

## SAP 40 - STM010 – Land between Salisbury Road and The Droveaway

This hearing statement is submitted by Neil Buckley. We are the owners of 100 The Droveaway, St Margarets Bay, which directly adjoins site STM010 which has been allocated in policy SAP40 of the Dover District Council (DDC) Local Plan. Indeed, the proposed extent of STM010 within SAP 40 is such that it appears to include land owned by us. Attached to this submission is the relevant freehold title and extract from the DDC 2015 Local Plan Adopted Policies Map which shows the land owned by us. Part of this land was put forward by the developers, to the DDC, as the proposed entrance road to the new housing estate on STM010.

The references in this response to the National Planning Policy Framework (NPPF) are to the NPPF prior to its revision in September 2023 (unless otherwise stated) as this would have been the framework which should have been applied by DDC.

This statement addresses the questions asked by the Inspectors.

*Q1 Does the site allocation represent major development in the AONB, and if so, is it justified? How have the potential impacts of development on the character and appearance of the area, including the AONB and Heritage Coast, been considered, having particular regard to the topography of the area?*

The site allocation is a major development within the AONB as defined under National Planning Policy Framework Paragraph 177 and it is not justified.

The definition of major development is, under Para 177, 'a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have an adverse impact on the purposes for which the area has been designated or defined'.

Outside of AONBs (and National Parks) for housing, 'Major Development' is defined in the glossary to the NPPF (see Annex 2 to the 2023 NPPF) as: 'For Housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more.' It is therefore reasonable to conclude that major development in AONBs can be less than 10 dwellings or an area of under 0.5ha as the nature scale and setting also have to be factored into the assessment. On this basis alone, the site (over 2 acres) and number of houses (10-12 or more) proposed clearly represents major development in the AONB.

Dover District Council (DDC) as the decision maker, should have assessed whether the allocation of this site would be a major development. There is no evidence in any public document that DDC has undertaken such an assessment. Moreover, DDC's considerations on this matter should have been informed not only by the requirements in the NPPF (particularly Paragraphs 174-176) but also by the current DDC 2015 Local Plan and the AONB Management Plan (as stipulated by Paragraph NE2 of the DDC Local Plan).

The current local plan, adopted by Dover District Council (DDC) in January 2015, based on the 2012 SHLAA which it undertook, recognises the severe adverse impact of any development on this site within the AONB (which is why development of this site would not be allowed under the 2015 plan). The relevant provisions can be found at Section 2.18 of the 2015 DCC Land Allocations Local Plan which emphasises that AONBs have the highest status of protection, and this is applied to St Margarets Bay at Section 3.6.9, Paragraph 3.405 on page 127. The current plan states that there are very limited development opportunities 'that would not harm the setting of the AONB'. This was the reason why under the 2015 Plan no sites within the AONB within St Margarets were chosen for allocation. STM010 within SAP40 departs from this Policy without any explanation or rationale.

The DDC response to Inspectors Initial Questions (Document ED5 para 13.10) confirms that the AONB agrees that for site STM010 within SAP40, DDC have not complied with the NPPF. That paragraph states: "The AONB unit agree that, except for sites STM010 and CAP011, the sites

proposed for allocation in the Local Plan within or affecting the setting the AONB comply with the requirements of the NPPF, on which the Council has based its assessment of the site." DDC does not put forward any arguments as to why the AONB unit might not be correct in this view and I would therefore suggest that this is an acknowledgement by DDC that site STM010 does not meet the NPPF criteria and therefore should not be an allocated site.

The criteria which DDC should have considered as to whether this was a major development include the following: the need for the development and its impact on the local economy, the cost and scope for cost and scope for alternative developments, plus any detrimental impact on the environment, landscape and recreational opportunities.

