



PLANNING STATEMENT

Supporting an outline proposal (with access fixed) for the erection of up to 800 market and affordable dwellings, with provision of a primary school, local health surgery, local convenience shops and link road between North Dane Way and Pear Tree Lane together with estate roads, open space and strategic landscaping.

 Land at East Hill, off North Dane Way, Chatham, Kent

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1 INTRODUCTION

- 1.1 This Planning Statement accompanies an outline planning application for the erection of up to 800 market and affordable dwellings. A full description of the application appears in the accompanying Design and Access Statement (DAS).
- 1.2 By letter dated 27 September 2018 the applicant sought a screening opinion from the council under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. Medway Council's decision (LPA Ref.MC/18/2827) dated 18 October 2018 determined that an EIA was necessary and an Environmental Statement (ES) supports the application.
- 1.3 This Planning Statement is therefore one of a suite of documents that include:
- A Statement of Community Involvement
 - Transport Statement
 - Landscape Report and Strategy Plan
 - Extended Phase 1 Ecology Report and accompanying surveys
 - Archaeological and Heritage Statement
 - Noise Report (included as a standalone ES Chapter)
 - Design and Access Statement
 - Air Quality Report (included as a standalone ES Chapter)
 - Flood Risk Assessment and Surface Water Drainage Report
 - Ground Conditions Report
 - Utilities Statement
 - Environmental Statement
- 1.4 The application site is recognised as a sustainable location and because of this and other comparative locational advantages (that will be highlighted in this Planning Statement) has been identified by Medway Council as part of the spatial strategy to meet the development needs of the unitary area, being selected in three of the four development scenarios at the Regulation 18 stage of the emerging Medway Local Plan.
- 1.5 The submitted proposal, whilst in outline form, represents a high standard of design quality and benefits from pre-application engagement with LPA officers; a Medway Council Member Presentation and feedback following a presentation to the South East Design Panel.
- 1.6 In line with best practice an Exhibition was also held to obtain feedback from the local community upon the emerging proposals. However, it was evident that a large proportion of this community feedback was affected by the lack of acceptance of the level of housing need and pressure for sites to be allocated across Medway. As a result, there was significant opposition, in principle to development in this location, which it is asserted is not a realistic position to take given the level of need and past under delivery relative to planned housing targets in Medway. Notwithstanding the above, a number of comments relating to the emerging layout and technical issues were taken into account and have shaped the final submission which is outlined further in the accompanying Statement of Community Involvement (SCI).
- 1.7 Although it was evident from the above feedback relating to the need for development from the process of community consultation that many comments were influenced by an in-principle objection to development per se, or that if this level of growth had to be accepted development should be placed well away from existing communities. This Planning Statement focuses on the land use merits of directing growth to this location at the edge of the urban area

(which are acknowledged by Medway Council) and provides an explanation of the design quality that derives from an understanding of the constraints and opportunities presented by the site. It is also relevant that the site is within single ownership and is capable of making a rapid contribution to meeting the housing needs of Medway.

- 1.8 Before the reader of this Planning Statement considers the case for development it is very important that the wider planning context within which representations must be examined and decision makers must consider the positive impacts and effects of the proposal is fully understood. For Medway because the 2003 adopted Medway Local Plan is time expired, running only to 2006 and a 5-year housing land supply cannot be demonstrated, it is accepted that the development plan policies are “out of date” and the planning decision making test is that the adverse impacts of the proposal must “significantly and demonstrably outweigh the benefits” for the scheme to be refused.

2 PLANNING CONTEXT

2.1 It is important that the content of this Planning Statement is reviewed having regard to the wider planning context. This context is defined;

- a. by a significant housing pressure to meet the past and future development needs of Medway;
- b. the lack of a short term 5-year housing supply pipeline, which makes many of the development plan policies “out of date”
- c. the failure on two occasions of a local plan to be put in place to guide planning application decision making since the Medway Local Plan was adopted in 2003.... a plan with a shelf life of only 3 years after adoption
- d. many years of consistent under delivery of housing relative to meeting the needs of Medway which itself will become even more acute as a planning issue as future growth pressure on Medway will be increased above even the existing planned targets as penalties that derive from the Housing Delivery Test accrue. This is fuelled by the expected mismatch between the annualised housing completions for Medway and the housing target projections.

2.2 In order to meet this recognised housing need and boost the supply it is accepted that difficult land use decisions will need to be taken and because of the length of time before a new local plan can be adopted, residential applications to meet the need will come forward in the short term to make up the supply pipeline. The available spatial options of any scale to accommodate the scale of growth and recognised development needs of Medway are limited to the following:

- Brownfield redevelopment of the Medway riverside, which the applicant accepts should be a “building block” of any future spatial strategy, but can only be part of the planned solution due to delivery challenges and the erosion of

employment land;

- Encroachment in to areas of the Green Belt on the west side of the administrative area...which national policy directs should be a last resort option;
- The creation of a new garden community on the Hoo Peninsula. Although it is accepted by Medway Council that this location can only be made “sustainable” with critical funding from the Housing Infrastructure Fund to deliver road, rail and community infrastructure. If Medway do not receive funding for this bid money, it is accepted that this spatial option would not be considered a sustainable one. As a separate issue there are also concerns about the long lead in times before this spatial option would start to deliver housing;
- A limited number of sustainable planned urban extensions of which the application site can be categorized as one.
- Greenfield releases at the edge of Rainham on Grades 1 and 2 BMV land

2.3 In land use terms, the application site has a number of distinct locational advantages vis a vis the alternative spatial options;

- It is located close to Chatham town centre and existing services and facilities and will support the revitalisation of the town centre which is a key theme of the emerging plan (para 3.24 of the Regulation18 emerging Local Plan) and therefore has wider benefits;
- “On site” infrastructure provision to meet the needs of the development have the capacity to be expanded to benefit residents in the wider catchment, in this case through;

1. The future expansion of the primary school site (sited within a 3-hectare site which

provides opportunity for future expansions

2. The future expansion of the doctor’s surgery (from a 2 GP surgery to an 8 GP surgery to allow more GP’s to operate in the future from a modern facility;
3. Improved pedestrian and cycleway linkage with the country park and other existing green infrastructure;

- Improvements to the permeability of the road network through the creation of a road link between North Dane Way and Pear Tree Lane will be demonstrated through the modelling outputs in the accompanying Transport Statement to improve traffic flow and create capacity at key junctions;
- The provision, not of a new isolated “island” of housing where a sense of community will take time to build social cohesion but instead an extension of the existing community close to an existing population catchment that provides from the development recognisable community facilities and open space that can also benefit the existing catchment. This would contrast with a garden community recognised as an isolated and unsustainable where community infrastructure investment will not accrue any benefits to neighbours and will serve only the new community themselves.
- As well as the footpath/cycleway linkages, there is a network of open space corridors including parklands that will be delivered by the proposal that will benefit the wider community;

2.4 Because of the large number of householders that are located so close to the site, the level of historic representations against development in this location has been very strong and representations have been particularly focused on highway issues and concerns relating to the perceived erosion of the separating function of the land giving rise to coalescence between Hempstead and Lordswood. Whilst the views of the local community are very important, the requirement to deliver housing in the most sustainable and deliverable way to meet the accepted high level of need, is a Medway- wide issue, where the comparative locational advantages of the spatial

options must be examined objectively by decision-makers. This Planning Statement with the supporting technical reports will justify that;

1. The proposed housing led proposal will be absorbed within a landscaped setting that will maintain the sense of separation between Lordswood and Hempstead and is acceptable in landscape terms;
2. That technically, the proposal will have an acceptable impact on the highway network in the vicinity of the site and will reduce local congestion through measures including the provision of a link road between North Dane Way and Capstone Road, and off-site capacity improvements, including:
 - A reconfigured mini roundabout for Luton High Street / Capstone Road / Street End Road;
 - Pear Tree Lane / Hempstead Road / Hempstead Valley Drive, where the southern arm of the mini roundabout will be widened to increase capacity;
 - Walderslade Road / Princes Avenue, where the existing mini roundabouts will be replaced with a signalised junction.

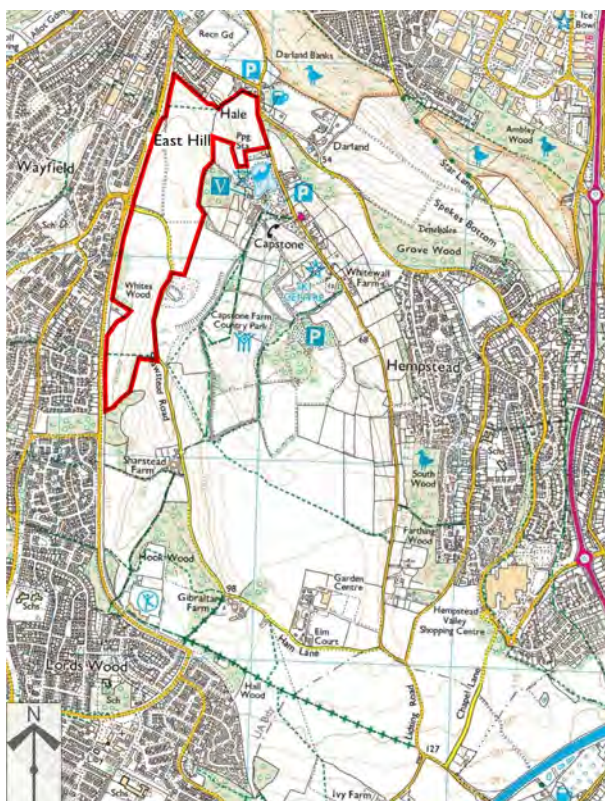
Full details of the junction assessment outputs are contained at Appendix F of the submitted Transport Assessment.

2.5 The Planning Statement will, after describing the site, the nature of the proposal and the planning policy context will highlight the supporting technical evidence supporting this submission.

2.6 It is relevant that the site is within single ownership and the proposal seeks to approve a very clear design framework upon which the site will be marketed, and housebuilders will acquire the land. The grant of outline permission will trigger a reserved matters application and it is realistic that construction would commence in 2020.

3 SITE AND LOCATION

3.1 The site consists of some 49.47 hectares of intensively cultivated agricultural farmland. The land has a frontage to North Dane Way within the Lordswood & Capstone ward, with the road separating the site from the urban area of Medway known as Princes Park. The landholding's northern boundary adjoins Luton ward, with Hempstead & Wigmore further east. These locations are extensive residential areas lying to the south of the built-up urban areas of Chatham and Gillingham. The site is situated to the west of the Capstone Valley which on its eastern side adjoins further residential development in the Hempstead area, which abuts the residential area of Wigmore. The M2 Motorway skirts around the south of these areas as shown on the site location plan below.



Site Location Plan – East Hill

3.2 North Dane Way forms the western boundary to the application site and separates the landholding from the urban areas to the west. Capstone Country Park lies to the east of the site. Within the southern portion of the site and along its western boundary lies Whites Wood, with the site terminating at the

boundary with North Dane Wood to the south. Shawstead Road bisects the site from west-east, then continues southwards where it converges with Ham Lane. Capstone Country Park adjoins to the east of the landholding, and the residential cul-de-sac of Carlton Crescent served from Capstone Road adjoins to the north.

- 3.4 Public Right of Way (PRoW) Footpaths RC32 and RC9 bisect the northern and southernmost tips of the landholding respectively and currently provide the only west-east points of connection to the Country Park from Princes Park to the west.
- 3.5 Topographically the site spans the flat-topped 'East Hill' ridgeline, which falls sharply towards the Capstone Country Park to the east and towards Luton to the north.
- 3.6 The development of the site is proposed as a sustainable urban extension that can be absorbed into this already densely populated area with its extensive services, employment, transportation links and community facilities.

SUMMARY OF SUSTAINABLE CREDENTIALS OF THE SITE

1. The site lies 1.5 miles from Chatham town centre and will support the existing services and bus connections to it through increased patronage;
2. The site adjoins the Capstone Country Park, an area 114-hectares which is acknowledged as an underutilised recreational asset currently focused on the community facilities around the Park entrance off of Capstone Road.
3. The site will access the B2156 (North Dane Way), a major routeway originally designed to form a link to Junction 4 of the M2 motorway and known as the "Medway Towns Southern Relief Road". The application site is accessible to the motorway network via Pear Tree Lane, Hempstead Road and Hoath Way.

4. The site lies close to job opportunities in the Gillingham Business Park (to the north east) and Lordswood Industrial Estate (to the south)
5. The Hempstead Valley Regional Shopping Centre lies in close proximity to the west
6. The development proposal will provide its own 2FE primary school and 2-practioner GP surgery
7. The development proposal offers the opportunity of enhancing bus services and will facilitate a quicker east-west public transport axis as well as promoting pedestrian and cycling via 4 main corridors running east-west across the site

4 PROPOSAL

4.1 The Proposal comprises the following:

- Up-to 800 dwellings, comprising a mix of:

7% x 2-Bed Houses

33% x 3-Bed Houses

30% x 4-Bed Houses

4% x 5-Bed Houses

26% x Apartments

- 25% of the total housing to be affordable and concentrated around the X and Y character areas
- A 3-hectare area of land to accommodate a 2FE primary school, with future capacity for expansion
- An urban area comprising:
 - Up-to 4 shops (total 150sqm of retail floorspace)
 - A 300sqm GP surgery for 2 GP's
- a road link (6.5m in width) connecting North Dane Way and Pear Tree Lane, each served by a roundabout
- a second roundabout to North Dane Way, serving X development of up-to X dwellings which following pre-application engagement with the Highway Authority was recognised for its speed calming benefits
- the total site area is 49.47-hectares and the development area for housing comprises 16.3-hectares or 33% of the total area

- the proposal includes some 19.15-hectares of open / landscaping made up of:
 - 2.2ha of retained woodland
 - 6.95ha of new woodland planting
 - 10ha of proposed open space the including 2 x LEAPs and 1 x NEAP and trim trail
- the height of the development is predominantly two and two and a half storey, with areas of 3 and 4 storey height in the urban area straddling the ridgeline. The taller buildings are set at key locations away from the edges of the site.
- new and improved cycleway and pedestrian routes in east-west and north-south directions

5 RELEVANT PLANNING HISTORY

- 5.1 There is no direct planning history of planning applications that affect the site.
- 5.2 It will be explained that the site features in a number of the spatial development options which have been the subject of public consultation as part of the local plan review process which is currently effectively on “hold” waiting for the outcome of a £170 million HIF funding bid for critical infrastructure to support the proposed new community at the Hoo Peninsula.
- 5.3 In a decision dated 18 October 2018 (Ref MC/18/2827) it was concluded that an Environmental Impact Assessment (EIA) was required for the following reasons:
1. The size and nature of the proposed development could have significant environmental impacts particularly with regards to the use of natural resources, in particular land, water, habitats and biodiversity, the emission of pollutants, noise, vibration, light, creation of nuisances, risks to human health and the environment. The culmination of impacts with other approved projects will increase the environmental impacts of the development. The increase in greenhouse gases associated with the development could impact on climate change. The proposed development is located in and adjacent to sites of national and international nature conservation importance is likely to have potential significant effects of the interest features of these designated sites. Therefore, an Environmental Impact Assessment is required in relation to the proposed development described above
- 5.4 The application proposals are also informed both by pre-application engagement with officers and the local community, a Design South East meeting and following a presentation to Medway Council members, which are detailed in the accompanying Statement of Community Involvement.
- 5.5 To the south of the application site is Gibraltar Farm where a planning application for up to 450 dwellings made on the 8th August 2014 (Ref. MC/14/2395) was allowed after a recovered appeal (Ref.APP/A2280/W/16/3143600) (Appendix 1), when the Secretary of State granted conditional permission (subject to a Section 106 Agreement) on the 6th March 2017. The time limiting condition required the submission of reserved matters within 18 months of the decision. A recent application (Ref. MC/18/0556) for an identical development seeking a time limited permission for a further 18 months, was submitted and granted planning permission on the 26th September 2018. Application Reference MC/19/0336 is currently under consideration for the same quantum of housing which proposes access from Ham Lane rather than North Dane Way (as approved). This site would now have been delivering housing if Medway Cabinet had agreed to the sale, at the full market value as a potential ransom, of the small connecting strip of land which Medway Council own and is necessary to form a road connection between North Dane Way and the Gibraltar Farm site.

6 PLANNING POLICY CONSIDERATIONS

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be considered having regard to the relevant policies of the development plan unless material considerations indicate otherwise. The policies in the National Planning Policy Framework (the Framework) are material considerations to be taken into account when dealing with planning applications.
- 6.2 The Development Plan for Medway relevant to this planning application consists of the saved policies of the Medway Local Plan (adopted May 2003). This plan ran until 2006 and is therefore time expired. The weight to be given to relevant policies is discussed below. The council has made two failed attempts to replace the 2003 plan which has led to a serious under supply of housing, the latest local plan review programme has been delayed until a HIF funding decision is made by MHCLG. The evidence base for the local plan and whether the approach to the assessment of alternative spatial options (given the historic commitment to Lodge Hill and Hoo explained below) are likely to be focal issues for the Examining Inspector in assessing whether the emerging plan is sound.
- 6.3 The council began work on what was then a Core Strategy (CS) in 2004/5 and submitted the formal documents for Examination on the 30th August 2006 with Lodge Hill (LH) as the principal development area. The examining inspector convened a procedural hearing on the 6th September 2007 expressing the view that he considered the plan unsound. The outcome was that the council asked that the CS be withdrawn which was confirmed on the 2nd October 2007.
- 6.4 The second attempt to replace the local plan was published in February 2012. Lodge Hill was once again identified as the principal development site for up to 5,000 dwellings in a mixed-use development.
- 6.5 During the Examination of the CS the area in which LH is situated was confirmed as a Site of Special Scientific Interest (SSSI). The examining inspector drew the council's attention to the provisions of the (then) 2012 National Planning Policy Framework where an avoid-mitigate-compensate approach was required.
- 6.6 The council claimed that the social and economic benefits of a new settlement at LH outweighed any impact on ecology and habitats and that the site was essentially brownfield. In this latter respect the inspector disagreed, stating that in her opinion most of the site was greenfield.
- 6.7 In a letter to the council dated the 21st June 2013 the Inspector stated (para 5.2) that as a general proposition, a new settlement may offer good opportunities to provide sustainable development, but other spatial alternatives, such as development of a range of sites, well related to existing settlements, can also achieve the kind of sustainable development envisaged in the Framework.
- 6.8 The Inspector then went on to record that the council's approach to LH could be contrasted with the analysis undertaken for other strategic options, which included this application site, through the SA. She stated that access and highway issues were identified as a potential problem in relation to all options but that the council was unable to provide any evidence that the scale of these problems had been addressed, other than in relation to the LH site. For failing to properly investigate alternatives to LH and for reasons relating to the SSSI she recommended that the CS be withdrawn. The council withdrew the CS on the 21st November 2013
- 6.9 The council still seeks to promote development at LH, albeit on a reduced scale, in the draft of the replacement plan, which will run to 2035, even though the Sustainability Appraisal of the draft replacement plan concludes that there is no evidence that appropriate mitigation of significant impacts would succeed at LH. The SA also fails to comprehensively examine and assess the alternative strategic options

promoted by owners and developers in Medway. The council is focused on a Hoo Peninsula option of a new settlement in conjunction with LH expending £1.19M of council money on a HiF bid to make an acknowledged unsustainable option sustainable rather than assessing and promoting the more sustainable alternatives that are available.

6.10 The position is that the council do not have an up to date development plan and the implications of this were considered by the Secretary of State in the planning appeal when planning permission was granted by the Secretary of State for up to 450 dwellings at Gibraltar Farm which is closely located to the application site. It is relevant that the Gibraltar Farm site occupied a narrower part of the undeveloped corridor between Hempstead and Lordswood than the application site which occupies one of the widest points of the gap which will be maintained by the Capstone Country Park.

6.11 The policies in the 2003 Local Plan under which the application falls to be considered and the weight to be attributed to them are discussed later in this Statement.

NATIONAL PLANNING POLICY FRAMEWORK 2019

6.12 The NPPF defines the purpose of the planning system as contributing to the achievement of sustainable development and divides this principal objective into three overarching and interdependent objectives, that need to be pursued in mutually supportive ways. The three objectives are:

- a) An Economic Objective: to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity, and by identifying and co-ordinating the provision of infrastructure.
- b) A Social Objective: to support strong, vibrant and healthy communities by ensuring that a sufficient number and range of homes can be provided to meet the needs of the present and future generations; and by fostering a well-designed, safe built environment, with accessible services and open spaces that

reflect current and future needs and support communities' health, social and cultural well-being.

- c) An Environmental Objective: to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

6.13 With reference to the above objectives, the NPPF states that they are not 'criteria against which every decision can or should be judged', and that planning policies and decisions should 'play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities in each area' (paragraph 9). To ensure that sustainable development is pursued in a positive way, there is a 'presumption in favour of sustainable development' at the heart of the NPPF (paragraph 10).

6.14 Paragraph 11 of the NPPF cements this approach by confirming that for decision making purposes this means:

- approving development proposals that accord with an up-to-date development plan without delay; or
- where there are no relevant development plan policies, or the policies which are most important for determining the application are 'out-of-date,' granting planning permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of this Framework as a whole.

- 6.15 The NPPF also encourages pre-application engagement and front-loading, stating that “early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality preapplication discussion enables better coordination between public and private resources and improved outcomes for the community” (Paragraph 39). The accompanying SCI to this application outlines the level of community input that has been taken into account in the preparation of this submission.
- 6.16 One of the core principles is for planning to identify and meet the housing needs of an area. Paragraph 11 of the NPPF states that “plans and decisions should apply a presumption in favour of sustainable development”. Paragraph 11 of the Framework states permission should be granted unless:
- i. The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 6.17 Paragraph 72 states that “the supply of large numbers of new homes can often be best achieved through planning for larger scale development”, which includes significant extensions to existing towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities. The proposal satisfies this guidance and provides a significant amount of justification for the design approach, supported by extensive technical material. The design aspects of the proposal have also been shaped by feedback from the South East Design Panel Review as well as consultation with members and the local community.
- 6.18 The Framework also promotes mixed-use developments, stating that they can help to achieve healthy, inclusive and safe places by promoting social interaction and creating opportunities for meetings between people who might not otherwise come into contact with each other (Paragraph 91). Chapter 8 of the NPPF highlights the importance of facilitating social interactions and creating healthy communities. Locating development within urban areas, close to existing amenities and facilities, as is the case with this proposal which adjoins an established residential area would support this principle.
- 6.19 The sustainable location of developments is an important consideration in locating and designing developments. Paragraph 103 of the NPPF outlines that “significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering genuine choice of transport modes”. As identified in the site description section above, this site is located within an accessible and sustainable location, with easy access to local services and the site layout offers improved cycle and pedestrian linkages to Chatham Town Centre and the Capstone Country Park. With the site’s proximity to bus routes and on-site provision of local shops and local health facilities as well as a 2FE primary schools are all factors that will contribute to assisting toward reducing car use and creating through the pedestrian and cycle connections to the Capstone Country Park more healthy choices for existing and prospective residents.
- 6.20 One of the core principles of the NPPF is to seek to secure high quality design. The NPPF identifies that good design “is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities” (Paragraph 124). It is asserted this proposal would secure good design on this site respecting the character of the area and creating a high-quality residential environment with the submitted layout (although outline in name) containing a great deal of detail and showing how proposals for the site have taken into account comments from community consultation, feedback after engagement with LPA officers and members of Medway Council and the South East Design Panel Review all of which have shaped the final outline submission.

7 EMERGING MEDWAY LOCAL PLAN AND 5-YEAR LAND SUPPLY POSITION

7.1 Medway Local Plan (Regulation 18 Stage) was the subject of public consultation between 16th March and 11th May 2018. The emerging plan has a proposed plan end date of 2035.

7.2 The publication of this document followed;

- An Issues and Options Document published in 2016 (which in turn had been informed by the earlier SHMA);
- A Development Options Document published in 2017 (which had been informed by the 'Strategic Land Availability Assessment');

7.3 The agreed Objectively Assessed Need (OAN) housing requirement was set at 1,281 dwellings per annum and Reg 18 Publication version set out 4 scenarios to accommodate different levels of growth levels which are summarised below; The development options are set out at Appendix 2

APPENDIX 2 - THE 4 SELECTED DEVELOPMENT SCENARIOS

Scenario 1 – 'Meeting OAN' with no Lodge Hill and no Green Belt releases. This option allocated all of the application site area for development;

Scenario 2 – 'investing in infrastructure' no allocations at Rainham or Capstone with greenfield development almost entirely focused on the Hoo Peninsula;

Scenario 3 – 'meeting calculation of local housing need'. All of the application site is allocated for development with this option;

Scenario 4 – 'Lodge Hill Option'...Again most of the application site is allocated for development with this development scenario option.

7.4 It is relevant that at the time of this public consultation, the Regulation 19 document was planned to be submitted to PINS in the winter of 2018 with an

Examination in March 2019. This timetable has been delayed because it is recognised by Medway policy officers that the planned level of growth on the Hoo Peninsula is not sustainable without significant public investment in;

- a. rail infrastructure to convert a freight line to a passenger service and a new station at Hoo (at a projected cost of £67m);
- b. Road infrastructure to address congestion and air quality issues around the Four Elms Roundabout plus an upgrade of the A228 (at a projected cost of £86m);
- c. Other infrastructure including health hub, country park and sports and leisure facilities.

7.5 Medway Local Plan policy officers recognise that as Hoo is an isolated location, this significant, baseline, level of publicly funded infrastructure in addition to the normally expected private developer contributions is critical in order to convert an acknowledged "non-sustainable location" into a sustainable one that can serve as a new hub for meeting the growth requirements for Medway. Paragraph 11.17 of the Regulation 18 Document states that the Hoo option "depends on strengthened connections and significant upgrades to transport".

7.6 By contrast with the Hoo Peninsula option, the proposals at East Hill (the application site) are;

- In a recognised sustainable location relative to surrounding services and facilities;
- Development of the application site is not reliant on any Public Funding (compared with the minimum of £170 million necessary at Hoo to make an isolated location more sustainable (the bid for which alone has cost Medway taxpayers £1.19 million). The infrastructure improvements put forward by the application site will be funded entirely at the developer's expense and any benefits

delivered by the East Hill proposal will also deliver improvements to the wider area, including –

- a. improved road link between North Dane Way and Pear Tree Lane which will improve local road capacity and create improved east-west public transport routeways;
- b. will create extra inbuilt future expansion capacity to the primary school;
- c. will create extra inbuilt future expansion capacity for health provision;
- d. will create cycle and pedestrian linages through the development and will include new open space corridors that will improve accessibility to the country park.

Date	Annual Housing Completion
2013	565
2014	579
2015	483
2016	553
2017	642
2018	680
Total	3502 = 584 per year average

then standard method set out in guidance (which equated to 37,143 dwellings over the plan period) the S of S concluded that local annual housing need in Medway was 1,310 dwellings per annum. In considering that the 20% buffer should be applied, to accord with paragraph 73 of the Framework and because of significant under delivery over the last 3 years, the S of S concluded the annual requirement to be 1,572 dwellings.

7.8 The lack of an up to date plan, the failure of development to come forward at Lodge Hill and the delays in the expected programme of delivery for riverside regeneration have resulted in the council meeting its own housing target on only 5 occasions in the last 31 years.

7.9 The latest assessment of housing need in Medway and whether the council can demonstrate a 5-year supply of deliverable housing sites were issues considered by the Secretary of State (S of S) when assessing the balancing of planning considerations before allowing an appeal at the nearby Gibraltar Farm site (Ref.APP/A2280/W/16/3143600). This position has been reaffirmed more recently on the 8th November 2018 in a called in appeal decision (Ref.APP/A2280/W/17/3175461) (Appendix 3) in respect of a site at Town Road, Cliffe Woods.

7.10 There is no dispute that the council cannot demonstrate a 5-year supply of deliverable housing land. The latest Annual Monitoring Report (Appendix 4) has just been published which shows completions have averaged 584 dwellings over the last 6 years as outlined below.

7.11 Because the Local Plan was adopted in 2003 the adopted housing requirement is more than 5 year’s old. Paragraph 73 of the revised 2019 Framework indicates that in these circumstances, local housing need should be applied. Taking into account the

7.12 The 2018 Annual Monitoring Report shows 680 completions for 2017-18, a deficit of 892 dwellings against the requirement identified by the S of S. Because of the change in the definition of “deliverable” in the Framework it was considered that the council had a housing supply of between 3.9 and 4.3 years.

7.13 Paragraph 75 of the Framework states that to maintain the supply of housing, local planning authorities should monitor progress in building out sites that have permission. Where the Housing Delivery Test indicates that delivery has fallen below 95% of the local planning authority’s housing requirement over the previous three years, as is the case here, the authority should prepare an action plan in line with national planning guidance to assess the causes of under delivery and identify actions to increase delivery in future years.

7.14 In his decision letter on the Cliffe Woods appeal the S of S noted that the council is preparing a Local Plan but that no draft policies have been issued. Paragraph 48 of the Framework states that decision makers may give weight to emerging plans according to 1) the stage of preparation of the emerging plan: 2) the extent to which there are unresolved objections to relevant policies in the emerging plan: and 3) the degree of consistency of relevant policies to the policies in the Framework. Whilst limited weight may be attached to the emerging local plan preferred spatial allocations

(such as the application site) are supported by an evidence platform which has been taken into account in the preparation of this submission. It is in these circumstances and in recognition that for Medway the annual housing shortfall is acute that the merits of the development proposals are now assessed.

8 EVOLUTION OF THE DESIGN

8.1 The design approach has been prepared having regard to an assessment of the character of the area and a desire to place people at the heart of the design process to create a community. As a result, a number of different character areas are proposed within the site each of which will be served by new facilities and the design process demonstrates a landscape led approach with parklands, strategic open space and pedestrian/leisure corridors at the heart of the development

8.2 Key influences on the design process;

- Place making and creating a community that provides for downsizing, aspirational, starter homes and affordability and family housing to meet the wide range of needs; recognizing the influence of topography and landscape (the land changing from 105m AOD to 34m AODN);
- Acknowledges the asset of the Capstone Country Park and the desirability of connectivity to this recreational resource for the development and as a routeway for the existing wider catchment area;
- The opportunity for ecological enhancement given the land is currently intensively farmed agricultural land, with limited ecological value other than the boundaries and woodland areas.
- Landscape none of the land is subject to any statutory landscape designation and the landscape character assessment of the site which has formed part of the evidence base of the emerging Local Plan has recognised the site's suitability for development along the corridor of land immediately adjoining North Dane Way. The majority of the allocated area in the 'Development Options' Regulation 18 Local Plan, lies within the East Hill Character Area (No25) recognised to be of 'moderate

landscape sensitivity' whilst the southern portion of the application site extends in to the Sharstead Farm Landscape Character Area (No 27) which is assessed of higher sensitivity. This portion of the site displays similar characteristics to the East Hill CA and within this portion of the site, a lower density of housing is proposed within a more heavily landscaped strategic framework and the 3ha primary school with its extensive area of open space is also proposed, justifying its inclusion within the application submission. The development of ridge line areas and wider landscape views against the backdrop of development are characteristic features of the area. The landscape assessment has identified that there is a limited zone of visual influence and green corridors serve to break up the development responding to the topographical changes and creating new linkages between the existing community of Lordswood with the Capstone Country Park through the application site. The two existing Public Rights of Way crossing the site will become more attractive routeways benefitting from the corridors incorporated within the layout. Within the development site, the proposed layout incorporates a series of interlinking open spaces that will include formal and informal recreational facilities to increase the leisure opportunities for the wider community. It is relevant that the Capstone-Bredhurst Green Cluster Study (March 2008) identified the Capstone valley as a strategic link for pedestrians and cyclists.

- The surface water drainage has strongly influenced the layout. The underground flow path identified on the EA mapping plan remains free of development following input at a pre-application meeting with Medway's drainage officer and the EA.
- The creation of principal frontages to define

character areas and arrival points and way finding landmarks include;

- A park
- A local centre with shops and doctor's surgery
- A school
- An east west road link between North Dane Way and Pear Tree Lane
- Open space and green infrastructure with pedestrian and cycle links which also forms part of the surface water drainage strategy.

8.5 Around these functional areas there are 8-character areas ranging from –

- i. Hale – aspirational high value
- ii. Northern edge
- iii. Hill top
- iv. Rural fringe
- v. Urban Quarter
- vi. School
- vii. Parkland
- viii. Whites Wood

These character areas are set within a wider landscape framework and each have different densities.

9 ASSESSMENT OF DEVELOPMENT PROPOSALS

9.1 For the last 3 years and from the Annual Monitoring Report 2018, housing completions represent some 35% of the S of S identified requirement. It is clear therefore that to accord with the requirements of paragraph 75 of the Framework the council needs to give urgent consideration to meeting its housing needs and ensure that the development of sites that represent sustainable planned extensions to the urban area are expedited.

9.2 When granting planning permission to the nearby Gibraltar Farm application the Inspector concluded and the S of S agreed that although the proposed development was in conflict with Policies BNE25 and BNE34 of the Local Plan, the council could not demonstrate a 5 year supply of deliverable housing sites and accordingly that these policies were out of date and should be afforded little weight (para 187 of Inspector's Report).

9.3 Given the lack of a 5 year supply the Secretary of State's decision for the Gibraltar Farm site concluded that it was inevitable that greenfield land would have to be developed and that this would include land within the designated Area of Local Landscape Importance "unless new development is to be located where it would not be accessible in terms of proximity to existing development with its associated facilities" (para 200 Inspector's Report).

9.4 The S of S also found that Policy S4 was not of significance in the determination of the appeal (para 191 Inspector's Report). For Gibraltar Farm the S of S agreed that the proposed development would harm the character and appearance of the immediate area but would not lead to coalescence between Lordswood and Hempstead or cause critical harm to the function of Capstone and Horsted Valley (para 223 Inspector's Report). It is relevant that the application site lies in the widest part of the corridor separating Lordswood and Hempstead where separation would be maintained by the Capstone Country Park.

9.5 The S of S for the Gibraltar Farm site nearby

also agreed that the proposed housing would be accessibly located, in close proximity to recreation facilities and local transport and that this made economic sense in terms of reducing the need for private car travel (para 250 Inspector's Report). This recognition by the Secretary of State of the merits of locating growth close to the urban area, is an important point given the alternative spatial options presented at the Hoo Peninsula which are recognised as unsustainably located without major infrastructure investment from HIF funding.

TRAFFIC AND TRANSPORTATION

9.6 Ensuring Medway has good quality transport connections to key markets and major conurbations in Kent, and London is one of the overarching priorities of the Medway Local Transport Plan 3 (LTP3).

9.7 The proposal delivers an east-west link comprising a 7.3m width road with 2m footway and 3 . 5 m cycleway at a maximum gradient of 8%. This will allow a reassignment of traffic routing Princes Ave/ North Dane Way and Pear Tree Lane without routing via Capstone and the Luton area. This road will be designed to allow for bus routing between Walderslade and Gillingham. The following highway works are also proposed:

- A reconfigured mini roundabout for Luton High Street / Capstone Road / Street End Road;
- Pear Tree Lane / Hempstead Road / Hempstead Valley Drive, where the southern arm of the mini roundabout will be widened to increase capacity;
- Walderslade Road / Princes Avenue, where the existing mini roundabouts will be replaced with a signalised junction.

Full details of the junction assessment outputs are contained at Appendix F of the submitted Transport Assessment.

LANDSCAPE AND VISUAL IMPACT

9.8 Please refer to the landscape chapter of the Environmental Statement, which assesses the landscape impact of the proposal from agreed viewpoints and explains the mitigation provided and how the emerging design proposals have been landscape led.

ECOLOGY

9.9 The application is accompanied by an Extended Phase 1 Ecological Report and a full suite of surveys including;

- Wintering Bird Survey
- Dormouse Survey
- Breeding Bird Survey
- Badger Survey
- Amphibian Survey
- Reptile Survey
- Terrestrial Invertebrate Surveys; and
- Bat Survey

9.10 The large majority of the site is intensively cultivated arable land of negligible intrinsic value with occasional site value habitats including scrub and species-poor hedgerows bounding the site. The habitat of most value contained within the site is the aggregation of fragmented ancient woodland blocks in the immediate vicinity of the site.

9.11 A summary of the findings of the surveys is provided below:

APPENDIX 11.1 – PHASE 1 HABITAT SURVEY

- The survey concluded that areas of ‘botanical value’ were confined to field margins and woodlands, with only small fragmented areas of chalk grassland found within the Site.
- Buffer-zones, planted generously with native species, are recommended to all boundaries, with a minimum of a 15m buffer from the edges of the Ancient Woodlands of Whites Wood and North Dane Wood.

APPENDIX 11.2 – HAZEL DORMOUSE

- Dormice have been identified within the Site, with evidence of active, nesting and breeding dormice.
- Suitable dormice habitats within Site are confined to the Site margins of the Site; the Ancient Woodlands within and adjoining Field 1; and the dense scrub to the margins of Field 2.
- The Site is considered to be of Local Importance for dormice populations

APPENDIX 11.3 – BAT SURVEY

- It is concluded that the Site is of moderate to low quality in terms of its suitability for bats, with the vegetated boundaries / field margins, dense scrub and Ancient Woodland (within and adjoining the southern portion of the Site) providing higher quality ‘linear’ features for commuting and foraging bats.
- Two trees (T1 and T2) were identified to be of ‘moderate’ potential for bat roosts and are to be retained by the proposals.
- Bat diversity and activity across the Site was generally low, and it is concluded that the Site is of Neighbourhood Importance for bat populations.

