



Department for
Communities and
Local Government

Mr Andrew Wilford
Barton Willmore
The Observatory
Southfleet Road
Swanscombe
Kent
DA10 0DF

Our Ref: APP/U2235/A/14/2226326
and
APP/H2265/A/14/2226327

19 October 2015

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 78
APPEALS BY CROUDACE STRATEGIC LTD
LAND EAST OF HERMITAGE LANE, MAIDSTONE, KENT
APPLICATION REFS: 13/1749 & TM/13/03147/OA**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, P W Clark MA MRTPI MCMI, who held a public inquiry on 5 days between 2 to 9 June 2015 into your client's appeals against the refusal of Maidstone Borough Council (MBC or 'the Council') and Tonbridge and Malling Borough Council (TMBC) to grant planning permission for a mixed-use development comprising up to 500 residential dwellings (including affordable homes, land safeguarded for an education facility and land safeguarded for a community centre, the provision of open space (including children's play areas) associated infrastructure and necessary demolition and earthworks and the formation of 2^{No} new vehicular accesses from Hermitage Lane and Howard Drive, in accordance with applications 13/1749 & TM/13/03147/OA, both dated 11 October 2013.
2. On 14 October 2014 the appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990. The reason for recovery was that the appeals involve proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Julian Pitt
Planning Casework Division
Department for Communities and Local Government
3rd Floor, Fry House
2 Marsham Street
London SW1P 4DF

Tel 0303 44 41630
Email pcc@communities.gsi.gov.uk

Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeals be allowed and planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendations. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Policy considerations

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies of the Maidstone Borough-Wide Local Plan, adopted December 2000, together with the Maidstone Local Development Plan Framework Affordable Housing and Open Space Development Plan Documents (DPDs) adopted December 2006 (IR27). Within Tonbridge and Malling, the statutory Development Plan comprises the Core Strategy adopted September 2007 and the Managing Development and the Environment Development Plan Document adopted April 2010 (IR27). The Secretary of State agrees with the Inspector that the most relevant policies to these appeals are those listed at IR29-36.
6. The Secretary of State notes that MBC is in the process of producing a new Local Plan (IR37 - 43). The latest draft is the 2014 Regulation 18 Consultation Document, which proposes to allocate the northern field for 500 dwellings, but the woodland and southern field are proposed to be designated for public open space. However, as this plan is still at an early stage and may change, the Secretary of State gives it limited weight.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 (The Framework), the associated planning practice guidance issued in March 2014, and the Community Infrastructure Levy (CIL) Regulations 2010 as amended. He has also considered the other documents referred to at IR26 and IR44 – 46.

Procedural matters

8. The Secretary of State notes that there are two identical applications and two appeals because the development proposed straddles the boundary between the two local authorities, but that no buildings are envisaged within TMBC's area (IR3). He agrees with the Inspector's conclusion regarding Appeal B at IR209.
9. The Secretary of State notes that both MBC and TMBC adopted Screening Opinions to the effect that the proposed development would not require an Environmental Impact Assessment.

Main issues

Housing supply

10. MBC cannot demonstrate a five year housing land supply and therefore the relevant policies in the development plan for the supply of housing should not be considered up to date in accordance with paragraph 49 of the Framework.
11. The Secretary of State notes that both the main parties agree that 30% of dwellings should be provided as affordable housing, and therefore the proportion of affordable housing offered is not an issue in this appeal.

Ecology

12. For the reasons given at IR218-236, the Secretary of State agrees with the Inspector's conclusions that majority of the area has been correctly designated as ancient woodland (IR227) and that the site has medium to high ecological value at local level (IR237).
13. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR238-252, including that there is no convincing justification for a condition insisting on the delivery of the proposal through the option 3 route to gain access to the southern field, as other options may prove to be more preferable (IR252). As this is an outline application the exact route would be decided at reserved matters stage. The Secretary of State endorses the Inspector's consideration of the option 3 route as an exemplar of how access would be resolved at reserved matters stage because this option is the appellant's currently preferred option (IR247). However, for the reasons at IR245-252, the Secretary of State considers that further investigation at the reserved matters stage might lead to another option to gain access to the southern field being identified and chosen that would be less harmful in ecological terms than option 3. Consequently he considers that option 3 may be regarded as the 'worst case' scenario for the purpose of deciding if the proposal would comply with Framework paragraph 118.
14. Option 3, if taken forward, would result in an absolute loss of about 0.03 ha of Ancient Woodland, equating to only 1.8% of the designated area (IR98 and 253). The Secretary of State agrees with the Inspector's assessment at IR253-260 of the ecological effects of the proposal on the basis of option 3. Although the small loss of Ancient Woodland would technically infringe the requirements of adopted Local Plan policy H12 which calls for the retention, without qualification, of trees and woodland, the Secretary of State agrees with the Inspector that the ecological effects of option 3 would be acceptable, notwithstanding the minor loss. For the reasons given at IR253-260, the Secretary of State does not consider that harm to biodiversity if option 3 were taken forward would be significant. In respect of the loss of Ancient Woodland, he considers that the need for, and benefits of the development in this location clearly outweigh the loss. He therefore agrees that the tests of Framework paragraph 118, bullets 1 and 5 are clearly met in this case (IR259 and 260).

Landscape

15. For the reasons given at IR261-270 the Secretary of State agrees with the Inspector's conclusion that the effects of the proposal on the landscape character of the neighbourhood would be acceptable, notwithstanding a technical contravention of adopted Local Plan policy H12 (IR271).

Other matters

16. The Secretary of State has had regard to the New Allington Action Group's concerns referred to at IR272 – 273. However he agrees with the Inspector that there is no substantive evidence on which to disagree with Kent County Council and TMBC that the outcomes of this proposal in terms of highway safety and air quality would be acceptable.
17. The Secretary of State agrees with the Inspector's reasons and conclusions at IR275-280 regarding infrastructure, loss of agricultural land, archaeological interest, the Strategic Gap, access to the development and issues arising with development on the Hythe beds.

Conditions

18. The Secretary of State agrees with the Inspector's assessment at IR281-300 regarding planning conditions. He is satisfied that conditions proposed by the Inspector and set out at pages 76-78 of the IR meet the tests of Paragraph 206 in the Framework and comply with the Planning Practice Guidance.

Section 106 planning obligations

19. The Secretary of State agrees with the Inspector's assessment at IR301-304 on the proposed planning obligations. He agrees with the Inspector that with the exception of the provision of £426 per dwelling for the provision and maintenance of strategic open space, the remaining obligations do accord with Paragraph 204 of the Framework and the CIL Regulations 2010 as amended, and so should be taken into account in making the decision.

Overall balance and conclusion

20. The Secretary of State agrees with the Inspector's conclusions at IR305-313. As the relevant policies for the supply of housing in the development plan are out of date the decision taking process in this case should be that set out in the final bullet of paragraph 14 of the Framework.

21. The social and economic benefits of the housing would be very significant. The effect of development on landscape character would be acceptable and there would be a positive overall environmental balance.

22. The harm to biodiversity would not be significant and Framework paragraph 118 does not represent a policy which indicates that development should be restricted in this case for the reasons set out in paragraph 14.

23. Overall, the significant benefits of the proposal would not be outweighed at all, let alone significantly or demonstrably, by the limited adverse impacts. It follows that the scheme should benefit from the presumption in favour of sustainable development.

Formal decision

24. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations and hereby allows your client's appeals and grants planning permission for a mixed-use development comprising up to 500 residential dwellings (including affordable homes, land safeguarded for an education facility and land safeguarded for a community centre, the provision of open space (including children's play areas) associated infrastructure and necessary demolition and earthworks and the formation of 2N^o new vehicular accesses from Hermitage Lane and Howard Drive, in accordance with applications 13/1749 & TM/13/03147/OA, both dated 11 October 2013, subject to the conditions set out at Annex A of this letter.

25. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

26. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

27. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
28. A copy of this letter has been sent to Maidstone Borough Council and Tonbridge and Malling Borough Council. A notification e-mail or letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Julian Pitt

JULIAN PITT

Authorised by Secretary of State to sign in that behalf

Richborough Estates

ANNEX A

Conditions applicable to planning applications referenced 13/1749 & TM/13/03147/OA:

- 1) Details of a phasing plan for the development shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out in accordance with the approved details.
- 2) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for each phase or sub-phase of the development shall be submitted to and approved in writing by the local planning authority before any development begins within that phase or sub-phase and the development shall be carried out in accordance with the details as approved.
- 3) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 4) Each phase or sub-phase of the development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved for that phase or sub-phase.
- 5) The access to the development hereby permitted shall be carried out in accordance with the following approved plans: 1402-GA-32 revision B and 1402-GA-37 revision A.
- 6) No other development of any phase or sub-phase shall commence until the access to the development has been completed in accordance with approved plan 1402-GA-32 revision B.
- 7) Prior to the first use of the access from Howard Drive, details of the measures to prevent its use other than by buses, emergency vehicles, pedestrians and cyclists shall have been submitted to and approved in writing by the local planning authority and the approved measures shall have been installed and made operational and thereafter retained in operation.
- 8) No more than 250 dwellings within the development hereby permitted shall be occupied until the completion of the improvements to M20 Junction 5 shown on drawing number WSP Figure 5 (dated 1 May 2014).
- 9) No part of the development hereby approved shall be occupied until details of measures (known as a Green Travel Plan) to encourage the use of access to and from the site by a variety of non-car means have been submitted to and approved in writing by the local planning authority, put into operation and thereafter retained in operation.
- 10) No development shall commence on any phase or sub-phase until details of trees to be retained on that phase and of the measures to be taken for their protection during construction have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 11) No development shall commence on any phase or sub-phase until details of both foul and surface water drainage for that phase or sub-phase have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. No building shall be occupied or used until its foul and surface water drainage has been completed in accordance

with the approved details. The drainage shall thereafter be retained in an operational condition.

- 12) No development shall take place within the areas indicated in paragraphs 8.3.2, 8.3.3 and 8.4.2 of the submitted Heritage Statement dated October 2013 prepared by Wessex Archaeology (report reference 86910.03) until a programme of archaeological work in accordance with those paragraphs has been implemented in accordance with a written scheme of investigation and, if necessary, preservation of finds, which has been submitted to and approved in writing by the local planning authority.
- 13) If, during development of any phase or sub-phase, contamination not previously identified is found to be present at the site then no further development of that phase or sub-phase (or any lesser but more appropriate area agreed in writing by the local planning authority) shall be carried out until details of a remediation strategy have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 14) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) working hours on site
 - ii) the parking of vehicles of site operatives and visitors
 - iii) loading and unloading of plant and materials
 - iv) construction traffic management
 - v) storage of plant and materials used in constructing the development
 - vi) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - vii) wheel washing facilities
 - viii) measures to control the emission of dust and dirt during construction
 - ix) measures to control noise and vibration during construction
 - x) a scheme for recycling/disposing of waste resulting from demolition and construction works
- 15) No building shall be occupied until provision has been made for the storage of its refuse and recycling bins in accordance with details to be submitted to and approved by the local planning authority.
- 16) No building shall be occupied until underground ducts have been installed to enable it to be connected to telephone and internet services, electricity services and communal television services without recourse to the erection of distribution poles or overhead lines within the development hereby permitted. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 or any other or subsequent Order revoking or re-enacting that Order, no distribution pole or overhead line shall be erected within the site of the development hereby permitted.
- 17) No dwelling shall be occupied unless its bedrooms have been fitted with windows with acoustically treated trickle vents in accordance with the recommendations of paragraphs 4.1.8 to 4.1.10 and 5.4 of the submitted Site Suitability Assessment Report: Noise by WSP UK Ltd revision 1 dated 24/09/2013.

- 18) No development shall commence on any phase or sub-phase until details of public lighting for that phase or sub-phase have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. No building shall be occupied or used until public lighting to it has been completed and made operational in accordance with the approved details. The lighting shall thereafter be retained in an operational condition.
- 19) Before the development of each phase or sub-phase begins a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of that phase or sub-phase from decentralised and renewable or low carbon energy sources shall have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented and retained as operational thereafter.
- 20) The details of scale to be submitted in accordance with condition 2 shall limit to 11m the height from ground level to ridgeline of any building proposed.
- 21) The details of the layout to be submitted in accordance with condition 2 shall provide for the quantity and type of open space specified in the tables headed Land Use and Green Space Type on pages 38 and 41 and in paragraph 13.15 of the submitted revised Design and Access Statement revision 06 dated 21 October 2013.

Richborough Estates

Report to the Secretary of State for Communities and Local Government

by P W Clark MA MRTPI MCMI

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

Date: 5 August 2015

TOWN AND COUNTRY PLANNING ACT 1990

APPEALS BY

CROUDACE STRATEGIC LTD

AGAINST

MAIDSTONE BOROUGH COUNCIL

AND

TONBRIDGE AND MALLING BOROUGH COUNCIL

Inquiry opened on 2 June 2015

Land East of Hermitage Lane, Maidstone, Kent

File Refs: APP/U2235/A/14/2226326 and APP/H2265/A/14/2226327

File A: APP/U2235/A/14/2226326
Land East of Hermitage Lane, Maidstone, Kent

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Croudace Strategic Ltd against the decision of Maidstone Borough Council.
- The application Ref 13/1749, dated 11 October 2013, was refused by notice dated 3 July 2014.
- The development proposed is a mixed-use development comprising up to 500 residential dwellings (including affordable homes), land safeguarded for an education facility and land safeguarded for a community centre, the provision of open space (including children's play areas) associated infrastructure and necessary demolition and earthworks and the formation of 2N^o new vehicular accesses from Hermitage Lane and Howard Drive.

Summary of Recommendation: That the appeal be allowed, and planning permission granted subject to conditions.

File B: APP/H2265/A/14/2226327
Land East of Hermitage Lane, Maidstone, Kent

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Croudace Strategic Ltd against the decision of Tonbridge & Malling Borough Council.
- The application Ref TM/13/03147/OA, dated 11 October 2013, was refused by notice dated 30 July 2014.
- The development proposed is a mixed-use development comprising up to 500 residential dwellings (including affordable homes), land safeguarded for an education facility and land safeguarded for a community centre, the provision of open space (including children's play areas) associated infrastructure and necessary demolition and earthworks and the formation of 2N^o new vehicular accesses from Hermitage Lane and Howard Drive.

Summary of Recommendation: That the appeal be allowed, and planning permission granted subject to conditions.

Application for Costs

1. At the Inquiry an application for costs was made by Croudace Strategic Ltd against Maidstone Borough Council. That application is the subject of a separate Report.

Procedural Matters

2. The Inquiry sat for five days (2-5 and 9 June 2015). I made an accompanied site visit on the sixth day (10 June 2015). The Inquiry was held open but did not sit whilst closing submissions were made in writing. The Inquiry was closed in writing on 26 June 2015.
3. There are two applications and two appeals because the development proposed straddles the boundary between two local authorities. In accordance with the advice contained in National Guidance, identical applications were made to each authority. Although the wording of each application is identical, the result is not, strictly speaking, accurate in the case of the application to Tonbridge and Malling Borough Council because no buildings are envisaged within that local authority's area. But it is a single development proposal and my Report treats it as such.

4. The applications are in outline form with details of access submitted for immediate approval. Details of appearance, landscaping, layout and scale were reserved for later consideration. Both authorities adopted Screening Opinions to the effect that the proposed development would not require an Environmental Impact Assessment¹.
5. The application to Maidstone Borough Council (MBC) was refused on 3 July 2014. The application to Tonbridge and Malling Borough Council (TMBC) was refused on 30 July 2014. The subsequent appeals were recovered for determination by the Secretary of State by Directions made on 14 October 2014. The stated reasons for the Directions are that the appeals involve proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
6. Most of the site lies within Maidstone but the main vehicular access would lie within Tonbridge and Malling. The decision notice from Tonbridge and Malling contains one reason for refusal. It refers to the lack of approval (implicitly, by Maidstone) of any development that would be served by the new access which would thus make an unjustified incursion into a Strategic Gap established by its Core Strategy policy CP5, intended to maintain the separation and separate identities of the built up areas of Maidstone, Medway Towns and the Medway Gap.
7. Tonbridge and Malling Borough Council's subsequent Statement of Case comments on both appeals but makes it clear that its refusal of permission for the element of the development within its own area arose simply because the principal application was refused by Maidstone Borough Council. In its view, the appeal that falls within its boundary stands and falls upon the decision on the appeal that falls within the Maidstone area. Tonbridge and Malling Council did not appear at the Inquiry, nor did it make any submissions in writing other than those in its Statement of Case and the Statement of Common Ground².
8. Maidstone Borough Council's decision notice gives three reasons for refusal. The second of these quotes policies from the adopted Maidstone Borough-Wide Local Plan and its emerging Local Plan but refers to the effects of the proposal on land within Tonbridge and Malling. By letter dated 27 March 2015³, the Council gave notice that it would not pursue this reason for refusal.⁴ The third reason for refusal cites the absence of an appropriate legal mechanism to secure the provision of affordable housing and other matters. Planning obligations in the form of deeds to address these matters were submitted at the Inquiry and are material considerations in these appeals. The Council had anticipated this action⁵ and did not otherwise pursue this reason for refusal at the Inquiry. I return later to the provisions of the obligations.

¹ Core Document 2/23, Appendix D

² Core Document 1/5, section 7

³ Core Document 3/5

⁴ Confirmed by Mr Bailey in his evidence (Core Document 1/13, paragraphs 1.9 and 3.7)

⁵ Core Document 1/5 (Statement of Common Ground) paragraph 6.24

9. So, only the first of MBC's reasons for refusal remains at issue. It reads; *"The development by virtue of the development of the southern field for housing and the link road through designated ancient woodland and works to existing footpaths through the woodland would erode the setting of the woodland as a landscape feature and result in the loss and deterioration of ancient woodland where the need for and benefits of the development does not clearly outweigh the loss contrary to policy H12 of the Maidstone Borough-Wide Local Plan (2000), advice contained within paragraph 118 of the National Planning Policy framework 2012 and policies H1(2) and DM10 of the Maidstone Borough Local Plan Regulation 18 Consultation 2014."*

The Site and Surroundings

10. The site and its surroundings are most fully described in the Statement of Common Ground⁶, the Highways statement of Common Ground⁷, the Landscape and Visual Impact Assessment⁸, the Arboricultural Impact Assessment⁹, the revised Design and Access Statement¹⁰, revised Planning Statement¹¹ and revised Transport Assessment¹² submitted during consideration of the application, in the officers' report to Maidstone Council's Planning Committee and in Mr Chard's and Mr Lovell's evidence¹³.
11. Two main roads lead westwards out of Maidstone; the A26 and the A20. The A26 runs on an alignment slightly south of due west. The A20 runs north-west. The angle between them encompasses much of the western built up area of Maidstone.
12. About 2.5km from the centre of Maidstone along the A20, the developed area of Maidstone comes to an end. At this point the road is crossed by the borough boundary at approximately right angles, running from south-south-west to north-north-east.
13. Along the A26 the developed area of Maidstone extends further than 2.5km but at around 2.5km there is a junction with the B2246. This road runs more or less due north-south between the A20 and the A26. For most of its length it is known as Hermitage Lane. Where it crosses the borough boundary is the location of the land the subject of these appeals. To the south of the boundary is the urban development of Maidstone Hospital on one side of the road and a new housing development being built on the other. To the north of the boundary is open countryside with a quarry not far away to the west. The location is therefore on the urban edge of Maidstone.
14. At the point where Hermitage Lane crosses the borough boundary it is descending a north-facing incline, passing through woodland and, on its east, passing by The Old Hermitage, a country residence. At the foot of the hill, to the

⁶ Core Document 1/5, section 2

⁷ Core Document 1/8, section 1.2

⁸ Core Document 2/13, sections 2 and 3

⁹ Core Document 2/20, section 2.1

¹⁰ Core Document 2/22, sections 2, 4 and 7

¹¹ Core Document 2/23

¹² Core Document 2/27, sections 1.4 and 3

¹³ Core document 1/10, section 2 and paragraphs 5.1 to 5.9 of section 5 and Core Document 1/14 paragraphs 4.1 to 4.17

- west of the road is Hermitage Court, now a business park. Fronting the road on its east side is a row of dwellings known as Hermitage Farm Cottages. Behind the cottages is a paddock, not part of the site. North of Hermitage Farm Cottages and the paddock is an arable field which extends as far north as Barming station, about half a mile from the site. Most of this field lies outside the site, except for a fringe abutting the length of Hermitage Lane and a corridor across the field, through which the access to the rest of the site would be taken.
15. Between The Old Hermitage and Hermitage Farm Cottages the appeal site has a small frontage to Hermitage Lane on which scrub is well advanced. Behind this is the part of the site known as The Knoll, which is identified as containing remains of some archaeological interest.
 16. The site is 30.66 ha in area¹⁴. Just over 27.5 ha lie within Maidstone; just over 3ha are within Tonbridge and Malling. The vast majority of the site is located back from Hermitage Lane, to the rear (east) of The Old Hermitage, The Knoll and the paddock to the rear of Hermitage Farm Cottages. It extends as far eastwards as the existing built up area of Maidstone, which surrounds it on three sides.
 17. In addition to The Knoll and the corridor which would connect with Hermitage Lane, the site has four elements and is currently structured by four public footpaths. Two of these footpaths diverge from Hermitage Lane on either side of the Knoll and The Old Hermitage. The southernmost (KB18) climbs the hill on the south side of The Old Hermitage and then runs on fairly level ground alongside a hedgerow forming the boundary of the site adjoining Maidstone Hospital.
 18. At the south-east corner of the site it forms a junction with several other footpaths. From this point, footpath KB19 descends gently through a woodland belt abutting the boundary of the site with the rear gardens of existing housing.
 19. The footpath passes out of the site at its eastern corner. From this corner an informal path falls in a north-westerly direction through a tree belt abutting the boundary of the site with the rear gardens of housing in Howard Drive. The site includes two dwellings fronting Howard Drive.
 20. The informal path reaches the lowest part of the site at its northern corner and joins footpath KB47 (also known as MR489). This footpath/bridleway runs from Howard Drive, through the site, in a straight line, climbing gently back towards Hermitage Lane.
 21. On the northern side of footpath KB47/MR489 and to the east of the paddock behind Hermitage Farm Cottages is an orchard. About half of this orchard on its southern side would be included within the development. This represents the first element of the site. The proposed site boundary across the orchard would follow an apparently arbitrary line, seemingly unrelated to any existing field boundaries or reference points.

¹⁴ Core Documents 1/5 (Statement of Common Ground), paragraph 2.4, 2/22 (Revised Design and Access Statement) paragraph 2.2 and 2/23 (Revised Planning Statement) paragraph 2.4 and Maidstone Council Committee report paragraph 1.01

22. The second element of the site is the largest of the four. It is an open arable field. It lies to the south-east of footpath KB47/MR489. It would be almost rectangular but for a covered reservoir and associated land which takes a large bite out of the field part way along its north-western boundary and around which the field now wraps. The reservoir is excluded from the site of the appeal. The field slopes up from its northern to its southern corner. From it there are extensive views across the Medway valley to the north, notwithstanding the belts of trees which surround it on three sides.
23. Two of these tree belts have already been referred to as edging the south-east and north-east boundaries of the site. They are protected by Tree Preservation Orders. The tree belt on the third side of the field is deeper than the other two belts and forms the third element of the site. It does not run along the boundary of the site but rather divides the larger field (sometimes referred to as the "reservoir" or "northern" field) from a smaller field (known as the "southern" or "hospital" field which forms the fourth element of the site). This tree belt is also protected by Tree Preservation Orders. Part is designated as Ancient Woodland. It has a further public footpath, KB51, running through it from end to end.
24. The smaller field which is the fourth element of the site currently lies fallow, not farmed. It is fairly level and surrounded by trees on three sides and a hedgerow adjacent to footpath KB18 to its south beyond which are the car parks, service road and ancillary buildings of Maidstone Hospital. There are indications that a now largely disused track through the tree belt partly designated as Ancient Woodland connected it to the northern field. It has no other access.

Planning Policy

25. Relevant planning policy is described in section 5.0 of the Statement of Common Ground¹⁵, in sections 2 of Andrew Wilford's, Rupert Lovell's and James Bailey's evidence¹⁶ and section 3 of Matthew Chard's evidence¹⁷. Biodiversity and Nature Conservation Policy is set out in the Ecological Assessment¹⁸ and in section 2 of Mr Forbes-Laird's evidence¹⁹. Policy on Noise is summarised in section 2 of Core document 2/21. Relevant Transport Planning Policy is set out in section 2 of the revised Transport Assessment²⁰.
26. During the Inquiry, extensive reference was made to the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (Guidance). Of particular relevance to this appeal are sections 1, 4, 6, 7, 8, 11 and 12 of the Framework. Paragraph 118 was frequently referred to. In pursuit of NPPF paragraph 118, reference is also made to the Standing Advice for Ancient Woodland and Veteran Trees (April 2014)²¹ produced by Natural England, the

¹⁵ Core Document 1/5

¹⁶ Core Documents 1/9, 1/13 and 1/14

¹⁷ Core Document 1/10

¹⁸ Core Document 2/12, section 2

¹⁹ Core Document 1/11, volume 1

²⁰ Core Document 2/27

²¹ Core Document 10/1. Copy also at Appendix 13 of Mr Bailey's Proof of Evidence (Core document 1/13)

government's adviser on the natural environment, and to "Keepers of time", the government's statement of policy for England's Ancient and Native Woodland.²²

Adopted policy

27. Within Maidstone, the statutory Development Plan comprises the saved policies of the Maidstone Borough-Wide Local Plan, adopted December 2000, together with the Maidstone Local Development Plan Framework Affordable Housing and Open Space Development Plan Documents (DPDs) adopted December 2006.²³ Within Tonbridge and Malling, the statutory Development Plan comprises the Core Strategy adopted September 2007 and the Managing Development and the Environment Development Plan Document adopted April 2010.²⁴
28. No single document submitted to the Inquiry contains a copy of all the policies of the Maidstone Borough-Wide Local Plan referred to.²⁵ The policies described below are those most relevant to the issues raised by this appeal.
29. Maidstone Borough-Wide Local Plan policy H1 simply lists sites defined on the Proposals Map as allocated for housing. Item (xvii) in the list reads "East of Hermitage Lane, Maidstone" and has an allocation of 380 units. The Proposals Map itself²⁶ shows the land allocated for housing to be appeal site elements 2, 3 and 4, i.e. the northern field, including its tree belts and the reservoir, the dividing tree belt (including the Ancient Woodland, not designated as such at the time but recognised as such prior to its designation²⁷) and the southern field. Other notations applying to the same land parcel are policies H12, H24(x), CF6(i) and CF8(v) but policy H24(x) has been superseded by the Affordable Housing DPD. Element 1 of the appeal site (the Orchard to the north of footpath KB47/MR489) is overlaid with a stippling which denotes Strategic Gap policy ENV31 and has the notation for policy ENV24. Other than policy H24(x) all are saved policies and still extant.
30. MBC Policy H12 is very detailed, filling nearly a page of A4 text²⁸. In summary it would permit housing development on the three allocated elements of the appeal site subject to the retention of trees and woodland, their future management,

²² Core Document 10/4

²³ Core Documents 8/1 and 8/2, 8/4 and 8/5

²⁴ Core Documents 9/1, 9/2 and 9/3

²⁵ Copies of Maidstone Borough-Wide Local Plan policies ENV24, ENV26 and part of EN27 are in Core Documents 1/2 and 8/1. A copy of Policy H12 is in Core Document 8/1, quoted in full in Andrew Wilford's evidence (Core Document 1/9 paragraph 2.9) and in part in Matthew Chard's, Julian Forbes-Laird's and Rupert Lovell's evidence (Core Documents 1/10 paragraph 3.10, 1/11 volume 1 paragraph 2.2.2 and 1/14 paragraphs 2.8 and 2.9). A copy of Policy CF1 is in Core document 1/2. Copies of policies ENV6, ENV22, ENV49, H1 and H12 are to be found at technical appendix 3 of the Ecological Assessment (Core Document 2/12). Parts of policy ENV6 are quoted in James Bailey's evidence (Core Document 1/13 paragraph 2.7) and more fully in Rupert Lovell's evidence (Core Document 1/14 paragraph 2.7). Policy ENV49 is quoted in Matthew Chard's evidence (Core document 1/10 paragraph 3.12). Copies of other Borough-wide Local Plan policies listed in the Statement of Common Ground are not provided but, in the event, were not referred to in the evidence submitted to the Inquiry.

²⁶ Core Document 8/2

²⁷ See Inquiry Document 40, fourth bullet of paragraph 3.18 demonstrating that it was regarded as Ancient Woodland in 2012, though not so designated at the time.

²⁸ Core Document 8/1, page 67

additional landscaping along footpath KB47/MR489, access and turning facilities for public transport, a high standard junction onto Hermitage Lane and a secondary emergency access to the Allington area (to the east), laying out and maintenance of "the proposed woodland park" for public access, a traffic management scheme in Barming, a contribution to a park and ride scheme at Barming station, cycle and pedestrian links from the site to Barming station and on to the A20, improved public transport along Hermitage Lane and the provision of affordable housing, education, health and shopping facilities in accordance with policies H24 (now to be read as the DPD), CF1 and R10. Justificatory paragraph 4.121 makes it clear that the reference to "the proposed woodland park" is a reference to policy ENV24, relating to the orchard (element one of the site), not, as might be thought, the existing woodland belt (element three of the site).

