

PINS REFERENCE: APP/U2235/W/23/3329481

LPA REFERENCE: 23/500899/OUT

APPEAL BY WATES DEVELOPMENTS LTD

**LAND NORTH OF THE A20, ASHFORD ROAD,
HOLLINGBOURNE, KENT, ME17 1XH**

OPENING SUBMISSIONS ON BEHALF OF THE APPELLANT

Introduction

1. This appeal is made by Wates Developments Ltd (“the Appellant”) against Maidstone Borough Council’s (“the Council”) decision, as local planning authority, to refuse planning permission for: *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).*
2. The appeal site is sandwiched between infrastructure and development. It lies adjacent to the A20 (Ashford Road) which immediately connects with junction 8 of the M20, which is on a notable embankment to the east of the site. Moreover, the appeal site is also located immediately adjacent to the large scale employment development which is well underway at Woodcut Farm (known as Loc8 in the adopted plan).
3. The Maidstone Borough Local Plan 2017 (“LP”) and emerging Local Plan Review (“eLPR”) includes the provision of sites for employment use. LP Policy SS1 provides through permission and allocations for 49,911m² of warehousing use. The four main employment allocations, which covers B1 (now Class E), B2 and B8 (*i.e.* they are not separated into the various uses) are set out in Policy EMP1. The eLPR Policy LPRSP11(B) seeks to create new employment opportunities, identifying five sites that *may* deliver B8 development, but which are similarly not broken down into various uses. The eLPR also sets out an increased minimum warehousing floorspace of 48,940m², an increase of a minimum of 7,950m².

4. The context for this appeal is that neither the LP, nor the eLPR, is able to meet the identified short term need for larger-scale B8 development. The eLPR has thus far failed to properly assess both the quantitative and qualitative need for such development and the plan led approach is currently deficient.
5. Further detail regarding the proposed development, site, supporting documents, relevant policy and points agreed/ in dispute are set out in a detailed agreed SoCG. A specific Economic Needs SoCG sets out the position in more detail.

Identification of benefits/ harms

6. The view of Government could not be clearer – the policy imperative is to make sufficient provision for employment and other commercial development. National policy emphasises 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 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”*.¹
7. The role of the planning system to facilitate a vibrant development industry could not be more important as the nation faces ongoing economic uncertainty. Far from being immune from that national picture the need for large scale logistics and warehousing development in this area typifies the failure to properly plan and facilitate the delivery of an urgent and increasing need. The current local plan was prepared at a time when the economic fundamentals of the country (including the need for B8 development) were very different, and the emerging local plan is the subject of robust objection that this economically crucial nettle just hasn't been grasped.
8. Whilst the Inspector examining the local plan hasn't 'flagged' a need for additional logistics sites to be an issue thus far – the Council can take no comfort from that and it is of little or no forensic utility in this case². Anything a local plan examiner says up to the point of her/his final letter is without prejudice to her/his final conclusions. The Appellant's representations as to the

¹ NPPF, paragraph 85

² Thus far the eLPR Inspector has been entirely silent on the LPA's site portfolio - he has only commented on the need projections and considers the projections won't constrain the economic growth, but hasn't said anything as to whether the allocated sites do/don't meet those needs.

need to address this immediate and clear need³ and the appropriateness of this site to meet those needs has been extensively canvassed as a soundness issue for the eLP. Whether the Inspector agrees with those representations is just not known at the moment and it is only with rose tinted spectacles that the LPA can seek to draw a positive from what is in reality no more than an undetermined issue.

9. Central to the Appellant's case is that the appeal proposal would make a significant and important contribution towards the identified and immediate need for logistics and warehousing developments in this area. This need will not be met any time in the near future, with the proposed allocations in the eLPR only rolling over allocations in the 2017 version that have not yet delivered as well as promoting employment as part of the garden village allocations which won't become available until the back end of the plan period.. The site is an obvious and a sustainable location for further economic development and is ready to be delivered now in what the eLPR evidence base identifies as the prime location for such activity. Indeed it is so obvious that the Inspector might wonder why on earth this site wasn't allocated as part of Loc8 years ago, and why the Council aren't embracing its development now – a fact underlined by the response of its own economic development team⁴.

10. This is a scheme with significant benefits in its favour:
 - a. Meeting an immediate need for additional large scale logistic development at this key location on the M20 corridor.

 - b. Long-term economic benefits including the delivery of 110-130 full time jobs⁵, 30 indirect jobs locals and 50 jobs in the wider area (substantial weight).

 - c. A contribution to the local economy of £4.7m in Gross Value Added per annum which includes direct productivity of end user businesses, local spend and supply chain (significant weight).

³ To take an obvious example – the plan period is to be extended but no additional employment allocations have yet been made. The eLPR is patently still in its formative stage.

⁴ CD2.4 *“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.”*

⁵ ED Consultee Response (CD2.4):

“These jobs could provide higher value activity than average warehousing positions with technical and office positions available as technology in the logistics sector progresses.”

