

**LAND NORTH OF THE A20
ASHFORD ROAD
HOLLINGBOURNE KENT**

**APPEAL REFERENCE
APP/U2235/W/23/3329481**

PROOF OF EVIDENCE OF ASHER ROSS MRTPI

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1. INTRODUCTION

1.1 My name is Asher Ross. I am Director of Planning at Wates Developments Ltd ('The Appellant'). I am a chartered member of the Royal Town Planning Institute.

1.2 My role involves providing strategic overview on planning matters and assisting in the day-to-day management of planning projects.

1.3 I have significant experience of giving evidence at public inquiries, including on behalf of Wates – I have given the planning evidence at a number of such inquiries in the past three years, all of which have been granted planning permission.

1.4 I joined Wates from JLL where I was a Planning Director. I have also worked at GL Hearn (now WSP) and Boyer as well as Indigo Planning (now also WSP) and Ove Arup and Partners. I started my planning career at the London Borough of Enfield as a planning officer, rising to the position of head of planning enforcement. A summary of my recent and relevant experience is attached as **[Appendix A]**.

1.5 I have significant experience in projects in Maidstone and more widely in Kent. I have been involved in this project since Wates secured their interest in the Site in 2019 and have been advising both on the residential and commercial elements.

1.6 This Proof of Evidence ('PoE') has been prepared to address the matter of compliance with relevant planning policies, accordance with the provisions of the development plan when considered as a whole, the relevant material considerations and the overall planning balance.

1.7 The evidence which I have prepared and provide for this appeal reference APP/U2235/W/23/3329481 is true and has been prepared and is given in accordance with the guidance of the Royal Town Planning Institute's Professional Code of Conduct (2023) and I confirm that the opinions expressed are my true and professional opinions, irrespective of by whom I am instructed.

1.8 This Proof of Evidence is set out as following:

- Section 2 sets out the background to the Application / Appeal;
- Section 3 describes the Appeal Scheme;
- Section 4 provides commentary on the relevant planning history;
- Section 5 sets out the relevant planning policy and guidance;
- Section 6 assesses the Appeal Scheme against such policy;
- Section 7 considers the matter of weight;
- Section 8 considers the benefits that would arise from the grant of consent;
- Section 9 provides the planning balance; and
- Section 10 provides a summary and conclusions.

GLOSSARY

1.9 In this Proof, I use the following terms:

'The Council' or 'MBC' – Maidstone Borough Council

'The County Council' or 'KCC' – Kent County Council

‘The Appeal Scheme’ – the scheme as submitted to the Council

‘The Appellant’ or ‘Wates’ – Wates Developments Ltd and Adrian Baille

‘The Site’ – the area of land shown to fall within the red line plan

‘The KDNL’ – the Kent Downs National Landscape (previously known as the Kent Down Area of Outstanding Natural Beauty)

‘The 1990 Act’ – The Town and Country Planning Act 1990 (as amended)

2. BACKGROUND

Introduction

2.1 This Section of my Proof of Evidence sets out the background to the Appeal. It should be read together with the Statement of Common Ground. As required by the PINS Guidance, it focuses on the reasons for refusal and does not repeat matters which are not contentious as between the parties, and which are addressed in other documentation before the Inquiry.

2.2 A planning application for development of the Site for a B8 Use Class development was submitted to the Council in February 2023 and was refused under delegated powers in June 2023.

2.3 It was open to the Council to have concluded that the significant economic benefits arising from this development outweighed any adverse planning harm within the above time frame. However, the Council instead decided to refuse permission under delegated powers.

2.4 The Council set out three reasons for refusal ('RfR'). Additional information has been provided in respect of Biodiversity Net Gain ('BNG')¹ and at the time of writing, it is anticipated that this 'technical' reason for refusal has been resolved through a combination of a proposed condition and provision of a planning obligation under s.106 of the 1990 Act.

2.5 The Appellant's view is that neither of the remaining two reasons for refusal stand up to scrutiny when considering the overall planning balance; and in particular the significant and weighty benefits that would be forthcoming should consent be granted, which is my view significantly outweigh the more limited level of harm.

2.6 My Proof of Evidence addresses matters of planning policy, compliance with such policy and the overall planning balance.

2.7 In addition, my colleagues provide evidence of specific matters and I rely on their evidence:

- Mr Andrew Cook of Pegasus – Landscape;
- Mr Martyn Saunders of Avison Young – Economic Need; and
- Mr John Sleeman and Mr Ed Cole of JLL – Economic Demand².

2.8 A Statement of Common Ground ('SoCG') has been agreed with the Council and I refer to this as required. I do not replicate any matters that have been agreed elsewhere.

¹ CD1.9 and CD1.10

² Their Report is appended to Mr Saunders' evidence. I refer to it as the JLL Report throughout my evidence.

MBC's Position

2.9 I have set out that RfR3 has now been overcome and that a minimum of 10% BNG can be provided. This is a material change from the previous position and this benefit weighs in favour of the grant of consent.

2.10 The first RfR is an in-principle reason for refusal, considering that there is no policy justification for release of greenfield land for economic development. The evidence of Mr Saunders on need and in the JLL Report on demand will demonstrate that there is both current local need and demand for the quantum and type of development proposed by the Appeal Scheme. Their evidence will also demonstrate that neither the existing Local Plan nor the emerging Local Plan seek to address this current need. Their evidence will also set out that no current or emerging development are able to meet this current need and demand.

2.11 The second RfR has two elements to it. The first part relates to general landscape and visual effects whilst the second part considers the effects on the setting of the KDNH, particularly the views to the KDNH from Old Mill Lane, but not views from the KDNH (which is understood to be the case of the AONB Board). The evidence of Mr Cook will address both these points (and the views of the AONB Unit). He will accept that whilst there is some harm to the character of the Appeal Site (which is inevitable in any greenfield development), that the character of the Site is heavily influenced by the neighbouring urbanising development. In addition, he will set out that the indicative design principles have had regard to the location of the Site as well as the development in the vicinity of the Site and that this respects the scheme can be brought forward in an acceptable manner, and mindful of mitigation, without causing significant landscape harm.

2.12 Mr Cook will also address the effects on the setting of the KDNL. He will note that it is now agreed that the Site is not valued landscape in NPPF terms (an important change in the Council's position). Whilst he accepts that the Site is located within the Setting of the KDNL, he will refer to the design parameters, the indicative design along with the proposed mitigation (illustrated through up-to-date photomontages) to demonstrate his position that the setting of the KDNL would be conserved.

2.13 The Council acknowledges that there would be economic benefits from the proposal, however, as stated in the OR *"The economic benefits of the proposals are a material consideration but they are not considered to outweigh the conflict with Development Plan and the significant harm caused to the character and appearance of the local area and the setting of the Kent Downs AONB"*.

2.14 It is the Appellant's case that the Council has over-estimated the harms that would emanate from granting consent to the development as well as under-estimating the benefits and has, therefore, reached an overall planning balance which is erroneous. I will set out my view on the overall planning balance later in this Proof of Evidence.

Conclusions

2.15 Wates has been promoting the Site for economic development for some time. Indeed, as I will demonstrate, the Council previously considered that the Site should be allocated for development at the Regulation 18 stage of the Local Plan. The pursual of an application by Wates was in response to identified need for such facilities but in the context of both the existing and emerging Local Plans not addressing this current need.

2.16 Far from being unacceptable – the Appeal Site is a logical and sensible site to bring development forward in light of an obvious and substantial demand for such schemes and a dwindling supply of where they could be delivered.

2.17 The next Section of this Proof sets out the key aspects of the Appeal Scheme.

3. THE APPEAL SCHEME

3.1 The Planning Application submitted by the Appellant was in outline format with access to be determined at this stage, and all other matters reserved for future determination.

3.2 The description of the development is *“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)”*.

3.3 The site area is 2.88ha.

3.4 Whilst indicative, the Appeal Scheme seeks consent for one building that would accommodate the floorspace and uses outlined above. In terms of height of the building, the Appellant has proposed that a condition should be imposed seeking to limit the development to a maximum of 67.5 AOD.

3.5 The Appeal Scheme also provides car and HGV parking as well as cycle parking. EV charging will be provided in accordance with the requirements of the Building Regulations. The parking would meet the standards set out by Kent County Council, who do not object to the grant of consent.