APPENDIX 11.4 – BADGER

- Badger activity was identified on the Site, but only 1 badger sett within the Site was identified, found within the dense scrub between Field 2 and Field 3 (forming the northern portions of the Site).
- There were no well-worn badger tracks throughout the Site, being largely confined to field margins.

APPENDIX 11.5 – WINTERING BIRDS

- A variety of bird species were identified within and moving through / across the Site, some of which are known priority species, although many are also common to the area and widespread nationally.

- The Site and wider area (inclusive of woodland and scrub edge) are considered to be of ‘minor’ importance to the functionality of the Special Protection Area, with many adjoining habitats likely to support the species found within and near to the Site.

APPENDIX 11.6 – BREEDING BIRDS

- No Schedule 1 WCA or Annex I or II species were identified within the Site.
- The Site was concluded to be of Local Importance for breeding bird populations.

APPENDIX 11.7 – TERRESTRIAL INVERTEBRATE SURVEY

- Invertebrate species of significance were confined to the field margins within the Site and the denser areas of scrub. It is concluded that the central portion of the Site provides limited suitable habitat because of its arable nature.
- Due to the number and type of species identified, in limited parts of the overall Site, these small areas of the Site that do contain invertebrate species are considered to be of County Importance.

APPENDIX 11.8 – REPTILES

- The Site was surveyed as three distinct parcels of land due to lack of suitable reptile habitat between the parcels.
- It was concluded that suitable reptile habitat is restricted to approximately 1% of the total site area.
- The Site is considered to be of Local Importance for reptile populations

APPENDIX 11.9 – AMPHIBIAN

- There are no waterbodies within the Site. A single pond exists within 500m of the Site, which is of poor suitability for Great Crested Newts and is isolated from surrounding habitats. The pond is also inhabited by predators of Great Crest Newts.
- The Site is considered unlikely to be suitable for Great Crested Newts, and no further surveys are required.

9.10 The proposed landscape framework will create a biodiversity enhancement as explained in the supporting ecological surveys and reports. Overall, the design provides for;

- Appropriate buffer areas from the adjoining North Dane Wood and Whites Wood Ancient Woodland;
- Areas of the site where man orchids and hedgerows have influenced the design proposals and areas where slow worms have been identified are safeguarded or improved. The dormouse population is assessed as of Local Importance and measures to safeguard numbers are also reflected in the design approach;

9.12 Bat activity was generally identified as low, and diversity of species assessed as moderate. The landscape structure proposed for bats and the badgers and mammals will be safeguarded and enhanced. Bird assemblages were also low and considered of localised importance only

9.13 Policy for conservation and enhancement of the natural environment at all levels aims to ensure that the natural environment is protected by “minimising impacts on and providing net gains for biodiversity” (the Framework para 170). Accordingly, from the outset of the design process the applicant’s consultant ecologist has contributed to the design of the Landscape Strategy assessed in the Ecological Appraisal which accompanies the planning application.

9.14 The ecological mitigation strategy for the scheme includes 1) avoidance measures already embedded within the proposed Landscape Strategy assessed in the Ecological Appraisal; 2) measures which should be incorporated at the construction stage; 3) those which should be designed and specified within the landscaping scheme; and 4) management measures to ensure that the design vision is achieved in the long term.

9.15 It is concluded that the proposed development satisfies relevant planning policy for the conservation of the natural environment at all levels and the proposed development is commended to the council as an ecologically sensitive response to the challenge of contributing to the recently determined annual housing requirement.

ARCHAEOLOGY

- 9.16 The Archaeological and Heritage Assessment that accompanies the application concludes that there are no “in principle” constraints in respect of archaeological and heritage assets with regard to the development of the site and that no further work in respect of either designated or non-designated heritage assets will be required prior to the determination of the application
- 9.17 There will be no impact on the setting of any designated heritage assets identified in the wider study area and as such they do not impose a constraint on the development of the site.
- 9.18 However, there is a requirement for a trial trench evaluation of the site to be undertaken subsequent to the grant of planning permission and this can be the subject of a planning condition.

FLOOD RISK, SURFACE/FOUL WATER DRAINAGE

- 9.19 The site varies between 34.43m and 105.97 AODN and generally levels fall from south to north and west to east. The underlying bedrock is chalk with overlaying superficial deposits of head and clay.
- 9.20 The lowest point of the site which runs roughly parallel with Pear Tree Lane and Capstone Road is identified by the EA mapping as a low risk area of surface water flooding (refer to Page 5 of FRA). This narrow strip of land is also the only part of the total site comprising over 49ha within Flood Risk Zone 3. This lower lying land has been designed as a green corridor to ensure the overland flow path is not impeded and will continue to flow freely.
- 9.21 The FRA concludes that because of the topography and fact that there is an absence of combined sewers, the risk of the foul network surcharging is low. The outline layout locates dwellings outside the predicted land flood extents for the worst-case modelled scenario (1 in 1000-year extreme rainfall event) where flooding may occur along the narrow corridor of the site close to the eastern boundary which roughly corresponds with the surface water flow path.
- 9.22 The accompanying FRA shows the proposed development lies outside of the 1 in 100-year

floodplain and as a result, the proposal will not displace floodwater. Given that the site is greenfield, the surface water drainage strategy demonstrates how the impact of development will be mitigated to ensure runoff replicates the natural drainage characteristics of the site taking account of the fact that the site is located within Source Protection Zone 1 (SP21) (inner) and SPZ2 (outer) which provides additional safeguards for the ground water table below.

- 9.23 The surface water drainage strategy set out in the FRA follows pre-application consultation with the Environment Agency and the Lead Local Flood Authority taking into account the proximity of the site to the adjoining historic landfill site.
- 9.24 The strategy divides the site into 10 sub catchment areas;
- Water butts
 - Permeable surfacing
 - Bioretention swales ranging between 0.5m and 1m in depth and where on sloping ground will contain a series of cascading pools. This swale system will be landscaped and will have biodiversity value.
- 9.25 As a result of these measures the surface water drainage strategy shows that the volume of water discharged from the site during an extreme rainfall event is likely to be reduced as a result of the proposal, thus improving the potential impact of flooding to the surrounding area.

AGRICULTURAL LAND QUALITY

- 9.26 The application site consists of Grade 3a and 3b agricultural land. Grades 1 and 2 are classified as excellent and very good quality respectively and represent the best and most versatile agricultural land. The proposal therefore accords with paragraph 170 of the Framework. The Agricultural Land Classification Report forms part of the submission package.

SOCIO ECONOMIC BENEFITS

- 9.27 The proposal would provide market and affordable housing in an area where such accommodation is

needed. Although an outline proposal the affordable housing mix and tenure will be agreed with Medway Council's Housing Manager.

9.28 Specific benefits of the proposal include;

- The creation of a number of full-time jobs during the construction stage and associated with the school, surgery and supporting commercial/retail units;
- Up to 200 affordable dwellings of a mix of unit sizes and tenures;
- It is estimated that up to 800 dwellings will generate a gross annual expenditure from new residents of £21million. The report findings suggest that 50% of this gross annual expenditure (£10.5m) would be spent in the local area.
- The inclusion of a school, surgery, open space and local shop units that will serve as a community focus within the development
- The proposal will upgrade and deliver new footpath and cycleway connections particularly to Capstone Country Park which would be of benefit to the wider community in promoting alternative modes of travel to the car for those residents wishing to travel between Hempstead and Lordswood.

bring forward this housing development at the site in a rapid manner. For these reasons the site is both developable, capable of delivery and deliverable within the next five years, meeting Government policy in this respect as expressed in the Framework.

DELIVERABILITY

9.29 The application site is clearly developable. The Glossary to the National Planning Policy Framework defines developable as:

"To be considered developable, sites should be in a suitable location for housing development with a reasonable prospect that they will be available and could be viably developed at the point envisaged"

9.30 On the grant of planning permission development will commence within 18 months, the intervening period being required for the marketing and disposal of the site, the discharge of pre-commencement conditions and the submission of reserved matters.

9.31 All of the application site is within the applicant's ownership. A range of regional and national housebuilders have already expressed their desire to

10 CONCLUSION

- 10.1 The Framework makes it clear at paragraph 11 that plans and decisions should apply a presumption in favour of sustainable development and approve development that accords with an up to date development plan without delay. It goes on to say that where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, as is the case here, planning permission should be granted unless:
- i. The application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
- 10.2 Housing need as recently as November 2018 has been determined by the S of S as being 1,572 dwellings per annum. For the last 6 years completions in Medway have averaged 583 dwellings, about a third of what is required. In these circumstances and in the absence of a 5-year supply of deliverable housing sites it is necessary to expedite planning permissions for development on sustainable sites such as the application site.
- 10.3 The council has not yet produced an action plan as required by paragraph 75 of the Framework to remedy what is a severe housing shortfall, whilst progress on the replacement local plan and resultant lack of policy guidance is such that that document can be afforded limited weight at this stage although usefully recognising the difficult spatial options available in meeting housing need. The Local Plan review cannot progress further until the HIF Funding bid for £170 million of funding comprising;
- a) £86m on roads
 - b) £67million on rail and
 - c) £17million on other infrastructure contributions (which are likely to include health-hub/country park and sports and leisure facility).
- is decided upon. The bid expects to deliver 12,100 new homes at Hoo by 2043. This compares with the current Local Plan Requirement of 28,500 by 2035 and implies that the emerging plan will need to allocate further substantial sites in order to meet its housing requirement.
- 10.4 This statement has demonstrated that the proposal will contribute to meeting housing need and deliver significant social and economic benefits and that the environmental effects of the development can be appropriately mitigated. The proposal benefits from engagement with the South East Design Panel a greater understanding of the matters that the local community consider are most important, and early engagement with members, LPA officers and key stakeholders. It is also relevant that this submission is accompanied by an Environmental Statement.
- 10.5 With regard to paragraph 11 of the Framework, the suite of reports submitted with the application confirm that the proposed development would not conflict with those policies in the Framework that seek to protect areas or assets of particular importance, nor would it have any impacts that would significantly and demonstrably outweigh the benefits of the proposal. In these circumstances there is no reason to withhold planning permission and the application and is commended to the council.

Appendix 1

Gibraltar Farm Appeal

LPA Ref. MC/14/2395

Appeal Ref.APP/A2280/W/16/3143600

Appeal Allowed March 2016



Department for
Communities and
Local Government

Our Ref: APP/A2280/W/16/3143600

Mr Alister Hume
Hume Planning Consultancy Ltd
Innovation House
Discovery Park
Sandwich
Kent CT13 9ND

6 March 2017

By email: info@humeplanning.co.uk

Dear Mr Hume

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY MESSRS KD, JC & MC ATTWOOD
LAND AT GIBRALTAR FARM, HAM LANE, HEMPSTEAD, GILLINGHAM, KENT ME7
3JJ - APPLICATION REF: MC/14/2395**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Mrs Zoe Hill BA (Hons) Dip Bldg Cons (RICS) MRTPI IHBC, who held a public local inquiry opening on 4 October 2016 into your client's appeal against the decision of the local authority to refuse planning permission for the erection of up to 450 market and affordable dwellings together with provision of access, estate roads and residential open space, in accordance with application ref: MC/14/2395, dated 8 August 2014.
2. On 4 August 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves proposals for residential development of over 150 units or sites of over five 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.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed on the basis of the revised plans and planning permission be granted subject to conditions set out in Annex A.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with her recommendation. He has decided to allow the appeal.

Department for Communities and Local Government
Stephen Jewell
Planning Casework
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Tel: 0303 444 42110
Email: PCC@communities.gsi.gov.uk

A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

5. In January 2015 the Secretary of State refused to make a direction under s.98 of the Local Government, Planning and Land Act 1980 which the appellants had sought to secure access using land in the Council's ownership. A revised scheme was submitted with a single primary access point which only involves a modest area of land in the Council's ownership. The provision of an emergency access onto Ham Lane remains the same. The Inspector considered the appeal on the basis of the single primary access proposal (IR3). The Secretary of State notes (IR4-5) that revised plans were submitted and that she, along with the main parties agreed that consideration of the amended plans would not cause any prejudice to any interested party.

Policy and statutory considerations

6. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case the development plan consists of the saved policies of the Medway Local Plan (adopted 2003). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR11 (S4, BNE34 and BNE25).
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as Supplementary Planning Guidance; Medway Council Guide to Developer Contributions (2014) and Medway Landscape Character Assessment 2011 and the North Kent Strategic Housing and Economic Needs Assessment (SHENA) (2015).

Main issues

9. The Secretary of State agrees with the Inspector that the main issues are those set out at IR184.

The Planning Policy position

10. In the context of the development plan position set out above, three saved local plan policies are cited as being of relevance; these are BNE25, BNE34 and S4.
11. Like the Inspector, the Secretary of State notes that policy BNE25 relates to development in the open countryside and clearly seeks to restrict housing growth. He also agrees with the Inspector, that as it is agreed that the Council does not have a five year land supply, and given the advice in the Framework paragraph 49, policy BNE25 is out of date and should only be afforded limited weight (IR187). Additionally, and like the main parties and the Inspector, the Secretary of State agrees, for the reasons in IR188, that policy BNE34 should also be considered out of date and has similarly afforded the policy limited weight.

12. Policy S4 seeks 'a high quality of built environment' with 'landscape mitigation where appropriate'. The Secretary of State has considered the appeal scheme in the context of the Inspector's view of this policy at IR191. Like the Inspector, he agrees that it is not a policy which seeks to restrict development in this, or any other, location and as such, it is not a policy which is of significance in the determination of this appeal. The Secretary of State agrees and has gone on to consider two of the three policies (BNE25 and BNE34) further under the main related issue below at paragraph 14.

Housing land supply

13. The Secretary of State has carefully considered the Inspectors analysis and reasoning set out at IR194-200. He notes that the main parties agree that a 5 year housing land supply cannot be demonstrated and the Council acknowledges a supply in the range of 2.21 to 2.79 years. The appellant considers that even that level is optimistic (IR194) and the Inspector considers that the housing land supply is significantly lacking (IR197). Overall the Secretary of State agrees with the Inspector's conclusion at IR200, that the shortfall in five year housing land supply is so great and the pressure on sites is so significant, that it is inevitable that Greenfield land will have to be developed.

Character and Appearance of the Countryside which is also designated as part of the Capstone and Horsted Valleys ALLI

14. For the reasons set out at IR 201-225 the Secretary of State agrees with the Inspector and considers that the proposed development would harm the character and appearance of the immediate area and, therefore, fail to accord with the provisions of policies BNE25 and BNE34 (IR224). He also agrees that the harm would not represent a critical harm to the function of the Capstone and Horsted Valleys ALLI taken as a whole (IR224). Furthermore, given that policy BNE34 allows for development in an ALLI if the social and economic benefits of the proposal outweigh the local priority to conserve the area's landscape (IR225), the Secretary of State has gone on to consider these benefits for the appeal scheme.

Whether there are other benefits of the scheme

15. The Secretary of State agrees with the Inspector's consideration of matters other than housing land supply to be added to the planning balance (IR226-231). In this the Inspector attaches significant weight to the provision of (25%) affordable homes (IR226) as she does to the economic benefits (IR227). Furthermore additional weight is afforded by the Inspector to the benefit resulting from the open space, including a children's place (IR228) and modest, biodiversity and access benefit of the scheme (IR229). For the reasons set out in IR230-231, the Secretary of State agrees that the proposed landscaping/planting and New Homes Bonus Payments attract little and no additional weight respectively.

Other matters

16. For the reasons given at IR232-248 the Secretary of State has considered and agrees with the Inspector's conclusions in considering a range of matters raised by interested parties that do not reflect issues between the main parties.

Planning conditions

17. The Secretary of State has given consideration to the Inspector's analysis at IR170-172, the recommended conditions set out at the end of the IR and the reasons for them, and

to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework.

Planning obligations

18. Having had regard to the Inspector's analysis at IR173-183, the signed s.106 Unilateral Undertaking, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion in IR183 and that, other than in respect of the specific items referred to for the waste and recycling contribution, the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework as being necessary to make the development acceptable in planning terms, directly related to the development, and are fairly and reasonably related in scale and kind to the development.
19. The Secretary of State has taken into account the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project or type of infrastructure for which an obligation has been proposed in relation to the appeal. The s.106 Unilateral Undertaking contributions calculation is as set out at IR7 and accords with the Council's Medway Guide to Developer Contributions (2014) and provides for education, healthcare, open space, public transport, waste and recycling, community facilities, impact on the Medway Estuary Special Protection Area and affordable housing. However, in respect of certain aspects of the waste and recycling contribution, the Inspector does not consider that those aspects of the calculation are CIL compliant and does not take them into account in her appeal recommendation (IR179). Nonetheless, in all other respects, the Secretary of State concludes that the obligations are compliant with Regulations 123(3), as amended.

Planning balance and overall conclusion

20. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with saved policies BNE25 and BNE34 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
21. Given that policies for the supply of housing are out of date, the Secretary of State considers that paragraph 14 of the Framework is engaged. He has therefore considered whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies as a whole.
22. In terms of the sustainability, there would be economic gains from housing delivery, including affordable housing, and in the value of construction works and subsequent housing to the local economy. The Inspector also notes that the housing would be accessibly located, in close proximity to recreational facilities and local transport, and concludes this would make economic sense in terms of reducing the need for private car travel. The Secretary of State agrees that these benefits significantly outweigh the dis-benefits, in economic terms, of losing the site from agricultural use.
23. Turning to the social role the proposed dwellings would provide much needed homes, including affordable homes and this would provide for an improvement in peoples' quality of life. This is alongside some benefits for existing residents in terms of play space and

sustainable transport provision. Although there are concerns that existing residents may experience some detrimental impact on their amenity and not feel their views have been listened to. Like the Inspector, the Secretary of State considers, on balance that the social benefits weigh heavily in favour of the proposal.

24. The overall positive balance for the economic and social strands of sustainability from the development contrast with the environmental role where there is clear harm to this area of countryside which is locally designated for protection. However, the development would not lead to coalescence between Lordswood and Hempstead or critical harm to the ALLI's function. The Secretary of State therefore concludes that the sustainability of the appeal scheme along with the fact that the relevant policies for the supply of housing land in Medway are out of date, outweigh the landscape harm and other harm, and that the adverse impacts of the scheme do not significantly and demonstrably outweigh its benefits when assessed against the policies of the Framework taken as a whole.

Formal decision

25. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in the annex to this decision letter for the erection of up to 450 market and affordable dwellings together with provision of access, estate roads and residential open space.

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. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

28. 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.

29. A copy of this letter has been sent to Medway Council, and notification has been sent to others who asked to be informed of the decision.

Yours sincerely

S Jewell

Stephen Jewell
Authorised by Secretary of State to sign in that behalf

Annex A: List of conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins except that authorised by condition 4 below and the development shall be carried out as approved.

Reason for the condition: As required to be imposed by Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 18 months from the date of this permission. The development hereby permitted shall begin not later than 12 months from the date of approval of the last of the reserved matters to be approved.

Reason for the condition: For the avoidance of doubt and to ensure the satisfactory and prompt development of the site.

- 3) No development shall take place until a scheme of phasing for the dwellings and highways and drainage infrastructure and associated open space / green infrastructure has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme of phasing.

Reason for the condition: This pre-commencement condition is required to ensure that the key elements of each phase of the development is completed in an order which ensures that infrastructure needs, landscaping/open space and access are in place relevant to each phase before further development is undertaken, in the interests of good planning.

- 4) The development of Phase One as agreed by condition 3 above shall begin not later than 12 months from the date of the approval of reserved matters applications relating to that phase.

Reason for the Condition: To ensure a prompt start on site.

- 5) All reserved matters and details required to be submitted pursuant to condition 1 shall be in accordance with the principles and parameters described and identified in the Illustrative Masterplan (Drawing No. EDP1995/97a received 24/09/2015 and the Design and Access Statement (Revised 12/08 2014). A statement shall be submitted with each reserved matters application, demonstrating how the submitted reserved matters comply with the Design and Access Statement and the indicative Masterplan documents.

Reason for the condition: For the avoidance of doubt and to ensure the satisfactory development of the site.

- 6) No dwelling or ancillary building construction shall take place until details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Reason for the condition: As the scheme is a large new development with limited screening in the initial years this condition is necessary in the interests of visual amenity and to ensure the satisfactory development of the site.

- 7) No more than 450 dwellings shall be constructed on the site.

Reason for the condition: For the avoidance of doubt and given all assessments have been on the basis of this figure such that it is necessary to ensure the satisfactory development of the site.

Trees and Landscaping and Ecology

- 8) The plans and particulars required to be submitted in accordance with the condition 1 shall ensure that no less than 2.96 ha of the site is set aside as woodland, 0.531 ha as open space and play space and where the development abuts the adjoining ancient woodland a clear minimum of 15m landscape buffer area/zone shall be maintained.

Reason for the condition: To ensure adequate open space for future occupiers of the development and to provide for the interests of the ancient woodland.

- 9) The development shall not commence until an Arboricultural Method Statement (AMS) and Tree Protection Plan (TPP), which shall include details of all trees to be retained and removed, any facilitation pruning required and the proposed measures of protection, undertaken in accordance with BS 5837 (2012) 'Trees in Relation to Design, Demolition and Construction-Recommendations' has been submitted to and approved in writing by the local planning authority. The AMS shall include full details of areas of hard surfacing within the root protection areas of retained trees which should be of permeable, no-dig construction and full details of foundation design, where the AMS identifies that specialist foundations are required. The approved barriers and/or ground protection measures shall be erected before any equipment, machinery or materials are brought onto the site and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the areas protected in accordance with this condition. The siting of barriers/ground protection shall not be altered, nor ground levels changed, nor excavations made within these areas without the written consent of the local planning authority. The measures set out in the AMS and TPP shall be adhered to in accordance with the approved details.

Reason for the condition: This condition is required and to be agreed pre-commencement to safeguard the arboricultural interests of the site before works commence that could cause irrevocable harm and to ensure adequate maintenance for the protection of landscape and habitat in the interests of ecological and local amenity.

- 10) A Landscape and Ecology Management Plan (LEMP), including long term design objectives, management responsibilities and maintenance schedules with timetable(s) for works for all landscape areas, other than domestic gardens, shall be submitted to the local planning authority for approval in writing prior to the occupation of the development. The LEMP shall be carried out as approved in accordance with the approved timetable(s).

Reason for the condition: To safeguard the landscape and ecological interests of the site and to ensure adequate maintenance for the protection of landscape and habitat in the interests of ecological and local amenity.

- 11) No dwelling shall be occupied until a Woodland Management Plan (WMP) for the existing and proposed woodland areas has been agreed in writing by the local planning authority. That part of the WMP for Hall Wood Ancient Woodland shall be in accordance with EDP's Heads of Terms for a WMP (EDP report ref: C_EDP1997_07).

The WMP shall include the following:

- a) Review of existing constraints and opportunities;
- b) Management objectives and associated practical measures;
- c) Details of initial enhancements and long term maintenance;
- d) Extent and location/area of management works on scaled maps and plans at a scale which shall have first been agreed by the local planning authority in writing;
- e) Timetable for implementation demonstrating that works are aligned with the proposed programme of development;
- f) Details for monitoring and remedial measures; and
- g) Persons responsible for implementing the works.

The measures set out in the WMP shall be implemented in accordance with the approved details and timetable(s).

Reason for the condition: This condition is required to safeguard the woodland and to ensure adequate management for the protection of landscape and habitat in the interests of ecological and local amenity.

- 12) The development shall not commence until details of all fencing, walling and other boundary treatments, to include hedgehog holes have been submitted to and approved in writing by the local planning authority. The landscaping areas and buffer zones shall be implemented in full in accordance with the approved details before the first occupation of any of the dwelling as hereby approved, or in accordance with a programme to be agreed in advance in writing by the local planning authority. All boundary treatments and buffer zones to be installed in or adjacent the ancient woodland shall be carried out in accordance with the approved details.

Reason for the condition: This condition is required and to be agreed pre-commencement to safeguard the ecological interests of the site. The works subsequently required are necessary in the interests of residential and local amenity.

- 13) All planting, seeding or turving comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons for the phase to which it relates following the occupation of the first dwelling on that phase or the completion of that phase of development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of that phase of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason for the condition: This condition is required to ensure that the landscaping gets properly established which is particularly important to visual amenity given the size and partly open location of the site.

- 14) No works shall take place (including ground works and vegetation clearance) until an updated species survey has been carried out to inform production of an Ecological Design Strategy (EDS) addressing all species mitigation for all species recorded within the site has been submitted to and approved in writing by the local planning authority.

The EDS shall include the following:

- a) Purpose and conservation objectives for the proposed works;
- b) Review of site potential and constraints;
- c) Detailed method statements to achieve stated objectives for each species;
- d) Extent and location/area of proposed mitigation for all species on appropriate scale maps and plans;
- e) The location of bat and bird boxes and/or bricks and their specifications;
- f) Type and source of materials to be used (including whether or not they are native species and local provenance);
- g) Timetable for implementation demonstrating that works are aligned with the proposed programme of development;
- h) Persons responsible for implementing the works;
- i) Details of initial aftercare and long term maintenance;
- j) Details for monitoring and remedial measures; and,
- k) Details for disposal of any wastes arising from works.

The EDS shall be implemented in accordance with the approved details and retained thereafter.

Reason for the condition: This condition is required and to be agreed pre-commencement to safeguard the ecological interests of the site before works commence that could cause irrevocable harm and to ensure adequate maintenance for the protection of landscape and habitat in the interests of ecological and local amenity.

- 15) No part of the development hereby granted (including ground works and vegetation clearance) shall take place until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP: Biodiversity shall include the following:
 - a) Details of the areas where ancient woodland soil and coppiced stools are to be translocated and method statement for translocation;
 - b) Risk assessment of potentially damaging construction activities;
 - c) Identification of biodiversity protection zones;
 - d) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
 - e) The location and timing of sensitive works to avoid harm to biodiversity features;
 - f) The times during construction when specialist ecologists need to be present on site to oversee works;
 - g) Responsible persons and lines of communication;
 - h) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
 - i) Use of protective fences, exclusion barriers and warning signs; and,

j) Cordwood above 20cm in diameter from the site should be retained and placed within the site in locations and quantities to be agreed with the local planning authority prior to any tree felling take place.

The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority

Reason for the condition: This condition is required and to be agreed pre-commencement to safeguard the ecological interests of the site before works commence that could cause irrevocable harm and to ensure adequate maintenance for the protection of landscape and habitat in the interests of ecological and local amenity.

16) No external lighting fixtures or fittings shall be attached to any building or structure hereby approved and no free standing lighting equipment shall be erected on the site, other than those shown on the plans approved for condition 17 below or as may be agreed on a temporary basis under condition 15 during the construction period.

Reason for the condition: This condition is required to safeguard the ecological interests of the site.

17) No dwelling shall be occupied until a Lighting Strategy for Biodiversity, including a timetable for its implementation has been submitted to and approved in writing by the local planning authority. The strategy shall:

a) identify those areas/features on site that are particularly sensitive for bats, dormice and otters and that are vulnerable to light disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and

b) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy.

Reason for the condition: This condition is required to safeguard the ecological interests of the site.

Highways

18) The access to the site shall be from North Dane Way Drive as show in drawing 186-SK-006 Rev A and the emergency vehicular access shall be from Ham Lane.

Reason for the condition: In the interests of highway safety and emergency access, for the avoidance of doubt and to ensure the satisfactory development of the site.

19) Development shall not begin until details of the proposed emergency access have been submitted and approved in writing by the local planning authority. The approved emergency access shall be made available prior to the first occupation of any dwelling and thereafter retained for the purpose intended.

Reason for the condition: This condition is required in the interests of highway safety and emergency access.

- 20) No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
- i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities;
 - v) measures to control the emission of dust and dirt during construction; and,
 - vi) a scheme for recycling/disposing of waste resulting from construction works.

Reason for the condition: This condition is required to be addressed pre commencement as it relates to activities which would be likely to have an impact immediately upon first works on the site and it relates to the interests of highway safety and the protection of the environment.

- 21) No development hereby permitted shall commence until such time as the improvement works to the junction of North Dane Way and Albermarle Road and the link access road to the site as shown in the drawing 1661-SK-001 Revised A within appendix H of the Transport Assessment Report have been completed in accordance with details which shall first have been approved by the local planning authority in writing.

Reason for the condition: This condition is required pre-commencement as it is essential that safe access is provided to the site before activities commence on site in the interests of highway safety and the free flow of traffic.

- 22) No dwellings on the development shall be occupied until the carriageway(s) (including surface water drainage/disposal, vehicular turning head(s) and street lighting) providing access from the nearest public highway to that dwelling have been completed to at least binder course level and the cycle and footway(s) to surface course level.

Reason for the condition: This condition is required to ensure pedestrian and cycle and vehicular access is available for each dwelling before it is occupied in the interests of the welfare and safety of the occupiers of the related dwelling.

- 23) No dwelling shall be occupied until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.

Reason for the condition: To ensure highways are maintained in a safe condition for the protection of those using them.

- 24) No dwelling hereby approved shall be occupied until a travel plan based on the Framework Travel Plan has been submitted to and approved in writing by the local planning authority.

Reason for the condition: To encourage alternative means of transport to that of the private car in the interests of the environment.

- 25) Details submitted pursuant to condition 1 shall include a shared footway/cycleway on the north side of North Dane Way to link the development site with the Lords Wood Leisure Centre with associated improvements and street lighting.

Reason for the condition: To encourage alternative means of transport to that of the private car in the interests of the environment.

Archaeology

- 26) No development shall take place within any phase of the development until a programme of archaeological work has been secured and implemented in accordance with a written scheme of investigation for the relevant phase, which shall have first been submitted to and approved in writing by the Local Planning Authority.

Reason for the Condition: It is necessary for this condition to be a pre-commencement condition so that archaeological assessment can take place before the land is disturbed.

Flood Risk and Drainage

- 27) The first application for the approval of reserved matters on the site shall be accompanied by a sustainable surface drainage strategy for the entire application site. No dwelling hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the Local Planning Authority as part of the reserved matters applications for the phase within which the dwelling is situated.

Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system **in accordance with the principles set out in DEFRA's non-statutory technical standards for the design, maintenance and operation of sustainable drainage to drain surface water (or any subsequent version), and the results of the assessment provided to the local planning authority.** Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) include a timetable for its implementation; and
- iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

Reason for the condition: To ensure acceptable drainage of the site so as to minimise flood risk.

- 28) No dwelling in any phase of development hereby permitted shall be occupied until sewage disposal works for that phase have been implemented in accordance with a scheme which has first been submitted to and approved in writing by the Local Planning Authority.

Reason for the condition: To ensure acceptable foul drainage of the site.

Noise

- 29) No dwelling shall be constructed until an acoustic appraisal specifying attenuation measures (where necessary) has been submitted for approval in writing by the local planning authority. No dwelling shall be occupied until the approved attenuation measures have first been installed in accordance with the approved details. The approved attenuation measures shall be maintained and retained thereafter.

Reason for the condition: To ensure acceptable living conditions for future occupiers of the site.

Air Quality

- 30) The development shall not be commenced until an Air Quality report has been submitted to the local planning authority for its written approval. The report shall contain and address the following:
- i) An assessment of air quality on the application site and of any scheme necessary for the mitigation of poor air quality affecting the residential amenity of occupiers of this development.
 - ii) An assessment of the effect that the development will have on the air quality of the surrounding area and any scheme necessary for the reduction of emissions giving rise to that poor air quality. The assessment should quantify the measures or offsetting schemes to be included in the development which will reduce the air pollution of the development. Any scheme of mitigation set out in the subsequently approved report shall include a timetable for implementation. The development shall be implemented and managed in accordance with the approved scheme.

Reason for the condition: This condition is required as a pre-commencement condition as air quality needs to be initially assessed prior to any works of development commencing as they could alter background air quality levels and this condition is required in the interests of the environment and living conditions of future occupiers of the development.

Contamination

- 31) If during the course of development, contamination is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for a remediation strategy detailing how the contamination shall be dealt with. The remediation strategy shall be implemented as approved, verified and reported to the satisfaction of the local planning authority.

Reason for the condition: This area is prone to fly-tipping and therefore it is anticipated that as yet unidentified contamination may exist on site. In such circumstances it may be necessary for remedial works to take place in order that the land becomes safe for residential use.

Report to the Secretary of State for Communities and Local Government

by Mrs Zoë Hill BA(Hons) Dip Bldg Cons(RICS) MRTPI IHBC

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

Date: 5 December 2016

Town and Country Planning Act 1990
Appeal by Messrs KD, JC & MC Attwood
Against the decision of
Medway Council

Inquiry opened on 4 October 2016

Gibraltar Farm, Ham Lane, Hempstead, Gillingham, Kent ME7 3JJ

File Ref: APP/A2280/W/16/3143600

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Abbreviations

ALLI	Area of Local Landscape Importance
AMR	Annual Monitoring Report
AONB	Areas of outstanding natural Beauty
The Council	Medway Council
CIL	Community Infrastructure Levy Regulations
CPRE	Campaign to Protect Rural England
dpa	dwellings per annum
The Framework¹	National Planning Policy Framework
The Guidance	The National Planning Practice Guidance
ha	hectares
LCA	Landscape Character Assessment
LCT	Landscape Character Type
OAN	Objectively Assessed Need
PRoW	Public Right of Way
SHENA	Strategic Housing and Economic Needs Assessment
SLAA	Strategic Land Availability Assessment
SoS	Secretary of State
SPA	Special Protection Area
ZVI	Zone of Visual Influence

¹ (also referred to when quoted as NPPF)

File Ref: APP/A2280/W/16/3143600

Gibraltar Farm, Ham Lane, Hempstead, Gillingham, Kent ME7 3JJ

- 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 Messrs KD, JC & MC Attwood against the decision of The Medway Council.
- The application Ref: MC/14/2395, dated 8 August 2014, was refused by notice dated 27 January 2016.
- The development proposed is the erection of up to 450 market and affordable dwellings together with provision of access, estate roads and residential open space.

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

Procedural Matters

Determination

1. The Secretary of State (SoS) has directed that, in exercise of powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, he shall determine the appeal because it involves proposals for residential development of over 150 units or sites of over five 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.

Inquiry Dates

2. The Inquiry opened on the 4 October 2016 and sat for three days. The accompanied site visit was conducted on the 6 October 2016.

Plans and Planning History

3. In January 2015 the SoS refused to make a direction under s.98 of the Local Government, Planning and Land Act 1980 which the appellants had sought to **secure access using land in the Council's ownership**. That scheme included two main access points. In light of that refusal to make such a Direction, a revised scheme was submitted with a single primary access point which only involves a **modest area of land in the Council's ownership**. The provision of an emergency access onto Ham Lane remains the same. I have considered the appeal on the basis of the single primary access proposal.
4. During the appeal process, and prior to the Inquiry, an inaccuracy was found in the 'red line' site boundary. As a consequence revised plans were submitted with the appeal. Those plans show a fractionally smaller site. It makes no material **difference to the scheme proposed on the 'masterplan'**. The parties agree that consideration of the amended plans would not cause prejudice to any interested party and, from the evidence before me, I agree. The revised plans are: Illustrative Masterplan [Dr No EDP 1995/125] (dated 5 Sept 2016); Site Plan / Application Boundary Plan [Dr No EDP 1995/74d] (dated 5 Sept 2016); and, Informative to Application Boundary Plan [Dr No EDP 1995/124a] (dated 5 Sept 2016).
5. The advance planting plan, road access plan, site section plan and open space breakdown plan, which were submitted as part of the planning application as illustrative plans, also require consideration.

Environmental Impact Assessment

6. The application was screened by the Local Planning Authority which decided on 24 February 2014 that it did not require an Environmental Impact Assessment. I have no reason to disagree.

S.106 Unilateral Undertaking

7. A draft s.106 Unilateral Undertaking was submitted for consideration with the appeal proposals. A signed s.106, dated 6 October 2016, was submitted at the Inquiry. It varies in detail, but not principle, from the draft and, in broad terms, it provides for:

Education Contribution - £2,226,674

Affordable Housing – 25% to be affordable housing

Healthcare Contribution - £210,577

Open Space Contribution - £290,928

Public Transport Contribution - £201,843

Waste and Recycling Contribution - £69,948

Community Facilities Contribution - £61,519.50

Impact on the Medway Estuary Special Protection Area (SPA) Contribution (tariff) - £81,300.

8. Community Infrastructure Levy Regulations (CIL) compliance is dealt with later in this report.

The Site and Surroundings

9. The appeal site is some 23.93 hectares (ha) of mainly open agricultural land. It is bordered by Lordswood to the south-west and Ham Lane to the north. Beyond Ham Lane is the Elm Court Business Park². The western boundary is **formed by the farm building complex at Gibraltar Farm and the woodland 'Hook Wood'**. The east/south-east boundary is not marked by any specific feature but runs across an open agricultural field. A byway runs north-west to south-east through the appeal site. This would be retained in the proposed scheme.

