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VIA EMAIL

26653/A3/SF/kf

21 March 2017

Dear Richard

APP/U2235/W/16/3165998: LAND AT WOODCUT FARM, ASHFORD ROAD, MAIDSTONE

As requested, I am pleased to outline the Appellant's position in relation to compliance with the recently prepared Proposed Modifications to Policy EMP1(5). The latest version of Policy EMP1(5) differs from the version that applied at the time of the determination of the planning application by Maidstone Borough Council ('MBC') on 6th July 2016. It also differs from the version that applied at the time of the submission of the planning appeal on 22nd December 2016.

Overall, it is the Appellant's intention to adhere as closely as possible to the additional requirements that have been introduced through the Proposed Modifications to Policy EMP1(5).

Initial Proposed Modifications (November 2016)

The Appellant's Statement of Case (Paragraph 5.8) and the draft Statement of Common Ground (Paragraphs 7.38-41) both make reference to the Proposed Modifications that were prepared by MBC in November 2016 in the context of the ongoing Local Plan Examination.

The main additional policy provisions, together with the Appellant's responses, are summarised in the following table:

Criterion	Response
<i>1. Mix of floorspace to include Class B1b</i>	The Building Areas Parameters Plan already includes Class B1b floorspace as part of the mix (Plots C1-2, D1-2).
<i>2. At least 7,500sqm of Class B1a/B1b floorspace</i>	<p>The Building Areas Parameters Plan already includes 7,864sqm of Class B1a/B1b floorspace (Plots C1-2 and D1-2).</p> <p>In addition, it is expected that ancillary office floorspace would be provided within the larger buildings (Plots A1-9 and B1-2).</p>



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Criterion	Response
<i>3. Landscape buffers of 35m adjacent to M20, 15m to Musket Lane, 25m to A20 and 30m to western boundary</i>	<p>The Landscape Parameters Plan meets the criterion. Along the length of some of the site boundary, the proposed landscape buffers would be even wider than the distances to which the criterion makes reference.</p> <p>The final details of the landscape buffers would be secured by planning condition/subsequent reserved matters application.</p>
<i>4. Maximum unit size of 5,000sqm to the east of the stream</i>	<p>The Building Areas Parameters Plan exceeds the threshold for Plots B1-2. However, in order to resolve this potential discrepancy, the draft Statement of Common Ground makes clear that the Appellant is prepared to agree to the maximum unit size threshold for Plots B1-2.</p> <p>The draft Statement of Common Ground appends a revised Building Areas Parameters Plan. This plan subdivides Plots B1-2 into Plots B1-4. It accords with the criterion.</p>
<i>5. Maximum unit size of 2,500sqm to the west of the stream</i>	<p>The Building Areas Parameters Plan exceeds the threshold for Plots A6-9. However, in order to resolve this potential discrepancy, the draft Statement of Common Ground makes clear that the Appellant is prepared to agree to the maximum unit size threshold for Plots A6-9.</p> <p>The draft Statement of Common Ground appends a revised Building Areas Parameters Plan. This plan subdivides Plots A6-9 into Plots A6-11. It accords with the criterion.</p>
<i>6. Maximum building footprint of 500sqm above the 55mAOD contour line on the highest part of the site</i>	<p>The Building Areas Parameters Plan does not propose any complete buildings above the 55mAOD contour on the highest part of the site (north western corner).</p> <p>Only a small corner of Plot A8 is proposed in this location. Furthermore, the Building Heights Parameters Plan confirms that the proposed ground level of this plot, at 52.60mAOD, would be less than 55mAOD.</p>
<i>7. Use of curved roofs, non-reflective materials, sensitive colouring, green roofs and walls on smaller footprint buildings, sensitive lighting, active frontage elements</i>	<p>Layout, scale and appearance are reserved matters.</p> <p>The final design details would be managed through a reserved matters application.</p>
<i>8. Land to accommodate 3,300sqm Class B1a/B1b to be provided with access and services prior to first occupation of Class B1c/B2/B8 units</i>	<p>Compliance with the criterion would be secured through a S106 obligation (see also Criterion 11 below).</p>

Further Proposed Modifications (March 2017)

It is understood that further Proposed Modifications were reported to MBC's Strategic Planning, Sustainability and Transportation Committee on 14th March.