3.6 Access to the Appeal Site will be provided off the A20 Ashford Road.

3.7 The Appeal Scheme will include significant amount of landscaping as identified by Mr Cook in his evidence.

3.8 The indicative design was influenced by the location of the Site, the neighbouring development and the need to minimise impacts on the setting of the KDNL. Of course, the design is indicative and if permission is granted, it is within the powers of the Council to specify matters such as exact location of the development, the size of development and the overall height of the development. Nonetheless, the indicative scheme closely mirrors the likely market for such as development, and as matter stand is likely to reflect a reserved matter application were the Appeal to be allowed. The Appeal Scheme is realistic and deliverable.

3.9 The Appeal Site does not sit in isolation and there is recent planning history that is relevant to the determination, and I turn to this next.

the subsequent planning consents as I consider that this has several implications to the determination of the Appeal Scheme.

4.6 As my colleagues set out, the development of Phase 1 of LOC8 has been complete and is nearly fully occupied, with Phase 2 now under way and due to be completed later this year. This supports their view that there is continued demand for employment development in this area.

4.7 It is my view that the planning history for Woodcut Farm is important for three reasons. The first is that the Council's view was that the location was not appropriate for significant development (an in-principle objection) was changed to a view that development was acceptable (albeit with parameters relating to design). The second is that significant and material changes to the allocation and original consent have led to increased impacts on the setting of the KDNL and the wider landscape and these have been accepted by the Council. Thirdly, the Council has accepted expansion of the scheme beyond the allocation on the basis that the economic benefits outweigh the harm. To my mind, when considering the approach of the Council to Woodcut Farm, should the same approach had been applied to the Appeal Scheme, the Council would have come to a view that the scheme should be granted consent.

White Heath, Ashford Road

4.8 Immediately to the north west of the Appeal Site, an application for a care home was proposed at White Heath, Ashford Road, Hollingbourne ME17 1XG. The application was subject of an appeal (APP/U2235/W/20/3249008)³. The Design and Access for the scheme is included as **Appendix C**.

4.9 In terms of the character of the area, the Inspector note that *"The surroundings are dominated by the road network which carries large volumes of fast moving traffic. The A20 (Ashford Road) passing the front of the site and connecting with junction 8 of the M20 at the rear, are significant infrastructure features"* (paragraph eight). In terms of Woodcut Farm, the Inspector note that *"It is of relevance that **the Local Plan identifies the area as being one for significant change, resulting from the allocation** of the land around the site at Woodcut Farm for a large scale mixed employment use. Outline planning permission has been given for such a development and is currently extant. This is **likely to extensively change the character of the area** and also bring with it more activity. Given the relatively early stage of the development and the evidence available, its effects are difficult to predict including whether resulting changes to local infrastructure may improve the accessibility of the site. As such, I am unable to attribute significant weight to this consideration"⁴. I note that the development of Woodcut Farm has progressed in place since that decision which has resulted in the significant change anticipated.*

³ Appendix B

⁴ Emphasis added

4.10 I also note the views of the Inspector that a three-storey building in this location would not be harmful to the character of the area (paragraph 21) and that the natural beauty of the AONB would be conserved (paragraph 22).

Conclusions

4.11 The Appeal Site was included within the Leeds-Langley area red line in the Regulation 18 version of the emerging Local Plan Review [CD6.1].

SP5a – LLRR Safeguarding Indicative Area of Search



4.12 However, was not taken forward in the Regulation 19 and the LP Inspector has now considered that the Leeds-Langley Area be removed. This is principally due lack of certainty about deliverability and continued fragmented land ownership, all of which led the Inspector to conclude that the Policy as drafted was unsound. However, the Inspector in his Stage 2 letter (dated 5 July 2023) noted that he accepted that a 'hook' for the continued Council support for the strategic objective of providing a relief road in this area, as well as the enabling development, should be provided and this was included as a Minor Modification.

4.13 In terms of the review of the planning history, it is clear that that there has been a substantial change of view from the Council as to the acceptability of development in the general vicinity of the Appeal Site. Indeed, the Council has accepted significant development in the area, with further changes proposed through several applications that increase the height and size of the development and significantly reduce the amount of landscaping. The Council has also accepted development outside the allocated land in the recent hybrid consent (partially justified under Policy DM37).

4.14 I have noted that the AONB Unit has objected to all applications at Woodcut Farm including the applications for reserved matters seemingly as a matter of principle. The Council in all cases has noted these objections but has not agreed with the AONB Unit. In my view, the intransigent view of the Unit affects the weight that can be afforded to its view about development in this area.

4.15 Overall, it is clear in my mind that the planning history indicates the following:

- Significant economic development in this area is acceptable;
- Acceptance of significant changes to the Woodcut Farm scheme which materially affected the setting of the KDNL but the Council recognised that economic benefits outweighed the harm;
- The development of Woodcut Farm has had a significant effect on the character of the area; and
- Acceptance of economic development in the countryside in this location.

4.16 I now move on to address the policies and guidance against which the Appeal will be determined.

5. PLANNING POLICY

Introduction

5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) set out that planning decisions should be made in accordance with the development plan unless material considerations indicate otherwise.

5.2 It is agreed that the most relevant development plan document for this Appeal is the Maidstone Borough Local Plan 2017. Other development plan documents, such as the minerals plan are relevant, but no breach of policy is associated with these and therefore the appeal does not turn on compliance or non-compliance with these.

5.3 The Council has highlighted four policies in the Local Plan that would, in its opinion, be breached. However, there are numerous other policies that are relevant in the development plan and that are material to the determination, and which, presumably are accepted to be either complied with or not breached.

5.4 In addition, the requirement is to come to a view on accordance with the development plan when considered as a whole and a breach of some policies (or even partial breach) does not automatically mean that the entire development plan is not accorded with.

5.5 Therefore, I first set out the relevant development plan policies. I also set out the relevant material considerations against which the Appeal has to be judged.

The Development Plan

5.6 The Maidstone Borough Local Plan 2017 ('LP')⁵ was adopted 25 October 2017 and is now over six-years old. Paragraph 1.3 confirms that "*The Maidstone Borough Local Plan covers the period from 2011 to 2031 but, to ensure an up-to-date planning policy framework is maintained, a review of the plan will be completed by April 2021*". Its evidence base was prepared some time before, most particularly the employment evidence base was dated 2014. I address whether the evidence base relating to employment is up-to-date later in my evidence.

5.7 The Spatial Objectives (page 9) include Objective 2 "*To focus new development: i. Principally within the Maidstone urban area and at the strategic development locations at the edge of town, and at junctions 7 and 8 of the M20 motorway*".

5.8 Policy SS1 sets out the Borough's spatial strategy. It includes the provision though permissions and allocations for 49,911m² of warehousing use. The fourth bullet point sets out that "*A prestigious business park at Junction 8 of the M20 that is well connected to the motorway network will provide for a range of job needs up to 2031. The site will make a substantial contribution to the need for new office space in the borough as well as meeting the 'qualitative' need for a new, well serviced and well connected mixed use employment site suitable for offices, industry and*

⁵ CD3.1

warehousing, and will thereby help to to [sic] diversify the range of sites available to new and expanding businesses in the borough”.

5.9 Policy SP17 addresses locations in the countryside. Seven criteria are set out in the Policy of which criterions one and four are relevant to the determination of this Appeal. Criterion one requires accordance with other policies in the plan and that proposals will not result in harm to the character and appearance of an area whilst criterion four requires developments to not have a significant adverse impact on the setting of the AONB.

5.10 Policy SP21 addresses economic development. The first element of the Policy sets out that *“The council is committed to supporting and improving the economy of the borough and providing for the needs of businesses”*. Eight criteria are identified as being the conduit through which economic growth will be supported. Of these, criterions four and eight are relevant to the determination of the Appeal.

5.11 Criterion four confirms that the Council will support proposals that encourage highly skilled residents to work in the borough and reduce out-commuting, whilst criterion eight confirms that *“proposals for the expansion of existing economic development premises in the countryside, including tourism related development, provided the scale and impact of the development is appropriate for its countryside location, in accordance with policy DM37”* would be supported.

5.12 Policy EMP1 sets out the four main employment allocations and confirms that these will deliver approximately 75,800m² of employment land over the plan period to 2031 (although this is not separated into the various uses and therefore covers B1 (now Use Class E), B2 and B8).

