

Special Town Council 9th September 2019
Legal Advice Regarding EIA Screening Direction for Limes Land
Agenda Item 6

This paper provides a brief background on the recent decision by ABC Planning to refuse an Environmental Impact Assessment for the site at Limes Land where Wates Developments Limited are proposing construction of up to 250 homes, car parking, landscaping and community facilities to include 'place space', a community orchard, an 8.57 acre 'country park', 5 football pitches, an outdoor classroom, changing rooms, a pavilion and further parking

We wish to ask whether there are grounds to challenge this decision by ABC and to check that proper and due process has been followed, with the correct criteria applied and all the relevant evidence taken into account. If this is not the case, we would request a legal letter to be drafted on the Town Council's behalf for submission to ABC Planning.

ABC Planning issued its decision on 23 August 2019 that an Environmental Impact Assessment was not required under the terms of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. It is the view of the Ward member, the TDRA and the NP Steering Committee, that this decision is seriously flawed. The decision is capable of being reviewed and challenged and the proposal put to TTC's Planning Committee on Monday 2 September 2019 and approved, was for the expenditure of an amount within the discretion of both the Town Clerk and the Chairman of the Committee, to seek independent, qualified legal advice as to whether a challenge was feasible and what legal remedies were available.

The scale of the expenditure is modest in light of the size of the development proposed and its potential impact on Tenterden residents and the fact that the development does not form part of the Local Plan. Public feelings against the development have been made very clear in the press, on social media and at attendance at relevant public meetings at the Town Council, as well as in response to the public meetings held by Wates in the Town.

The Chair of the Planning Committee and myself have sought the advice of the Monitoring Officer at ABC who has advised that house ownership close to the site can constitute 'a disclosable pecuniary interest'. Membership of the NP Steering Committee has been categorically stated by the Monitoring Officer as not, 'a significant other interest'. The proposal is therefore to be brought before the Town Council for consideration on Monday, 9th September 2019.

Proposal: to fund up to £3,000 on legal advice regarding ABC's decision to not request an Environmental Impact Assessment on Limes Land.

Cllr. Kate Walder
Vice-Chair of Planning

Impact on Crime and Disorder	: None
Impact on Bio-diversity	: None
Budgetary Impact	: Unbudgeted

From: Siggie Nepp
Sent: 01 September 2019 16:03
To: Town Clerk <townclerk@tenterdentowncouncil.gov.uk>; 'John Crawford' <cllr.crawford@tenterdentowncouncil.gov.uk>
Subject: Limes Land - TDRA Review of ABC EIA Decision

Dear Phil, John

In our opinion Ashford Borough Council's (ABC) decision that an EIA is not required for Limes Land, regarding the Wates' proposal (19/00007/EIA/AS), appears to lack proper consideration of all the detailed comments submitted. We request therefore that Tenterden Town Council seeks legal counsel to assess the soundness of ABC's decision with a view to pursuing an Appeal against this decision.

We feel that ABC have not fully considered the importance and sensitivity of the site and the negative environmental impact the proposed development would have on key aspects, including:

- Heritage
- Biodiversity
- Pollution – waste/ emissions/ light
- Sustainability
- Ecology
- Tranquillity
- Views

We request that this decision is robustly challenged and this is treated as a matter of urgency.

Siggie Nepp - TDRA Planning Secretary

Phil Burgess
Tenterden Town Council
Town Hall
24 High Street
Tenterden
Kent TN30 6AJ

cc. Claire Gilbert
Cllr. John Crawford

1st September 2019

Dear Phil

Application 00007/EIA/AS; Screening for an Environmental Impact Assessment

As you will perhaps have seen from the minutes of our meeting on Tuesday, the Tenterden Neighbourhood Plan Steering Committee currently employed in studying remaining green spaces in proximity to the town has expressed serious concern over Ashford Borough Council's rejection of the need for an EIA on the site between the Woodchurch and Appledore roads known locally as 'Limes Land'.