'Need' according to the dictionary definition, means something is required because it is essential or very important. It is neither essential nor very important to build 12 large, detached houses (which was the number and scale of buildings proposed by the developer of the site) on the top of this prominent site within the AONB. The recognised requirement for extra houses in Dover District can be secured via many other sites, which are not within the AONB, and which will satisfy 'need' (i.e., affordable homes for local people to purchase or rent). Given the small number of homes proposed compared to the overall number of homes required within the plan, the development of site STM010 is not essential and hence not justified.

Most importantly, the detrimental impact of allocation and development will be very substantial and irreparable. This is a very sensitive setting, and any houses will be visible for miles. The very rationale for designating this site as within the AONB would be completely undermined if this allocation and development goes ahead.

The 2012 SHLAA for the site makes it absolutely clear why the site allocation of SAP40 would be a major development: 'The site is on a crest of a hill and despite screening would be visible from a long distance...Any development on the site would therefore have a highly detrimental impact on the designated landscape'.

It is inconceivable that development of any kind on this site would have less detrimental impact than was determined in 2012. The topography is the same; this site remains the highest point in the area. The attributes of the landscape that led this site to being within the AONB are unaltered. There has been some reference by DDC (for example in their proposed changes to SAP40) to 'the lower parts' of the site. However, there are no substantially lower parts of the site. The field as a whole (including its boundaries) is considerably higher than both the Droveaway and Salisbury Road.

The site continues to be next to an important SSSI/SAC and is within an SSSI Impact Risk Zone. The beautiful vistas to and from the heritage assets (see the response to Q.5) remain the same. The site is part of the Heritage Coast for which UNESCO Global Geopark status is being sought. Moreover, the negative impacts of development, particularly in relation to biodiversity and the night sky (in an area with a dark skies policy which DDC commits to in the AONB Management Plan) which were given less prominence in 2012, but which now should have been fully considered and evaluated, means that the opposite is likely, the detrimental impact would be more than it was 10 years ago.

I made all these and other points in my submission to the recent consultation by DDC on the Non-Technical Summary of the Sustainability Appraisal. In dismissing all the points, I raised, DDC state 'The assessment of effects of site options on SA objective 11 (landscape) drew on the Council's HELAA site assessments...'. However, as I also pointed out in my response to that consultation, the 2020 HELAA for STM010 (SAP40) did not have any considerations relating to its AONB status since it simply stated (although it has since been amended when submitted for Examination to the Inspectors) 'Site adjacent to the AONB and Heritage Coast - Medium landscape sensitivity'.

DDC did not consider whether allocation would represent major development because when it did the HELAA it did not consider that the site was within the AONB. The HELAA was amended before submission for this examination - see Page 3 of the GEB09f HELAA Erratum Note. The reference to 'adjacent to' was removed and replaced by wording that states the site is within the AONB and Heritage Coast. But when the assessment was done (and on which DDC say they relied) none of

these considerations were taken into account. DDC's assessment which underpins this allocation was that the site was outside the AONB and only of 'medium landscape sensitivity'.

The 2020 HELAA Suitability Assessment makes no reference at all to its topography and very limited reference to any of the other elements of its landscape sensitivity. In addition, in direct contradiction of DDC's conclusion in the 2012 SHLAA (that is the basis of the 2015 DDC local plan) the 2020 HELAA states 'generous landscaping would also be required to screen the site to reduce the impact on residential amenity'. Apparently in a period of 8 years what was not possible (i.e., development of the site without a highly detrimental impact on the designated landscape) would now be possible with a bit of 'landscaping'.

Finally, on this question, DDC's obligation in order to ensure soundness of its decision-making is to show how allocation of this site is consistent with its legal duty to 'conserve and enhance the scenic beauty of the AONB'. Under the NPPF, DDC should attach 'Great Weight' to this status. There is no evidence they have done so. This allocation will not conserve and enhance the landscape. The allocation and development would have, as DDC themselves stated in 2012, 'a severe detrimental impact' on the AONB and surrounding areas.

