Case Officer: James Moyce
Tonbridge & Malling Borough Council

Sent by email to:
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22nd April 2025

Kent Downs National Landscape
The Granary
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Anglesey
Arnside and Silverdale
Blackdown Hills
Cannock Chase
Chichester Harbour
Chilterns
Clwydian Range
Cornwall
Cotswolds
Gower
Cranbourne Chase and
West Wiltshire Downs
Dedham Vale
Dorset
East Devon
Forest of Bowland
Howardian Hills
High Weald
Isle of Wight
Isles of Scilly
Kent Downs
Lincolnshire Wolds
Llyn
Malvern Hills
Mendip Hills
Nidderdale
Norfolk Coast
North Devon
North Pennines
North Wessex Downs
Northumberland Coast
Quantock Hills
Shropshire Hills
Solway Coast
South Devon
Suffolk Coast and Heaths
Surrey Hills
Tamar Valley
Wye Valley

Dear James

25/00599/PA: FORMER MARLEY SITE, London Road, Wrotham, Sevenoaks, TN15 7RW

Full planning application for demolition of the existing buildings and redevelopment of the Site to provide 2no. warehouse buildings (Units 1a - 1d for B8 Use and Units 2 and 3 for flexible B2 (general industrial) /B8 (storage and distribution) Use), with ancillary office space and associated access, servicing, parking and landscaping

Thank you for your recent consultation on the above. The following comments are on behalf of the Kent Downs National Landscape (NL) team and as such are at an Downs NL partnership and do not necessarily represent the comments of the whole Kent Downs NL partnership The legal context of our response and list of National Landscape/AONB guidance is set out at Appendix 1 below.

On 22 November 2023, all designated Areas of Outstanding Beauty (AONBs) in England and Wales were renamed 'National Landscapes' (NLs). Accordingly, the Kent Downs AONB is now the Kent Downs National Landscape. Its legal designation and policy status remain the same.

Also of note is the changes introduced through the Levelling-Up and Regeneration Act 2023, which came into force on 26/December 2023. The Act amends the Countryside and Rights of Way Act, which is the primary legislation relating to AONBs and replaces the previous Duty of Regard to AONBs set out at S85 with a new, strengthened requirement that:

'*In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty'. (Part 12 - Miscellaneous; Section 245. Protected Landscapes; paras (5) - (10).*

This clearly places a much stronger duty on relevant authorities, which includes local authorities, to ensure that their actions and decisions seek to conserve and enhance AONBs, and is applicable to proposals in the setting of National Landscapes.

Further guidance is provided in Appendix 2.

The application site lies in the setting of the Kent Downs National Landscape, by virtue of its proximity to the National Landscape, immediately adjacent to the Kent Downs boundary and the fact that the site is visible in views from the Kent Downs escarpment. The application should therefore be tested against the purpose of the AONB designation, to conserve and enhance the natural beauty of the National Landscape, in line with paragraph 189 of the NPPF.

Under the Countryside and Rights of Way Act, local authorities are required to prepare an AONB Management Plan which must "formulate the policies for the management of the AONB and for carrying out their functions in relation to it". The Kent Downs National Landscape team produces a Management Plan on behalf of the local authorities within the AONB. The Management Plan has been formally adopted by the local authorities in Kent in which the National Landscape occurs. The national Planning Policy Guidance confirms that Management Plans can be a material consideration in planning decisions.

The Kent Downs Management Plan, Third Revision 2021 to 2026 sets out the policy for the conservation, enhancement and management of the National Landscape in a series of aims, actions and Principles.

The following principles from the Management Plan are considered to be of particular relevance to the current application:

MMP2 The Kent Downs AONB is a material consideration in plan making and decision taking, and so local authorities will give a high priority to the AONB Management Plan vision, aims, principles and actions in Local Plans, development management decisions, planning enforcement cases and in taking forward their other relevant functions.

SD7 New projects, proposals and programmes shall conserve and enhance tranquillity and where possible dark night skies.

SD8 Ensure proposals, projects and programmes do not negatively impact on the distinctive landform, landscape character, special characteristics and qualities, the setting and views to and from the Kent Downs AONB.