Planning Policy

10. The Development Plan comprises the saved policies of the Medway Local Plan (May 2003).
11. The main parties agree that the saved policies which are relevant to the appeal are:

² I note that this site was also referred to as Elm Park, Elm Court Business Village, Elm Court Industrial Village and may be referred to by similar titles. For ease of reading I have adopted Elm Court Business Park throughout

Policy S4 - Landscape and Urban Design

Policy BNE34 - Areas of Local Landscape Importance

Policy BNE25 - Development in the Countryside

12. It is agreed between the main parties that little weight should be given to Policy BNE25. The pertinence and weight to be attached to the other policies was a matter of debate.
13. In addition, the following guidance is relevant to the appeal:
 - Supplementary Planning Guidance –
 - Medway Council Guide to Developer Contributions (2014)³
 - Medway Landscape Character Assessment 2011(LCA)⁴
14. The National Planning Policy Framework (the Framework) is a relevant material consideration.
15. The Medway Submissions Draft Core Strategy (2006-2028) was withdrawn. The emerging Issues and Options consultation seeks to identify contextual matters for the new Local Plan, rather than setting out detailed policies or site specific matters. It is currently envisaged that a new Local Plan will be submitted in early 2018.
16. The North Kent Strategic Housing and Economic Needs Assessment (SHENA) (2015) underpins the objectively assessed housing need (OAN) of 29,463 dwellings for the plan period (or 1281dpa). The Issues and Options Consultation makes it clear that Medway intends to meet the OAN for its area. The intention is that 25% affordable housing would be sought on sites of 15 or more units.

The Appeal Proposals

17. The application is described as the erection of up to 450 market and affordable dwellings together with provision of access, estate roads and residential open space. The highways access would be a continuation of North Dane Way which is to the north-east of housing in Lordswood⁵. The emergency access would be from Ham Lane at the opposite side of the site.
18. The scheme is in outline with only access for consideration at this stage and all other matters reserved for subsequent consideration. However, the illustrative Masterplan broadly identifies structural landscaping, open/play space, potential open water storage areas, retention of the public byway across the site, and primary and secondary vehicular routes.

Other Agreed Facts⁶

³ CD10.6

⁴ CD10.5

⁵ I note that in some places the address is given as Lords Wood – I have adopted Lordswood throughout this report

⁶ Key matters taken from the Statement of Common Ground CD8.1

19. **Housing Matters:** The site is not allocated for any development purpose in the Medway Local Plan and, as the land lies beyond the designated settlement confines, comprises countryside and is designated as an Area of Local Landscape Importance (ALLI).
20. The parties agree that Medway Council does not have a five year housing land supply. They acknowledge that at a recent appeal for land west of Hoo St Werburgh⁷ the Inspector concluded at paragraph 75 of his Decision that **Medway's five year housing land supply was within a range of 2.21 and 2.79 years.**
21. **The Council's Annual Monitoring Report (AMR) for 2014-15** sets out that housing completions in the years 2012-2015 respectfully were: 809, 565, 579 and 483 giving a total of 2436 dwellings.
22. It is recognised by both parties that the Framework supports housing and economic growth with a balanced approach applied through the presumption in favour of sustainable development. Paragraph 49 of the Framework states that relevant policies for housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. Medway Council acknowledges **in the officer's report that it does not have sufficient sites to meet the 5-year housing land supply.** It is agreed that, in line with the Framework, a 20% buffer should be applied given the recent rate of housing completions that are identified in the Annual Monitoring Report (AMR).
23. The parties agree that the Framework sets out a presumption in favour of sustainable development and that, in the context of Medway and the relationship of the site to the surrounding urban area, the site represents a sustainable location in accessibility terms and would contribute to the supply of housing, including market choice and affordable provision, to meet a persistent record of under delivery relative to annualised targets.
24. There is no dispute that the site is readily deliverable and could make a short term contribution to supply and the agreed timing conditions would help to accelerate delivery.
25. **Heritage Matters:** The site contains no designated or non-designated heritage assets. Nor does it form part of or affect the setting of any conservation area or listed building. It is also agreed that an archaeological investigation condition would safeguard any archaeological potential of the site.
26. **Design and Residential Amenity:** The parties agree that the masterplan accompanying this outline scheme, combined with the distance of separation from existing housing and proposed buffer landscaping, would allow the site to be developed for up to 450 dwellings without material harm to the living conditions of existing residential occupiers in terms of overshadowing, overlooking and conventional expectations of distances of separation required for providing adequate outlook from property windows.
27. **Flood/Drainage and Sewage:** There is agreement between the parties that flooding, drainage and sewerage considerations have been properly addressed

⁷ CD10.7 APP/A2280/W/15/3132141 (dated 6 September 2016)

within the outline planning proposal subject to the imposition of appropriate planning conditions.

28. **Air Quality Noise and Contamination:** There is agreement that the impact of the proposed outline development on living conditions in the locality would be acceptable with suitable mitigations that can be secured via appropriate conditions.
29. **Agricultural Land Quality:** It is agreed that the appeal site consists of Grade 3a and 3b agricultural land - classified as good to moderate quality. The proposal therefore meets the requirement of the Framework at paragraph 112, which seeks to protect the best and most versatile agricultural land.
30. **Ancient Woodland:** It is accepted that the small area of woodland that would be required for access contains no significant tree specimens. The proposal includes some 2.96ha of new woodland and additional open space that would be safeguarded by planning conditions. It is accepted by both parties that the loss of Ancient Woodland is minor and offset by mitigation in the form of new woodland and open space, in line with paragraph 118 of the Framework. The parties have agreed planning conditions which seek to ensure that proposed housing would not encroach within a distance of 15 metres from the Ancient Woodland. This is reflected within the illustrative masterplan.
31. **Highways:** The parties agree that there is no highway objection to the appeal scheme.

The Case for Messrs KD, JC & MC Attwood (the Appellants)

The Appellants' Introduction

32. The appellants' contend that the key issues are the policy framework and particularly the weight to be attached to the development plan; whether the appeal proposals would cause harm to the ALLI, or to a valued landscape; and if so, the magnitude of that harm; and, whether the harm significantly and demonstrably outweigh the benefits of the scheme.

Weight to be attached to the Development Plan

33. It is common ground that s.38(6) of the Planning and Compulsory Purchase Act 2004 (s.38(6)) requires the decision taker to start from the development plan.
34. It is common ground that the appeal proposal conflicts 'in principle' with Policy BNE25 of the Local Plan which resists most development in the countryside, and that, in the absence of any other material considerations, this would indicate that permission should be refused.
35. However, it is also common ground that the Framework is an important material consideration which is capable of justifying a decision other than in accordance with the development plan. In particular, paragraph 49 advises that the relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year housing land supply. Where relevant policies are out-of-date, the presumption set out in paragraph 14 is engaged.
36. **The appellant's take the view that it is wrong to say that the bar set by s.38(6) is a high one in terms of according with the development plan. S.38(6) doesn't**

- include weighting as some other parts of statute do (for example green belt or listed buildings) rather the weighing of other material considerations is one for the decision maker.
37. In this appeal, the key development plan policies relied on (BNE25 and BNE34) are both agreed to be relevant policies for the supply of housing within the meaning of Framework paragraph 49. Since the Council does not have a five year housing land supply, those policies are out-of-date.
38. As the Court of Appeal made clear in *Suffolk Coastal District Council v Hopkins Homes*⁸ (Suffolk Coastal), the fact that the policies are out-of-date does not mean that they are necessarily irrelevant, or must be given no weight: rather weight is ultimately a matter for the decision-maker.
39. However, the Framework is clear about the weight to be attached to policies that are out-of-date. In particular, paragraph 14 of the Framework advises that, where relevant policies are out-of-date, permission should be granted unless ***“any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”***.
40. There are two important components in the para 14 formulation. Firstly, what is important is not harm when assessed against the out-of-date development plan policies, but harm when assessed against the Framework as a whole; and secondly, the starting point is that permission should be granted, unless the harm ***“significantly and demonstrably outweighs the benefits”***.
41. As the Court of Appeal made clear in *Suffolk Coastal* it is for the decision-maker to decide what weight is to be given to Framework policies, and the weight to be given to policies of the development plan is not dictated by the Framework. In the present case, the decision-maker will be the same SoS who is responsible for the Framework. While the SoS is perfectly entitled to disregard his own policy, he would need good reasons for so doing and would want to be careful about the precedent this might set for others.
42. This is a straightforward case for the application of paragraph 14 of the Framework. The appellants have considered each of the policies referred to in the reasons for refusal in light of this context.
43. **Policy S4 states that: “A high quality of built environment will be sought from new development, with landscape mitigation where appropriate. Development should respond appropriately to its context, reflecting a distinct character.”**
44. It was accepted by the Council that there is no reason why the appeal scheme could not satisfy the first part of the policy: **the Council’s complaint relates to the second part.**
45. **In the appellants’ submission, when policy S4 is read together with its reasoned justification, it is clear that it is primarily intended to govern issues of detailed design, rather than the location of new development. However, if it provides locational guidance of any relevance to this appeal, it was accepted by the Council that it adds nothing substantive to policies BNE25 and BNE34.**

⁸ CD11.2

46. **Policy BNE25** is a typical old style countryside policy, premised on the need to protect the countryside for its own sake. It creates an 'in principle' policy objection to any form of development which does not fall within the categories listed in its sub-paragraphs; this position exists irrespective of the quality or value of the countryside in which that development is proposed and of whether the development would cause harm. In all these respects, it is completely inconsistent with the Framework.
47. Further, in circumstances where the Council does not have a five year housing land supply, the Council **accepts that it will not be possible to meet Medway's** housing needs without the release of greenfield sites beyond the built up area. It is therefore difficult to see how any weight could rationally be attached to the 'in-principle' conflict with policy BNE25.
48. This leaves the first limb of the policy, which states that development in the countryside will only be permitted if it maintains and wherever possible enhances the character, amenity and functioning of the countryside. For the Council it is argued that this part of the policy is consistent with the Framework, in as much as its paragraphs 17 and 109 both seek to protect the countryside. However, the fact that there is an overlap in the subject matter of policy BNE25 and paragraphs 17 and 109 is not enough to make the development plan policy consistent with the Framework, because of the way in which the Framework tells us how the countryside should be protected.
49. In that regard, paragraph 17 of the Framework speaks only of recognising the intrinsic character and beauty of the countryside, which is some way short of requiring the character, amenity and functioning of the countryside to be maintained and enhanced. Paragraph 109 speaks only of protecting valued landscapes, whereas BNE25 applies to all countryside. Moreover, it is implicit in the policy BNE25 criterion (i) requirement that character, amenity and function are maintained and that the policy requires development to cause no harm. In contrast, where there is a shortfall in the five year housing land supply, but meeting housing need conflicts with paragraphs 17 and 109, paragraph 14 tells us how that balance should be struck, in terms which expressly recognise that this may mean doing harm to the countryside.
50. Once these elements are stripped out of policy BNE25, it is difficult to see what is left. Consequently, if one seeks to protect the countryside in a way which is consistent with the Framework, there is no need to look to policy BNE25 to know how to do it: the answer is in the Framework itself. The Council's **planning** witness confirmed that he was not seeking to resile from the SoCG, which states that little weight should be attributed to policy BNE25. That was also the view of officers when reporting the Mierscourt application to committee⁹, and of the Inspector dealing with the Station Road appeal¹⁰. Reference to the Audlem Road decision¹¹ **to seek a contrary view ignores the evidence of the Council's** witness and SoCG.
51. **Policy BNE34** is accepted by the Council to be a relevant policy for the supply of housing. Nonetheless, the Council seeks to argue that it should be given
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⁹ CD11.7

¹⁰ CD11.3 para 14

¹¹ CD11.4

- considerable weight, on the basis that it is consistent with Framework paragraph 109. The appellants do not share that view.
52. As the 2011 Landscape Character Assessment (LCA) observed¹², national policy has for some time discouraged the protection of landscape via rigid local landscape designations, and has instead advocated the use of criteria-based policy guidance. Further, as the Gleaming Wood¹³ Inspector points out, it should be based on objective landscape character assessment rather than qualitative perception. In contrast, policy BNE34 is clearly based on a rigid designation and, as two Inspectors have now pointed out, there is no evidence that it was ever underpinned by an objective landscape character assessment. In neither respect is it consistent with the Framework.
53. The Framework expects development plan policies to be up-to-date. The ALLI designation dates back to 1992. There is no evidence that the appropriateness of either the designation generally or that the detailed boundaries have ever been reviewed since that time. Further, when the SoS saved the policy in 2007, he did so specifically to give Medway a chance to justify the continued retention of the policy. In the 9 years since that letter, no justification has been forthcoming.
54. Although the 2011 LCA assesses the landscape character of all the ALLIs it makes no recommendations as to the retention of the designation generally or the validity of particular boundaries. That is to be expected given that the **LCA's** recognition that national policy guidance proposed the replacement of rigid local landscape designations. The LCA was intended to provide the basis for such a replacement policy, not the justification for retaining policy BNE34.
55. The absence of an up-to-date review justification is all the more critical, given the way in which the ALLI designations have been tightly drawn around the main urban areas of Medway. Effectively, policy BNE34 means that any proposal for a sustainable urban extension to meet housing needs will be contrary to policy. However, this conflict is inevitable given that Medway cannot demonstrate a five year housing land supply. In these circumstances, meeting the future housing needs of the district will necessarily involve development within areas designated as ALLIs. Indeed, in resolving to grant permission for the Mierscourt application, the Council has recognised that this is the case. The Station Road appeal decision¹⁴ is to similar effect. Further, as the LCA makes clear, there are significant differences in the quality and importance of the landscape areas within individual ALLIs. This is precisely why the Framework has moved away from the concept of blanket designations and towards a criteria-based approach, informed by objective landscape character assessment.
56. The policy BNE34 approach to balancing harm is markedly different to paragraph 14 of the Framework. Whereas paragraph 14 requires permission to be granted unless the harm significantly and demonstrably outweighs the benefits, in policy BNE34 the presumption is the other way around.
57. Between **them, the Council's witnesses** accepted that each and every one of these points reduced the weight which should be attached to policy BNE34.

¹² CD10.5 page 2

¹³ CD3.5 Appeal Ref: APP/U2235/W/14/2227572 & 3132364

¹⁴ CD11.3

Thus, the appellants contend it is difficult to see how the policy could have considerable weight. Such an approach stands in stark contrast to the advice given to members when the Mierscourt application was reported to committee with a recommendation for approval. In that case, officers concluded that policy BNE34 should only be given limited weight, notwithstanding the fact that that was a case in which they considered there would be significant harm to the ALLI.

58. Policy BNE34 may be claimed to be about protecting valued landscapes in line with the Framework. However, this overlooks the inconsistency between policy BNE34 and the Framework over the way valued landscapes should be protected, and how any conflicts should be balanced.
59. **The Council's planning witness** contended that there was no difference between the balancing exercise in policy BNE34 and that in paragraph 14 but he accepted that, when making a decision on the appeal, the approach in paragraph 14 should be applied. If the SoS wishes to act consistently with his own policy this must be done. If one wants to understand how the Framework considers things should be done, there is no need to refer to policy BNE34: all that is needed is Framework paragraph 109, read together with paragraph 14.

Whether the appeal proposals would cause harm to the ALLI, or to a valued landscape; and if so, the magnitude of that harm

60. The first question to be considered is whether the appeal site is, or forms part of, a valued landscape. It is common ground that value is not to be equated with popularity, and that what one is looking for is some demonstrable physical attribute which lifts a site out of the ordinary.
61. The appeal site lies within an area which has been designated in a Local Plan as an ALLI which can be taken as evidence that it is valued. However, just as **landscapes can be valued even though they are not designated, as the Council's landscape witness agreed**, the ALLI designation does not necessarily equate to value. For the reasons set out above, it is necessary to be careful about assuming that the ALLI designation is an assessment of value in the sense referred to in Framework at paragraph 109. Value is not an on or off switch. There is a hierarchy of landscape designations, with higher value placed on national designations such as AONBs. Even within single designations, there will be parts of the landscape that have greater value than others.
62. As their name suggests, ALLIs are a local designation. Consequently, we are not dealing with an AONB, a National Park or even a county-wide designation such as a Special Landscape Area. This does not mean that ALLIs are not valued, but it means that their value is towards the lower end of the spectrum. It is therefore important not to apply the same rigorous standards that would be expected in an AONB.
63. It is necessary to assess whether the landscape in which the appeal site sits has demonstrable physical attributes which raise it above the ordinary. It is common ground between the parties that, when considering whether the appeal site has such attributes, it is helpful to start from the 2011 LCA. As the LCA makes clear¹⁵, while the ALLI for the Capstone area as a whole has some demonstrable

¹⁵ CD10.5

- physical attributes which engage paragraph 109 of the Framework, not all parts of the Capstone ALLI are equally valuable. The LCA does not seek to rank the ALLIs but nor does it suggest that they are of equal value; what it does is to provide some information for comparison.
64. **The appeal site lies within the 'Elm Court' landscape** character type (LCT). In that context, it has value in terms of its spatial and recreational function. However, there is nothing about the fabric of the land which takes Elm Court out of the ordinary. This is borne out by the LCA, which describes Elm Court as being characterised by indistinct field patterns, a lack of containment, the discordant presence of the Elm Court Industrial Estate, monotonous open farmland, and urban fringe activities such as fly tipping.
65. In short, Elm Court is part of a wider valued landscape, but the Elm Court LCT is in poor condition overall, and has significantly less value than the other LCTs which make up the wider Capstone ALLI. Moreover, this specific proposal leaves the roles of the wider ALLI to the north unaffected. Paragraph 109 of the Framework is engaged, but very much at the lower end of the spectrum.
66. It is in this context that the harm which would be caused should be assessed. In **this regard, the Council's** landscape witness identifies the key attributes of the ALLI as being a green wedge linking urban communities into the wider countryside, preventing coalescence of Lordswood/Princes Park and Hempstead, being a rural landscape in close proximity to the urban area, contributing to the wider landscape setting of Capstone Farm Country Park and, contributing to the setting of the Kent Downs AONB.
67. **The Council's landscape witness agreed that the contribution to** the setting of the Kent Downs AONB was a secondary issue, and he made no issue in respect of the contribution to the setting of Capstone Farm Country Park.
68. Turning to the matter of the site being part of a green wedge linking urban communities into the wider countryside, it is relevant to consider the size of the ALLI as a green wedge (**the Council's** viewpoint 1 is, in the appellants' view, a good illustration). The ALLI totals over 575ha, and extends for almost 4km north of the appeal site up to Darland Banks, along two sharply incised valleys. The appeal site is invisible from the urban edges to the north, and for residents along 90% of **the ALLI's boundaries there would** be no change in their sense of being linked to the countryside.
69. **The Council's landscape witness** referenced his concerns to what he described as the flow of countryside from north to south. However, the LCA notes that there are few footpaths in the ALLI which run north-south, and none which run the length of the ALLI in that direction. To the extent that the flow can be experienced in a single journey, it is most likely to be in a car or on a bicycle, travelling the length of Shawstead Road/Ham Lane or Capstone Road/Lidsing **Road. In the appellant's** view the appeal scheme would not materially affect the extent to which that journey is experienced as being a journey through countryside.
70. Turning to the prevention of coalescence between Lordswood/Princes Park and Hempstead, there is no doubt that the appeal proposal would narrow the gap between these settlements in this particular location. However, the effect of this would be localised. In the extensive areas of the ALLI to the north, there would

still be very substantial separation between the urban areas to the east and west, and development on the appeal site would have no effect on this at all. Even within the immediate locality, there would still be a gap of at least 0.5km between the two settlements. Elsewhere within the LCA, the authors of that document recognise that areas of land such as the Horsted Valley still manage to fulfil the function of preventing coalescence, even though they are narrower than would be the case for this location were the scheme developed.

71. It is also important to consider the extent to which the reduction in the gap would be perceived once the proposed mitigation has matured. In this regard, it is worth reflecting on the extent to which the existing urban development on either side of the ALLI is already largely screened by woodland. In time, there is no reason why development on the appeal site should be any different.
72. As to the importance of the site as a rural landscape in close proximity to the urban area, the appeal proposals would inevitably change the character of the existing open field. However, although residents of the nearest parts of Lordswood would have a slightly longer walk to get there, they would still be able to access open countryside via the footpaths through the site. Moreover, the development would provide its own areas of open space for recreation, as well as better managed access to Hall Wood.
73. In considering **the Council's** criticisms, it is important to recognise the extent to which these impacts are localised. In considering the functions and value of the ALLI as a whole, the appeal scheme would have a negligible effect. Further, a number of the impacts are time limited. In the medium to long term, any visual harm would be substantially mitigated by the landscape proposals and, in particular, the 20m wide block of woodland which is proposed for the southern boundary of the site.

Whether the harm significantly and demonstrably outweighs the benefits of the scheme

74. It is common ground that whatever the precise figure, the shortfall against **Medway Council's five** year housing land supply is significant. In the words of the Moor Street Inspector¹⁶, **the situation is "parlous"**. Leaving the disagreement over landscape impacts to one side, the appeal proposal site is in a sustainable location. The provision of 450 houses with ready access to jobs, services and public transport would **make a valuable and sustainable contribution to Medway's** housing needs, and that is a matter to which significant weight should be given.
75. The only area of uncertainty relates to precisely how bad the shortfall in the five year housing land supply is. In this regard, the SoS may take the view that, even on the best estimate, the Council is so far short of its requirement that the exact figure is of limited relevance. However, in Suffolk Coastal, the Court of Appeal indicated that the magnitude of the shortfall will be important in determining the weight to be attached to development which will address that problem.

¹⁶ CD11.5 Appeal Ref: APP/A2280/W/15/3012034

76. In terms of need, the appellants are content to accept the Moor Street **Inspector's conclusion that the total requirement** (recovering a backlog of 2215 units within the next 5 years and adding a 20% buffer) is 10344, or 2068 dpa.
77. At the Moor Street appeal, the Council claimed a supply of 5587 units, which equates to a 2.7 year supply. However, in the more recent Hoo St Werburgh appeal¹⁷ the Inspector concluded that the 5 year housing land supply was somewhere between 2.21 and 2.79 years. Precisely how this range was arrived at is not clear from the decision letter **but, despite the Council's planning witness** referring to 2.7 years, the SoCG records that the Council now considers that the correct figure lies within the range identified at Hoo St Werburgh.
78. As the Hoo St Werburgh decision records, the range of 2.21 to 2.79 years was arrived at without any exploration of the supply side. It is this aspect, or the lack of transparency which surrounds it, which results in concern about the robustness of the 2.21 to 2.79 range. In particular, the appellant has been unable to unearth any document which clearly explains what the Council considers its supply side is, and how that figure has been arrived at.
79. A table from the appendices to the 2015 AMR has been submitted¹⁸ which appears to have been the source of the 5587 figure relied on at Moor Street. That table provides a breakdown between sites with planning permission, allocations, sites from the latest Strategic Land Availability Assessment (SLAA) and windfalls. While that document answers some questions, it raises others.
80. In particular, the Housing Trajectory table¹⁹ shows large sites with planning permission for 3649 units. However, elsewhere the 2015 AMR records that the SLAA has identified 12808 sites of which 11481 do not have planning permission, which suggests that there are only 1327 units with planning permission²⁰. That is **less than one year's supply. The difference is not explained, nor are we able to** interrogate the list of large sites to understand what assumptions have been made with regard to phasing.
81. The overall total includes in the five year housing land supply two allocations from the 2003 Local Plan which begin to deliver a projected 232 dwellings starting mid-way through the five year period. However, it is impossible to tell why, having been allocated for 15 years, it is assumed that they should suddenly come to life now. There is no way of identifying the basis on which it has been concluded that the sites from the SLAA are deliverable.
82. **In circumstances where it is not possible to interrogate the Council's figure and** so test its reliability, the appellants' **planning witness** has taken an alternative approach based simply on looking at what the Council has managed to deliver over the last five years. He readily accepts that that is not a conventional approach to deciding what is on the supply side, but the reason why he has done it is because it has not been possible to find (and the Council has not been able to provide) any better information from which to work.

¹⁷ CD10.7

¹⁸ Inquiry Document 9

¹⁹ Inquiry Document 9 p.112

²⁰ CD10.3 p.4

83. Working on this basis, for the appellants it is considered that the five year housing land supply could be as low as 1.5 to 1.8 years, depending on whether the backlog is spread over the remaining plan period (**'Liverpool' approach**) or made up in the next five years (**'Sedgefield' approach**).
84. In this regard, attention is also drawn to the fact that, when reporting the application for residential development at Mierscourt Road to committee in June **this year, the Council's Head of Planning advised members that Medway had "more like a two year supply"**.
85. In the appellants' submission, it is worrying that the Council appears to have so little idea of what the true position is, and is unable to provide the basic data from which a meaningful figure could be calculated. The appellants are not in a position to fill that gap definitively, but in their submission there is a very real possibility that the true five year housing land supply position is even worse than the Hoo St Werburgh decision suggests.
86. Second, the appeal scheme would deliver 25% affordable housing. The significance of this can be gauged from the Moor Street decision, where the Inspector records that the need is for 713 affordable homes per year over the plan period, but that over the last four years the Council has delivered only 845. In other words, the Council is currently achieving only 30% of the affordable housing required. In those circumstances, the potential for up to 112 units from the appeal scheme is also a matter to which considerable weight should be given.
87. Third, it is common ground that the appeal scheme would bring economic **benefits. The government's views on the importance of this** are well known. In this case, during the construction period the appeal scheme would provide jobs and training opportunities for local people, as well as spend in the local economy. In the longer term, occupants of the new development would provide additional expenditure to support local services.
88. Fourth, the appeal proposals would bring forward social and environmental benefits in the form of 5.67ha of open space, including a community park and **children's play area**.
89. Fifth, there would be significant environmental benefits from the woodland management plan for Hall Wood. Hall Wood is currently not well managed and, as a result, suffers damage from unregulated access and fly-tipping. The proposed Woodland Management Plan (WMP) would address these issues, benefitting the ancient woodland itself, and its value for recreation and biodiversity.
90. Sixth, there would be 2.96ha of new woodland planting. This would also improve biodiversity and address the LCA objectives of introducing new planting to provide a strong landscape framework into which future development can be absorbed. It would also strengthen the landscape structure by breaking up the monotony of the open farmland with new woodland planting.
91. **The Council's landscape witness** accepted the benefits of this new woodland planting for biodiversity, but was critical of its location on the grounds that this was arbitrary, lacked historical justification and, being a straight line, would look out of place. However, in light of the widespread clearance of woodland in the

- last half century to create Lordswood, the LCA specifically advocates new planting in the Elm Court LCT.
92. In fact, there has historically been planting along the line of parts of the southern boundary. There is certainly as much justification for planting along this line as there is for anywhere else. In any event, planting does not have to be historically accurate to achieve the LCA objectives of strengthening the landscape structure and breaking up the monotony of the open farmland; nor does it have to be historically accurate to deliver much needed habitat and biodiversity improvements.
93. The southern boundary is not a straight line, nor is there any reason why it should be perceived as such. Moreover, when looking at a layered woodland backdrop, it can be difficult to perceive differences in the depth of field.
94. In the appellants' submission, the new woodland would emulate the wooded character of surrounding settlements, and so be appropriate in context, as well as **enhancing the appeal site's denuded ecological interest.**
95. Seventh, there would be additional receipts to the Council in the form of New Homes Bonus and a capital receipt in excess of £4m for the small area of land required for access. Despite some initial reluctance to do so, the Council eventually accepted that this latter point was a relevant consideration. It is a benefit which would flow directly from the grant of permission, and so is plainly a matter to which weight should be given.
96. In summary, there would be significant and material benefits under each of the three dimensions of sustainable development.
97. In considering the weight to be attached to them, the appellants draw attention to one final factor which is the prospect that, in the absence of the release of sites such as the appeal site, Medway would not be able to meet its housing needs. On this issue, it is noted that when bringing forward the (now abandoned) 2012 Core Strategy, the Council itself recognised that achieving even 815 dpa would be challenging. Since then little has changed. However, the requirement has gone up by over 60% since that time because of undersupply. The OAN figure spans the period 2012 to 2035. In the first four years of that period the Council has consistently failed to hit the required target to the extent that there is already (as at December 2015) a shortfall of 2215 dwellings. **The Council's trajectory for 2017/18, 2018/19 and 2019/2020 requires delivery of 1259, 1239 and 1581 dwellings respectively.** This level of delivery has never been achieved at any time in the last 25 years. It is somewhere between 2 and 4 times what has been achieved in the last three years. Without a major injection of new sites, it is simply not credible.
98. There is no realistic prospect of the need being met by the Council through the development plan process at any time in the near future. The 2003 Local Plan is 10 years past its end date. If there are any unused allocations from that plan, the fact that they have not already been taken up must raise a significant question over their deliverability. Medway has twice tried and failed to bring forward a replacement development plan. Its third attempt has only just reached **the issues and options stage. Even on the Council's best estimates, it is unlikely to be adopted before the end of 2018/early 2019.**

99. **There are good grounds for caution in accepting the Council's estimates** of its housing land supply. In particular, although Lodge Hill is not relied on as part of **the Council's five year housing land supply**, it is clear that this site remains a key issue for the Council. It is difficult to see how it can progress the Local Plan much further until the Lodge Hill situation has been resolved.

The Appellants' Conclusion

100. This case falls squarely within paragraph 14 of the Framework. Permission **should be granted unless the harm "significantly and demonstrably outweighs"** the benefits, when assessed against the policies in the Framework as a whole.
101. There would be some localised harm to the landscape. However, harm of this sort is going to be inevitable, somewhere within Medway, if the Council is going to meet its housing needs.
102. Against this, both individually and cumulatively, the benefits of the scheme are considerable, and cover all three dimensions of sustainable development. **The harm does not "significantly and demonstrably" outweigh those benefits.**
103. If, the SoS decides to give policy BNE34 any material weight, the issue of balance would be addressed slightly differently, but the answer would remain the same, that is the economic and social benefits of the appeal scheme are so important that, **on the facts of this case, they "outweigh the local priority to conserve the area's landscape"**.
104. Either way, **it is the appellants' view that** the overall balance is firmly in favour of the grant of permission.

The Case for Medway Council

The Council's Introduction

105. It is common ground that the appeal proposal breaches saved Local Plan policy BNE25, such that under the first limb of s.38(6), the appeal should be dismissed **"unless material considerations indicate otherwise"**. The same point also applies if the development breaches policies BNE34 and S4, as the Council maintains.
106. Before jumping to material considerations (primarily that the Council cannot demonstrate a five year housing land supply), it is necessary to consider the nature and extent of the breach of the development plan²¹. Local Plan policy **BNE25 is an 'in principle' policy** in the sense that it tells the reader that development is not acceptable here. It is not a policy that deals with detail or minutiae, but rather the fundamental question of whether it is acceptable under the Local Plan to build here. Policy BNE34 requires an analysis of the nature of the proposed development in terms of the criteria of the policy. Policy S4 seeks development to respond appropriately to its context, reflecting a distinct local character.

²¹ **Tesco Stores Ltd v Dundee City Council [2012] UKSC " Where it is concluded that the proposal is not in accordance with the development plan, it is necessary to understand the nature and extent of the departure from the plan which the grant of consent would involve in order to consider on a proper basis whether such a departure is justified by other material considerations." (Lord Reed [22])**

107. The Council considers that the proposed scheme conflicts with these policies. Therefore, given the breach of the countryside (BNE25), the ALLI (BNE34) and landscape and urban design (S4) policies, building up to 450 dwellings here would constitute a significant breach of, and inconsistency with, the Development Plan.
108. Thus, when it comes to the issue of whether material considerations indicate that the appeal should be allowed, rather than dismissed, because of its breach of the development plan, the question to be asked is whether those material considerations are sufficiently weighty to justify sanctioning a significant departure from the development plan.
109. Further, in order to allow the appeal, not only must the material considerations be judged to be as weighty as explained above, they must also be sufficiently weighty to justify not according the development plan ***"the priority which the statute has given it"***.²² In other words, the bar is set high.

Housing Land Supply

110. As made clear in the SoCG, the Council accepts that it cannot demonstrate the requisite five year housing land supply, that the shortfall is substantial and that the housing land supply position is a significant material consideration in the determination of the appeal. Despite **the appellants' acceptance of this**, some Inquiry time was spent in **cross examining the Council's planning witness** on housing supply.
111. The SoCG records that the most recent appeal decision²³ concluded that the supply was within a range of 2.21 to 2.79 years. **The appellants' planning witness** suggested 1.8 years, albeit based on what he accepted was an unusual approach of averaging completions over the last five years and projecting the figure forward over the next five year period. Moreover, this witness stated that if the 'Sedgefield' approach was applied, wherein any backlog is made up over the next five year period, the supply would drop to 1.5 years.
112. **Whilst the appellants' figures** are not accepted by the Council, given the extent of any difference is readily apparent, and the common ground is that the shortfall is substantial, the Council considers that the Inspector and SoS have sufficient information, when considering the weight to be attributed to policies BNE25 and BNE34 **to assess "the extent to which relevant policies fall short of providing for"** the five year housing land supply, as sought by Suffolk Coastal²⁴. In that context, the Council has taken proactive measures of promoting regeneration and is being robust in looking at sites such as Mierscourt Road to address the shortfall prior to the adoption of a new Local Plan.

The weight to be accorded to Local Plan Policies

113. The material considerations in this appeal spring from the Framework. The presumption in Framework paragraph 14 applies in any one of three circumstances; the first, where the development plan is ***"absent"***, and second,

²² As set out in Bloor Homes East Midland v SSCLG & Hinckley & Bosworth BC [2014] EWHC 754 (Admin)

²³ CD10.7 (Hoo St Werburgh)

²⁴ CD11.2 paragraph 47

where it is *"silent"*, do not arise here; the policies address what will or will not be permitted in the open countryside and the ALLI and thus whether the site is an appropriate location for the proposed development. Policies BNE25 and BNE34 are both saved, extant, policies and neither is temporary in nature. It is therefore only the third circumstance where *"relevant policies are out-of-date"* that is relevant in the present case.

114. It was accepted by the appellants' planning witness that Policies BNE25 and BNE34 are not out-of-date on the basis of inconsistency in principle with the Framework given that paragraph 215 in respect of protecting the countryside from being built upon is consistent with the fifth core planning principle in Framework **paragraph 17 of "recognising the intrinsic character and beauty of the countryside"** and the environmental dimension of sustainability at Framework paragraph 7. The March 2015 Ministerial letter²⁵ also makes it clear that it is consistent with the Framework to seek to protect the countryside from being built upon.
115. The Framework means to recognise the intrinsic, the inherent and innate, character and beauty of all countryside as countryside. This has nothing to do with special designations for landscape quality. Some parts of the countryside have a stronger or more distinct character and beauty than others, but the Council takes the view that all countryside is regarded by the Framework as intrinsically characterful and beautiful. Having recognised these intrinsic qualities, it would be nonsensical not to protect the countryside from development – there would be little point of recognising the intrinsic character and beauty of the countryside if one then did nothing with that recognition.
116. Therefore, the countryside protection purpose of BNE25 is consistent with the fifth bullet point of Framework paragraph 17. In the recent Audlem Road decision (in relation to a policy with a similar purpose to BNE25), the SoS concluded the policy to be generally consistent with the Framework and to carry *"reduced but still significant weight"* although it is acknowledged that in the present case it has been agreed that only limited weight should be afforded to policy BNE25 .
117. As to BNE34, the ALLI policy is a landscape character protection policy which is also consistent with the Framework. In the Station Road case, the Inspector found that although *"BNE34 does not set a criteria-based approach and the ALLI designations were not based upon a landscape character assessment"* so that the policy did not fully accord with the Framework in those respects, *"the discrepancy related to the nuances of how landscape should be protected through planning policy as opposed to the fundamental principle of whether those landscapes should be protected"*. The Inspector then concluded that *"I can find nothing inherently inconsistent with the Framework in seeking to recognise and protect areas of recognised local landscape character. Thus, whilst the weight afforded to policy BNE34 must be reduced to a degree as a result of the inconsistency with paragraph 113 of the Framework, I am satisfied that its aims are broadly consistent with the Framework as a whole and I attach significant weight to the policy"*. It is acknowledged by the Council that the Station Road decision predates the Suffolk judgment, and that the Inspector considered (on the basis

²⁵ CD11.1 Mr Harouni proof of Evidence Appendix 1

of the authorities as they then stood) that the policy was not a policy for the supply of housing, but he reached a clear conclusion, which remains relevant, that the landscape protection purpose of the policy was consistent with the Framework. **Whilst the appellants' landscape witness, endorsed the Station Road Inspector's approach he did not agree that the policy should be accorded significant weight.**

118. The Council accepts it cannot demonstrate a five year housing land supply. Thus, by virtue of the Suffolk Coastal case, Framework paragraph 49 applies such that Local Plan policies BNE25 and BNE34 are out-of-date for the purposes of Framework paragraph 49. It is accepted that policy BNE34 is a policy for the supply of housing for the purposes of Framework paragraph 49, such that the weight to be afforded to the policy is reduced. However, **the Council's case is that considerable weight should be attached to BNE34 in the present case, because its landscape character protection purpose is consistent with the Framework. This is reinforced as the site falls within part of a valued landscape for the purposes of Framework paragraph 109.**
119. The Council acknowledges that the ALLI designations have not been reviewed and that the designations are part of a dated local plan. However, the LCA makes it clear that despite the then (Planning Policy Statement 7: ***Sustainable Development in Rural Areas***) national policy approach moving away from local designations, the assessment work within the LCA ***"will ensure an appropriate level of protection continues to be provided [for the ALLIs] without a continued need for rigid designation"***. It also states it: ***"is important that all of these valuable [ALLI] functions continue to be valued and protected, particularly when considering the urban-fringe character areas of Medway"***. Thus, the criteria-based LCA 2011 is compliant with the objectives and approach of the Framework in relation to the assessment of effects on the natural environment, and the area assessed within the Capstone and Horsted Valleys LCA includes all of the Capstone, Darland and Elm Court ALLI.
120. The supporting text to policy BNE34²⁶ makes clear that the ALLIs are areas of landscape that enhance local amenity and environmental quality, providing an attractive setting to the urban area and surrounding villages. The ALLIs are significant not only for their landscape importance but for other specified important functions, including as green lungs or buffers, helping to maintain the individual identity of urban neighbourhoods and rural communities, as green corridors (or links) for the community to reach the wider countryside and as edge or fringe land, needing protection from the pressures of urban sprawl. In this case the function of maintaining biodiversity is not at issue. The landscape character and function of each of the ALLIs is to be protected, with the justification for designating each ALLI set out in order to provide guidance on the landscape features and functions the Council will aim to protect.
121. The Council considers that weight, limited in the case of policy BNE25 and considerable in the case of policy BNE34, should be given to the policies because of the countryside protection purpose, consistent with the approach set out in the Suffolk Coastal case:

²⁶ CD10.4

"46. We must emphasize here that the policies in paragraphs 14 and 49 of the NPPF do not make "out-of-date" policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker (see the speech of Lord Hoffmann in Tesco Stores Ltd. v Secretary of State for the Environment [1995] 1 W.L.R. 759, at p.780F-H). Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is "out-of-date" should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied. That idea appears to have found favour in some of the first instance judgments where this question has arisen. It is incorrect.