*Q2 How have the effects of development on the integrity of the Dover to Kingsdown Cliffs SAC and SSSI been considered as part of the plan-making process? What mitigation, if any, is required?*

The documents that have been made available lead to the firm conclusion that DDC, throughout the process prior to this examination, have given no consideration to the effects of the development on the SAC and SSSI. I would again reference the original 2020 HELAA in relation to which DDC said they made their sustainability assessment, as there is absolutely no reference whatsoever in that assessment to the fact that the site falls within a SSSI Impact Risk Zone. Again, this was a point I highlighted in my response to the recent consultation by DDC on the Non-Technical Summary of the Sustainability Appraisal with regard to DDC's assessment of SA9 Biodiversity for this site as 'Minor negative impact.' This assessment was clearly incorrect for a SSSI Impact Zone, (the site also being part of a Biodiversity Opportunity Area and within the Green Infrastructure Network), but my comments were dismissed.

If, contrary to my view that the allocation of this site is unsound, SAP 40 remains for allocation, then it is absolutely essential that there be a project level Habitats Regulation Assessment.

*Q3 What is the justification for requiring a speed survey? Is it clear to users of the Plan what is required from development proposals?*

I am not aware of any requirement for a speed survey for this site. There are a multitude of concerns about safe and suitable access, and these are amplified in my response to Q4.

*Q4 Can a safe and suitable access be achieved for both vehicles and pedestrians? How has this been assessed as part of the allocation of the site? Where will access be taken from?*

Safe and suitable access, for cars and pedestrians, cannot be provided to this site. DDC have not considered this issue even though it is one that has been highlighted by many people, including myself, who have responded to the Regulation 19 consultation.

It is a prerequisite of considering whether there is safe and suitable access, as required by Paragraph 110 of the NPPF, that the specific location of that access be identified for it to be assessed. DDC have not done this and still seem not to have identified the location for access to the site.

The constraints of the ownership of this site have been explored in my and others' previous submissions. Those submissions also noted that this part of the Drove is a narrow single-track road, has no pavements, no streetlights and many pedestrians, including many hikers and dog

owners, who walk down the middle of the road to access the public footpaths that cross three sides of this site.

The key consideration in relation to access is that the site's promoters own a 'landlocked' field. The land borders on one side Salisbury Road, which is privately owned and whose residents not only oppose any development but have a legal ability to prevent access, as described in previous submissions by the Salisbury Road Residents. Along the opposite side is The Droveaway. Here, there is a strip of land that is mostly ancient hedgerow/woodland that separates the field owned by the promoter from the road. None of the land that abuts the road is owned by the promoter and he has no right of access from his land to The Droveaway. There are two freehold owners of the land abutting the Droveaway and we are one of them. Evidence of this ownership is set out in the attachments to this submission.

Throughout this process DCC have given no proper consideration as to how and where safe and suitable access would be provided.

The promoter's plans for the housing which led to DDC putting forward the site at Regulation 19 included a road that provided vehicular access over land we own (see our freehold title and the 2015 local plan allocations map). Indeed, the splay it envisaged would have required the removal of a portion of our front garden. The road proposed by the developer led to 12 houses right across the whole of the top of the site (thereby maximising the houses' views over the coast). The other part of the access originally put forward by the promoter is owned by the freeholder of the strip of hedgerow. The promoter has no legal rights of access over any of this land. DDC have never asked us about access to the site even though we emphasised in our Regulation 19 submission that there could be no access over land we own, and we objected to the allocation, not least on the grounds that safe and suitable access was not deliverable.

By the time of the submission to the inspectorate examination, DDC in the March 2023 SD06 Schedule of Additional Modifications (AM67-page 28) refers to the development (now specified by DDC to be 10 houses) being 'located on the lower part of the site along the road frontage with The Droveaway only'. It is not clear whether this suggests multiple individual driveways over land which is ancient hedgerow (which hedgerow DDC also says needs to be retained), and over land which is not owned by the promoter of the development, or whether DDC are of the view that the access can continue to come across land which we own and which we have explicitly advised DDC cannot be used for access. In both regards, safe and suitable access cannot be delivered along The Droveaway and it is not going to be achievable.