31. MBC Policy CF1 requires new residential development to provide for new community facilities to serve its needs if existing capacity is lacking. Policies CF6(i) and CF8(v) specifically reserve land for a general medical practitioners' surgery and for a primary school on the land allocated on the proposals map (elements two, three and four of this appeal site, i.e. the northern and southern fields and the dividing woodland belt). Policy R10 allows for new local centres anchored by a convenience store or supermarket particularly in areas deficient in such facilities, subject to criteria, such as access arrangements and impact on existing centres and other neighbouring uses, set out in policies R1, R2 and R11 (and formerly, policy R15, not now saved).
32. MBC's Affordable Housing DPD²⁹ policy AH1 seeks to negotiate the provision of a minimum of 40% of dwellings as affordable housing on a site of this size, more on allocated greenfield sites. Of the affordable housing provision, 24% is to be rented.
33. MBC's Open Space DPD³⁰ policy OS1 requires open space provision on all residential developments of 10 dwellings or more in proportion to the expected population. Because the current proposal is in outline, an expected population cannot be calculated but, by way of illustration, a development with an expected population of 1000 people would be expected to provide 2.3 ha of parks and gardens, 1 ha of Local Nature Reserve, 0.7 ha of amenity greenspace, 0.12 ha of children's and young persons' equipped play areas, 1.4 ha of outdoor sports facilities, 0.21 ha of allotments and community gardens and 0.66 ha of cemeteries or graveyards.
34. MBC policy ENV24(xiii) allocates the part of the orchard land within Maidstone (element one of the site) for public open space. Policy ENV31 would not permit development significantly extending the defined urban area or the extent of settlement on to this land.
35. TMBC policy CP5³¹ applies to the part of the orchard within TMBC, to the road corridor and to the part of The Knoll which is within TMBC. Unless justified by special circumstances, this policy would not permit development that would harm the function of the Strategic Gap as a physical break maintaining the separation

²⁹ Core Document 8/4

³⁰ Core Document 8/5

³¹ Core Document 9/1

and separate identities of Maidstone, the Medway towns and the settlement known as the Medway Gap.

36. TMBC policy CP1³², referred to in its reasons for refusal, is a general policy requiring development to result in a high quality sustainable environment, providing for needs but balancing these against protection of the natural and built environment, minimising waste generation, water and energy consumption and the need to travel, avoiding areas liable to flood, promoting mixed use developments and providing a mix of house types and tenures, built at the highest density compatible with the local environment, focussing on brownfield land and accessible locations, designing out crime and providing for necessary infrastructure.

Emerging policy

37. Maidstone Borough Council is in the process of producing a new Borough Local Plan. But it has been much delayed by several iterations at Regulation 18 stage.³³ Regulation 19³⁴ publication is not now expected until December 2015, submission for examination at Easter 2016 and adoption in Spring 2017.³⁵
38. The weight to be given to relevant policies in the emerging plan is set out in the NPPF at paragraph 216. The various iterations of emerging policy to date are;
- Core Strategy Strategic Site Allocations Public Consultation 2012³⁶
 - Interim Approval of Maidstone Borough Local Plan policies 13 March 2013³⁷
 - The Maidstone Borough Local Plan Regulation 18 Consultation Policies March 2014³⁸.
39. Core Strategy Strategic Site Allocations Public Consultation 2012 policy SS1 proposed three strategic housing locations to the north-west of Maidstone which were to contribute as necessary towards a series of Highway junction improvements and to a circular bus route. One of these is land to the east of Hermitage Lane. Policy SS1b would have made no allocation for the orchard (element one of the current appeal), would have allocated the northern field only (i.e. element two of the current appeal but including the reservoir) for the development of 415 dwellings. It would have allocated the woodland belt (element three), the southern field (element four) and The Knoll for designated open space. It would have specified 40% affordable housing, Code for Sustainable Homes (CfSH) level 4 from 2013, level 5 from 2016, transfer of land and/ or contributions for primary education, provision of appropriate community and health facilities, a buffer incorporating existing trees along the north-eastern boundary, protection of the wooded character along the south-eastern boundary

³² Core Document 9/2

³³ Regulation 18 of the Town and Country Planning (Local Planning)(England) Regulations 2012

³⁴ Regulation 19 of the Town and Country Planning (Local Planning)(England) Regulations 2012

³⁵ Inquiry Document 13 and Mr Bailey's evidence given orally in cross-examination

³⁶ Core Document 8/14

³⁷ Core document 8/15

³⁸ Core Document 8/16

and an ecological survey. Access was to be taken from Hermitage Lane, preferably along the route of footpath KB47/MR489 and a bus and emergency access from Howard Drive³⁹. There were to be pedestrian and cycle links to existing residential areas, a direct pedestrian footpath to Hermitage Lane as close as possible to Barming station and financial contributions towards education, health, open space and community facilities, a pedestrian and cycle route on Hermitage Lane and towards increasing the size of Barming station car park.⁴⁰

40. The Interim Approval of Maidstone Borough Local Plan Policies 13 March 2013 document contained a policy also SS1b which again would have made no allocation to the orchard. It would have allocated both the northern and the southern fields (including the reservoir) for housing development of 600 dwellings (elements two and four of the current appeals). The woodland belt and The Knoll were to be allocated for multifunctional green space. Added requirements would have been the provision of a local shopping parade, a 30m buffer to the Ancient Woodland, an archaeological survey and securing the use of 15.4 ha of land in Tonbridge and Malling for ecological mitigation measures, site access and open space. Access requirements were to be changed to an access on Hermitage Lane opposite the entrance to Hermitage Quarry for the western part of the site and to an access from Howard Drive for the eastern part of the site and for a bus gate to provide limited access between the two. Other requirements would have remained largely unchanged from the 2012 document.
41. The Maidstone Borough Local Plan Regulation 18 Consultation 2014 document allocates the orchard (element one of the current appeals) for a combination of community infrastructure and public open space. It allocates the northern field (element two of the current appeals but including the reservoir) for approximately 500 dwellings. It allocates the woodland belt, the southern field (elements three and four of the current appeals) and The Knoll for public open space. Further added requirements are for air quality mitigation measures. The buffer to the Ancient Woodland would be reduced to 15m but otherwise requirements for the appeal site remain unchanged from the 2013 document.
42. No feasibility study underpinned these proposals. There remain unresolved objections to them.⁴¹
43. The 2014 Regulation 18 Consultation Document also contains a proposed policy DM10 which is referred to in the reasons for refusal. It is very detailed, covering two A4 pages of text. In summary it would require new development to protect and enhance the historic and natural environment. Subsection (i) would require protection for Ancient Woodland, amongst other matters. Subsection (iv) would require development to enhance, extend and connect designated sites of importance for biodiversity, priority habitats and fragmented Ancient Woodland. Other relevant elements of the proposed policy would seek protection for landscape character and would require developments to take account of a Landscape Character Guidelines supplementary planning document (SPD) and a Green and Blue Infrastructure SPD.

³⁹ The appellant objected to this provision on the basis that the proposal was made without evidence (Inquiry document 40, paragraphs 4.16 and 4.17)

⁴⁰ Core Document 8/14

⁴¹ Mr Bailey's evidence given orally in chief

44. Other documents produced in support of emerging policy and which are relevant to these appeals are;
- Local Plan Viability Testing: Economic Viability Study April 2013⁴²
 - The Consultation Draft of the Green and Blue Infrastructure Strategy⁴³
45. The significance of the Local Plan Viability Testing document is firstly that it recommends a balance between affordable housing and CIL contributions in urban extensions to Maidstone which would reduce the affordable housing sought to 25% and a maximum contribution to CIL of £84 per square metre.⁴⁴ Its second point of significance is that the East Hermitage Lane site was subject to a detailed appraisal. This resulted in advice that affordable housing at 40% is not likely to be achieved on the site and that a modest level of CIL/s106 of between £50 and £80 per sq m would enable affordable housing at 30%.⁴⁵
46. The significance of the Consultation Draft of the Green and Blue Infrastructure Strategy lies in its draft proposals⁴⁶. These show much of the appeal site to be a Biodiversity Opportunity Area. They also show in diagrammatic form a "Maidstone green and blue corridors and action plan" passing to the south of the site and also, in diagrammatic form, a Strategic green link (the "King's Hill Link") extending beyond the "green and blue corridor", outside the borough boundary.

Planning History

47. Relative to these appeals the planning history of this site begins with the considerations of objections to the Maidstone Borough-Wide Local Plan. Croudace Homes sought (i) the removal of the site from the then proposed Strategic Gap policy and (ii) from the then proposed Oakwood Green Corridor, (iii) the deletion of the designation ALLI (Area of Local Landscape Importance) from the site and (iv) its designation south of the KB47 footpath as a housing site and as an informal woodland park north of the KB47 footpath.
48. The consideration of the first and fourth of these points in the report of the Inspector who considered the objections to the Maidstone Borough-Wide Local Plan is copied in Appendix 3 to Mr Bailey's Proof of Evidence⁴⁷. It led to the deletion from the Strategic Gap of the site south of the KB47 footpath and to its allocation for development of housing, education, health, shopping and open space in policies H12, CF1, CF6, CF8 and ENV24 described previously.
49. The Inspector's consideration of the Green Corridors then proposed and of the Oakwood Green Corridor in particular is set out elsewhere in his report⁴⁸. He recommended their deletion. He also recommended deletion of the designation

⁴² Core Document 8/21

⁴³ Appendix 10a to Mr Bailey's Proof of Evidence (Core Document 1/13)

⁴⁴ Core Document 8/21, paragraph 9.2.1

⁴⁵ Core document 8/21, paragraph 7.1.4

⁴⁶ Miss Thomas's closing submissions paragraph 42, referencing Maps 5 and 10 on pages 32 and 80 of Appendix 10a to Mr Bailey's Proof of Evidence (Core Document 1/13) Extracts are also found at appendix B to Mr Lovell's Proof of Evidence (Core Document 1/14)

⁴⁷ Core Document 1/13

⁴⁸ Core Document 8/3, paragraphs 3.263 to 3.271 and paragraphs 3.287 to 3.295 on pages 73 to 79 and paragraphs 3.349 and 3.350 on page 91

- of this site as an ALLI.⁴⁹ These recommendations were carried through to the adopted plan.
50. Subsequent planning history is described in the appellant's revised Planning Statement⁵⁰, the Statement of Common Ground⁵¹ and Mr Wilford's Proof of Evidence⁵².
51. Following the adoption of the Maidstone Borough-Wide Local Plan in December 2000, in January 2001 Croudace Ltd made planning applications to MBC and to TMBC for the development of the site in accordance with the Local Plan allocation. But the then extant government Planning Policy Guidance Note 3: Housing (PPG3) advised that planning applications for development of Greenfield sites allocated in a development plan should be decided in the light of policies set out in PPG3. One of these was that previously developed land should be developed before greenfield land. During 2001, MBC undertook an Urban Capacity Study (UCS). This reported in December 2001 and by April 2002 MBC had resolved that its findings (in effect that brownfield land alone provided capacity in excess of the Council's housing requirements for the following four years) be adopted as a material consideration for development control purposes.
52. Meanwhile, the 2001 applications were not determined. In September 2001 Croudace appealed on the grounds of non-determination. The appeals were heard at a Public Inquiry in May 2002, shortly after the findings of the UCS were finalised and MBC resolved to adopt them as a material consideration. By letter dated 2 October 2002⁵³ the Deputy Prime Minister and First Secretary of State dismissed the appeals on the grounds that the UCS was robust and showed that the housing requirement for Maidstone could be met from brownfield sites; that consequently there was no need to release a greenfield site for housing at that time; and that this was a material consideration which outweighed the fact of the site's allocation for development in the Local Plan.
53. MBC imposed a moratorium on the development of the greenfield sites allocated for housing in the Local Plan. This moratorium was reviewed and renewed in 2008. In March 2013 it was revoked because the Council could not demonstrate a five-year housing supply in the terms required by paragraph 47 of the NPPF. Applications which led to the current appeals were made in October 2013.
54. Meanwhile, the Council began work on replacing its Borough-Wide Local Plan, consulting in January 2007 on emerging Core Strategy Preferred Options which identified a south-eastern urban extension to Maidstone and issuing a revised Issues and Options Core Strategy in September 2011 identifying that the south-east urban extension was not feasible and putting forward a strategy including 975 dwellings in north-west Maidstone. August 2012 saw the Core Strategy Strategic Site Allocations Public Consultation on the document described earlier. In March 2013 MBC approved the use of the Interim Approval of Maidstone Borough Local Plan Policies 13 March 2013 document, described earlier, for development management purposes (an approval which appears to have no

⁴⁹ Core Document 8/3, paragraphs 3.404 to 3.408 on pages 104 and 105

⁵⁰ Core Document 2/23, section 4

⁵¹ Core Document 1/5, section 3

⁵² Core Document 1/9, section 2 (i)

⁵³ Core Document 13/1

statutory significance). In March 2014 consultation began on the Maidstone Borough Local Plan Regulation 18 Consultation 2014 document described earlier. Croudace made representations on this document which remain unresolved.

55. In September 2014, Croudace submitted further outline applications known as Schemes 2 and 3⁵⁴. Scheme 2 is identical to elements one and two of the current appeals. Scheme 3 is identical to elements 3 and 4 of the current appeals. At the time of the Inquiry no decision had been taken on these two further applications. The relevance of these two subsequent applications to the current appeals lies in parts of Maidstone Council's case, which I summarise at paragraphs 132 and 172 below.

The Proposals

The application

56. The Statement of Common Ground⁵⁵ includes an agreed description of the proposals but the basis for this description needs to be understood. The application is in outline with some details of access submitted for immediate approval. All other details are reserved for later approval. Some of the elements included in the description in the Statement of Common Ground are suggested in supporting documents but would need to be secured by condition. Others would be secured by the planning obligations submitted to the Inquiry⁵⁶.
57. The application forms contain the description of development reproduced in the Headers to this report. The submitted detailed drawings of the secondary access (to Howard Drive within Maidstone Council's area) show that its construction would require the demolition of two houses so the net quantity of housing proposed would be up to 498 additional dwellings.
58. The submitted drawings include a site boundary plan, drawing number EB-M-02⁵⁷. This simply shows the red line around the site boundary and shows by blue lining that the appellant also owns or controls two adjacent properties, one in Howard Drive adjacent to the proposed secondary site entrance and one in the cul-de-sac called The Weavers, on the south-eastern boundary of the site near its southern corner, both within Maidstone Council's area.
59. Article 2 (1) of the Town and Country Planning (Development Management Procedure)(England) Order 2015 defines access, in relation to reserved matters, as the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network. The submitted details of access, shown on drawings 1402-GA-32 revision B and 1402-GA-37 revision A⁵⁸ only show a secondary access from Howard Drive to a point approximately 67m into the site and the site access alignment from Hermitage Lane to a point about 581m into the site.

⁵⁴ Core Documents 14/3, 14/4, 14/5 and 14/6

⁵⁵ Core Document 1/5, section 3 (ii)

⁵⁶ Inquiry Documents 38 and 39

⁵⁷ Core Document 2/5

⁵⁸ Core Documents 2/7 and 2/8

Illustrative drawings

60. Beyond that, no details are shown in the drawings submitted for approval of other pedestrian or cycle accesses to the site nor of the access arrangements within the site. Drawing number LN-M-02 revision I, entitled Illustrative Masterplan, substituted for that originally submitted during the Councils' consideration of the applications, indicates a layout of Primary Access, Bus and Emergency Access, Pedestrian/Cycle access, Primary Vehicular/Bus route, Bus gate, Secondary route, Access Street (shared surface), Lane/private drive (shared surface), pedestrian and/or cycle route and pedestrian/cycle link. But the diagrammatic nature of the drawing, the terminology of the notations and the title of the drawing itself make it clear that it is purely illustrative, as does the Design and Access Statement⁵⁹. If its provisions were thought to be necessary to make the development acceptable they would have to be secured by condition, if not secured by planning obligation.
61. Appendices JFL23 and JFL24 of Mr Forbes-Laird's Proof of Evidence⁶⁰ are entitled "Engineers' Detail for Construction of the Boardwalk" and "Engineers' Example Detail for Vehicular Access Link" but as the latter title indicates, it is an example detail. Mr Forbes-Laird states⁶¹ that as part of the delivery of the appeal scheme it is proposed to form two internal site accesses between the larger area of development of the appeal site in the north and the smaller area to the south. The two accesses would comprise a footway/cycleway boardwalk along the line of the existing informal path towards the western end of the designated ancient woodland and a vehicular and pedestrian access formed towards the eastern end of the designated ancient woodland. He continues that the footway/cycleway would be constructed as a boardwalk in accordance with the details in appendix 23 of his proof but he goes on to say⁶² that notwithstanding the information at his Appendix 23, it is envisaged that final details of the boardwalk would be secured by means of a planning condition, thus making it clear that the drawing at his Appendix 23 is not submitted as a definitive detail but as an illustration of what might be submitted. Similarly, in a later paragraph⁶³ he states that the drawing in his appendix 24 for the vehicular and pedestrian access is but one design option, again making it clear that the drawing is not submitted as a definitive detail but as an illustration of what might be submitted.
62. The Illustrative Masterplan drawing also shows; existing public rights of way, proposed mown paths, key spaces, open space, an area safeguarded for archaeology potential (no construction), existing trees and woodland to be retained, existing orchard to be retained and enhanced, proposed structural planting, children's play areas, proposed attenuation basins and proposed swales. But all of these matters are purely illustrative and, if thought necessary to make the development acceptable, would have to be secured by condition if not already secured by planning obligation.

⁵⁹ Core Document 2/22 paragraph 1.5

⁶⁰ Core Document 1/11 volume 3

⁶¹ Core Document 1/11 volume 1, Paragraph 4.1.2 and 4.4.1

⁶² Core Document 1/11, volume 1, paragraph 4.4.2. Mr Wilford says the same in his evidence (Core Document 1/9 paragraph 4.9)

⁶³ Core Document 1/11, volume 1, paragraph 4.4.3

63. A Parameters Plan was also submitted with the application and substituted by an amended version⁶⁴ during the Councils' consideration of the applications. This has designations and notations indicating areas for; residential development of 2, 2.5 and 3 storeys up to 11m high, including gardens, associated planting, movement routes and parking; an area for a 2 form entry primary school including proposed structural planting; the approximate location of a school building up to 11m to ridgeline; an area for community hall, including proposed structural planting, access and parking, Community Hall up to 11m to ridgeline; existing structural planting, woodlands, landscape buffers and orchards to be retained and enhanced; amenity open space including children's play areas, foot/cycle routes, proposed structural planting and sustainable drainage systems; ancient woodland to be retained and maintained; a 15m buffer to ancient woodland to accommodate open space, planting and recreational use; an area safeguarded for archaeology potential (no intrusive works); approximate location of children's play area; proposed primary vehicular access; proposed bus and emergency access only; existing pedestrian and/or cycle access; access roads; link road; existing Public Right of Way (PROW) and approximate link of proposed pedestrian and cycle link.
64. MBC took this Parameters Plan as being a substantive drawing of the proposals and protests at doing otherwise.⁶⁵ Although it is described as such in paragraph 3.25 of the Statement of Common Ground⁶⁶ and as being "submitted for approval" in the Design and Access Statement⁶⁷, the matters it deals with are clearly stated to be reserved matters on the application form. Furthermore, its diagrammatic nature and tentative notation (e.g. reiterated use of word "approximate") make it clear that its provisions are illustrative and, if thought necessary to make the development acceptable, would have to be secured by condition if not already secured by planning obligation. At the Inquiry, the appellant's advocate confirmed that the Parameters Plan is not fixed but he urged the Secretary of State to adopt it by condition. An alternative Parameters Plan was submitted during the Inquiry⁶⁸.
65. There is also a drawing of a Landscape Strategy - Landscape Character Zones⁶⁹. It shows designations and notations for fifteen landscape zones and notes for their treatment. But, as noted in the Landscape and Biodiversity Management Strategy⁷⁰, these zones are illustrative and provide just one example of how the appeal site could be defined. The species shown are noted to be indicative and the zones are superimposed on the Illustrative Masterplan layout and so, like the Illustrative Masterplan itself, the drawing can only be regarded as illustrative. Paragraph 3.25 of the Statement of Common Ground confirms this as the parties' understanding. If the provisions of this drawing are thought to be necessary to make the development acceptable, they would need to be secured by condition, if not secured by obligation. Paragraph 3.22 of the Statement of Common Ground makes it clear that the provisions of the Landscape Strategy are not agreed.

⁶⁴ Core Document 2/26

⁶⁵ Miss Thomas's closing submissions, paragraphs 54 and 55

⁶⁶ Core Document 1/5

⁶⁷ Core Document 2/22, paragraph 1.5

⁶⁸ Inquiry Document 34

⁶⁹ Core Document 2/33

⁷⁰ Core document 14/7, paragraphs 2.3 and 4.2

Supporting documents

66. The applications were also accompanied by a Design and Access Statement⁷¹, a Planning Statement⁷², an Ecological Assessment⁷³, a Landscape and Visual Impact Assessment⁷⁴, a Landscape and Biodiversity Management Strategy⁷⁵, a Flood Risk Assessment including a Drainage Strategy⁷⁶, a Heritage Statement⁷⁷, a Statement of Community Involvement⁷⁸, a Transport Assessment⁷⁹, an Air Quality assessment of Watlington Junction⁸⁰, a Preliminary Framework Travel Plan⁸¹, an Arboricultural Impact Assessment⁸² and a Site Suitability Assessment report: Noise⁸³.
67. Some of these make recommendations for the proposal, relevant to their subject matter⁸⁴. Other documents submitted during the Inquiry make further recommendations for inclusion within the proposals. These include a Lighting Design report⁸⁵. If the recommendations of these reports are thought to be necessary to make the development acceptable, they would need to be secured by condition, if not previously secured by obligation.

Planning obligations

68. The two submitted planning obligations both contain conditionality clauses to the effect that if this report recommends and the Secretary of State agrees that any one or more of the obligations in their schedules does not satisfy the

⁷¹ Core Document 2/10, superseded by Core Document 2/22

⁷² Core Document 2/11, superseded by Core Document 2/23

⁷³ Core Document 2/12

⁷⁴ Core Document 2/13

⁷⁵ Core Document 2/14, superseded by Core Document 14/7

⁷⁶ Core Document 2/15

⁷⁷ Core Document 2/16

⁷⁸ Core Document 2/17

⁷⁹ Core Document 2/18, superseded by Core Document 2/27

⁸⁰ Core Document 2/18a

⁸¹ Core Document 2/19

⁸² Core Document 2/20

⁸³ Core Document 2/21

⁸⁴ Core Document 2/12 makes somewhat generalised recommendations for ecology in section 13 and at table 7; Core document 2/13 contains Landscape guidelines at paragraph 8.8 and suggested responses to key sensitivities at paragraph 8.13; Core Document 14/7 provides a Management Strategy for the fifteen zones of the illustrative Landscape Strategy but is specific to that strategy so, although its principles might apply, its details might not apply if finally approved layouts were to differ from the Illustrative Masterplan and Landscape Strategy; Core document 2/15 makes observations at paragraphs 6.3.7 concerning the location of drainage infiltration and at paragraphs 4.7.2 and 9.1.9 for engineered site levels to cope with such matters as catastrophic failure of the water supply reservoir adjacent to the site; Core Document 2/16 makes recommendations from archaeological investigations at section 9; Core Document 2/27 makes recommendations for potential transport mitigations in section 10 and section 2 of the Highways Statement of Common Ground (Core Document 1/8) sets out the parties' agreement on which of these are thought to be necessary; Core Document 2/20 contains Appendices FLAC 4 and 5 including a Data table and drawing 33-1010.03 giving recommendations for trees to be retained and their root protection areas. Core Document 2/21 makes recommendations at paragraphs 4.1.8 – 4.1.10 and 5.4 for night-time noise insulation to parts of the site.

⁸⁵ Appendix 11 to Mr Baxter's Proof of Evidence (Core Document 1/12, volume 2)

requirements of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 then such obligation or obligations shall not have any effect. To that extent, the provisions of the obligations are not secured. There is discussion of compliance with the CIL regulations later in this report.

69. The planning obligation agreement with Kent County Council would provide for the transfer of the Primary School Plot to the County for an agreed price, for the County to construct the school within ten years and for index-linked financial contributions;
- £41.57 per dwelling for new and expanded adult care facilities and services
 - £30.86 per dwelling for new and/or expanded facilities and services through dedicated adult learning centres and outreach community learning facilities
 - £2825 per dwelling towards:
 - Modification of the junction of Fountain Lane and Tonbridge Road
 - Modification of the layout and approaches to the Coldharbour Roundabout on the London Road
 - Improvement of junction 5 of M20 by a white lining scheme
 - Additional pedestrian crossing facilities on Hermitage Lane north of the site
 - Site works for shared pedestrian and cycle use of the eastern footway of Hermitage Lane
 - Supporting the initial five years of a bus service
 - £48.02 per dwelling to provide additional book stock and services at Allington Library
 - £14,286 per pupil (calculated by a formula) towards the cost of constructing the Primary School to be provided on the Primary School Plot
 - £30,000 towards surfacing and other improvements to public rights of way KB35 and KB18
 - £11,799 per pupil (calculated by a formula) towards the expansion of the Maplesden Noakes Secondary School
 - £8.48 per dwelling for the provision of youth based services serving the development
70. The Unilateral Undertaking to Maidstone Borough Council would provide for between 30% and 40% of the dwellings to be affordable housing, of which 60% would be for rent. It would require the developer, before commencing any phase of development, to submit to the Council for approval a Landscape and Ecological Management Plan (LEMP), prepared in accordance with the principles of the Landscape Management Biodiversity Strategy (May 2015)⁸⁶, the Ecological Assessment 2013⁸⁷ and updated 2014/2015 survey work of the woodland⁸⁸,

⁸⁶ Core Document 14/7

⁸⁷ Core Document 2/12

which would included details of legal and funding mechanisms for its implementation, ongoing monitoring and remedial measures and also to carry out the development in accordance with the LEMP.

71. The Undertaking would provide for the construction, at the developer's expense, of a single storey community hall of approximately 600 square metres and ancillary parking on 0.36 ha of land. Its freehold, together with that of the woodland and public open space to be provided in accordance with the LEMP, would be transferred to the Council or, failing that, to a management company owned by purchasers of flats or dwellings on the site, to be managed by the Council or, failing that, by the management company with a power to levy a charge on freeholders or leaseholders for the purpose.
72. The Undertaking would also provide for index-linked financial contributions;
- £100 per dwelling towards the cost of improvements, refurbishment and replacement of facilities including play equipment at Giddyhorn Lane
 - £426 per dwelling to be used for the provision and maintenance of strategic open space within the vicinity of the site
 - £864 per dwelling towards improvements to health care provision in the locality, particularly Blackthorn Medical Practice, Allington Park Surgery, Aylesford Medical Practice and Brewer Street surgery.

Other Agreed Facts

73. A Statement of Common Ground between the appellant, MBC and TMBC and a Highways Statement of Common Ground between the appellant and Kent County Council were submitted prior to the Inquiry. In summary, these confirm agreement on;
- The subject of the appeals and their joint consideration.
 - The description of the appeal site and its immediate surroundings.
 - The planning history of the site.
 - The description of the proposals (but note my reservations set out earlier).
 - The timeline of the application leading to the appeal.
 - The reasons for refusal.
 - The Development Plan.
 - Relevant planning policies.
 - The following other material considerations:
 - The emerging Maidstone Borough Local Plan as a material consideration.
 - The lack of an adequate Five-Year Housing Land supply.

⁸⁸ Possibly a reference to Appendix 5 of Mr Baxter's Proof of Evidence (Core Document 1/12 volume 2)

- The written Ministerial statement: Housing and Growth 6.9.12⁸⁹.
- Natural England Standing Advice for Ancient Woodland and Veteran Trees⁹⁰.
- The position of TMBC in relation to the appeal within its area.
- Matters not in dispute:
 - The principle of development on the greater part of the site.
 - That 30% of the dwellings would be provided as Affordable Housing.
 - That highway matters are acceptable to the highway authority subject to the mitigation proposed.
 - Some construction details of the vehicular and cycleway accesses to the southern field are agreed with the highway authority. (Some matters remain not agreed but not actively disputed).
 - That measures proposed would result in the development having a neutral impact upon air quality.
 - That drainage and flooding matters are acceptable subject to mitigation proposed, secured through condition.
 - That adequate water supply would be secured by provisions under the Water Industry Act 1991.
 - The viewpoints for the Landscape and Visual Impact Assessment.
 - That a full ecological assessment has been made which describes the mitigation and enhancement incorporated into the proposal.
 - That the appeal does not seek to locate any development in the area of highest archaeological potential.
 - Noise.
 - The quantity of open space proposed.
 - The intention to address the third reason for refusal by means of a planning obligation.
 - That the appeal proposals do not constitute EIA development.
- Matters in dispute
 - The designation as Ancient Woodland.
 - The extent of harm caused to woodland.
 - The ecological impact on woodland.
 - The balance between harm to woodland and the benefits arising.

⁸⁹ Core Document 7/1

⁹⁰ Core Document 10/1

- The effects of the proposal on the setting of woodland as a landscape feature.
- The weight to be given to emerging policy.

The Case for Croudace Strategic Ltd (the appellant)

(i) The development plan allocation

74. The appellant's opening remarks point out that there is no outstanding objection from TMBC and that Council does not appear at the Inquiry. In closing, the observation is made that no objection is made in respect of the Tonbridge and Malling development plan, nor in respect of adopted supplementary planning guidance. There is no neighbourhood plan made or in preparation and no prematurity objection is raised⁹¹.
75. The scheme was originally refused permission by MBC for three reasons. One is now withdrawn. One other will be dealt with by planning obligations. That leaves one reason for refusal with several strands. The development is alleged to cause harm to Ancient Woodland through ecological deterioration and in terms of its setting as a landscape feature. The latter was acknowledged in cross-examination not to justify refusal of permission in its own right.⁹²
76. Both of these issues relate only to the impact of developing part of the site, that is the "southern" or "hospital" field. Development of the "northern" or "reservoir" field is considered by the Council to be entirely acceptable.⁹³
77. The site lies within the settlement boundary for Maidstone set within the adopted Maidstone Local Plan and hence, excluded from the restricted policies applied to "the countryside" in policy terms. Policy H12 has been saved and forms part of the adopted development plan. The plan period has expired and, in the absence of a five-year housing land supply⁹⁴ relevant policies for the supply of housing should not be considered up to date but it conforms to the NPPF aim of seeking to boost the supply of land for housing.⁹⁵
78. The appeal scheme accords with those parts of policy H12 still considered to be relevant. Non-conformity is justified by the passage of time or is explained by reconfiguration of elements of the proposal within the overall scheme.⁹⁶ The main access road is accepted in principle by TMBC as a consequence of any permission for housing development within MBC.⁹⁷
79. It is policy H12 of the adopted Local Plan which allocates both the northern and southern fields for residential development. The woodland belt, not then identified as Ancient Woodland but nonetheless recognised as an important constraint, is to be retained⁹⁸. The inevitable consequence is that there would be

⁹¹ Mr Boyle's closing submissions, paragraph 6

⁹² Mr Boyle's closing submissions, paragraph 3

⁹³ Mr Boyle's closing submissions paragraph 2

⁹⁴ Confirmed in paragraphs 2.5 to 2.8 of Inquiry Document 12

⁹⁵ Mr Wilford's evidence (Core Document 1/9, paragraphs 3.2 and 5.5)

⁹⁶ Mr Wilford's evidence (Core Document 1/9, paragraphs 5.9 and 5.10 referencing his Appendix 1)

⁹⁷ Mr Wilford's evidence (Core Document 1/9, paragraph 5.11)

⁹⁸ Mr Boyle's closing submissions paragraph 7

housing on both sides of the Ancient Woodland and a link through it⁹⁹. Although it was not designated ancient woodland at that time, its ecological value would have been recognised and is not alleged to have increased in the intervening years.