47. One may, of course, infer from paragraph 49 of the NPPF that in the Government's view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy – such as the protection of a "green wedge" or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment (see paragraphs 70 to 75 of Lindblom J.'s judgment in Crane, paragraphs 71 and 74 of Lindblom J.'s judgment in Phides, and paragraphs 87, 105, 108 and 115 of Holgate J.'s judgment in Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government and Mid-Sussex District Council [2015] EWHC 1173 (Admin))."

122. In this case, the first criterion of policy BNE34 is breached because the proposed development would be an inappropriate form of development in the countryside that would materially harm the landscape character and function of the area. Further, the second criterion is not satisfied, because the economic and social benefits are not so important that they outweigh the local priority to conserve the area's landscape.
123. Although it is acknowledged that the objective of policy S4, that development should respond appropriately to its context, reflecting a distinct local character, adds little to the issues to be determined in relation to policies BNE25 and BNE34. **It is the Council's case that there would also be conflict with policy S4** because the development would fail to respond appropriately to its context and fail to reflect the distinct local character of the area.

Sustainability

124. In light of the recent judgment in the Suffolk Coastal case, whether the development is, or is not, sustainable is to be assessed by the exercise to be undertaken in accordance with Framework paragraph 14, in other words, the proposed development would not be sustainable only if the adverse impacts significantly and demonstrably outweigh the benefits.
125. Therefore, the absence of a five year housing land supply is not an automatic green light to planning permission. The lack of a five year housing land supply does not mean that housing development should be permitted anywhere, but only where it amounts to sustainable development taking account of all relevant considerations.
126. In terms of whether this proposal is sustainable, on the positive side of the weighing scales the Council recognises that building market and affordable homes against the backdrop of a need for both provides important benefits and contributes towards the economic and social dimensions of sustainable development as expounded in paragraph 7 of the Framework. This should be given significant weight. On the negative side of the weighing scales is the loss of greenfield land in the open countryside and an ALLI, by reason of a very significant extension of the urban form of Lordswood in an area of high sensitivity.

Landscape, Rural Character and Appearance

127. As set out above, the site falls within the Capstone and Horsted Valleys LCA. The principal characteristics of the Capstone Valley are listed in the LCA and include that the area forms a green wedge linking urban communities into the wider countryside and the North Downs, connects **into the heart of Medway's** urban areas, is a valuable semi-rural open space in close proximity to densely populated urban communities, provides a distinctive edge to urban areas and prevents coalescence of Lordswood and Hempstead, contains blocks of deciduous woodland (predominantly ancient woodland) which are distinct features, particularly on the shallower slopes and plateau landform, contains woodlands providing valuable containment for open arable farmland and retains a distinctly rural character and has a strong sense of overall coherence. Further, the LCA identifies the development pressure that the area is under, and emphasises that both valleys are valuable green wedges linking town with countryside and bringing the distinctive North Downs landscape character into urban areas.
128. The Capstone Character Area is then separated into sub-areas in the LCA. The site falls within the Elm Court sub character area, described as flat or undulating wooded farmland. It is common ground that the site reflects many of the characteristics of the Elm Court sub-area – it is typical of the undulating open farmed arable plateau, with a weak hedgerow pattern.
129. The Council considers that the site has a rural character. Whilst the **appellants' landscape witness acknowledged** that the site looks rural, he stated that it does not feel rural. The main area of difference on this point is the influence of the identified detractors. The M2 motorway cuts through the landscape approximately 1km to the south of the site, is set in a shallow landscaped cutting, and is largely screened from view. The site is bordered by open countryside to the north, to the west notwithstanding Elm Court Business

- Park and to the south. The Council considers that the influence of the motorway, including traffic noise, has been overstated by the appellants and notes that motorways cutting through rural areas are a common feature throughout the country.
130. The appellants consider that road, aircraft noise and services infrastructure serve as constant reminders of proximity of urban area. **However, the Council's** conclusion is that the noise impacts on the tranquillity of the site are negligible and the electricity pylons are an unremarkable countryside feature. As such, the appeal site and the surrounding area retain a predominantly rural character, characterised by rolling arable farmland, with wooded blocks and a network of narrow country lanes and paths.
131. **The Council's landscape witness** also considers that the existing residential development at Lordswood can only be glimpsed through breaks in the wooded edge to the settlement. Thus, the influence of the Lordswood development on the character of the appeal site and the Elm Court sub-area is negligible, because it is, in the main, screened in views north and west across the appeal site.
132. It is common ground that the Elm Court Business Park is a detractor, but it is an isolated development and is typical of small industrial or business parks often located in the urban fringe countryside.
133. The LCA assessed the landscape condition of the Elm Court Area as poor, but the landscape sensitivity as high which is consistent with the Kent Landscape Assessment. The high sensitivity assessment is attributable to the perceived development pressure and the visual openness. **The appellants' landscape witness agreed on this point but not to the Council's view that high sensitivity is** due to the spatial sensitivity of the area. Despite this he accepted that the wider ALLI fulfils such a function, and that this sub-area of course forms part of the ALLI. Although the appellants' **disliked the word 'pinch-point'**, the area is a relatively narrow point of the ALLI and it is, **in the Council's view**, right to regard the area as spatially sensitive.
134. The appellants draw attention to the low marks attributed to the Elm Court sub character area, compared to the others in the Capstone and Horsted LCA. However, this does not draw attention to the fact that the area is assessed as one of only two sub-areas to have a **"coherent" pattern of elements and "high"** visibility. Further, Elm Court is one of four **"high" sensitivity areas (the other three are moderate)**. It is also important to note that the LCA does not seek to rank the sub-areas against each other²⁷ and the recommendation to restore is recognition that the area warrants restoration because of its high sensitivity. The LCA defines sensitivity as a measure of the ability of a landscape to accept change without causing irreparable damage to the essential fabric and distinctiveness of that landscape. The sensitivity categories used were: distinctiveness, continuity, sense of place, landform, tree cover and visibility. As **to the appellants'** claim that the Elm Court sub-area is the least harmful location for development, it is clear that the LCA makes no such ranking and without a full assessment of the other sub-areas (indeed the other ALLIs), there is no evidence to support the suggestion.

²⁷ CD10.5 p122

135. Turning to the function of the ALLI as a green wedge preventing coalescence between Lordswood and Hempstead, the appellants acknowledged that the development would **adversely affect the ALLI**. **The appellants' landscape witness** agreed that the proposed development would result in material harm to the spatial function of the ALLI in this part of it and, therefore, that there would be harm to the ALLI overall, albeit that **the appellants' planning witness made the assessment** that there would be no material harm to the ALLI overall.
136. The Council maintains that the development would lead to coalescence between settlements because of the significant reduction in the open countryside and as it would enclose the southern end of the Capstone Valley. The development would reduce the width of the gap between the eastern edge of Lordswood and the nearest residential areas on the western edge of Hempstead (in the vicinity of Elm Court Business Park) from some 1.4km to 0.7km or approximately 50%, as was accepted by the appellants.
137. The Council considers that the result would be that the continuous flow of countryside through the valleys to the AONB would be adversely affected. Indeed, the connection to the wider valley to the north would be reduced to Ham Lane and Public Rights of Way (PRoW) KH34 and 41, whereas at present, the connection is formed by the open countryside in a green wedge, in an uninterrupted flow (bar Elm Court Business Park), of rural landscape. At present, **the appellants' landscape witness accepts that** a sense of separation is experienced within the ALLI, adding that the open land remaining post development would **"punch above its weight", because of the contrast between the wooded edges of the settlements and the open countryside**. He described **that contrast as "a powerful delineation of those 2 settlements"**, and finally acknowledged that the existence of those features means that the site similarly operates as part of that powerful delineation. The Council considers that narrowing of the separation by 50% would not reinforce that delineation in any positive sense; rather, it would reduce the gap to a material extent and cause adverse harm to the spatial function of the ALLI.
138. Further, the site forms part of a valued landscape for the purposes of Framework paragraph 109. **The appellants' landscape witness** agreed that the site and its environs are part of a valued landscape. He also accepted that the demonstrable physical attributes of the site and its surroundings, which apply to the whole of the ALLI, are as a green wedge preventing coalescence between Lordswood and Hempstead, as part of the wider setting of the Country Park and AONB, providing a continuous flow of open countryside from the Capstone Valley to the AONB, providing an accessible rural landscape in close proximity to urban areas and, that it meets informal open space needs of communities nearby. Finally, he agreed that identifying demonstrable physical attributes was not just about physical features on a site, but the character, function and role of the landscape.
139. In terms of the effect on landscape character of the Elm Court sub-area, the Landscape and Visual Impact Assessment (LVIA)²⁸ concludes that the development would result in a major/moderate adverse effect during the short term (years 1-15) which is considered significant. Notably the LVIA defines

²⁸ CD1.9

major as “*changes resulting in a fundamental change to the landscape resource or visual amenity*” and moderate as “*a material but non-fundamental change to the landscape resource or visual amenity*”. The table (A3.67) explains that a ranking of moderate or above is judged to be a significant effect. Therefore, it is common ground that the development would have a significant adverse effect on local landscape character in the short term.

140. In the medium term, the LVIA concludes that the development would result in a low overall magnitude of change with a consequent minor to minor/negligible adverse residual effect. That conclusion is largely based on the perceived benefits of the proposed landscape infrastructure mitigation, as it matures. However, the Council notes that that mitigation would come at the cost of the loss of a substantial area of open countryside and spatial harm, in terms of the large reduction in the rural gap/green wedge between Lordswood and Hempstead.
141. Moreover, while the proposed landscape infrastructure on the south eastern boundary shown on the illustrative masterplan and the photomontages²⁹ would help to mitigate some of the adverse visual effects, it does not follow any existing topographical feature but simply cuts across the field. The proposed boundary is arbitrary. Indeed the LVIA acknowledges that the boundary is arbitrary, because it follows the administrative boundary between Maidstone and Medway and is not representative of any change in landscape character further south. The need to plant a dense tree belt to screen the development is a consequence of the arbitrary or artificial nature of the boundary and it would result in the enclosure of the southern end of the Capstone Valley. Therefore, the Council considers that in the medium term (15yrs +), the overall residual landscape effect would be moderate adverse.
142. In terms of visual effects, the LVIA identifies a significant adverse effect (major or major/moderate adverse) from seven out of 10 of the representative viewpoints in the short term (1-15 years). **The Council’s six** additional viewpoints reinforce the findings of the LVIA that the development would result in significant adverse visual effects. Indeed, all six would experience major or major/moderate adverse effects in the short term.³⁰
143. Although the LVIA **and appellants’ landscape witness** both describe the significant visual effects as geographically confined, the Zone of Visual Influence (ZVI) is not particularly geographically small, it extends approximately 1km north and south of the site and across the entire width of open countryside between Lordswood and Hempstead. As the viewpoints show, views from within the visual envelope tend to be relatively wide and expansive. It is also relevant to note that several of the viewpoints are from PRow, where similar views would be experienced over substantial lengths of each route, for example some 400m of footpath RC11 between viewpoints 8 and 16, and similar lengths of footpath RC28/KH34 and byway KH41³¹. Views from these rights of way are highly sensitive to change. Further, the development would be very prominent in the

²⁹ CD11.9 (Appendix 10)

³⁰ CD11.9 (Appendix 7)

³¹ See the appellants’ landscape witness’s Plan 2

short to medium term, such that there would be a harmful loss of visual openness and countryside character.

144. As to the medium term (15 years +), the LVIA records that even after the landscape infrastructure has matured there would remain significant adverse effects from seven of the 10 viewpoints. **In terms of the Council's additional viewpoints from three of those six there would be significant (major) adverse effects, moderate effects from one viewpoint and minor effects from the other two.**
145. **The appellants' landscape witness acknowledged that** the proposed development would contribute to a permanent erosion of the rural character of the area and the open countryside separating the settlements of Lordswood and Hempstead. He acknowledged that those were material detrimental effects, **albeit that the appellants' case is they are outweighed by benefits.**
146. Moreover, however well landscaped as a housing estate, the proposed development would utterly transform the site because the open greenfield countryside would be lost, the development would cause a change for the worse to the intrinsic character of the site and the local area as countryside. That change would have a significant and permanent effect on the character of the area. The permanent loss of openness cannot be mitigated. Therefore, building up to 450 dwellings on this land would result in an inappropriate development because of the significant harmful change to the intrinsic character and beauty of the countryside, and the material harm to the landscape character and function of the ALLI, contrary, the Council considers, to policies BNE25, BNE34 and S4 of the Local Plan.
147. The fact that greenfield sites on the edge of settlements are needed to meet the housing requirement in Medway does not mean that the impact on the open countryside and ALLI, as set out in this case, must be acceptable. Each proposed development falls to be determined on its merits and the Council has permitted development of some sites in the open countryside and in ALLIs, where they have been considered to be sustainable. In this case the Council attaches significant weight to the harm to the **countryside's intrinsic character and function**. This, the Council considers, is not a place where it would be appropriate for such a large scale development to extend the settlement of Lordswood, materially and adversely reducing the important green wedge and leading to coalescence with Hempstead. Greater weight should be given to protection of the countryside in this location.

The Council's Conclusion

148. Much has been made by the appellants of the lack of a five year housing land supply, and it is acknowledged that is an important material consideration in the determination of this appeal. However, the real issue here is whether the acknowledged material harm caused to the landscape and rural character and appearance of the area significantly and demonstrably outweighs the benefits of the proposed development, when assessed against the policies in the Framework taken as a whole.
149. **The Council's case is that the negatives weigh very heavily against the proposal in the scales. In the Council's judgment they outweigh** the significant weight given to the benefits of providing market and affordable housing such

that, having weighed the competing considerations, the appropriate conclusion to reach is that the appeal scheme is not sustainable development. Material considerations would not indicate otherwise than dismissing the appeal. In these circumstances the appeal should be dismissed because of the significant breaches of the development plan.

The Case Advanced by Others Appearing at the Inquiry

150. **Mrs Vanessa Jones**, who is the chair of Bredhurst Parish Council and Bredhurst Woodland Action Group, explained that this proposal would impact on the Kent Downs AONB. Bredhurst is on the edge of that AONB in, she considers, a beautiful location. The residents of Bredhurst value the arable farmland which forms the appeal site and want it to be kept as rural land. Whilst traffic figures are not questioned, the traffic along the lanes is of concern. In particular she notes that there are no footpaths. The vehicles used by the occupiers of the proposed 450 additional dwellings would have a devastating effect on the existing community and change the rural character of the area.
151. **Mrs Pauline Bowdery** is the Clerk to Boxley Parish Council and spoke on behalf of the Parish Council, reading out a statement³². The Parish Council supports **Medway Council's decision. In particular, she explains that what is important about the ALLI is the patchwork of different habitats with open flatter land being necessary to enjoy the sweeping views. Moreover, open spaces can be improved with hedges. It is not reasonable to suggest monotonous fields should be improved by developing 450 houses and tree planting. The fact that Elm Court Business Park exists as a detractor does not justify further development. The proposed development would extend urban frontages into the countryside. The proposed tree belt is only proposed as it would be required for mitigation. Further, the screen planting would take a long time to establish, it might not achieve the extent of screening predicted and for half of the year, when trees are not in leaf, the screening effect would be reduced.**
152. Lordswood already has a clearly defined boundary. The proposed development would be at a pinch point in the ALLI and would impact upon the whole of the ALLI as 50% of the land at the pinch point would be developed. As a result development here would erode the function of the green wedge in terms of preventing coalescence between Lordswood and Hempstead.
153. The site is rural regardless of how quiet it might be. In this respect it is no different from the North Downs AONB which is rural even though in many parts noise can be heard from motorways or high speed rail and the M20 can be glimpsed.
154. The Parish Council do not understand why there is no case being made on traffic grounds or on the lack of medical facilities. One surgery has closed and another may close altogether as staff retire and money will not solve the problem of retiring doctors. In terms of traffic, people from the development would use private cars as buses use circuitous routes, get stuck in traffic and are costly. People would not walk to Hempstead because it is a 60mph road without footways and is too far, particularly with heavy shopping. Traffic at the beginning/end of school day indicates the difficulty of relying on public transport.

³² Inquiry Doc 6

That said, it is acknowledged that there is one good commuter service for the Walderslade area.

155. It is unlikely that future residents of the site would work at Elm Court Business Park because generally it is not a high spec /high tech employment area. As a result, future residents would be likely to commute for work. Thus, there would be much use of the local road network. To get to Maidstone the cross country journey cuts through the ALLI, AONB, and the villages of Boxley and Bredhurst. At Boxley the road reduces to single width. The additional traffic would cause more noise and air pollution particularly where cars stop to allow for passing.
156. The Parish Council offices are located near to the application site and junction 3 of the M2 motorway. As such, it is felt by local residents and the Parish Council that they are much more aware of local traffic issues and impacts than Highways England.
157. There is an asbestos waste transfer site near to the proposed housing and future residents should be made aware of this.
158. A greenfield site would be lost forever if this proposal goes ahead, the green wedge would be reduced, 50% of the greenfield pinch point would be eroded and the proposed development would join up with Elm Court Business Park. This harm is such that Boxley Parish Council requests that the appeal be refused.
159. **Mr N Van der Vliet**, a local resident, explained the importance of this open land, and access across it, as open space for his family and for others. He stressed the importance of the relief this open space brings to the nearby developed areas and its ease of access. He also expressed concern about accessibility of the development to local facilities and services. He noted that people are unlikely to travel the proposed distances on foot or by bicycle when carrying heavy shopping. As such, those in affordable housing who might have lesser access to a private car would find this location difficult. He also had significant doubts about the highway situation. Given the access issues he considers it most unlikely that households would only have one car. Rather, based on the experience of living where he does, it is more likely they would have in excess of two vehicles per household.
160. In terms of other facilities Mr Van der Vliet is concerned that there would not be adequate capacity to serve the needs of future occupiers of the proposed development. **For instance there is no space at the local doctors' surgery and the schools are oversubscribed** so that those in catchment cannot get places. The contribution to education appears far too small given the very high costs involved. The green wedge is important and loss of it, as well as his concerns for future occupiers, results in his view that the site should not be developed.
161. **Mr Dines**, a local resident, set out his expertise as a highway manager and, thus, his relevant experience in dealing with highway matters. He explained that his main concern relates to the lack of sustainable credentials for this greenfield site. In particular he voiced concerns that the site is difficult to serve by public transport. The walking distance to Clandon Road is some 500m and so beyond the 400m distance which would normally be sought. He considers that the contribution to be made through the s.106 would be inadequate to entice a bus service operator into the culs-de-sac of the site. Moreover, the bus services are not good. He also felt conditions to secure the proposed works at the Gleaming

Wood Road/Lordswood Lane junction would be essential and expressed concern about whether the detail was acceptable in terms of pedestrian and cycle users at this junction. Whilst being close to Hempstead and Elm Valley there are no specific provisions for walking or cycling. Thus, there would be reliance from future occupiers on the private car.

Written Representations to the Inquiry

162. The Local Member of Parliament for this area, Tracey Crouch MP, wrote reiterating her earlier objections made to the Council in respect of the scheme. In particular the MP focusses on the loss of green space which creates a green buffer between distinct residential areas, the precedent it would cause, the impact on local services and on the local road network with particular concern for the motorway junction no.3 of the M2. The previous letters also set out concerns regarding wildlife and proximity to an asbestos waste transfer site.
163. **In addition to the MP's letter I received** a letter from the Campaign to Protect Rural England (CPRE) who object on a numbers of grounds. They express concern at the impact on local character, noting the siting at a pinch point harms **the 'green lung' benefits of the ALLI and the effect on the setting of the Kent Downs AONB**. Concern is raised regarding the impact on designated habitats and protected species and the loss of best and most versatile agricultural land. They consider that the environmental harm is such that the proposed development is not sustainable development. They also express concern that the habitat has not been properly assessed and draw attention to the concerns of others regarding traffic.
164. A further 22 letters or e-mails of objection were received. In addition to the points raised by objectors at the Inquiry and by the MP and CPRE these letters expressed the following concerns:
- i) that it would result in pressure on schools, emergency services, roads, water, power, health provision, including dental services, play space provision and air quality (existing services are overstretched in schools and the national health service);
 - ii) the negative impact on house prices and a reduction in the desirability of the Hempstead area;
 - iii) impact on wildlife, including skylarks;
 - iv) it is too close to Capstone Country Park;
 - v) brownfield land should be utilised as once greenfield sites have gone they are lost forever. In particular Chattenden Barracks site could offer comprehensive development on a brownfield site;
 - vi) highways impacts, especially at overstretched junctions and on single carriageway lanes, harm to road safety, concern about learner HGV drivers operating from the Gillingham Business Park. There would also be a further harm to existing poorly surfaced roads;
 - viii) that migration should be controlled to reduce housing need;
 - ix) the recent hawthorn planting would not screen this proposed development;
 - x) this proposal could lead to widespread social unrest and a lack of integration between residents of the proposed development;

- xi) the area is already burdened by traffic to the Channel ports, widening of the M2, threats of an airport and expansion of the Hempstead Valley Shopping Centre. These are not local benefits;
- xii) future residents would add to the existing jobless figures;
- xiii) financial contributions would be insufficient to resolve the pressure on medical services and the Council might not spend the money on this need. One objector records two personal incidents where family members had been left in hospital corridors before being found rooms; one was given life-saving surgery whilst the other died. They are not critical of the medical care but consider adding to the populous in these circumstances would be criminal;
- xiv) the scheme is opportunistic property development,
- xv) this scheme should be considered with the Lodge Hill site,
- xvi) allowing the proposal would be contrary to localism,
- xvii) extensive housing is already being provided for instance at Horsted Park (250-300 dwellings) and on North Dane Way (100 dwellings); and,
- xviii) the site is not sustainable because of the likely number of car movements given the lack of access to schools, doctors, dentists and shops and that there is no public money to support public transport.

165. One further email was received and asked to be considered with the sender's details omitted. It indicates that the sender considers the land to be a Site of Special Scientific Interest and green belt. The writer complains about static caravans on a nearby site (outwith the appeal site) and objects on grounds already covered above.

Written Representations at the Application Stage

166. **Petitions:** The Council received four petitions of objection at the application stage. The committee report advises that the largest of these was signed by 2,730 people objecting to the proposal on the grounds of loss of local beauty spots, loss of farmland and additional strain on local schools and medical services. Three petitions of 169 signatories were received on grounds of additional pollution, impact on the local highway leading to reduced highway safety, impact on the character and appearance of the area and AONB, loss of a green lung providing relief to the adjoining urban areas and preventing coalescence, loss of ancient woodland, loss of habitat reducing flora and fauna, extra demand on education and healthcare, impact on local water supply, asbestos risk from the nearby waste transfer station and no benefits from the scheme for the existing residents.
167. **Letters of objection:** At the application stage the committee report records 295 letters of objection from 285 respondents, with a further 74 letters of objection reiterating objections and adding to them. In addition to the matters raised by the letters above the following objections are made:
- i) the proposed development would not be a natural extension to the urban area which is well contained;
 - ii) the occupiers of Gibraltar Farm and Gibraltar Farm Cottages would be surrounded on three sides by residential development;

- iii) this might be a part of a piecemeal application as the site boundary follows an administrative boundary and a subsequent application might be made **for the Maidstone Council's area**;
- iv) there is no need to support housing here as the Council supports 5000 houses at Lodge Hill;
- v) harm to a recreational walking route;
- vi) inadequate resources for the Police service and this would add to the burden;
- vii) doubts about the highway modelling;
- viii) doubts about the likelihood of success for the travel plan;
- ix) concern about additional traffic near to the recreational space and Lords Wood Leisure Centre;
- x) North Dane Way to Gleaming Wood Drive should be extended to relieve congestion;
- xi) North Dane Way should not be speed restricted as it is designed as a quick peripheral route;
- xii) the emergency access could be used as a secondary route;
- xiii) construction traffic would cause traffic issues and disturb residents;
- xiv) light pollution;
- xv) loss of privacy;
- xvi) Gibraltar Farm was used as a gun position during WW2 and munitions may remain on site;
- xvii) the provision of affordable housing would result in anti-social behaviour;
- xviii) an EIA should be required;
- xix) flood risk;
- xx) walking routes to bus stops are 500m not 400m as reported by the appellants and bus services and stops in the Transport Assessment are inaccurate;
- xxi) concerns about pedestrian and cyclist safety;
- xxii) two access points are needed, a priority junction at North Dane Way/Albemarle would be less safe than a roundabout; and,
- xxiii) the main access off North Dane Way would create security concerns for existing residents.

168. Bredhurst Parish Council, Boxley Parish Council and Hempstead Residents Association all objected at the application stage on grounds already covered above.

169. **Letters of support and other letters:** There was one letter of support and one neither supporting nor objecting.

Conditions and Obligations

170. **Conditions** were discussed at the Inquiry in the light of the advice in the Guidance which has replaced, in part, Circular 11/95. The conditions have in some cases been amalgamated, as discussed, and amended to provide compliance with the Guidance. Those conditions would be necessary in order to achieve an acceptable development, were the Secretary of State to consider the

principle of the development to be acceptable. Thus, they are set out in the Schedule attached at Annex A. Where necessary, specific conditions have been addressed in the Considerations below. Reasoning for the conditions is otherwise contained with the conditions in the Annex. The conditions set out would be relevant, necessary to make the development acceptable and otherwise comply with the necessary tests.

171. The conditions include a shortened timescale for the submission of reserved matters and commencement given the pressing need for housing. It is for the Council to be prompt in discharging conditions to get progress made on site. The timing and phasing conditions proposed by the parties have been adjusted for clarity and to avoid conflict between conditions. I have omitted the suggested electric car charging point condition as there is no formal policy basis for it nor is it a pre-requisite for making the proposal acceptable in planning terms, although I accept it is a laudable suggestion and the appellants did not object to it.
172. I have reorganised the conditions into clear subject groups and altered pre-commencement style conditions to other trigger points where it is appropriate.
173. **The s.106 Unilateral Undertaking** provides for education, healthcare, open space, public transport, waste and recycling, community facilities and Medway SPA contributions as set out in the details at paragraph 7 above. It also commits to providing 25% affordable housing.
174. I have had regard to this planning obligation in the light of the tests set out in the s.122 of the Community Infrastructure Levy Regulations 2010 and repeated in the Framework at paragraph 204. These state that a planning obligation may only be sought if it is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development. In this regard a CIL compliance checklist has been provided by the Council³³. The approach to seeking contributions is set out in the **Council's Medway Council Guide to Developer Contributions (2014)**³⁴.
175. In terms of the education contribution it is derived from a formula based on the likely number of children arising from the proposed development. The calculations are based on charging rates per type of pupil. It is calculated that the scheme would result in the need for 44.55 nursery places (£377,396). This would be used at one or more of Swingate Primary, Hempstead infants or new provision. For primary education 109.35 places are sought (£930,010). This would be used at **one or more of Lords Wood Primary Academy, St Benedict's RC School** or new provision. The secondary provision would require 66.95 places (£919,269). This would be used at Walderslade Girls and Greenacre Boys Schools or a new provision. This results in the total contribution of £2,226,674. The calculations are set out in Inquiry Document 1 and the sums are fairly and reasonably related to the development based on Education Department confirmation that there is inadequate capacity within schools in this area, a calculated pupil product ratio and costs. The schools proposals identified would be necessary to provide capacity through expansion and extension. No issue arises with regard to other projects or pooling of s.106 monies. This contribution accords with **the Council's Medway Council Guide to Developer Contributions**.

³³ Inquiry Document 1

³⁴ CD10.5

176. The National Health Service (NHS) confirms that it has insufficient capacity to accommodate additional demands from the proposed development and I am conscious that this has been mentioned in many of the objections. The contribution is based on a sum arising from the Healthy Urban Development Unit model taking account of demographics, predicted population growth, and NHS costs and floor space requirements. This results in a calculation per dwelling. The monies would be utilised at Lordswood Community Living Centre, Hempstead Medical Centre and Princes Park Medical. Again no pooling issue would arise and the approach and sums follow the **Council's Guide to developer contributions**.
177. The public open space requirement is also based on a set formula and would provide monies towards sport improvements at Hook Meadow and/or Princes Meadow and /or Kings Frith, allotment improvements at Chapel Lane and/or Hatton Road and, park improvements at Capstone Country Park and/or Wigmore Park. It is not disputed that these facilities do not have sufficient capacity to accommodate additional demand from the proposed development and the proposal is likely to result in demand for such facilities. The contribution is therefore directly related to the development. Again no pooling issue would arise and the sums and approach **follow the Council's Guide to developer contributions**.
178. The transport contribution relates to improvements in evening services and frequency of the Sunday service and to provide for diversion of the bus service into the site. The sum for diverting into the site is clearly related to the proposed development. It is also reasonable to expect a contribution towards the improvement of existing services into the evening and on Sundays to make the site more sustainable. The Council advises that the sum sought in this regard relates to the anticipated cost of the improvements. While I agree a need is generated by the development, I note it is likely to have ancillary benefits to others on the bus route. Nonetheless, given the contribution is required to facilitate those improvements it is reasonably related to the appeal development.
179. The waste a recycling contribution is costed in detail and is based on a rate per dwelling using 2013 figures. It does not relate to costs involved in collecting and disposing of waste which is met from Council Tax. Whilst bin provision and additional waste site capacity are justified as a result of need generated by the site, I am not satisfied that payments for graffiti removal have been justified as necessary in relation to this development. Nor is there any reason to suspect pest control leaflets would be required for this site. Despite these being matters **set out in the Council's** Guide to developer contributions, I do not consider that those aspects of the calculation are CIL compliant and so they shall not be taken into account in my recommendation in respect of this appeal.
180. The contribution towards community facilities relates to Lordswood and Hempstead libraries to provide more meeting room and associated facilities which the main parties agree are under pressure. The space provision is based on 31sqm per 1000 **population which reflects Medway's provision and on** construction costs of £1,800 per square metre. I accept that this appears a fair basis on which to seek a contribution and that it relates to needs likely to be generated by the proposed development. Again no pooling issue would arise and the approach and sums follow the **Council's Guide to developer contributions**.
181. The SPA contribution is a per dwelling contribution. Over 80.8% of the site is within 6km of the North Kent Marshes SPA/ Ramsar site. This contribution is for

mitigation and designated habitat monitoring, including through management to enhance certain locations to attract visitors so as to avoid disturbance of these sensitive areas for over-wintering birds. The limited details are set out in Inquiry Document 1. Whilst those details are rather limited, on the basis that they do not relate to site infrastructure (which has not been identified) this satisfies the CIL regulations. Natural England advises that the payment avoids the need for Appropriate Assessment under the Habitat Directive. On the basis that the sum relates to management of sites the CIL pooling provisions do not apply to this tariff.

182. The affordable housing requirement would be policy compliant (policy H3) and directly relates to housing need in this Council's area. **The s.106 sets out details** relating to provision, management and occupation of that housing in line with the **Council's Guide to developer contributions (2014)**.

183. Thus, from the information and evidence provided, other than in respect of the specific items referred to for the waste and recycling contribution, I am satisfied that the obligation tests set out in the Framework would be met for these items. It is therefore appropriate to take the obligation into account in the determination of this scheme save in respect of the matters identified.

Inspector's Conclusions

[References to earlier paragraphs are set out in square brackets]

The Main Considerations

184. The main issue in this case is whether or not the proposed development amounts to sustainable development having regard to local and national planning policies for the supply of housing and the countryside. In order to arrive at a recommendation in this regard, the main considerations I have set out before arriving at the planning balance are: -

- (a) whether or not the proposal accords with local and national planning policy and the implications of this;
- (b) the implications of housing land supply for the proposed development;
- (c) the effect of the proposed development on the character and appearance of the area which is within an ALLI; and,
- (d) the assessment of other matters, including other benefits and disbenefits.

The Planning Policy Position

185. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that where the development plan contains relevant policies, applications for development should be determined in accordance with the development plan unless material considerations indicate otherwise. [33, 105]

186. In terms of this appeal three saved Local Plan policies are cited as being of relevance; these are BNE25, BNE34 and S4 of the Medway Local Plan which was adopted in 2003. Whilst it is an old plan, a matter to which I shall return, it has status as the development plan.

187. Policy BNE25 relates to development in the countryside, which it seeks to resist except for specific uses or circumstances, none of which apply in this case. As such, the appeal scheme is in clear breach of this development plan policy. However, policy BNE25 clearly seeks to restrict housing growth. It is agreed that the Council does not have a five year housing land supply. Given this, and based on the advice of the Framework at paragraph 49, there is no doubt in my mind that policy BNE25 of the Medway Local Plan, which, incidentally, was only intended to run until 2006, is out-of-date. As such, it should only be afforded limited weight as was originally agreed in the SoCG.
188. **Policy BNE34 relates to the ALLI's.** It seeks to limit development only permitting it where it would not materially harm the landscape character and function of the area or the economic and social benefits are so important that **they outweigh the local priority to conserve the area's landscape.** This policy, because of its restrictive approach, is a relevant policy for the supply of housing within the meaning of paragraph 49 of the Framework and thus, given the housing land supply situation, it is to be considered out-of-date, a position with which both main parties agree. [118]
189. Policies BNE25 and BNE34 are also of reduced weight because of their age: their formation dates from a time when national guidance sought to protect the countryside for its own sake. Moreover, in terms of Policy BNE34, local landscape designations were a standard approach when it was drafted, whereas current policy advice seeks to avoid blanket restrictions and takes a more balanced and pragmatic criteria based landscape character approach. In this case the work on the ALLIs dates back to 1992. Since that time there appears to have been no reassessment of the designation boundaries, despite the saving direction indicating that saving would give an opportunity to justify the retention of the policy. That opportunity has not been taken despite the LCA being clear about the change in direction and noting that the LCA itself would be a tool for informing decision making. While this reduces weight to policy BNE34, so that it is limited, that cannot be said of the LCA itself which reflects a criterion based approach. The Council is clearly aware of the pressure on the ALLIs and the need to look at their quality. Indeed, it has supported housing development within them in certain circumstances, for example in the Mierscourt scheme.
190. While the policies BNE25 and BNE34 are out-of-date and old, this does not mean that they are of no weight or that they relate to planning matters of no merit - a principle confirmed by the Suffolk Coastal Court of Appeal Decision. It remains reasonable and legitimate to consider the impacts of development on the character and appearance of the countryside. Indeed, the current Framework identifies, as a core principle, the importance of recognising the intrinsic character and beauty of the countryside albeit this represents a shift in emphasis from former days of protecting the countryside for its own sake. The Framework, at paragraph 14, differentiates between countryside and specific designated countryside assets. The ALLI designation and its level of importance is a matter which will be considered in more detail later in this report. [38-39]
191. Policy S4 is entitled Landscape and Urban Design. It seeks 'a high quality of **built environment**' with 'landscape mitigation where appropriate'. **The Council** does not dispute that this could be achieved and does not take issue in terms of the first part of this policy. The policy goes on to explain that 'development should respond appropriately to its context, reflecting a distinct local **character**'.

While the Council considers the proposal would fail in this regard, because it says the scheme would harm the local character and not fit the site's context, it seems to me that this policy is being misapplied. The policy is one of the strategic policies of the plan. Reading it as a whole, it indicates what will be expected of developers when schemes are submitted. It is not a policy which seeks to restrict development in this, or any other, location. Rather it is a policy to achieve a positive scheme, in design and landscape terms, should development be allowed in any given location. As such, it is not a policy which is of significance in the determination of this appeal and, even if it were considered directly relevant, the character harm set out by the Council would be no different in terms of this policy than for that addressed in the BNE25 and BNE34 policies which I consider are relevant. [43-45, 123]

192. Notwithstanding my view in respect of policy S4, it is important to consider a number of matters in arriving at a conclusion as to whether the development would be sustainable. Moreover, it is possible that, when looking at the wider benefits of the scheme, one might come to the conclusion that the appeal scheme could be compliant with policy BNE34 **because it allows for "development where the economic and social benefits are so important that they outweigh the local priority to conserve the area's landscape"**. Aside from this, it is the balance of a number of key matters that results in the recommendation as to whether material considerations justify determining the proposal other than in accordance with the development plan. [122]

193. In this case those key matters for consideration relate to the housing land supply position, the effect of the proposed development on the character of the countryside and the impacts on the Capstone and Horsted Valleys ALLI. There are some further matters raised by interested parties, relating to highways issues, pressures on infrastructure and services, other development sites, localism, proximity to an asbestos waste transfer station, light pollution, flood risk and ecological matters, including impacts upon an area of ancient woodland, which also require consideration.