Subsequently, DDC issued another document ED3 (Selection of Site allocations Housing sites Addendum April 2023) where, whilst stating this site is the preferred option within St Margarets Bay, also said development 'would be confined to the street frontage of Salisbury Road'. This apparently is a 'mistake' but illustrates the complete absence of identification of the location of the access and proper consideration of the legal requirements of Paragraph 110 of the NPPF by DDC.

*Q5 How have the effects of development on the setting of heritage assets such as the Grade II\* listed Dover Patrol War Memorial and the St Margaret's Bay Conservation Area been considered? Can a suitable scheme be achieved on this site whilst maintaining the significance of these heritage assets?*

There is no evidence that DDC considered these issues during the Regulation 18 and 19 process. The 2020 HELAA makes no reference at all to the setting of heritage assets. There is no evidence of any discussions with Historic England on this matter. I and others set out in detail in response to the Regulation 19 consultation the impact on the vistas to the Dover Patrol and the South Forelands lighthouse (also Grade II listed) if there is any development of this site. Any screening on the site would inevitably further impede the views to these heritage assets. Currently, there are views of these heritage assets from all three of the footpaths that cross this site. Development and screening would obliterate those views, reducing public enjoyment and appreciation of them. The significance of these sites can only be secured if this site is not allocated.

*Q6 What is the justification for the suggested changes to Policy SAP40?  
Why are they necessary for soundness?*

I can only assume that DDC decided to make substantive changes to SAP 40 following the Regulation 19 consultation because it realised, from the responses, that the proposed allocation of this site was not compliant with the NPPF and that the flaws in the HELAA and the multiple aspects of the NPPF that should have considered previously by DDC, but which had not been assessed, needed to be responded to if possible.

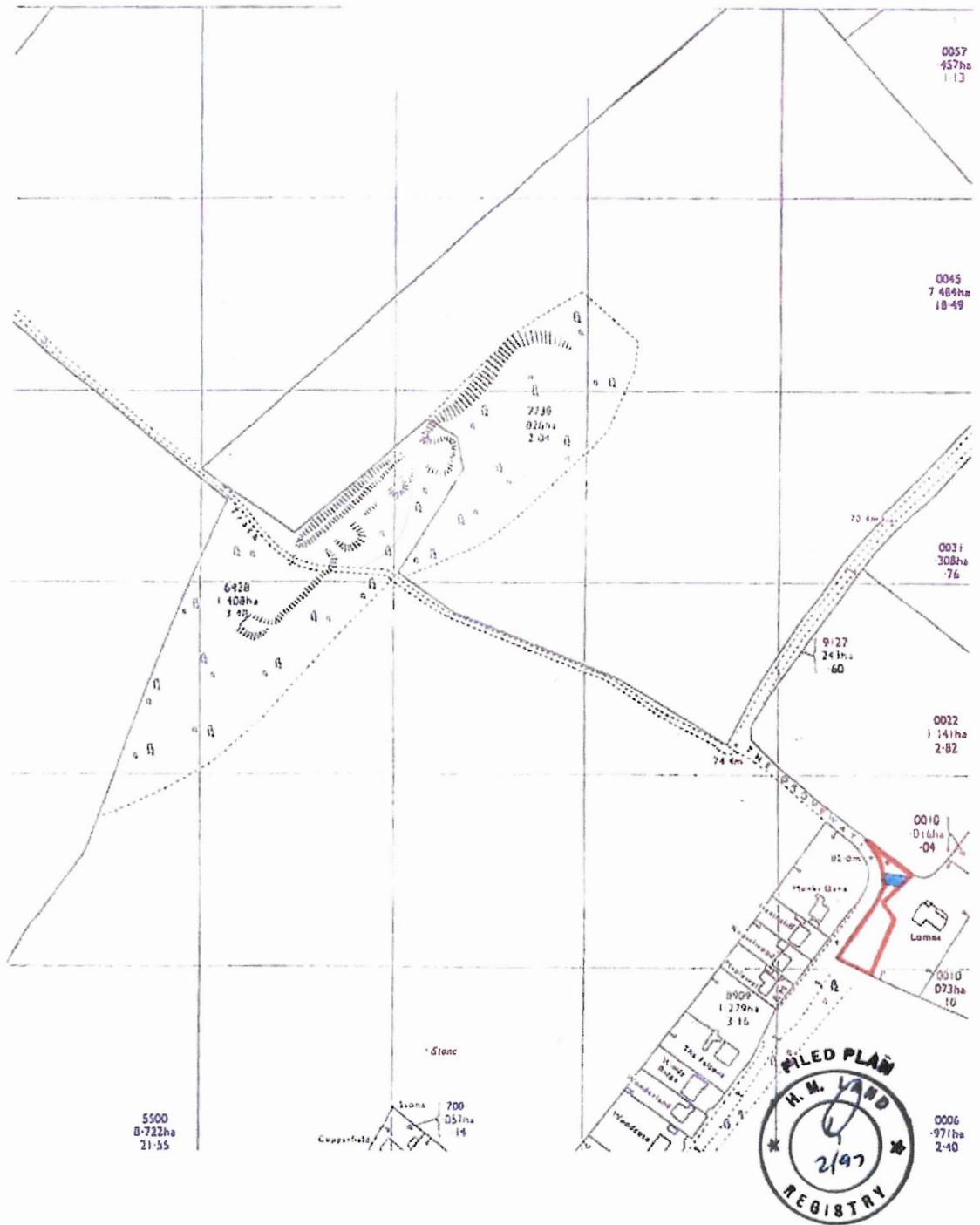
The proposed changes to SAP 40 cannot however make the allocation a sound one because they do not address the failure to assess properly the allocation of this site as required under the NPPF. DDC's approach to allocation of this site raises a whole host of questions, not least why DDC would put forward STM010 within SAP 40 as its preferred site for development within St Margarets at Cliffe (see page 71 of the April 2023 document Selection of Sites Allocation Housing Sites Addendum).