80. In addition, any landscape impact on the setting of the woodland belt from development of the southern field would have been apparent and acceptable – indeed it had the sanction of statutory policy.¹⁰⁰ The allocation came about by virtue of the Local Plan Inspector’s report, where he concluded that three factors limited the impact of additional development in this location: the existing surrounding urban uses, the limited visibility of the site and the urban character of Hermitage Lane. Moreover, these observations applied to the whole site whereas the only issue now relates to the particularly well-enclosed southern field. The Council’s landscape witness, Mr Lovell, accepted that all three factors applied unchanged today.¹⁰¹
81. The subsequent identification as Ancient Woodland is said to justify a change in policy. Yet this was not an issue which prevented the allocation of the southern field for development in the Interim Approval of Maidstone Borough Local Plan Policies 2013 when the presence of Ancient Woodland on the site was well known to the Council and, indeed, referenced in the allocation policy SS1b itself¹⁰². Yet, the policy allocates for development both parcels, north and south of the Ancient Woodland but with only one point of access to the Highway network, namely Hermitage Lane and so there is an expectation of a link between the northern field and the southern field, through the woodland belt somewhere along its length. Once more, impact on the setting of the woodland belt was plainly judged acceptable (as it was and still is in relation to the northern field) and so, is endorsed by the (albeit non-statutory) adopted policy.¹⁰³ The appeal scheme largely accords with the relevant parts of policy SS1b. Sufficient justification is set out where it does not wholly comply¹⁰⁴. The council adopted the Interim Approval Local Plan in 2013 for “development control purposes”, a status that has not subsequently been revoked or superseded.¹⁰⁵
82. This is a site, therefore, the development of which benefits from positive support in the statutory and emerging development plan. Furthermore, this is an authority that is unable to demonstrate a five-year housing land supply, thereby engaging paragraph 49 of the NPPF and adding especial weight to the need to provide for additional housing supply¹⁰⁶. Policy H12 contains a number of control criteria which have either been met, or have been agreed to be no longer

⁹⁹ Mr Boyle’s opening submissions and paragraph 9 of closing submissions, Mr Wilford’s evidence (Core Document 1/9 paragraph 5.12), Mr Chard’s evidence (Core Document 1/10, paragraph 10.2), Mr Forbes-Laird’s evidence (CD1/11) volume 1, paragraph 2.2.1 and Mr Baxter’s evidence (Core Document 1/12 paragraph 5.3)

¹⁰⁰ Mr Boyle’s closing submissions paragraph 9

¹⁰¹ Mr Boyle’s closing submissions paragraph 8

¹⁰² Mr Wilford’s evidence (Core Document 1/9 paragraph 4.4), Mr Chard’s evidence (Core Document 1/10) paragraphs 3.23 and 10.3 and Mr Boyle’s closing submissions paragraphs 3 and 13

¹⁰³ Mr Boyle’s closing submissions paragraph 13

¹⁰⁴ Mr Wilford’s evidence (Core Document 1/9, paragraph 5.15, referencing his appendix 3)

¹⁰⁵ Mr Boyle’s closing submissions paragraph 12

¹⁰⁶ Mr Boyle’s opening submissions and closing submissions paragraphs 1 and 11

relevant in present circumstances¹⁰⁷, so this is a scheme which accords with the material parts of the statutory development plan and the non-statutorily “adopted” emerging plan and should, therefore, be granted permission in accordance with s38(6) of the Planning and Compulsory Purchase Act 2004 and the advice in the first bullet of the “decision taking” part of paragraph 14 of the NPPF, “without delay”¹⁰⁸.

83. Harm is alleged in respect of emerging Regulation 18 policy H1(2) in so far as that policy does not allocate the southern field for housing but allocates it for open space¹⁰⁹. But:

- The 2014 regulation 18 draft policy is subject to significant unresolved objection and is yet to be consulted upon under regulation 19.
- It seeks to allocate open space when the Council’s planning witness acknowledges that the Council cannot justify a need for open space.
- There is no cogent justification for the de-allocation of the southern field for housing development between the Interim Approval Local Plan of 2013 and the 2014 consultation draft¹¹⁰:
 - Ancient Woodland designation was known in 2013 yet did not prevent allocation then¹¹¹.
 - Required housing numbers are going up, not down, leading to increased pressure to identify more land for housing, not less.¹¹²
 - Evolution of the Green and Blue Infrastructure Strategy has as much relevance to the development of the northern field as to the southern and is an ex-post facto attempt to rationalise the change.
 - Deletion of the allocation occurred not because the developer proposed an access through the woodland but because Council members took fright at the number of objections to the planning application.
- By virtue of the failure to demonstrate a five-year housing supply, any such allocation would be out of date by the test of NPPF paragraph 49 and so would not prevent a grant of planning permission under the tests in NPPF paragraph 14.¹¹³

84. Harm is also alleged in respect of emerging regulation 18 policy DM10(1) concerning Ancient Woodland. However, this policy is, quite clearly on its face, in conflict with NPPF paragraph 118(5) in that it omits the necessary test of balancing need with harm which the NPPF requires¹¹⁴. In any event, the appeal

¹⁰⁷ Mr Boyle’s closing submissions paragraph 10 and Mr Wilford’s evidence (Core Document 1/9, paragraph 5.9 referencing his Appendix 1)

¹⁰⁸ Mr Boyle’s closing submissions paragraph 4 and Mr Wilford’s evidence (Core Document 1/9 paragraphs 5.13 and 6.2)

¹⁰⁹ Mr Wilford’s evidence (Core Document 1/9, paragraph 5.16 referencing his Appendix 4)

¹¹⁰ Mr Chard’s evidence (Core document 1/10), paragraphs 3.23, 5.18 and 10.5

¹¹¹ Mr Chard’s evidence (Core document 1/10), paragraphs 3.23 and 5.18

¹¹² Inquiry Document 14

¹¹³ Mr Boyle’s closing submissions paragraphs 14 and 16

¹¹⁴ Mr Forbes-Laird’s evidence (CD1/11 volume 1) paragraph 2.5.4

scheme accords with emerging policy DM10¹¹⁵. Moreover, the equivalent policy CS13 in the adopted Interim Approval Local Plan in 2013 was not considered by the Council to warrant exclusion of the southern field from development. Quite the contrary: it was in accordance with CS13 that policy SS1b (allocating the land) was formulated. Development of the southern field entailed no unacceptable harm to the Ancient Woodland.¹¹⁶

(ii) Ecology and Ancient Woodland

85. In opening, the appellant accepted that if the second bullet in the second half of NPPF paragraph 14 was engaged, then NPPF paragraph 118, making a specific reference to Ancient Woodland might amount to a specific policy indicating that development should be restricted¹¹⁷. Although the appellant challenges the designation as Ancient Woodland, the scheme has been designed as though the designation were correct. NPPF paragraph 118 requires a balancing test¹¹⁸; identifying the degree and nature of the harm caused, after allowing for mitigation and compensation; and then identifying the benefits of the scheme, that is, the whole scheme, not just part of it. On the cautionary principle, the appellants have assessed the benefits of developing the southern field only and conclude that these alone outweigh any harm.¹¹⁹

86. There are therefore three strands to the appellant's case in relation to ecological harm¹²⁰;

- Is there Ancient Woodland affected?
- If so, what is the effect of the development, taking account of mitigation?
- Do the need for and benefits of the development in this location (including any compensatory provision proposed) clearly outweigh any harm?

Woodland not Ancient

Map evidence

87. Cross-examination of the Council's Ancient Woodland expert Mr Sansum established that the exercise which led to designation as Ancient Woodland was wholly desk based. It rests on map evidence. On site survey of Ancient Woodland vascular plants or dendrochronology played no part in the designation process.¹²¹

88. The appellant's witness, Mr Forbes-Laird initially disputed the conclusions to be drawn from nineteenth century historic maps but, as more were produced during the Inquiry he withdrew much of his evidence relating to this point and was content to proceed on the basis that a map (Mudge) of 1801 shows woodland in

¹¹⁵ Mr Wilford's evidence (Core Document 1/9, paragraph 5.18 referencing his Appendix 5

¹¹⁶ Mr Boyle's closing submissions paragraph 15

¹¹⁷ Mr Wilford's evidence (Core Document 1/9, paragraphs 3.4 and 5.26)

¹¹⁸ Mr Wilford's evidence (Core Document 1/9, paragraph 5.23) and Mr Forbes-Laird's evidence (Core Document 1/11 volume 1 paragraph 9.4)

¹¹⁹ Mr Boyle's opening submissions and Mr Wilford's evidence (Core Document 1/9 paragraphs 5.24(1), 5.28, 6.18 to 6.21 and table 6.2)

¹²⁰ Mr Boyle's closing submissions paragraph 31

¹²¹ Mr Boyle's closing submissions paragraphs 33 and 34

the disputed area of Ancient Woodland and that the draft Ordnance Survey map of 1797 was capable of three interpretations and so he did not rely on it as evidence of an absence of woodland at that date.¹²²

89. However, Ancient Woodland designation depends on a view taken that a site has been continuously wooded since 1600¹²³. Five other maps were examined covering the period between 1596 and 1797.¹²⁴
90. By referencing the administrative boundary between Hundreds on the historic maps to modern day Ordnance Survey maps showing the designated Ancient Woodland¹²⁵, the latter can be shown to lie outside (or largely outside) treed areas shown on all four of the oldest historic maps spanning the period 1596 to 1695.¹²⁶
91. A map of 1769 (Andrews, Dury and Herbert) clearly shows a substantial open area to the east of the Hermitage, showing no trees in the region of the disputed Ancient Woodland.¹²⁷ This depiction is likely to be correct because there would be an open line of sight to Allington Castle from the ridgeline above the Hermitage; Mr Forbes-Laird argues that had trees been present, blocking the line of sight, the cartographer would have shown them.¹²⁸
92. Natural England describes the Inventory of Ancient Woodland as “provisional” because it recognises that a desk based exercise will always be flawed.¹²⁹ Designation is always liable to be challenged or updated depending on the evidence available.¹³⁰

Other evidence

93. Experts advise that up to sixteen corroborating indicators should be used as evidence of Ancient Woodland.¹³¹ Those adduced by the appellant are a dendrochronological assessment based on the White method and a coppice stool

¹²² Mr Forbes-Laird's supplementary evidence (Core Document 1/11 volume 4), paragraphs 3.3 to 3.5

¹²³ Mr Forbes-Laird's evidence (Core Document 1/11 volume 1) paragraphs 5.1.1 and 5.1.2, quoting Natural England's Standing Advice (Core document 10/1), NPPF Annex 2 Glossary and Woodland Trust definition (Appendix 7 of his evidence).

¹²⁴ Mr Forbes-Laird's evidence (Core Document 1/11 volume 4), Paragraph 4.1 and Mr Boyle's closing submissions paragraph 36

¹²⁵ Inquiry Documents 19 and 30

¹²⁶ Mr Forbes-Laird's evidence (Core Document 1/11 volume 4), Paragraph 5.3 and Mr Boyle's closing submissions paragraph 37

¹²⁷ Mr Forbes-Laird's evidence (Core Document 1/11 volume 1), Paragraph 6.3.3 and Mr Boyle's closing submissions paragraph 38

¹²⁸ Mr Forbes-Laird's evidence (Core Document 1/11 volume 1), Paragraph 6.3.5

¹²⁹ Mr Forbes-Laird's evidence (Core Document 1/11 volume 1), Paragraphs 5.1.7 and 5.2.4

¹³⁰ Mr Boyle's closing submissions paragraph 33 and Mr Forbes-Laird's evidence (Core Document 1/11 volume 1 paragraphs 5.1.3 to 5.2.7, 9.5 and 9.6)

¹³¹ Mr Forbes-Laird's evidence (Core Document 1/11 volume 1), Paragraphs 5.3.1, 5.3.2 and 6.7.3 and table 4 and Mr Baxter's evidence (Core Document 1/12, paragraph 3.5)

age estimate¹³², a soil survey¹³³ and a survey of ancient woodland vascular plants¹³⁴. Other indicators were sought but not found.¹³⁵

94. The dendrochronological assessment suggests that the principal standard oaks range in age from 69-171 years and that the coppice analysis suggests an old hedgerow on the edge of the woodland dating from 1538 and three zones of coppice plants, one dating from the mid-nineteenth century, the other two from the turn of the nineteenth and twentieth centuries.¹³⁶ The Council's witness, Mr Sansum also sought to use the White method of calculating the age of trees from a measurement of the girth of their trunk to show pre-1797 trees on the site.¹³⁷ But he provided an empirical control in the form of a felled tree, estimated by ring count to be about 150-190 years old¹³⁸. However, its girth was comparable to the largest trees whose origins Mr Sansum's use of the White methodology had placed 200 years older. The dendrochronological analysis bears out the map analysis to indicate that the woodland is not ancient.¹³⁹
95. Similarly, the soil analysis showed a distinct break or discontinuity in the soil profile between samples taken at the extreme western end of the designated Ancient Woodland on the one hand and those taken in the rest of the designated Ancient Woodland, in woodland not designated and outside the woodland in the southern field on the other. This was manifest in topsoil depth and in organic matter.¹⁴⁰ The Council's witness, Mr Sansum had himself claimed that he would expect to see discontinuity if only part of the Ancient Woodland was correctly designated.¹⁴¹ Despite Mr Sansum's attempts to cast doubts upon the scientific robustness of the work¹⁴², he had to accept that the expert authors considered the methodology fit for purpose and he had no expertise to bring to the exercise¹⁴³.
96. Species with poor dispersal mechanisms which are slow to colonise new woodland can indicate the presence of Ancient Woodland. These are termed Ancient Woodland Vascular Plants. Their presence in high numbers may indicate the presence of Ancient Woodland. It does not on its own indicate proof but may be used as confirmatory evidence.¹⁴⁴ Equal numbers of Ancient Woodland Vascular Plants were recorded within the designated Ancient Woodland and within

¹³² Appendix 18 of Mr Forbes-Laird's evidence (Core Document 1/11 volume 3)

¹³³ Appendix 8 to Mr Forbes-Laird's evidence (Core Document 1/11 volume 2)

¹³⁴ Plan AB6 and Appendix 5 to Mr Baxter's evidence (Core Document 1/12, appendices volumes 1 and 2)

¹³⁵ Mr Forbes-Laird's evidence (Core Document 1/11 volume 1), Paragraph 6.7.2

¹³⁶ Mr Forbes-Laird's evidence, Core Document 1/11 volume 1, section 3.6 and paragraph 6.7.3

¹³⁷ Mr Boyle's closing submissions, paragraph 39

¹³⁸ Inquiry Document 2, paragraphs 2.24 and 2.25. Mr Forbes-Laird counted 155-170 rings, Mr Sansum more than 190

¹³⁹ Mr Boyle's closing submissions, paragraph 39

¹⁴⁰ Section 5 of Tim O'Hare Associates' Soil Investigation report, found at Appendix 8 to Mr Forbes-Laird's evidence (Core Document 1/11 volume 2)

¹⁴¹ Mr Sansum's evidence (Core Document 1/16) paragraph 5.2

¹⁴² Mr Sansum's Note on the Soil Investigation Report (Inquiry Document 1)

¹⁴³ Mr Boyle's closing submissions paragraph 40, referencing Sansum in cross-examination

¹⁴⁴ Mr Baxter's evidence (Core Document 1/12), paragraphs 3.8 and 3.9

woodland not designated Ancient¹⁴⁵. Though different plants appeared in different locations within the different areas, in aggregate, Ancient Woodland Vascular Plants were found in equal numbers in the areas not alleged by anyone to be Ancient Woodland. In short, their presence is entirely consistent with the disputed Ancient Woodland not being ancient but being a Plantation on an Ancient Woodland Site (PAWS).¹⁴⁶

Effect on woodland

97. Part of the appeal site lies within an identified Biodiversity Opportunity Area but no other identified statutory ecological designation affects the site.¹⁴⁷ The high proportion of non-native Sweet Chestnut precludes the Ancient Woodland from designation as a priority habitat under the Kent Biodiversity Action Plan.¹⁴⁸ For the same reason its canopy is generally not of high ecological value.¹⁴⁹ The lack of recent woodland management has led to bramble restricting the majority of Ancient Woodland Vascular Plants to small, localised patches.¹⁵⁰ Survey work records two Priority Species of bird, one further Bird of Conservation Concern, a Soprano Pipistrelle bat roost and two inactive badger setts within the designated Ancient Woodland¹⁵¹. These are not particularly sensitive to disturbance.¹⁵² Considering the above factors, the designated Ancient Woodland area should be considered to be of medium to at most medium/high value at the local level.¹⁵³
98. The appellants have consistently treated the proposals as if the Ancient Woodland were correctly designated.¹⁵⁴ The actual loss of designated Ancient Woodland would be 305 sq m, or 1.8% from the vehicular access¹⁵⁵, a tiny percentage of the total Ancient Woodland area within Maidstone.¹⁵⁶ Partial mitigation for the loss of soil resulting from the proposed access road would be achieved by a soil translocation exercise.¹⁵⁷ The intended boardwalk through the woodland would not constitute a loss of Ancient Woodland because it would not result in ground damage or soil loss.¹⁵⁸

¹⁴⁵ Conclusion (paragraph 4.1) of Woodland Botanical Survey by Aspect Ecology, found at Appendix 5 to Mr Baxter's evidence (Core Document 1/12, appendices volume 2)

¹⁴⁶ Mr Baxter's evidence (Core Document 1/12), paragraphs 3.12 to 3.19 and Mr Boyle's closing submissions, paragraph 41

¹⁴⁷ Mr Baxter's evidence (Core Document 1/12), section 4.2

¹⁴⁸ Mr Baxter's evidence (Core Document 1/12), paragraphs 4.3.1 to 4.3.4

¹⁴⁹ Mr Baxter's evidence (Core Document 1/12), paragraphs 4.3.5 to 4.3.10

¹⁵⁰ Mr Baxter's evidence (Core Document 1/12), paragraphs 4.3.11 to 4.3.14

¹⁵¹ Mr Baxter's evidence (Core Document 1/12), paragraphs 4.4.1 to 4.4.6

¹⁵² Mr Baxter's evidence (Core Document 1/12), paragraph 5.9.67

¹⁵³ Mr Baxter's evidence (Core Document 1/12), paragraph 4.3.15

¹⁵⁴ Mr Baxter's evidence (Core Document 1/12), paragraph 3.23 and Mr Boyle's closing submissions, paragraph 43

¹⁵⁵ Mr Forbes-Laird's evidence (Core Document 1/11 volume 1) paragraphs 4.3.2 (2) and 8.4.1, Mr Wilford's evidence (Core Document 1/9 paragraph 4.7), Mr Chard's evidence (Core Document 1/10), paragraphs 6.6 and 6.7, Mr Baxter's evidence (Core Document 1/12) paragraphs 5.8.5 and 5.12.2

¹⁵⁶ Mr Chard's evidence (Core document 1/10), paragraph 8.18

¹⁵⁷ Mr Baxter's evidence (Core Document 1/12) paragraph 5.8.12, 5.8.13, 5.12.2 and Appendix 9

¹⁵⁸ Mr Wilford's evidence (Core Document 1/9) paragraphs 4.10 and 4.11, Mr Chard's evidence (Core document 1/10), paragraphs 6.12 to 6.14, Mr Forbes-Laird's evidence (Core

99. The Council attempted to have its cake and eat it by objecting to the link road through the designated Ancient Woodland but refusing either to acknowledge that there was no preferable route or to claim that there was a preferable one. The situation must be one or the other. If there is a preferable (ie less harmful) route that avoids the Ancient Woodland, it is open to the local planning authority to secure that at reserved matter stage. If there is not, the allocation must have accepted a route through the designated Ancient Woodland. The latter was certainly the appellant's understanding of the Council's position from their pre-application discussions. The suggestion otherwise only came in the Council's opening, not in Mr Bailey's evidence.¹⁵⁹ The appellant is convinced that the route indicated on the parameters plan is the least harmful.¹⁶⁰
100. Be that as it may, this being an outline scheme, ultimately, the location of the link road is for reserved matters. The Secretary of State can choose to establish an acceptable line now, (by imposing by condition the line in the original parameters plan¹⁶¹, or the line in the alternative parameters plan¹⁶²) or leave the final line to reserved matters (by imposing no parameters plan, or a parameters plan excluding any line for the road).¹⁶³
101. Deterioration of the woodland (from the effects of development on adjacent land) would be prevented by a minimum 15m landscape buffer¹⁶⁴ (except adjacent to the link road itself given its intrinsic design¹⁶⁵). The indicative plans show separation to residential development well in excess of this in places. The Council accepts the principle of a minimum 15m buffer to residential development on the north side. No evidence was led suggesting that a different approach was necessary on the south side.¹⁶⁶ The Council has consistently allocated or permitted housing development adjacent to Ancient Woodland.¹⁶⁷
102. The Standing Advice for Ancient Woodland identifies a number of potential effects arising from development of land adjacent to Ancient Woodland.¹⁶⁸ The woodland is already poorly connected.¹⁶⁹ Further fragmentation would be minimised by detailed design of the proposed boardwalk and by minimising the dimensions of the vehicular access to allow canopy closure.¹⁷⁰ The landscape

Document 1/11 volume 1) paragraph 4.4.1 and 4.4.2 and Mr Baxter's evidence (Core Document 1/12) paragraphs 5.8.8 to 5.8.10 and 7.3

¹⁵⁹ Mr Boyle's closing submissions paragraph 56

¹⁶⁰ Mr Wilford's evidence (Core Document 1/9 paragraph 4.8), Mr Chard's evidence (Core Document 1/10), paragraph 6.7, Inquiry Document 15 and responses by Mr Baxter, Mr Chard and Mr Wilford to Inspector's questions

¹⁶¹ Core Document 2/26

¹⁶² Inquiry Document 34

¹⁶³ Mr Boyle's closing submissions paragraph 56

¹⁶⁴ Mr Forbes-Laird's evidence (Core Document 1/11 volume 1 paragraph 4.4.4)

¹⁶⁵ Mr Baxter's evidence (Core Document 1/12) paragraph 5.10.3 and 5.8.14

¹⁶⁶ Mr Wilford's evidence (Core Document 1/9, paragraph 4.25), Mr Baxter's evidence (Core Document 1/12) paragraph 5.4 and 7.5 and Mr Boyle's closing submissions paragraph 45

¹⁶⁷ Mr Chard's evidence (Core Document 1/10) paragraph 3.15 and Mr Baxter's evidence (Core Document 1/12) paragraphs 5.9.3 to 5.9.7

¹⁶⁸ Mr Baxter's evidence (Core Document 1/12) paragraph 5.9.8

¹⁶⁹ Mr Baxter's evidence (Core Document 1/12) paragraph 5.9.10

¹⁷⁰ Mr Chard's evidence (Core Document 1/10) paragraphs 6.9 and 8.17 and Mr Baxter's evidence (Core Document 1/12) paragraphs 5.9.10 to 5.9.19 and Appendices AB3 and AB4

buffers will avoid hydrological issues.¹⁷¹ Their design has the potential to enhance the quality of habitat adjoining the woodland¹⁷² and reduce cat predation.¹⁷³ Traffic flows through the woodland would be unlikely to lead to any significantly reduced air quality.¹⁷⁴ Detailed design of the link road would reduce any potentially contaminated surface water run-off to the designated Ancient Woodland to a negligible level.¹⁷⁵ Following the construction phase during which dust creation could be controlled by condition, no significant dust deposition is expected.¹⁷⁶ It is not expected that health and safety works to protect the public would be needed to veteran trees.¹⁷⁷ Whilst development would alter the surroundings, the change to what are already urbanised, fragmented and incoherent surroundings would not affect the ability to appreciate the value of the designated Ancient Woodland as a landscape feature.¹⁷⁸ Undisputed lighting evidence shows that a design can be produced with a dark canopy above and dark corridors between the lighting columns resulting in light-spill at lux levels below that which would affect even the most light-sensitive bats (as representative of other nocturnal species).¹⁷⁹ Detailed layout design can avoid residential gardens backing on to Ancient Woodland and so avoid the risk of encroachment. Frontage development provides passive surveillance to prevent fly-tipping, which would anyway be deterred by the active management company proposed.¹⁸⁰ The woodland is already open to and used by the public so is already subject to anthropogenic effects such as noise and trampling of vegetation.¹⁸¹ The proposed boardwalk will prevent trampling.¹⁸² Detailed design can limit or dissuade access.¹⁸³ Alternative open space provided in the development will provide diversionary attractions.¹⁸⁴

103. Natural England advice is that the irreplaceable nature of Ancient Woodland means that loss or damage cannot simply be rectified by mitigation and compensation measures and so it advises that where mitigation or compensation is offered, these measures should be considered only after it has been judged that the wider benefits of a proposed development clearly outweigh the loss of or damage to Ancient Woodland.¹⁸⁵ But that advice is inconsistent with NPPF paragraph 118 since the mitigation and compensation are part of the wider benefits of a proposed development to be taken into account in making the

¹⁷¹ Mr Baxter's evidence (Core Document 1/12) paragraphs 5.9.36 to 5.9.38

¹⁷² Mr Baxter's evidence (Core Document 1/12) paragraphs 5.9.21 to 5.9.24

¹⁷³ Mr Baxter's evidence (Core Document 1/12) paragraphs 5.9.55 and 5.9.56

¹⁷⁴ Mr Baxter's evidence (Core Document 1/12) paragraphs 5.9.25 to 5.9.29

¹⁷⁵ Mr Baxter's evidence (Core Document 1/12) paragraphs 5.9.30 to 5.9.32

¹⁷⁶ Mr Baxter's evidence (Core Document 1/12) paragraphs 5.9.33 to 5.9.35

¹⁷⁷ Mr Baxter's evidence (Core Document 1/12) paragraph 5.9.39.

¹⁷⁸ Mr Chard's evidence (Core Document 1/10), section 7 and paragraph 10.11

¹⁷⁹ Mr Chard's evidence (Core Document 1/10), paragraphs 6.10 and 8.22 and Mr Boyle's closing submissions, paragraph 46, referencing Mr Baxter's evidence (Core Document 1/12) paragraphs 5.9.41 to 5.9.50 and Appendix 11

¹⁸⁰ Mr Baxter's evidence (Core Document 1/12) paragraphs 5.9.51 to 5.9.54

¹⁸¹ Mr Baxter's evidence (Core Document 1/12) paragraph 5.9.58

¹⁸² Mr Chard's evidence (Core Document 1/10) paragraph 8.23

¹⁸³ Mr Baxter's evidence (Core Document 1/12) paragraphs 5.9.59 to 5.9.62

¹⁸⁴ Mr Baxter's evidence (Core Document 1/12) paragraphs 5.9.63 to 5.9.66

¹⁸⁵ Paragraph 6.1 of Natural England's Standing Advice (Core Document 10/1). Copy also at Appendix 13 of Mr Bailey's Proof of Evidence (Core document 1/13)

judgement balancing benefits against loss or damage.¹⁸⁶ The Council's planning witness, Mr Bailey readily accepted that, contrary to the Natural England standing advice, mitigation was to be taken into account in judging the effects on Ancient Woodland before then seeing whether the need and benefits clearly outweigh that residual or net loss.¹⁸⁷

104. There is some dispute as to whether soil translocation was "mitigation" (as it reduced the harmful impact of what was lost) or "compensation" (as it was saving biodiversity but outside the Ancient Woodland boundary). Even without the soil translocation, the net impact would be "at least neutral"¹⁸⁸ The Council's ecological witness, Miss Forster agreed in oral evidence that the net effect on Ancient Woodland with mitigation would be considerable biodiversity enhancement.¹⁸⁹

The biodiversity balance

105. There are two balancing exercises to be done. One is required by NPPF paragraph 118, bullet 5. This requires the decision taker to consider whether planning permission should be refused unless the need for, and benefits of the development in that location clearly outweigh the loss.¹⁹⁰ It is not a very profound observation that, with a net loss of "at least neutral", not very much in the way of benefits need be identified in order "clearly" to outweigh that harm. In addition to the mitigation measures already described, a range of ecological enhancements would be advanced.

106. The landscape buffers would provide more than mitigation.¹⁹¹ Of 1648 viable trees on site, it is proposed to retain 1114 (68%) and to add 3062 sq m of new woodland, more than ten times the area of designated Ancient Woodland which would be lost.¹⁹² Additional pedestrian and cycle routes would increase connectivity to the surrounding area by means of sustainable transport methods.¹⁹³ There would be woodland restoration and management¹⁹⁴, avoiding the harm of a "do nothing" scenario¹⁹⁵ and not just of the Ancient Woodland¹⁹⁶,

¹⁸⁶ Mr Forbes-Laird's evidence (Core Document 1/11 volume 1), paragraph 2.6.2 to 2.6.6

¹⁸⁷ Mr Boyle's closing submissions, paragraph 47, referencing Mr Bailey's evidence in cross-examination

¹⁸⁸ Mr Boyle's closing submissions paragraph 48, referencing Mr Baxter's oral evidence. Mr Forbes-Laird, in his evidence (Core Document 1/11 volume 1, paragraphs 8.5.2, 8.5.3 and 9.8) summarises the extent of harm to the woodland as minor and at least neutralised by the proposals for mitigation and compensation.