5.13 The detailed allocations include four specific employment allocations:

Allocation reference	Location	Quantum of allocated development	Consented floorspace
EMP1(1)	West of Barradale Farm, Maidstone Road, Headcorn	5,500 sqm	1,935 sqm
EMP1(2)	South of Claygate, Pattenden Lane, Marden	6,800 sqm	0
EMP1(3)	West of Wheelbarrow Industrial Estate, Pattenden Lane, Marden	14,500 sqm	4,307sqm
EMP1(4)	Woodcut Farm, Ashford Road, Bearsted	49,000 sqm	45,295 sqm
TOTAL		75,800 sqm	51,537 sqm

5.14 In addition, mixed use allocations (especially the former Syngenta Works) were allocated for a mix of uses including employment uses. The JLL Report addresses the market-led approach to these allocations and confirms (Section four) that these could not provide the type of development to meet the need and demand.

5.15 In terms of development management policies, Policy DM1 sets out principles of good design whilst Policy DM2 addresses sustainable design. Policy DM3 considers the natural environment. In terms of wider highway effects, Policy DM21 sets out the principles relating to the assessment of transport impact of development whilst Policy DM23 sets out the parking standards.

5.16 As to the countryside, two policies are relevant to the determination. Policy DM30 sets out the design principles for development in the countryside whilst Policy DM37 addresses expansion of existing businesses in rural areas.

5.17 The Council sets out in the decision notice that only Policy DM30 is breached.

Other material considerations

5.18 Any assessment of the planning appeal has to have regard to material considerations. In this case, they include the following:

- The emerging Local Plan Review and its evidence base;
- The National Planning Policy Framework 2023; and
- Kent Downs AONB Management Plan 2021-2026.

Emerging Local Plan Review

5.19 The emerging Local Plan Review ('eLPR')⁶ was submitted to the Secretary of State on 31 March 2022. This followed three stages of consultation (two Regulation 18 consultations and one Regulation 19 consultation). The eLPR has been at examination for some time. Consultation on Main Modifications took place between 29 September and 13 November 2023. At this stage, there is still no timetable for an Inspector's Report and / or indication as to whether the examination will progress further. I address the weight to be afforded to the eLPR below.

5.20 In my evidence, I set out the policies of the Submission version of the eLPR, whilst also commenting on the views of the Inspector in his two letters as well as the recent Main Modification consultation.

5.21 Draft Policy LPRSS1 sets out the spatial strategy for delivery across the Borough. In terms of B8 use, the Policy sets out a minimum requirement of 49,900m² to be delivered in the period 2022 to 2037. In terms of employment allocations, the two major allocations are Woodcut Farm and the former Syngenta Works, both of which were allocations in the previous Local Plan.

5.22 A main proponent of the eLPR is the designation of two garden communities. Heathlands is proposed to deliver approximately 5,000 new homes of which 1,400 would be in the period up to 2037. 14ha of employment land would be provided (although the draft Policy does not specify use classes). Lidsing is proposed to

⁶ CD3.2

accommodate 2,000 new homes of which 1,300 would be provided to 2037. This garden community also includes a requirement for 14ha of employment land.

5.23 The eLPR also proposed a safeguarded area for the potential delivery of the Leeds-Langley bypass and development associated with this, but as noted above, this has now been removed through the Main Modifications.

5.24 Emerging Policy LPRSP9 sets out the criteria for development in the countryside and mirrors the existing adopted policy whilst Policy LPRSP11 mirrors the existing economic development policy.

5.25 Emerging Policy LPRSP11(A) sets out the draft policy on safeguarding existing employment sites. However, the emerging policy is materially different to the existing policy (SP22) as it allows both development outside designated Economic Development Areas and elsewhere in the Borough. Different criteria apply as to whether the proposal is for an expansion of an existing use or a new use.

4.26 Emerging Policy LPRSP11(B) seeks to create new employment opportunities. The draft Policy identifies five sites that may deliver B8 development, however, does not break down the allocations into various uses. The allocations are:

Site	Amount of floorspace to be delivered	Status
Woodcut Farm	49,000 sqm	Same as allocation in 2017 Local Plan – although existing permission is limited to 45,295 sqm
West of Barradale Farm	3,500 sqm	Allocated in 2017 Local Plan – now seeking to deliver the remainder of the allocation
South of Claygate	4,000 sqm	Reduced allocation from the 2017 Local Plan allocation of 6,800 sqm
Ashford Road, Lenham	2,500 sqm	New allocation ⁷
Former Syngenta Works	46,000 sqm	Former mixed use allocation in 2017 Local Plan

The draft Policy sets out four locations where additional employment development can be supported. These areas include locations in the rest of the Borough. The

⁷ Addressed in the JLL Report in Section four as to the suitability of the site to meet the need and demand

Policy sets out three criteria relating to character of the area and accessibility by public transport.

5.27 As noted, the eLPR has been subject of examination. The Inspector has issued two letters (CD6.5 and CD6.6). In his letter dated 11 January 2023, the Local Plan Inspector addressed employment. His paragraph 3.4 stated *“The submitted plan is underpinned by comprehensive Economic Development Needs Studies which have looked at scenarios of labour demand (Experian), past trends in completions and estimates of local labour supply based on demographic modelling in the SHMA update. A further Economic Development Needs Study (EDNS) Addendum in 2021 has looked at recent changes to the Use Classes Order, impacts of Brexit and Covid and applied latest Experian projections for ‘labour demand’ to cover the time period to 2042. The Council has selected the ‘labour demand’ scenario and my final report will explain why this would be appropriate, would not constrain the economic potential of the Borough and is therefore sound. The resulting requirement is expressed in Policy LPRSS1 as gross floorspace figures. Given the extended plan period above, it will be necessary for soundness to extrapolate the employment land (floorspace) requirement as a proposed main modification and the updated EDNS to 2042 would provide a sound basis for doing so”*.

5.28 In terms of the changes proposed, these were set out by the Council and require delivery of a minimum 48,940 sqm of warehousing floorspace – an increase of a minimum of 7,950 sqm of warehousing and logistics floorspace.

5.29 The second letter from the Inspector addresses many matters that are not relevant to this Appeal. However, in relation to Policy LPRSP9 (countryside), the Inspector set out that the first criteria relating to development in the countryside should be amended to require that the threshold for breach is that of significant harm to the rural character and appearance of the area (rather than just harm).

5.30 As I noted above, the eLPR has been recently subject of consultation on Main Modifications. The Appellant has responded to this consultation and its responses can be found at CD6.5. In essence, the Appellant has set out that the additional minimum employment floorspace will not realistically be met through the eLPR allocations.

National Planning Policy Framework

5.31 The latest iteration of the National Planning Policy Framework (‘NPPF’) is from 2023, albeit that version only differs from the 2021 version in relation to on-shore wind energy.

5.32 The NPPF does not change the statutory test, however, is a significant material consideration in the determination of the Appeal.

5.33 Paragraph 48 allows decision takers to give weight to emerging plans and I address this matter later in my evidence. Paragraph 49 addresses prematurity. I note that the Council did not consider that this paragraph applies to the determination and I agree with this approach.

5.34 Paragraph 81 sets out that *“Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development”*. Paragraph 83 sets out that *“Planning policies and decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for clusters or networks of knowledge and data-driven, creative or high technology industries; and for storage and distribution operations at a variety of scales and in suitably accessible locations”*.

5.35 Paragraph 174 addresses the natural environment. Paragraph 174a sets out that valued landscapes should be protected and enhanced. Paragraph 174b requires the recognition of the intrinsic character and beauty of the countryside as well as the economic benefit of best and most versatile agricultural land. It is agreed with the Council that 174b is the relevant part of the paragraph to consider in this case. Paragraph 174d sets out the effects on biodiversity should be minimised and that measurable biodiversity net gain should be secured.

5.36 Paragraph 176 sets out that *“development within their setting⁸ should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas”*.

Kent Downs AONB Management Plan 2021 -2026

5.37 The AONB Management Plan⁹ is a statutory document developed by the AONB Board. It is not however part of the statutory development plan and is not a Development Plan Document. It is therefore not caught by section 38(6) and is not subject to an independent examination. The Plan sets out specific guidance relating to setting¹⁰:

“The setting of the Kent Downs AONB is broadly speaking the land outside the designated area which is visible from the AONB and from which the AONB can be seen, but may be wider when affected by intrusive features beyond that. The setting of the Kent Downs is not formally defined or indicated on a map. The setting of the AONB landscape should be distinguished from the setting of listed buildings and other heritage assets (on which there is legislation and also policy in the National Planning Policy Framework and elsewhere). Proposals which would affect the setting of the AONB are not subject to the same level of constraint as those which would affect the AONB itself. The weight to be afforded to setting issues will depend on the significance of the impact. Matters such as the size of proposals, their distance, incompatibility with their surroundings, movement, reflectivity and colour are likely to affect impact. Where the qualities of the AONB which were instrumental in reasons for its designation are affected by proposals in the setting, then the impacts should be given considerable weight in decisions. The Kent Downs AONB Joint Advisory Committee has prepared a ‘Setting Position Statement’ which provides helpful further advice supporting the vision, aims and principles of the Plan”.