In our letter to the Town Council of 20th July 2019, we refuted a number of assertions made by Judith Ashton Associates on behalf of Wates, which claimed an EIA to be unnecessary on the grounds that their client's plan to build 250 houses on the site would not have a significant effect on the environment. To summarise our main arguments:

- 1) The (Wates) description of the site as consisting mainly of 'low-grade agricultural fields' obscures its true status as a rare survival of a Medieval Wealden field system, with ancient hedgerows and an undisturbed ecosystem dating back many hundreds of years.
- 2) The (Wates) description of the site as 'semi-improved grassland' conflicts with the KCC Historic Environment Record Officer's definition of it as 'unimproved grassland', and therefore a DEFRA Priority Habitat, with areas of acid grass, heath and neutral grassland that are increasingly rare in the Weald of Kent.
- 3) Absent from data supplied by Judith Anderson Associates is the detailed botanical survey one would expect for such an ecologically sensitive site.
- 4) It is known from EPR ecological surveys and British Ornithological Trust records that the site has significant breeding populations of great crested newts and other protected amphibians and reptiles, that it provides foraging and roosting for 7 species of bat, 11 red listed bird species 'of conservation concern', and in total supports a minimum of 25 European Protected species.
- 5) A major development on the Limes Land in conjunction with existing or planned developments across the road at Hales Place and Tilden Gill must inevitably have a cumulative and disastrous effect on local species dispersed and driven from one disrupted site to another.

- 6) The development would obscure fine views of the landscape, not least of the St Mildreds church tower from the public footpath; an established local visual amenity.

In supporting Wates's claim that the major development they are proposing for this site would have too limited an impact on the environment to justify an EIA, it appears to us that Ashford Borough Council have not only failed to take account of the numerous ecological arguments in its favour, along with representations in support of it by such interested and informed bodies as the Council for the Protection of Rural England and the Weald of Kent Protection Society, but have also failed to acknowledge the strongly expressed and widely held concerns of the Tenterden community regarding this land and their historical relationship to it, as expressed by numbers local residents over a considerable period of time and recently articulated by the Tenterden and District Residents Association.

If the Town Council as a constitutional body share this committee's strongly held view in favour of an EIA prior to any building application, we would encourage and support them in making whatever representations to Ashford Borough Council they consider appropriate in the circumstance.

Yours sincerely,

Richard Masefield – on behalf of the Tenterden Neighbourhood Plan Steering Committee

**NOTIFICATION OF SCREENING OPINION
OF THE LOCAL PLANNING AUTHORITY**

Date of Decision 23 August 2019



ASHFORD
BOROUGH COUNCIL

Judith Ashton
Judith Ashton Associates
The Mill House
Cackle Street
Brede
East Sussex
TN31 6EA

**Town and Country Planning (Environmental Impact Assessment)
Regulations 2017**

APPLICATION NO: 19/00007/EIA/AS

PROPOSAL: Screening opinion for proposed development of land at Appledore Road/Woodchurch Road, Tenterden, so as to accommodate up to 250 house with associated car parking, landscaping and community facilities to include place space and community orchard, together with a 8.57ha country park encompassing natural place areas and outdoor classroom and land for five football pitches, changing rooms, pavilion and parking

LOCATION: Land between Woodchurch Road and, Appledore Road, Tenterden, Kent

APPLICANT: Wates Developments Limited c/o Agent

DECISION: The Local Planning Authority is of the opinion that an Environmental Impact Assessment is not required for the development described above.

This decision is issued in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

Screening - Environmental Impact Assessment is not required

The Local Planning Authority is of the opinion that an Environmental Impact Assessment is not required for the development described below.

This decision is issued in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

The proposal involves the development of a site 24.53 hectares in area and

comprises of the following:

Outline permission for the development of up to 250 residential dwellings (40% affordable) on 12.63 ha including the creation of access points from Appledore Road and creation of a network of roads, footways, and cycleways through the site. Provision of open space including children's play areas, community orchards, sustainable urban drainage systems, landscape buffers and green links on the site. (Matters for approval: Access).

Full planning permission for the change of land use from agricultural land to land to be used as a country park (8.57 ha) and land to be used as formal sports pitches (3.33 ha) together with pavilion to serve the proposal and the surrounding area. Including accesses, ancillary parking, pathways, sustainable urban drainage systems and associated landscaping.

The proposal comprises of an infrastructure project falling within category 10b of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and exceeds the thresholds in column 2 of the table in the Schedule.