¹⁸⁹ Mr Boyle's closing submissions paragraph 47, referencing Miss Forster's oral evidence in cross-examination

¹⁹⁰ Mr Wilford's evidence (Core Document 1/9, paragraphs 6.3 and 6.9

¹⁹¹ Mr Baxter's evidence (Core Document 1/12), paragraphs 5.10.2 to 5.10.10) and Mr Wilford's evidence (Core Document 1/9), paragraphs 5.47 to 5.50

¹⁹² Mr Forbes-Laird's evidence (Core Document 1/11, volume 1) paragraphs 4.2.1 and 4.2.2, Mr Wilford's evidence (Core Document 1/9) paragraph 5.43, Mr Chard's evidence (Core Document 1/10) paragraphs 6.8, 8.20 and 10.8 and Mr Baxter's evidence (Core Document 1/12) paragraphs 5.10.11, 5.10.12 and 5.12.5

¹⁹³ Mr Wilford's evidence (Core Document 1/9 paragraph 5.46)

¹⁹⁴ Mr Chard's evidence (Core Document 1/10) Paragraphs 6.17 to 6.24 and 8.21

¹⁹⁵ Mr Baxter's evidence (Core Document 1/12) section 5.11 and paragraph 7.8

¹⁹⁶ Mr Baxter's evidence (Core Document 1/12) paragraphs 5.10.13 to 5.10.23 and 5.10.29

grassland management,¹⁹⁷ the provision of a community orchard¹⁹⁸, a parkland buffer in the north-west part of the appeal site¹⁹⁹, the opportunity to create new habitats²⁰⁰ and enhancements for fauna in the form of bird nest boxes, bat boxes, hedgehog cut-outs, invertebrate boxes and reptile hibernacula²⁰¹.

107. There would be very significant economic benefits, the quantification of which is not in dispute.²⁰² The Council's planning witness, Mr Bailey, agreed that the support of the planning system to achieving the delivery of these significant sums is to be accorded substantial weight.²⁰³

108. In addition, particularly in the context of the inability of the Council to demonstrate a five-year housing supply, the provision of housing in what is acknowledged to be a sustainably located site for residential development is itself a planning good to be accorded substantial weight. Further, the contribution to affordable housing, in the context of the affordable housing need in the Borough is to be given substantial positive weight. The substantial weight to be given to the achievement of these "social" dimensions of sustainability was again, agreed by the Council's planning witness, Mr Bailey.²⁰⁴

109. The substantial benefits across all three dimensions of sustainability as defined by paragraph 7 of the NPPF clearly outweigh any residual harm to the Ancient Woodland as a result of the proposals and so, the test in NPPF paragraph 118(5) is passed.²⁰⁵ Harm to the ecology of the site is not a reason for withholding permission.²⁰⁶

(iii) Landscape setting

110. The reason for refusal refers to "the setting of the woodland as a landscape feature". It was thought that the reference to "the woodland" referred back to the reference to "designated Ancient Woodland" earlier in the reason for refusal.²⁰⁷ Clarification was sought and given²⁰⁸ that this presumption was correct.

¹⁹⁷ Mr Baxter's evidence (Core Document 1/12), paragraph 5.10.28

¹⁹⁸ Mr Baxter's evidence (Core Document 1/12) paragraphs 5.10.25 and 5.10.26 and Mr Wilford's evidence (Core Document 1/9) paragraph 5.51

¹⁹⁹ Mr Baxter's evidence (Core Document 1/12) paragraph 5.10.27 and Mr Wilford's evidence (Core Document 1/9) paragraphs 5.50, 5.55 and 5.56

²⁰⁰ Mr Baxter's evidence (Core Document 1/12), paragraph 5.10.24

²⁰¹ Mr Baxter's evidence (Core Document 1/12) paragraphs 5.10.30 to 5.10.35, 7.6, 7.7 and plan AB5

²⁰² Mr Boyle's closing submissions, paragraph 52, referencing Mr Wilford's evidence (Core Document 1/9), paragraphs 5.30 to 5.33 and Appendix 6

²⁰³ Mr Boyle's closing submissions, paragraph 52, referencing Mr Bailey's oral evidence in cross-examination

²⁰⁴ Mr Boyle's closing submissions, paragraph 53, referencing Mr Wilford's evidence (Core Document 1/9) paragraphs 5.34 to 5.42 and Mr Bailey's oral evidence in cross-examination

²⁰⁵ Mr Boyle's closing submissions, paragraph 54, Mr Wilford's evidence (Core Document 1/9) paragraphs 6.10 to 6.20 and tables 6.1 and 6.2 and Mr Baxter's evidence (Core Document 1/12), paragraph 5.10.36

²⁰⁶ Mr Boyle's closing submissions, paragraph 57 and Mr Wilford's evidence (Core Document 1/9, paragraph 6.21)

²⁰⁷ Mr Boyle's closing submissions, paragraph 17

111. In cross-examination, the Council's planning witness withdrew this clarification in favour of an area wider than the designated Ancient Woodland, including an area of woodland at its western end, north of The Old Hermitage and the strip of self-sown woodland to the north side of the designated Ancient Woodland but not to the area of woodland to the east of the southern field (except in so far as the designated Ancient Woodland extended into it)²⁰⁹.
112. For as long as the objection was linked to the recent designation of Ancient Woodland, it had at least some shred of a claim that there had been a material change of circumstance since the allocation of the southern field for development in the 2000 adopted development plan, even though the change of circumstance had not prevented the Council from adopting in 2013 an emerging policy making the same allocation²¹⁰. However, once it was "woodland" rather than the recently designated "Ancient Woodland" that was said to be harmed, such an argument ceases to be available.²¹¹
113. No explanation has ever been offered as to why the impact on the setting is objectionable from development of the southern field but acceptable as regards development of the northern field.²¹² There has always been woodland present. Development in the southern field would always have to have been in its "setting". It is plainly judged acceptable to develop in the setting of woodland; development of the northern field would acceptably do so, as does development of the "West of Hermitage Lane" site which has planning permission. There is no change of circumstance since the 2000 site allocation of development on the southern field in terms of impact on "woodland".²¹³
114. The objection arose from one line within the MBC's Committee report²¹⁴. The reason for refusal is supported neither by the consultation response from the Council's own landscape officer (which raises no landscape objection), nor by the County Council's response letter (which actually identifies benefits to landscape features).²¹⁵
115. Setting of Ancient Woodland is not a concept that has any recognition or protection in policy²¹⁶. The protection of Ancient Woodland is an ecological designation, not a landscape one²¹⁷. It is notable that the Council's landscape witness (Mr Lovell) did not even seek to analyse the alleged landscape impact in

²⁰⁸ Core Document 3/5, second paragraph (Copy also provided as Appendix 2a to Mr Bailey's evidence, Core Document 1/13)

²⁰⁹ Mr Boyle's closing submissions, paragraph 21, referencing Mr Bailey's oral evidence in cross-examination

²¹⁰ Mr Chard's evidence (Core Document 1/10) paragraph 3.23 and Mr Boyle's closing submissions paragraph 23

²¹¹ Mr Boyle's closing submissions paragraph 23

²¹² Mr Chard's evidence (Core Document 1/10), paragraphs 3.23, 8.5 and 8.7 and Mr Boyle's closing submissions paragraph 19

²¹³ Mr Boyle's closing submissions paragraph 23

²¹⁴ Core Document 3/1 paragraph 9.31

²¹⁵ Mr Chard's evidence (Core Document 1/10) paragraph 8.12 and Mr Boyle's closing submissions paragraph 19, referencing Core Document 1/2, tabs 1 and 14

²¹⁶ Mr Boyle's closing submissions paragraph 17 and Mr Chard's evidence (Core Document 1/10), paragraphs 2.13 and 10.9 and section 4

²¹⁷ Mr Chard's evidence (Core document 1/10), paragraphs 5.20 to 5.23, 8.8 to 8.11, 10.9 and 10.10

terms of setting.²¹⁸ Nevertheless, so long as the development was linked to the recent designation of Ancient Woodland, the objection had at least some shred of a claim that it was seeking to protect something identified as important in policy terms. However, once it was “woodland” rather than recently designated “Ancient Woodland” that was said to be harmed by development in its setting, any such policy status ceased to be available to the Council.²¹⁹

116. Regardless of policy, identification of some but not all of the woodland surrounding the southern field as being harmed destroys any credibility that the point may have had. It simply cannot be that the setting of the woodland bounding the west of the southern field would be more affected by development on the field than the setting of the woodland bounding the east side. Nor is it plausible that the part of the Ancient Woodland within the woodland to the east would have its setting unacceptably affected whilst the woodland which surrounds it and hides it from view of the southern field would not. Lastly, it is nonsensical to suggest that the strip of self-sown woodland on the north of the designated Ancient Woodland would have its setting unacceptably affected by development in the southern field (from which it is separated by the Ancient Woodland itself) but not by development in the northern field, immediately adjacent to it.²²⁰

117. No analysis seeks to substantiate such self-apparently absurd propositions. The Council’s landscape witness, Mr Lovell, did not seek to defend the reason for refusal by reference to the alleged harm; he widened the debate to landscape impact generally. It comes as no surprise that on the final question in cross-examination, the Council’s planning witness accepted that the landscape objection would not justify withholding planning permission.²²¹

118. In considering landscape impact in general terms, Mr Lovell, the Council’s landscape witness highlighted the very contained visual envelope of the southern field, confirming the findings of the Local Plan Inspector who allocated the southern field for development²²² and the appellant’s own analysis.²²³ Mr Lovell’s own firm, both at County and at District level, identifies the landscape in which the southern field sits as “poor” for condition and with “very low” sensitivity to additional development.²²⁴

119. Views of the woodland belt are restricted to its immediate context²²⁵. Its value as Ancient Woodland is primarily ecological. It does not include its setting.²²⁶ Its

²¹⁸ Mr Boyle’s closing submissions paragraph 17

²¹⁹ Mr Boyle’s closing submissions paragraph 24

²²⁰ Mr Boyle’s closing submissions paragraph 25

²²¹ Mr Boyle’s closing submissions paragraphs 26 and 27

²²² Mr Boyle’s closing submissions paragraph 28, referencing paragraph 4.558 of the Local Plan Inspector’s report (Core Document 8/3). He might also have referred to paragraphs 3.406, 4.561

²²³ Mr Chard’s evidence (Core document 1/10), paragraphs 5.11, 5.12, 8.13 and 10.6

²²⁴ Mr Chard’s evidence (Core Document 1/10) paragraphs 2.30, 2.31, 2.37, 2.38, 5.14, 5.16 and 5.24 and Mr Boyle’s closing submissions paragraph 28, referencing the Kent County Council Landscape Assessment (Inquiry document 8) and Maidstone Landscape Character Assessment (2012) (Core Document 8/8), the latter assessment being almost specific to the appeal site (Copies also found as appendices G and H of Mr Lovell’s evidence (Core Document 1/14)

²²⁵ Mr Chard’s evidence (Core document 1/10), paragraphs 5.19 and 7.5 to 7.7 and 8.13

antiquity is not readily perceptible or understood from its setting.²²⁷ The surroundings which comprise its setting are both limited and poor.²²⁸ The role of the southern field is particularly limited in contributing to the woodland's setting²²⁹. It sits in a landscape in which urban form and urban influences are all-pervasive – the hospital to the south, residential development to west of the busy Hermitage Lane and to the east and north²³⁰. Its character is not rural. While the development would change its character, that is axiomatic for any green-field development. The proposed setting would not affect the ability to appreciate the value of the designated Ancient Woodland as a landscape feature.²³¹ Additional residential development would not be substantially uncharacteristic of the receiving landscape.²³²

120. The conclusion is that this is an undesignated landscape of very low sensitivity to change. The proposal is for a highly contained development not substantially uncharacteristic of the surrounding landscape and so this is a site whose development would cause no unacceptable landscape impact.²³³

(iv) Highway safety and air quality

121. Neither of these issues raised by local residents has the support of technical evidence or of the responsible statutory authorities. The Statement of Common Ground with Kent County Council as Highways Authority²³⁴ confirms that, with the mitigation proposed, there are no residual highway safety concerns. Air quality is the subject of a number of assessments within the highways documentation²³⁵. These conclude that no significant air quality effects are anticipated. The Council's Environmental Health Officer has not objected to the scheme, nor to the subsequently submitted Schemes 2 and 3 which cumulatively equate to the appeal scheme.²³⁶ The Statement of Common Ground confirms the agreement of MBC and TMBC that the development would have a neutral impact upon air quality.²³⁷

(v) Other issues raised by third parties

122. Landscape impacts on the Strategic Gap are not a source of objection from either local planning authority. They will be as anticipated and found acceptable in the Inspector's reports and decisions on the Borough-Wide Local Plan and the

²²⁶ Mr Chard's evidence (Core document 1/10), paragraphs 5.20 to 5.23 and 7.9

²²⁷ Mr Chard's evidence (Core document 1/10), paragraphs 5.26, 5.27, 5.30 and 8.16

²²⁸ Mr Chard's evidence (Core document 1/10), paragraphs 5.24 and 10.7

²²⁹ Mr Chard's evidence (Core document 1/10), paragraph 5.25

²³⁰ Mr Chard's evidence (Core document 1/10), paragraphs 5.28, 5.29 and 8.15

²³¹ Mr Chard's evidence (Core Document 1/10) paragraph 8.14

²³² Mr Chard's evidence (Core Document 1/10) paragraphs 7.2 to 7.4 and Mr Boyle's closing submissions, paragraph 29

²³³ Mr Boyle's closing submissions, paragraph 30

²³⁴ Core Document 1/8

²³⁵ Core Documents 2/18a and 2/27, Appendix K. The copy of the Air Quality Assessment at Appendix K of Core Document 2/27 is incomplete but the project revision date at the foot of the pages of the incomplete document shows that it is the same document as Appendix K of otherwise superseded Core Document 2/18

²³⁶ Mr Boyle's closing submissions paragraph 60

²³⁷ Core Document 1/5

previous appeal decision on the site.²³⁸ The proposed density of development is not objected to by MBC and is less than that found acceptable in the previous appeal.²³⁹ Loss of agricultural land was seen by the Local Plan Inquiry Inspector as a consideration overridden by housing need; a consideration which also applies in current circumstances.²⁴⁰ The lack of brownfield sites is the principal reason why the moratorium on Greenfield development was lifted in 2013.²⁴¹

123. MBC has confirmed that it is not pursuing its second reason for refusal citing the absence of a country park. TMBC does not consider it appropriate or necessary for a country park to be delivered in this location. Existing public rights of way used for Leisure will be retained and supplemented by additional public open space resulting in a net addition of land for leisure purposes.²⁴²
124. The Local Plan Inquiry Inspector noted that the southern or hospital field was found to contain significant archaeological remains but that these did not need to be retained in situ and that a condition on development could secure the interest. An agreed condition to record and remove remains was noted as an agreed fact in the previous appeal decision. A similar condition is proposed for the current appeal.²⁴³
125. The Environment Agency has confirmed that it has no objections to the development subject to conditions requiring the submission and approval of a surface water drainage scheme. The reservoir was last inspected in 2010 and found to have no items of concern regarding its structural integrity. It is next due for inspection in 2017/8.²⁴⁴ The appellant's submitted Ecological Assessment records priority habitats and species within the appeal site and proposes mitigation measures for birds, badgers and bats which are acceptable to the local planning authority.²⁴⁵
126. The appellant has agreed to provide financial contributions to remedy lack of capacity in infrastructure facilities.²⁴⁶

(vi) Conclusion

127. This is a scheme which accords with the material parts of the development plan. As such, it should be approved without delay in accordance with s38(6) of the Act and paragraph 14 (third bullet) of the NPPF. In any event, the local

²³⁸ Mr Wilford's evidence (Core Document 1/9, Table 4.1 referencing Core Documents 8.3 (paragraph 4.555) and 13.1 (paragraph 251))

²³⁹ Mr Wilford's evidence (Core Document 1/9, Table 4.1 referencing Core Document 13.1 (paragraph 94))

²⁴⁰ Mr Wilford's evidence (Core Document 1/9, paragraphs 3.31 and 3.32 and Table 4.1 referencing Core Documents 8.3 (pages 142 to 151) and Core Documents 13/2 (Committee report paragraph 8.28) and 13/6)

²⁴¹ Mr Wilford's evidence (Core Document 1/9, Table 4.1)

²⁴² Mr Wilford's evidence (Core Document 1/9, Table 4.1)

²⁴³ Mr Wilford's evidence (Core Document 1/9, Table 4.1 referencing Core Documents 8.3 (paragraph 4.558) and 13.1 (Other Agreed Facts))

²⁴⁴ Mr Wilford's evidence (Core Document 1/9, Table 4.1)

²⁴⁵ Mr Wilford's evidence (Core Document 1/9, Table 4.1 referencing Core Documents 1/2, 2/12 and 3/1, paragraph 7.08)) and Mr Baxter's evidence (Core Document 1/12), sections 4.5 and 4.6

²⁴⁶ Mr Wilford's evidence (Core Document 1/9, Table 4.1 and paragraph 5.64)

planning authority cannot demonstrate a five-year housing land supply and so, any attempt to rely on an emerging policy which seeks to de-allocate the southern field should fall foul of NPPF paragraph 49 and so again invoke paragraph 14 of the NPPF.²⁴⁷

128. If the woodland is Ancient Woodland, NPPF paragraph 118(5) would be engaged but the evidence indicates that it is not. Even so, the development amply passes the test at NPPF paragraph 118(5) and so that is not a policy which indicates that development should be restricted for the purposes of NPPF paragraph 14 (fourth bullet).²⁴⁸
129. NPPF paragraph 14, bullet 4 requires that permission should be granted unless the harms significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework, taken as a whole²⁴⁹. On the current evidence it is not a rational conclusion to say that they do²⁵⁰. The benefits arising are significant; primarily the provision of 500 dwellings in an area suffering from a shortfall. The significance of other benefits should not be underestimated; the land for a two form entry primary school will not only serve the new community on the appeal site, but also wider strategic growth in the immediate surroundings, alleviating existing pressures on primary schools in Barming and Allington.²⁵¹ The scheme would provide for extensive open space and landscaping, a significant improvement to the management of existing woodland and an increase in woodland planting throughout the site providing not just mitigation but enhancement.²⁵² Adverse impacts are limited.²⁵³
130. Of the two elements at issue; firstly, the reference in NPPF paragraph 118(5) to Ancient Woodland does not prevent development; secondly the "harm" to this undesignated landscape setting is endorsed by statutory policy and no longer alleged to justify refusal. By contrast the positive benefits are agreed to be of substantial weight. Accordingly, permission should be granted.²⁵⁴

The Case for Maidstone Borough Council (the lead local planning authority)

(i) The nub of objection

131. The third reason for refusal cited the absence of an appropriate legal mechanism to secure the infrastructure improvements necessary to mitigate the impact of the development on schools, public open space, health care, local libraries, adult education, youth and community facilities and highways. Discussion seeking an agreement on these matters is expected to lead to the

²⁴⁷ Mr Boyle's closing submissions, paragraph 62 and Mr Wilford's evidence (Core Document 1/9, paragraphs 7.1 and 7.2)

²⁴⁸ Mr Boyle's closing submissions, paragraph 63 and Mr Wilford's evidence (Core document 1/9, paragraphs 7.3 to 7.20)

²⁴⁹ Mr Wilford's evidence (Core Document 1/9, paragraphs 3.3, 3.12 and 6.22)

²⁵⁰ Mr Wilford's evidence (Core Document 1/9, paragraphs 6.23 to 6.31 and table 6.3)

²⁵¹ Mr Wilford's evidence (Core Document 1/9, paragraph 6.26)

²⁵² Mr Wilford's evidence (Core Document 1/9, paragraph 6.27) and Mr Baxter's evidence (Core Document 1/12), paragraphs 5.12.6 to 5.12.8

²⁵³ Mr Wilford's evidence (Core Document 1/9, paragraph 6.28)

²⁵⁴ Mr Boyle's closing submissions, paragraph 63 and Mr Wilford's evidence (Core Document 1/9, paragraphs 6.30 and 6.31)

signing of a legal agreement.²⁵⁵ Although the Affordable Housing SPD requires 40% of all dwellings to be affordable, recent MBC decisions²⁵⁶ accept 30% within the urban fringe, relying on the evidence base provided by Peter Brett Associates²⁵⁷ and so that would also be the case in respect of this appeal site.²⁵⁸

132. The Council has no objection in principle to the development of the northern "reservoir" field nor to the safeguarding of land for school and community hall purposes.²⁵⁹ The appellant has lodged a planning application (known as scheme 2) for just that. It would provide for biodiversity management of a buffer zone on the northern side of the Ancient Woodland but not of the Ancient Woodland itself. So, because potential residents would increase public use of the Ancient Woodland, further negotiation is required but, on current knowledge and without fettering the Council's discretion, there is a reasonable prospect of planning permission being granted for Scheme 2.²⁶⁰

133. The appellant's Statement of Economic Benefits²⁶¹ provides a measure of the economic benefits arising from the scheme. If housing development were confined to only the northern field, up to 84% of the benefits would still be delivered.²⁶² Development of the southern field would produce only 16% of the economic benefits.²⁶³ Development of the northern field alone would still provide the social benefits of the scheme.²⁶⁴ Most of the environmental benefits would result from development of the northern field but substantial harm results from the development of the southern field²⁶⁵.

134. When weighing up all material considerations in this case, the adverse impacts on landscape, visual amenity, Ancient Woodland and biodiversity would significantly and demonstrably outweigh all the benefits of the scheme. With the planning application for Scheme 2 so well advanced and finding favour, the question is whether the southern or hospital field should be developed for an additional 80 or so houses providing just 16% of the benefits²⁶⁶, with the resulting raised boardwalk and vehicular and pedestrian road through the designated Ancient Woodland. But even if the benefits of the scheme meant the whole development on the appeal site, planning permission should be refused, in line with paragraph 118 of the NPPF, because the need and benefits arising from

²⁵⁵ Mr Bailey's evidence (Core Document 1/13 paragraphs 3.2 to 3.4). Although agreement with Kent County Council was reached (Inquiry Document 38) only a Unilateral Undertaking was issued in respect of MBC and TMBC matters (Inquiry Document 39). Nevertheless, no other evidence was offered by MBC)

²⁵⁶ Mr Bailey's evidence (Core Document 1/13, paragraphs 3.5 and 3.6, referencing Core documents 13/1 to 13/6)

²⁵⁷ Core Document 8/21

²⁵⁸ Mr Bailey's evidence (Core Document 1/13, paragraph 3.6)

²⁵⁹ Mr Bailey's evidence (Core Document 1/13, paragraph 4.3 and 4.7)

²⁶⁰ Miss Thomas's opening submissions, paragraphs 1-4 and Mr Bailey's evidence (Core Document 1/13 paragraphs 1.6, 1.7 and 4.3 to 4.19)

²⁶¹ Core Document 2/23

²⁶² Mr Bailey's evidence (Core Document 1/13, paragraph 4.8)

²⁶³ Mr Bailey's evidence (Core Document 1/13, paragraphs 4.10 and 4.11)

²⁶⁴ Mr Bailey's evidence (Core Document 1/13, paragraphs 4.12 to 4.15)

²⁶⁵ Mr Bailey's evidence (Core Document 1/13, paragraphs 4.16 and 4.17)

²⁶⁶ Mr Bailey's evidence (Core Document 1/13 paragraph 4.8)

the development would not outweigh the loss of and deterioration to the Ancient Woodland.²⁶⁷

(ii) Ancient Woodland

Map evidence

135. For an area of land to be included on the Ancient Woodland Inventory, the ideal supporting evidence is a continuous cartographic record for woodland presence on the site since 1600. A provisional designation as Ancient Woodland rests upon a significant historical series of maps demonstrating woodland continuity on the site from a known post-1600 date onwards, strong field evidence for woodland antiquity or some combination of these types of data²⁶⁸.
136. Historic maps from 1797 to the current day show the area of designated Ancient Woodland as woodland.²⁶⁹ The appellant does not now dispute this.²⁷⁰
137. The Greensand or Chart hills west of Maidstone are known to have been a major concentration of woodland in medieval Kent. Much survived into the nineteenth century, by that time mostly under coppice management. A more or less continuous belt of woodland extending from the Mereworth and Comp Woods across to Oaken and East Malling Woods is an example of this. It persisted until the nineteenth century and encompassed the southern part of the historical Allington parish (now subsumed into Maidstone), the location of the Hermitage and the woods surrounding it. When dealing with an old wood shown on pre-nineteenth century maps in this area there is an entirely reasonable supposition that there is a good likelihood of its deriving from medieval woodland.²⁷¹
138. The appellant's evidence agrees that at least the western part of the designated Ancient Woodland is correctly designated. Mr Forbes-Laird acknowledges that there was significant woodland over this part of Kent in general but disagrees that the whole of the designated Ancient Woodland has been continuously wooded (not necessarily with the same trees) since 1600 without significant numbers of years when parts were unwooded.²⁷²
139. Because Allington historically forms the boundary between the Larkfield and Maidstone Hundreds, it can be located approximately, even on old maps of relatively small scale.²⁷³ On Symonson's 1596 map of Kent the designated Ancient Woodland can be identified with confidence as lying within a major block

²⁶⁷ Miss Thomas's opening submissions, paragraphs 5 and 6 and Mr Bailey's evidence (Core Document 1/13, paragraphs 5.0 to 5.2)

²⁶⁸ Mr Sansum's evidence (Core Document 1/16) paragraph 2.1

²⁶⁹ Miss Thomas's closing submissions paragraph 7 and Mr Sansum's evidence (Core Document 1/16) paragraphs 2.3 and 4.15 to 4.25

²⁷⁰ Miss Thomas's opening submissions paragraph 9 and Mr Forbes-Laird's supplementary evidence (Core Document 1/11 volume 4 sections 2 and 3)

²⁷¹ Miss Thomas's opening submissions paragraph 8, her closing submissions paragraph 3 and Mr Sansum's evidence (Core Document 1/16) paragraphs 3.2 and 3.3

²⁷² Miss Thomas's closing submissions paragraphs 1 and 2, referencing Mr Forbes-Laird's evidence (Core Document 1/11 volume 2) Appendix 15

²⁷³ Mr Sansum's evidence (Core Document 1/16) paragraph 3.4

- of woodland straddling the Hundred boundary.²⁷⁴ Later seventeenth century maps by Seller (1688) and Morden (1695) also show the Chart woods straddling the Hundred boundary towards the London to Maidstone Road (now A20).²⁷⁵
140. For the appellant, Mr Forbes-Laird's registration of the Ancient Woodland boundary onto these historic maps places it far too south-west, erroneously showing it not far from the river and near Barming Church. The curve of the river, the position of the old river crossing in Maidstone, the position of the twelfth century St Margaret's church at Barming and the general position of the A20 London to Maidstone road are just a few of the landmarks which show that the site is considerably further north-east than has been indicated by Mr Forbes-Laird. It is highly likely therefore that it is part of the ancient East Malling Wood.²⁷⁶
141. The block of woodland containing the Ancient Woodland is clearly identifiable on the large-scale but schematic map of Kent produced by Andrews Dury and Herbert in 1769, in spite of the shortcomings of the map. The break in the woodland area east of Hermitage Lane is a schematic representation but the relationship of the wood, the break and the topography shown is recognisable.²⁷⁷ Barlow's later map of the Hundreds of Kent is a derivative of the Andrews Dury and Herbert map and the same comments apply.²⁷⁸
142. Mr Forbes-Laird's argument for a different interpretation of the Andrews Dury and Herbert map and of the Barlow map on the basis of a line of sight to Allington Castle is overly literal and unconvincing.²⁷⁹ His attempted defence of it undermines his credibility as a witness.²⁸⁰
143. Literary references establish the presence of abundant coppice woods in this area but are insufficiently precise to draw lines on a map of the extent of these woods.²⁸¹
144. It is possible that the site may have been under active forestry management from at least the nineteenth century. The bulk of the designated Ancient Woodland is not obviously shown affected but the eastern tip, about 10% of the total appears to have been affected by conifer planting. The practice of forestry does not argue against designation as Ancient Woodland.²⁸² Nor would designation as replanted Ancient Woodland rather than Ancient semi-natural Woodland.²⁸³

²⁷⁴ Miss Thomas's closing submissions paragraph 3 and Mr Sansum's evidence (Core Document 1/16) paragraph 3.5

²⁷⁵ Mr Sansum's evidence (Core Document 1/16) paragraph 3.6

²⁷⁶ Miss Thomas's closing submissions paragraphs 4 and 6

²⁷⁷ Miss Thomas's closing submissions paragraph 4 and Mr Sansum's evidence (Core Document 1/16) paragraphs 3.7 and 3.8

²⁷⁸ Mr Sansum's evidence (Core Document 1/16) paragraphs 4.7 to 4.10

²⁷⁹ Mr Sansum's evidence (Core Document 1/16) paragraphs 4.2 to 4.6, 4.11 and 4.12

²⁸⁰ Miss Thomas's closing submissions paragraph 5

²⁸¹ Mr Sansum's evidence (Core Document 1/16) paragraphs 4.13 and 4.14

²⁸² Mr Sansum's evidence (Core Document 1/16) paragraphs 4.31 to 4.32

²⁸³ Miss Thomas's closing submissions paragraph 18 and Mr Sansum's evidence (Core Document 1/16) paragraphs 4.33 to 4.36

Other evidence

145. In a wood of less than 2 ha on the kind of substrate on site, the variety of Ancient Woodland Vascular Plants surveyed represents considerable diversity and is likely to indicate Ancient Woodland.²⁸⁴ It is comparable with a nearby site which is undoubtedly Ancient Woodland²⁸⁵. The appellant's adviser Mr Forbes-Laird has misunderstood the purpose of the fourteen lists of Ancient Woodland Indicator Plants provided in Natural England's guidance material for local authorities, only one of which is relevant to the appeal site in south-east England and he excluded plants from analysis on an arbitrary basis, distorting the ecological evidence.²⁸⁶ Ancient woodland species were observed to be less well-represented in the areas outside the designated Ancient Woodland, suggesting that the designation is correct.²⁸⁷
146. Light Detection and Ranging (LiDAR) data used to produce a digital surface model of the land east of Hermitage Lane gives no indication that the wood to field boundary has moved.²⁸⁸ Occasional hornbeam coppice (uncommon outside Ancient Woodland in Kent) can be associated with the boundary of the wood shown in 1797.²⁸⁹
147. Designation of woodland as Ancient does not depend on the age of trees presently comprising the woodland.²⁹⁰ The interest of Ancient Woodland lies in its soils more than its trees.²⁹¹ But a substantial proportion of aged trees would disprove an assertion of recent planting. By using correct growth factors within the White method for determining the age of trees, the largest oak standards within the designated Ancient Woodland would be calculated at approximately 400 years old. Ring counting of a felled oak on site establishes an age greater than 190 years.²⁹² The varied ages of the oaks and the mixture of two species suggest a natural, rather than a planted origin.²⁹³
148. The appellant's soil survey sample size is inadequate and its spatial configuration is unrepresentative²⁹⁴. Data is missing.²⁹⁵ The subsequent two-profile classification is qualitative and subjective.²⁹⁶ Differences in particle size