- d. The provision of a significant area of land on a site owned by the Appellant close to the site to produce at least a 10% biodiversity net gain (moderate weight).
 - e. The provision of improved bus facilities, HGV parking, EV (including rapid) charging and cycle parking (moderate weight).
 - f. The delivery of a high-quality, highly sustainable scheme where the Appellant has committed that the scheme will meet BREAM Excellent standards⁶ which will result in the minimisation of overall impacts of the building (moderate weight).
11. The Appellant accepts that there would be some conflict with the overall spatial strategy since the site is not allocated for employment in the LP and is part of the countryside in policy terms. However, the site is also at junction 8 of the M20 where the spatial strategy of the adopted plan already advocated significant employment development to take place,⁷ and is a site which is surrounded by roads, embankments and development.
12. In any event, the most relevant policies, SS1, SP17 and SP21, are out of date. That much is clear when the eLPR is replacing those policies and is itself predicated on the release of greenfield land.⁸ There is no suggestion the Council can meet its development needs on brownfield land. The development plan is failing to meet employment need and has not worked as intended.
13. Unfortunately, that deficiency is not going to be resolved by the eLPR. The plain fact is that the eLPR does not meet the development needs for Maidstone nor the minimum objectively assessed needs for logistics and warehousing floorspace. The evidence base for the quantum of employment does not address the immediate need and demand identified by the Appellant. The Appellant's case before the LP Inspector is that there will be a requirement for 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.

Reasons for refusal

⁶ The LP requirement (and Woodcut Farm) is for schemes to meet only Very Good standards, not Excellent.

⁷ Objective 2 states: "To focus new development: i. Principally within Maidstone urban area and at the strategic development locations at the edge of town, and at junctions 7 and 8 of the M20 motorway".

⁸ The LP Inspector's second letter set out, in respect of eLPR Policy LRPSP9, 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 (CD6.7 at 13).

14. The Council originally refused planning permission for three reasons. Reason for refusal (“RfR”) 3, which related to biodiversity net gain, is no longer being defended by the Council.⁹
15. The remaining issues arise out of RfR 1 and 2 and are neatly encapsulated in the Inspector’s Post Conference Note:
 - a. whether the proposal accords with local and national policy when regard is paid to the location of economic development (RfR1); and,
 - b. effects on the character and appearance of the area, when regard is paid to local landscape impact and impact on the setting of the Kent Down Area of Outstanding Natural Beauty (RfR2).
16. A brief outline of the Appellant’s position in respect of each of these issues, where not already addressed above, is as follows.
 - a. Need and Demand
17. Mr Saunders’ evidence explains that neither the adopted nor emerging local plans make sufficient provision for distribution businesses when considered in light of the market demand, sector space requirements and land supply. In particular, Mr Saunders’ evidence indicates that irrespective of the immediate post-COVID ‘correction’ in employment levels inconsistently applied in the Employment Land Needs Study Addendum¹⁰ which formed the basis for the eLPR figures, the Avison Young employment land needs model¹¹, which has been used and found sound at other local plan examinations, identifies a demonstrable ongoing need for new B8 space within Maidstone which is in excess of that in both the adopted and emerging local plans. This need is reflected by market demand, including the early demand and strong leasing activity for similar units at Panattoni Park Aylesford; Crossways Commercial Park Dartford; Loc8 Maidstone; and, Click at Aylesford. The Kent Property Market Report¹², published only recently on 7th November 2023, further challenges the position taken in the eLPR, given the increasingly strong market context within Maidstone. Both Locate in Kent and the JLL report

⁹ SoCG at 5.16

¹⁰ CD6.9

¹¹ CD1.6

¹² CD5.3

confirm that this is reflected by 'live' requirements in the market *now* which are not able to fit suitable sites and premises in the borough, where they want to locate¹³.

18. The qualitative requirements of businesses are also vitally important, indeed, it was for this reason that Woodcut Farm was allocated – to address a qualitative deficiency despite existing sites providing a sufficient quantum of development capacity. No such evidence base was considered in the eLPR, which seems to have focussed only upon quantitative considerations. Mr Saunders' analysis of the eLPR portfolio of sites shows that although *theoretically* in quantum terms there is capacity (in practice it is likely that the quantum of space will not however be available), the sites identified are not capable of providing the form and scale of space or accessibility that businesses in the sector require. The appeal site, however, is able to offer all the positive attributes needed to meet market demands and attract distribution businesses, provide a form of space that is not achievable elsewhere and deliver in a timeframe that other sites cannot meet.