The likely significant effects of the development on the environment should therefore be considered in relation to criteria as set out in Schedule 3. These are:

- (i) Characteristics of the development.
- (ii) Location of the development.
- (iii) Types and Characteristics of the potential impact.

National Planning Practice Guidance (PPG) on Environmental Impact Assessment (EIA) indicative criteria and threshold advises for sites which have not previously been intensively developed:

- (i) area of the scheme is more than 5 hectares; or
- (ii) it would provide a total of more than 10,000 m² of new commercial floorspace; or
- (iii) the development would have significant urbanising effects in a previously non-urbanised area (e.g. a new development of more than 1,000 dwellings).

Key issues to consider are the physical scale of such development, potential increase in traffic, emissions and noise.

Characteristics and location of development

The size and design of the whole development

The site consists of mainly existing agricultural fields and is located adjacent to the built up area boundary of Tenterden, to the north east of the Town Centre. The site has no specific landscape or ecological designation. The High Weald Area of Outstanding Natural Beauty lies in close proximity to the east.

In terms of the size and design of the whole development the proposal is for up to 250 houses with associated car parking. For the most part, the housing will not exceed 2 storeys in height. Some 2½ and/or 3 storey buildings will be placed at focal points. Vehicular access will be provided from two points along Appledore Road and new pedestrian links will be provided to both

Appledore Road and Woodchurch Road.

The housing development will cover part of the site. 17 hectares is to be set aside as publicly accessible open space, which will encompass the county park (8.57ha), sports pitches (3.33ha), equipped children's play areas, community orchard, semi-natural amenity space, and extensive landscape buffers (5.77ha).

The size and design of the whole development in this location adjoining the existing built up area of Tenterden is not likely to have significant effects on the environment to require an EIA.

Cumulation with other existing development and/or approved development

This includes consideration of other development in the surrounding area. Of particular note a reserved matters application ref 19/00340/AS for 100 dwellings at land south and east of Tilden Gill Road was granted planning permission on 19 July 2019. A planning application ref 14/0757/AS for 250 dwellings at land south west of Recreation Ground Road and north and east of, Smallhythe Road (TENT 1) was granted permission on 29 September 2015 and is currently under development. Planning permission ref 15/01160/AS for a sheltered housing scheme consisting of 34 apartments and four chalet bungalows at Danmore, Beachy Path was granted permission on 9 September 2016. The proposals on this site can be developed independently of these sites and it is considered the proposals in cumulation with other existing development and/or approved development will not result in significant effects on the environment to require an EIA.

The use of natural resources, in particular land, soil, water and biodiversity

The proposals involve the development of mostly agricultural fields and a small area used by Homewood School as playing pitches/ for grazing. The majority of the site comprises grade 3b agricultural land, with pockets of grade 3a and grade 4 land. The majority of that identified as grade 3a is to be set aside at Country Park/ public open space/ amenity space i.e. not built upon. A detailed Agricultural Land Assessment will be submitted with any future application.

The proposed development will result in the loss of the existing playing pitches on field F13. This loss will be compensated for by the introduction of five junior sports pitches (9v9, 7v7, 5v5 x2), and one adult pitch (11x11) on fields F14 and F10.

The site encompasses a number of mature trees (some of which are subject to a TPO (5/1998)). Most are located within the existing hedgerows/ along field boundaries. An Arboricultural Implications Report (AIR), based on the survey data and an impacts assessment of the relevant parameters, highway and masterplans will be submitted with the future application. The intention is that the proposed development retains the majority of the existing trees, and hedgerows within the open space network, provides adequate space between them and proposed built forms and provides for their protection and integration into the new landscape. In addition, further tree and hedgerow planting, and positive management is proposed to promote their continued ecological function, as part of a comprehensive landscape strategy for the site.

The site includes two relatively minor and separate pockets of land defined as being mineral safeguarding areas within the 2013 Kent Minerals and

Waste Local Plan. The planning application which will be prepared following this screening process will include a minerals assessment that will consider the effect of the proposals upon these mineral safeguarding areas. The proposals will not result in a significant use of water resources to require an EIA.

There are no statutory designated ecological sites within or nearby to the boundary of the development and therefore, the site does not fall into an ecologically designated 'sensitive area', within the definition of 'sensitive areas' in the EIA Regulations 2017. To the north, on the opposite side of Woodchurch Road lies Knock Wood designated as a Local Wildlife Site (Site of Nature Conservation Interest). Kent County Council Ecological Advice Service in their letter dated 31 July 2019 have advised that the development is unlikely to have a significant impact on biodiversity.