²⁸⁴ Mr Sansum's evidence (Core Document 1/16) paragraphs 4.37 and 4.38, quoting two authorities including a Natural England publication and paragraphs 4.47 and 4.49 and Miss Forster's evidence (Core Document 1/15, paragraphs 3.1 and 3.2)

²⁸⁵ Mr Sansum's evidence (Core Document 1/16) paragraphs 4.46.1 and 4.46.2

²⁸⁶ Mr Sansum's evidence (Core Document 1/16) paragraphs 4.39 to 4.45, 4.47 and 4.48

²⁸⁷ Mr Sansum's evidence (Core Document 1/16) paragraph 5.3

²⁸⁸ Mr Sansum's evidence (Core Document 1/16) paragraph 5.5 and figure 7

²⁸⁹ Mr Sansum's evidence (Core Document 1/16) paragraph 5.6.1

²⁹⁰ Paragraph 1.1 of Mr Sansum's supplementary note on the Dendrochronological Assessment (Inquiry document 2)

²⁹¹ Mr Sansum's evidence (Core Document 1/16) paragraph 4.50.1

²⁹² Mr Sansum's supplementary note on the Dendrochronological Assessment (Inquiry document 2)

²⁹³ Miss Thomas's closing submissions paragraph 10 and Mr Sansum's evidence (Core Document 1/16) paragraph 3.6

²⁹⁴ Miss Thomas's closing submissions paragraph 12 and Mr Sansum's supplementary evidence (Inquiry Document 1, paragraphs 3.1 to 3.5)

²⁹⁵ Miss Thomas's closing submissions paragraph 15

²⁹⁶ Miss Thomas's closing submissions paragraph 10 and Mr Sansum's supplementary evidence (Inquiry Document 1 paragraph 3.8)

do not withstand scrutiny.²⁹⁷ Increased topsoil depth in parts can be explained by deposition of topsoil from the immediately adjacent sand pit.²⁹⁸

149. The evidence of Ancient Woodland Vascular Plants supports the designation of Ancient Woodland, as shown by both the supporting material at application stage and by the appellant's witness Mr Baxter at the Inquiry.²⁹⁹ The indications are that this woodland comprises coppices with standards which retains a strong complement of native species and a semi-natural ground flora of traditionally managed coppice woodland. Chestnut has been planted into existing semi-natural woodland without replacing it outright. Chestnut as a species has a long-established status as an honorary native and in Kent particularly it is recognised that coppiced chestnut woodland makes an important contribution to biodiversity. Both replanted Ancient Woodland and Ancient semi-natural Woodland are treated equally in policy.³⁰⁰

Witness credibility

150. The Council's witness Mr Sansum is the author of the Ancient Woodland Inventory. He is an Ancient Woodland expert and a qualified ecologist. The appellant's witness Mr Forbes-Laird is not an ancient woodland expert. He is not an ecologist. His work demonstrates that he is not skilled in interpreting historic maps. The significance of the Ancient Woodland Vascular Plants was handled erroneously in his supporting documentation at the application stage and has been taken out of his hands for the Inquiry. Mr Forbes-Laird's proof of evidence was also based on a soil analysis that is fatally flawed and a dendrochronological analysis which does not support his theory that the woodland must have been planted.³⁰¹

(iii) Effect on Woodland

151. The condition of the woodland containing the Ancient Woodland is described by Mr Forbes-Laird as between uninspiring and poor³⁰². Yet this contrasts with his original analysis in which he grades woodland group 3 (mainly the Ancient Woodland) as A2 and A3 and describes the "overall condition of this coppice woodland as very good."³⁰³ Similarly, the appellant's ecology assessment by Aluco Ecology reports the wood and the Ancient Woodland Vascular Plants very favourably.³⁰⁴ In a woodland of less than 2 hectares, the number of Ancient

²⁹⁷ Miss Thomas's closing submissions paragraph 13 and 14 and Mr Sansum's supplementary evidence (Inquiry Document 1 paragraphs 3.11 to 3.17 and 4.1 to 4.11)

²⁹⁸ Mr Sansum's supplementary evidence (Inquiry Document 1 paragraph 3.23)

²⁹⁹ Miss Thomas's closing submissions paragraph 16, referencing Core Document 2/12 paragraphs 5.4.12 and 5.6.2 and Mr Baxter's evidence (Core document 1/12 and plan AB6)

³⁰⁰ Miss Thomas's opening submissions paragraph 20 and Mr Sansum's evidence (Core Document 1/16 section 7)

³⁰¹ Miss Thomas's opening submissions paragraph 15 and her closing submissions paragraph 17

³⁰² Mr Forbes-Laird's evidence (Core Document 1/11 volume 1 paragraph 3.5.6)

³⁰³ Miss Thomas's opening submissions paragraph 17, referencing Core Document 2/20, Appendix 4, third table (Data for trees assessed as woodland), row for WG3002, also attached as appendix 16 to Mr Forbes-Laird's proof of evidence

³⁰⁴ Miss Thomas's closing submissions paragraph 25, referencing Core Document 2/12

Woodland Indicator species recorded in the appellant's ecological survey highlights the importance of the soils and seed banks.³⁰⁵

152. Mr Lovell's evidence,³⁰⁶ Mr Sansum's evidence³⁰⁷ and that of Miss Forster³⁰⁸ point to the value of Ancient Woodland which is recognised in government policy³⁰⁹. The proposal would not only result in the direct loss of a section of Ancient Woodland but would also introduce development in the form of a road and a boardwalk directly into it without any kind of buffer, contrary to national advice.³¹⁰
153. Impacts such as those listed in Standing Advice³¹¹ such as increased exposure to pollutants from the surrounding area, effects on root protection areas, impacts on hydrology through drainage or water table levels changing, insertion of light pollution and fly-tipping are likely to result from the construction of the link road without any buffers.³¹²
154. The link road would increase the fragmentation of the Ancient Woodland by leaving a very small nib isolated to its east. New edges would expose the interior of the wood to higher temperatures and wind speeds, greater disturbance, light pollution (affecting bats particularly) increased water loss and the presence of non-woodland species all of which can negatively impact on the ecology of the wood.³¹³ Loss of connectivity would restrict the movement of species within the woodland, when the Council's emerging Blue and Green Infrastructure Strategy is seeking to improve connectivity along a corridor out of Maidstone.³¹⁴
155. In cross-examination, the appellant's witness accepted that the Boardwalk would suppress the ground flora underneath.³¹⁵ Yet the soil is a major component of Ancient Woodland and holds a valuable seed bank³¹⁶. Its water supply would be inhibited. There would be a need to fell twelve trees to accommodate the width of the structure³¹⁷.

³⁰⁵ Miss Forster's evidence (Core Document 1/15, paragraph 3.1)

³⁰⁶ Core Document 1/14, paragraphs 2.24 and 2.25

³⁰⁷ Core Document 1/16, paragraphs 4.50.1 and 4.50.2

³⁰⁸ Core Document 1/15, paragraphs 1.4, 3.3, 3.4, 3.9,

³⁰⁹ Inquiry Document 20

³¹⁰ Miss Thomas's closing submissions paragraphs 19 and 20 and Miss Forster's evidence Core Document 1/15, paragraph 2.1

³¹¹ Core Document 10/1, paragraph 5.2. Copy also at Appendix 13 of Mr Bailey's Proof of Evidence (Core document 1/13)

³¹² Miss Thomas's closing submissions paragraphs 20 and 21

³¹³ Miss Thomas's closing submissions paragraph 23 Mr Lovell's evidence (Core Document 1/14 paragraph 6.11) and Miss Forster's evidence (Core Document 1/15, paragraphs 2.1 and 5.1 to 5.3)

³¹⁴ Miss Forster's evidence Core Document 1/15, paragraphs 2.3 and 7.1 to 7.5

³¹⁵ Miss Thomas's closing submissions paragraph 22

³¹⁶ Miss Thomas's closing submissions paragraph 22 and Miss Forster's evidence Core Document 1/15, paragraphs 4.1 to 4.3

³¹⁷ Miss Thomas's closing submissions paragraph 22 and Miss Forster's evidence Core Document 1/15, paragraph 3.12

156. Development on both sides of the woodland would result in a greater increase in its use for human recreation and cat predation than if development were restricted to one side only.³¹⁸
157. Compensation or mitigation measures include a proposal to translocate soil but this could be no more than partially successful.³¹⁹ The appellant's own ecology assessment very clearly said that the road and cycleway would result in an adverse impact on a feature of District importance and that the loss of Ancient Woodland cannot be mitigated and that the translocation of ground flora into parts of the proposed buffer zone is not considered as suitable offsetting compensation.³²⁰ There is a Landscape Management and Biodiversity Strategy which, if implemented, is likely to address some of the lost biodiversity interests. Active management of the woodland and the creation of the buffer zones would bring benefits but because of the irreplaceable nature of the Ancient Woodland that would be lost and the areas which would deteriorate, the outcome would not compare with the benefits of leaving the Ancient Woodland undisturbed. The overall balance would not be positive or neutral. It would be negative.³²¹

(iv) Landscape character and visual amenity

158. The Council's Statement of Case indicated that there would be evidence of the adverse impacts resulting from the development of the hospital field and of the access road and pedestrian cycle link on the open setting of the woodland.³²² The Council indicated on 27 March 2014 that the first reason for refusal referred to harms to ancient woodland. In cross-examination, the Council's witness, Mr Bailey, expressed his view that the harm extended to woodland in the approximate position of Area 1 of TPO 36/2003, to the north of the designated Ancient Woodland.³²³ The development of the hospital field would obscure the view of the trees and result in removal of some of them. It would hem in the public right of way through the Ancient Woodland with housing on both sides and so detract from the enjoyment of that recreational walk through very attractive woodland. The preferred solution is to keep the field free from built development so that it can properly contribute to a green corridor and can provide a green lung or space between the hospital and the new housing estate beyond.³²⁴
159. At both County and Local levels, the site lies within landscape character areas whose condition are described as poor and their sensitivity to change as very low.³²⁵ During construction, the landscape effects of the development both on the Ancient Woodland and its setting and on the southern field would be "large adverse".³²⁶ So too would be its effects on completion of the development.³²⁷

³¹⁸ Miss Forster's evidence Core Document 1/15, paragraphs 6.1 and 6.2

³¹⁹ Miss Forster's evidence Core Document 1/15, paragraph 2.4 and 3.5 to 3.8

³²⁰ Miss Thomas's opening submissions paragraph 18 and her closing submissions paragraph 25 referencing Core Document 2/12 paragraphs 12.3.2, 13.2.2 and table 7 on page 67

³²¹ Miss Thomas's closing submissions paragraph 26 and Miss Forster's evidence Core Document 1/15, paragraphs 8.1 and 8.2

³²² Miss Thomas's closing submissions paragraph 26, referencing Core Document 1/4, paragraph 6.1

³²³ Miss Thomas's closing submissions paragraph 26, referencing Core Document 1/4.

³²⁴ Miss Thomas's opening submissions paragraph 21

³²⁵ Mr Lovell's evidence (Core Document 1/14) paragraphs 4.22 to 4.28

³²⁶ Mr Lovell's evidence (Core Document 1/14) paragraphs 6.6, 6.7, 9.6 and 9.7

160. The appellant's own Landscape and Visual Impact Assessment states that the area most likely to experience adverse landscape character effects is the existing woodland as a result of the influence of residential development and the proposed access road.³²⁸ The appellant's landscape witness, Mr Chard described these effects as significant adverse effects on the landscape character of the Ancient Woodland itself and in addition, more limited adverse effects on wider landscape character.³²⁹ He went on to say that even with the carefully considered landscape mitigation approach provided, which will reduce effects over time, adverse effects on landscape character are considered to be inevitable in a situation where a currently undeveloped landscape is being developed for residential use.
161. The southern (or hospital) field is enclosed mainly by the Ancient Woodland and footpath KB18, is rough grassland and has an intimate character. In spite of the presence of the hospital, it retains a strong rural semi-wooded countryside character.³³⁰ Any green field site comprising open grassland and mature woodland would be at least moderately susceptible to development of the nature proposed. Although the enclosure of the surrounding trees gives the field some ability to accommodate change with limited harm, the Ancient Woodland designation, the TPOs, the prominence of the woodland on the ridgeline, heritage associations with The Old Hermitage, St Lawrence's Chapel and Romano-British archaeology and the proximity to a well used public right of way give it greater value.³³¹
162. The trees (whether just the Ancient Woodland or the wider area including TPO 2003 Area 1) are protected by Tree Preservation Orders because they are judged to have landscape and visual amenity value from the public realm. The appellant's own arboricultural impact assessment following BS5837:2013 places the area of woodland in categories A2 and A3. These categories are for high quality trees noted for their landscape qualities being woodlands of particular visual importance as arboricultural and/or landscape features and for mainly cultural values as woodlands of significant conservation, historical, commemorative or other value. The evidence of the appellant's landscape witness, Mr Chard should be given reduced consideration because he has not taken account of these matters³³². That of the Council's witness, Mr Lovell should be preferred.³³³

³²⁷ Mr Lovell's evidence (Core Document 1/14) paragraphs 6.12 to 6.14

³²⁸ Miss Thomas's closing submissions paragraph 26, referencing Core Document 1/4 paragraph 8.18

³²⁹ Miss Thomas's closing submissions paragraph 26, referencing Core Document 2/29 (a letter to Kent County Council dated 13 March 2014) page 7, in which Mr Chard himself paraphrases Core Document 1/4 paragraph 8.18. Core document 1/4 paragraph 8.18 itself describes the significance as "up to moderate-major adverse at year 1"

³³⁰ Miss Thomas's closing submissions paragraph 33, referencing Mr Lovell's evidence (Core Document 1/14, paragraphs 4.30, 4.31 and 4.36 and appended photographs RL2, 6, 7 and 9

³³¹ Mr Lovell's evidence (Core Document 1/14) paragraphs 4.37 to 4.40 and 9.4

³³² Miss Thomas's closing submissions paragraphs 31, referencing Core Document 2/20 Appendix 4 (In fact this assesses TPO group W3 (the Ancient Woodland) as A2+3 but TPO area A1 as grade B2), and 32.

³³³ Miss Thomas's closing submissions paragraph 35

163. There are repeated references to the contribution Ancient Woodland makes to our landscape and cultural heritage in Natural England's Standing Advice and in Keepers of Time. The appellant's landscape witness, Mr Chard fails to make any reference whatsoever to the value that residents place on the woodland, knowing it to be Ancient. That misses the wealth of evidence in the representations from third parties which demonstrates that the woodland is valued for its landscape contribution and for its contribution to people's sense of place.³³⁴
164. The visual effects of the development from the southern footpath (KB18) would be "large adverse" both during construction and on completion of the development as housing and its associated urban infrastructure would replace a view across rough grassland towards the Ancient Woodland on the skyline.³³⁵ The skyline itself would be etched by a gap in the woodland canopy created by the link road.³³⁶ The appellant's contention that the canopy would close over within ten years must be questioned because there is no clear evidence to show just how far apart trees could be retained on either side of the link road.³³⁷ From footpath KB51 (which runs through the Ancient Woodland) the sense of place is strong. It is little affected by noise. The southern field acts as a buffer keeping built development or hospital buildings mainly out of view. Filtered views through woodland trees to the North Downs in the distance to the north and across the rough grassland of the southern field towards the Maidstone Hospital infrastructure would be replaced by filtered views of housing and its associated urban infrastructure so the effects would be "large adverse".³³⁸
165. Visual effects from eight properties on the south side of Howard Drive which presently enjoy views across the northern field towards the Ancient Woodland would be curtailed by housing and associated urban infrastructure. The effect would be "large adverse".³³⁹ Visual effects from residential property at The Old Hermitage, for pedestrians and motorists using Howard Drive and Maxwell Drive, for pedestrians using Hermitage Lane and for staff, patients and visitors using Maidstone Hospital would be variously neutral to slight adverse, slight adverse, slight to moderate adverse or slight to large adverse.³⁴⁰
166. The southern part of the appeal site is part of a larger unit of green infrastructure which includes Fullingpits Woods ancient woodland to the south west which can be realised when looking at the aerial photograph on page 7 of the Design and Access Statement³⁴¹. A study of the wider public rights of way in the area reveals how footpath KB18 is an important link from denser urban areas such as Cherry Orchard to those wider recreational routes and to Barming railway

³³⁴ Miss Thomas's closing submissions paragraph 35, referencing paragraph 4.8 of Core Documents10/1 (Copy also at Appendix 13 of Mr Bailey's Proof of Evidence (Core document 1/13)) and Core Document 10/4

³³⁵ Miss Thomas's closing submissions paragraph 34 and Mr Lovell's evidence (Core Document 1/14) paragraphs 7.2 to 7.9

³³⁶ Mr Lovell's evidence (Core Document 1/14) paragraph 7.6

³³⁷ Miss Thomas's closing submissions paragraph 38

³³⁸ Miss Thomas's closing submissions paragraph 36 and Mr Lovell's evidence (Core Document 1/14) paragraphs 7.10 to 7.16

³³⁹ Mr Lovell's evidence (Core Document 1/14) paragraphs 7.17 to 7.19

³⁴⁰ Mr Lovell's evidence (Core Document 1/14) paragraphs 7.20 to 7.36

³⁴¹ Mr Lovell's evidence (Core Document 1/14) paragraph 4.32 and Miss Thomas's closing submissions paragraph 33, referencing Core Document 2/22

station.³⁴² MBC has been proactive in responding to NPPF paragraph 114 that local planning authorities should set out a strategic approach and plan positively for green infrastructure by publishing its draft Green and Blue Infrastructure Strategy.³⁴³ This shows green routes corresponding to this pathway. This underpins the aim to retain the Ancient Woodland copse intact and to allocate the southern field as open space.³⁴⁴

(v) Conclusions

167. The starting point is the adopted development plan. The scheme accords with adopted policies H1 and H12 in providing housing and safeguarding land for a school. It departs from other parts of that policy and the wider plan in failing to retain the existing trees, in proposing development on land allocated as a Strategic Gap³⁴⁵ and in failing to provide a GP surgery or retail facilities. The adopted DPD requires 40% affordable housing but only 30% is offered. But as these policies are housing supply policies, NPPF paragraph 49 advises that these should not be considered up-to-date because the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Policy ENV6 (requiring a landscaping scheme) is not out of date and is not met. The scheme cannot be said to comply with the adopted development plan as a whole. This is a case where all material considerations will have to be balanced against one another.³⁴⁶

168. The latest emerging policy for the site is the Maidstone Borough Local Plan Regulation 18 Consultation³⁴⁷. This excludes the hospital field as a housing site and earmarks it for public open space. The change is inspired by the exhortation at NPPF paragraph 114 to set out a strategic approach towards networks of biodiversity and green infrastructure, which MBC has done in its Consultation Draft Green and Blue Infrastructure Strategy. There are objections to these policies but they deserve moderate weight.³⁴⁸

169. It cannot be presumed that in earlier local plan proposals allocating the hospital field for housing development the Council must have accepted the loss of part of the Ancient Woodland. There is no evidence that they gave any consideration to access to the hospital field. The actual policy states in terms that the ridge woodland shall be retained.³⁴⁹ MBC has never condoned or accepted in principle that a route to the southern field must pass through the Ancient Woodland.³⁵⁰

³⁴² Miss Thomas's closing submissions paragraph 37

³⁴³ Mr Lovell's evidence (Core Document 1/14) paragraph 8.8

³⁴⁴ Mr Lovell's evidence (Core Document 1/14) paragraph 8.10, 9.3 and 9.13

³⁴⁵ Mr Bailey's evidence (Core Document 1/13, paragraph 3.11

³⁴⁶ Miss Thomas's closing submissions paragraphs 39 and 40 and Mr Bailey's evidence (Core Document 1/13, paragraphs 2.39 and 4.1)

³⁴⁷ Core Document 8/16

³⁴⁸ Mr Bailey's evidence (Core Document 1/13, paragraphs 2.24 to 2.27 and Miss Thomas's closing submissions paragraphs 41 to 43

³⁴⁹ Miss Thomas's closing submissions paragraph 44

³⁵⁰ Miss Thomas's opening submissions paragraph 28 and her closing submissions paragraph 50, referencing cross-examination of Mr Wilford's acceptance in cross-examination after an examination of Inquiry documents 32 and 33 that the developer had examined options and made a choice which was then presented to Council officers as the preferred scheme.

170. Both the appellant and the Council have proceeded to consider both application and appeal on the basis that the Parameters Plan, showing the link road passing through the Ancient Woodland is not illustrative but would be secured by condition if permission were granted. This is an agreed position between the appellant and the Council. It is not appropriate simply to switch the location of the vehicular link road from a detailed matter to be determined at this stage of the planning permission to a matter which can be determined under a reserved matters application.³⁵¹
171. Applying the tests of NPPF paragraph 118, bullets 1 and 5; evidence has not been given of the arboricultural, landscape or ecological impacts of any potential alternative route, so it is not possible to conclude that significant harm resulting from the development cannot be avoided.³⁵² In so far as there is at least one alternative route for the link road, outside the Ancient Woodland, there is no need for the development in that location.³⁵³
172. If the scheme passes the NPPF paragraph 118 tests, then the test in NPPF paragraph 14, bullet 2, limb 1 should apply (the significant and demonstrable test)³⁵⁴. In doing so, the planning history of the site is a material consideration. Scheme 2 (for development which excludes the hospital field) has a real prospect of success.³⁵⁵ The result of that is that the net benefits of the present appeal would be restricted to those resulting from the development of the southern field alone. So it would be appropriate for the decision maker in the current appeal to focus on those in comparison with the harm that would flow from the creation of the link road and boardwalk through the Ancient Woodland.³⁵⁶
173. Even if the need for and benefits of the wider scheme are put into the balance, they do not clearly outweigh the loss and deterioration that the Ancient Woodland would suffer. The loss and deterioration would be considerable. It would permanently detract from England's biodiversity resource. The benefits flowing from new housing, land for a school, a community hall and some open space are not sufficient to outweigh it.³⁵⁷ In the event that permission is granted, conditions are suggested.³⁵⁸

The Case for the New Allington Action Group

174. The site was allocated for development as part of the Maidstone Borough Wide Local Plan in December 2000. In the subsequent 14-15 years approximately 980 houses have been built in the immediate and surrounding area. Maidstone Hospital has continued to expand. The result is increased traffic congestion and air pollution, the latter regularly exceeding European Union guidelines.

³⁵¹ Miss Thomas's closing submissions paragraphs 54 and 55

³⁵² Miss Thomas's closing submissions paragraphs 49 and 54

³⁵³ Miss Thomas's closing submissions paragraph 45

³⁵⁴ Miss Thomas's closing submissions paragraph 51

³⁵⁵ Miss Thomas's closing submissions paragraph 47

³⁵⁶ Miss Thomas's closing submissions paragraphs 48 and 53

³⁵⁷ Miss Thomas's opening submission paragraph 5 and her closing submissions paragraphs 46 and 52

³⁵⁸ Inquiry Document 41

- Infrastructure has not kept abreast. A nearby quarry causes vibration, industrial noise and dust. Allington has reached saturation point without this proposal.³⁵⁹
175. When first allocated, the proposal was for 280 houses. Now nearly double is proposed. The density, 35 dwellings per hectare would be greater than that of a nearby scheme at 27 dwellings per hectare and is out of character. Five hundred new homes will bring approximately 2,000 more people and approximately 1,000 more cars. This is likely to have a significant detrimental effect on local infrastructure and air quality.³⁶⁰
176. Local retail and business premises disgorge large numbers of vehicles onto the A20 at one end of Hermitage Lane. There is a continuous flow of lorries to and from the Gallagher quarry. Permission has just been given for a new supermarket and drive-through outlet at the same junction. There are current applications of 1,347 new dwellings, all to be accessed from Hermitage Lane. They will generate 6735 vehicles movements per day. A recent application for about 150 homes has been approved on land at Bridge Nursery Allington. Kent County Council concurs that the scheme will lead to more traffic and further delays. A Councillor agrees that the road network will not cope. Helen Grant MP raised concerns about increased traffic.³⁶¹
177. The only roads around Maidstone carrying more traffic than either the A20 or the A26, both of which are single carriageway roads, are four lane dual carriageways. Hermitage Lane connects these two single carriageway roads. It is the only vehicular access to Maidstone Hospital. That has parking for 1485 cars, generating 7,500 vehicle movements per day. It is the main thoroughfare between the M20 junction 5 and the A26, the main route to Pembury Hospital. At peak times traffic is at a standstill leading to heavy pollution immediately outside Maidstone Hospital. Government guidelines indicate that in sensitive areas around schools and hospitals, amongst others, traffic should be minimised to avoid pollution. This development would not only do the opposite but would also require the felling of hundreds of trees which would help to combat the effects of pollution.³⁶²
178. Howard Drive consists mainly of bungalows intended for and mainly lived in by retired and elderly people. It used to be a quiet cul-de sac. It was opened up to serve three large housing estates close by. Now it is dangerous for residents to cross the road. The proposal includes an emergency access on to Howard Drive. It provides the opportunity for greater future use of Howard Drive. The proposals to limit car use are pie in the sky. They rely on people's commitment to them but most people do not run their lives in that way.³⁶³
179. The appellant's Air Quality Assessment uses data from only one Air Quality Management Area (AQMA), at Watlingbury, located several miles away from the site. It does not draw on data from the Aylesford AQMA, 500m from the site, nor

³⁵⁹ NAAG Statement of Case (Core Document 1/7) section 2

³⁶⁰ NAAG Statement of Case (Core Document 1/7) section 2

³⁶¹ NAAG Statement of Case (Core Document 1/7) section 13 and Ann Bates's evidence (Core Document 1/18, sections 3 and 4)

³⁶² NAAG Statement of Case (Core Document 1/7) section 13 and Ann Bates's evidence (Core Document 1/18, sections 3 and 4)

³⁶³ Ann Bates's evidence (Core Document 1/18, section 3)

- from the Maidstone AQMA which encompasses the entire conurbation. Data from roadside monitoring sites was excluded because of the significant effects of traffic queuing. This is flawed. An air quality assessment on behalf of another developer, 500m away in Hermitage Lane, warns that development there may cause exposure of future residents to elevated pollution concentrations and has the capacity to cause air quality impacts as a result of excessive road traffic exhaust emissions.³⁶⁴
180. Recent comments by the Council's Air Quality Environmental Health Officer on Scheme 2 for the northern field alone report that provisional results from a new air quality monitoring site in Hermitage Lane shows that the annual mean nitrogen dioxide (NO₂) National Air Quality Objective is exceeded during winter months. He cannot exclude the possibility that the proposed development (Scheme 2) would impact on air quality within and near the Maidstone AQMA.³⁶⁵
181. Maidstone Borough Council has already identified six areas currently exceeding European Union guidelines. A survey of some of the largest medical practices in Maidstone confirms an increase in breathing problems. The highest court in the UK has ruled that the government must take immediate action to cut air pollution. No amount of mitigation measures can solve this problem. The additional traffic that this high density development will generate will worsen local air quality considerably. Tonbridge and Malling policy SQ4 would not permit development where the proposed use would result in a significant deterioration in air quality, either individually or in combination with others nearby.³⁶⁶
182. The site comprises mostly Grade 2 (very good) agricultural land. A small part is Grade 3a. This falls within the definition of Best and Most Versatile agricultural land. NPPF advises that poorer quality land should be used in preference to that of a higher quality.³⁶⁷
183. Access to nature helps to secure quality of life. People who live within 500m of accessible open space are 24% more active and fitter. The site presently provides that access. Suggested alternatives require crossing heavily trafficked Hermitage Lane or a drive to an alternative location. The site provides a panoramic view across the North Downs. Landscaping of the development will not provide an adequate substitute.³⁶⁸
184. The site is landlocked, with no easy access. Access via Howard Drive would be unacceptable because the roads in the area were not designed for such an increased volume of traffic. They are subject to subsidence caused by sink-holes.³⁶⁹
185. The major risk for this proposed development is the reservoir at the centre of the site, not part of the appeal proposal. By e-mail 20/8/2012, SE Water

³⁶⁴ NAAG Statement of Case (Core Document 1/7) section 10

³⁶⁵ Inquiry Document 7

³⁶⁶ NAAG Statement of Case (Core Document 1/7) section 10, Ann Bates's evidence (Core Document 1/18, section 4) and NAAG's closing statement.

