB and the wider setting is taken to include the land which sits at and beyond the foot of the scarp slope of the North Downs and the wider views thereof. It is countryside sensitive to change, with a range of diverse habitats and landscape features, but through which major transport corridors pass. Having due regard to the purposes of the designation is part of the council's statutory duty under the Countryside and Rights of Way Act 2000. National policy (NPPF and NPPG) directs that great weight should be given to conserving landscape and scenic beauty in the AONB. The duty is relevant to proposals outside the boundary of the AONB which may have an impact on the statutory purposes of the AONB. Matters such as the size of proposals, their distance, incompatibility with their surroundings, movement, reflectivity and colour are likely to affect impact. The Kent Downs AONB Management Plan advises that 'where the qualities of the AONB which were instrumental in reasons for its designation are affected, then the impacts should be given considerable weight in decisions. This particularly applies to views to and from the scarp of the North Downs.' It is considered therefore that it is not necessary to formally define the setting of the Kent Downs AONB and that the impact of development can be appropriately assessed through the criteria of the policy.'*

While Criteria 3 and 4 of Policy SP17 state:

*3. Great weight should be given to the conservation and enhancement of the Kent Downs Area of Outstanding Natural Beauty.*

*4. Proposals should not have a significant adverse impact on the settings of the Kent Downs Area of Outstanding Natural Beauty or the High Weald Area of Outstanding Natural Beauty.*

### **Impacts on the setting of the Kent Downs AONB**

The application proposes a substantial new employment development on a green field site, outside of any recognised settlement on a site that is not allocated in either the

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existing adopted local plan, nor is it proposed as a new allocation by the Council in the emerging Regulation 19 Local Plan. The principle of whether the proposal lies within the settlement boundaries and complies with policies relating to sustainable development in Maidstone's Local Plan are for the judgement of the case officer, however in view of the scale of development and potential harm to the setting of the Kent Downs AONB, and claim from the applicant that there is a need for additional employment floorspace, it is the view of the AONB Unit that such a matter would be more appropriately considered through the Local Plan process.

The Planning Statement at 6.9 states 'The AONB itself is a heavily wooded environment, limiting viewing opportunities outward to the surrounding countryside. Any views of the proposed building would be very limited and would be seen in the context of other surrounding built infrastructure located across the area.'

However, this is not supported by the ZTV included in the LVIA that indicates that the site will in fact be visible from large tracts of the Kent Downs AONB to the north, and in particular from the escarpment of the Kent Downs, the main target of the AONB designation and from which panoramic views are available southward over the site. This includes from the North Downs Way, the importance of which is recognised with its designation as a national trail, as well as from numerous other public rights of way as well as from an extensive tract of Open Access land to the north west of Hollingbourne.

The application proposes a single building comprising 'the erection a building for storage and distribution (Class B8 use) with a floorspace up to 10,788sqm' which would be upto 15 metres in height. This is a significant scale of building, much larger than any of the individual employment buildings that have been permitted at the adjacent site. The application site also sits on higher ground than most of the adjacent employment site at Woodcut Farm. Taking these factors into account, the proposal has potential for significant adverse impacts on views from the Kent Downs AONB, through the introduction of a large scale building into a currently undeveloped field and a largely rural setting. The scale of the building and the fact that views from the AONB would be from higher topography means that mitigation of impacts from vegetative screening would be largely ineffective in views from the AONB, contrary to assertions at paragraph 6.68 of the Planning Statement which advises 'The proposed green infrastructure framework, including retained vegetation and new planting, will minimise the visual impacts of the Development'.

The Planning Statement also considers, at 6.71 '*It is considered that the special qualities that define the Kent Downs AONB would remain materially unaffected with the Development in place. The special components, characteristics and qualities of the Kent Downs AONB would also remain and prevail with the Development operational....*'

The Kent Downs AONB Unit strongly disagrees with this conclusion. 'Breath taking, long-distance panoramas are offered, often across open countryside, estuaries and the sea from the scarp, cliffs and plateaux' are specifically noted as one of the components of the 'dramatic land form and views' [special characteristics of the Kent Downs AONB](#). It is considered that a development of the proposed scale and form and in the largely rural context would inevitably impact on the views, introducing a detracting, urbanising feature in to the scene.