The proposals are not likely to have significant effects on the environment through the use of natural resources, in particular land, soil, water and biodiversity to require an EIA.

The production of waste

The proposals will not generate a substantial volume of waste through the construction process. No significant demolition of existing structures is required. Whilst the proposed development will result in the generation of household waste, once occupied, the level of waste will be minimal and the proposed development will include measures to try and encourage recycling details of these measures will be set out in the Design and Access Statement to be submitted as part of any future planning application. The proposals are not likely to have significant effects on the environment through the production of waste.

Pollution and nuisances

The proposed development is likely to cause short term nuisance during the construction programme. This will be kept to a minimum through good environmental management and the submission of a Code of Construction Practice prior to any development commencing. The proposal involves the development of mainly agricultural land. The construction of and proposed permanent uses for residential purposes, open space, a country park and formal sports area will not have a significant effect on the environment by virtue of pollution and nuisances to require an EIA.

The risk of major accidents, and/or disasters relevant the development concerned including those caused by Climate Change, in accordance with scientific knowledge

The proposed development will not give rise to the potential for a higher than average number of accidents either during construction or when in operation. The proposal includes a reduction in speed limit along a section of Appledore Road from 40 to 30mph along with traffic calming measures, with the aim to reduce vehicle speeds and provide a safer environment for all users

The proposals will not result in significant effects on the environment through the risk of major accidents, and/or disasters relevant the development concerned including those caused by Climate Change, in accordance with scientific knowledge.

The risks to Human health (for example due to water contamination or air

pollution)

Documents will be submitted with the planning application to demonstrate that the proposed development will not lead to risks of contamination of land or water from releases of pollutants onto the ground or into surface waters, groundwater. The nature of the proposals for residential use, open space, country park and formal sports pitches are not likely to result in significant effects on the environment in terms of risk to human health (for example, due to water contamination or air pollution)

Location of the development

The environmental sensitivity of geographical areas likely to be affected must be considered. The site abuts the built-up area boundary of Tenterden to the south and west with countryside to the north and east. The site is located in close proximity to (but not within) the High Weald Area of Outstanding Natural Beauty a 'sensitive' area as defined under the Town and Country Planning (Environmental impact Assessment) regulations 2017. The masterplan shows open space and sports pitches on the eastern part of the site closest to /adjoining the AONB boundary and the built residential development to the west adjoining existing built development.

A full and detailed Landscape and Visual Impact Assessment (LVIA) will be carried out in accordance with best practice guidelines (Guidelines for Landscape and Visual Impact Assessment (GLVIA, 3rd edition, 2013). This will identify/quantify the impacts of the proposed development on the landscape and visual resource including impacts on landscape character and views towards the site from a range of receptors, according to their sensitivity, including residents and recreational users of public footpaths.

There is only one public right of way crossing the eastern part of the site and limited public rights of way within the AONB to the east from where views might be possible. The proposals are not likely to result in significant environmental effects in respect to the AONB to require an EIA.

There are no statutory designated Nature Conservation Sites near to the site that will be affected. Knock Wood Local Wildlife Site of Nature Conservation Interest (LWS) is located immediately to the north of the site, on the opposite side of Woodchurch Road and will not be significantly effected by the proposals.

A number of ecology surveys of the site have been undertaken between 2016 and 2018. The surveys undertaken to date suggest that the proposed development is unlikely to cause a significant negative effect on the conservation status of any European Protected Species through the implementation of appropriate avoidance, mitigation and compensation measures that can be incorporated as part of proposals. Habitat creation within the proposed Country Park and other areas of open space, and subsequent management of existing and new habitats will have a positive effect on local wildlife, including bats and birds.

KCC Ecological Advice Service in their letter dated 31 July 2019 advise the development is unlikely to have a significant impact on biodiversity. The submitted information has confirmed that the applicants have a good understanding of the ecological interest of the site and the proposed masterplan demonstrates that connectivity can be retained throughout the site and it is likely that there is sufficient habitat within the wider site to

mitigate for the impact on protected/notable species. The proposals are not likely to have significant environmental effects on ecological areas/species.