Housing Land Supply

194. The parties agree that a 5 year housing land supply cannot be demonstrated. Indeed, it is agreed that the supply is significantly lacking. The Council, based on the Inspector's reasoning in Hoo St Werburgh, an appeal relating to an Inquiry held in August 2016, acknowledges a supply in the range of 2.21 to 2.79 years. The appellants consider that even that level is optimistic.

195. The housing supply figures were not the subject of significant interrogation at the Inquiry. This was, in part, because the AMR appendices were supplied late in the event and because neither party sought to waste Inquiry time given the relatively recent Hoo St Werburgh appeal decision and so had broadly agreed to adopt the figures from that decision (as set out in the SoCG). That said, despite the lack of figures to interrogate, **I do not endorse the appellants' unorthodox approach of calculating delivery in the last five years as a way of predicting supply.** However, I share some of **the appellants' scepticism about the Council's supply side figures.** In particular, I agree with the appellants that the three allocations brought forward from the 2003 Local Plan (those listed in the AMR as Strood Riverside North Canal Road, Commissioners Road Strood and Gray's Garage Chatham) have been identified for so long, yet not been developed, that

it appears likely that they have significant sticking points. Thus, without clear explanation, it seems unlikely that they would now be imminently deliverable.

196. I also note that the appellants point out that the AMR refers to 90 sites being identified as suitable for housing with an estimated capacity of 12808 units, of which 11481 do not have planning permission. However, this included Lodge Hill which is now discounted. Moreover, these figures appear to reflect the early stages in the call for sites and not the more detailed assessment included elsewhere in the AMR regarding residential land availability of large sites with planning permission which is provided at Table 4 Section 3. I appreciate the robustness of sites within that table was not a matter of discussion. Nevertheless, I do not share the appellants' concerns, as set out above, regarding the level of large sites with planning permission.
197. I acknowledge that the Council appears to be showing some pragmatism for instance in the Mierscourt Road resolution to grant planning permission for 134 dwellings despite it being within an ALLI. That resolution, assuming it results in planning permission, and the appeal decision for Station Road for 90 dwellings would assist in housing supply. However, even on these reasonably large sites, in the context of the shortfall in the range of 2.21 to 2.79 years supply it is evident very much more has to be done. In this respect, to give a more meaningful numerical picture, it is agreed that the housing requirement for 2012-2035 is 1281 dpa, yet the completions in the four years 1 April 2012-31 March 2015 only amount to 2436 dwellings, so at that point there was already a backlog of 2688 dwellings. Interested parties refer to other sites but there is no evidence as to how they would fit into the supply side, if at all. Thus, from the evidence before me I take the view that housing land supply is significantly lacking and constitutes a very serious issue for this Council. [21, 97, 164]
198. Whether or not the Head of Planning Services was lacking caution when/if he advised members that the supply side was more like a two year supply when dealing with the Mierscourt Road application in June 2016 it seems to me that this level of supply may well be the case and it may be even worse still. However, without rigorous testing of the evidence that was simply not available, it is not possible to be definitive. [84]
199. That said, it is acknowledged by the parties that the lack of supply is significant. Having regard to the Suffolk Coastal case, the extent of undersupply in this case is such that housing provision attracts materially greater weight than if the supply was only marginally under the five year housing land supply requirement.
200. Moreover, the shortfall in five year housing land supply is so great and the pressure on sites so significant, that it is agreed to be inevitable that greenfield land will have to be developed. Furthermore, given the extent of the ALLI designations, ALLI designated land will need to be developed unless new development is to be located where it would not be accessible in terms of proximity to existing development with its associated services and facilities. These factors are considerations which also need to be placed in the planning balance.

Character and Appearance of the Countryside which is also designated as part of the Capstone and Horsted Valleys ALLI

201. The appeal site is open countryside and situated within the Capstone and Horsted Valleys ALLI. Whilst this is not a national designation, the area is recognised for its local value. The Framework seeks that the planning system contributes to and enhances the natural and local environment by protecting and enhancing valued landscapes. But it is also clear that weight should be apportioned on the importance of the landscape with great weight being given to those areas protected by national designations. The ALLI designation is at the lower end of the landscape designation hierarchy. [65, 138]
202. The principal characteristics of the Capstone Valley part of ALLI are set out in the LCA. The main characteristics which are relevant to the issues in this appeal include the two valleys with a central plateau area, its provision of a setting for the Capstone Farm Country Park, its position as a green wedge linking urban communities into the wider countryside and the North Downs, valuable semi-rural open space in close proximity to densely populated urban communities offering significant health and recreational benefits, a distinct edge to urban areas and prevention of coalescence of Lordswood/Princes Park and Hempstead, remnant chalk grassland on steep slopes leading to smaller fields and then larger arable units to the southern section, blocks of deciduous planting providing containment for arable land and distinct rural character and coherence despite proximity to urban settlements. [66-67, 128, 138]
203. The appeal site is situated within the Elm Court sub-area. This area forms the central plateau with dry valleys to west and east and with the Capstone Country Park to the north. Access to the area is by the country lanes network, with Ham Lane being one of the roads through this sub-area. There are PRoW which give east/west access but there is little north/south access, although there is a footpath across the appeal site in this direction. The characteristics of this sub-area include the gently undulating open farm arable plateau rising towards the North Downs and the indistinct field pattern with a weak hedgerow structure. I saw, as set out in the LCA, that this lack of uniform containment provides a large scale landscape.
204. The Elm Court Business Park, to the east of the appeal site, has a long and tall conifer boundary. That boundary treatment, along with the buildings on the business park, introduces discordant urban elements into the rural scene. The Lordswood Leisure centre and its associated playing fields are situated to the north-west of the appeal site and are within the ALLI. It creates a feature that has a different use to that of agriculture. [63, 127]
205. The appeal site consists mainly of an expansive area of arable agricultural land with wide views over the appeal site and attached agricultural land as well as more distant views. There is also a small area of woodland within the site boundary. The dwellings of Lordswood are well screened from the appeal site by trees for about half of the length of the western boundary and for the remaining part of this boundary there is a good degree of screening which softens the appearance of the dwellings. This can be partly seen in LVIA viewpoints 4 and 7 **and the Council's viewpoint 15** and also the appellants' landscape proof of evidence plan 3 *Oblique Ariel Photograph of the Site*. [131]
206. The buildings of Gibraltar Farm and Gibraltar Farm Cottages are rural in character such that the only main detractor which can be seen is the Elm Court Business Park (this can be seen in LVIA viewpoint 6 on Byway RC29 adjacent to

- Hall Wood looking across the site). However, it has a rural industrial appearance and it is partly screened by planting, albeit in addition to the traditional hedgerow there are uncharacteristic conifers.
207. In landscape terms the lack of hedgerow planting detracts from the area, although this provides for open views (as shown in LVIA viewpoint 4 from PRoW RC27 on Ham Lane looking across the site). Both landscape witnesses agreed that the site looked rural. [129, 132]
208. I appreciate that on this site there are certain factors which detract from the feeling of being in a rural area, particularly background noise. That said, motorways often cross rural areas yet do not change them from being rural. This is particularly so where the traffic movement is not seen, as is the case here. I also saw high levels of fly-tipping on Ham Lane and littering more generally in the area. Whilst that is a landscape detractor, I do not consider this to be simply an urban phenomenon (albeit it an urban fringe is likely to be under greater pressure because of proximity to the community).
209. Those aspects prevent the appeal site, in its wider context, being entirely attractive or tranquil. However, I concur with the Council that it is in a rural countryside location where the appeal site provides a sense of being away from the urban area. It is this which provides **the 'visual relief' that some local residents describe as being important for well-being.** [130, 153, 159]
210. In addition to the appearance of the site, the spatial matters which are of importance for the ALLI and appeal site are the distinct rural character despite close proximity to urban areas, the green wedge position which links urban areas to the Downs and the position in relation to preventing the coalescence of Lordswood/Princes Park with Hempstead. [120]
211. In spatial terms, I have no doubt that the ALLI as a whole, the sub-area and the appeal site are of value because of their rural character and appearance in close proximity to the urban area. However, that situation could arise in many circumstances, **particularly in this Council's area where so many ALLI designations adjoin the urban area.** This matter is therefore of limited weight. [72]
212. The extent of the green wedge formed by the ALLI can be **seen in the Council's** viewpoint 1 taken from the top of the scarp at Darland Banks and also in the LVIA viewpoint EDP 1 (Kingsway Road). I agree with the appellants that the appeal scheme would cause limited visual intrusion in that expansive view. This, also reflects the LVIA assessment that even in the short term (1-15 years) the magnitude of change seen from this viewpoint would be 'very low' with a minor neutral' significance of change (hereafter in this report the impacts are listed in the same order i.e. magnitude of change followed by significance of change). I also agree that the site seems modest in the context of the size of the ALLI as a green wedge given the ALLI covers some 575ha. However, visual impact is not just about a particular static view or the proportion of an area occupied; rather, it is also requires consideration of movement through the area as well as consideration of other key views. [68]
213. Many of the viewpoints provided are taken close to the site (e.g. LVIA viewpoints EDP 2, 3, 4, 5, 6, 7 are all taken on the site or close to its boundary as are Council viewpoints 4, 6a and 7). As such, considerable change would be

- felt here particularly by those people (receptors) walking or riding on PRow through the appeal site or travelling along Ham Lane. Indeed the LVIA considers the short term impacts to be 'very high' and 'major adverse' or 'moderate adverse' for viewpoints 2, 4, 5, 6 and 7, with a level of 'high' and 'major/moderate adverse' at the least for viewpoints 2, 5 and 6 in the medium term (15 years) and beyond. However, development of any greenfield site would inevitably result in a considerable change when seen from the site itself or any of its unscreened boundaries. [69, 139-140, 142]
214. In other views, such as that from Footpath RC11 (LVIA viewpoint EDP 8, Council viewpoint 8) some distance to the north of the site, the proposed development would be seen in the distance as a detractor to the rural view. The LVIA identifies short term impacts as being 'high' and 'major/moderate adverse' reducing to 'medium' and 'moderate adverse' in the medium term once planting becomes established. Similarly the proposed development would have an urbanising effect, but at closer proximity, when seen from the Council's viewpoint 11 taken on PRow KG35 near Roots Wood. I consider that view would be more adversely affected than LVIA viewpoint EDP 8 due to proximity. [143]
215. In terms of the distant views from the south, I agree that the proposed tree planting is likely be able to screen much of the site in the long term, though not all light spill. The foreshortening of views such as that from the motorway bridge (LVIA viewpoint EDP 10, Council viewpoint 10) would alter the character of this view even at a distance. However, dense tree cover is a characteristic of the wider area. As such, I consider that the LVIA conclusion of a 'medium' and 'moderate/minor neutral' reducing to 'very low' and 'minor/negligible' in the medium and longer term represents a reasonable assessment of the likely visual impact. This is a relatively sensitive location heading towards the ALLI and the green wedge/corridor it provides. It would result in change because it would appear to partially block this southern end of the ALLI. That said, the blocking would be by trees in the long term and so would not be uncharacteristic for the wider locality. Moreover, the blocking effect would be to block views of trees rather than longer open views. [71, 73, 93, 141]
216. The route leaving the urban area, along Shawstead Road/Ham Lane and heading out towards the Downs, is currently one of a rural character despite the fly-tipping referred to above. The effect of the proposed development on the sequential views along this route would be to create an urbanised section from Gibraltar Farm almost to the junction with the Lidsing Road. Thus, the presence of the appeal development would be prominent and uncharacteristic in views on this route until the planting became established. Even in the long term, with established planting, it is likely that the development's presence would be felt. This is because of likely glimpsed views into the site, for instance along the emergency access route and retained footpaths as well as from associated activity and lighting. Given the site boundary adjoins Ham Lane at a point where the Elm Court Business Park also adjoins the lane it is likely to result in a feeling of consolidated development, exacerbating the impact of that existing, albeit semi-rural, detractor. Even though I accept that landscaping using deep tree belts would not be uncharacteristic in this locality, the current route of Ham Lane as a countryside rural route would feel less rural. Furthermore, such planting would take a considerable time to provide robust screening particularly during winter months. [69, 151, 158]

217. In practical terms those walking across the appeal site would have to simply walk further to access an open countryside view. Once there they would lose visual connection with the rest of the ALLI to the north but there would still be views southwards to the Downs. Nonetheless, there would be some harm to this public recreational route within the ALLI contrary to the assertion made by the appellants. That said, the appeal scheme would offer other recreational opportunities. [72]
218. Turning to the matter of coalescence, the comparison with other smaller ALLIs is not particularly helpful as the issue is site specific and requires assessment of other matters beside distance. Essentially, in terms of this spatial function of the ALLI, the matter is one of whether the erosion of the gap between Lordswood/Princes Park and Hempstead would be so significant that the settlements began to appear or feel like they are merging. The parties agreed that the existing separation distance between Hempstead and Lordswood (Princes Park is further to the north) would be reduced by some 50% to somewhere in the region of 500-700m. In contrast with the existing situation this would represent a pinch-point at the southern end of the ALLI, particularly given the position of the Elm Court Business Park in relation to the appeal site. [70, 158]
219. Viewpoint EDP 4 on Ham Lane is assessed in the LVIA as having a **'very high' and 'major/moderate adverse'** short term impact and a medium to longer term impact of **'medium' and 'moderate/minor neutral'**. This relies heavily on the landscape planting significantly filtering or screening views of the development behind. However, even with a planted boundary, the existing open rural/agricultural gap seen between the areas of Lordswood and Hempstead from the surrounding road and PRow network, would be markedly altered. This would particularly be the case for views from Ham Lane, Lidsing Road and Chapel Lane (this can be seen in in LVIA viewpoint EDP 4 and Council viewpoints 4, 15 and 14 respectively). However, that landscape change does not indicate a merging of settlements. The landscaping combined with the traffic flow which would be from the southern side towards Lordswood rather than onto the rural Ham Lane would mean that the neighbouring settlements would not appear to merge. [71, 133, 135-137, 145]
220. The appeal would also see other sizeable new landscaping belts. Whilst a number of these would reinforce existing planting or enhance roadside planting, that across the southern end of the site would be a lengthy boundary traversing an open tract of arable land as set out above. Although tree screening of housing is a characteristic of this area, the position chosen follows **the Council's** administrative boundary rather than being robustly determined by existing landscape features. That said, the administrative boundary does not follow any current fixed feature and so may well be reflective of historic features such as those dating back to 1860, as shown on the appellants' proof of evidence plan 6 ***Landscape Change through the 20th Century*** such that the planting would reintroduce a historic boundary feature. [141]
221. Aside from the main development area of the appeal site, I appreciate that the small area of woodland within the site boundary would remain largely intact and be proactively managed were the appeal to be successful. The section to be removed would be limited to that essential for the access, and does not contain high importance trees. Thus, in respect of the existing woodland the proposals overall would be able to secure a benefit.

222. The LCA analyses the condition of the area, which it notes is strongly influenced by external factors with urban fringe areas often under pressure, to be poor. It also assesses the sensitivity, described as measure of the ability of a landscape to accept change without causing irreversible damage to the distinctiveness of that landscape, as high. It goes on to seek restoration of the area.
223. In this regard, the poor landscape condition does not render the appeal site of limited landscape value. Rather, I agree that its sensitivity in this part of the ALLI depends on the role it plays as part of the green wedge the ALLI creates, and in preventing coalescence. On these points I do not consider that the site is critical to maintaining separation between the settlements of Lordswoods and Hempstead. Further, when considered in more distant views (rather than those on the site or at its boundaries) does not have a particular prominence or importance in creating the sense of a green wedge.
224. I conclude that the proposed development would harm the character and appearance of the immediate area and, therefore, fail to accord with the provisions of policies BNE25 and BNE34. However, that harm would not represent a critical harm to the function of the Capstone and Horsted Valleys ALLI taken as a whole. [133-134]
225. Policy BNE34 allows for development in an ALLI if the social and economic benefits of the proposal are so important that they outweigh the local priority to **conserve the area's landscape. It is therefore necessary to consider** whether there are social and economic benefits of the proposal before coming to a final conclusion in respect of policy BNE34 and indeed before making the final planning balance.

Whether there are other Benefits of the Scheme

226. As set out above the housing land supply situation is very significant in this case. However, there are other matters to be added to the planning balance. The first is directly linked to housing supply and relates to affordable housing provision. The scheme would deliver 25% affordable housing. Based on the Moor Street decision the Inspector recorded the need for 713 affordable dwellings to be provided per year, yet only 845 such dwellings have been delivered over the last four years. Given that shortfall I agree with the appellants that significant weight should be attached to the provision of affordable homes. In this regard I also note that there is no evidence to suggest the provision of affordable housing would result in anti-social behaviour.
227. I agree with the appellants that the appeal scheme would bring economic **benefits. The government's views on the importance of this are well known.** In this case, during the construction period the appeal scheme would provide jobs and training opportunities for local people, as well as spend in the local economy. In the longer term, occupants of the new development would provide additional expenditure to support local services. These factors clearly align with the economic dimension of planning and should be afforded significant weight.
228. Whilst the proposal would bring forward open space, including a community **park and children's play space this, to a large extent, is a requirement of the** scheme, both to serve the needs of future occupiers and to be able to screen the

proposed development. As such, I consider modest additional weight should be afforded to this benefit.

229. I agree, as set out above that the provision of a Woodland Management Plan for Hall Wood would represent a positive, albeit modest, biodiversity and access benefit of the scheme.

230. The extensive structural landscape planting which is proposed would create a biodiversity benefit. However, although the Elm Court LCT encourages new planting of woodland and hedgerows I am not convinced it envisaged woodland belts of the extent proposed to screen the appeal site. Nor do I agree that the form of planting proposed necessarily improves the landscape character, which at this point is of wider views and larger and more open fields, rather it is more neutral in landscape terms. Thus, and given that planting is largely required to screen the appeal proposal, I attach little additional weight to this matter.

231. New Homes Bonus payments would be significant, but this does not attract weight in the planning balance, as it offers an incentive for Councils to provide much needed housing on appropriate sites. I also note that the Council would be in receipt of a capital sum in excess of £4m as a result of the scheme. This clearly should be a matter of public record and I appreciate this would bolster the **Council's resources** and so assist the provision of public services. However, it seems to me this should attract no weight as a material consideration because it is unrelated to the planning matters in this case.

Other Matters

232. Interested parties raise a significant number of other matters which do not reflect issues between the parties and it is to these I shall now turn.

233. Many interested parties have raised concerns about access to medical and education services. As part of the appeal process the appellants have signed up to a s.106 Unilateral Undertaking in which they agree to make provision based **upon the Council's formulae in respect of need anticipated to be generated from** the future occupiers of the appeal site. It is not for the developer to have to make up for existing shortcomings in service provision. There is no evidence before me from any main service provider to indicate that the scheme should be resisted because of likely impact on services. Thus, there is nothing before me to justify withholding permission because of the concerns raised.

234. There are a number of transported related matters raised by interested parties. Many relate to general concerns regarding traffic in the locality. However, it is important to note that all traffic would come through the primary access route on North Dane Way / Albemarle Road before joining the highway network. The traffic modelling has been agreed with the highway authority. It is agreed that existing junctions currently operate within their capacity albeit queuing is experienced in the morning and evening peak periods. It is also agreed that the appeal scheme would not unacceptably impinge on the free flow of traffic in the locality. The access to Ham Lane would be for emergencies only. Mr Dines' concerns regarding the Gleaming Wood Road /Lordswood Lane Junction are understandable given the queue predictions. However, the junction improvement scheme would allow ahead traffic to pass traffic waiting to turn right, reducing queuing. This and pedestrian/cycle links would be dealt with through the imposition of conditions.

235. A circular bus route is a core part of the transport plans and a contribution to this (at the level sought) would be provided through the s.106 undertaking. The internal road layout would be designed to accommodate a bus route and the Council would be able to control this through the reserved matters application process. Details of bus stops close to the site are in Albemarle Road and Clandon Way (CD1.14 Appendix C). The frequency of bus services indicate a reasonable level of service, for instance with the Lordswood/Chatham service having five buses per hour during the day Monday to Saturday and hourly on Sundays (CD1.14 Table 3.19 p.12). It is proposed that evening and Sunday services would be enhanced through the s.106 contribution.
236. Many services would be within easy walking or cycling distances (CD1.14 Appendix C) albeit one would not wish to transport heavy shopping over longer distances. That would be the case in many locations and delivery services are not uncommon.
237. There is no substantiated evidence to support withholding a decision on this appeal to await the outcome of the Lodge Hill proposals.
238. I am satisfied that the site would provide ample opportunity for positioning of dwellings in the detailed scheme so as to prevent adverse impacts in terms of privacy or overshadowing of existing residential properties. It is likely that there would be impacts on outlook but there is no right to a private view.
239. Whilst there is criticism of the scheme for being opportunistic, house-building relies upon business to take development opportunities and risks to develop the housing that is needed for the nation.
240. Fluctuation in property prices as a consequence of development, be it good or bad, is not a matter which the planning system is designed to control.
241. Other infrastructure projects, such as motorway improvements, may be considered by some to result in undesirable change but they reflect community and business needs and are not a reason to withhold planning permission in this case.
242. The substantiated evidence before me indicates that the scheme would not have a harmful impact on ecology, which, in any event, is limited given the arable agricultural management of much of the site. Ecological mitigation proposals, which would be secured by condition were the appeal to be allowed, would make improvements to the surrounding area and so no statutory objections are raised. In terms of the Ancient Woodland conditions would be required to secure a Woodland Management Plan and prevent encroachment within 15 metres of the Ancient Woodland.
243. The site is good classified as grade 3a and 3b agricultural land but is not of the highest quality. In any event, impact upon it must be judged in the context of the dire need for homes.
244. The visual effect on the ALLI set out above would have a modest contextual impact on the Capstone Country Farm Park and the scheme would be likely to increase visitor numbers and thus management needs. S.106 monies have been put forward to assist in recreation requirements arising from the site and are identified for this location. Aside from this, the proximity to this facility would be

a benefit for future occupiers of the site in terms of access to recreational space for health and well-being.

245. Concerns are raised about a waste transfer station near to the site which takes asbestos. That business will be carefully regulated under other legislation and should be managed so that it poses no risk to occupiers of the proposed development.
246. There is no substantiated evidence before me that flood risk/drainage would pose a problem here which could not be dealt with by the conditions proposed.
247. I appreciate that there is substantial local opposition, including as sustained by the Parish Councils and the MP. **I am mindful of the Government's localism agenda.** However, I have to consider the proposed development having regard to local development plan policies and associated documents, including those relating to local housing need. I also have to report on the development having regard to national planning policies and all other material considerations.
248. It is not unreasonable for people to have homes and I am not satisfied that providing such homes here would lead to social unrest. Nor do I consider that immigration and its potential impact on the requirements of housing need is a matter for consideration in dealing with this housing scheme. Furthermore, there is no substantiated evidence before me that occupiers of the proposed development would materially add to the existing jobless figures for this area.

The Planning Balance

249. The planning balance must be considered in the light of the Framework as a whole. This sets out that there are three dimensions to sustainable development; economic, social and environmental. Gains should be sought jointly and simultaneously for each of those roles. It is inevitable that there will be times when different strands pull in different directions, as is the case here.
250. In terms of economic benefits there would be gains in housing delivery, including affordable housing, and in the value of the construction works and subsequent housing to the local economy. The housing would be accessibly located, in close proximity to recreational facilities, reasonably close to other facilities and to bus service provision, so would make economic sense in terms of reducing the need to travel by private car. I consider those benefits significantly outweigh the disbenefit, in economic terms, of losing the site from agricultural use.
251. In terms of the social role, the proposed dwellings would provide much needed homes, including affordable homes. The social benefits of being able to house people are significant in creating stable communities. I do not share the objection raised that this scheme would result in social unrest; on the contrary it should make life better for many by easing housing pressure. In this case there is no reason to doubt that the homes would create a high quality environment. This would provide for an **improvement in people's quality of life, improving the conditions in which they live and take leisure and would widen the choice of quality homes.** These are all important objectives of the Framework.
252. There would also be benefits for existing residents as a result of access to the **on-site children's play facilities,** recreational open space on the site and better woodland management. The bus services would also be improved.

253. Some existing residents that adjoin the site may feel the proposed development would be to the detriment of their living conditions. However, development would be likely to have that impact in many cases and the living conditions of those residents would be considered in the light of normal development management policies at the time of the reserved matters application.
254. I have greater concerns, in terms of social impacts, that local people would feel they have not been listened to, that the Local Plan is being ignored and that localism would not have been taken seriously were the appeal to be allowed. However, the Local Plan is not up-to-date in terms of its policies for the supply of housing and this is a materially important consideration. Despite this, other local assessments providing evidence to support the new local plan, including for housing and affordable housing, have identified local requirements and it is these which need to be considered.
255. Weighing these social dimension matters together, I consider that the balance of social benefits weighs heavily in favour of the proposed development.
256. In terms of the environmental role I find that, despite the landscaping proposals and management plans, the proposed development would cause harm to this area of countryside which is locally designated for protection. Whilst it would begin to close off the southern end of the ALLI and so impinge on the sense of spaciousness, it would not lead to coalescence between Lordswood and Hempstead. It would reduce the sequential countryside views from Ham Lane and the PRoW across the site, but these are limited distances and in terms of Ham Lane, the impact would significantly reduce as planting becomes established.
257. Moreover, acknowledging those harms, even the dated policy BNE34 accepts that economic and social benefits of a scheme might be so important that they **outweigh the local priority to conserve the area's landscape**. In this case the economic and social benefits are particularly clear and the harms are not critical to the functioning of the ALLI as a whole. Moreover, I am mindful that ALLI designations cover a significant part of undeveloped land in accessible locations **in this Council's area**, so that it is inevitable that to fulfil housing requirements ALLI land will need to be developed. As such, I consider this is a case where policy BNE34 would be complied with.
258. Turning to the Framework, the balancing exercise is explicit where relevant policies are out-of-date. It sets out the presumption in favour of sustainable development and says that for decision taking planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. Those policies make it clear that the locally designated ALLI is at the lower level of priority in terms of weight to its protection and I have already determined that harm to the ALLI as a whole is not so significant that it outweighs the benefits of the appeal scheme, particularly in terms of housing provision.
259. Local planning authorities are advised by the Framework to boost significantly the supply of housing. In this case it is evident that the supply of housing is in a precarious state, at best being in the range 2.79 to 2.21 years. That very substantial policy under-provision has no clear solution in the near future, despite

the Council's more flexible approach to development on ALLI sites. Thus, given the sustainable location in close proximity to Lordswood and its facilities, the harm to the landscape would not significantly and demonstrably outweigh the benefits of the proposed development. Thus, the Framework planning balance lies in favour of the proposal.

260. It is not disputed that there would be conflict with adopted policy BNE25 of the development plan and that policy is afforded limited weight by the parties in the SoCG. As noted above, s.38(6) requires that applications for development should be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the Framework is a significant material consideration. Because the development plan policies are out-of-date, the Framework test is whether any adverse impacts of approving this development would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole. It is my view that the appeal should succeed as the harms do not significantly and demonstrably outweigh the benefits of the scheme in the circumstances before me, where housing land supply is so significantly below that required. Accordingly, I find the proposed development to be a sustainable one in the terms of the Framework, that being a material consideration which warrants a decision other than in accordance with the development plan.

Recommendation

261. I recommend that the appeal be allowed on the basis of the revised plans and planning permission be granted subject to conditions set out in Annex A.

Zoë Hill

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Paul Brown QC	Instructed by Mrs V. Stoodley
He called	
Mr D McInerney	
Mr G Warren	

FOR THE APPELLANT:

Graeme Keen	Instructed by the Head of Legal Services, Medway Council
He called	
Mr Withycombe	
Mr Harouni	

INTERESTED PERSONS:

Mrs Pauline Bowdery	on behalf of Boxley Parish Council
Mr Van der Vliet	Local resident
Mrs Vanessa Jones	Chair of Bredhurst Parish Council and Bredhurst Woodland Action Group
Mr Dines	Local resident

INQUIRY DOCUMENTS:

- 1 CIL Compliance Checklist
- 2 Opening on behalf of the Appellants
- 3 Opening Statement on behalf of the Council
- 4 Judgement of Mr Justice Ouseley:
Stroud District Council v SoS Communities and Local Government
Gladman Developments [2015] EWHC 488 (Admin)
- 5 Bundle of documents submitted by Mrs Bowdery
- 6 Statement on behalf of Boxley Parish Council (made by Mrs
Bowdery)
- 7 Proposed conditions list with additional sheet
- 8 Email regarding s.106 contributions - G Gould
- 9 Housing Land Availability Tables
- 10 Closing Submissions for the Council
- 11 S.106 Unilateral Undertaking
- 12 Closing Submissions on behalf of the Appellants

CORE DOCUMENTS

- 1.1 Pre-Application Response
- 1.2 Covering Letter
- 1.3 Application Forms
- 1.4 Ownership Certificates
- 1.5 Acknowledgement of Application

- 1.6 Environmental Screening Opinion
- 1.7 Planning Statement
- 1.8 Design and Access Statement (EDP1995_04a)
- 1.9 Landscape and Visual Impact Assessment (Volume 1 EDP1995_04a)
- 1.10 Landscape and Visual Impact Assessment Volume 2 L_EDP1995_04a
- 1.11 Ecological Appraisal. C_EDP 1995_05a.
- 1.12 Archaeological and Heritage Assessment. EDP 1995_03a
- 1.13 Arboricultural Assessment. T_EDP 1995_02a. July 2014
- 1.14 Transport Plan Amended. GC/HB/P14-630/10
- 1.15 Residential Travel Plan. GC/CS/P14-630/02
- 1.16 Flood Risk Assessment. GL/HB/P14-630/03
- 1.17 Utilities Assessment. PL/HB/P14-630/04
- 1.18 Site Ground Investigation. Appendix C to FRA CD DOC GF1.16
- 1.19 Residential Travel Plan Amended. GC/CS/P14-630/11
- 1.20 Furneaux & Co. Agricultural Land Classification (P889)
- 1.21 Ecology Addendum Report. (C_EDP 1995_06)
- 1.22 LinSig Output M2 J3 (Scheme Model with Lodge Hill Mitigation Scheme)
 - 1.22.1 LinSig Output M2 J3 (Base Model (Existing Junction) Without Development)
 - 1.22.2 LinSig Output M2 J3 (Base Model (Existing Junction) With Gibraltar Farm + Lodge Hill)

- 2.1 Illustrative Masterplan. 1995/77d
- 2.2 Illustrative Masterplan. Amended Version 1 1995/97a
- 2.3 Site Plan EDP 1995/74b
- 2.4 Parameter Plan 5 Advance Planting Amended. edp 1995/99
- 2.5 Parameter Plan 2 Access Plan Amended. 1661-SK-006 Rev A
- 2.6 Site Section Plan EDP/1995/79a
- 2.7 Open Space Breakdown EDP1995/102 dated 03 Dec 2015
- 2.8 Application Boundary Site Plan EDP 1995/74c (Amended August 2016)

- 3.1 Covering email updating ecological report
- 3.2 Letter to case officer (G. Gould)
- 3.3 Letter to case officer (G. Gould) with appended letters by BTF Lister
- 3.4 Letter to case officer (G. Gould) clarifying transport + S106 position
- 3.5 Gleaming Wood Drive, Lordswood appeal decision
- 3.6 Email to case officer clarifying points before committee
- 3.7 Email to case officer (G. Gould) with extract from Autumn Statement
- 3.8 Email from Noel Filmers (Medway Council) to Appellant
- 3.9 Email to case officer
- 3.10 Letter from case officer seeking clarification on open space contribution request
- 3.11 EDP email to case officer (G. Gould) clarifying open space
- 3.12 **Email from Medway's G. Gould to G. Warren re S106**
- 3.13 **Email from Medway's G. Gould confirming open space**

- 4.1 Planning Committee Report
- 4.2 Planning Committee Supplementary Report
- 4.3 Minutes of the Meeting
- 4.4 Decision

- 5.1 Appeal Application Form
- 5.2 Appeal Notification to Ownership
- 5.3 Appeal Covering letter

- 6.1 Appellants Statement of Case
- 6.2 LPA Statement of Case

- 7.1 LPA Planning Evidence Proof of Evidence – Majid Harouni
- 7.2 LPA Planning Evidence Summary of Proof – Majid Harouni
- 7.3 LPA Landscape Proof of Evidence – David Withycombe
- 7.4 LPA Landscape Summary Proof of Evidence – David Withycombe
- 7.5 Appellant Planning Evidence Proof of Evidence – Graham Warren
- 7.6 Appellant Planning Evidence Summary Proof of Evidence – Graham Warren
- 7.7 Appellant Planning Evidence Proof of Evidence – Duncan McInerney
- 7.8 Appellant Planning Evidence Summary Proof of Evidence – Duncan McInerney

- 8.1 Statement of Common Ground September 2016

- 9.1 List of Agreed Draft Conditions
- 9.2 Signed but Undated s.106 Unilateral Undertaking

- 10.1 Medway Local Plan Update
- 10.2 Medway Council Issues and Options (2012-35)
- 10.3 Medway Council Annual Monitoring Report
- 10.4 Medway Local Plan (saved policies) (S4, BNE25, BNE34)
- 10.5 Medway Landscape Character Assessment Mar11 Main Report
- 10.5.1 Medway Landscape Character Assessment Mar11 Appendices
- 10.5.2 Medway Landscape Character Assessment Mar11 Map
- 10.6 Medway Developers Contribution Guide
- 10.7 Appeal Decision Land West of Hoo St Werburgh

- 11.1 LPA Planning Evidence Appendix 1 Minister of State for Housing Letter 27th March 2015
- 11.2 LPA Planning Evidence Appendix 2 Suffolk Coast Hopkins Judgement
- 11.3 LPA Planning Evidence Appendix 3 Appeal Decision Land at Station Road, Rainham
- 11.4 LPA Planning Evidence Appendix 4 Appeal Decision Muller Properties Group
- 11.5 LPA Planning Evidence Appendix 5 Appeal Decision Moor Street, Rainham

- 11.6 LPA Planning Evidence Appendix 6 Appeal Decision Land Off Bath Road, Leonard Stanley
- 11.7 LPA Planning Evidence Appendix 7 Land East of Mierscourt Road, Committee Report 01-06-2016
- 11.8 LPA Planning Evidence Appendix 8 Land North of Peninsula Way, Chattenden, Rochester, MC-15-3104
- 11.9 LPA Planning Evidence Landscape Proof of Evidence Appendices – David Withycombe
- 11.10 Appellant Planning Evidence Proof of Evidence Appendices – Graham Warren
- 11.11 Appellant Planning Evidence Proof of Evidence Appendices Parts 1 - 13 – Duncan McInerney

- 12.1 Illustrative Masterplan [EDP 1995/125] (dated 5 Sept 2016)
- 12.2 Site Plan / Application Boundary Plan [EDP 1995/74d] (dated 5 Sept 2016)
- 12.3 Informative to Application Boundary Plan [EDP 1995/124a] (dated 5 Sept 2016)

Appendix 1 – Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins except that authorised by condition 4 below and the development shall be carried out as approved.

Reason for the condition: As required to be imposed by Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 18 months from the date of this permission. The development hereby permitted shall begin not later than 12 months from the date of approval of the last of the reserved matters to be approved.

Reason for the condition: For the avoidance of doubt and to ensure the satisfactory and prompt development of the site.

- 3) No development shall take place until a scheme of phasing for the dwellings and highways and drainage infrastructure and associated open space / green infrastructure has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme of phasing.

Reason for the condition: This pre-commencement condition is required to ensure that the key elements of each phase of the development is completed in an order which ensures that infrastructure needs, landscaping/open space and access are in place relevant to each phase before further development is undertaken, in the interests of good planning.

- 4) The development of Phase One as agreed by condition 3 above shall begin not later than 12 months from the date of the approval of reserved matters applications relating to that phase.

Reason for the Condition: To ensure a prompt start on site.

- 5) All reserved matters and details required to be submitted pursuant to condition 1 shall be in accordance with the principles and parameters described and identified in the Illustrative Masterplan (Drawing No. EDP1995/97a received 24/09/2015 and the Design and Access Statement (Revised 12/08 2014). A statement shall be submitted with each reserved matters application, demonstrating how the submitted reserved matters comply with the Design and Access Statement and the indicative Masterplan documents.

Reason for the condition: For the avoidance of doubt and to ensure the satisfactory development of the site.

- 6) No dwelling or ancillary building construction shall take place until details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Reason for the condition: As the scheme is a large new development with limited screening in the initial years this condition is necessary in the interests of visual amenity and to ensure the satisfactory development of the site.

- 7) No more than 450 dwellings shall be constructed on the site.

Reason for the condition: For the avoidance of doubt and given all assessments have been on the basis of this figure such that it is necessary to ensure the satisfactory development of the site.

Trees and Landscaping and Ecology

- 8) The plans and particulars required to be submitted in accordance with the condition 1 shall ensure that no less than 2.96 ha of the site is set aside as woodland, 0.531 ha as open space and play space and where the development abuts the adjoining ancient woodland a clear minimum of 15m landscape buffer area/zone shall be maintained.

Reason for the condition: To ensure adequate open space for future occupiers of the development and to provide for the interests of the ancient woodland.