³⁶⁷ NAAG Statement of Case (Core Document 1/7) section 3, referencing DEFRA's "Magic" website, Natural England's Technical Information Note 49, December 2012 and the natural Environment White Paper June 2011

³⁶⁸ NAAG Statement of Case (Core Document 1/7) sections 2 and 3

³⁶⁹ NAAG Statement of Case (Core Document 1/7) section 3 and 5

- confirms that they would be concerned about ground movement and contamination potential if this development were to proceed. It is most unsuitable to build a primary school, 500 dwellings and play areas in close proximity to an unprotected reservoir, not subject to any compliance or safety regulations, at risk from ground instability.³⁷⁰
186. The southern field is of archaeological interest, not fully investigated. Further investigation should be carried out prior to any development on the site. It is surrounded by woodland on three sides and by Maidstone Hospital on the fourth. Housing on this field would have no outlook.³⁷¹
187. National Planning Practice Guidance advises that both Ancient Semi-Natural Woodlands and Plantations on Ancient Woodland Sites count as Ancient Woodland. An understanding of the topography shows that attempts to discount the antiquity of the woodland by justifying an open designation on eighteenth century maps with arguments of a line of sight between The Hermitage and Allington Castle are flawed. The appellant's analysis of Ancient Woodland Indicators is flawed. Literary evidence demonstrates the antiquity of the wood.³⁷²
188. The archaeological interest of the southern field supports a hypothesis that sweet chestnut, comprising much of the Ancient Woodland, was introduced by Roman settlement. Photographic evidence confirms the existence of very old pollards and stools.³⁷³ Examination of previous coppicing suggests the wood is 200-300 years old. A recently felled oak was up to 380 years old³⁷⁴. Contrary to the verdict of the appellant's arboricultural expert, the condition of the woodland is very good with a good stand of timber. Reintroduction of good management is not dependent on development taking place³⁷⁵
189. The necessity for access to the southern field to pass through the Ancient Woodland is not proven.³⁷⁶ Yet, as proposed, just for 80 houses, it would damage Ancient Woodland, its ecology habitat and fauna.³⁷⁷ This would be contrary to advice contained in the NPPF, in advice from Natural England more recent than any quoted by the appellant's expert witness and in a report from the House of Commons Communities and Local Government Committee December 2014. No wholly exceptional benefits could outweigh the increased traffic congestion, air pollution, population increase and loss of natural green space resulting from the proposal.³⁷⁸ Damage would include light pollution, pet predation and from increased public use. Translocation of soil would not

³⁷⁰ NAAG Statement of Case (Core Document 1/7) section 11

³⁷¹ NAAG Statement of Case (Core Document 1/7) sections 4 and 12

³⁷² NAAG Statement of Case (Core Document 1/7) section 5, Mrs Woodward's evidence (Core Document 1/18, section 1), Inquiry Document 27 and NAAG's closing statement

³⁷³ NAAG Statement of Case (Core Document 1/7) sections 7 and 8

³⁷⁴ Mrs Woodward's opening comments and Inquiry document 6

³⁷⁵ NAAG's closing statement.

³⁷⁶ NAAG's closing statement.

³⁷⁷ NAAG Statement of Case (Core Document 1/7) section 3 and 5, Mrs Woodward's opening comments and evidence (Core Document 1/18, section 2) an Inquiry document 27

³⁷⁸ NAAG Statement of Case (Core Document 1/7) section 5, Mrs Woodward's evidence (Core Document 1/18, section 2), Inquiry document 27 and the Introduction to NAAG's closing statement

succeed³⁷⁹ and is anyway, a loss of Ancient Woodland.³⁸⁰ The loss would be irretrievable because it takes more than 400 years for such woodland to develop.³⁸¹

190. For safety reasons, the wood would need to be closed to the public during construction. After completion, the road would present a safety hazard to users of the wood. A cycle path alongside the existing right of way through the wood would cause greater tree loss.³⁸² Cited examples of boardwalks elsewhere are much narrower than proposed in this appeal.³⁸³

191. Buffer zones to provide root protection areas to trees are required but 15m is inadequate because the designated woodland is a long linear feature³⁸⁴. A thirty metre zone was required for the car park extension to Maidstone Hospital and has been provided by another developer in the locality.³⁸⁵ There are no guarantees of the future maintenance of any retained woodland or buffer zone. No consideration has been given to a conservation bond.³⁸⁶

192. The description of the character of the area in the developer's Landscape and Visual Impact Assessment is inadequate. The site is within Maidstone and has more in common with the character of that area at County level³⁸⁷. Its character is good and its sensitivity to change is moderate. Recommended actions are to conserve and reinforce, not create. Local opinion values it highly.³⁸⁸

The Cases for other third parties

(i) CPRE Kent³⁸⁹

193. CPRE Kent does not oppose the development of the northern field because it was allocated in 2000 for 380 dwellings, is almost an infill site and because it recognises the need for new dwellings in Maidstone. It objects to development in the south of the site because it sees it as within an area currently ancient or mature woodland³⁹⁰.

194. It does not see the need for this particular housing because the Borough has already identified land which nearly meets its requirements. The requirements are likely to be reduced in its forthcoming regulation 19 Local Plan consultation in response to a letter dated 19 December 2014 from the Planning Minister to the Planning Inspectorate to the effect that a Strategic Housing Market Assessment is only a starting point and that local authorities can take account of constraints.

³⁷⁹ NAAG Statement of Case (Core Document 1/7) section 6 and paragraphs 4.1 to 4.5 of Inquiry Document 16

³⁸⁰ NAAG's closing statement.

³⁸¹ Mrs Woodward's evidence (Core Document 1/18, section 1)

³⁸² NAAG Statement of Case (Core Document 1/7) section 6

³⁸³ NAAG's closing statement and paragraphs 3.3 and 3.4 of Inquiry Document 16.

³⁸⁴ Inquiry document 27

³⁸⁵ NAAG Statement of Case (Core Document 1/7) section 9 and Mrs Woodward's evidence (Core Document 1/18, section 2)

³⁸⁶ NAAG's closing statement.

³⁸⁷ Inquiry document 8

³⁸⁸ Diana Lewins's evidence (Core Document 1/18, section 5) and NAAG's closing statement.

³⁸⁹ Inquiry Document 4, supplemented by oral comments on delivery

³⁹⁰ Only the proposed road would constitute development within the woodland

Maidstone is also entitled to take account of windfall sites, of which there have been a considerable number this year.

195. This block of houses would degrade the wood because it is coppiced, the public footpath goes through the middle and the small amount of wood left would be used by the estate for recreation. There is every likelihood that the remaining area would be subject to further applications eventually leading to a very large, continuous estate with a few scattered trees.

196. The wood should be retained for the benefit of Maidstone as a whole;

- As Ancient Woodland for its own sake, in accordance with NPPF paragraph 118, Local Plan policy H12 and draft Local Plan policy DM10
- As a prominent feature in the landscape which is a pleasing sight
- As a break in otherwise urban sprawl
- As a buffer between the hospital and housing to the north

(ii) *Councillor Dan Daley*³⁹¹

197. His first principal concern is the covered reservoir in the northern field. Until 2012, it was presumed that this would be made redundant. South East Water has now declared that it is to remain as a service reservoir for the foreseeable future. The capacity of the sewage system to accept additional flows is limited. Significant, costly and time-consuming works will be needed to provide capacity. The risk of contamination of the fresh water through seepage and groundwater run-off is real.

198. The northern field lies on a major aquifer within the Hythe Beds. There are two springs on site. The land is unstable, known to be subject to movement, subsidence and to the opening of sudden sink holes. Disaster awaits if anything suddenly happens to rupture the structure and suddenly release 9,000 tonnes of water downhill towards Howard Drive. Since the Maidstone floods of 2014, Insurance Companies demand that new dwellings are built more than 400m from water courses, including reservoirs. If this should prove to be the case, then this is an unsuitable site for housing.

199. His second concern is the Ancient Woodland. Buffers to protect it would be set at nought by breaching it to gain access to the southern field. Houses mean people; people mean pets and pets lead to predation of wildlife. Any development would lead in short order to degradation and eventual total destruction of the Ancient Woodland.

200. It is used by the psychiatric wing of Maidstone Hospital to help disturbed patients by providing a quiet and peaceful retreat as an important part of their therapy. Its tranquillity is also valued by the local population. It should be accepted as a relict of a once extensive forest.

201. Since 1900, Allington has changed from a hamlet of 65 dwellings and 103 persons into today's conurbation of over 6,000 adults. In the process much

³⁹¹ Cllr Daley's full statement is Inquiry Document 11

green space, orchard and woodland has disappeared. The sustainability of adding over 1400 homes is questionable. The local voice should be heard.

Written Representations

Tonbridge and Malling Borough Council

202. In relation to the part of the scheme which falls within its territory, TMBC recognises that the appeal stands or falls on the decision on the part of the scheme which falls within Maidstone. The Council refers to the Secretary of State's decision on the previous appeal, which accepted the Inspector's assessment that whilst the proposal contravened the Tonbridge and Malling Local Plan, the impact would not be so material as to weigh against the development of the housing land in Maidstone Borough if that were found to be necessary to meet housing requirements.³⁹²

203. In relation to the part of the scheme within Maidstone, TMBC reserves its position on the detailed design of improvements to the Coldharbour roundabout but accepts the likelihood that adequate space is available within existing highways limits for an acceptable scheme to be designed to overcome TMBC's concerns.³⁹³ Similarly, subject to seeing the details, the Council accepts that measures to be included in a s106 obligation, namely:

- Contribution to pedestrian crossing of Hermitage Lane
- Enhanced shared cycle and pedestrian routes, including to Barming station
- Five year support for bus service enhancements
- Provision of a Travel Plan
- Contribution to the improvement of the Coldharbour roundabout
- Contribution to the improvement of M20 junction 5

would encourage the use of transport modes other than cars and so would be adequate to address TMBC's concerns about the potential impacts of the proposal on air quality within TMBC.³⁹⁴ It follows that the appeal proposals are acceptable to TMBC subject to a s106 agreement and appropriate planning conditions.³⁹⁵

204. Although TMBC accepted Unilateral Undertakings given in relation to the 2002 appeal for the provision of informal parkland and woodland and open space on land in its area, there is no clear evidence of the need for such facilities within the TMBC area. TMBC's Open Space Strategy (February 2009) does not identify any need for a Country Park in this vicinity. Its current development plan makes no provision for a Country Park in this location. The Council has raised objection to the provisions of the Maidstone Borough Local Plan Regulation 18 Consultation

³⁹² Tonbridge and Malling Council Statement of Case (Core Document 1/6), paragraph 2.1 and Statement of Common Ground (Core Document 1/5) paragraphs 4.6 and 7.1

³⁹³ Tonbridge and Malling Council Statement of Case (Core Document 1/6), paragraphs 1.5 to 1.7

³⁹⁴ Tonbridge and Malling Council Statement of Case (Core Document 1/6), paragraphs 1.8 to 1.10

³⁹⁵ Statement of Common Ground (Core Document 1/5) paragraph 7.1

Policies March 2014 which seek to make policy requiring the provision of such a proposal within TMBC.³⁹⁶

Other written representations

205. The MBC committee report³⁹⁷ records over 900 letters of objection received at application stage. I have sorted these alphabetically by originator's name.³⁹⁸ When arranged in this way, it can be seen that many of the reported 900 are in fact duplicate copies of letters sent separately to a number of different recipients within Maidstone Council and so recorded as individual objections. In fact there are 309 correspondents making 331 communications and an additional 164 campaigning Christmas Cards. Their concerns are otherwise accurately reported in the Council's Committee report. They do, of course, represent comment on the scheme as originally submitted; for example, a considerable number object (amongst other matters) to the gyratory proposed for Barming as part of the suggested s106 agreement but not pursued in the agreement finally signed.

206. The TMBC committee report³⁹⁹ records 150 letters of objection received at application stage. Their concerns are reported at paragraph 5.4 of that committee report.

207. In response to the notification of the appeals, 46 letters from 45 correspondents making representations were sent to the Planning Inspectorate. They include a petition of 225 names. The concerns they raise are;

- Poor access/Access to Hermitage Lane unacceptable
- Increased and unacceptable traffic congestion
- Increased and unacceptable traffic pollution
- No connection to station
- Overcrowding the area
- Increased burden on inadequate infrastructure and facilities
 - Hospital beds
 - Schools
 - GP surgeries
 - Drainage
- Loss of agricultural land/orchard
- Loss of open land – only remaining green field between Allington and Aylesford

³⁹⁶ Tonbridge and Malling Council Statement of Case (Core Document 1/6), paragraphs 1.11 to 1.15

³⁹⁷ Core Document 3/1, paragraph 6.01

³⁹⁸ Core Document 11. Inquiry document 27 was omitted from the copies supplied by the Council. It provides a particularly comprehensive list of the potential adverse impacts of nearby development on ancient woodland

³⁹⁹ Core Document 4/1

- Urban regeneration preferred
- Eroding Strategic Gap/separate identity of Malling and Maidstone
- Loss of Ancient Woodland
- Loss of habitat
- Effects on fauna (bats, birds, badgers)
- Woodland management after development
- Absence of promised country park
- Risk of reservoir failure
- Archaeological interest
- Need for self-build plots

Inspector's Conclusions

208. In this section of my report, numbers in square parentheses thus [] refer to paragraphs in the preceding sections of the report from which these conclusions are drawn.
209. So far as Appeal B is concerned, no party disputed the propositions (i) that its outcome is dependent on the outcome of Appeal A and (ii) that, notwithstanding any conflict with Tonbridge and Malling Core Strategy policies CP1 or CP5 within that Borough's area, the impact would not be so material as to weigh against the development of the housing land in Maidstone Borough if that were found to be needed to meet housing requirements and acceptable in other respects [202, 203]. I have no reason to disagree.
210. Both main parties acknowledge [73], and other parties do not dispute [193, 194], that MBC cannot demonstrate a five-year housing land supply. It follows, in line with NPPF paragraph 49, that relevant policies in the Maidstone Borough-Wide Local Plan 2000 for the supply of housing should not be considered up to date [77, 167]. Paradoxically, that must include policies H1 and H12 which allocate the site for housing, notwithstanding government policy (NPPF paragraph 47) to boost significantly the supply of housing. The decision-making process therefore needs to follow the final bullet point of NPPF paragraph 14; that is, granting permission unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits, when assessed against policies in the NPPF taken as a whole, or unless specific policies in the NPPF indicate that development should be restricted.
211. This gives rise to the two main issues between the parties because it is claimed that the proposal would conflict with the specific policy set out in paragraph 118 of the NPPF. This seeks to conserve and enhance biodiversity by applying a number of principles (particularly relevant is the fifth bullet which calls for planning permission to be refused for development resulting in the loss or deterioration of irreplaceable habitats including ancient woodland unless the need for, and benefits of, the development in that location clearly outweigh the loss but the first bullet is also called into play which calls for planning permission to be refused if significant harm resulting from a development cannot be avoided

through locating on an alternative site with less harmful impact, adequately mitigated or compensated for). It is also claimed that the adverse impacts set out in the first reason for refusal would significantly outweigh the benefits of the proposal.

212. The proportion of housing which is proposed to be provided as affordable housing is set out in the Unilateral Undertaking. The Council acknowledges [131], and other parties do not dispute, that MBC's Affordable Housing DPD policy is undermined by more recent evidence. I have no reason to disagree. Both main parties agree that 30% of the dwellings should be provided as Affordable Housing [73]. The proportion of affordable housing offered is therefore not an issue in this appeal.
213. Contrary to Local Plan policy CF6(i), land is not reserved for a general medical practitioners surgery. Instead, provision is made in the Unilateral Undertaking for financial contributions towards improvements to existing surgeries serving the area [72]. Although this is not an issue between the main parties and so it is not a main issue, third parties continue to raise impact on infrastructure as an issue.
214. Likewise, although land reserved for a primary school is not in the location prescribed by Local Plan policy CF8(v), land is reserved as part of the appeal proposals, secured through the s106 agreement with Kent County Council, along with financial contributions to other educational facilities and services [69]. So, it is not an issue between the main parties but third parties continue to raise impact on infrastructure as an issue.
215. Evidence is provided to show compliance with Maidstone's Open Space DPD. This is not contested. The quantitative provision of open space is therefore not an issue between the main parties [73]. Nor is any issue taken with the fact that what is proposed to be provided would not be in the location prescribed by Local Plan policy ENV24 (xiii). But third parties do raise the issue of the configuration of open space to be provided [183] and it is a part of the Council's case relating to the landscape character of the neighbourhood that the southern field should be used as open space [83], so it forms part of that main issue.
216. In addition to the two main issues separating the main parties, third parties present evidence concerning air quality and highway safety [174 to 181]. I therefore consider that the **main considerations** in this appeal are;
- The effects of the proposal on the ecology of the neighbourhood
 - Its effects on the landscape character of the neighbourhood, and
 - Its effect on the living conditions of existing and potential future residents of the area in terms of air quality and highway safety.

Ecology

217. Much effort has been spent during this appeal seeking to prove or disprove that the Ancient Woodland has been correctly identified. This has involved examination of historic maps, various analyses to identify the age of extant trees, soil analysis and analysis of Ancient Woodland Vascular Plants.

Historic maps

218. Eventually, all parties agreed that the Ordnance Survey (OS) drawing of 1797, the Mudge map of 1801, the tithe map of 1843, the OS map of 1856 and the OS map of 1872⁴⁰⁰ all showed that the area now designated as Ancient Woodland was woodland at those times [88]. The parties focussed on debating whether earlier maps proved that the area had been continuously wooded since 1600. They agreed that the Speed map of 1611⁴⁰¹ showed too little detail to be of any use and that the Barlow map of 1800⁴⁰² was simply a derivative of the earlier Andrews Dury and Herbert map of 1769⁴⁰³. Debate focussed on that map and the Symonson map of 1596, the Seller map of 1681 and the Morden map of 1695.⁴⁰⁴
219. These four maps all show the boundary between Hundreds, which, in the vicinity of the site was agreed to correspond with the modern civil parish boundary, shown on modern OS maps.⁴⁰⁵ This, together with features such as the river Medway, the London Road (the modern A20), the Tonbridge Road (the modern A26) and the bridge across the Medway at Maidstone could be used to register the maps against each other and the modern map in attempts to locate the present-day Ancient Woodland on the historic maps and so prove, or disprove, its antiquity [90, 139].
220. The three seventeenth century maps show varying degrees of afforestation to the east of the Hundreds boundary. Their accuracy is very broad brush. Mr Forbes-Laird's registration of the maps is clearly mistaken, leading to a placing of the Ancient Woodland several miles to the south west of its actual position [140]. Mr Sansum's registration can be replicated. I therefore concur with his view that the present-day extent of designated Ancient Woodland falls within the areas shown as afforested on the maps of 1596, 1681 and 1695.
221. The three seventeenth century maps are fairly sketchy with only a broad degree of accuracy, but the Andrews Dury and Herbert map of 1769 is even more diagrammatic. Even so, the projection towards Maidstone of the woodland shown to the east of the Hundreds boundary and to the north of The Hermitage is proportionate to the projection of the Ancient Woodland on a modern map [141] and so I once again concur with Mr Sansum that this map too shows that the area now designated as Ancient Woodland was afforested at that time.
222. The parties did not greatly debate more recent maps, apparently taking it for granted, in accordance with common practice, that if the area now designated as Ancient Woodland could be shown to have been afforested in 1596, 1681, 1695, 1769, 1797, 1801, 1843 and 1856, then it must have been continuously

⁴⁰⁰ Core Document 14/8, maps 5, 7, 8, 9 and 10

⁴⁰¹ Core Document 14/8, map 1a

⁴⁰² Core Document 14/8, map 6

⁴⁰³ Core Document 14/8, map 4. an extract of a wider area at a smaller scale is appended to appendix 3 of the Heritage Statement (Core Document 2/16)

⁴⁰⁴ Core Document 14/8, maps 1, 2 and 3

⁴⁰⁵ For example, Core Document 14/8 map13

afforested since [136]. But, within the evidence, there are other maps which repay close attention⁴⁰⁶.

223. Recent OS maps⁴⁰⁷ show that the eastern extremity of the defined Ancient Woodland area is divided from the rest of the designated Ancient Woodland by a track. Somewhat overgrown, this can be recognised on site. It can be traced back to OS maps of 1908 but not earlier. It marks the boundary between Woodland zones 2 and 3 of the 1996 TPO⁴⁰⁸. Within TPO woodland zone 2 there is no physical distinction between the Ancient Woodland and the rest of the protected zone which extends southwards to footpath KP18 along the eastern side of the southern or hospital field. But the part of the designated Ancient Woodland within TPO woodland zone 2 to the east of the track is noticeably different from the part of the Ancient Woodland to its west, as Mr Sansum acknowledged in evidence [144] and in response to my questions.
224. The OS maps of 1865 and 1870 show that at that time, what is now the designated Ancient Woodland formed part of a much more extensive area of woodland extending to the north over what is now the Reservoir field and to the south (in the form of a conifer plantation) over part of the southern or hospital field. Other than the section which is now designated Ancient Woodland, TPO woodland zone 2 is shown not to have been afforested.
225. By the time of the 1897 OS map, the conifers to the south are shown to have been cleared. The deciduous woodland is shown to have been cut back to the line of the track which first appears on the 1908 OS map. The area to the east, which is now TPO woodland zone 2, including a part of the designated Ancient Woodland, is shown as a conifer plantation. It reverts to a broadleaf notation by the time of the 1931 OS map.
226. The Council's witness Mr Sansum acknowledges this [144] and acknowledges that the point had not been researched in his work which led up to the designation as Ancient Woodland⁴⁰⁹ but goes on to say that because it concerns only 10% of the designated area of Ancient Woodland and because it was only a short temporal interruption it does not invalidate the designation as Ancient Woodland. I am not so convinced.
227. Both main parties agree that for an area of land to be included on the Ancient Woodland Inventory continuous woodland presence on the site is required [89, 135]. I conclude that map evidence shows that the majority of the area designated as Ancient Woodland has been correctly designated but that there appears to be a period of discontinuity some time between 1870 and 1931 when

⁴⁰⁶ Appendix C of the Flood Risk Assessment (Core Document 2/15) contains extracts from OS maps of 1865 (wrongly labelled 1965), 1897, 1908, 1936, 1966 and 1989. Appended to Appendix 3 of the Heritage statement (Core Document 2/16) are extracts from Ordnance Survey maps of 1870, 1897, 1898, 1908, 1909, 1931, 1951 and 1966. Volume 5 of Mr Forbes-Laird's evidence has extracts of maps dated 1872, 1897, 1908, 1909, 1931, 1936 and 1945

⁴⁰⁷ For example, 2015 OS base used for Appendix 1 of Mr Baxter's evidence, 2012 base map for Appendix 3 of Miss Forster's proof of evidence (CD1/15)

⁴⁰⁸ Found at Appendix 2 of Core Document 1/11 volume 2

⁴⁰⁹ Paragraphs 4.31 of his proof of evidence and paragraph 7.3 of his summary (Core Document 1/16)

the area within TPO woodland zone 2 had been cleared and planted with conifers and then subsequently replanted with sweet chestnut. This casts uncertainty over the validity of the designation of Ancient Woodland for that part.

228. But in any event, designation as Ancient Woodland is only shorthand for an indication of ecological interest; it is the ecological interest itself which is of value rather than the designation as such. I now turn to look at indicators of ecological interest.

The age of trees

229. Both parties accepted the White method for estimating the age of standing trees [93, 147]. But the method depends on the practitioner choosing the correct growth factor to apply. The method offers a range of growth factors which are intended to be applied to the particular conditions in which the trees were grown and which produce hugely varying results. Since the parties disagree on whether the conditions in which the trees were grown were an Ancient Semi-Natural Woodland or a Plantation on an Ancient Woodland Site and are using the White method to try to prove themselves right, the arguments become circular and so little or no reliance should be placed upon either party's use of the White method by itself.
230. However, there is a control, in the form of a felled tree which can be dated by ring-counting, the results of which can be compared with each party's application of the White method [94, 147]. This favours Mr Forbes-Laird's application of the White method on behalf of the appellant. I therefore accept that, in all likelihood, the principal standard oaks range in age from 69-171 years and that the coppice analysis suggests an old hedgerow on the edge of the woodland dating from 1538 with two campaigns of coppice planting, one dating from the mid-nineteenth century, the other from the turn of the nineteenth and twentieth centuries [94]. Mr Forbes-Laird categorises the latter planting campaign into two zones, according to whether they are inside or outside the designated Ancient Woodland area but, consistent with my conclusions on the map evidence and what I saw on site, it appears to me that there is nothing physically distinguishing the two.
231. But, although the age of trees is of interest in its own right, the existence, or otherwise, of Ancient Woodland is not proven or disproven by the age of the trees presently on site [147]. This is because it is the wildlife, species and soil which results from the continuity of afforestation which is of ecological interest, even though individual trees will have come and gone over time⁴¹⁰. I now turn to look at the soil indicators.

Soil analysis

232. Neither party sought to show by soil analysis what, if any, was the inherent ecological interest of soil which might be damaged by the development. Both focussed their attention on whether samples taken demonstrated any differences, both within the designated Ancient Woodland area or between the designated Ancient Woodland area and areas of Woodland not designated or areas not woodland. Despite Mr Sansum's protestations about the sample size and method

⁴¹⁰ See the advice contained in Core Document 10/1, section 4

[148], the expertise of those who produced the evidence has to be accepted [95]. On the other hand, the interpretations of the evidence which Mr Sansum puts forward are as plausible as those put forward by Mr Forbes-Laird. I conclude that the soil analysis is inconclusive in determining both whether the Ancient Woodland has been correctly defined and in determining whether it has any particular value. I therefore turn to look at the evidence of wildlife and plant species.

Wildlife and plant species

233. The appellant's survey work was the basis of both main parties' cases [97, 149]. Mr Baxter's analysis of the significance of records of bats, birds and badgers [97] was not disputed. His firm's survey of the woodland vascular plant distribution⁴¹¹ was the basis of both parties' cases [97, 145]. This shows as much interest from Ancient Woodland vascular plants lying in the woodland to the south-east of the site as from Ancient Woodland vascular plants lying in the designated Ancient Woodland [96].
234. Although it may be fair to say that the Ancient Woodland Vascular Plants are found in small, localised patches [97] this is consistent with the view that recent lack of management is suppressing the interest of the wood; it does not demonstrate that the Ancient Woodland has been incorrectly designated. The furthest any of the appellant's witnesses go, is to say that it is evidence of Plantation on an Ancient Woodland site, rather than Ancient Semi-Natural Woodland [96] but both of these classifications are subdivisions of Ancient Woodland [187].⁴¹²
235. The Council's assertion that in a wood of less than 2ha in size, and on the kind of substrate present, the variety of Ancient Woodland Vascular Plants surveyed represents considerable diversity and is likely to indicate Ancient Woodland [145], is not disputed. I concur with that view. The evidence of Ancient Woodland Vascular Plants in the strip of woodland along the south-eastern boundary is also evidence of ecological interest. That too may be Ancient Woodland (the appellant's 1998 Archaeological Assessment, paragraph 7.5⁴¹³, indicated its antiquity) but simply not yet recognised or designated as such. It does not prove that the designated Ancient Woodland is wrongly designated.
236. What does not follow is that all the land within the designated Ancient Woodland boundary is correctly so designated. The 1996 Tree Preservation Order clearly distinguishes three different woodland areas. Comparison of those three areas with Mr Baxter's map AB6 shows clearly that whereas TPO areas W1 and W3 have a reasonable intensity and wide variety of Ancient Woodland Vascular Plants, TPO area W2, including a part of the designated Ancient Woodland area does not. The Council's witness, Mr Sansum, acknowledged in response to one of my questions that the area of designated Ancient Woodland to the east of the track separating TPO areas W2 and W3 does appear to have poorer flora. This reinforces the conclusion I reached earlier in examining the historic maps.

⁴¹¹ Map AB6 in Core Document 1/12 (Appendices volume 1)

⁴¹² Core Document 10/1, paragraph 4.4

⁴¹³ Appendix 3 to Core Document 2/16

The extent of ecological interest

237. For all the above reasons, which I have examined in some detail because of the amount of effort put into the controversy by the parties, I conclude that the designation of the area as Ancient Woodland and the argument about its designation is something of a red herring. Designation itself does not comprise ecological value; it recognises it, provided it is accurately done. That should not distract the decision maker from firm evidence of actual ecological value. In this case, it appears to me that the designated area of Ancient Woodland may not be accurate in respect of its eastern extremity within TPO area W2. That is not to say that that section is devoid of ecological interest; clearly it is not, but I would suggest that more note is taken of the distribution of ecological interest noted in Mr Baxter's plan AB6 than of the nominal boundary of the designated Ancient Woodland. For the same reasons, and because it was not contested [151], I take the view that Mr Baxter has correctly assessed the ecological significance of the site [97], that is, that it has a medium to high value at a local level. That is also consistent with the view of the New Allington Action Group [188].

Harm to ecology

238. An outline application always presents a challenge to a local planning authority in that there may be an infinite number of feasible ways of delivering the proposal. If there is but one (or, more likely, a few) which would be acceptable in planning terms, the proposal would merit favourable consideration in this regard, albeit there may have to be conditions limiting any permission to the sole (or few) solution(s) thought to be acceptable. Conversely, if a refusal on this basis is to be justified, the local planning authority would need to have demonstrated that none of the realistic ways of implementing an outline proposal were acceptable.

239. In the present case, all parties focussed their examination of potential ecological harm on the effects of a connection or connections between the northern and southern fields. Because that is where there is a concentration of ecological interest, I have no reason to disagree with that approach.

240. However, the parties (and particularly the Council) went further and debated the impact of the proposal only in terms of particular alignments (indicated on the submitted parameters plan) for a new road and for an upgrading of an existing footpath (partly informal, partly right of way) to a combined footpath and cycleway even though that was not submitted for detailed approval. There are a number of observations to make on this approach.

241. Although the inclusion of the site in the adopted Local Plan came about as a result of an objection to the Local Plan made by the current appellant, it is the local planning authority's decision to accept the recommendation of the Local Plan Inquiry Inspector to include the proposal in its Plan. In doing so, it becomes, in effect, the Council's proposal. Similarly, in at least one of the Council's iterations of its proposals for a new Local Plan, it is the Council which has proposed the development for housing of both the northern and the southern fields.

242. It is nowadays one of the tests of soundness of a development plan that its proposals would be deliverable. The adopted plan was prepared before that test

applied. Even so, it would have been sensible for any planning authority first to satisfy itself that delivery of the site was at least feasible.