The site falls within Flood Zone 1 i.e. land with a Low (having a less than 1 in 1,000 annual probability) of flooding. A Flood Risk Assessment (FRA) will be submitted as part of the planning application to detail the flood risk and to demonstrate that not only will the proposed dwellings will not be at risk, but that the proposed development will not increase the risk of flooding elsewhere.

Surface water discharge from the site will be limited to that of the pre-development greenfield run off rate, thus ensuring there is no increase in post development peak discharge flow rates. In order to manage the flow, SuDS features such as ponds and swales (designed to accommodate all storms up to and including the 1 in 100 year event + 40% climate change) will be utilised.

The proposed surface water drainage design will allow an opportunity to improve the downstream receiving watercourses and public sewers where historical flooding is known to have occurred. Works will be carried out to the existing ordinary watercourses and Southern Water public surface water sewers to reinstate them back to an acceptable level of hydraulic function. These improvements will reduce the risk of flooding to the existing properties in Appledore Road.

The FRA will also explain that foul water from the dwellings will be collected by private gravity drains; and that before any connections are made to the foul sewerage network an application will be submitted to Southern Water to ensure that there is no increase in sewer flood risk. The proposals will not result in any likely significant environmental effects in respect to flooding/drainage issues.

There are existing dwellings located to the west and south of the site. A Code of Construction Practice will be provided during construction to help mitigate short terms impacts. The proposals themselves are not likely to result in any significant environmental effects on densely populated areas.

In terms of cultural heritage, there are no listed buildings or other nationally or locally designated heritage assets within the application site. The Tenterden Conservation Area lies to the west (which contains a number of listed buildings) and part of the south west corner of the application site immediately abuts it.

Whilst a Heritage Assessment will be submitted with any future application it is acknowledged that there is a need to protect the eastern boundary of the conservation area and the settings of the adjacent listed Stace House and Craythorne through careful boundary treatment and the adoption of an appropriate layout and form of development on the western side of the application site. Likewise care will need to be taken to ensure that the boundaries of the application site to the south-east are preserved to ensure no indivisibility with the group of listed buildings to the southeast.

Initial heritage advice has also highlighted the fact that historic map evidence suggests that the majority of the site has remained under pasture with field boundaries dating to the post-medieval period, with the remains of clay/marl pits scattered across the site. Whilst the field boundaries are not identified as of particular significance, it is acknowledged that the opportunity should be

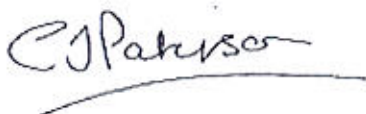
taken to preserve these field boundaries where feasible and/ or to preserve the legibility of the earlier land use divisions within the broader design and layout of the site.

The Initial heritage advice also suggests that the preservation of a small area of cultivation ridges associated with lost post-medieval cottages in the western corner of the application site, in combination with the need to preserve the settings of the conservation area and associated listed buildings suggests that the use of a green space allocation in this area of the application site may be appropriate. This advice has been adopted by the applicant as set out on the illustrative masterplan D2 submitted with the screening opinion

An initial Archaeological Desk Based Assessment has confirmed that the site has low archaeological potential for significant archaeological evidence for all periods. A high potential for archaeological evidence relating to Post Medieval agricultural activity has been identified in the north-western corner of the study site. Any archaeological features that may be present on the study site would probably be of local importance. It is suggested that any archaeological investigation, if required by the Local Planning Authority, could, follow planning consent, be secured by an appropriately worded archaeological planning condition. Hedgerows are present within the study site which would be defined as historic under the terms of the Hedgerow Regulations.

KCC Heritage in their letter dated 24 July 2019 confirm there are no designated heritage assets within the site and as such would not recommend an EIA just for heritage reasons. The proposals will not result in likely significant environmental effects on landscapes and sites of historical, cultural or archaeological significance to require an EIA.

In light of the above it is considered that the characteristics and location of development and types of characteristics of the potential impact of development outlined in schedule 3 of the EIA regulations are not likely to have significant effects on the environment by virtue of factors such as size, nature and location. The proposed development is therefore not environmental impact assessment development and therefore an environmental impact assessment is not required



Head of Development Management and Strategic Sites