The National Planning Policy Framework (NPPF) paragraph 189 requires great weight to be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The NPPF includes reference to setting in the context of National Landscapes advising at paragraph 189 *'...while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.*' An Appeal decision has confirmed that where a proposal is outside of a National Landscape, the effect on views outside of the National Landscape, but gained from within the National Landscape would result in NPPF paragraph 189 being relevant.[1]

Advice on how to approach development within a National Landscape setting is expanded on in the nPPG at Paragraph: 042 Reference ID: 8-042-20190721. This advises:

Land within the setting of these areas often makes an important contribution to maintaining their natural beauty, and where poorly located or designed development can do significant harm. This is especially the case where long views from or to the designated landscape are

[1] Appeal Ref: APP/G1630/W/20/3256319 Land off Ashmead Drive, Gotherington

identified as important, or where the landscape character of land within and adjoining the designated area is complementary. Development within the settings of these areas will therefore need sensitive handling that takes these potential impacts into account.

The setting of the Kent Downs National Landscape from the escarpment of the Kent Downs has enormous value. It was a principal reason why the Kent Downs was designated as an AONB. The importance of setting has been supported by the Planning Inspectorate in several recent dismissed appeal decisions. These include a proposed housing development at Harrietsham and commercial developments at Waterside Park, adjacent to Junction 8 of the M20 near Maidstone. In respect of the appeal at Harrietsham, the Inspector concluded that "*the unacceptable effects of the proposal on the landscape character of the area, including its SLA categorisation and its position at the edge of the AONB significantly and demonstrably outweigh the benefits that would arise from the proposal*". (APP/U2235/W/15/3119223).

In respect of the Waterside Park appeals it was concluded that "considerable environmental harm would result from the loss of this area of countryside to development through the combined impact on the landscape setting of the AONB and the heritage assets. The developments would fail to protect the setting of the AONB and therefore also conflict with the aims of Section 85 of the Countryside and Rights of Way Act 2000". (APP/U2235/A/14/2224036 & APP/U2235/A/14/2229271).

Further guidance on Setting is provided in the Kent Downs National Landscape adopted Position Statement on Setting.

Impacts on the Kent Downs National Landscape

The application site is located at the base of escarpment of the Kent Downs, the eastern part of the ridge of chalk that makes up the North Downs that was the main target of the Kent Downs AONB designation, back in 1968. The site comprises a former tile yard, with much of it given over to large areas of hard standing and two relatively small scale. It is generally enclosed by mature tree belts (albeit gappy in places), particularly along the southern and south eastern boundaries. While there is a mix of residential and commercial uses to the immediate east of the application site and further south on the east side of London Road, the character of the surrounding land to the south of the application site is rural in character with adjacent fields and woodland consistent with the landscape character of the adjacent National Landscape which is considered to be of high landscape value. The proximity of the site to the KDNL boundary, and the fact the site is visible from the National Landscape means that it forms part of the setting to the Kent Downs, a point that is acknowledged by the applicant in the LVIA accompanying the application at paragraph 2.10.

The application proposes the redevelopment of the site with two new warehouse buildings for B2 and B8 use. The proposed buildings are of a significant scale with large footprints and heights of 11 metres and 14.8 metres. The buildings are much bigger than the existing built form on site as well as being significantly taller and having larger footprints than any other building, including commercial buildings, in the vicinity of the site and requires extensive areas of cut and fill. The buildings would extend much further south than the existing built form on the site and, along with the associated service yards and parking areas would occupy the majority of the site area with buildings proposed very close to the site boundaries, leaving very little space for any meaningful landscape mitigation to be incorporated.

The proposal also requires significant removal of trees from within the site, with the entirely of G24 and G23, large groups of trees at the southern and south eastern end of the site proposed to be removed, both of which are classified as being Category B trees of moderate quality and with a life expectancy of at least 20 years. The tree groups currently help enclose the site from its rural surroundings. The proximity of the proposed development to the site boundaries results in their proposed replacement with just a single row of trees, which will have very limited effectiveness in terms of landscape mitigation .

The scale of the buildings is such that they will be visible in views from the adjacent Kent Downs National Landscape, including from public rights of way to the west and from the escarpment of the Kent Downs to the north, including from open access land at Golden Nob. In such views, at present existing built form and other detracting features are generally integrated into the landscape and the views are rural in nature. It is accepted that the existing quarry at Nepicar is currently visible from the escarpment, but this is a temporary use that is reaching the end of its life and will be subject to full restoration requirements. In contrast, as illustrated in the photomontages within the LVIA accompanying the application (viewpoints 2 and 8), the proposal would introduce large scale, industrial buildings that would appear wholly out of keeping with the currently rural scene, introducing detracting features in the view.