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The LVIA includes photomontages of the proposal, including from a Viewpoint within the Kent Downs, VP12. There appears to be a significant error in that from VP 12, the site location is shown is a wholly incorrect location, both in respect of the annotated red line indicating the location of the site and in respect of the photomontages, which indicates the site and building shown some significant distance away from the correct location (it appears to be placed to the south west of Woodcut Farm, rather than correctly to the east of the employment development). Such a fundamental error puts the validity of the whole LVIA assessment into question in my view.

### **Conclusion:**

Taking the above matters into account, it is considered that the proposed development would result in the introduction of a large scale and intrusive form of development that would detract from the existing views that would neither conserve nor enhance this part of the setting of the AONB. Effective mitigation in respect of impacts on views from the AONB to an acceptable level is not possible due to the scale of the building and higher topography of the views rendering vegetative screening largely ineffective in screening or filtering views of it from the AONB. As such the proposal is considered contrary to paragraph 176 of the NPPF, policy SP17 of the adopted Maidstone Local Plan, as well as the Kent Downs AONB Management Plan and in particular Principle SD8.

**Accordingly, the Kent Downs AONB Unit strongly objects to this application.**

Yours sincerely



Katie Miller MRTPI  
Planning Manager, Kent Downs AONB Unit

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## **APPENDIX 1**

### **Planning consultations with the Kent Downs AONB Unit**

#### **Background and context:**

The Kent Downs Area of Outstanding Natural Beauty partnership (which includes all the local authorities within the AONB) has agreed to have a limited land use planning role. In summary this is to:

- Provide design guidance in partnership with the Local Authorities represented in the AONB.
- Comment on forward/strategic planning issues-for instance Local Development Frameworks.
- Be involved in development management (planning applications) in exceptional circumstances only, for example in terms of scale and precedence.
- Provide informal planning advice/comments on development control (planning applications) at the request of a Kent Downs AONB Joint Advisory member and /or Local Authority Planning Officer.

#### **The Countryside and Rights of Way Act 2000**

The primary legislation relating to AONBs is set out in the Countryside and Rights of Way Act 2000. Section 85 of this Act requires that in exercising any functions in relation to land in an AONB, or so as to affect land in an AONB, relevant authorities, which includes local authorities, shall have regard to the purpose of conserving and enhancing the natural beauty of the AONB. This is known as the 'Duty of Regard'. The Duty of Regard can be demonstrated by testing proposals against the policies set out in the Kent Downs AONB Management Plan and its supporting guidance (see below).

#### **Relationship of the AONB Management Plan and Development Management**

The CRoW Act requires that a management plan is produced for each AONB, and accordingly the first Kent Downs AONB Management Plan was published in April 2004. The third revision Management Plan (2021-2026) has been formally adopted by all the local authorities of the Kent Downs. The Management Plan may be viewed on the Kent Downs web site:

<https://explore-kent-bucket.s3.eu-west-1.amazonaws.com/uploads/sites/7/2021/11/16141210/The-Kent-Downs-AONB-Management-Plan-2021-2026-Adopted.pdf>

Under the CRoW Act, the Management Plan is required to 'formulate the (Local Authority) policies for the management of the AONB and for carrying out their

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functions in relation to it'. The policies of the Kent Downs AONB Management Plan are therefore the adopted policies of all the Local Authorities in the Kent Downs.

The national Planning Policy Guidance confirms that AONB Management Plans can be a material consideration in planning decisions and this view is confirmed in previous appeal decisions, including APP/U2235/W/15/3131945, Land west of Ham Lane, Lenham, Maidstone, where at para 48 of the Inspectorate's decision letter, it is confirmed that "the Kent Downs AONB Management Plan April 2014 (the Management Plan) is also a further significant material consideration". The decision can be downloaded at:

<https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3131945>

Any Kent Downs AONB Unit response to consultations on planning applications will reflect the policies of the Management Plan along with other Kent Downs AONB produced guidance which help support the delivery of the policies of the Management Plan, as set out below.