Site STM010 within SAP 40 is a topographically prominent site, within an AONB, that is part of the Heritage Coast and for which UNESCO Global Geopark status is being sought. It is within an SSSI Risk impact Zone, part of a Biodiversity Opportunity Area, within the Green Infrastructure Network, as well as having incomparable views to important heritage assets (simultaneously). DDC prefers such a site over sites that have none of those characteristics. How can this be compatible with DDC's legal obligations under the NPPF and compliant with the site's status within an AONB and DDC's own legal obligations to the AONB Management Plan? I would just note that Paragraph 175 of the NPPF, as you know, requires authorities to allocate land with the least environmental or amenity value.

The multiple failings of DDC in allocating this site are in no way remedied by the suggested changes. The changes do not and cannot provide safe and suitable access to the site. The changes will not prevent there being 'a highly detrimental impact on the landscape' (to use DDC's own 2012 assessment) whose status within an AONB is meant to protect that landscape. The changes do not establish how DDC has complied with its obligations under Paragraphs 174-176 of the NPPF. Finally, building on this site will cause significant light pollution across the dark skies of the AONB and St Margaret's Bay (inconsistent with DDC's commitment within the AONB Management Plan), impact negatively on biodiversity, the green infrastructure and the SSSI as well as destroying the wonderful vistas on this site to the Heritage Assets.