The Appellant's responses to the further policy provisions are summarised in the following table:

Criterion	Response
9. At least 10,000sqm of Class B1a/B1b floorspace	<p>The Building Areas Parameters Plan includes 7,864sqm of Class B1a/B1b floorspace (Plots C1-2 and D1-2), which is a shortfall of 2,136sqm.</p> <p>In addition, it is expected that ancillary office floorspace would be provided within the larger buildings (Plots A1-9 and B1-2).</p> <p>In order to resolve the potential discrepancy, compliance with the criterion would be secured through an additional S106 obligation. The S106 obligation would secure the following measures:</p> <ol style="list-style-type: none"> Notwithstanding the previously submitted Parameter Plans, the area of Plots A1-2 would be excluded from the proposed development. As a consequence of this change, reserved matters applications could not be submitted for Class B8/B1c development in the area of Plots A1-2 pursuant to the current proposed development; The Appellant would commit to submitting a new planning application for at least 2,500sqm of Class B1a/B1b floorspace, to be located within the excluded area, within a period to be agreed with MBC and use reasonable endeavours to obtain planning permission; The excluded area would be safeguarded from any other uses until April 2026, or until otherwise allocated through a Local Plan Review, or until alternative provision for at least 2,500sqm of Class B1a/B1b floorspace is secured on an alternative plot in the vicinity of the excluded area. <p>It should be noted that, in assessment terms, the principle of increasing the amount of Class B1a/B1b floorspace has been previously considered. For example the Environmental Assessment Addendum (including the Transport Assessment) takes account of a significant element of office provision at Waterside Park as a cumulative scheme, which is no longer the subject of a planning application (Paragraphs A2.30-32 and A10.121-124).</p>

Criterion	Response
<i>10. At least 7,500sqm of Class B1a/B1b floorspace to be provided to the east of the stream</i>	The Building Areas Parameters Plan already includes 7,864sqm of Class B1a/B1b floorspace (Plots C1-2 and D1-2) to the east of the stream. In addition, it is expected that ancillary office floorspace would be provided within the larger buildings (Plots A1-9 and B1-2).
<i>11. Land to accommodate 5,000sqm Class B1a/B1b to be provided with access and services prior to first occupation of Class B1c/B2/B8 units</i>	Compliance with the criterion would be secured through a S106 obligation.
<i>12. Land for the 7,500sqm of Class B1a/B1b floorspace to be safeguarded from any other uses until April 2026 or until otherwise allocated through a Local Plan Review</i>	Compliance with the criterion would be secured through a S106 obligation.
<i>13. At least 2,500sqm of Class B1a/B1b floorspace to be provided to the west of the stream</i>	Compliance with the criterion would be secured through a S106 obligation, as detailed above at Criterion 9.
<i>14. Land for the 2,500sqm of Class B1a/B1b floorspace to be safeguarded from any other uses until April 2026 or until otherwise allocated through a Local Plan Review</i>	Compliance with the criterion would be secured through a S106 obligation, as detailed above at Criterion 9.
<i>15. Minerals assessment to assess the viability and practicability of prior extraction of minerals resource</i>	Compliance with the criterion would be secured through a planning condition.

Compliance with Procedural Guidance

The Planning Inspectorate's 'Planning Appeals Procedural Guide' confirms that, in instances where amendments are made during the appeals process, the Inspector will normally take account of the Wheatcroft Principles when deciding if the proposals can be formally amended (Paragraph M2.2).

The Wheatcroft Principles establish that the main, but not the only, criterion on which judgment should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation.

In this instance, it is considered that the responses that have been provided above would fully accord with the Wheatcroft Principles, for the following reasons:

- The proposed development already accords with the vast majority of the criteria that have been added by MBC to Policy EMP1(5);
- In response to Criteria 4 and 5, reference is made to a revised Building Areas Parameters Plan. It is considered that consideration of the revised Building Areas Parameters Plan would accord with the Wheatcroft Principles because the changes would be minor and would not prejudice anyone involved in the appeal. In particular, the change would not affect the overall amount or location of the proposed floorspace. Moreover, the change would not affect the conclusions of the Environmental Assessment Addendum, including the Landscape and Visual Assessment which has already assessed the 'worst case' scenario (Chapter A7);

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- In response to Criterion 9, reference is made to an additional S106 obligation, which excludes the area of Plots A1-2 from the proposed development and provides for a further planning application for Class B1a/B1b floorspace within this area alongside future safeguarding of the land. It is considered that this response would accord with the Wheatcroft Principles, because the further planning application would be subject to statutory consultation and therefore would not prejudice anyone involved in the appeal;
- In particular, it should be noted that the proposed amendments result in a cutting back of the scale of development to be considered on appeal from that which was originally considered by MBC. It has long been established that this may be achieved via the Wheatcroft principles since a cutting back could only very rarely result in any prejudice to a third party. In the present case, it is very difficult indeed to see how there could be any prejudice to a third party as a result of the amendments proposed.

It is acknowledged that any 'appeal stage' amendments agreed between the Appellant and MBC would be subject to a decision by the Inspector and any references to amended plans in the Statement of Common Ground would be made on that understanding.

I trust that these details will be of assistance and please do not hesitate to let me know should you require any additional details at this stage.

Yours sincerely



SIMON FLISHER
Director