## **Other Kent Downs AONB Guidance**

### [Kent Downs AONB Guidance on the selection and use of colour in development – Guidance](#)

The purpose of this guidance is to provide guidance on the selection and use of colour for building development within the AONB and its setting. 'Development' includes any building work, ranging from home extensions and conversions through to house building, agricultural and industrial premises, and retail and office buildings. It also includes infrastructure developments associated with transport, flood defences, power generation and distribution, communications and other utilities.

### [Kent Downs Landscape Design Handbook](#)

Design guidance based on the 13 landscape character areas in the Kent Downs. Guidance is provided on fencing, hedges, planting, gateways etc. to help the conservation and enhancement of the AONB.

### [Kent Downs Renewable Energy Position Statement](#)

Provides a clearly articulated position for the Kent Downs AONB partnership with regards to renewable energy technologies. It recognises that each Local Planning Authority must balance the impact of proposals for renewables on the AONB with all the other material planning considerations.

### [Kent Rural Advice Service Farm Diversification Toolkit](#)

Guidance on taking an integrated whole farm approach to farm developments leading to sound diversification projects that benefit the Kent Downs.

### [Kent Downs Land Manager's Pack](#)

Detailed guidance on practical land management from how to plant a hedge to creating ponds and enhancing chalk grassland.

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### [Rural Streets and Lanes - A Design Handbook](#)

Guidance on the management and design of rural lanes and streets that takes the unique character of the Kent Downs into account. This document discusses the principle of shared space and uses examples from around the UK and Europe. The Handbook has been adopted by Kent County Council as policy.

### [Managing Land for Horses](#)

A guide to good practice on equine development in the Kent Downs, including grassland management, fencing, trees and hedges, waste management and basic planning information.

### [Kent Farmstead Guidance and Kent Downs Farmstead Guidance](#)

Guidance on the conservation, enhancement and development change of heritage farmsteads in the Kent Downs based on English Heritage's Kent and National Character Area Farmstead Statements. Includes an Assessment method and Design Guidance.

### [Kent Downs Setting Position Statement](#)

An advisory document providing guidance on issues of setting including the legislative basis for considering setting, identification of where setting is likely to be an issue and provision of advice on how to mitigate potential impacts.

## **The NPPF and AONBs**

National planning policies are very clear that the highest priority should be given to the conservation and enhancement of Areas of Outstanding Natural Beauty. The NPPF confirms that AONBs are equivalent to National Parks in terms of their landscape quality, scenic beauty and their planning status.

Paragraph 176 of the revised NPPF specifies that 'great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues.' It is advised that the scale and extent of development within AONBs should be limited and at paragraph 177 that major developments should be refused in AONBs except in exceptional circumstances and where it can be demonstrated that they are in the public interest. No definition is given as to what constitutes major development within an AONB, however a footnote to this paragraph states that this is 'a matter for the relevant decision taker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined'.

NPPF paragraph 11 explains the presumption in favour of sustainable development. For decision-making this means that proposals in accordance with the development plan should be approved. Part d says that where there are no relevant development plan policies or the relevant ones are out of date (for instance in applications involving new housing where there are housing supply or delivery deficits) then permission should be granted unless:

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- “i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>6</sup>; or  
ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”.

Areas of Outstanding Natural Beauty are listed in footnote 7 and the most relevant paragraphs in the Framework are 176 and 177. A recent court of appeal case<sup>2</sup> confirms that, if a proposal causes harm to an AONB sufficient to refuse planning permission if there were no other considerations, then the presumption in favour (or ‘tilted balance’ expressed in ii) above) should be disengaged. The decision-maker should therefore conduct a normal planning balancing exercise, applying appropriate weight to each consideration, to come to a decision. This will of course include giving great weight to the AONB as required by NPPF 176.

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<sup>2</sup> Monkhill Limited vs Secretary of State for Housing, Communities and Local Government and Waverley Borough Council Case No: C1/2019/1955/QBACF

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