243. In the present case, however, it appears that the Council did not, in fact, carry out any feasibility study before adopting the proposal as its own [169]. Two consequences follow. Firstly, it is not valid to presume, as the appellant has done [79, 81], that there is, necessarily, any previously identified acceptable way of delivering the proposal. Secondly, it is not sufficient to appraise this outline proposal, as the Council has done [170], on the basis of one option alone; all feasible options must be considered.
244. Although the appellant has considered a number of options for delivery, the options do not cover all possibilities. Three options were considered in the appellant's Design and Access Statement⁴¹⁴.
245. Option 1 would have made use of the alignment of the previous track connecting the two fields. It was not considered by the Council⁴¹⁵. A different option is preferred by the appellant because the construction of this option would have affected the root protection area of a 600 year old coppiced ash, one of the oldest trees in the woodland⁴¹⁶. Whilst noting Mr Forbes-Laird's estimate of the life remaining to this tree, observation on site shows that it is suffering die-back, so I am not convinced that the appellant's ranking of this option is necessarily the most advantageous; had the Council considered this option, at least a second opinion could have been obtained.
246. Option 2 would have formed a dog-leg through TPO area W2 avoiding the designated Ancient Woodland area in its entirety. Although the Council, in its opening and closing remarks notes that there is at least one alternative location for the link road and that it is outside the designated Ancient Woodland, it has not given it any consideration⁴¹⁷. Its refusal of the application is not based on a rejection of this option. The appellant prefers a different option because this one would generate greater tree loss, a longer route through woodland and so a potentially greater impact on ecology resulting from street lighting⁴¹⁸. But that preference was expressed before Mr Baxter's work, identifying the distribution of Ancient Woodland vascular Plants showed that this area of woodland was perhaps the least ecologically significant, so I am not convinced that the appellant's ranking of this option is necessarily the most advantageous; had the Council considered this option, at least a second opinion could have been obtained.
247. Option 3 is the appellant's preferred option [99]. It would take a short route through the narrowest part of the designated Ancient Woodland, a little to the north-west of the route of the historic track. It would avoid any effects on the 600-year old Ash coppice⁴¹⁹. Observation on site shows that it is a route which appears to make use of a natural clearing in part of the wood, but it was preferred by the appellant before Mr Baxter's work became available, showing

⁴¹⁴ Core Document 2/22, paragraphs 11.5 to 11.7

⁴¹⁵ Accepted by Mr Wilford in cross-examination

⁴¹⁶ Core Document 2/22, paragraphs 11.5 to 11.7

⁴¹⁷ Accepted by Mr Wilford in cross-examination

⁴¹⁸ Core Document 2/22, paragraphs 11.5 to 11.7

⁴¹⁹ Core Document 2/22, paragraphs 11.5 to 11.7

the distribution of Ancient Woodland Vascular Plants, so I am not convinced that the appellant's ranking of this option is necessarily the most advantageous.

248. Thus, in theory, there are at least three other options, not considered in detail by anybody. One, which I will call option 4 is a route through TPO area W2, not avoiding the part of the designated Ancient Woodland (which, as I have noted above, may have been unjustifiably designated) but, informed by Mr Baxter's work, taking a shorter route than the dogleg option 2 described above.

249. Another, which I will call option 5 is a route from the western corner of the northern field, skirting around the western end of the designated Ancient Woodland. The view was expressed in the Inquiry that the topography made this implausible⁴²⁰. Certainly, the site of a former sand pit lies in the way. It would also pass through The Knoll, which is suspected to have considerable archaeological interest which has not been investigated, so it is understandable that the appellant has not even investigated this option. But, if other options involving a route through the woodland were found to be unacceptable in principle, it remains an option to be investigated.

250. The final option (which I will call option 6) is a route to the southern field which would not connect with the northern field at all but would approach from Maidstone Hospital from the south⁴²¹. This would require the use of land not in the appellant's ownership. Furthermore, the concept of a housing estate accessed via the hospital's internal road system might be an unattractive marketing proposition, so it is understandable that the appellant has not investigated this option. It would also be contrary to the Development Plan which prescribes a sole access to both fields from Hermitage Lane, so may be accepted for that reason as an option not worth pursuing.

251. The Council correctly points out⁴²² that evidence about the impacts of these options (other than the summary comments in the Design and Access Statement or the cursory comments made in cross-examination) was not before the Inquiry [171]. Certainly, there is nothing to match the detailed appraisal of option 3. It follows that it cannot be said with any certainty that any of these options would produce a result with a lesser impact on ecology than the appellant's preferred option. Equally, however, it cannot be said that option 3 has been tested and found to be the best or only available option.

252. There is therefore no convincing justification for a condition insisting on the selection of option 3 through applying the Parameters Plan. It should remain as an illustrative example only. I adopt that route for the purposes of this Report, but it needs to be understood that any finding that the development is acceptable on the basis of option 3 does not mean that some other option might not be found to be preferable at detailed stage. Equally, if, contrary to my recommendation, the development were to be found unacceptable on the basis of option 3, it would not mean that planning permission should automatically be refused; a view would have to be taken on the basis of the limited evidence reported here of the likelihood of any other options proving acceptable. In my view, both options 1 and 4 show promise.

⁴²⁰ By Mr Wilford in cross-examination

⁴²¹ Paragraph 10.2 of Matthew Chard's proof of evidence (Core Document 1/10)

⁴²² In closing submissions

The effects of option 3

253. Different witnesses took different views of Natural England's advice that a conclusion on the ecological balance should be reached before taking into account any effects of mitigation or compensation [103]. All parties accepted the observation that loss of Ancient Woodland is an absolute loss and cannot be mitigated [157], though it was argued that soil translocation (which could be secured by condition at reserved matters stage and might be 85% effective) would represent a less than total loss of the area affected [98]. The New Allington Action Group's assertion [190] that a cycle way is proposed alongside the existing right of way is mistaken; it would be constructed in its place. The contention that the construction of the boardwalk was not a loss because it retained and protected the Ancient Woodland soils was not convincingly challenged [98]. Overall, the appellant's view prevailed that the absolute loss of Ancient Woodland which would result from option 3 was about 1.8% of the designated Ancient Woodland area [98]. Taking into account Mr Baxter's work on the distribution of ecological interest on the site, the absolute loss to ecology from option 3 would be less even than that figure.
254. When considering damage, even more than when considering loss, it is counterintuitive to follow Natural England advice⁴²³ that mitigation and compensation measures should be issues for consideration only after it has been judged that the wider effects of a proposed development clearly outweigh the loss or damage of ancient woodland because mitigation, of its nature, clearly reduces damage; that is what it is intended to do and it may be thought unrealistic to separate the two. Neither party did so [103].
255. The list of potential adverse ecological effects [152 to 156, 189, 195 and 199] is not contested but their magnitude and significance was challenged. Some claimed harms appear overstated. It is true that the road through the woodland would fall within the definition of development within the Town and Country Planning Act but would not be provided with a buffer in the way recommended in Natural England's advice. Yet a buffer is intended to provide protection against human activity, which is usually based on a workplace or a residence; a road is just a passageway, not a basis of activity and so, it may be thought that the use of the word "development" in Natural England's standing advice is a more colloquial than technical use⁴²⁴. In any event, the appellant explains why a buffer to the road should not be provided [101].
256. The claimed harm from the boardwalk would also appear to be overstated, since it ignores the fact that the existing pathways, both informal and rights of way, through the Ancient Woodland are already well used by the public and their dogs and so trampling damage is already experienced. This would be substantially increased by the increased population of the development in the northern field, which development the Council finds acceptable [132] and only marginally increased further as a result of the development in the southern field.

⁴²³ Core document 10/1, paragraph 6.1

⁴²⁴ Natural England advice on buffer zones (paragraph 6.4 of Core Document 10/1) is that an appropriate buffer area will depend on the type of development, amongst other matters. Its example of the kind of thing a buffer zone is intended to confront is activity from a residential garden.

The boardwalk might lead to some construction damage but would permanently relieve the trampling damage.

257. Loss of connectivity between parts of the wood which would be separated by the road is alleged to be prejudicial to the Council's emerging Blue and Green Infrastructure Strategy [154]. The appellant's response, that woodland canopy would grow back over the road within ten years, is disparaged. Yet the Councils' emerging Blue and Green Infrastructure Strategy is based on concepts of connectivity across barriers, such as Hermitage Lane itself, far greater than those implied in this development, so it seems to me that the alleged harm through a break in continuity is overstated.

258. A long list of mitigation measures [101 and 102] is proposed. Some of these would provide more than mitigation and would provide enhancement or compensation for unmitigated loss [106]. Although the New Allington Action Group asserts an inadequate depth to buffer zones [191], they comply with Natural England advice⁴²⁵. In some cases it is difficult to distinguish between the mitigation effects and the compensation effects of a measure and so, it is not surprising that both sides claimed victory in the mitigation balance [104, 157]. In my view it may be as well to remember that mitigation is just that; namely mitigation; harm remains, albeit minimised; at most, neutralised. Anything more than that offers enhancement or compensation for other harms.

259. Compensation and enhancement also need to be taken into account, as Natural England confirms⁴²⁶. When that is done [106], even leaving out of the equation for the moment the non-ecological benefits [107,108], the ecological balance of option 3 would be as follows:

- An absolute loss of a small area of designated Ancient Woodland (less than 2% of its designated area, much less than 2% of the identified ecological interest of the site and reduced to a degree by soil translocation) which has a medium to high value at a local level
- Damage to woodland ecology largely neutralised by mitigation
- New woodland, ten times the area lost (largely provided on the northern field)
- Management of all woodland; designated Ancient, other ancient and new
- Community orchard, parkland and grassland provision (largely provided on the northern field)
- Facilities to encourage fauna

Even allowing for the fact that much of the compensation would be provided on the northern field [133], the balance would be clearly positive and so the test of NPPF paragraph 118, bullet 1 would be met.

260. The need for, and benefits of development are not disputed by the Council [107, 108]. When these are taken into account, then, even allowing for the fact that an estimated 84% of the benefits would accrue from the development of the northern field [133], the test of NPPF paragraph 118, bullet 5 is clearly met. The

⁴²⁵ Core Document 10/1, paragraph 6.4

⁴²⁶ Core Document 10/1, section 6.5

benefits resulting from 80 dwellings in the southern field, including affordable housing, and their contribution to the planning obligations would clearly outweigh the very small loss of Ancient Woodland envisaged in option 3. Although this loss would technically infringe the requirements of adopted Local Plan policy H12 which calls for the retention, without qualification, of trees and woodland and of policy DM10 of the Council's emerging Local Plan which requires developments to incorporate measures to protect, without qualification, areas of Ancient Woodland and features of biological interest I conclude that the ecological effects of option 3 would be acceptable, notwithstanding the minor loss. It may well be found that when some of the other road link options are evaluated during the submission of detailed proposals, that the balance could be even more favourable to the proposal.

Landscape character

261. Although the context of the reference in the reason for refusal suggests that concern is limited to the Ancient Woodland, the Council's planning witness at the Inquiry averred that it meant a wider area of woodland [111, 158]. His explanation of what he understood the area of woodland to be was challenged by the appellant's advocate [112 – 117] but his explanation was not disowned by the Council's advocate [158] and, as a matter of fact, the Council's reason for refusal is capable of interpretation in a wider way.

262. Although the wording of the Council's reason for refusal refers specifically to an alleged erosion of the setting of the woodland as a landscape feature by development of the southern field and the necessary road linking to it, the Council's landscape witness expanded this to a consideration of the general landscape impacts of the proposal both on the woodland itself, and on the southern field [115, 117 and 159]. Because Natural England's Standing Advice⁴²⁷ is that Ancient Woodland is of prime ecological and landscape importance, and the first reason for refusal refers to loss and deterioration of Ancient Woodland not limited to its ecological interest, it may not be thought wrong for the landscape interest of the Ancient Woodland to be examined in the way suggested by the Council's witness. Nor, given that the woodland is protected by TPOs, and that the ostensible reason for making a TPO is that it is expedient in the interests of amenity, is it necessarily wrong to consider the wider woodland.

263. Whether it is the landscape interest of the Ancient Woodland itself, or of the woodland in a wider sense, or of their setting, these matters are nearly as equally significant to development of the northern field as to development of the southern field. The development of the southern field would require a link between the two fields, whereas the development of the northern field alone would not. The link might result a break in the continuity of the woodland on the skyline [164]⁴²⁸. That might affect the value of the woodland as a landscape feature, but would have little or no effect on its setting. But, there is already a break, caused by the previous track. In commenting on the Costs application, the Council's advocate advanced the argument that the woodland is seen across the southern field at closer range and by more people from footpath KB18 than

⁴²⁷ Paragraph 4.8.1 of Core Document 10/1

⁴²⁸ Option 3, which has been used as the basis for evaluation in this report would do so but option 2 (the dog-leg) would not. Nor would a less extreme curved option, if eventually chosen.

from elsewhere. However, the Council's landscape witness only evaluates the southern field and the woodland itself and makes no comparative analysis of the impact on the woodland's setting from the northern field, which has public rights of way on two sides and an informal path on a third. It is, on the face of it, inconsistent for the Council to accept that development of the northern field would have an acceptable impact on either the setting of the woodland, or of its value as a landscape feature, and yet find that development of the southern field would not and it is correct that no convincing explanation of this inconsistency has been given [113].

264. The proposals in front of the Secretary of State comprise a scheme to develop both fields. Neither party suggests that a split decision between the northern and southern fields would be appropriate, nor would it be practicable given that the planning obligations apply to the whole site and are not divisible. Nevertheless, regardless of the wording of the Council's reasons for refusal and notwithstanding all parties' acceptance of development on the northern field and a consequent lack of any evidence of any harm from the development of the northern field, it is open to the Secretary of State to consider that the effects of the proposal to develop on both sides of the woodland merit dismissing the appeal. However, that is not my recommendation, nor is it the case presented by any party.
265. In analysing the effects of proposed development landscape architects adopt a particular terminology in line with the Guidelines of their Institute⁴²⁹. They assess both the landscape effects of a proposal (ie what physical changes to the landscape would be made) and also its visual effects, in both cases by reference to the condition of the landscape and its sensitivity to change in terms of various strategic levels of concern (eg, national, regional, county, district or local). Intrinsic to this method, impacts at lower levels in the hierarchy of concern are inevitably described in more portentous terms (similar to the effect of a large ripple in a small pond).
266. So, Mr Lovell's description (for the Council) of the impact of the development on Ancient Woodland and on the southern field as "large adverse" [159] and Mr Chard's description (for the appellant) of the impact of development on the landscape character of the Ancient Woodland as "up to moderate-major adverse at year 1" [160] are unsurprising. It simply means that they are describing a change from arable fields to a housing estate. Almost any proposed development on a greenfield site anywhere might be described in the same way.
267. Of more significance to the decision maker is the context within which the effects would be realised. Making an analysis at local level for the purposes of this appeal, Mr Lovell assesses the sensitivity of the landscape character of the southern part of the site (the woodland and the southern field) as at least moderate.⁴³⁰ Published analyses (by Mr Lovell's firm for the County and for MBC) record the landscape character area within which the appeal sits as in poor condition and with very low sensitivity to additional development whether assessed at County level or at District level [118]. The New Allington Action Groups references are to different character areas in a different part of Maidstone

⁴²⁹ Guidelines for Landscape and Visual Impact Assessment (GLVIA) 3rd edition 2013

⁴³⁰ Paragraph 9.4 of Mr Lovell's proof of evidence (Core Document 1/14)

[192] and so are not relevant to this appeal. The simile of the large ripple in a small pond applies again; the southern field is very contained⁴³¹; if one's attention is confined to the southern field, then any change appears more sensitive than if one is considering a wider context.

268. These matters were considered in the report of the Inspector who considered the objections to the Local Plan [49, 118] and found the development of the site, including the southern field, acceptable. In landscape terms, nothing has changed since, as Mr Lovell, for the Council, accepted in cross-examination [118]. I have no reason to take a different view of the landscape impacts of the proposal.

269. Although not specific in its reason for refusal, there is more than a hint in the Council's evidence that the southern field should be retained as open space [41, 166] as part of the Council's emerging Green and Blue Infrastructure Strategy. This recognises the northern field and woodland, rather than the southern field as a Biodiversity Opportunity Area. That is not incompatible with development, as the Council's acceptance of development of the northern field indicates.

270. Notwithstanding the New Allington Action Group's concerns about the configuration of open space to be provided [183] and the support from CPRE for retention as open space [196], the Council's planning witness accepted that there is no case for additional open space in this location [83] and asserted that the Council would not adopt what is proposed to be provided⁴³². The proposals of the emerging Green and Blue Infrastructure Strategy are diagrammatic; its concept of a green and blue corridor and action plan could as easily be fulfilled by the retention of the woodland as is proposed as by the retention of the southern field; examination of the manifestations of the corridor already existing within the built up area to the east of the appeal site suggest that zone 10 of the Landscape Strategy envisaged by the appellant would also go some way towards projecting the corridor in the direction envisaged without the retention of the field as open space. For all these reasons, I do not see the Council's emerging Green and Blue Infrastructure Strategy as a reason to dismiss the appeal.

271. I conclude that the effects of the proposal on the landscape character of the neighbourhood would be acceptable, notwithstanding a technical contravention of adopted Local Plan policy H12. This requires, without qualification, the retention of trees which, strictly speaking, the current proposal would contravene in that it would remove some. Emerging policy DM10 is less rigidly drafted in that it takes a more nuanced approach and so the proposal which balances removal with mitigation and new planting would be compliant.

Living conditions

272. The evidence produced by the New Allington Action Group of existing traffic and air quality conditions in the area is not seriously challenged [174, 176, 177, 179, 180, 181] but their case makes no more than suppositions about the future impact of the proposal [175, 178, 181]; it is not reinforced with technical analysis.

⁴³¹ Paragraph 9.2 of Mr Lovell's proof of evidence (Core Document 1/14)

⁴³² Mr Bailey, in discussion on planning obligations.

273. That is not to say that the concerns are groundless; they were clearly shared by TMBC [203]. Although my visits to the site and to Hermitage Lane did not coincide with peak times, so I cannot confirm the reports of "gridlock", one has only to look at the size of the car parks associated with Maidstone Hospital, served only by Hermitage Lane, and to take into account the information given of local out-of-town retail parks, to realise the volume of traffic and consequent air pollution they would generate in the existing situation.
274. However, despite the scepticism of the New Allington Action Group [178], tools such as Travel Plans are known to be capable of a significant influence on people's travel behaviour. And, having taken into account the transport improvements proposed to the road and public transport network as a result of this and other developments in the area, both Kent County Council and TMBC are satisfied that the outcomes of this proposal, both in terms of highway safety and air quality, would be acceptable [73, 121, 203]. There is no substantive evidence on which to base a disagreement with that conclusion.

Other matters

275. The effect of the proposal on infrastructure was a principal matter on which the main parties came to an agreement to which third parties did not subscribe. This is not surprising because although Heads of Terms for a planning obligation were reported in MBC's Committee report, a draft of a planning agreement and of a Unilateral Undertaking were not produced until 27 May, a few days before the Inquiry opened and a final draft not until the final day of the Inquiry. Despite the assertion in the New Allington Action Group's closing submissions that they were not given any copies of documents, all documents presented at the Inquiry were understood to have been copied to the Rule 6 party and no request for an adjournment to receive or to consider documents was made. The provisions secured were discussed at the Inquiry with the Action Group present, so, in the event, their interests were not prejudiced. The obligations would address the expressed concerns [69 to 72].
276. The loss of agricultural land is inherent in the designation of the site for development. The principle was considered by the Local Plan Inquiry Inspector and found acceptable⁴³³. There is no material change in circumstance which would lead to a different conclusion.
277. Likewise, the archaeological interest of the southern field was considered by the Local Plan Inquiry Inspector and its inclusion in the plan as a development proposal found to be acceptable.⁴³⁴ There is no new archaeological evidence which would lead to a different conclusion.
278. Similarly, the effect of development on the Strategic Gap was considered by the Local Plan Inquiry Inspector⁴³⁵ and found acceptable if limited to the south of footpath KB47. The current proposal includes provision within the planning obligations for the primary school and community centre to be located within the area previously retained as Strategic Gap but with extensive grounds. MBC has

⁴³³ Core Document 8/3, paragraph 4.560

⁴³⁴ Core Document 8/3, paragraph 4.558

⁴³⁵ Core Document 8/3, paragraphs 4.554 to 4.556

no objection to this aspect of the proposals and indeed proposes such an allocation in its Regulation 18 Consultation 2014 document [41].

279. The Local Plan Inquiry Inspector also considered the appropriate location for the access to the development⁴³⁶ to be from Hermitage Lane in the location proposed. There is no new evidence to require revisiting this discussion.

280. The liability of the Hythe beds which underlie the site to form sink holes as a result of water percolation [198] is a known geological phenomenon. This matter is recognised on page 4 of Appendix C to the appellant's submitted Flood Risk Assessment⁴³⁷. This observes that large fissures can open up and states that conventional soakaways are not recommended. Drainage details are not a matter to be considered at this stage, although a Sustainable Urban Drainage System is clearly contemplated⁴³⁸. The findings and recommendations⁴³⁹, which include the need for engineered site levels to cope with a catastrophic failure of the water supply reservoir, would need to be observed by the developer and local planning authority in submitting and considering details for approval at the appropriate time. These matters have not prevented other development in this part of Allington and so, are not reasons to dismiss this appeal.

Conditions

281. TMBC made no suggestions for conditions applicable to the appeal. MBC suggested 29 conditions which it felt would be necessary to make the development acceptable, if permission were to be granted⁴⁴⁰. I have considered these in the light of advice contained in the National Planning Practice Guidance (Guidance), preferring, where appropriate, the wording of the model conditions set out in the Annex to the otherwise now cancelled circular 11/95, *the Use of Conditions in Planning Permissions* and append my recommended conditions to this report.

282. MBC's first five suggested conditions concern the timing within which reserved matters applications must be made and development must start. Because of the size of the scheme and the logistics of submitting details, a phasing scheme will be needed, so it is necessary to adjust the standard conditions accordingly. In the interests of boosting housing delivery, MBC wanted development to progress swiftly, if approved, and so sought a reduced timescale for the submission of reserved matters. The developer demurred at submitting each phase more frequently than once every six months. Five phases were envisaged, so I have left the standard timescales unaltered. I have condensed the five suggested conditions into four to avoid duplication.

283. MBC's suggested twenty-ninth condition would define the approved plans. Amended details of the accesses were submitted during the Councils' consideration of the applications, so it is necessary that this condition makes it clear which are approved. I have made it condition five. For the reasons discussed previously [64] and again below, the list of approved plans does not

⁴³⁶ Core Document 8/3, paragraph 4.544

⁴³⁷ Core Document 2/15

⁴³⁸ Core Document 2/15, paragraph 8.1.3

⁴³⁹ Core Document 2/15, paragraphs 4.7.2, 6.3.7 and 9.1.9

⁴⁴⁰ Inquiry Document 41

- include the Parameters Plan or any other illustrative plan. Rather, if particular provisions are to be required, a separate condition is applied to each.
284. MBC suggests that conditions 6, 7 and 8 are needed to ensure that the site is provided with an access before construction commences and to ensure that the Howard Drive bus link is constructed when it is needed and in a way which is limited to its intended users. However, because MBC's suggested condition 5 (my suggested condition 1) includes a phasing plan and a requirement that it be followed, MBC's suggested condition 6 is unnecessary and so I have omitted it. I recommend rephrasing the other two (my suggested conditions 6 and 7) to avoid duplication with MBC's suggested conditions 5 and 29 (my suggested conditions 1 and 5). It would not be necessary to require details of the management regime for the control on the Howard Drive entrance; it is sufficient that the condition requires the control to be kept in operation.
285. MBC's suggested conditions 9 and 10 presume the approval of certain details of layout. But as details of layout are reserved matters which have not been submitted for approval, these suggested conditions are premature at this stage and so I do not recommend their adoption. The terms of condition 2 would require that no development of the southern field, or of any other phase takes place until details of its layout have been approved, so conditions 9 and 10 are in any event unnecessary.
286. MBC's suggested condition 11 seeks to ensure that no more than 250 dwellings (half the total permitted) are occupied until improvements to M20 junction 5 have been completed. The appellant objects that the timescale for completion of the junction improvements is out of their hands and that the condition is unnecessary because the s106 agreement binds the developer not to occupy any of the dwellings in a phase until 50% of the highways contribution for that phase has been paid and not to occupy more than 50% of the dwellings in a phase until all the highways contribution has been paid. The highways contribution is to be used by the County Council in part towards the M20 junction 5 improvements.
287. The appellant's view is understandable but the junction improvement is one of the measures necessary to satisfy TMBC's concerns about Air Quality [203] and to address the similar concerns of the New Allington Action Group [177 to 181]. Moreover, the condition is the subject of a Direction from the former Highways Agency⁴⁴¹. The Highways Agency has since been abolished and its successor holds no powers of direction. Despite legal representation, no party was able to offer advice or evidence as to the continued validity of the Direction. As a precaution, I include it in my list of suggested conditions (suggested condition 8), although I have omitted the various tailpieces allowing amendments to the scheme which appear to be contrary to the judgement in the case of *Midcounties Cooperative Ltd v Wyre Forest District Council* [2009] EWHC 964.
288. MBC's suggested condition 12 presumes that the layout of the scheme has been approved. But as details of layout are reserved matters which have not been submitted for approval, this suggested condition is premature at this stage and so I do not recommend its adoption now. It would be appropriate for inclusion when the appropriate details are approved.

⁴⁴¹ Inquiry Document 33

289. MBC's suggested condition 13 would secure the submission, approval and application of a Travel Plan. A Travel Plan is necessary as one of the measures necessary to satisfy TMBC's concerns about Air Quality [203] and to address the similar concerns of the New Allington Action Group [177 to 181]. It is not a reserved matter whose submission would be secured by suggested condition 2 and so it is necessary to impose it now (my suggested condition 9), though I have omitted those parts of the suggested condition which would specify its content because no evidence is submitted to justify its necessity and to do so would pre-empt the local planning authority's discretion to approve or reject what may be proposed.
290. Likewise, MBC's suggested conditions 14, 15, 16, 17, 18 and 19 would duplicate the requirement of condition 2 to submit details of landscaping as a reserved matter. Other than the requirement for a 15m buffer to the woodland, no evidence is submitted to justify their content. Even then, the appellant makes a cogent case to disapply the requirement for a buffer from any access road passing through the woodland [101]. The suggested conditions would fetter the discretion of both appellant and local planning authority in preparing and considering proposals to be submitted in accordance with condition 2 without full and convincing justification, so I do not recommend their imposition. Schedule 4 of the submitted Unilateral Undertaking binds the developer not to commence any phase of development until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved by the local planning authority and then to carry out the development in accordance with the LEMP and so duplicates suggested condition 17 in any event, rendering it unnecessary.
291. On the other hand, although details of new landscaping are required to be submitted by condition 2, reserved matters would not necessarily include measures for the protection of trees to be retained. The Tree survey and retention plan submitted with the application⁴⁴² only makes recommendations for which trees should be retained, does not specify the measures to be taken to secure their retention and is designed around a particular layout which may, or may not be that submitted for approval as a reserved matter, so cannot simply be applied; a condition achieving the purpose of MBC's suggested condition 20 to secure a new Arboricultural Implications Assessment and to apply its recommendations is necessary. My suggested condition 10 is recommended.
292. MBC's suggested condition 21 would seek the submission and approval of a Biodiversity Construction Environmental Management Plan. This is said to be in the interests of ecological preservation. But, as the ecological surveys indicate that the vast majority of ecological interest on the appeal site is to be found in the woodland areas, and my suggested condition 10 (replacing MBC's suggested condition 20) is intended to secure the protection of the woodland areas during construction, this additional condition may be thought to be superfluous to necessity. I do not recommend its adoption.
293. MBC's suggested condition 22 is predicated on the presumption that the layout to be submitted and approved as a reserved matter will require the removal of Ancient Woodland soils. It is one of the mitigations proposed if option 3 for the road linking the two fields is pursued. But as details of layout are reserved

⁴⁴² Appendix 5 to Core Document 2/20

matters which have not been submitted for approval, this suggested condition is premature at this stage and so I do not recommend its adoption at this stage. It would become appropriate if a road layout is approved at detailed stage which involves passage through designated Ancient Woodland.

294. MBC suggests two conditions 23 to secure the submission and approval of details of a surface water drainage scheme and of a foul water drainage scheme. Details of drainage are not a reserved matter whose submission would be secured by suggested condition 2 and so it is necessary to require it by condition now (my suggested condition 11). However, I have omitted the specific requirement as to content and sustainable drainage principles, both in order not to fetter the Councils' discretion when considering what might be proposed and also in the light of the recommendations of the appellant's submitted Flood Risk Assessment⁴⁴³. This states that conventional soakaways are not recommended. I have also combined the suggested conditions into one to require details of both foul as well as surface water drainage.
295. MBC's suggested condition 24 is as drafted by Kent County Council's Senior Archaeological Officer. It would require archaeological field evaluation works. As drafted it does not recognise that some work has already been done and it would appear to be satisfied by those works. Yet, as made clear in section 8 of the appellant's Heritage Statement, that is not the intention, so I have redrafted the condition to make specific reference to the description of intended works in the Heritage Statement (my suggested condition 12).
296. Although there has been no formal assessment of potential land contamination risks, there are a Site Assessment report by Southern Testing dated 23 May 2001 and an Environmental Disclosure report prepared for Southern Testing dated 4 June 2001 within Appendix C of the Appellant's Flood Risk Assessment⁴⁴⁴ both of which indicate little or no potential for ground contamination. National Planning Practice Guidance advises that if there is a reason to believe contamination could be an issue, developers should provide proportionate but sufficient site investigation information. In this light, it may be felt that MBC's suggested condition 25 is unnecessary, even though it is said to derive from the Environment Agency's comments on a later application for the site. In relation to the current appeal, the Environment Agency's comments on the original application simply requested the imposition of a less demanding condition on which I have based my suggested condition 13, making adjustments to reflect the fact that phasing of the site is proposed.
297. MBC seeks a condition requiring the submission of a Construction Method Statement. The reason given is because of the site's proximity to residential development. I am not convinced by that because the site is buffered from neighbouring residential development by tree belts which are to be retained and it is to be accessed from Hermitage Lane specifically so as to avoid impacts on the residential area. However, the site is a large one and is likely to employ a significant number of people and to generate considerable volumes of construction traffic over a number of years. Its effects, even though temporary,

⁴⁴³ Core Document 2/15 paragraphs 4.7.2, 6.3.7 and 9.1.9 and section 8 of Southern Testing's Soakage Report dated 5/1/2006 contained in Appendix C

⁴⁴⁴ Core Document 2/15

would be as prolonged as some nominally permanent developments, so it would not be unreasonable and may even be felt necessary for the construction process to be subject to a similar degree of evaluation. I therefore recommend my suggested condition 14.