⁸ AONBs

⁹ CD3.5

¹⁰ Page 29

5.38 The Plan also includes sustainable development principles which are relevant to the Appeal determination. Principle SD8 sets out that *“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”*.

Conclusions

5.39 I have set out the key planning policies and guidance that are relevant to the determination of the Appeal and now move on to assess the Appeal Scheme against these.

6. APPEAL SCHEME ASSESSMENT

Introduction

6.1 In this Section of my Proof of Evidence, I assess whether the Appeal Scheme complies with relevant policies of the development plan and whether the scheme accords with the provisions of the development plan as a whole.

6.2 I also consider the material considerations that are relevant to the Appeal Scheme.

6.3 I carry out the overall planning balance in Section eight, below.

The Development Plan

6.4 The Council has set out that in its view the Appeal Scheme does not comply with several policies of the Local Plan. The OR concludes that the Appeal Scheme does not accord with the provisions of the development plan (which I assume to be an assessment 'taken as a whole').

6.5 The Council alleges a breach of the following policies: SS1; SP21; SP17(1); and SP17(4). I address each of these below. The Council has now also set out that Policy DM20 was referred to in error and the reference should be to Policy DM30.

6.6 In addition, the Kent Downs AONB Unit has also provided a substantive response to the Appeal and I also address this insofar as it falls within my area of expertise.

6.6 Policy SS1 is a strategic policy that sets out the broad spatial strategy for development in the Borough. Bullet point 1 sets out that both allocations and planning permissions to meet needs (including employment needs). It is my opinion that the figures set out in the Policy are not maxima (indeed, this would be contrary to NPPF requirements) and, as such, exceedance of this floorspace requirements would not be a breach of the Policy. The grant of this Appeal to meet clearly evidenced needs would accord with Policy.

6.7 Bullet point 4 sets out that *"A prestigious business park at Junction 8 of the M20 that is well connected to the motorway network will provide for a range of job needs up to 2031. The site will make a substantial contribution to the need for new office space in the borough as well as meeting the 'qualitative' need for a new, well serviced and well connected mixed use employment site suitable for offices, industry and warehousing, and will thereby help to to [sic] diversify the range of sites available to new and expanding businesses in the borough"*. I accept that the Appeal Site is not allocated in the Local Plan, however, in all other aspects, the Site fully complies with the criteria set out in this Policy.

6.8 Bullet point 9 sets out that the rural character will be protected. Mr Cook addresses the character of the Site, which – whilst undeveloped - cannot be regarded as truly rural given the significant urban influences on it¹¹. As to Bullet point 10, it is Mr Cook's view that the setting of the AONB would be conserved (as per his conclusions in paragraphs 8.20 to 8.22).

¹¹ As per the view of Inspector McCreery in the White Heath decision

6.9 The first RfR also mentions Policy SP21 as being breached by the Appeal Scheme. Having reviewed the Policy, it is my view that this is a high-level policy that sets out several ways of meeting the wider commitment to *“to supporting and improving the economy of the borough and providing for the needs of businesses”*. Whilst, the Appeal Scheme does not specifically fall within the locations identified, the Policy does not prohibit developments in other locations. Having reviewed the Policy, I cannot see how granting consent for the Appeal Scheme would lead to any breach of this Policy.

6.10 As to Policy SP17, the Council alleges two breaches of this Policy. SP17(1) sets out that development proposals will not be permitted unless they accord with other policies in the development plan and will not result in harm to the character and appearance of an area. I address the matter of weight to be afforded to this Policy below. I accept that there is no specific policy that allocates the Site for development. However, it is my view that the development does nonetheless accord with the majority of relevant policies set out in the Local Plan. In terms of character and appearance, the development of any greenfield land will inevitably lead to some negative effects in terms of character and appearance. The Policy is more concerned about a wider area than a specific site, although of course ‘area’ is not defined within the Policy. Mr Cook addresses the effects of development on the ‘area’ and concludes that the Appeal Scheme will have a negligible (adverse) impact on the landscape character¹² and visual receptors in the area¹³. Nevertheless, having regard to the specific wording of this Policy, I am of the view that it is breached by the Appeal Scheme, albeit that the extent of the breach is limited.

6.11 Policy SP17(4) requires that developments do not have a significant adverse impact on the setting of the AONB. This matter is subject of a difference of opinion between the landscape experts and the Inspector will have to come to his own view. If the Inspector agrees with the expert evidence of Mr Cook, then this policy is complied with. I note that the Council does not allege harm from any views from the AONB, only to it from one viewpoint.

6.12 As to Policy DM30, this Policy deals with detailed design matters (I address this further below when discussing weight). It is my view that this Policy is capable of being complied with during the reserved matter stage should permission be granted for the Appeal Scheme. The Inspector in the Northdown Business Park appeal addressed the applicability of this policy in terms of outline schemes (paragraph 22) and considers that this policy is not applicable.

6.13 In conclusion, I accept that the site is not allocated for employment in the Local Plan and is located in the countryside – to that extent it does not accord with the spatial strategy of the plan which allocates sites to meet the needs up to 2031. As such, there is no specific policy that supports the delivery of an employment site within the existing Local Plan. I also accept that as currently worded, there is a

¹² Paragraph 8.16 of Mr Cook’s PoE

¹³ Ibid paragraph 8.19

breach of Policy SP17(1). Therefore, I conclude that the Appeal Scheme would not accord with the provisions of the development plan when considered as a whole.

6.14 In order for the Appeal to be allowed, material considerations need to indicate that a decision not in accordance with the development plan can be supported, and I turn to these next. I will also address later in my evidence as to whether the most important policies are up to date, in light of the historic evidence base and the major changes in the nature of the economy that could not have been anticipated in developing the employment policies (such as Brexit, Covid etc).

National Planning Policy Framework (2023)

6.15 The NPPF is a significant material consideration in the determination of this Appeal.

6.16 Paragraph 81 sets out that *“Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development”*. The Appeal Scheme will inevitably support economic growth and therefore benefits from the clear NPPF advice that significant weight should be afforded to the delivery of the development.

6.17 Paragraph 82(d) sets out that planning policies should *“be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices (such as live-work accommodation), and to enable a rapid response to changes in economic circumstances”*. The blanket ban by the current Local Plan policies does not offer the flexibility required by the NPPF (which is one of the reasons why there are significant changes in the eLPR which propose greater flexibility in terms of employment locations). As set out in the evidence of Mr Saunders, there have been significant changes in the nature of need for storage and distributions needs, mainly due to the rapidly changing nature of consumption. The Local Plan has not addressed that need and has not delivered the required infrastructure within Maidstone Borough to meet that need. He also sets out that the eLPR does not provide the certainty that any such need would be met.

6.18 Paragraph 83 sets out that *“Planning policies and decisions should recognise and address the specific locational requirements of different sectors. This includes making provision for clusters or networks of knowledge and data-driven, creative or high technology industries; and for storage and distribution operations at a variety of scales and in suitably accessible locations”*. This key requirement of the NPPF is not met either through the Local Plan or the eLPR. There is no specific policy that ensures that there would be delivery of storage and distribution developments of a variety of scales would be provided. Indeed, as set out in the evidence of JLL no schemes of the size of the Appeal Scheme are proposed in Maidstone Borough. The neighbouring development of Woodcut Farm does provide some storage and distribution space, however, none of this is of the scale proposed by the Appeal Scheme. As such, the NPPF provides very strong support in favour of the grant of consent for the Appeal Scheme.

6.19 Furthermore, the NPPF requires such schemes to be in suitably accessible locations. This means very good access to the strategic road network. The Appeal

Scheme is located in an unrivalled position within Maidstone Borough with immediate access to the wider strategic road network. Other allocated or emerging allocations do not have such access and cannot be regarded as being in such an appropriate location with direct access onto the motorway network¹⁴. It is striking to note that similar developments have been allowed at other junctions along the M20. As such, granting consent for this scheme would accord with wider development that has already been permitted – plainly to meet the NPPF requirements.