b. Character and Appearance

19. The appeal site does not constitute a "valued landscape" with reference to paragraph 180(a) of the NPPF,¹⁴ to that extent it is to be viewed as part of the 'ordinary' countryside. It contains no landscape features of note and is not considered to be of any particular ecological value. The site comprises an open field which is presently in agricultural use. In planning terms, the site is simply ordinary and unremarkable countryside.
20. Mr Cook's evidence demonstrates that although the proposed development will have some limited and localised landscape and visual effects, these will not result in an unacceptable level of harm to the local or wider landscape character or appearance area. Mitigation will further reduce effects. Yes the site will be visible – but context is everything – and the change will be evident in the context of a site which is circumscribed by infrastructure and development and which is capable of mitigation whether viewed from the north or the south.
21. The appeal proposal provides landscape and visual mitigation and local enhancement including by retaining and enhancing existing hedgerows and trees; providing a landscape tree belt along the southern boundary of the site; providing new naturalistic landscape areas; providing new

¹³ A point further underscored by the letter of support from LOC8 Kent's inward investment agency (appended to AY's Proof) which recognises that "*demand for this size of industrial property in Maidstone is significant and supply in the borough isn't meeting demand*"

¹⁴ SoCG at 5.11 – This is a point only recently accepted by the Council through its SOC.

tree planting and hedgerows; providing amenity planting associated with parking bays; and providing a landscape corridor fronting the A20 (Ashford Road). Such landscaping would comprise native trees and shrubs which would reinforce the site's strong landscape framework and would provide green infrastructure for the benefit of the wider landscape¹⁵ and therefore wider community.

22. Mr Cook's evidence identifies that landscape effects are to be read in the context of the site's character which is heavily influenced by the neighbouring urban development of Woodcut Farm. The proposed development would introduce elements found adjacent to the site, which would result in a loss of some open character at site level, but which would not change the nature of the context in which it sits. Indeed, the AONB Unit's representations have to be considered in this light. It has objected to *all* applications at Woodcut Farm, including the applications for reserved matters on the allocated site. The Council in all cases has noted these objections but has not agreed. The apparent *in principle* blanket approach taken by the AONB Unit to *all* development in this location, irrespective of the changing baseline, is utterly confused, and appears to disregard the Loc8 allocation.
23. Mr Cook's evidence identifies that that visual effects are highly localised as the geographical extent of noticeable change will be very limited. The LVIA demonstrates that the site has a limited visual envelope. The development would be generally framed and screened by built form including Woodcut Farm, together with the topography, existing tree cover and hedges in the area. Where it is observed, it would generally be seen in the context of the adjacent industrial development of Woodcut Farm. There are limited distant views of the appeal site from the AONB, and overall there will be a limited extent of receptors affected, but the change will be such that one would have to be actively looking for it rather than it being obvious (*i.e.* Loc 8 will look a little bit bigger as a tiny feature in a panoramic view) – little wonder that the Council's RfR relates to views towards but not from the AONB. Accordingly, Mr Cook's evidence demonstrates that where the site is seen at all (*i.e.* from very limited points along Old Mill Lane, and from the barely used public footpath from nowhere to nowhere) whilst the site is located within the setting of the AONB that the character of that setting is conserved as a result of the design parameters, indicative design and proposed mitigation.
24. The development would not materially impact views from the KDNL and would conserve the setting of the KDNL as a result of the context in which the development viewed from Old Mill

¹⁵ Including the proposed hedgerow restoration proposed south of the A20 which will have the additional benefit of mitigating views of Woodcut Farm once it matures.

Lane would sit within. Mr Cook's evidence demonstrates that all reasonable opportunities have been sought to enhance landscape character and visual amenity through effective mitigation. The limited and localised harm that will arise would arise with any greenfield development. Indeed, much of this is accepted by Mr Radmall and the differences that remain are those of judgement, in particular in relation to the impact on the setting of the AONB. The resolution of that will primarily be for the site visit.

Conclusion

25. In conclusion, the Council cannot demonstrate a sufficient quantitative nor qualitative provision of B8 space in light of the need and demand in this part of the M20 corridor. There is significant need *now* and no sensible plan to address the shortfall given the deficiencies in both the adopted and eLPR. In favour of the appeal are numerous economic and environmental benefits. The appeal benefits are substantial whether or not the tilted balance is engaged. They are forceful material considerations which clearly outweigh the limited conflict with the development plan.
26. As Mr Ross explains, although there would be a conflict with the development plan the most important policies are out of date and the proposals would still be in general accordance (*i.e.* only 'technical' conflict) with the adopted spatial strategy. Mr Saunders demonstrates that the development would be able to deliver both quantitative and qualitative features required in Maidstone which cannot be delivered elsewhere. As Mr Cook demonstrates the effects upon the landscape are highly localised.
27. The balance, tilted or not, is overwhelmingly in favour of granting consent for this sustainable scheme; and it is firmly submitted that this should be the outcome of this appeal.

Paul G Tucker KC

Shemuel Sheikh

KINGS CHAMBERS

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8th January 2024

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COUNSEL:

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INSTRUCTED BY:

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WITNESSES:

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Need and Demand: Martyn Saunders MIED – Principal, Avison Young (UK) Ltd