- 9) The development shall not commence until an Arboricultural Method Statement (AMS) and Tree Protection Plan (TPP), which shall include details of all trees to be retained and removed, any facilitation pruning required and the proposed measures of protection, undertaken in accordance with BS 5837 (2012) 'Trees in Relation to Design, Demolition and Construction-Recommendations' has been submitted to and approved in writing by the local planning authority. The AMS shall include full details of areas of hard surfacing within the root protection areas of retained trees which should be of permeable, no-dig construction and full details of foundation design, where the AMS identifies that specialist foundations are required. The approved barriers and/or ground protection measures shall be erected before any equipment, machinery or materials are brought onto the site and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the areas protected in accordance with this condition. The siting of barriers/ground protection shall not be altered, nor ground levels changed, nor excavations made within these areas without the written consent of the local planning authority. The measures set out in the AMS and TPP shall be adhered to in accordance with the approved details.

Reason for the condition: This condition is required and to be agreed pre-commencement to safeguard the arboricultural interests of the site before works commence that could cause irrevocable harm and to ensure adequate maintenance for the protection of landscape and habitat in the interests of ecological and local amenity.

- 10) A Landscape and Ecology Management Plan (LEMP), including long term design objectives, management responsibilities and maintenance schedules with timetable(s) for works for all landscape areas, other than domestic gardens, shall be submitted to the local planning authority for approval in writing prior to the occupation of the development. The LEMP shall be carried out as approved in accordance with the approved timetable(s).

Reason for the condition: To safeguard the landscape and ecological interests of the site and to ensure adequate maintenance for the protection of landscape and habitat in the interests of ecological and local amenity.

- 11) No dwelling shall be occupied until a Woodland Management Plan (WMP) for the existing and proposed woodland areas has been agreed in writing by the local planning authority. That part of the WMP for Hall Wood Ancient Woodland shall **be in accordance with EDP's Heads of Terms for a WMP (EDP report ref: C_EDP1997_07).**

The WMP shall include the following:

- a) Review of existing constraints and opportunities;
- b) Management objectives and associated practical measures;
- c) Details of initial enhancements and long term maintenance;
- d) Extent and location/area of management works on scaled maps and plans at a scale which shall have first been agreed by the local planning authority in writing;
- e) Timetable for implementation demonstrating that works are aligned with the proposed programme of development;
- f) Details for monitoring and remedial measures; and
- g) Persons responsible for implementing the works.

The measures set out in the WMP shall be implemented in accordance with the approved details and timetable(s).

Reason for the condition: This condition is required to safeguard the woodland and to ensure adequate management for the protection of landscape and habitat in the interests of ecological and local amenity.

- 12) The development shall not commence until details of all fencing, walling and other boundary treatments, to include hedgehog holes have been submitted to and approved in writing by the local planning authority. The landscaping areas and buffer zones shall be implemented in full in accordance with the approved details before the first occupation of any of the dwelling as hereby approved, or in accordance with a programme to be agreed in advance in writing by the local planning authority. All boundary treatments and buffer zones to be installed in or adjacent the ancient woodland shall be carried out in accordance with the approved details.

Reason for the condition: This condition is required and to be agreed pre-commencement to safeguard the ecological interests of the site. The works subsequently required are necessary in the interests of residential and local amenity.

- 13) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons for the phase to which it relates following the occupation of the first dwelling on that phase or the completion of that phase of development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of that phase of the development die, are removed or become seriously damaged or diseased

shall be replaced in the next planting season with others of similar size and species.

Reason for the condition: This condition is required to ensure that the landscaping gets properly established which is particularly important to visual amenity given the size and partly open location of the site.

- 14) No works shall take place (including ground works and vegetation clearance) until an updated species survey has been carried out to inform production of an Ecological Design Strategy (EDS) addressing all species mitigation for all species recorded within the site has been submitted to and approved in writing by the local planning authority.

The EDS shall include the following:

- a) Purpose and conservation objectives for the proposed works;
- b) Review of site potential and constraints;
- c) Detailed method statements to achieve stated objectives for each species;
- d) Extent and location/area of proposed mitigation for all species on appropriate scale maps and plans;
- e) The location of bat and bird boxes and/or bricks and their specifications;
- f) Type and source of materials to be used (including whether or not they are native species and local provenance);
- g) Timetable for implementation demonstrating that works are aligned with the proposed programme of development;
- h) Persons responsible for implementing the works;
- i) Details of initial aftercare and long term maintenance;
- j) Details for monitoring and remedial measures; and,
- k) Details for disposal of any wastes arising from works.

The EDS shall be implemented in accordance with the approved details and retained thereafter.

Reason for the condition: This condition is required and to be agreed pre-commencement to safeguard the ecological interests of the site before works commence that could cause irrevocable harm and to ensure adequate maintenance for the protection of landscape and habitat in the interests of ecological and local amenity.

- 15) No part of the development hereby granted (including ground works and vegetation clearance) shall take place until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP: Biodiversity shall include the following:

- a) Details of the areas where ancient woodland soil and coppiced stools are to be translocated and method statement for translocation;

- b) Risk assessment of potentially damaging construction activities;
- c) Identification of biodiversity protection zones;
- d) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- e) The location and timing of sensitive works to avoid harm to biodiversity features;
- f) The times during construction when specialist ecologists need to be present on site to oversee works;
- g) Responsible persons and lines of communication;
- h) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
- i) Use of protective fences, exclusion barriers and warning signs; and,
- j) Cordwood above 20cm in diameter from the site should be retained and placed within the site in locations and quantities to be agreed with the local planning authority prior to any tree felling take place.

The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority

Reason for the condition: This condition is required and to be agreed pre-commencement to safeguard the ecological interests of the site before works commence that could cause irrevocable harm and to ensure adequate maintenance for the protection of landscape and habitat in the interests of ecological and local amenity.

- 16) No external lighting fixtures or fittings shall be attached to any building or structure hereby approved and no free standing lighting equipment shall be erected on the site, other than those shown on the plans approved for condition 17 below or as may be agreed on a temporary basis under condition 15 during the construction period.

Reason for the condition: This condition is required to safeguard the ecological interests of the site.

- 17) No dwelling shall be occupied until a Lighting Strategy for Biodiversity, including a timetable for its implementation has been submitted to and approved in writing by the local planning authority. The strategy shall:
- a) identify those areas/features on site that are particularly sensitive for bats, dormice and otters and that are vulnerable to light disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
 - b) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above

species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy.

Reason for the condition: This condition is required to safeguard the ecological interests of the site.

Highways

- 18) The access to the site shall be from North Dane Way Drive as show in drawing 186-SK-006 Rev A and the emergency vehicular access shall be from Ham Lane.

Reason for the condition: In the interests of highway safety and emergency access, for the avoidance of doubt and to ensure the satisfactory development of the site.

- 19) Development shall not begin until details of the proposed emergency access have been submitted and approved in writing by the local planning authority. The approved emergency access shall be made available prior to the first occupation of any dwelling and thereafter retained for the purpose intended.

Reason for the condition: This condition is required in the interests of highway safety and emergency access.

- 20) No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:

- i) the parking of vehicles of site operatives and visitors;
- ii) loading and unloading of plant and materials;
- iii) storage of plant and materials used in constructing the development;
- iv) wheel washing facilities;
- v) measures to control the emission of dust and dirt during construction; and,
- vi) a scheme for recycling/disposing of waste resulting from construction works.

Reason for the condition: This condition is required to be addressed pre commencement as it relates to activities which would be likely to have an impact immediately upon first works on the site and it relates to the interests of highway safety and the protection of the environment.

- 21) No development hereby permitted shall commence until such time as the improvement works to the junction of North Dane Way and Albermarle Road and the link access road to the site as shown in the drawing 1661-SK-001 Revised A within appendix H of the Transport Assessment Report have been completed in accordance with details which shall first have been approved by the local planning authority in writing.

Reason for the condition: This condition is required pre-commencement as it is essential that safe access is provided to the site before activities commence on site in the interests of highway safety and the free flow of traffic.

- 22) No dwellings on the development shall be occupied until the carriageway(s) (including surface water drainage/disposal, vehicular turning head(s) and street lighting) providing access from the nearest public highway to that dwelling have been completed to at least binder course level and the cycle and footway(s) to surface course level.

Reason for the condition: This condition is required to ensure pedestrian and cycle and vehicular access is available for each dwelling before it is occupied in the interests of the welfare and safety of the occupiers of the related dwelling.

- 23) No dwelling shall be occupied until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.

Reason for the condition: To ensure highways are maintained in a safe condition for the protection of those using them.

- 24) No dwelling hereby approved shall be occupied until a travel plan based on the Framework Travel Plan has been submitted to and approved in writing by the local planning authority.

Reason for the condition: To encourage alternative means of transport to that of the private car in the interests of the environment.

- 25) Details submitted pursuant to condition 1 shall include a shared footway/cycleway on the north side of North Dane Way to link the development site with the Lords Wood Leisure Centre with associated improvements and street lighting.

Reason for the condition: To encourage alternative means of transport to that of the private car in the interests of the environment.

Archaeology

- 26) No development shall take place within any phase of the development until a programme of archaeological work has been secured and implemented in accordance with a written scheme of investigation for the relevant phase, which shall have first been submitted to and approved in writing by the Local Planning Authority.

Reason for the Condition: It is necessary for this condition to be a pre-commencement condition so that archaeological assessment can take place before the land is disturbed.

Flood Risk and Drainage

- 27) The first application for the approval of reserved matters on the site shall be accompanied by a sustainable surface drainage strategy for the entire application

site. No dwelling hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the Local Planning Authority as part of the reserved matters applications for the phase within which the dwelling is situated.

Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage **system in accordance with the principles set out in DEFRA's non-statutory** technical standards for the design, maintenance and operation of sustainable drainage to drain surface water (or any subsequent version), and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) include a timetable for its implementation; and
- iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

Reason for the condition: To ensure acceptable drainage of the site so as to minimise flood risk.

- 28) No dwelling in any phase of development hereby permitted shall be occupied until sewage disposal works for that phase have been implemented in accordance with a scheme which has first been submitted to and approved in writing by the Local Planning Authority.

Reason for the condition: To ensure acceptable foul drainage of the site.

Noise

- 29) No dwelling shall be constructed until an acoustic appraisal specifying attenuation measures (where necessary) has been submitted for approval in writing by the local planning authority. No dwelling shall be occupied until the approved attenuation measures have first been installed in accordance with the approved details. The approved attenuation measures shall be maintained and retained thereafter.

Reason for the condition: To ensure acceptable living conditions for future occupiers of the site.

Air Quality

- 30) The development shall not be commenced until an Air Quality report has been submitted to the local planning authority for its written approval. The report shall contain and address the following:

i) An assessment of air quality on the application site and of any scheme necessary for the mitigation of poor air quality affecting the residential amenity of occupiers of this development.

ii) An assessment of the effect that the development will have on the air quality of the surrounding area and any scheme necessary for the reduction of emissions giving rise to that poor air quality. The assessment should quantify the measures or offsetting schemes to be included in the development which will reduce the air pollution of the development. Any scheme of mitigation set out in the subsequently approved report shall include a timetable for implementation. The development shall be implemented and managed in accordance with the approved scheme.

Reason for the condition: This condition is required as a pre-commencement condition as air quality needs to be initially assessed prior to any works of development commencing as they could alter background air quality levels and this condition is required in the interests of the environment and living conditions of future occupiers of the development.

Contamination

31) If during the course of development, contamination is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for a remediation strategy detailing how the contamination shall be dealt with. The remediation strategy shall be implemented as approved, verified and reported to the satisfaction of the local planning authority.

Reason for the condition: This area is prone to fly-tipping and therefore it is anticipated that as yet unidentified contamination may exist on site. In such circumstances it may be necessary for remedial works to take place in order that the land becomes safe for residential use.



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 for permission 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

With the permission of the High Court 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. 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 for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

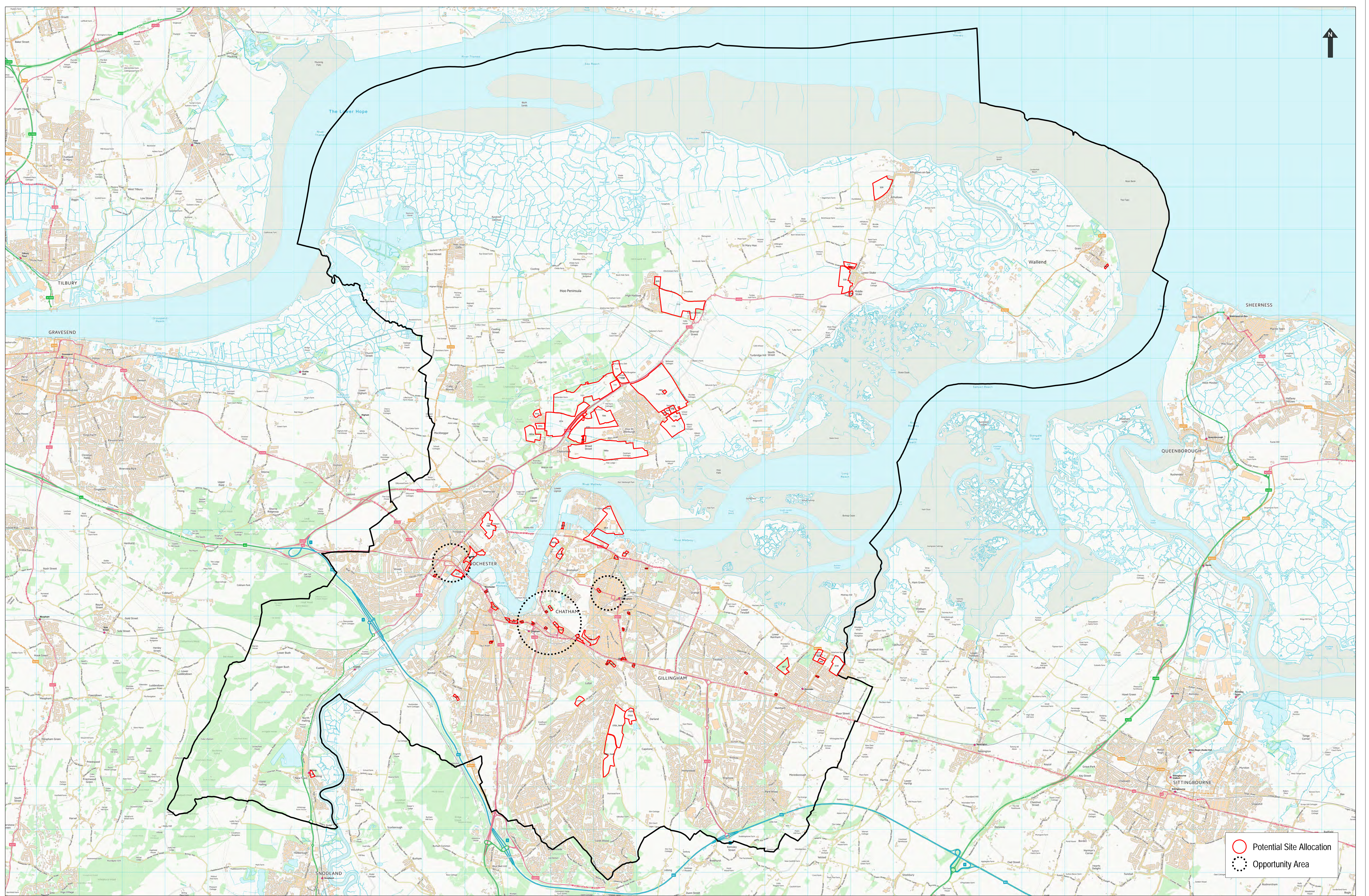
Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If 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.

Appendix 2

Development Scenarios 1 – 4

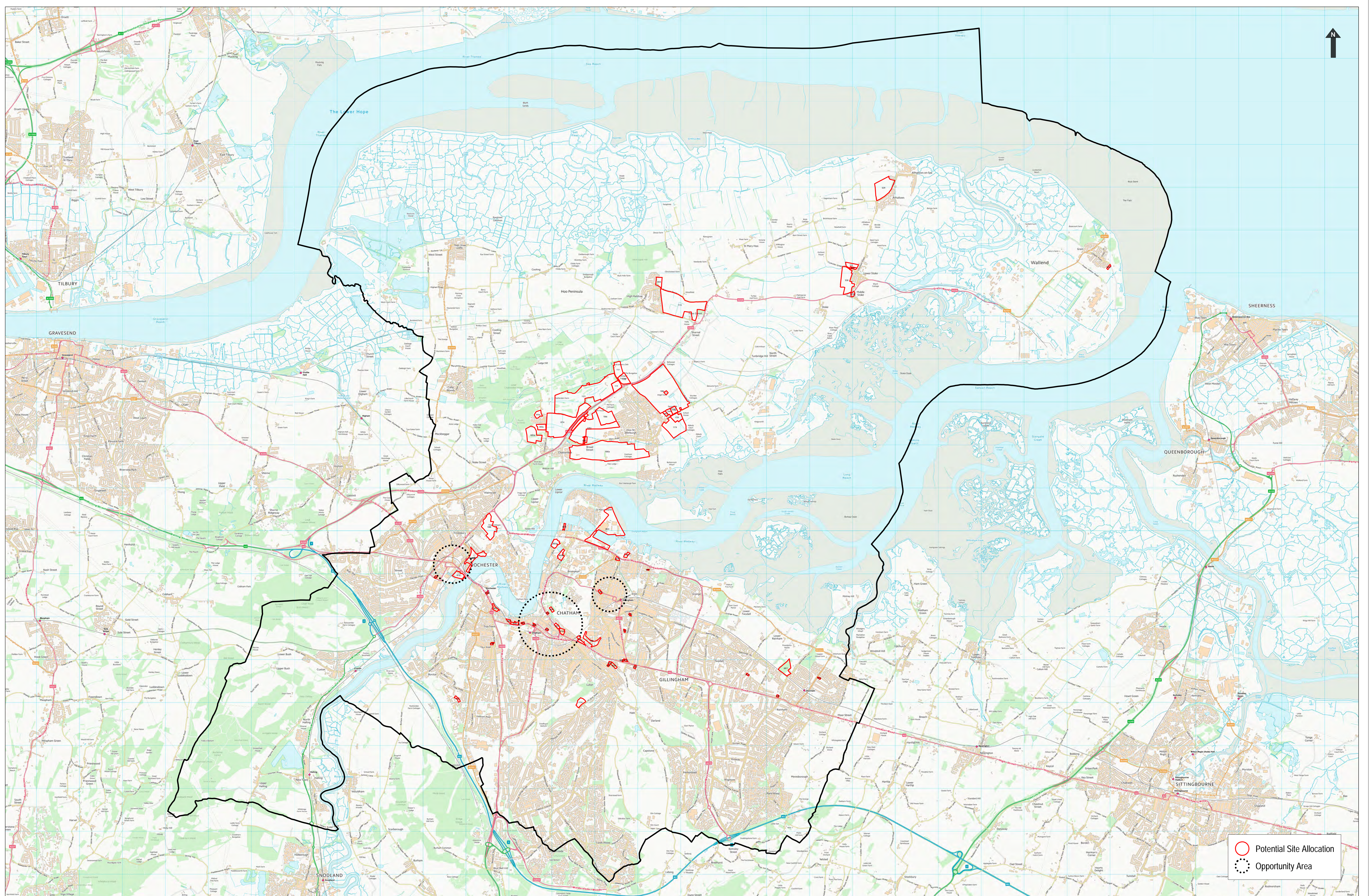
Future Medway Local Plan – Development Strategy (Regulation 18)

March 2019



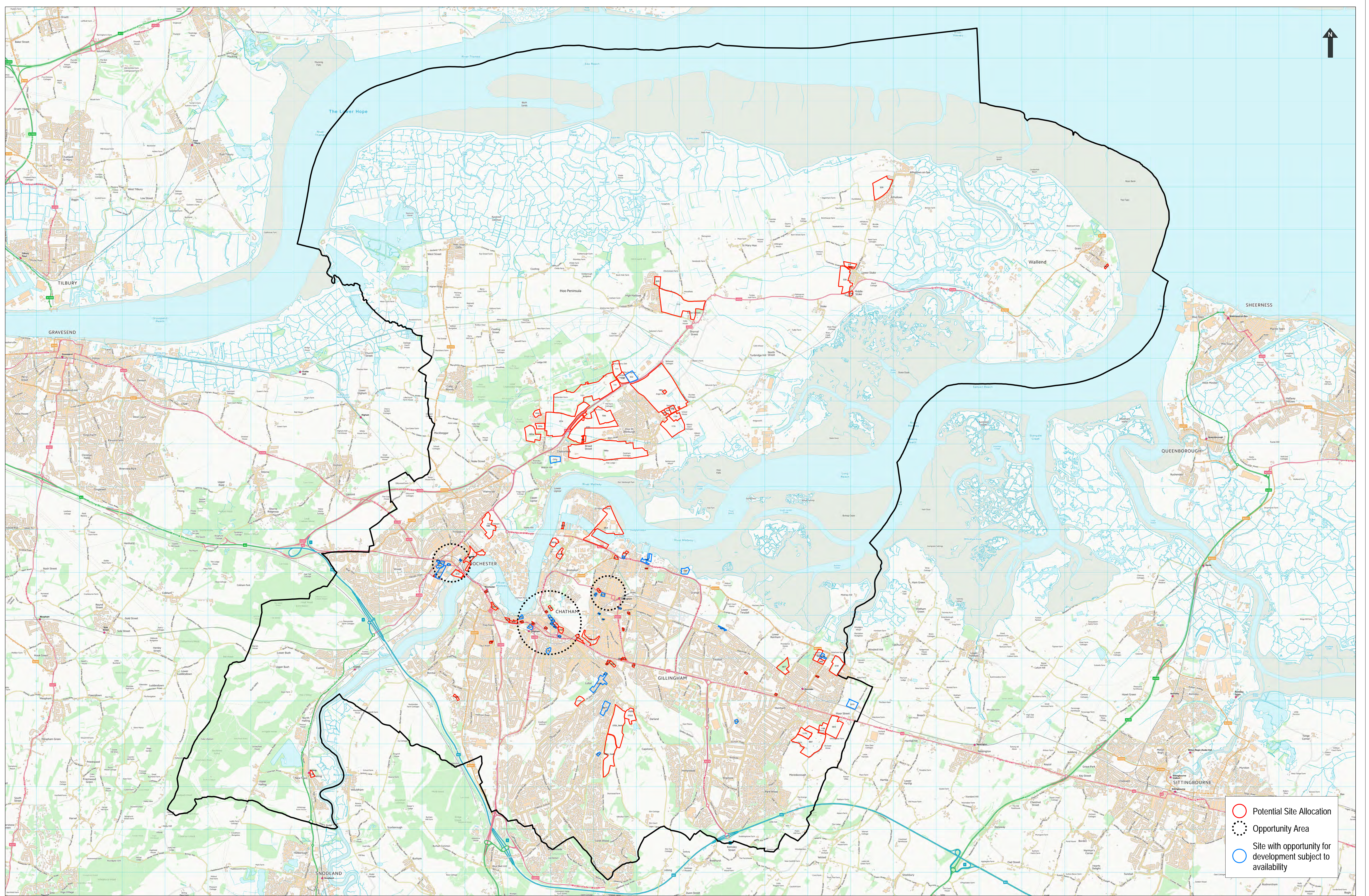
Scenario 1 - Meeting Objectively Assessed Need

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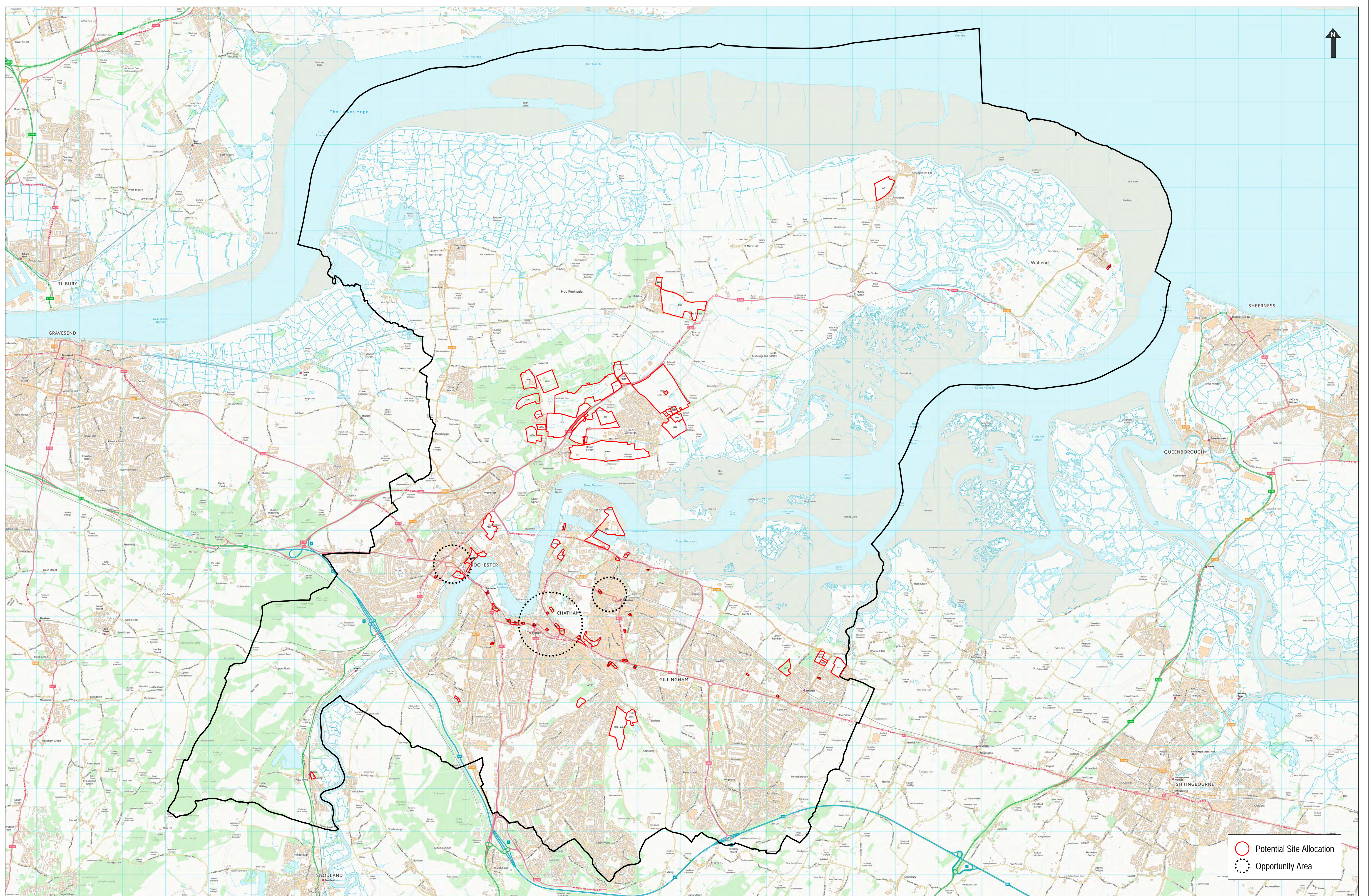
Scenario 2 - Investment in Infrastructure to Unlock Growth

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Scenario 3 - Meeting Government's Proposed Calculation of Local Housing Need

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Scenario 4 - Consideration of Development within Lodge Hill SSSI

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Appendix 3

Town Road, Cliffe Woods Appeal
Appeal Ref.APP/A2280/W/17/3175461



**Ministry of Housing,
Communities &
Local Government**

Tim Booth
Gladman Developments Ltd
Gladman House
Alexandria Way
Congleton Business Park
Congleton
Cheshire
CW12 1LB

Our ref: APP/A2280/W/17/3175461
Your ref: PP-05441858

8 November 2018

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY GLADMAN DEVELOPMENTS LTD
LAND AT TOWN ROAD, CLIFFE WOODS, KENT, ME3 8JL
APPLICATION REF: MC/16/3669**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Matthew Nunn BA BPL LLB LLM BCL MRTPI, who held a public local inquiry on 28, 29 and 30 November, and on 5 and 6 December 2017 into your appeal against the decision of Medway Council to refuse your application for outline planning permission for up to 225 residential dwellings (including up to 25% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from Town Road and associated ancillary works; all matters to be reserved with the exception of the main site access, in accordance with application ref: MC/16/3669, dated 31 August 2016.
2. On 13 September 2017, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed, and outline planning permission granted subject to conditions.
4. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the inquiry

5. On 28 June 2018, the Secretary of State wrote to parties to afford them an opportunity to make representations on the judgment of the Court of Justice of the European Union (CJEU) in Case C-323/17 *People Over Wind and Sweetman v Coillte Teoranta* of 12 April 2018.
6. On 27 July 2018, the Secretary of State wrote to parties giving them the opportunity to make representations on the revised National Planning Policy Framework, published on 24 July 2018.
7. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.
8. On 26 October 2018, Government published “Technical consultation on updates to national planning policy and guidance”, dealing with the calculation of local housing need and other matters, including the *People Over Wind and Sweetman v Coillte Teoranta* issue. While a number of the issues dealt with in that document are relevant to this case, given these remain the subject of consultation and may not be the final position, the Secretary of State has made his decision here based on existing policy.

Policy and statutory considerations

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case the development plan consists of the saved policies of the Medway Local Plan, adopted May 2003. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR14-17.
11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (‘the Framework’) and associated planning guidance (‘the Guidance’). The revised National Planning Policy Framework was published on 24 July 2018, and unless otherwise specified, any references to the Framework in this letter are to the revised Framework.

Emerging plan

12. The Secretary of State notes that the Council is currently preparing a new Local Plan, and a Neighbourhood Plan is at a very early stage. He further notes that no draft policies have yet been published for either.
13. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. Given their very early stage of development the Secretary of State takes the view that no weight can be attributed to either of these emerging plans.

Main issues

Five-year housing land supply

14. The Secretary of State has given careful consideration to the Inspector's analysis of the five-year housing land supply at IR93 which reports that the parties do not dispute that the Council cannot demonstrate a deliverable 5 year supply of housing, and that the appellant believes it to be no better than 2.75 years, with the Council claiming it to be around 3 years.
15. However, as the Local Plan was adopted in 2003, the adopted housing requirement figure is more than 5 years old. Paragraph 73 of the Framework indicates that in that scenario, local housing need should be applied. The Secretary of State has applied the standard method set out in guidance, and has concluded that local housing need for Medway is 1,310.
16. He notes that under paragraph 73 of the Framework, a 20% buffer should apply where there has been significant under-delivery of housing over the previous three years. He further notes that the most recent Monitoring Report before the inquiry (December 2016) (IR23) shows that in 2015-16, there were 553 completions against a requirement of 1,000 dwellings. He considers that this is significant under-delivery. The Secretary of State has taken into account the fact that no evidence has been put forward in response to his reference back letter of 27 July 2018 to suggest that Medway (which accepted that it was a 20% authority under the old Framework – IR23) is not a 20% authority under the provisions of the revised Framework. He therefore considers that a 20% buffer should be applied. This gives an annual requirement of 1,572 dwellings. The Secretary of State further notes that no party has suggested in representations that the assessment of housing supply should change as a result of the change in definition of 'deliverable' in the revised Framework. Overall he considers that there is a housing land supply of 3.9-4.3 years.
17. While this means that the shortfall in housing land supply has reduced since the inquiry, there is still not a 5-year housing land supply. The Secretary of State considers that his conclusions on housing land supply do not alter the weight he assigns to the matters set out below, or his decision on the case as a whole. For this reason, he does not consider that it is necessary to refer back to parties on this matter before reaching his decision.

Locational accessibility

18. The Secretary of State notes that the site is located close to the village of Cliffe Woods which has a range of shops, services and community facilities (IR101). He agrees with the Inspector (IR109) that residents are likely to travel further afield for larger food supermarkets, specialist shops, leisure, employment, and secondary schools, and that this is likely to generate trips by car.
19. The Secretary of State has carefully considered the Inspector's analysis of available public transport (IR102-104). He has taken into account that bus services do not operate in the very early morning or after early evening, that cycling is not a realistic option for most or an attractive option, and that the nearest train station is 2km away. He has further taken into account the proposals to improve accessibility of the scheme (IR105-7), and whilst he agrees that the proposed measures will go some

way to facilitating sustainable travel modes, given the uncertainty around the operation of the 'Arriva Click' service (IR106) he gives these measures limited weight.

20. The Secretary of State has further taken into account the Framework's statement in paragraph 103 that the opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and he agrees with the Inspector that given the rural character of the area, a realistic approach to the general travel method of residents is required (IR109). However, in the Secretary of State's judgement, the proposed development does not limit the need to travel or offer a genuine choice of transport modes, and is therefore in conflict with the Framework's policy on promoting sustainable transport (paragraph 103 of the Framework). His concerns are not overcome by the proposed mitigation. He therefore disagrees with the Inspector's conclusion that there is no intrinsic conflict with the requirement of Policy BNE25 that development should 'offer a realistic chance of access by a range of transport modes' (IR110). The Secretary of State considers that these conflicts carry substantial weight against the proposal.
21. The Secretary of State agrees that by introducing new market and affordable housing along with the associated economic benefits, the proposal would comply with paragraphs 83-84 of the Framework, which advocate supporting a prosperous rural economy.

Effect on character and appearance

22. For the reasons given at IR111-116, the Secretary of State agrees with the Inspector at IR116 that the appeal scheme would inevitably adversely affect the currently open and rural character of the landscape, and in terms of Policy BNE25(i) would not maintain or enhance the character, amenity and functioning of the countryside. He therefore considers it is in conflict with that aspect of the policy. He also considers it is in conflict with the development strategy set out in Policy S1, which seeks to prioritise development within the existing urban areas, and Policy S2, which implements that strategy.
23. For the reasons given at IR94-100, the Secretary of State agrees that Policy BNE25 read as a whole is not fully consistent with the Framework, that Policies S1 and S2 run counter to the objectives of the Framework to significantly boost the supply of homes, and that the weight that should be attached to conflict with Policies BNE25, S1 and S2 should be reduced (IR 97 and 100). Overall the Secretary of State considers that these development plan policies carry moderate weight, and that the conflict with them in terms of protection of the countryside also carries moderate weight.
24. He notes that the numbering and precise wording of the relevant parts of the Framework have changed on publication of the revised Framework; however, these changes do not alter his conclusions on these matters.

Benefits of the proposal

25. The Secretary of State agrees with the Inspector that the proposal would introduce much-needed market and affordable housing for local people; would create investment in the locality and increase spending in shops and services; and would result in jobs during the construction phase (IR127). Overall he considers that the

additional housing carries significant weight, and the economic benefits carry moderate weight in favour of the proposal. He further agrees with the Inspector that the creation of open space with play area, new planting and landscaping, the provision of a pond, new pedestrian routes would convey benefits to the wider population in addition to mitigating the adverse effects of the development (IR128). He considers that these benefits carry limited weight.

26. As set out in paragraph 19 above, the Secretary of State also considers that the improvements to public transport infrastructure carry limited weight in favour of the proposal. As no evidence has been put before him that the New Homes Bonus would be used to help make the proposal acceptable in planning terms, he has not given it any weight in the planning balance.

Appropriate assessment

27. Following the reference back to parties exercise described in paragraph 5 of this letter, the Secretary of State has concluded that the screening assessment undertaken for the purposes of this appeal and presented to the inquiry is no longer legally sound.

28. Therefore, as competent authority for the purposes of the Conservation of Habitats and Species Regulations 2010, the Secretary of State has carried out a new screening. He has concluded on the basis of this screening that an appropriate assessment is required, and has carried out that assessment, consulting Natural England as the appropriate nature conservation body. Both the screening and appropriate assessment are attached to this decision letter at Appendix B. On the basis of his appropriate assessment, and for the reasons set out in that assessment, the Secretary of State considers that he can safely conclude that the proposed development would not adversely affect the integrity of any European site.

29. The Secretary of State notes that under paragraph 177 of the Framework, the presumption in favour of sustainable development does not apply where development requiring appropriate assessment is being determined.

Other matters

30. The Secretary of State notes the Council's agreement that safe access to the site can be achieved, subject to various highway improvements being undertaken, and that these can be secured by condition (IR117). He considers that the evidence put forward does not suggest there would be an unacceptable impact on highway safety, or that the residual cumulative impacts on the road network would be severe, and hence the development does not conflict with the provisions of the Framework at paragraph 109.

31. The Inspector considered further objections raised in relation to the loss of 2.6 hectares of best and most versatile (BMV) agricultural land. The Secretary of State agrees with the Inspector that the loss of agricultural land is not significant enough to be a determining issue in this case (IR120). He attaches limited weight to the loss of BMV land.

32. The Secretary of State has considered a number of other concerns raised in respect of local services, outlook and privacy, ecology and nature conservation, flood risk,

ground conditions/contamination and archaeology and heritage. For the reasons given in IR118, 119, 121 and 123-125, the Secretary of State considers that these matters do not weigh against the scheme.