6.20 In terms of landscape and visual effects, the NPPF sets out that valued landscapes should be protected and enhanced. Whilst the Council's decision notice sought to make a case that the Appeal Site is valued landscape, the Statement of Case confirmed the withdrawal of that allegation. Paragraph 174(b) notes that the intrinsic character and beauty of the countryside should be recognised. Mr Cook addresses the character of the Site in light of the significant development in the surrounding area. In weighing the overall planning balance, I fully recognise that intrinsic character and beauty of the countryside which is undoubtedly outweighed by other factors which I address below.

6.21 Paragraph 176 addresses development located within the setting of AONBs. It is agreed between the parties that the Appeal Site is located within such a setting. The NPPF requires that "*development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas*". The NPPF has two separate tests. The first relates to the location of development and its relationship with the AONB. It is my view that given the significant amount of development and the intervening features as well as the development of Woodcut Farm, that development on the Appeal Site would be located in suitable position having regard to the relationship with the AONB.

6.22 As to the second test, the NPPF does not require no adverse harm to be demonstrated, but that adverse impacts are minimised. This approach to minimising adverse impacts would occur though the design of the development. As the Inspector will be aware, the Appeal Scheme is outline in nature within only the access details being sought for full approval at this stage. The Appellant has provided indicative masterplans and landscape schemes, however, by their nature, they are indicative and subject of change. Should consent be granted for the Appeal Scheme, it is wholly within the Council's remit to consider these matters as part of the reserved matters and discharge of conditions. Indeed, this is exactly what the Council has done on the neighbouring site at Woodcut Farm where significant changes have been approved post the allocation and the grant of the original outline consent, including changes in height of buildings, orientation, size of buildings etc. This has led the neighbouring site to be very different in size, scale and ultimately design to the original intentions for the site. The Council has come to those conclusions having regard to the effects of the development on the setting of the AONB and has approved all applications (notwithstanding the AONB Unit objecting to every application). A similar approach here would be consistent with the

¹⁴ This is addressed by Mr Saunders who provides a comparison of the sites

approach of the Council to Woodcut Farm. Therefore, it is my view that the second test is capable of being complied with through the planning process, when the detailed scheme is considered.

6.23 I accept that the Inspector has material before him setting out heights and area of a scheme and that the Inspector needs to be confident that some form of development could be acceptable in terms of the effects on the setting of the KDNL. To my mind this gives sufficient comfort to the Inspector that a scheme could come forward that would seek to minimise the adverse impacts. Indeed, as the Inspector will be aware, the Appellant is seeking a condition limiting the overall height of the buildings.

6.24 As such, I consider that the NPPF supports the grant of consent for the Appeal Scheme.

Emerging Local Plan Review

6.25 I address the weight to be afforded to the eLPR below. I note that the Appeal Site is not proposed to be allocated in the eLPR. I also note that the current version of the eLPR (i.e. post Main Modifications) does not provide sufficient allocations to meet the overall need for employment space in the Borough. I also note the recent refusal of planning permission at Northdown Business Park¹⁵ at appeal, an emerging allocation for employment. This means that a further plank in the eLPR may not come forward, further damaging the overall delivery of critical logistics and warehousing floorspace.

6.26 In terms of the relevant policies, Policy LPRSP11(A) sets out that *“Elsewhere in the borough, outside of designated Economic Development Areas, permission will be granted for the expansion or intensification of existing industrial or business uses, recognising the specific locational requirements of different sectors”*. This emerging policy is significantly different to the existing employment policy in that it specifically allows employment development elsewhere in the Borough (including the countryside) subject to certain criteria. To my mind, there is a clear rationale to consider the Appeal Scheme as being an extension to the Woodcut Farm development. Whilst not being brought forward by the same developer, the Appeal Scheme would be seen as a logical extension of the existing business park, both on plan and on the ground. Importantly, the Policy specifically accepts that different uses will have specific locational requirements.

6.27 No development can be considered to have a specific locational requirement than larger-scale logistics and warehousing development, such as the Appeal Scheme. Its proximity to the wider strategic highway is a critical and essential part of the ability to deliver the quantum of such space across the country. This approach is fully supported by paragraph 83 of the NPPF.

6.28 Four criteria are identified in the emerging Policy:

¹⁵ Appendix D

Criteria	Assessment	Conclusion
<p>Cannot be suitably relocated to an allocated employment/mixed-use site or designated Economic Development Area, or to a suitable site/premises within the Urban Area, Rural Service Centres or Larger Villages, as per the settlement hierarchy;</p>	<p>The need and demand for larger-scale logistics and warehousing development cannot be accommodated in any of the existing or emerging allocations or designated employment areas. The proposal cannot be located in more urban areas due to the need to have excellent access to the strategic highway network.</p>	<p>No alternative locations exist in Maidstone that can accommodate this development in the current / medium term. Compliance with this criterion is secured.</p>
<p>Would be of a type and scale of activity that does not harm the character and appearance of the site and its surroundings nor harm the amenity of occupiers of nearby properties;</p>	<p>The type and scale of the development would be similar to that of the neighbouring development and reflect the wider infrastructure that is located in the area. No residents would be affected by the appeal scheme</p>	<p>Development of greenfield land would inevitably change the nature of the site, but the Appellant’s evidence is that the development would be seen in the context of the existing and emerging employment development and thus would be in character. Compliance with this criterion is met.</p>
<p>Would be readily accessible by public transport, and by bicycle and foot, wherever possible, or contribute towards provision of new sustainable transport infrastructure to serve the area, in order to make the development accessible by those modes</p>	<p>The Site has access to bus services as well as a choice of other transport modes. Contributions towards wider sustainability measures are secured through the S.106</p>	<p>Criterion is met</p>
<p>Have a layout, access, parking, landscaping and facilities that are</p>	<p>The appeal scheme would provide extensive landscaping to mitigate the effects of the</p>	<p>Criterion is met</p>

appropriate to the site and its surroundings	development on the surrounding area. The access and parking have been approved by the County Council.	
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6.29 Having reviewed the eLPR, and notwithstanding the weight to be afforded to this (in light of the continued objections to elements of the eLPR) I consider that the Plan provides support for extension of businesses and commercial premises in suitable locations. In addition, the eLPR follows the NPPF approach in recognising the locational importance of some developments, such as the ability of logistics and warehousing development to have good access to the wider strategic road network. This locational requirement cannot be met through the emerging allocations.

6.30 As such, the additional flexibility set out in the eLPR provides support for grant of consent for the Appeal Scheme.

Kent Downs AONB Unit

6.31 The Kent Downs AONB Unit has provided a response to the Inquiry¹⁶. Unfortunately, the response is not paginated and has no paragraph numbers, so it is hard to direct the Inspector to the exact point in their response which I seek to address.

6.32 I have already set out above, in the Section on planning history, the continued objection of the AONB Unit to the Woodcut Farm scheme and the continued approach of the Council to dismiss the Unit's concerns. I would urge the Inspector to have a similar approach here.

6.33 The AONB Unit does not agree with the Council and makes further points, especially in terms of views from the AONB towards the Site. However, no clear evidence is provided by the AONB Unit as to the impacts. Mr Cook addresses this in more detail in his evidence.

6.34 The AONB Unit sets out that *“Notwithstanding the presence of the motorway, A20 and two railway lines close to the application site, none of these features are prominent, lying on generally lower ground than the appeal site, and the view currently comprises a predominantly undeveloped, rural landscape. While we acknowledge that development at Woodcut Farm is partially visible in views from the AONB, this comprises smaller footprint and height buildings and the impacts of the development will be mitigated by establishing vegetative planting to a degree. The height and single large scale footprint of the proposed development by contrast, and location on a higher ridge of ground, would make the building much more prominent in views and largely incapable of being mitigated by landscaping”*. It is my view, and as shown on the photomontages provided by Mr Cook that it is clear that some infrastructure as well as Woodcut Farm are visible from the KDNL.

¹⁶ CD7.4

6.35 In terms of future design, the AONB Unit sets out that *“While muted coloured and non-reflective cladding and roof materials are also put forward as mitigation, the changing colours of the vegetation surrounding the site would make it difficult to camouflage the buildings within the landscape however. Furthermore, this is an outline planning application however with design reserved for future consideration. There can be no certainty that such materials would be carried through to the detailed design stage”*. Whilst it is correct that there is no certainty relating to materials, it is also correct to state that determination of materials is within the powers of the Council. Therefore, if consent is granted for the Appeal Scheme, full scrutiny of details will be undertaken in accordance with relevant policy and guidance.