The Kent Downs Position Statement on Setting confirms that consideration the setting of the Kent Downs National Landscape should be taken into account in considering development likely to affect the special qualities of the National Landscape and that development resulting in a negative impact on the setting will not be supported, unless it can be satisfactorily mitigated. The Setting Position Statement identifies five locations where development is more likely to impact on the National Landscape setting. This includes the area impacted by the proposed development at Wrotham; "views to and from the *scarp of the Kent Downs to the Vale of Holmesdale – the valley that lies at the foot of the North downs and incorporates the A20/M20, M26 and M25 corridors...*".

The Position Statement also provides examples of adverse impacts on the setting. These include:

- development which would have a significant impact on views in or out of the AONB;
- loss of tranquillity through the introduction or increase of lighting, noise, or traffic movement or other environmental impact including dust, vibration and reduction in air quality;
- introduction of abrupt change of landscape character;
- loss or harm to heritage assets and natural landscape, particularly if these are contiguous with the AONB;

Other than last bullet point, the proposed development would give rise to all these listed impacts, with impacts likely to arise to tranquility and as a result of lighting requirements, the scale of proposal and associated vehicular movements and the proposed 24/7 intended hours of operation. It is notable that the LVIA fails to provide any assessment of the night time effects of the proposal, other than to set out at paragraph 5.5 that the lighting will be designed to minimize light spill.

In terms of proposed mitigation, we note that dark/mid grey colours are proposed for the external materials, which will less be impactful than the usual colour palette colour used by Panattoni which incorporates white cladding. We also note that the lighting scheme will be designed to meet requirements for an E2 ILP zone. Nevertheless, CPRE dark night skies

mapping shows the majority of the site (southern part) to be of relatively low brightness and the proposal will result in increased sky glow as a result of the extensive lighting requirements, including from light emanating from the roof lights proposed in the buildings.

In terms of the proposed landscaping mitigation, the application relies largely on existing vegetation to help filter views of the site, but as outlined above, proposes removal of large numbers of trees. Furthermore, much of the existing tree coverage around the perimeter of the site lies outside of the application site and is therefore presumed to be outside of the control of the applicant. Notwithstanding our fundamental concerns about the scale and nature of the proposal, the proposed landscape mitigation is considered wholly inadequate, due to the lack of space for any meaningful planting with the site. The lack of effectiveness is demonstrated in the photomontages with very little difference in the screening effects from construction to year 15 as can be seen in the photomontage from Viewpoint 2 reproduced below. In views from the higher topography of the Kent Downs escarpment, views over the tops of existing planting will always occur, as demonstrated in the photomontage from the LVIA viewpoint 8 reproduced below.

In respect of views from the KDNL, the assessed level of harm as reported in the LVIA is considered to be under assessed, principally through an under estimation of the viewpoints sensitivity, and an under assessment of the scale of change, along with an over estimation of the effects of landscape mitigation at viewpoint 2. This consequently leads to under-estimated residual significance of effects for the receptors. It is also unclear why the LVIA considers non recreation users from Viewpoint 2 given that this is a PRoW - footpath only – other than in attempt to reduce the overall effect by considering non-recreational users. The sensitivity should, in our view be high, stemming from a high value and having high sensitivity, reflecting its use as a recreational resource within the KDNL, which would result in an increased level of importance and effects at Construction, Year 5 and Year 15.

Viewpoint 8 photomontage at Year 15

Viewpoint 2 photomontage at Year 15

Conclusion

Taking the above into account, it is considered that the proposal would fail to conserve or enhance the landscape and scenic beauty of the Kent Downs National Landscape by impacting on its setting and would, therefore, conflict with paragraph 189 of the NPPF as well as guidance on development affecting the setting of National Landscapes in the nPPG, with the proposal *'neither sensitively located nor designed to avoid or minimise adverse impacts'*. We therefore also conclude that the proposal would not further the purposes of National Landscape designation. The proposal would also fail to comply with adopted Tonbridge and Malling's Core Strategy policy CP7 and would be in conflict with the Kent Downs AONB Management Plan, in particular Principles SD7 and SD8.

I hope this is of assistance to you. I would be happy to discuss further if this would be helpful.