298. MBC's suggested condition 27 would require details to be submitted, approved and constructed to provide storage for refuse and recycling. Such details are not a reserved matter whose submission would be secured by suggested condition 2 and so it is necessary to impose it now (my suggested condition 15), adjusted to reflect the mixed use nature of the proposals.
299. The installation of utility services is normally carried out as permitted development. Details would not normally have to be submitted as reserved matters. MBC's suggested condition 28 would require facilities to be provided for their installation. It is necessary to avoid unnecessary clutter in the street scene (my suggested condition 16).
300. Although not specifically canvassed during the Inquiry, all parties agreed during the discussion on conditions that recommendations made in documents submitted with the application might need to be the subject of a condition if not secured through a planning obligation or required as a reserved matter. Upon reflection, these include; a scheme of public lighting, measures to secure renewable energy in accordance with paragraph 97 of the NPPF, measures to secure noise insulation in accordance with the recommendations of the Site Suitability Assessment Report – Noise and measures to limit the height of buildings in accordance with the recommendations of the appellant's Landscape and Visual Impact Assessment⁴⁴⁵. The description of development on the application forms includes reference to open space including children's play areas. Whereas the Unilateral Undertaking makes provision for open space to be offered to the Council or to a Management Company, neither the definition of Public Open Space nor Schedule 3 of the Undertaking quantifies the Open Space. Nor do they specify the provision of play facilities. A condition is necessary to do so. My conditions 17, 18, 19, 20 and 21 are therefore recommended.

Obligations

301. The content of the obligations has been summarised earlier [69 to 72]. Here I simply consider to what extent they comply with the CIL regulations. TMBC is not a party to the obligations or a beneficiary of them. MBC and Kent County Council are reported to have checked their records and confirm that the obligations would comply with the pooling limitations of CIL regulation 123.⁴⁴⁶
302. Some of the obligations would discharge or substitute for specific provisions in site allocation policies from the Maidstone Borough-Wide Local Plan [30 to 34]. These include most of the highway and transport contributions, the primary school provision, the affordable housing, the community hall, the public open space within the site and the health care provision. These facilities, or their equivalent, were included as proposals in the Maidstone Borough-Wide Local Plan because the Local Plan Inspector considered them necessary at the time [48].

⁴⁴⁵ Core Document 2/13, paragraph 8.13, bullet 3, interpreted in the Parameters Plan as 11m from ground level to ridge line of any building

⁴⁴⁶ Inquiry document 35, page 2

There is no evidence to show that they are no longer needed. In one form or another they are retained in the Council's various iterations of its regulation 18 consultations on its emerging Local Plan [39 to 43]. They are all directed at specific projects with measurable outcomes and I have no doubt but that these items all conform with the CIL regulations and should be taken into account in making the decision.

303. Others of the obligations are necessary to satisfy concerns arising from the impacts of the scheme on highway safety, air quality and other local social infrastructure. These include all of the highway and transport contributions, the adult care and learning facilities, the youth-based services, the primary and secondary school contributions, the libraries contribution, the community hall, the on-site open space and the play facilities at Giddyhorn Lane. Their necessity is confirmed in general terms by a letter from Kent County Council commenting on Maidstone's Local Plan Review.⁴⁴⁷ In so far as these contributions are not required to comply with a site-specific allocation policy, they are reported to have been calculated by reference to the County Council's published advice on Developer Contributions⁴⁴⁸ and so may be presumed to be proportionate to the impact of the development proposed. They are all directed towards nominated projects and identifiable outcomes. I have no doubt but that these items all conform with the CIL regulations and should be taken into account in making the decision.
304. The only provision which is challenged by the developer is the provision of £426 per dwelling to be used for the provision and maintenance of strategic open space within the vicinity of the site. Given the stated requirements of MBC's Open Space DPD [33] and the table of open space proposed on page 41 of the revised Design and Access Statement⁴⁴⁹, which can be secured by condition [300], there is no clear justification for this obligation. The Council's planning witness accepted that he was unable to provide evidence to justify this contribution. I conclude that there is no need for it and so it fails the test of CIL regulation 122 and should not be taken into account in making the decision.

Overall conclusions

305. In many ways, this Inquiry has been a re-run of the issues rehearsed during the Local Plan Inquiry some fifteen years ago. Not only were most of the matters listed above as "other issues" considered previously in circumstances now unchanged but so too were many aspects of the main issues; the consideration of the landscape character has many resonances with the Local Plan Inquiry Inspector's report⁴⁵⁰ and today's agreed housing need echoes the similar considerations of fifteen years ago.

⁴⁴⁷ Inquiry Document 5, last point on page 1, third paragraph on page 3 and penultimate paragraph on page 4

⁴⁴⁸ Inquiry Document 35, table of obligations to the County council, final column

⁴⁴⁹ Core Document 2/22

⁴⁵⁰ Not just paragraphs 3.404 to 3.408 and paragraph 4.561 but also paragraphs 3.263 to 3.271, paragraphs 3.287 to 3.295 and paragraphs 3.349 and 3.350 which deal with a putative Oakwood Green Corridor somewhat similar in concept to the corridor envisaged in the currently emerging Green and Blue Infrastructure Strategy.

306. What has changed in the interim is that the Council has been following a "brownfield first" policy in line with government advice and that the Ancient Woodland has been designated. The first justified postponing the development of the site in the 2002 appeal. It does not do so now because the Council has run out of sufficient sites.
307. The second is only a dependent change; designation as Ancient Woodland recognises its ecological attributes; but the attributes themselves remain unchanged from the time when allocation of this site for development was made. Its habitat interest was drawn to the attention of the 2002 appeal Inspector but was not a reason for dismissing that appeal.⁴⁵¹ The woodland was recognised to be Ancient Woodland at least by September 2012, before it was so designated [29] but the whole site continued to be proposed for development subsequently by MBC in its reiterations of its Local Plan Review.
308. The parties agree, and I concur, that the development plan is out of date, so the decision taking process should be that set out in the final bullet point of NPPF paragraph 14. The development needs to be considered in the context of the presumption in favour of sustainable development, defined by the Framework as encompassing economic, social and environmental dimensions.
309. As previously noted, the economic benefits of the proposal are very significant and not disputed [107], the substantial weight of social benefits are agreed by the Council [108] and there is a positive environmental balance [106] and so the development would be sustainable [109]. All that remains is to consider whether any adverse effects of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or whether specific policies in the Framework indicate that development should be restricted.
310. I have examined whether the needs for, and benefits of, development in the location proposed (taking option 3 for the road link as an exemplar) clearly outweigh the small loss of irreplaceable habitat which would result. I have found [109] that they would so that whether looking at the first or fifth bullet point of NPPF paragraph 118, that does not represent a specific policy in the Framework which indicates that development should be restricted.
311. The potential future living conditions of local residents in terms of highway safety and air pollution have been examined. Whilst the quantity of traffic and consequent air pollution arising from existing development in the area, such as Maidstone Hospital, is clearly a matter of current concern, both to local residents and to the local authorities, there is no evidence to indicate that the development proposed will cause an outcome any more unacceptable than it would otherwise be. Rather, it appears to me that the concerns, of the local authorities at least, have been assuaged.
312. I have also looked at the landscape impact of the development on the woodland and its setting. I have found that the impacts would be transformational but localised. That is reflected in the local strength of feeling demonstrated by the involvement of the New Allington Action Group in this Inquiry and by the volume of correspondence which the applications generated.

⁴⁵¹ Core document 13/1, paragraph 171

But, as soon as one moves away from the immediate locality, there is no significant landscape harm.

313. On the other hand, the benefits are not restricted to the immediate locality and would not be outweighed at all, let alone significantly or demonstrably. It follows that the scheme should benefit from the presumption in favour of sustainable development, the appeals should be allowed and permission should be granted.

Recommendations

File Ref: APP/U2235/A/14/2226326 (Appeal A)

314. I recommend that the appeal be allowed and planning permission be granted subject to the twenty-one conditions appended to this report.

File Ref: APP/H2265/A/14/2226327 (Appeal B)

315. I recommend that the appeal be allowed and planning permission be granted subject to the twenty-one conditions appended to this report.

P. W. Clark

Inspector

Richborough Estates

CONDITIONS

- 1) Details of a phasing plan for the development shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out in accordance with the approved details.
- 2) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for each phase or sub-phase of the development shall be submitted to and approved in writing by the local planning authority before any development begins within that phase or sub-phase and the development shall be carried out in accordance with the details as approved.
- 3) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 4) Each phase or sub-phase of the development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved for that phase or sub-phase.
- 5) The access to the development hereby permitted shall be carried out in accordance with the following approved plans: 1402-GA-32 revision B and 1402-GA-37 revision A.
- 6) No other development of any phase or sub-phase shall commence until the access to the development has been completed in accordance with approved plan 1402-GA-32 revision B.
- 7) Prior to the first use of the access from Howard Drive, details of the measures to prevent its use other than by buses, emergency vehicles, pedestrians and cyclists shall have been submitted to and approved in writing by the local planning authority and the approved measures shall have been installed and made operational and thereafter retained in operation.
- 8) No more than 250 dwellings within the development hereby permitted shall be occupied until the completion of the improvements to M20 Junction 5 shown on drawing number WSP Figure 5 (dated 1 May 2014).
- 9) No part of the development hereby approved shall be occupied until details of measures (known as a Green Travel Plan) to encourage the use of access to and from the site by a variety of non-car means have been submitted to and approved in writing by the local planning authority, put into operation and thereafter retained in operation.
- 10) No development shall commence on any phase or sub-phase until details of trees to be retained on that phase and of the measures to be taken for their protection during construction have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 11) No development shall commence on any phase or sub-phase until details of both foul and surface water drainage for that phase or sub-phase have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved

details. No building shall be occupied or used until its foul and surface water drainage has been completed in accordance with the approved details. The drainage shall thereafter be retained in an operational condition.

- 12) No development shall take place within the areas indicated in paragraphs 8.3.2, 8.3.3 and 8.4.2 of the submitted Heritage Statement dated October 2013 prepared by Wessex Archaeology (report reference 86910.03) until a programme of archaeological work in accordance with those paragraphs has been implemented in accordance with a written scheme of investigation and, if necessary, preservation of finds, which has been submitted to and approved in writing by the local planning authority.
- 13) If, during development of any phase or sub-phase, contamination not previously identified is found to be present at the site then no further development of that phase or sub-phase (or any lesser but more appropriate area agreed in writing by the local planning authority) shall be carried out until details of a remediation strategy have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 14) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) working hours on site
 - ii) the parking of vehicles of site operatives and visitors
 - iii) loading and unloading of plant and materials
 - iv) construction traffic management
 - v) storage of plant and materials used in constructing the development
 - vi) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - vii) wheel washing facilities
 - viii) measures to control the emission of dust and dirt during construction
 - ix) measures to control noise and vibration during construction
 - x) a scheme for recycling/disposing of waste resulting from demolition and construction works
- 15) No building shall be occupied until provision has been made for the storage of its refuse and recycling bins in accordance with details to be submitted to and approved by the local planning authority.
- 16) No building shall be occupied until underground ducts have been installed to enable it to be connected to telephone and internet services, electricity services and communal television services without recourse to the erection of distribution poles or overhead lines within the development hereby permitted. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 or any other or subsequent Order revoking or re-enacting that Order, no distribution pole or overhead line shall be erected within the site of the development hereby permitted.

- 17) No dwelling shall be occupied unless its bedrooms have been fitted with windows with acoustically treated trickle vents in accordance with the recommendations of paragraphs 4.1.8 to 4.1.10 and 5.4 of the submitted Site Suitability Assessment Report: Noise by WSP UK Ltd revision 1 dated 24/09/2013.
- 18) No development shall commence on any phase or sub-phase until details of public lighting for that phase or sub-phase have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. No building shall be occupied or used until public lighting to it has been completed and made operational in accordance with the approved details. The lighting shall thereafter be retained in an operational condition.
- 19) Before the development of each phase or sub-phase begins a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of that phase or sub-phase from decentralised and renewable or low carbon energy sources shall have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented and retained as operational thereafter.
- 20) The details of scale to be submitted in accordance with condition 2 shall limit to 11m the height from ground level to ridge line of any building proposed.
- 21) The details of the layout to be submitted in accordance with condition 2 shall provide for the quantity and type of open space specified in the tables headed Land Use and Green Space Type on pages 38 and 41 and in paragraph 13.15 of the submitted revised Design and Access Statement revision 06 dated 21 October 2013.

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Megan Thomas, of Counsel	Instructed by Amanda Berger-North (of Maidstone Borough Council Legal Services)
She called	
Philip Sansum BSc PhD	Ecologist
Helen Forster BSc(Hons) MCIEEM	Biodiversity Officer, Kent County Council
Rupert Lovell BSc MA CMLI	Senior Consultant for Landscape and Urban Design, Jacobs UK Limited
James Bailey BA(Hons) DipTP MRTPI	Development Manager, Maidstone Borough Council

FOR THE APPELLANT:

Christopher Boyle QC	Instructed by Barton Willmore
He called	
Julian Forbes-Laird BA(Hons) MICFor MRICS MEWI MArborA Dip Arb(RFS)	Director and Principal Consultant, Forbes-Laird Arboricultural Consultancy Ltd
Alistair Baxter BA(Hons) MA(Oxon) MSc CEnv MCIEEM	Director, Aspect Ecology
Matthew Chard BA(Hons) DipLA(Hons) MAUD CMLI	Partner, Barton Willmore LLP
Andrew Wilford BA(Hons) MA MRTPI	Associate, Barton Willmore LLP

FOR THE NEW ALLINGTON ACTION GROUP:

Barbara Woodward	Chair
Diane Lewins	
Ann Bates	
Richard Barnes	Woodland Trust

INTERESTED PERSONS:

Gareth Thomas	CPRE Maidstone District Chairman
Cllr Dan Daley	Allington Ward Maidstone Borough Councillor

CORE DOCUMENTS

CD1 Appeal Documents

- CD1/1** Appeal submitted to the Planning Inspectorate (26 September 2014)
- CD1/2** LPA Appeal Questionnaire, including supporting document, relevant development plan policies, statutory consultees and neighbourhood responses
- CD1/3** Appellant's Statement of Case (26 September 2014)
- CD1/4** MBC Statement of Case (undated)
- CD1/5** Appellant/LPA Agreed Statement of Common Ground (May 2015)
- CD1/6** TMBC Statement of Case (25 November 2014)
- CD1/7** New Allington Action Group Rule 6 Party Statement of Case (02 January 2015)
- CD1/8** Appellant/KCC Highways Statement of Common Ground (29 April 2015)
- CD1/9** Appellant's Planning Proof of Evidence (Andrew Wilford, Barton Willmore, May 2015)
- CD1/10** Appellant's Landscape Proof of Evidence (Matthew D Chard, Barton Willmore, May 2015)
- CD1/11** Appellant's Arboriculture Proof of Evidence (Julian Forbes-Laird, Forbes-Laird Arboricultural Consultancy, April 2015)
- CD1/12** Appellant's Ecology Proof of Evidence (Alistair Baxter, Aspect Ecology, May 2015)
- CD1/13** LPA's Planning Proof of Evidence (James Bailey, MBC, May 2015)
- CD1/14** LPA's Landscape Proof of Evidence (Rupert Lovell, Jacobs, 01 May 2015)
- CD1/15** LPA's Ecology Proof of Evidence (Helen Forster, KCC, undated)
- CD1/16** LPA's Ancient Woodland Designation Proof of Evidence (Philip Sansum, 05 May 2015)
- CD1/17** (Not used)
- CD1/18** New Allington Action Group Rule 6 Party Proof of Evidence (undated)

CD2 Planning Application Documents

Original Submission October 2013

- CD2/1** Covering Letter to MBC (Barton Willmore, 11 October 2013)
- CD2/2** Covering Letter to TMBC (Barton Willmore, 11 October 2013)
- CD2/3** Original Application Form and Notices to MBC (Barton Willmore, 11 October 2013)
- CD2/4** Original Application Form and Notices to TMBC (Barton Willmore, 11 October 2013)
- CD2/5** Site Boundary Plan (EB-M-02 Rev C, 16 July 2013)
- CD2/6** Superseded Parameters Plan (LN-M-05 Rev C, 22 August 2013)
- CD2/7** Site Access Alignment (1402-GA-32 Rev B, 10 April 2013)
- CD2/8** Howard Drive Access (1402-GA-37 Rev A, 09 May 2013)
- CD2/9** Superseded Illustrative Masterplan (LN-M-02 Rev H, 22 August 2013)
- CD2/10** Superseded Design and Access Statement (Barton Willmore, October 2013)
- CD2/11** Superseded Planning Statement – including Affordable Housing, Economic Benefits Statement, Retail Assessment and S106 Heads of Terms (Version 03) (Barton Willmore, October 2013)
- CD2/12** Ecological Assessment (Aluco Ecology, October 2013)

- CD2/13** Landscape and Visual Impact Assessment inc. Night-Time Lighting Assessment (Barton Willmore, October 2013)
- CD2/14** Landscape and Biodiversity Management Strategy (Barton Willmore, October 2013)
- CD2/15** Flood Risk Assessment inc. Drainage Strategy (WSP, October 2013)
- CD2/16** Heritage Statement inc. Archaeological Survey/Listed Buildings Assessment (Wessex Archaeology, October 2013)
- CD2/17** Statement of Community Involvement (Barton Willmore, October 2013)
- CD2/18** Superseded Transport Assessment inc. Air Quality Assessment at Highway Junctions (WSP, 09 October 2013)
- CD2/18a** Impacts of Proposed Development Off Hermitage Lane on the Wateringbury Junction: Air Quality Assessment (WSP, 01 October 2013)
- CD2/19** Preliminary Framework Travel Plan (WSP, 08 October 2013)
- CD2/20** Arboricultural Impact Assessment, Tree Survey, Proposed Tree Retention/Removal and Review of On-Site Ancient Woodland Designation (Forbes-Laird Arboricultural Consultancy, October 2013)
- CD2/21** Site Suitability Assessment Report: Noise (WSP, September 2013)

Submission of Additional Information

- CD2/22** Covering Letter to MBC and TMBC (Barton Willmore, 22 October 2013) and Design and Access Statement (October 2013)
- CD2/23** Revised Planning Statement inc. Affordable Housing, Economic Benefits Statement, Retail Assessment and S106 Heads of Terms (Version 04) (Barton Willmore, October 2013)
- CD2/24** Letter to MBC (Barton Willmore, 03 December 2013)
- CD2/25** Covering Letter to MBC (Barton Willmore, 30 April 2014)
- CD2/26** Revised Parameters Plan (LN-M-05 Rev E, 26 February 2014)
- CD2/27** Revised Transport Assessment (WSP, 07 February 2014)
- CD2/28** Appeal Decision – Land at Daux Wood, Marringdean Road, Billingshurst, West Sussex, RH14 9HE (Appeal Ref: APP/Z3825/A/13/2200213) (27 March 2014)
- CD2/29** Letter to KCC (Barton Willmore Landscape, 13 March 2014)
- CD2/30** Email correspondence between Forbes-Laird Arboricultural Consultancy and MBC Heritage, Landscape & Design (January 2014 – March 2014)
- CD2/31** Note on Additional Information of Biodiversity Proposals and Recreational Impact On and Off Site (Aluco Ecology, April 2014)
- CD2/32** Revised Illustrative Masterplan (LN-M-02 Rev I, 29 January 2014)
- CD2/33** Landscape Strategy – Landscape Character Zones (L24 Rev A) (Figure 7 and Figure LBMS 1)
- CD2/34** Written Advice (Christopher Boyle QC, 26 September 2013)

CD3 Maidstone Borough Council Committee Documents and Reasons for Refusal

- CD3/1** Planning Officer's Report to MBC Development Control Committee held 03 July 2014
- CD3/2** Minutes from MBC Development Control Committee (03 July 2014)
- CD3/3** BW Transcription of MBC Development Control Committee (03 July 2014)
- CD3/4** MBC Decision Notice (dated 03 July 2014)

CD3/5 MBC Letter to BW withdrawing Reason for Refusal No. 2 (27 March 2015)

CD4 Tonbridge and Malling Borough Council Committee Documents and Reasons for Refusal

CD4/1 Planning Officer's Report to TMBC Area 3 Planning Committee held 24 July 2014

CD4/2 Minutes from TMBC Area 3 Planning Committee (24 July 2014)

CD4/3 TMBC Decision Notice (dated 30 July 2014)

CD4/4 Planning Officer's Report to TMBC Area 3 Planning Committee held 08 January 2015

CD4/5 Minutes from TMBC Area 3 Planning Committee (08 January 2015)

CD5 National Planning Polices and Guidance (extracts where appropriate)

CD5/1 National Planning Policy Framework (27 March 2012)

CD5/2 National Planning Practice Guidance (06 March 2014)

CD6 Regional Planning Policies

Not used

CD7 Circulars, Regulations and Case Law

CD7/1 Not used

CD7/2 Not used

CD7/3 Not used

CD7/4 Not used

CD7/5 Judgment – Gallagher Homes Limited & Lioncourt Homes Ltd v Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin) (30 April 2014)

CD7/6 Not used

CD7/7 The Community Infrastructure Levy Regulations 2010

CD7/8 Circular 11/95: The Use of Conditions in Planning Permissions – Annex A only (remainder cancelled)

CD7/9 Judgment – Tewkesbury Borough Council v SSCLG, Comparo Limited & Welbeck Strategic Land LLP [2013] EWHC 286 (Admin) (20 February 2013)

CD7/10 Judgment – Stratford on Avon District Council v SSCLG [2013] EWHC 2074 (Admin) (18 July 2013)

CD7/11 Judgment – Cotswold District Council v SSCLG, Fay & Son Ltd & Hannick Homes & Development [2013] EWHC 3719 (Admin) (27 November 2013)

CD7/12 Judgment – Hunston Properties v SSCLG v St Albans C&D Council [2013] EWCA Civ 1610 (12 December 2013)

CD7/13 Judgment – Dartford Borough Council v SSCLG & Landhold Capital Limited [2014] EWHC 2636 (Admin) (24 June 2014)

CD7/14 Judgment – South Northamptonshire Council v SSCLG & Barwood Land and Estates Limited [2014] EWHC 573 (Admin) (10 March 2014)

CD7/15 Judgment – Cheshire East BC v SSCLG & Richborough Estates Partnership LLP [2015] EWHC 410 (Admin) (25 February 2015)

CD8 Maidstone Borough Council Local Planning Policies and Guidance (extracts where appropriate)

- CD8/1** 'Saved' Maidstone Borough Wide Local Plan Policies (2000)
- CD8/2** Maidstone Borough Council Local Plan Proposals Maps (2000)
- CD8/3** Maidstone Borough Wide Local Plan Inspector's Report (November 1999)
- CD8/4** Affordable Housing DPD (2006)
- CD8/5** Open Space DPD (2006)
- CD8/6** Secretary of State Direction to Save Policies (September 2007)
- CD8/7** Not used
- CD8/8** Maidstone Landscape Character Assessment (2012)
- CD8/9** Maidstone Ancient Woodland Inventory (2012)
- CD8/10** Not used
- CD8/11** Not used
- CD8/12** Annual Monitoring Report 2012-2013
- CD8/13** Not used
- CD8/14** Core Strategy Strategic Site Allocations Public Consultation Document (August 2012)
- CD8/15** Interim Approval of Maidstone Borough Local Plan Policies (13 March 2013)
- CD8/16** Maidstone Borough Local Plan Regulation 18 Consultation (March 2014)
- CD8/17** Not used
- CD8/18** MBC Report to Cabinet (13 March 2013)
- CD8/19** Not used
- CD8/20** Not used
- CD8/21** Maidstone Borough Council Local Plan Viability Testing, Economic Viability Study (April 2013)
- CD8/22** Not used
- CD8/23** Maidstone Housing Land Supply Table (dated 17 March 2015)

CD9 Tonbridge and Malling Borough Council Local Planning Policies and Guidance (extracts where appropriate)

- CD9/1** Core Strategy (September 2007)
- CD9/2** Managing Development and the Environment DPD (April 2010)
- CD9/3** Local Plan Proposals Map (May 2012)

CD10 Other Relevant Guidance

- CD10/1** Natural England Standing Advice for Ancient Woodland and Veteran Trees (07 April 2014)
- CD10/2** Design for Crime Prevention – A Kent Design Guide for Developers, Designers and Planners
- CD10/3** BS5837:2012 'Trees in Relation to Design, Demolition and Construction – Recommendations' (Not contained in set of Core Documents, but one hard copy available for all parties at Inquiry).
- CD10/4** Keepers of time: A Statement of Policy for England's Ancient and Native Woodland (2005)

CD11 Third party responses to application MA/13/1749

- CD11/1-309** Ordered alphabetically

CD12 TMBC Consultation Responses to application TM/13/03147

Not used

CD13 Relevant Application and Appeal Decisions

- CD13/1** Appeal Decision – Land at Hermitage Lane, Maidstone, Kent (Appeal Ref: U2235/A/01/1073529 & H2265/A/01/1073533) (02 October 2002)
- CD13/2** Application – Land at Boughton Lane, Maidstone, Kent (Application Ref: MA/13/2197) (Decision dated 29 July 2014 – subject to pending S78 Appeal)
- CD13/3** Application – Land at Langley Park, Sutton Road, Maidstone, Kent (Application Ref: MA/13/1149) (Decision dated 04 September 2014)
- CD13/4** Application – Land West of Hermitage Lane, Maidstone, Kent (Application Ref: MA/13/1702) (Decision dated 13 January 2015)
- CD13/5** Appeal Decision – Hermitage Quarry, Hermitage Lane, Aylesford (Appeal Ref: APP/W2275/V/11/2158341) (11 July 2013)
- CD13/6** Application – Bridge Nursery, London Road, Maidstone (Application Ref: 14/501209/FULL) (Approved at Committee on 06 November 2014, pending Decision Notice)
- CD13/7** Appeal Decision – North Side Copse, Land to South of Lake House, Valewood Road, Fenhurst, Haslemere, West Sussex (Appeal Ref: APP/Y9507/A/12/2173809) (24 July 2013)
- CD13/8** Appeal Decision - Land at Little Park Farm and Land North of Highfield Drive, Hurstpierpoint, West Sussex (Appeal Ref: APP/D3830/A/13/2203080) (04 September 2014)

CD14 Other

- CD14/1** Vehicle Access Option 1 (1402-GA-35 Rev E, 28 August 2014)
- CD14/2** Footway/Cycleway Access (1402-GA-39 Rev C, 28 August 2014)
- CD14/3** Scheme 2 (MBC Ref: 14/503735/OUT and TMBC Ref: TM/14/03290/OA) – Illustrative Masterplan (SC2-M-02 Rev D, 01 July 2014)
- CD14/4** Scheme 2 (MBC Ref: 14/503735/OUT and TMBC Ref: TM/14/03290/OA) – Parameters Plan (SC2-M-03 Rev D, 05 August 2014)
- CD14/5** Scheme 3 (MBC Ref: 14/503736/OUT) – Illustrative Masterplan (SC3-M-02 Rev C, 01 July 2014)
- CD14/6** Scheme 3 (MBC Ref: 14/503736/OUT) – Parameters Plan (SC3-M-03 Rev B, 01 July 2014)
- CD14/7** Revised Landscape and Biodiversity Management Strategy (May 2015)
- CD14/8** Maps of the Locality – 1596 to Present Day

DOCUMENTS SUBMITTED AT INQUIRY

- ID1** Mr Sansum's Note on the soil investigation report
- ID2** Mr Sansum's Note on the Dendrochronological Assessment
- ID3a** Allington Parish Tithe Map 1843 – uncoloured
- ID3b** Allington Parish Tithe Map 1843 – coloured
- ID4** Statement by Gareth Thomas on behalf of CPRE
- ID5** Letter dated 20.1.2015 from Kent CC to MBC commenting on Local Plan
- ID6** Note by Alan Foreman answering Barbara Woodward's questions

- ID7** Memorandum dated 17.11.2014 commenting on later application (Scheme 2)
- ID8** Extract from KCC Landscape Character Assessment; Greensand Fruit Belt – Maidstone
- ID9** Page 23 of Wessex Archaeology report October 2013
- ID10** Page 24 of Wessex Archaeology report October 2013
- ID11** Statement by Councillor Dan Daley
- ID12** Report to Strategic Planning Sustainability and Transport Committee 9.6.2015; Housing Sites Update
- ID13** Report to Strategic Planning Sustainability and Transport Committee 9.6.2015; Local Plan Position Statement
- ID14** Report to Strategic Planning Sustainability and Transport Committee 9.6.2015; SHMA update
- ID15** E-mails dated 2.7.13 and 4.7.13 between Jim Hutchins and Paul Lulham
- ID16** Written Representation by Woodland Trust
- ID17** Map and photographs of Hundred boundary stones
- ID18** List Entry Summary for Allington Castle
- ID19** Ordnance Survey map of land to the west of Maidstone
- ID20** Government Forestry and Woodland Policy Statement
- ID21** Sketch to show landtake of vehicular access through designated Ancient Woodland
- ID22** Sketch to show landtake of vehicular access through designated Ancient Woodland, with carriageway narrowings
- ID23** Sketch to show landtake of vehicular access through corrected boundary of designated Ancient Woodland
- ID24** Helen Forster's comments on Scheme 3
- ID25** Helen Forster's comments on Scheme 2
- ID26** Full title of Andrews Dury and Herbert map
- ID27** Woodland Trust's objections to application 13/1749
- ID28** Map of Allington Parish
- ID29** Barton Willmore letter of 13.3.2014 to Paul Crick of KCC
- ID30** Maps and photographs of search for Hundred boundaries
- ID31** Bundle comprising
- (a) Cover, Title page and two figures from Canterbury Archaeological Trust report October 1998
 - (b) Landscape Masterplan from 2001 application
 - (c) Statement of Common Ground for 2002 appeal
- ID32** Key Points arising from MBC Meeting 26.6.2013
- ID33** Highways Agency Direction and covering e-mail 12.5.2014
- ID34** Alternative Parameters Plan
- ID35** CIL Compliance statement
- ID36** Tracked changes Unilateral Undertaking
- ID37** Tracked changes s106 Agreement
- ID38** Signed and dated s106 agreement
- ID39** Signed and dated Unilateral Undertaking
- ID40** Croudace objection to Core Strategy Strategic Sites Allocation Public consultation 2012
- ID41** Suggested conditions
- ID42** Council's opening submissions
- ID43** Closing submissions on behalf of NAAG
- ID44** Council's closing submissions
- ID45** Closing submissions on behalf of the appellants



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

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

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

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