6.36 The AONB Unit’s response concludes that *“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”*. I have already commented on the context of the Appeal Site which is clearly not largely rural. As set out by Mr Cook, the Appeal Scheme will be visible from the KDNL, however, this will be seen in the wider context of development and would not materially affect these views. As such, I agree that the views from the KDNL would be conserved in accordance with the requirements and guidance.

Conclusions

6.37 I have assessed the Appeal Scheme against the provisions of the development plan and material considerations. Whilst I consider the overall planning balance in Section eight, that assessment has to be taken in the context of the weight to be afforded to each of the relevant documents and policies and I turn to this next.

7. WEIGHT

Introduction

7.1 The matter of weight is important for the purpose of this Appeal for two principal reasons. Firstly, in relation to the Local Plan, paragraph 219 of the NPPF sets out that *“existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)”*. An assessment of the Local Plan policies needs to be carried out against the policies of the NPPF to consider whether they are up-to-date and whether reduced weight should be afforded to them (and potentially any conflict with them). If the most important policies for the determination of this Appeal are considered to be out-of-date, then the so-called ‘tilted balance’ in paragraph 11d of the NPPF would apply.

7.2 Secondly, in relation to the eLPR, paragraph 48 of the NPPF allows weight to be afforded to emerging plans subject to three criteria. In my mind, the eLPR has reached a stage where such an assessment is required (indeed, failing to do so would lead to a relevant material consideration not being taken into account which would be unlawful).

The Local Plan

7.3 As set out in the SoCG (CD7.3) the agreed most important policies are: SS1; SP17 and SP21.

7.4 Policy SS1 sets out the strategic direction for the Borough over the period 2011 to 2031. It generally accords with the policies of the NPPF. However, both the housing and employment figures are out-of-date. This is due to the fact that new evidence demonstrates that significant more development is required (which is why the Council is carrying out the review of the local plan). In terms of employment allocations, as set out above, a significant number of these have not come forward and are unlikely to deliver the minimum level of employment as set out in the Local Plan in the period up to 2031. Furthermore, the evidence base confirms the changing nature of employment (Mr Saunders elaborates further on this). As such, the Policy does not cater for the delivery of the up-to-date needs despite the fact that the plan period expires in 2031. Therefore, it is my view that only **moderate** weight should be afforded to it. In coming to my view, I note that the Council has set out that the emerging replacement policy provides a major update to the existing policy.

7.5 Policy SP17 relates to the countryside. It was adopted in the context of the 2012 version of the NPPF and reflects it (for example, paragraph 4.95 states that *“The countryside has an intrinsic character and beauty that should be conserved and protected for its own sake”*). The Policy does introduce some flexibility in terms of uses requiring a balanced view, however, the first bullet point sets out that *“Development proposals in the countryside will not be permitted unless...they will not result in harm to the character and appearance of the area”*. To my mind, this blanket restriction in terms of harm does not reflect the more nuanced approach in

the NPPF. Indeed, when considering development within the setting of AONBs, the NPPF (paragraph 176) accepts that adverse effects could occur. Overall, it is my view that only **limited** weight can be afforded to this Policy. Indeed, the Local Plan Inspector in his Stage 2 letter (paragraph 13) also grappled with this issue and required a change to the eLPR policy introducing a requirement to demonstrate significant harm.

7.6 Policy SP21 addresses economic development. It is a high-level policy that is not particularly relevant to the determination of application. Nevertheless, it does provide flexibility in terms of meeting economic need and accords with the NPPF. **Significant** weight can be afforded to this Policy.

7.7 As to Policy DM30 this effects the NPPF principles of good design and should be afforded **full** weight.

Emerging Local Plan Review

7.8 As set out, the eLPR has progressed and has recently been subject of Main Modifications ('MM'). The Appellant provided a response to the MM consultation [CD6.5]. As can be seen from these representations, the Appellant continues to have serious concerns about the employment provision in the eLPR. In particular, the Appellant noted that the Plan period has been extended, but no new allocations have been provided. In addition, the Appellant has concerns about the allocations, especially those in the new communities as well as the lack of specific allocations to meet larger-scale B8 uses in suitable locations. I accept that the Local Plan Inspector considers that the evidence base for the quantum of employment is sound. However, this does not address the immediate need and demand identified by the Appellant. Indeed, one only has to look as to the effectiveness of the 2017 Local Plan (now over six years old) and the lack of delivery of sites leading to a significant supply shortfall (addressed by JLL in their Report).

7.9 As such, in terms of the overall employment strategy set out in the eLPR, it is my view that only **limited** weight can be afforded to this element of the Plan.

7.10 I note in terms of the overall requirements, the MM set out that a minimum of 48,940 sqm needs to be provided in the period between 2021 and 2038. This is an increase of 7,950 sqm over the submission version of the Plan, however, no new allocations are proposed in the eLPR to address this additional requirement. Whilst the Appeal Scheme would exceed this, I recall that this is a minimum figure. Therefore, the Appeal Scheme could assist in meeting's the plan approach and would not breach the overall spatial strategy which continues to support employment development at Junction eight of the M20.

7.11 In terms of the most important policies, these are to be replaced in the eLPR. I have addressed the emerging policy on development in the countryside (LRPSP9). With the MM required by the Inspector, this Policy reflects the guidance in the NPPF and is unlikely to be subject to any significant objection. As such, **significant** weight should be afforded to the policy.

7.12 Policy LPRSP11 seeks to replace Policy SP21 and other policies including DM37 (although both emerging policies LPRSP11(A) and LPRCD6 appear to address employment development in the countryside). Emerging Policy LPRSP11A allows development outside of the Economic Development Areas. I address whether DM37 and its proposed replacement LPRCD6 are applicable to the Appeal Scheme in light of the Council's decisions elsewhere, however, to my mind emerging Policy LPRSP11A affords greater flexibility in terms of location of development. Should this policy be applicable to the Appeal Scheme, I afford it **moderate** weight.

7.13 In coming to a view as to the weight to be afforded to the policies of the eLPR, I have had regard to the views of Inspector Wyborn in the Northdown Business Park appeal¹⁷.

7.14 I do want to provide further commentary on the eLPR and my view as to its soundness. Wates' representation to the Main Modifications (CD6.5) raised serious soundness concerns about the approach to employment provision in the eLPR. The plain fact is that the eLPR does not meet the development needs for Maidstone (NPPF paragraph 11(a)) nor the minimum objectively assessed needs for logistics and warehousing floorspace (NPPF paragraph 11(b) and paragraph 35(a)).

7.15 We have consistently set out that the eLPR is unsound. To my mind, it is inevitable that the LP Inspector will require additional employment allocations to be identified now in order for the eLPR to be found sound. Failure to comply with this approach is likely to lead to an unsound plan which would be unlikely to stand up to legal scrutiny.

Most important policies

7.16 The purpose of identifying most important policies is due to the potential applicability of paragraph 11d of the NPPF and the tilted balance. Case law has concluded that there is a need to consider the 'basket' of policies, i.e. the fact that one policy is out-of-date, may not mean that paragraph 11d is automatically applicable.

7.17 In this case, I have reduced the weight afforded to two of the most important policies (SS1 and SP17) whilst significant weight can be afforded to the remaining most important Policy (SP21).

7.18 In coming to my view to whether the basket of most important policies is up to date, I have had regard to the view of Inspector Pipkin in Ashford Road, Harrietsham¹⁸ appeal albeit recognise that her assessment related to a housing scheme. I refer especially to paragraph 75 of the appeal decision where reference is made to the continued success of the spatial strategy in terms of housing delivery. However, the context of this Appeal is whether the existing development plan can accommodate the specific employment needs and, specifically, larger-scale B8 uses.

7.19 The context of the Appeal is very different. The evidence base of the Local Plan employment allocations is seriously out of date, with the majority of it from 2014. It

¹⁷ APP/U2235/W/22/3302571 and APP/U2235/W/23/3323246

¹⁸ APP/U2235/W/22/3305441 and Appendix E

could not anticipate major changes that have materially affected employment need and demand such as Brexit and Covid19. It did not, and could not have, anticipated the major changes that have occurred especially in the logistics and warehousing sectors. The Local Plan 2017 simply does not address the need and demand in these sectors and the inflexibility of the policies cannot cater for such changes. As such, the spatial strategy set out is out-of-date in relation to employment provision. As set out in the evidence of my colleagues (and different to the housing land supply position), employment needs are not being met by the existing development plan.