Yours sincerely

Katie Miller
Planning and Place Manager, Kent Downs National Landscape team

APPENDIX 1

Planning consultations with the Kent Downs National Landscape Team

Background and context:
The Kent Downs National Landscape partnership (which includes all the local authorities within the National Landscape) has agreed to have a limited land use planning role. In summary this is to:

- Provide design guidance in partnership with the Local Authorities represented in the National Landscape.
- Comment on forward/strategic planning issues-for instance Local Development Frameworks.
- Be involved in development management (planning applications) in exceptional circumstances only, for example in terms of scale and precedence.
- Provide informal planning advice/comments on development control (planning applications) at the request of a Kent Downs National Landscape Joint Advisory member and /or Local Authority Planning Officer.

The Countryside and Rights of Way Act 2000

The primary legislation relating to AONBs is set out in the Countryside and Rights of Way Act 2000. Section 85 of this Act, as recently amended by the Levelling Up and Regeneration Act, requires that in exercising any functions in relation to land in an AONB, or so as to affect land in an AONB, relevant authorities, which includes local authorities, must seek to further the purpose of conserving and enhancing the natural beauty of the AONB. Compliance with this requirement can be demonstrated in part by testing proposals against the policies set out in the Kent Downs AONB Management Plan and its supporting guidance (see below).

Relationship of the AONB Management Plan and Development Management

The CRoW Act requires that a management plan is produced for each AONB, and accordingly the first Kent Downs AONB Management Plan was published in April 2004. The third revision Management Plan (2021-2026) has been formally adopted by all the local authorities of the Kent Downs. The Management Plan may be viewed on the Kent Downs website [link].

Under the CRoW Act, the Management Plan is required to 'formulate the (Local Authority) policies for the management of the AONB and for carrying out their functions in relation to it'. The policies of the Kent Downs AONB Management Plan are therefore the adopted policies of all the Local Authorities in the Kent Downs.

The national Planning Policy Guidance, 2019, confirms that Management Plans can be a material consideration when assessing planning applications (Paragraph: 040 Reference ID: 8-040-20190721) and this view is confirmed in previous appeal decisions, including APP/U2235/W/19/3232201, Cossington Fields Farm North, Bell Lane, Boxley, Maidstone where at paragraph 5 of the Inspectorate's decision letter it is stated that "I am mindful of the

policies contained within the Kent Downs AONB Management Plan (2014-2019) requiring development to conserve and enhance natural beauty of AONB to which I attach substantial weight." The decision can be downloaded at:

https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3232201

Any Kent Downs National Landscape team response to consultations on planning applications will reflect the policies of the Management Plan along with other Kent Downs National Landscape produced guidance which help support the delivery of the principles of the Management Plan, as set out below.

Other Kent Downs AONB/National Landscape Guidance

Kent Downs AONB Guidance on the selection and use of colour in development – Guidance
The purpose of this guidance is to provide guidance on the selection and use of colour for building development within the National Landscape and its setting. 'Development' includes any building work, ranging from home extensions and conversions through to house building, agricultural and industrial premises, and retail and office buildings. It also includes infrastructure developments associated with transport, flood defences, power generation and distribution, communications and other utilities.

Kent Downs Landscape Design Handbook
Design guidance based on the 13 landscape character areas in the Kent Downs. Guidance is provided on fencing, hedges, planting, gateways etc. to help the conservation and enhancement of the National Landscape.

Kent Downs Renewable Energy Position Statement
Provides a clearly articulated position for the Kent Downs National Landscape partnership with regards to renewable energy technologies. It recognises that each Local Planning Authority must balance the impact of proposals for renewables on the National Landscape with all the other material planning considerations.

Kent Rural Advice Service Farm Diversification Toolkit
Guidance on taking an integrated whole farm approach to farm developments leading to sound diversification projects that benefit the Kent Downs.

Kent Downs Land Manager's Pack
Detailed guidance on practical land management from how to plant a hedge to creating ponds and enhancing chalk grassland.

Rural Streets and Lanes - A Design Handbook
Guidance on the management and design of rural lanes and streets that takes the unique character of the Kent Downs into account. This document discusses the principle of shared space and uses examples from around the UK and Europe. The Handbook has been adopted by Kent County Council as policy.