Planning conditions

33. The Secretary of State has given consideration to the Inspector's analysis at IR87-89, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

34. Having had regard to the Inspector's analysis at IR84-85, the planning obligation dated 13 December 2017, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR86 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, he does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

35. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies BNE25, S1 and S2 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
36. Although there is no 5-year housing land supply, the presumption in favour of sustainable development does not apply because of the effect of paragraph 177 of the Framework (as set out in paragraph 29 above).
37. The Secretary of State considers that the housing benefits of the proposal carry significant weight, and the economic benefits carry moderate weight. The provision of open space with play area, new planting and landscaping, the provision of a pond, new pedestrian routes and improvements to public transport infrastructure carry limited weight in favour of the proposal.
38. The Secretary of State considers that the conflict with the Framework and the development plan in terms of sustainable transport carries substantial weight, the conflict with development plan policies designed to protect the countryside and prioritise development within existing urban areas carries moderate weight, and the loss of BMV land carries limited weight against the proposal.
39. Overall, the Secretary of State considers that there are no material considerations that indicate that the proposal should be determined other than in accordance with the development plan. He therefore concludes that planning permission should be refused.

Formal decision

40. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your appeal and refuses planning permission for outline planning permission for up to 225 residential dwellings (including up to 25% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from Town Road and associated ancillary works; all matters to be reserved with the exception of the main site access.

Right to challenge the decision

41. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

42. A copy of this letter has been sent to Medway Council and Rule 6 parties, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Maria Stasiak

Maria Stasiak

Authorised by the Secretary of State to sign in that behalf

Annex A

SCHEDULE OF REPRESENTATIONS

Party	Date
Mr David Wolfson, SAVE Action Group	9 January 2018
Mr Roger Brown , Chair SAVE Action Group	15 July 2018
Gladman Developments Ltd	19 July 2018
Gladman Developments Ltd	10 August 2018
Medway Council	24 August 2018
Medway Council	28 August 2018
Natural England	27 September 2018

Annex B

RECORD OF THE SCREENING ASSESSMENT AND HABITATS REGULATIONS ASSESSMENT UNDERTAKEN UNDER REGULATION 61 OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017 (AS AMENDED) FOR AN APPLICATION UNDER THE TOWN AND COUNTRY PLANNING ACT 1990

Project Title and Location: Recovered planning appeal: APP/A2280/W/17/3175461 Land off Town Road, Cliffe Woods, Kent, ME3 8JL

Project description: outline planning permission for up to 225 residential dwellings (including up to 25% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from Town Road and associated ancillary works; all matters to be reserved with the exception of the main site access (Planning Application Ref: MC/16/3669, dated 31 August 2016).

Completion Date: 27 September 2018

Project description – further information

1. The appeal site and surroundings are described at paragraphs 9 – 13 of the Inspector's report arising from a public inquiry held into this appeal between 28 November and 21 December 2017. A copy of the inspector's report is attached to this assessment. The proposal description is set out in further detail in the planning application and other inquiry documentation in the Core Document List of the Inspector's report from p 34.

Competent authority

2. The above proposal, having been recovered by the Secretary of State for Housing, Communities and Local Government, is to be determined by him using his powers under section 78 of the Town and County Planning Act 1990. The Secretary of State is therefore the 'competent authority' for the purposes of the Conservation of Habitats and Species Regulations 2017.

PART 1 – SCREENING

3. In its letter dated 16 October 2016 Natural England confirmed to Medway Council that it considered that subject to appropriate mitigation the proposal could be screened out as not having a likely significant effect on the relevant designated sites i.e. Appropriate Assessment was not required. A judgment in the Court of Justice of the European Union (CJEU) in People Over Wind and Sweetman and Coillte Teoranta (12 April 2018) means this interpretation is no longer legally sound.

4. It will now fall to the Secretary of State to take a screening decision for this application, taking into account any relevant information. As part of this process, a reference back to parties was undertaken, to enable further relevant evidence to be addressed by parties to the Inquiry.

Screening Assessment

Relevant documentation

5. The Secretary of State has consulted with parties on the implications of the CJEU ruling in his letter of 28 June 2018 and has taken into account the documents supplied in

response, namely 'Town Road, Cliffe Woods, Kent Information for an Appropriate Assessment following CJEU People over Wind judgement (Case C-323/17)', dated 12 April 2018 and prepared for Gladman Developments Ltd ('IFAA') and 'Habitat Regulation Assessment Screening Matrix and Appropriate Assessment Statement' prepared by Medway Council in August 2018 ('SMAAS'). In this screening assessment, all references to sections, unless otherwise stated, are to the IFAA and SMAAS documents.

6. The Secretary of State has also taken into account comments submitted by SAVE Cliffe Woods, a Rule 6 party, in a letter of 15 July 2018, as well as a separate 'Appellant's note' provided for Gladman Developments Limited in addition to the IFAA.

7. The Secretary of State agrees with sections 1 to 4 of IFAA, which set out relevant background and context, and the legislative and policy background. The IFAA also sets out factual information about the Special Protection Area (SPA) and Ramsar sites concerning their relationship with the application site.

Consideration and conclusions

8. In screening the proposals, the Secretary of State needs to conclude whether they would be likely to have a significant effect on the internationally important interest features of the site, either alone, or in combination with other projects.

9. The Secretary of State agrees with the relevant European designated sites identified in section 6.0 to 6.2 of IFAA:

- Thames Estuary and Marshes SPA/Ramsar
- Medway Estuaries and Marshes SPA/Ramsar

10. The conservation objectives for both the Thames Estuary and Marshes SPA and the Medway Estuaries and Marshes SPA are:

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- The extent and distribution of the habitats of the qualifying features
- The structure and function of the habitats of the qualifying features
- The supporting processes on which the habitats of the qualifying features rely
- The population of each of the qualifying features, and,
- The distribution of the qualifying features within the site.

11. The Secretary of State has paid close regard to IFAA sections 6.4 to 6.8 and the SMAAS 'Part 2 – HRA Screening Assessment'. For the reasons given at IFAA 6.6 the Secretary of State agrees that due to its close proximity, relatively convenient pedestrian links and resulting local population increase there would be potential for likely significant effects from the proposed development when considered alone in terms of impact on the Thames Estuary and Marshes SPA/Ramsar. He concludes that, in the absence of avoidance or mitigation measures, the development proposal would have the potential to contribute towards a significant disturbance effect on the interest features for which the

Thames Estuary and Marshes SPA and Ramsar site has been classified. Accordingly there is no need to go on to consider in combination effects with other plans and projects or the impact on Medway Marshes SPA/Ramsar at the screening stage.

12. Having regard to all the available information and the views of the Council and Applicant set out in the IFAA and SMAAS, the Secretary of State finds there is no evidence to indicate likely significant effects would occur as a result from the development proposals other than through the disturbance to the Thames Estuary and Marshes SPA/Ramsar.

Overall conclusions

13. The Secretary of State has concluded that, in the absence of avoidance or mitigation measures, the proposal would have potential to contribute towards a significant effect on the interest features for which the Thames Estuary and Marshes SPA and Ramsar site has been classified.

14. Accordingly, as the competent authority in this case, the Secretary of State has gone on to carry out the required Appropriate Assessment in Part 2 of this document.

PART 2 – APPROPRIATE ASSESSMENT

15. The Secretary of State has identified at the screening stage potential to contribute towards a significant effect on the interest features for which the Thames Estuary and Marshes SPA and Ramsar site has been classified and has determined that an Appropriate Assessment is required.

16. In accordance with the People Over Wind and Sweetman and Coillte Teoranta ruling, avoidance or mitigation measures can only be considered at this Appropriate Assessment stage. This Appropriate Assessment now needs to consider whether it can be concluded that the proposal will not adversely affect the integrity of the sites in question. In the event it is concluded that the mitigated project will adversely affect the integrity of the protected sites considered, the Appropriate Assessment will need to consider whether it can be demonstrated that there are no alternatives and that there are imperative reasons of overriding public interest as to why it must proceed.

Relevant documentation

17. The Secretary of State has had regard to the responses received following reference back to parties, particularly the IFAA and SMAAS. He has also had regard to documents considered at the public inquiry, listed at pages 33 to 37 of the Inspector's report, noting the relevance of Core Documents CD2.21 Ecological Appraisal December; 2.5 Ecological Appraisal; and 3.1–3.16 Consultation Responses.

18. The Secretary of State's Appropriate Assessment has not simply relied on and adopted the above information. Rather, the Secretary of State has considered all the evidence, including the views of Natural England, the Government's advisors on ecological issues, in reaching his conclusions on the Appropriate Assessment.

Consideration

19. At the screening stage, the Secretary of State has already concluded that the application proposals would be likely to have a significant effect on the Thames Estuary and Marshes SPA and Ramsar site in respect of disturbance effects from additional recreational visits. There is no evidence of other direct impacts either during the construction or

operational phases of the development proposals. In contrast the IFAA does not indicate there to be a similar likelihood of significant impact on the Medway Estuaries and Marshes SPA/Ramsar. In terms of disturbance effects it is clear at IFAA 6.7 that a number of factors reduce likelihood of walking journeys from the site to this SPA/Ramsar. However, from IFAA 6.8 it is also apparent that occasional car-borne visits may occur and the SMAAS at 'Part 3 – Appropriate Assessment' concludes that additional dwellings result in additional activity, causing disturbance to protected bird species that over-winter or breed on these SPA and Ramsar sites. Therefore as the Medway Estuaries and Marshes SPA/Ramsar is also within the zone of influence from the site, it is also considered at this stage as is the in-combination effects of the proposal site alongside other planned development.

20. The Secretary of State has considered the proposed measures to avoid/mitigate the potential for significant impacts and is satisfied that these will reduce harm from the proposed development to both the SPA/Ramsar sites. The mitigation proposed is a financial contribution to the Strategic Access Management and Mitigation Strategy (SAMMS) detailed in the IFAA 7.6 to 7.10 as well as other measures that will be beneficial to reducing harmful effects on the SPA/Ramsar and which are set out at IFAA 7.2 to 7.5. He notes that the IFAA and SMAAS conclude that through the mitigation and additional measures the proposal will not adversely affect the integrity of either European Protected site, and that the Natural England agreed this as its position when consulted by Medway Council on the preparation of the SMAAS.

21. The Secretary of State has paid close attention the SAMMS function, setting out a strategy which includes a range of measures to resolve disturbance issues to wintering birds on the North Kent Marshes focusing on European protected/Ramsar sites as set out at SMAAS 'Part 2 – HRA Screening Assessment':

- Rangers to provide wardening and visitor engagement
- A North Kent Coast dog project to promote responsible dog ownership and encourage walking on lead in sensitive areas
- Codes of conduct developed in partnership with local groups and clubs to raise awareness of recreational disturbance in a variety of activities both on and off of the water
- Interpretation and signage
- New and/or enhanced infrastructure
- Enforcement and Monitoring

The measures are to be delivered through the Birdwise project (www.birdwise.org.uk), a partnership of local authorities and conservation organisations in North Kent, to ensure that development, considered in-combination, does not have an adverse effect on the integrity of the European sites. Monitoring is to be undertaken on recreational impacts at each of the European protected sites. IFAA 8.8 confirms the applicant agrees the financial contribution required for this. This is secured via a unilateral undertaking dated 13 December 2017 which provides for a payment of £50,305.50 for bird mitigation (paragraph 85 of the Inspector's report).

22. The Secretary of State has considered the multi-faceted approach of the SAMMS described at IFAA 7.8. He is satisfied that the SAMMS is sufficiently robust in setting a level of financial contribution per household (see IFAA 7.7) that will be sufficient to mitigate the SPA/Ramsar sites from development anticipated in the wider North Kent coastal area.

Overall this is agreed to mitigate the in-combination impact from plans and projects in the area including on the two European protected sites.

23. For the reasons given at IFAA 7.2 to 7.3, the Secretary of State considers that the provision of maintained open space and recreation on site, a circular walk around the application site and off-lead areas will reduce the frequency of dog walking away from the appeal site and support the diversion of visitors away from the designated sites. Furthermore, as explained at IFAA 7.4 to 7.5, information is to be provided in packs to emphasise the sensitivity of the areas concerned, give practical guidance on how households can lessen the impact on these and explain the recreational alternatives available. The Secretary of State considers that these measures, while not essential or part of the proposed mitigation, will usefully serve to further lessen the impact on both the Thames Estuary and Marshes and the Medway Estuaries and Marshes SPA/Ramsar sites.

24. For the reasons given at IFAA 6.9 to 6.15 the Secretary of State concludes that the provision of open space represents a suitable measure which will alleviate both existing and potential increased recreation at the SPA/Ramsar site. He recognises that this provision is an integral part of the scheme, and not a proposed mitigation measure intended to protect the SPA/Ramsar site.

25. The Secretary of State agrees that the proposed mitigation for this scheme is compliant with the SAMMS. He also agrees with the assessment of the impact of the potential effects on the integrity of the European protected sites set out both in the SMAAS and IFAA. He concludes that the application proposals would not adversely affect the integrity of the Thames Estuary and Marshes and the Medway Estuaries and Marshes SPA/Ramsar site when the development proposal is considered, either alone or in-combination with other plans or projects.

Natural England's advice

26. This appropriate assessment concludes that the Secretary of State is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites mentioned above. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any permission given.

Consideration and conclusions

27. Having concluded that the proposal will not adversely affect the integrity of either SPA/Ramsar site, and having given careful consideration to the advice of Natural England, the Secretary of State has considered how the proposed mitigation/avoidance measures needed to ensure the acceptability of the proposal are to be secured should the application be granted.

28. The provision of a financial contribution to SAMMS is to be secured through the unilateral undertaking dated 13 December 2017.

29. The provision of public open space is to be secured via planning condition 4, and the appellant's commitment to providing interpretation boards and resident's information packs is also noted.

30. Accordingly, the Secretary of State is satisfied that if the appeal proposal were granted outline planning permission, the mitigation and avoidance measures he has

deemed necessary to make the proposal acceptable could be secured. In the light of this conclusion, he has not needed to go on to consider whether it can be demonstrated that there are no alternatives and there are imperative reasons of over-riding public interest as to why it must proceed i.e. the derogation tests.

31. Copies of the technical information and correspondence referred to in this Assessment may be obtained by application to the address at the bottom of the first page of the decision letter.



Report to the Secretary of State for Housing, Communities and Local Government

by Matthew Nunn BA BPL LLB LLM BCL MRTPI

an Inspector appointed by the Secretary of State

Date: 29 March 2018

TOWN AND COUNTRY PLANNING ACT 1990

MEDWAY COUNCIL

APPEAL BY

GLADMAN DEVELOPMENTS LTD

Inquiry Opened on 28 November 2017

Land off Town Road, Cliffe Woods, Kent, ME3 8JL

File Ref: APP/A2280/W/17/3175461

File Ref: APP/A2280/W/17/3175461
Land off Town Road, Cliffe Woods, Kent, ME3 8JL

- 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 Gladman Developments Ltd against the decision of Medway Council.
- The application Ref MC/16/3669, dated 31 August 2016, was refused by notice dated 5 May 2017.
- The development proposed is described as 'outline planning permission for up to 225 residential dwellings (including up to 25% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from Town Road and associated ancillary works; all matters to be reserved with the exception of the main site access.

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

Preliminary Matters

1. The Secretary of State recovered the appeal on 13 September 2017 and directed that he would determine it himself. The reason given was that the appeal involved a proposal for residential development of over 150 units on a site of over 5 hectares. This 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.
2. The Inquiry sat on 28, 29 and 30 November, and on 5 and 6 December 2017. In addition to my accompanied site visit on 6 December 2017, I made unaccompanied site visits on other occasions, before, during and after the Inquiry. The Inquiry was closed in writing on 21 December 2017 to allow time for the completion of a planning obligation. This took the form of a unilateral undertaking, dated 13 December 2017. I deal with this in the body of my report¹.
3. The Cliffe and Cliffe Woods Parish Council sought 'Rule 6' status which was granted by letter dated 25 July 2017. Mr Chris Fribbins gave evidence to the Inquiry on behalf of the Parish Council.
4. The application is made in outline with all matters except for access reserved for subsequent determination. The proposal includes a Location Plan (7199-L-01 Rev A), an illustrative Development Framework Plan (7199-L-03 Rev E) showing an indicative layout, and a Proposed Access Arrangement (P16020-001-D)².
5. The Council refused the application on 5 May 2017, citing two reasons for refusal³. However, the second reason was amended by the Council in September 2017 to exclude reference to a 'valued landscape' as per Paragraph 109 of the National Planning Policy Framework ('the Framework'). At the same time, references to Policies S1 and S2 of the Medway Local Plan were also deleted. The second reason now reads: '*The development, if permitted, would have an*

¹ Inquiry Document (ID) 31

² CD 2.1, CD 2.1 & CD 2.18

³ CD 5.2

*adverse impact on the character and visual amenity of the local area, contrary to Paragraph 17 of the National Planning Policy Framework and Policy BNE25(i) of the Medway Local Plan 2003*⁴.

6. Following the appellant's request for a screening opinion under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended), the Council determined that an Environmental Impact Assessment (EIA) was not required on the basis the proposal did not constitute EIA development⁵.
7. An updated Statement of Common Ground, signed and dated 29 November 2017, was jointly agreed by the Council and appellant and provided during the Inquiry⁶.
8. The appellant's evidence in relation to landscape matters was originally prepared by Mr Phil Rech. Unfortunately, due to illness, he was unable to attend the Inquiry and landscape evidence was given by Mr Gary Holliday. An addendum was provided by Mr Holliday to be read in conjunction with Mr Rech's original proof.

The appeal site and surroundings

9. The irregularly shaped appeal site comprises a group of three, generally flat, agricultural fields to the west of the built-up area of Cliffe Woods. Cliffe Woods is a village on the Hoo Peninsula in Kent to the north of Strood, Rochester and Chatham. The site area is around 11 hectares. A portion of a field further to the north is proposed to be used for a sustainable drainage scheme and pond. The northern, western and southern boundaries of the site abut open agricultural land. The eastern boundary is delineated by Town Road (B2000) and the residential properties of Mortimers Avenue and Ladyclose Avenue. A public footpath RS72 runs through the site, adjacent to the site's northern boundary. This footpath connects with Town Road to the east, running through an area of scrubland and rough grassland, and to the west runs across further fields connecting to Buckland Road. The field boundaries are defined by a mix of hedging and rows of poplar trees.
10. There are two Second World War pillboxes, one in the north eastern corner of the site, and the other on the south boundary. In the wider context, to the north are further arable fields, often with poplar shelter belts. The built-up area of the village is located to the east of the site on rising land. Further to the south are arable fields, with a small square reservoir enclosed by trees on the eastern side of Town Road. Land to the west comprises arable fields gently rising up to Cooling Hill.
11. The appeal site is not covered by any specific landscape designations. At the national level, the site is identified as falling within the 'North Kent Plain National Character 113'⁷. Its characteristics are an open, low and gently undulating landscape, with large arable and horticultural fields with regular patterns and rectangular shapes predominating. The national profiles are necessarily broad in their descriptions. At a county level, the site is identified as lying within the

⁴ CD 12.2

⁵ CD 4.9 and 4.10

⁶ ID 13

⁷ Landscape and Visual Impact Assessment [CD 2.6]

western part of the 'Hoo Peninsula' character area. It is noted that farmland is the predominant land use, although its character varies quite markedly. At a local level, the site is identified as within the 'Cliffe Woods Farmland' landscape character area. This is described as an undulating and complex mix of arable farmland and orchards, with poplar shelter belts being a dominant feature⁸. The description notes that there is a tranquil, rural feel away from roads, creating a distinctive landscape with few detracting features. However, it also notes that principal detracting features include the B2000 with heavy traffic, including lorries servicing the aggregate works and industrial estates, together with pylons to the north and the suburbanisation of village edges.

12. The site is reasonably close to a range of European and nationally designated sites. These include the Thames Estuary and Marshes Special Protection Area (SPA) and Ramsar site; the Medway Estuaries and Marshes SPA and Ramsar site; the North Down Woods Special Area of Conservation (SAC); Peter's Pit SAC and Site of Special Scientific Interest (SSSI); Benfleet and Southend Marshes SPA; Queendown Warren SAC/SSSI; and Chattenden Woods and Lodge Hill SSSI⁹.
13. There is no relevant recent planning history at the appeal site.

Planning Policy Context

14. The statutory development plan comprises the 'saved' policies of the Medway Local Plan ('The Local Plan') adopted in May 2003. The Council, in its original reasons for refusal, cited Policy BNE25(i), Policy S1 and Policy S2¹⁰. Although Policies S1 and S2 were removed from the amended second refusal ground, they were referred to during the Inquiry and relied on by the Council.
15. Policy BNE25 relates to development in the countryside, and criterion (i) states that development will only be permitted if it maintains, and wherever possible enhances, the character, amenity and functioning of the countryside, including the river environment of the Medway and Thames, and it offers a realistic chance of access by a range of transport modes. Criteria (ii) to (vii) impose further conditions on development. These are: that development should be either on a site allocated for that use; or is development essentially demanding a countryside location (such as agriculture, forestry, outdoor or informal recreation); or is a re-use or adaptation of an existing building that is, and would continue to be, in keeping with its surroundings; or is a re-use or redevelopment of the existing built-up area of a redundant institutional complex or other developed land in lawful use; or is a rebuilding of, or modest extension or annex to a dwelling; or is a public or institutional use for which the countryside location is justified and which does not result in volumes of traffic that would damage rural amenity. The policy states that the countryside is defined as that land outside the urban and rural settlement boundaries defined on the proposals map.
16. Policy S1 sets out a development strategy which is to prioritise re-investment in the urban fabric. This includes the redevelopment and recycling of under-used and derelict land within the urban area, with a focus on the Medway riverside areas and Chatham, Gillingham, Strood, Rochester and Rainham town centres.

⁸See Mr Etchell's Proof, Paragraph 3.2.7 onwards & Mr Rech's Proof, Paragraph 3.12 onwards

⁹ CD 2.5, Chapter 3

¹⁰ CD 12.1

Policy S2 sets out strategic principles. Of particular relevance is principle (i) which seeks to maintain and improve environmental quality and design standards; and principle (ii) which requires a sustainable approach to the location and mix of new development, to provide local communities with a range of local facilities (including transport measures to serve development and sensitivity in the use of energy and natural resources). Principle (iii) focuses on adopting a sequential approach to the location of major people and traffic attracting forms of development.

17. Policy H11 is not cited in the reasons for refusal, and the Council states that it is not relied on in this appeal and no weight should be placed on it¹¹. It was referred to during the Inquiry. Essentially, the policy restricts housing development within the confines of the villages or settlements, unless the site is allocated for housing development in the Local Plan, or an exceptional justification can be made. Cliffe Woods is one of the villages listed within the Policy.
18. The Council is currently preparing a new Local Plan that will guide development up to 2035. This will be a single document, containing both strategic and development management policies, land allocations, minerals and waste, and a policies map. The emerging plan is at an early stage and no draft has yet been published. The latest Local Development Scheme does not anticipate adoption of the emerging plan until 2019. Hence, at this stage, there are no specific policies that can attract any weight.
19. Cliffe and Cliffe Woods Parish Council has submitted proposals to prepare a Neighbourhood Plan. The Council approved the neighbourhood plan area in June 2015 but no draft version has yet been produced. Thus there is no document to which any weight can be given.

Matters agreed between the Council and Appellant

20. The appeal site is located outside, but partly adjacent to, the settlement boundary of Cliffe Woods. It is not allocated for any specific purpose in the Local Plan, nor subject of any designations, including those relating to environmental, historic environment, open space or landscape. It is not a 'valued landscape' in terms of Paragraph 109 of the Framework. Cliffe Woods is identified as a 'rural Settlement' under Policy H11 of the Local Plan.
21. Cliffe Woods contains a range of shops, services and community facilities which include: a community centre, the Cliffe Woods Social Club including the Woodpecker Bar; a Co-op convenience store, including a Post Office; a 'Premier' convenience store; a chip shop takeaway; an Indian takeaway; a health centre; pharmacy; a church; a day nursery; a recreation ground; a primary school; and recycling facilities¹².
22. In terms of transport, the closest bus stop to the site lies around 450m to the east of the centre of the site, along View Road. The 133 bus route operated by Arriva is the main service in Cliffe Woods linking the village to Strood, Rochester, Chatham and St Mary's Island. Other services include routes 193, 417, 601 and

¹¹ Council's Closing Submissions, Paragraph 80

¹² ID 13, Paragraph 5.4.1

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633. The nearest railway station is around 2 km from the site at Higham. Trains operate in each direction serving stations at Gillingham, Chatham, Rochester, Strood, Gravesend, Dartford, Woolwich Arsenal, Lewisham, London Bridge, London Waterloo East, and London Charing Cross¹³.
23. It is agreed that the Council is unable to demonstrate a deliverable five year supply of housing, as required by the Framework. The appellant is of the view that the supply is no better than 2.75 years whereas the Council says it is around 3 years. The Council also accepts that there has been a record of persistent under-delivery of housing in the past, and it is a '20%' authority for the purposes of assessing the requisite buffer. The most recent Monitoring Report (December 2016) shows that between 2013 and 2016 there were 2,180 completions against a requirement of 4,000, resulting in a deficit of 1,820 over that period¹⁴.
24. It is agreed that the 'tilted balance' of Paragraph 14 of the Framework applies which states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
25. There is no objection on highway grounds subject to the works set out in the Statement of Common Ground¹⁵. No objections are raised on arboricultural, archaeological, ecological, noise or contamination grounds subject to the imposition of appropriate conditions. There are no designated heritage assets within the site, although as already noted, there are two Second World War pillboxes along the site boundaries, which are non-designated heritage assets. Subject to the imposition of conditions, no objections are raised in respect of the effect on these non-designated heritage assets¹⁶.
26. It is agreed that the site falls within Flood Risk Zone 1, the area least at risk at flooding, and that the proposal would not result in any unacceptable impacts on flood risk and drainage, subject to appropriate conditions. In relation to the best and most versatile (BMV) agricultural land, a proportion of the site falls within the BMV 'Good' (Grade 3a) category, whilst the majority is within the BMV 'Moderate' (Grade 3b) category. It is agreed that the loss of agricultural land is not significant enough to be a determining issue¹⁷.

The Case for the Council

27. The Council's full case is contained within the opening and closing statements made by Mr Robert Williams¹⁸, along with the submitted proofs of evidence, comprising Mr Sensecall's proof relating to planning matters, and Mr Etchell's proof relating to landscape matters. This is a summary of the Council's case.

Locational Sustainability

28. Cliffe Woods is not a sustainable location for residential development of this scale. It is a small village with a limited range of shops and limited employment and leisure facilities. There is no secondary school, no larger supermarket, no

¹³ ID 13, Paragraph 5.5.1 & 5.5.2

¹⁴ ID 13, Paragraph 5.17

¹⁵ ID 13, Paragraph 5.4.2

¹⁶ ID 13, Paragraph 5.15

¹⁷ ID 13, Paragraph 5.19.1

¹⁸ ID 8 & ID 28

public house, no library, no dentist, no sports centre and no bank. Walking and cycling would not be a realistic proposition for most trips. This is particularly the case for employment, most leisure and retail activities, entertainment and secondary education. Town Road (B2000), which is the most direct route to the main settlements and employment centres to the south, does not have a cycle lane, is predominantly unlit, hilly and is a route used by a large number of HGVs accessing the nearby Brett Aggregates site in Cliffe.

29. Except in respect of school services, the bus service to the village is poor. Although there is a service connecting the village with the centres of Strood and Chatham, it is relatively infrequent (particularly at weekends) and its operating hours severely restrict its utility, especially for commuters or those wishing to travel in the evenings. This is backed up by empirical evidence. The Method of Travel to Work (MTW) data demonstrates that virtually 70% of people within Cliffe Woods travel to work by car¹⁹. This increases to 75% when passengers and those using motorcycles are accounted for. This is over 10% higher than across Medway as a whole, 12.5% higher than the average across the south east (excluding London) and 16% higher than the average across England as whole.
30. Conversely, only 6.2% of commuter trips from Cliffe Woods are made by foot, cycle or bus, lower than the average across the Hoo Peninsula (8.9%), less than half of the average within Medway (14.9%) and less than a third of the average across England as a whole. The high dependency on private car travel, and the low take-up of sustainable modes of transport is illustrative of the lack of realistic opportunities to use sustainable modes of transport for commuters from Cliffe Woods, as well as the lack of employment opportunities in the village itself.
31. The proposal is a large scale residential development increasing the population of the village by over 20%. It would result in approximately 540 new inhabitants and would generate significant traffic movements, with the Transport Assessment recording an increase of over 15% in traffic movements on Town Road/Lillechurch Road in the AM and PM peaks²⁰.
32. The scheme itself would not make Cliffe Woods a sustainable location. The appellant does not promote a *'mix of uses in order to provide opportunities to undertake day-to-day activities including work on site'*, as encouraged by Paragraph 38 of the Framework. It brings forward no retail, employment or other community uses. On the contrary, what is proposed is a single use, residential development which would fail in any material way to enhance the facilities, service or employment opportunities within Cliffe Woods.
33. In an attempt to bolster the sustainability credentials of the proposal (thereby acknowledging the weakness of the scheme), the appellant has indicated a willingness to fund a demand-responsive 'Arriva Click' bus service, through a planning obligation. This 'Click' service was suggested for the first time in the appellant's proof²¹ relating to highways and transport. At no point has the Council been involved in any of the discussions with Arriva. Although the appellant originally offered to fund the service for two years, it is now prepared to do so for five. However, much uncertainty surrounds the operation of the

¹⁹ Mr Schumacher's Proof, Table 5.1

²⁰ Transport Assessment, Table 6.5 [CD 2.11]

²¹ Mr Schumacher's Proof

scheme, and it was increasingly clear during the Inquiry that the appellant has only a limited understanding of how it would operate in practice.

34. For example, it was suggested in evidence that the service could guarantee a waiting time of no more than 20 minutes, but this cannot be correct. If the minibus was heading away from Cliffe Woods to Strood station, there is simply no possibility of it making the drop-off and returning to Cliffe Woods within a 20 minute time-frame, especially in rush hour, notwithstanding the use of 'algorithms'. The provision of the service is also time limited to five years. After that, Arriva will have to make a commercial decision as to whether to retain the service.
35. The appellant accepted that the 'Click' service was still an embryonic service. As such, there can be no guarantees that the service would be self-financing in the long run. The appellant would cover the cost of only one twelve-seater minibus. Thus, at any one time, only 2.5% of the new residents of the proposed development could use the service. Only limited weight should be attributed to the benefits provided by the 'Arriva Click' service. In any event, the service cannot disguise the fact future residents would be highly dependent on car travel, and it cannot be relied upon to make Cliffe Woods a sustainable location for development.
36. The Inspector in the *Hoo* decision²² concluded that the high degree of dependency on car travel and failure of that scheme to make the location sustainable was an 'enduring harm' which was 'significant'. The same conclusions apply here, albeit for different reasons. Cliffe Woods is not a sustainable location for a development of this scale and nature, and would not be made sustainable by the proposal. The resultant high degree of dependency on non-sustainable forms of transport is an enduring harm which is significant and which should weigh very heavily against the proposal.
37. Locating development in a village which is neither currently sustainable, nor would be made sustainable by the proposal, with the failure to offer '*a realistic chance of access by a range of transport modes*' (Local Plan Policy BE25(i)), let alone to '*make the fullest possible use of public transport, walking and cycling*' (Framework Paragraph 17), means that the development is contrary to both national and development plan policy.

Effect on Character and Appearance - Landscape

38. This would be a large and significant development in terms of character and visual amenity. There are open and rural views into and across the site from its northern and eastern boundaries, with more limited views from slightly further afield to the west and south, as well as medium to long range views from the east and south. The site and immediately surrounding area is assessed as of "medium" landscape quality, and "medium/high" sensitivity to the type of development proposed²³.
39. The development would take place within a part-edge-of-settlement context, but would extend the built form out into open countryside on the west side of Town

²² APP/A2280/W/15/3132141 [Appendix D of Mr Sensecall's Proof]

²³ Mr Etchell's Proof, Paragraph 8.5

Road (B2000) from the main part of the village. The site is influenced by the edge of the settlement to a degree, but the western edge of the village is reasonably well contained and vegetated, and is also low key in terms of height and density. The buildings to the west of the B2000 are predominantly bungalows, at most 1.5 storeys. The change to the local landscape would be highly visible and would be difficult to screen effectively, at least in the short term, and the development would lead to a significant urbanisation of what is currently a pleasant rural landscape.

40. The development would leapfrog the existing edge of the village and introduce new, taller buildings into an open and rural landscape. There would be a high degree of landscape change within the site as the existing fields would become a new housing estate. There would be 'moderate to high adverse' effects on the character and landscape around the site, and these effects would decrease slowly over time²⁴. Effects would persist at a 'moderate adverse' level after 15 years and there would be long term significant harm to the local landscape²⁵. There would also be some significant adverse visual effects, mainly for the properties to the east of the site, and for users of the public footpath that runs through the northern part of the site²⁶.
41. As a consequence, there would be a clear conflict with the core planning principles set out in Paragraph 17 of the Framework. The scheme would harm the character and beauty of the countryside. There would also be a clear conflict with Local Plan Policy BNE25(i) as the development would neither maintain nor enhance, the character, amenity and functioning of the countryside. This weighs heavily against the proposal.

Council's Planning Balance

42. Turning to the planning balance, it is not disputed that there is a substantial need for new housing in Medway. It is accepted that the Council has a large shortfall against the requirement to demonstrate a five year supply of housing such that the 'tilted balance' in Paragraph 14 of the Framework is engaged. The Council recognises the need for new housing and has, where appropriate, granted permission for large scale residential developments where the adverse impacts do not significantly and demonstrably outweigh the benefits. In particular, in the last 12 months the Council has granted permission for over 2,000 dwellings on non-allocated sites alone²⁷. It is also preparing a new Local Plan which will be designed to meet its objectively assessed housing needs in full.
43. The relevant legislation establishes a statutory priority in favour of the development plan. The proposal does not accord with the development plan. It conflicts with Policy S1 (Development Strategy) as the thrust of this policy has the objective of focusing new development within the urban area. It conflicts with Policy S2 (Strategic Principles) because of the adverse impacts on landscape and visual amenity, and because Cliffe Woods is not a sustainable location for new development. It would also conflict with Policy BNE25(i) as the scheme would fail to maintain the character and amenity of the countryside and because

²⁴ Ibid, Paragraph 8.8

²⁵ Ibid, Paragraph 8.8

²⁶ Ibid, Paragraph 8.9

²⁷ For example, at Otterham Quay Lane, Ref MC/16/2051, granted Feb 2017 for a scheme of up to 300 homes [ID 9]

the location of the development would not offer a realistic chance of access by a range of transport modes.

44. Significant weight can be given to Policy BNE25(i) and the harm it seeks to prevent because the protection of the countryside and promotion of sustainable transport are consistent with the Framework. The interests protected by BNE25(i) are separate to, and not based on, out-of-date settlement boundaries. It is perfectly appropriate to give weight to Policy BNE25 to the extent it does not derive from settlement boundaries that in turn reflect out-of-date housing requirements. Therefore the breach of that policy – in respect of harm to landscape character and promotion of sustainable transport modes - should carry significant weight. Disaggregation of policies is not inappropriate in principle: there is no reason why a decision-maker should not afford more or less weight to parts of a policy, particularly where (as here) the different parts reflect different objectives. The appellant's approach of reducing weight across the board, even where there is compliance with the Framework, risks 'throwing the baby out with the bathwater', by ignoring those elements of policies which continue to reflect national policy.
45. As to the strategic policies, the focus of Policy S1 is consistent with national policy, especially the core planning principle to '*encourage the effective use of land by re-using land that has been previously developed (brownfield land)*'. Similarly, the appellant does not dispute Policy S2(i) and (ii) are in broad accordance with the Framework²⁸. It follows that the breach of these policies should also be afforded significant weight.
46. **Adverse impacts:** the harm caused by significant development coming forward in an unsustainable location, with the resultant high dependency on the private car, is a harm which should be given significant weight (as per the *Hoo* decision). In terms of landscape and visual impacts, the moderately adverse effects over time are significant and they should also weigh heavily against the proposal. There would be harm to the non-designated heritage assets (the pillboxes), albeit that harm would be less than substantial. This too should weigh against the proposal. Finally, there is the harm to the public interest in having plan-led planning decisions which necessarily arises from the grant of permission for development which is otherwise than in accordance with development plan.
47. **Benefits:** the provision of up to 225 dwellings, including a 25% affordable housing element, would be a significant benefit. The Council also accepts that the resultant positive effect on jobs and the economy from the provision of this level of housing would be beneficial. However, 'double-counting' must be avoided. For example, there is nothing unusual about the benefits to jobs and the economy from this particular housing development as compared to any other. Thus when significant weight is given to the provision of new housing, that is in part because of the economic (and other) benefits which ordinarily flow from the provision of new housing. The same applies in relation to the 'Vitality and Viability' that it is claimed the residents would bring to the village of Cliffe Woods.
48. Although local finance considerations, such as the New Homes Bonus, are capable of being a material consideration, it is only so far as the financial

²⁸ Mr Booth's Proof, Paragraph 7.3.11 & 7.3.12

considerations are material to the application²⁹. As the Planning Practice Guidance (PPG)³⁰ makes clear, these can only be material considerations where it is shown that they would help to make the development acceptable in planning terms. This has not been done in this instance³¹. In terms of environmental features, much of what is claimed to be a benefit (planting, provision of green infrastructure) is in reality mitigation to reduce the landscape and visual effects. It is accepted that there is the potential for biodiversity benefits on the site and this should be given weight.