7.20 On that basis, I do conclude that the overall basket of most important policies is out-of-date. The presumption in paragraph 11d of the NPPF applies to the determination in that significant and demonstrable harm has to be identified in order to outweigh the numerous and significant benefits that I identify in the next Section.

8. THE BENEFITS

Introduction

8.1 Any assessment of the Appeal Scheme has to have regard to the benefits that would clearly emerge from the grant of consent. These are not generic benefits and would only be secured should consent be granted.

8.2 In coming to a view as the benefits that would be secured, I rely on the evidence of my colleagues. The matter of weight in the overall planning balance is my judgement.

8.3 In coming to my view, I have regard to the three components of sustainable development as outlined in the NPPF: economic; social; and environmental.

8.4 When considering the benefits (and the harms) associated with the Appeal Scheme, I have used the following terms to signify the weight to be afforded to each element:

Weight
Substantial
Significant
Moderate
Limited
Negligible
None

Economic Benefits

8.5 There are no doubts that the Appeal Scheme would lead to economic benefit. This would comprise three different elements. The first of these would be the constructions benefits in terms of employment and spend in the local area. The second of these would be the longer-term local employment benefits. Whilst the third of the benefits would be a wider regional benefit.

8.6 I address each in turn.

8.7 In terms of construction benefits, the development value is estimated at £4.7m Gross Value Added. This includes construction workers, local spend and supply chain.

8.8 Overall, it is my view that these economic benefits would be **significant**.

8.9 The proposed development would deliver 110-130 full time jobs and is expected to generate 30 indirect jobs locally and 50 jobs in the wider area (e.g. supply chain positions). The Council's economic development team agree with this assessment and consider that this is a benefit¹⁹.

8.10 The NPPF (paragraph 81) sets out that "*Significant weight should be placed on the need to support economic growth and productivity, taking into account both local*

¹⁹ CD2.4

business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future. This is particularly important where Britain can be a global leader in driving innovation, and in areas with high levels of productivity, which should be able to capitalise on their performance and potential”.

8.9 The identified need for logistics and warehousing development now is not being met. Neither will these needs be met any time in the near future, with the proposals for allocations in the eLPR only rolling over allocations in the 2017 version that have not delivered. It is clear that through an economic cycle, these sites are not attractive for the type of development being proposed.

8.10 The evidence by Mr Saunders and JLL addresses the attractiveness of this location and significant under-delivery of such units. This is supported by the Council’s economic development team who state that *“The Borough remains attractive for inward investment enquiries but is hampered to a certain extent by the supply of available modern fit for purpose commercial units and employment sites close to strategic transport networks”*. They also identify that *“Such developments can provide wider positive economic and environmental impacts such as new supply chains, and cuts to pollution and congestion”*.

8.11 Whilst I address the wider environmental benefits below, it is clear in my mind that granting consent for the Appeal Scheme would have **substantial** longer-term economic benefits.

8.12 Paragraph 8 of the NPPF states that economic benefits are *“to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity”*. To my mind, this is exactly what the Appeal Scheme does. Indeed, I am very surprised that the Council seeks to object to a deliverable development that provides so many substantial benefits, given the comparatively limited adverse land use impacts that would arise.

Environmental benefits

8.13 The development of a greenfield site would inevitably lead to change. As to whether this change is acceptable in terms of the character and appearance of the site and the wider area is a matter that the Inspector will come to a view in light of the evidence of the relevant experts.

8.14 In terms of tangible environmental benefits, it is of course important to not double count elements that are mitigation, for example the landscaping proposed as part of scheme (I note that Mr Cook considers that the landscaping could have beneficial effects— see paragraph 3.26 of his PoE).

8.15 However, granting consent will have the following benefits.

8.16 The Appeal Scheme will deliver at least 10% BNG on a site owned by the one of the applicants and in close vicinity of the site. The Environment Act 2021 requirements for a minimum 10% BNG does not apply to the Appeal Scheme. Neither is there an adopted planning policy that requires such a level to be provided.

The delivery of the BNG would be secured through the s.106. The provision of BNG above the minimum requirement is a benefit that should be accorded **moderate** weight in the overall planning balance.

8.17 The second benefit relates to the point made by the economic team and relates to the sustainability of the site and the reduction of carbon emissions. As noted, no facilities such as the one proposed exist or are planning in Maidstone. As such, there would be a need to travel further beyond Maidstone (if coming from the continent) which would increase travel and congestion. The co-location of the scheme with the neighbouring Woodcut Farm, with improved bus facilities and HGV parking and rapid charging, as well as the facilities on site including cycle parking and EV charging, would all have environmental benefits. To my mind the package of these benefits should be afforded **moderate** weight.

8.18 The Appellant has committed that the Appeal Scheme would meet BREAAAM Excellent standards. The current Local Plan requirement (and Woodcut Farm) are for schemes to meet only very good. The BRE states that *“The BREEAM New construction standards provide a framework to deliver high performing, and sustainable, newly built assets that support commercial success, whilst also creating positive environmental and social impact. Each standard uses a common framework that is adaptable to the asset’s location, allowing for international consistency and comparability”*.

8.19 The delivery of a high-quality, highly sustainable scheme that is certified by an independent third party will ensure that the overall impacts of the building will be minimised. The promotion of this is a further benefit of the scheme (and would be secured via condition). I afford this benefit **moderate** weight.

Conclusions

8.20 I have considered the numerous benefits that would be secured should consent be granted for the Appeal Scheme. For ease of reference, I provide this as a summary in the below table:

Benefit	Weight
Construction benefits	Significant
Long-term economic benefits	Substantial
Biodiversity net gain	Moderate
Sustainability benefits	Moderate
BREEAM	Moderate

8.21 Having reviewed the above benefits, it is my view that cumulatively the benefits should be afforded **significant** weight in the overall planning balance.

8.22 Against these benefits, the harms need to be identified and I turn to these and the overall planning balance next.

9. THE PLANNING BALANCE

Introduction

9.1 In this Section of my Proof of Evidence, I address the planning balance. In coming to my view, I have regard to the provisions of S38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) in that the planning decision should be made in accordance with the provisions of the development plan unless material considerations indicate otherwise.

9.2 It is agreed between the two parties that the most important policies are: SS1; SP17 and DM21. The Council argues that Policy DM30 is also the most important policy, but this is not an agreed position (given that it principally addresses matters of design that would be subject of reserved matters).

The Harm

9.3 The Council had initially set out several adverse effects that weigh against the grant of consent. In terms of BNG, this now is not contended by the Council and is, to my mind, a benefit rather than a harm.

9.4 The Council also, when making its decision, considered that there would be harm to valued landscapes. This allegation has now been removed. However, this is neutral in the overall balance.

9.5 In terms of mineral extraction, the Site does appear as safeguarded land for mineral extraction. However, evidence provided by the Appellant demonstrates that it is not economically viable to extract the minerals. As such, the Appeal Scheme complies with policy. This matter is also neutral in the overall balance.

9.6 The Site is agricultural land. There is no detailed assessment, however the land grade is likely to lie between 2 and 3b. As such, there is likely to be some loss of Best and Most Versatile Agricultural ('BMV'). Paragraph 174b of the NPPF sets out that BMV's economic role should be recognised. The land parcel associated with the Appeal Scheme is relatively small and would not have a significant wider impact on agricultural land through its loss. Nevertheless, the loss of some BMV is an adverse impact which should be afforded **limited** weight in the overall balance.

9.7 As to the non-compliance with the overall spatial strategy, whilst I accept that the Site is notionally 'countryside' it is also at Junction eight of the M20 where the spatial strategy advocated significant employment development to take place. I have had regard to the evidence of my colleagues on need and demand for the development as well as the existing and emerging local plans and the fact that none of these provide for the type of development that the appeal scheme provides. I also note that the emerging local plan is predicated on release of greenfield land and that there is no contention from the Council that it can meet its development needs on brownfield land. All of the above lead me to come to a view that the breach of the spatial strategy is more of a 'technical' breach, rather than one that undermines the overall strategy. As such, I consider that any harm to the overall spatial strategy should be afforded **limited** weight.

9.8 In terms of the landscape and visual effects, there are three matters to address. The first relates to the countryside and the Site and local effects. The second is the effects on the setting of the KDNL (articulated by the Council) and the third the effects on the KDNL itself (articulated by the AONB Unit). In coming to my view, I rely on the evidence of Mr Cook and I adopt his conclusions on the effects.