Managing Land for Horses
A guide to good practice on equine development in the Kent Downs, including grassland management, fencing, trees and hedges, waste management and basic planning information.

Kent Farmstead Guidance and Kent Downs Farmstead Guidance

Guidance on the conservation, enhancement and development change of heritage farmsteads in the Kent Downs based on English Heritage's Kent and National Character Area Farmstead Statements. Includes an Assessment method and Design Guidance.

Kent Downs Setting Position Statement

An advisory document providing guidance on issues of setting including the legislative basis for considering setting, identification of where setting is likely to be an issue and provision of advice on how to mitigate potential impacts.

The Kent Downs Landscape Character Assessment Update 2020

An update of the original Landscape Character Assessment of the Kent Downs that was published by the Countryside Commission, that identifies 13 different landscape character areas in the Kent Downs, describes their key characteristics and identifies recommended actions, investments and priorities to help with the conservation and enhancement of the Kent Downs National Landscape.

APPENDIX 2 : ADVICE ON THE NEW STATUTORY DUTY ON RELEVANT AUTHORITIES, SECTION 245 OF THE LEVELLING UP AND REGENERATION ACT 2023

The Levelling-up and Regeneration Act (2023) amended section 85 of the CRoW Act, to create a new duty on public bodies to '*seek to further the purpose of conserving and enhancing the natural beauty of the area'* when discharging their functions in Areas of Outstanding Natural Beauty (now known as National Landscapes). The single purpose of AONB designation is '*the conservation and enhancement of natural beauty'*.

On 16 December 2024 the Department for Environment, Food and Rural Affairs published "Guidance for relevant authorities on seeking to further the purposes of Protected Landscapes" . This "*sets out how the Protected Landscapes duty is intended to operate and provides broad principles to guide relevant authorities in complying with it*". The guidance advises that the new duty is decision making in respect of development management, planning applications and nationally significant infrastructure projects. When seeking to further the purposes, relevant authorities should consider the information contained in a Protected Landscape's Management Plan.

The Guidance confirms that the duty is an active, not passive one which means that:

- a relevant authority should take appropriate, reasonable, and proportionate steps to explore measures which further the statutory purposes of Protected Landscapes
- as far as is reasonably practical, relevant authorities should seek to avoid harm and contribute to the conservation and enhancement of the natural beauty, special qualities, and key characteristics of Protected Landscapes
- a relevant authority should be able to demonstrate with proportionate, reasoned, and documented evidence the measures to which consideration has been given when seeking to further the statutory purposes of Protected Landscapes
- for development management decisions affecting a Protected Landscape, a relevant authority should seek to further the purposes of the Protected Landscape - in so doing, the relevant authority should consider whether such measures can be embedded in the design of plans and proposals, where reasonably practical and operationally feasible.

It is also advised that the decision maker should consider:

- Whether measures which would further the purposes align with and help to deliver the targets and objectives in the Protected Landscape's Management Plan?
- Are such measures appropriate and proportionate to the type and scale of the function and its implications for the area? For instance, are measures in keeping with the natural beauty, the special qualities and key characteristics of the Protected Landscape?
- Could the measures contribute to the conservation and enhancement of the Protected Landscape's wildlife, ecological value and quality, geological and physiographical features, water environment, cultural heritage, dark skies, tranquillity, opportunities for access to nature, and landscape character for which the area was designated?

The Guidance specifies that the duty also applies to functions undertaken outside of the designation boundary which affects land within the Protected Landscape. It is advised that

natural beauty, special qualities, and key characteristics can be highly dependent on the contribution provided by the setting of a Protected Landscape. Aspects such as tranquillity, dark skies, a sense of remoteness, wildness, cultural heritage or long views from and into the Protected Landscape may draw upon the landscape character and quality of the setting. Functional connectivity is also important where there are flows or close interconnection between the Protected Landscape and its setting.

In determining this application, the local planning authority should be able to demonstrate how they have actively sought to further the purpose of conserving and enhancing the natural beauty of this National Landscape. The way in which the purpose of designation might be furthered, or the evidence of the genuine attempt to seek to do so, should be open to scrutiny and therefore documented.

Further guidance can be found in an Interim Advice Note produced by the Kent Downs National Landscape team for LPAs on the new duty and in a Guidance Note by the National Landscapes Association Applying the CroW Act section 85 duty to 'seek to further the purpose in National Landscapes (AONBs).