Appendix A

LMT		TITLE NUMBER	
H.M. LAND REGISTRY		K76 0783	
ORDNANCE SURVEY PLAN REFERENCE	TR3645	Scale 1/2500	
COUNTY KENT	DISTRICT DOVER	©Crown Copyright	

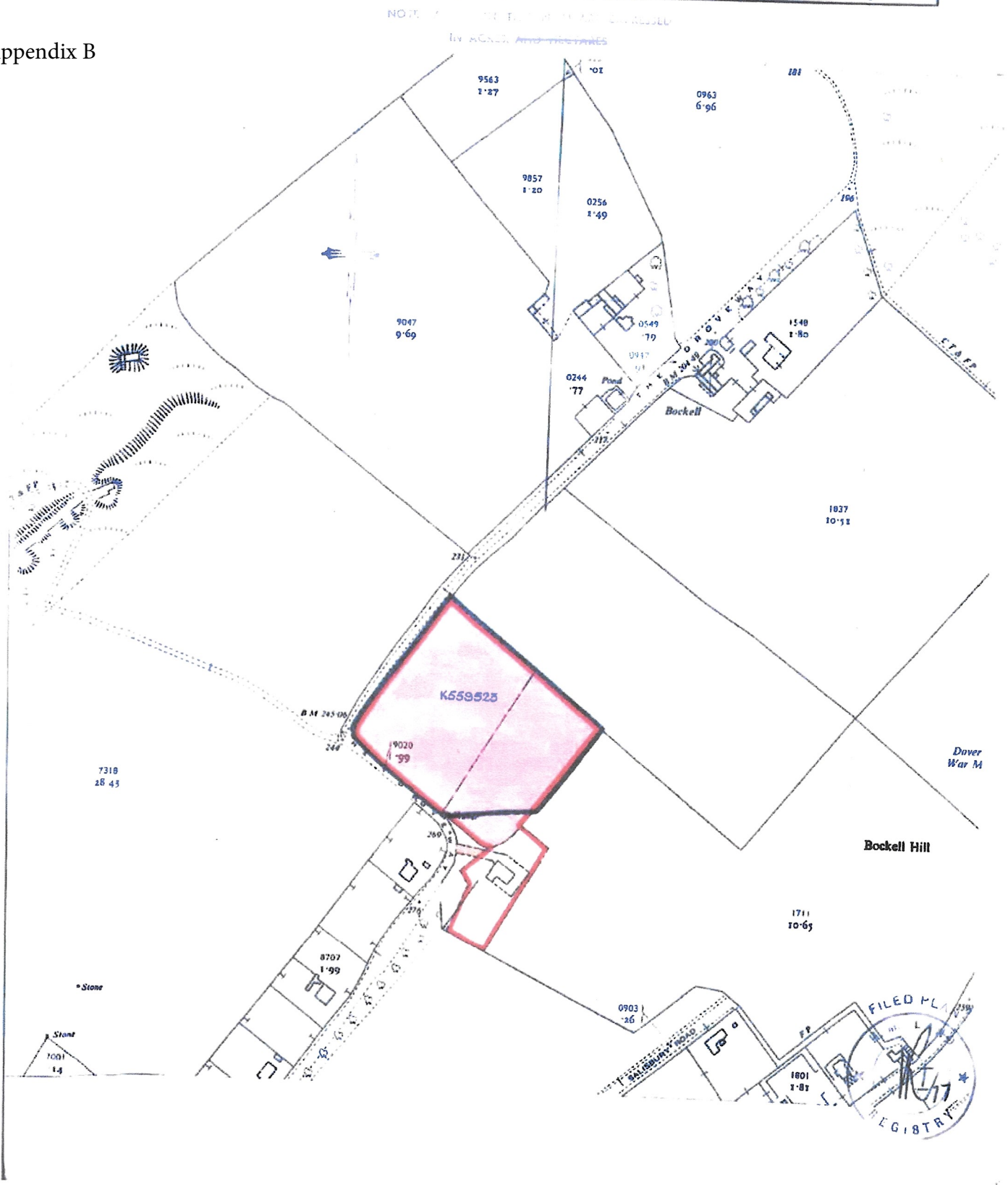


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<b>H.M. LAND REGISTRY</b>		<b>TITLE NUMBER</b>	
		K 365304	
<b>ORDNANCE SURVEY PLAN REFERENCE</b>	TR 3645 & 3745	<b>Scale</b> 1/2500	
<b>COUNTY KENT</b>	<b>DOVER DISTRICT</b>	© Crown copyright	

Appendix B



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