9.9 The evidence of Mr Cook is that the Council has exaggerated the harmful effects of the Appeal Scheme both on the countryside location and its landscape character as well as the setting of the KDNL. He notes that the Council has now changed its view on the Appeal Site being valued landscape and that this, inevitably, tilts the balance in favour of the Appellant. Whilst he accepts that there will be some harm, he notes that this is inevitable when greenfield development takes place. I note that it is clear that the only way the Council will meet the requirements is through development of greenfield land, and indeed, through sites where harm to the setting of the AONB is accepted. Therefore, the Appeal Scheme is not out of kilter with the approach of the Council on other sites.

9.10 As such, there is acceptance that there is some harm to the surrounding area. However, as set out this has to be considered in the context of the Site, the surrounding development and the mitigation proposed. Mr Cook concludes that the harm to the character of the Site would be moderate whilst there would be limited and highly localised visual adverse effects²⁰. For the purpose of my assessment, I conclude that the level of harm is not significant, but I consider that it is of **moderate** level.

9.11 As to the impacts on the setting of the KDNL, the Council considers that the main impact on this would be on the view from Old Mill Lane towards the escarpment of the KDNL. Mr Cook explains that any change to this view has to be taken in its context, which is of a very poorly used public right of way and the existing view which already includes significant buildings and infrastructure within it. Mr Cook explains the context of the Site and the rationale for the development including the proposed height which would be located below the highest point of the street lighting as well as not being higher than the maximum height assessed for the neighbouring site at Woodcut Farm.

9.12 Mr Cook concludes that the effects are **negligible**.

9.13 Finally, as to the view of the AONB Unit, Mr Cook's view is that the Appeal Scheme would have a **negligible** effect and that overall, the views from the KDNL would be conserved in accordance with the requirements and the recent legislation.

The Balance

9.14 It is my view that the Appeal Scheme is contrary to the provisions of the development plan when considered as a whole. However, it is also my view that reduced weight should be afforded to this conflict due to the more limited weight afforded to such policies.

²⁰ Paragraph 8.12 of Mr Cook's PoE

9.15 Section 38(6) requires decisions to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. In this case, it is my view that significant material considerations do exist to make a decision not in accordance with the development plan.

9.16 As such, I conclude that planning permission should be granted subject to appropriate and proportionate conditions and the agreed s.106 obligation.

9.17 In coming to this view, I have weighed up the following benefits and adverse effects. In my view, it is clear that the numerous and significant benefits more than outweigh the limited adverse effects:

Matter	Benefit / harm	Weight
Short-term / construction impacts	Benefit	Significant
Long-term economic impacts	Benefit	Substantial
BNG	Benefit	Moderate
Sustainability	Benefit	Moderate
BREEAM	Benefit	Moderate
Minerals	Neutral	N/A
BMV	Harm	Limited
Spatial Strategy	Harm	Limited
Landscape character	Harm	Moderate
Setting of KDNL	Harm	Negligible
KDNL	Harm	Negligible

9.18 I have set out that in my opinion the tilted balance applies to the determination of this Appeal. I do not rely on the operation of this to justify the scheme, but if the Inspector agrees with me on the application of the tilted balance, then even greater support would be afforded to the grant of consent.

Conclusions

9.19 I have set out a clear approach to determination of this Appeal.

9.20 I consider that the proposal does not accord with the provisions of the development plan when considered as a whole.

9.21 I consider that there are significant material considerations that indicate that a decision not in accordance with the development plan can be supported. These material considerations include (inter alia): the reduced weight afforded to the conflict with the development plan policies; the support of the NPPF; and the lack of sufficient allocations in the eLPR to meet the need and demand.

9.22 I conclude that the Appeal should be allowed when undertaking the S38(6) assessment.

9.23 However, I also set out that the tilted balance applies to the determination of the Appeal in that significant and demonstrable harm needs to be identified to outweigh the benefits. I consider that the benefits are numerous and significant so that the level of harm has to be exceptional. I do not consider that such a level of harm can be demonstrated.

10. SUMMARY AND CONCLUSIONS

10.1 The Appeal Scheme would provide numerous and significant benefits. Whilst not allocated in the current Local Plan, the Site is located at Junction 8 of the M20, a location specifically set out in the Local Plan as being suitable for employment development.

10.2 The Site is very well located to provide a B8 use that would serve Maidstone and the wider area. Indeed, junctions along the M20 provide this type of development, and granting consent for this development would be in keeping with other developments along this corridor. Indeed, the Council allocated and granted consent for employment development immediately adjacent to the Appeal Site. As such, it is my view that the Site is ideally located.

10.3 In terms of need, the evidence of Mr Saunders and JLL is that the current Local Plan does not meet identified need for larger-scale B8 development, something that has arisen since the advent of Covid and changing patterns of consumption. It is also my view, that whilst the emerging Local Plan's employment figures have been accepted by the Local Plan Inspector, there are no specific allocations for larger-scale B8 developments in locations such as the Appeal Site. In addition, a significant amount of the proposed employment space is linked to the garden communities which will not come on-line for some time. Mr Saunders considers that there is identified specific need for well-connected, larger scale B8 development. I note that the eLPR has not specifically addressed this matter to date.

10.4 As to the demand for such development, the evidence from JLL is that there is clear demand for such units, with other units in the wider area being occupied swiftly and no such units being proposed in Maidstone Borough. The lack of larger scale units will lead to employment opportunities leaking from Maidstone and would create unsustainable patterns of employment with further out-commuting, something which the existing Local Plan sought to reverse. This is addressed in the JLL Report.

10.5 As such, I consider that specific need and demand for larger-scale B8 development in Maidstone Borough has been identified and that there is no better site than the Appeal Site to accommodate this development.

10.6 In terms of adverse effects, I do not consider that the impact of development on greenfield land or countryside is a well-made case. The Council accepts that it cannot accommodate all its needs on brownfield land, and the emerging Local Plan as well as the existing Local Plan all significantly rely on greenfield land to accommodate development.

10.7 As to the harm to the surrounding area, this has to be taken in the context of the Site including the development of Woodcut Farm, the highway network and wider development in the area. Of course, there will be some localised harm, however, this is limited in scale and, to my mind, would not outweigh the significant and numerous benefits.

10.8 Finally as to the effects on the setting of the KDNL, again, this have to be taken in the context of the surrounding development which is located between the Appeal Site and the KDNL itself. Whilst the AONB Unit make an allegation as to the effects on views from the KDNL, this is not supported by the Council or any sound evidence. The continued intransient view of the AONB Unit in light of other decisions materially affects the weight that can be afforded to their conclusions. The Council considers that harm is identified to the setting of the KDNL. As Mr Cook sets out, this harm is limited in scope and scale. No allegation of valued landscape is made by the Council (indeed, this allegation was withdrawn by the Council following the decision being issued).

10.9 I accept that the Site is not allocated in the current Local Plan nor in the emerging Local Plan however the evidence that larger scale B8 units are not catered for in either plan is compelling and granting consent for this Scheme would address this major deficiency.

10.10 If the Inspector accepts the view of Mr Cook in relation to landscape character and visual effects as well as the effects on the setting of the KDNL, then in terms of compliance with the current Local Plan, the main complaint of the Council is the location of the development in the 'countryside'. I accept that there is no current countryside policy that allows an exemption for such development (albeit, the Council has allowed expansion of the neighbouring site into the countryside under Policy DM37 and a case could be made that this Policy is applicable here as well).

10.11 If the Inspector does come to that view, then it is my view that accordance with the development plan as a whole cannot be achieved. As such, the Inspector would have to consider whether material considerations indicate that a decision other than in accordance with the development plan can be sustained. In my view there are strong material considerations to support such a decision.

10.12 Firstly, the existing development plan countryside policy does not accord with the NPPF as it was set in the context of the 2012 version which sought to protect the countryside for its own sake, whilst current policy only seeks to recognise the intrinsic character and beauty of the countryside. Secondly, the emerging Local Plan Review amends the countryside policy and employment policies to allow development such as the Appeal Scheme. Whilst full weight cannot be afforded to the emerging policies, they are material considerations of some weight. Finally, the Council's continued support and reliance on greenfield land reduces the weight to this argument.

10.13 When considering the overall planning balance, the significant and numerous benefits would outweigh the more limited harm, including the non-accordance with the development plan. This is further the case should the Inspector agree with my view that the tilted balance applies to the determination.

10.13 As such, I conclude that planning permission should be granted subject to appropriate conditions and obligations.