Council's Overall Conclusions

49. The development is in neither a sustainable location nor one which would be made sustainable. The failure to offer a realistic chance of access by a range of sustainable transport modes, and the adverse impacts which would be caused to the local landscape character and visual amenity - all of which result in breaches of the development plan - with the resultant harm to the public interest in having plan-led decisions, significantly and demonstrably outweigh the benefits of the scheme. The undeniably considerable benefits of the scheme are significantly and demonstrably outweighed by the adverse effects it would cause. Therefore, the presumption in favour of sustainable development in the Framework does not apply. There is no justification for departing from the development plan in this instance, and the appeal should be dismissed.

The Case for the Appellant

50. The appellant's full case is contained within the opening and closing statements made by Ms Thea Osmund-Smith³², along with the submitted proofs of evidence, comprising Mr Booth's proof relating to planning matters, Mr Rech's proof relating to landscape matters (together with the addendum provided by Mr Holliday), and Mr Schumacher's proof relating to highways and transport. This is a summary of the appellant's case.

Locational Sustainability

51. The site is a sustainable location for development and is well connected to Cliffe Woods. The scheme includes three points of access into the site in addition to the proposed new vehicular access along Town Road. There are realistic options for walking, public transport, and cycling for journeys to work, recreational activities, and to services and facilities in nearby settlements. Cliffe Woods is an attractive place to live and provides a range of facilities for day-to-day living. It is close to the Medway Towns, as well as the Medway City Estate, a major employment area.

52. The appeal scheme is within walking distance of key facilities within the village, including a primary school. Cliffe Woods is an active and well run local community with various social clubs and societies operating within the village, a number of which meet in the community centre. The shops in Cliffe Woods are capable of meeting day-to-day needs. For larger weekly shops, people would

²⁹ s.70(2)(b) of TCPA 1990

³⁰ Paragraph: 011 Reference ID: 21b-011-20140612

³¹ ID 28, Paragraph 105

³² ID 7 & ID 30

generally choose a car to travel in any event, given the number of bags to carry, even if walking was an option.

53. Mr Schumacher provides a comprehensive assessment of the sustainability credentials of the settlement, examining the bus routes, cycle routes and the availability for multi-modal access. He concludes that Cliffe Woods is a sustainable settlement. Bus stops are within walking distance of the site (less than 500 metres). There is an hourly bus service to Strood, Rochester and Chatham which allows for journeys to work and nearby secondary schools (Route 133). The service starts in the morning at 0651 hrs and the last returning service to Cliffe Woods is at 1745 hrs. This service would be perfectly adequate for commuters working in the Medway Towns between 0800 hrs and 1600 hrs or 1700 hrs. It is accepted that the bus service would not provide a viable option for evening / night time travel because, although it may be possible to use the bus for an outward journey, it would be necessary to get a taxi back.
54. The site is close to Higham Railway Station that connects to London Charing Cross with two trains per hour. Ample car parking is available there (around 100 spaces). Strood and Rochester stations are close by (around 6 kms). From there, connections can be made to Gravesend, Ebbsfleet, Stratford, St Pancras International, Maidstone, Gillingham, Ramsgate, Faversham, London Victoria and London Charing Cross. There is a network of routes that mean that cyclists can avoid using the B2000, although it is accepted that these are more likely to be used for recreational rather than commuting purposes. There is a cycling group in the village that meets twice a month for social rides.
55. It is not disputed that the private car would be the main mode of travel for commuting purposes. However, the Framework explains that the Government recognises different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas³³. This is a pragmatic response which recognises the same level of public transport cannot be expected of a village such as Cliffe Woods as it would be for an urban area. Short car journeys to work should not be viewed as inherently unsustainable, and this has been accepted at other appeals³⁴. Moreover, the private car represents the main mode of travel to work nationally, and it would not be reasonable to expect these proposals to break with the national trend. Even if public transport opportunities are provided, it does not always mean they will be taken up.
56. The appellant is proposing to fund an 'Arriva Click' service to be secured in the planning obligation. This is a demand-responsive service whereby users book a seat in advance and are picked up from a safe location. The funding would be for five years from occupation of the first dwelling, with £50 credit provided to each household to encourage the use of the service. It would operate Monday to Friday between 0630 hrs and 2200 hrs and on Saturday and Sunday between 0630 hrs and 2330 hrs serving Cliffe Woods and providing connections to Strood, Rochester and Chatham³⁵.

³³ Paragraph 29

³⁴ CD 10.4, Paragraph 25 & CD 10.7, Paragraph 31

³⁵ ID 30, Paragraph 66

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57. The service would function as a hybrid bus / taxi, with regular services to railway stations at peak times, and within a designated catchment. Arriva has indicated that the likely catchment would be Cliffe Woods, Wainscott, Strood, Medway City Estates, Rochester, Chatham and St Mary's Island. At the weekends, the service would extend to Bluewater Shopping Centre. It would therefore provide connectivity to a range of employment opportunities, education and local services including Medway City Estate³⁶. The 'Click' service has already been tried and tested in Sittingbourne and has been in operation there since 2017³⁷. Arriva consider that this sort of service represents the future of sustainable transport provision. Such a demand-responsive service avoids running empty buses which may occur with traditional services. It would also use low emission Euro VI vehicles.
58. The Council has not raised concerns in respect of highway safety issues, or congestion, and it is agreed that safe access to the site can be achieved, subject to various improvements. It is not alleged that residual cumulative transport impacts would be severe, as per Paragraph 32 of the Framework.
59. Although the Council suggests that the scheme should include a mix of uses to make it sustainable, there is no policy basis for this, nor is there evidence that certain uses, for example employment units, would be viable on this site. Nor could it be guaranteed that occupiers of the new housing would work in the employment units even if they were provided. The Council has not claimed that existing infrastructure within the village cannot cope with the development.
60. Although the Council relies on the *Hoo* appeal decision³⁸, it is not comparable to the circumstances of this case. In that case the site was at some distance from, and poorly connected to, the services and facilities of Hoo. The boundary of the village was 'relatively impermeable'³⁹ and there was poor pedestrian connectivity. The village of Cliffe Woods is not impenetrable to the site: quite the opposite, and there is good pedestrian connectivity.

Effect on Character and Appearance – Landscape

61. In terms of landscape impact, it is accepted that there will be some harm arising from the development. That is almost inevitable when open countryside is built on (because green fields are perceived as more desirable than built development), but that does not, of itself, make the proposals unacceptable. In this instance, the Council now accepts that the landscape is not 'valued' in terms of Paragraph 109 of the Framework. It is not out of the ordinary, and it has no important or defining landscape features. It is not a rare landscape and has limited ecological value. It is not designated for its landscape beauty, nor has it ever been, in contrast to other parts of Medway⁴⁰. It is affected by noise from Town Road (B2000), and the existing urban edge of Cliffe Woods. There is housing adjacent to the appeal site itself, which rises up the hill to the east of the site. Hence it has something of a 'settlement edge character'.

³⁶ ID 30, Paragraph 67

³⁷ ID 18

³⁸ APP/A2280/W/15/3132141 [Appendix D of Mr Sensecall's Proof]

³⁹ Ibid, Paragraph 16

⁴⁰ For example, designated as Special Landscape Areas

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62. The site is considered to be of 'medium' overall landscape value⁴¹. In terms of the overall effect on the landscape character of the site itself and its immediate context, the initial 'moderate adverse' effect would reduce to 'moderate/minor' after ten years⁴². In terms of visual effects, the effects would initially be 'moderate adverse' reducing to 'moderate/minor adverse'⁴³. There would be no 'major' or 'high' adverse effects. Over time, the scheme would be successfully assimilated into the landscape.
63. The site has limited lawful public access. In fact, the majority of the site is not accessible to the public and most of the appeal site has no formal recreational function⁴⁴. Although the public footpath running along the northern boundary would be affected, it would only be for a limited length of around 300 metres. In practical terms, those walking along the footpath would have simply to walk further to access a countryside view⁴⁵. In any event, the presence of the built-up area of Cliffe Woods is very obvious in existing views from the footpath, whether travelling east or west. New housing need not be unattractive and can create a pleasant environment. There are no designated viewpoints within or towards the site. Although the views from nearby residential properties might be regarded by residents as important, in general terms, the loss of a view cannot be a material planning consideration. The Council accepts that planting and green infrastructure would reduce the adverse effects of development. The Development Framework Plan proposes structural planting in the form of a 15 metre wide corridor alongside the footpath as well as an area of open space in the north east corner of the site⁴⁶.
64. The scheme itself is landscape led, comprising nearly 4 hectares of green infrastructure (around a third of the site area). Significant new native planting could be introduced to reinforce the site boundaries. It is not alleged that the appeal site is important to the setting of Cliffe Woods. The rural setting of the village would remain if the scheme was permitted. The development would comprise a logical and natural extension to the existing settlement. In terms of night-time effects, the Council has not raised a specific objection, and a sensitive lighting scheme could be implemented to minimise any impacts. Lighting is already apparent, especially in housing that rises up the hill.
65. The landscape is not of the type that the Framework seeks to protect from development, sitting at the bottom of the landscape hierarchy in terms of its status. Paragraph 113 of the Framework states that protection should be commensurate with status. In areas where there is a housing supply deficit, development should be directed to areas of lesser environmental value.
66. To conclude on this issue, the proposals would not result in any unacceptable harm to the landscape, nor the wider countryside. The scheme could be developed in a way that leads to landscape enhancement, enabling the proposal to successfully assimilate with its surroundings.

⁴¹ Mr Rech's Proof, Paragraph 8.8

⁴² Mr Rech's Proof, Paragraph 5.13

⁴³ Comparative Table [ID 1]

⁴⁴ Mr Rech's Proof, Paragraph 3.40

⁴⁵ As per the Gibraltar Farm appeal decision, Paragraph 217 (APP/A2280/W/16/3143600)

⁴⁶ Mr Rech's Proof, Paragraph 5.17

Appellant's Planning Balance and Overall Conclusions

67. The existing Local Plan, adopted in 2003, was only intended to guide development up to 2006. It is based on an out-of-date housing requirement figure that is not capable of delivering Medway's current housing needs. The latest Strategic Housing Market Assessment (SHMA)⁴⁷ that forms part of the evidence base for the emerging Local Plan identifies an objectively assessed need of 1,281 dwellings per annum (dpa). This is significantly higher than the annual requirement that the adopted Local Plan is predicated on (867 dpa) derived from the Kent Structure Plan. The figure from the SHMA may need to be increased before the new plan is adopted. The Council can only demonstrate a 2.75 year supply of housing⁴⁸ and is a '20%' authority because of persistent under-delivery of housing.
68. Although there is significant public benefit in maintaining a plan-led system, the policies of the Local Plan are incapable of meeting current housing requirements. This reduces the weight that can be attached to them. It is inevitable that greenfield sites outside the defined settlement boundaries will be required if the shortfall is to be addressed. In fact, the Council is already granting permission for sites outside the settlement boundary in conflict with the Local Plan⁴⁹. In the Gibraltar Farm appeal decision, the Secretary of State agreed with the Inspector that greenfield land will need to be developed⁵⁰.
69. Policy BNE25 imposes a 'blanket ban' on development of the sort proposed here, but that policy is intrinsically linked to out-of-date settlement boundaries, and does not reflect the Framework's objective to boost significantly the supply of housing. It is a policy formulated to protect the countryside for its own sake⁵¹ but this is no longer a requirement of the Framework, which now advocates a hierarchical approach to protection. The Council seeks to only apply part (i) of the Policy, and to disapply (ii) to (vi), but the wording of the policy does not allow such an approach. It is not how the policy works. Part (i) of the Policy contains the words "*and is either*", and so is to be interpreted in the light of the exceptions that follow. Although there is a conflict with Policy BNE25, the conflict can only be given little weight.
70. Policies S1 and S2 are not mentioned in the amended reasons for refusal, but the Council seeks to rely on them. This is surprising given the Council's decision to delete reference to them. Although Policies S1 and S2 urge an 'urban focus', that should not be to the exclusion of rural development, nor does it mean the proposal is in conflict with them. Essentially, these policies are silent on the development proposal⁵².
71. In the 'Development Options' for the emerging Local Plan⁵³, Cliffe Woods is earmarked for growth. At the very least, there will be some incremental expansion, and one option would see Cliffe Woods perform as an 'expanded

⁴⁷ CD 9.2

⁴⁸ Mr Booth's Proof, Page 24

⁴⁹ Otterham Quay Lane [ID 9]

⁵⁰ CD 10.1, Paragraph 13 (& Inspector's Report, Paragraph 200)

⁵¹ Medway Local Plan, Paragraph 3.4.71 [CD 7.1]

⁵² ID 30, Paragraphs 113 & 114

⁵³ CD 8.1

village'. Therefore, the village is already regarded as appropriate for some household growth.

72. There is no heritage reason for refusal, and thus no statutory duties relating to heritage assets are engaged. There are non-designated heritage assets and therefore Paragraph 135 of the Framework is engaged. This is not a 'restrictive policy' in terms of the Framework, but even without applying the Paragraph 14 'tilted balance', the negligible harm⁵⁴ to one pillbox (on the southern boundary⁵⁵) is heavily outweighed by the benefits of the scheme⁵⁶. No harm would be sustained to the other pillbox (on the north eastern boundary⁵⁷). No harm would be sustained to a third pillbox, located outside the appeal site, around 200 metres to the south.
73. The scheme would make a valuable contribution to market and affordable housing. There are economic and social benefits to the scheme⁵⁸. Local spending would increase, supporting local facilities and services⁵⁹. The development would result in jobs during the construction phase⁶⁰. The New Homes Bonus would bring additional resources to the Council⁶¹. The scheme would offer new recreational opportunities, including a trail around the site, past the pillboxes. There would be net gains in biodiversity with additional planting and provision of green space. The existing pillboxes would be converted to dedicated bat roosts, and there would be heritage benefits in securing their preservation for future generations.
74. The Council accepts that financial contributions towards health, education, the public realm and affordable housing mitigate the impacts of the scheme and meet the relevant policy requirements. To conclude, there are only very limited adverse impacts to be weighed against a number of very significant benefits, including the provision of market and affordable housing. There are also biodiversity benefits. The new residents of the scheme could contribute to Cliffe Woods and become active members of the community, enhancing the village. Therefore, the appeal should be allowed.

The case for Cliffe and Cliffe Woods Parish Council

75. The Parish Council's case is summarised in the original 'Rule 6' submission and the statement provided at the Inquiry⁶². The Parish Council is disappointed to see that the decision of the Council is now subject of appeal. It wants to ensure that the views of local residents are presented to the Inquiry. The Parish Council has been engaged since the pre-application meetings took place, and has responded to both the pre-planning application consultation and application itself, and participated in the public meeting at the Cliffe Woods Community Centre in October 2016 called in response to residents' serious concerns, held jointly with Kelly Tolhurst MP and Medway Council Ward Councillors.

⁵⁴ Mr Booth's Appendix 3 (Built Heritage Summary Statement for Appeal)

⁵⁵ Type 24 Pillbox TQ 77 SW 56

⁵⁶ ID 30, Paragraphs 124 - 127

⁵⁷ Type 24 Pillbox TQ 77 SW 59

⁵⁸ Mr Booth's Proof, Page 44

⁵⁹ Household expenditure from the new homes is estimated to be around £7.4 million per annum

⁶⁰ The build cost is estimated to be around £23.9 million with 212 jobs per annum created during construction

⁶¹ Estimated to be around £2.1 million [Mr Booth's Proof Page 44]

⁶² ID 27

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76. The Parish Council strongly supports the Council's reasons for refusal, relating to the sustainability of the site, and the effect on the landscape. The suggested financial contributions from the legal agreement do not cover the impacts that this scheme would have on facilities within the village. The development would impact on existing services: pre-school, primary school, doctors' surgery, the community centre and other community facilities. In particular, the primary school would be unable to satisfy the needs of this development – and provision will need to be provided elsewhere, leading to more traffic. There is already over-reliance on the private motor vehicle and other transport provision is poor. There are limited facilities and services in the locality – most are in Strood, Rochester, Chatham and Gravesend. The proposal does not address the additional problems that this development would create. The site, originally assessed as a 'valued landscape', has always been in agricultural use, and provides a natural boundary between Cliffe Woods and the boundary with Gravesham / Kent County Council.
77. The site is located on the west side of Town Road (B2000) and is separated from the village facilities by a busy main road with significant lorry movements to Cliffe (Salt Lane). The traffic survey commissioned by the Parish Council shows that significant numbers of lorries use the B2000. The proposed highway works, including the provision of a footpath between View Road and Tennyson Road, do not overcome the problems of crossing the road. The main access to the site is adjacent to the busy B2000 Town Road / View Road junction (a main route into the village for residents) with poor visibility from View Road towards the proposed new access. There are already traffic problems around the primary school at drop-off and pick-up times, which will be exacerbated by this scheme.
78. The suggestion that the 'Click' bus service would help reduce the need for a car has not been proven. The ability to pick up a customer within 20 minutes would be very difficult to achieve, especially in peak times, and would not be practical if Bluewater Shopping Centre were to be included as a destination. There is a lack of clarity as to how the service could be booked, and whether there would be a need for pre-booking and pre-paying via a smart phone.
79. The scheme fails to address the problems it would create and is unsustainable. There is little practical benefit being proposed for the village. The development is located on the 'wrong side' of the B2000. The Parish Council fully supports the reasons for refusal and requests that the appeal is dismissed.

Comments of Third Parties

80. The Council's committee report advises that there were 332 letters of objection from local residents, as well as a petition comprising 198 signatures. A number of individuals spoke against the scheme at the Inquiry⁶³. Objections to the proposals raise many points and include the following: the site is not identified in the Medway Local Plan nor Neighbourhood Plan; the site is not in a sustainable location with limited shops / services and public transport provision; the large scale of development is unacceptable, and will overload existing limited facilities and infrastructure in the village; it will cause increased pressure on schools, doctors surgeries, police, fire services etc; the financial contributions in the legal agreement are inadequate; and the provision of affordable housing is inadequate.

⁶³ Listed as interested persons at the end of this report

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81. It will result in the loss of open countryside and the loss of the best and most versatile agricultural land – such land should be retained for food production, especially in the light of the decision to leave the European Union; development would have a significant environmental impact – including impacts on biodiversity, and local habitats, including nearby Special Protection Areas and Sites of Special Scientific Interest; it would have a harmful effect on the landscape character of the area and destroy the village environment; new housing development should take place on brownfield sites; there is no need for housing on this scale; the development would lead to urban sprawl and to Cliffe Woods becoming an extension of Strood and Rochester; the lack of a 5 year supply of housing is only temporary and does not outweigh the harm that this development would permanently cause; and there would be loss of amenity, outlook and views especially from properties in Ladyclose Avenue and Mortimers Avenue.
82. There would be increased light and air pollution; the indicative scheme layout is unacceptable; the land is potentially contaminated; there are potential subsidence issues in the locality; there are drainage concerns, including those relating to increased runoff causing flooding; there would be an increase in crime and antisocial behaviour; there would be an unacceptable impact on the highway network – the roads are already dangerous, especially the B2000 that has many HGV lorry movements; the increase in traffic would make the problem worse and the proposed access point has limited and poor visibility; and the application documentation is misleading and there has been poor pre-submission community consultation.

Other objections

83. **Kelly Tolhurst (Member of Parliament for Rochester and Strood)** objects to the proposal, noting the substantial opposition from local constituents. In a letter dated 5 July 2017, she observes that a public meeting was attended by more than two hundred local residents who were unanimously opposed to the scheme. Specific concerns related to the increased pressure on local services, transport, emergency services, the primary school and GP practice. The proposal would also have an adverse effect on the environment, as well as causing increased pollution and traffic congestion.

Planning Obligation

84. The appellant has provided a planning obligation dated 13 December 2017 in the form of a unilateral undertaking. The obligation secures the provision of affordable housing at the rate of 25%. It also secures various financial contributions towards: the provision of a bus service scheme comprising a 'Click' demand-responsive minibus service, including credit (£50) to pay for travel on the bus service; a bus season ticket for the first occupier of each dwelling; improvements to public transport infrastructure in the vicinity - for example upgrading the bus stop/shelter (£25,000); an education contribution towards nursery, primary, secondary and sixth form education (to be calculated using a formula); a healthcare contribution (up to £105,288.75); a school transport contribution (£5,000) towards the costs of safer roads to school initiatives and updating Cliffe Woods Primary School's travel plan.
85. The obligation secures a footpath contribution (£1,800) towards two 'kissing gates' to replace the stiles at each end of footpath RS72 on the northern

boundary of the site, as well a contribution (£500) towards new footpath signage; and an outdoor open space contribution (to be calculated according to a formula). It also provides for bird mitigation (£50,305.50); and towards waste management (£85,686.30). The obligation provides for the establishment of a management company to maintain the open space (including the play area) in accordance with a scheme to be submitted to and approved in writing by the Council. The obligation provides for a public realm contribution (£55,125). It also provides for a monitoring fee (£2,700) towards the Council's costs of monitoring compliance of the obligations.

86. I have no reason to doubt that the formulae and charges used by the Council and County Council to calculate the various contributions are other than soundly based. In this regard, the Council has produced a Compliance Statement⁶⁴ which demonstrates how the obligations meet the relevant tests in the Framework⁶⁵ and the Community Infrastructure Levy Regulations⁶⁶. The development would enlarge the local population with a consequent effect on local services and facilities. I am satisfied that the provisions of the obligation are necessary to make the development acceptable in planning terms, that they directly relate to the development, and fairly and reasonably relate in scale and kind to the development, thereby meeting the relevant tests in the Framework and the Community Infrastructure Levy Regulations. I have taken the obligation into account in my deliberations.

Conditions

87. I have reviewed the suggested conditions in the light of the discussion at the Inquiry and advice in the PPG. Where necessary, I have reworded them for clarity and simplicity, and have also amalgamated some of the conditions to avoid duplication.
88. Commencement conditions are necessary to comply with the relevant legislation. A condition requiring compliance with the submitted plans and specifying the maximum number of dwellings is necessary for the avoidance of doubt. A condition specifying the scope of requirements in relation to reserved matters is necessary to ensure these matters are properly dealt with and to achieve a high quality scheme. These matters include the design and layout of dwellings and materials to be used; details of boundary treatments, hard and soft landscaping; details of retained trees and hedgerows; existing and proposed ground levels; internal road layouts, parking and pedestrian routes, including surfacing details; details of the public realm; details of refuse and recycling storage; measures to minimise the risk of crime; and an open space masterplan. A condition to ensure the replacement of any trees or plants that die, become diseased or are removed is required to ensure the effectiveness of the landscaping scheme.
89. A condition relating to lighting is necessary to ensure adequate illumination, whilst minimising light pollution and safeguarding ecological interests. Conditions relating to sustainable surface drainage, ecology, highway works, archaeology and contamination are required to ensure that these matters are appropriately addressed. A condition requiring a travel plan is required to minimise private car

⁶⁴ ID 17

⁶⁵ Paragraph 204

⁶⁶ Regulation 122 & 123

trips and encourage sustainable modes of transport. A condition requiring a construction management plan is necessary to minimise disturbance to local residents. A condition relating to the two pillboxes on the site is necessary to ensure these non-designated heritage assets are protected. A number of the conditions relate to pre-commencement activities. In each of these cases, the requirement of the condition is fundamental to make the scheme acceptable in planning terms.

Inspector's Conclusions⁶⁷

Main Issues

90. In the light of all the evidence and submissions, I consider the main issues to be:
- i. the locational accessibility of the site, in terms of shops and services, and public transport;
 - ii. the effect on the character and appearance of the area, including the landscape; and
 - iii. in the absence of a five year supply of deliverable housing sites, whether any adverse impacts would significantly and demonstrably outweigh the benefits of the scheme.

Reasons

Planning Policy Context

91. The relevant legislation⁶⁸ requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The statutory development plan comprises the Medway Local Plan ('the Local Plan') adopted in 2003. Only Policy BNE25 is now specifically cited by the Council in its refusal grounds. [5]
92. The Framework sets out the Government's planning policies and is a material consideration in planning decisions. The Framework does not change the statutory status of the development plan for decision-making, but provides guidance for decision-takers in determining planning applications. The Local Plan predates the Framework, although the Framework states that policies should not be considered out-of-date simply because they were adopted prior to the Framework's publication⁶⁹. Nonetheless, the Local Plan is formally 'time expired', its end date being 2006. That said, the mere age of a plan does not mean that it loses its statutory standing as the development plan.
93. In this case, there is no dispute that the Council cannot demonstrate a deliverable five year supply of housing, as required by the Framework. The appellant is of the view that the supply is no better than 2.75 years although the Council says it is around 3 years. Either way, the shortfall in supply remains significant. The Council also accepts that the housing targets in the Medway

⁶⁷ In this section, the numbers in square brackets [] refer to earlier paragraphs of this report

⁶⁸ Section 38(6) of the 2004 Act

⁶⁹ Paragraph 211

Local Plan no longer represent the objectively assessed housing need for the district, and that the settlement boundaries were only designed to plan for growth up to 2006. There is no dispute between the Council and appellant that Paragraph 14 of the Framework is triggered. Indeed, the housing shortfall is sufficient, of itself, to trigger the second part of Paragraph 14. This so called 'tilted balance' states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole [23, 24, 42, 67].

94. There was disagreement at the Inquiry as to the weight to be given to Policy BNE25 [44, 69]. Given that Policy BNE25 is concerned with development in the countryside, both the Council and appellant were of the view that it should not be considered a policy for the supply of housing⁷⁰ particularly as case law has effectively narrowed the definition of such policies⁷¹. Nonetheless, I consider that Policy BNE25 in dealing with development in the countryside is intrinsically linked to settlement boundaries that in turn reflect out-of-date housing requirements. Furthermore, it is clear that its application is not leading to sufficient housing being provided in accordance with the Framework nor is it boosting the supply of housing⁷².
95. The Framework also advises at Paragraph 215 that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. In terms of Policy BNE25, Part (i) states that development will only be permitted if it maintains, and wherever possible enhances the character, amenity and functioning of the countryside and it offers a realistic chance of access by a range of transport modes. This first part of the policy is subject to further criteria which restrict development to specific uses or circumstances set out at (ii) to (vii). In my judgement, the wording of the policy implies that criterion (i) should be read conjunctively and not disjunctively with the subsequent criteria. This is clearly conveyed by the words 'and is either' at the end of criterion (i).
96. The Framework refers to the planning system performing various roles, including an environmental one. This involves contributing to protecting and enhancing the natural, built and historic environment⁷³, as well as, amongst other things, taking account of the different roles and character of different areas, and recognising the intrinsic character and beauty of the countryside⁷⁴. The Framework specifically states planning should contribute to conserving and enhancing the natural environment⁷⁵. It also seeks to promote sustainable transport and give people a choice about how they travel⁷⁶. To that extent, the first criterion of Policy BNE25 is not in fundamental conflict with the underlying aims of the Framework.

⁷⁰ Council's Closing Submissions, Paragraph 85 (2)

⁷¹ *Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG; Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council* [2017] UKCS 37

⁷² Paragraph 49

⁷³ Paragraph 7

⁷⁴ Paragraph 17

⁷⁵ Paragraph 17

⁷⁶ Section 4

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97. All that said, Policy BNE25 read as a whole is not fully consistent with the Framework to the extent that it lacks a hierarchical approach requiring that landscape protection is commensurate with status, and it arbitrarily restricts proposals to various forms of development that meet certain specific criteria. That is not surprising given that the Local Plan was conceived at a time when national guidance sought to protect the countryside for its own sake, as acknowledged in supporting paragraph 3.4.71⁷⁷. Indeed, the thrust of the Framework has moved away from a 'blanket protection' of the countryside, to a more hierarchical approach of consideration of landscape value, and it places no 'in principle' restriction on the type of development.
98. To sum up, I consider that the wording of the Policy BNE25 means that it was intended to be applied as a whole, rather than its individual elements selectively. Furthermore, whilst it remains legitimate to consider the impacts of development on the character and appearance of the countryside, the policy's approach to development in the countryside does not fully accord with the Framework's more hierarchical approach to landscape protection. In addition, it is clear that its application is not resulting in sufficient housing being provided. The Secretary of State in the *Gibraltar Farm* decision concluded that the policy 'clearly seeks to restrict housing growth'⁷⁸. Overall, therefore, all these factors diminish the weight that can be accorded to any conflict with this policy.
99. At the Inquiry the Council also sought to rely on Policies S1 and S2 of the Local Plan, notwithstanding that these policies were deleted from the reasons for refusal⁷⁹ [5, 43, 45, 70]. Policy S1 sets out the development strategy for the plan area and seeks to prioritise development within the existing urban areas. Policy S2 is concerned with the implementation of the development strategy set out in Policy S1, with a focus on maintaining and improving environmental quality and design standards, and a sustainable approach to the location and mix of new development to provide local communities with a range of local facilities (including transport measures to serve development).
100. These principles are broadly consistent with the overall objectives of the Framework. Nonetheless, it is clear that the development strategy of the Local Plan and the application of Policies S1 and S2 are failing to provide sufficient housing in accordance with the Framework. This runs counter to the objectives of Paragraph 47 of the Framework which seeks to boost significantly the supply of housing. Again, this limits the weight that can be attached to any conflict with these policies.

Locational Accessibility

101. The village of Cliffe Woods has a range of shops, services and community facilities [21]. There is a parade comprising a useful variety of outlets: a pharmacy, two convenience / grocery stores (including a post office), a fish and chip takeaway (which also sells burgers and kebabs), and an Indian takeaway. There is also a community centre and social club (including the Woodpecker Bar). There is a doctors' surgery/health centre, a church, a day nursery, a primary school and recreation ground. There is also a sizeable car park in the village

⁷⁷ Page 79 of the Local Plan

⁷⁸ APP/A2280/W/16/3143600, Paragraph 11 [CD 10.1]

⁷⁹ CD 12.2

centre where there are recycling facilities. These facilities are all close to the appeal site, and would be readily accessible to future residents.

102. The site is also accessible to public transport [22]. The closest bus stop to the site lies around 450m to the east of the centre of the site, along View Road. The 133 bus route is the main service in Cliffe Woods linking the village to Strood, Rochester, Chatham and St Mary's Island. However, whilst operating at reasonably regular intervals during the day, it does not operate in the very early morning or after early evening. Therefore, its timetable restricts the utility for commuters or those wishing to travel in the evenings for leisure purposes. The nearest railway station is not far away, at around 2 km from the site at Higham, where car parking is available. Trains operate in each direction serving stations at Gillingham, Chatham, Rochester, Strood, Gravesend, Dartford, Woolwich Arsenal, Lewisham, London Bridge, London Waterloo East, and London Charing Cross.
103. Although the village centre does provide a useful selection of outlets for essential shopping needs, residents of the village would need to travel further afield for a wider and more specialist range of shops. Although the use of internet shopping is growing, this does not obviate the need for shopping trips. Employment opportunities in the village are somewhat limited, as are leisure facilities. Although some residents may work from home, many would need to commute to larger centres. Also, there is no secondary school, library or bank in the village.
104. It seems to me that, notwithstanding the existing level of public transport, including both buses and train services, residents would be likely to rely on the private car for a number of trips. Although cycling may be an option for some residents, it is not a realistic option for most, especially those wishing to travel to Strood, Chatham or beyond for commuting purposes. Indeed, the appellant accepted that the possible options for cycling, utilising Town Road (B2000) and existing national and local cycle networks, were not particularly attractive to cyclists⁸⁰. Town Road, which is the most direct route to the main settlements and employment centres to the south, does not have a cycle lane, is predominantly unlit and is heavily used by lorries.
105. Measures have been proposed by the appellant to improve accessibility of the scheme [56, 57]. As part of the planning obligation, the appellant has agreed to fund a bus service scheme for a period of five years. It is envisaged that this will operate as an 'Arriva Click' demand-responsive service. The planning obligation requires the details of the scheme be agreed, including specification of the vehicles to be used, the departure points, en-route stops, and the charging and fares to be employed.
106. It is clear that a degree of uncertainty exists as to how this service would operate in practice, particularly in order to guarantee the waiting times suggested by the appellant. Both the Council and Parish Council urged that only limited weight could be attributed to the benefits provided by this service, and it could not be relied upon to alter the dependency on the car for future residents [34, 35, 78]. I acknowledge that the bus scheme is still in its embryonic stages, and further liaison will be required to crystallise its exact details and mechanics.

⁸⁰ This was accepted by Mr Schumacher in cross-examination.

However, the scheme should not be discounted as potentially improving transport links and accessibility to the site.

107. The appellant also proposes a financial contribution of £25,000 towards the costs of public transport infrastructure improvements in the vicinity of the site including upgrades to the bus stop in View Road. The appellant proposes to offer a bus season ticket for a period of three months and 'bus service credit' of £50 to pay for travel on the 'click' service for future households of the development [84]. All these measures will go some way to facilitating sustainable travel modes, and improving the site's accessibility to sustainable transport.
108. The Council relies on the *Hoo* appeal decision⁸¹, where the Inspector found that a residential development was not in a sustainable location, and would be highly dependent on car travel [36, 60]. However, that decision is not directly comparable to the circumstances of this case. In that case, the site was at some distance from, and poorly connected to, the services and facilities of Hoo. The boundary of the village was 'relatively impermeable'⁸². The site although juxtaposed with the western boundary of Hoo, had little or no connection with it and there was poor pedestrian connectivity. By contrast, in this case, the site is in close proximity to the centre of Cliffe Woods, its associated shops and other facilities. Although separated by Town Road, the facilities are not impenetrable to the site and there is good pedestrian connectivity.
109. To sum up on this first issue, there is a range of essential shops and other services in Cliffe Woods that would be accessible to future residents of the scheme. Nonetheless, residents are likely to travel further afield for larger food supermarkets, specialist shops, leisure, employment, and secondary schools. This is likely to generate trips by car, notwithstanding the existing public transport services available in the locality. Importantly however, the Framework, although seeking to promote sustainable transport, recognises that different policies and measures will be required in different communities, and opportunities to maximise sustainable transport solutions will vary from urban to rural areas⁸³. Parts of the Medway District are more rural in character, including the Hoo Peninsula and the village of Cliffe Woods. This means that options for public transport are more limited, as are the availability of shops, local services and facilities. This requires a realistic approach to the general travel method of its residents.
110. Moreover, residents of the appeal development would be in no different position to the existing residents of Cliffe Woods. Measures are proposed as part of the scheme to improve accessibility and encourage sustainable transport. I find no intrinsic conflict with the requirement of Policy BNE25 that development should '*offer a realistic chance of access by a range of transport modes*'. Weighing all the above in the balance, I am satisfied on the first issue that the proposal can be justified in this location. Furthermore, by introducing new market and affordable housing along with the associated economic benefits, the proposal would comply with the Framework, which advocates supporting a prosperous rural economy⁸⁴.

⁸¹ APP/A2280/W/15/3132141 [Appendix D of Mr Sensecall's Proof]

⁸² Ibid, Paragraph 16

⁸³ Paragraph 29

⁸⁴ Paragraph 28

Effect on Character and Appearance – Landscape

111. The appeal site has no specific landscape designation or protection. At a local level the site falls within the 'Cliffe Woods Farmland' landscape character area. This character area is described as comprising undulating arable farmland and orchards, with poplar shelter belts being a dominant feature. Whilst the description notes that there is a tranquil, rural feel away from roads, it also accurately records that detracting features include the B2000 which carries heavy traffic (including lorries), together with pylons to the north and the suburbanisation of village edges [11].
112. In terms of scenic quality, the appeal site can be regarded as reasonably attractive, comprising open fields, but it is nothing out of the ordinary. It contains few landscape features of intrinsic value. Indeed, the Council specifically amended its second reason for refusal to omit reference a 'valued landscape'. Although currently open, its character is significantly affected by the urban development on its edges – in particular, the busy Town Road (B2000), the residential housing within Mortimers Avenue and Ladyclose Avenue as well as the larger urban expanse of Cliffe Woods on rising land to the east. Whilst I acknowledge the northern, western and southern boundaries abut open agricultural land, the site is largely perceived in the context of the nearby development. I do not consider the site to be an essential or intrinsic component of the wider open countryside. In terms of tranquillity, the locality is affected by the heavy traffic flows, including a significant number of lorries along Town Road.
113. Although I observed a number of walkers traversing the edges of fields, these are not formal public rights of way. Indeed, the majority of the site is not accessible to the public and most of the appeal site has no formal recreational function [63]. The open fields do, however, provide a setting for the public footpath running along the northern boundary. This footpath is clearly popular and locally valued, and is a route used by walkers, including those living in the village. The proposed coverage of the existing fields with housing would inevitably compromise views from this stretch of footpath. The introduction of built form would undoubtedly alter users' experiences: rather than walking past an open field, it would in effect become a walk past a housing estate. The development would create a substantially more suburban appearance. Most users are likely to find their experience and enjoyment of this section of footpath diminished by such changes to the landscape.
114. All that said, only a very limited section of footpath would be affected by the proposal. In practical terms, those walking along the footpath on the northern edge of the appeal site would simply have to walk further westwards to experience an open country view. In any event, views from the footpath are already affected by the properties of Mortimers Avenue and Ladyclose Avenue, as well as the built environs of Cliffe Woods rising up the hill. The Development Framework Plan proposes structural planting comprising a 15 metre wide corridor alongside the footpath as well as an area of open space in the north east corner of the site. These features would help mitigate the impact on the footpath [63].
115. Turning to views in the wider landscape, the site has a relatively restricted 'visual envelope'⁸⁵. There are views from the north and east, but these are

⁸⁵ Landscape and Visual Appraisal, Figure 7 [CD 2.6]

filtered by the existing built development of Cliffe Woods. Views from the west are impeded because of the undulating landform and vegetation along the site's boundary. To the south, views are affected by intervening belts of vegetation, although during the winter months when deciduous trees lose their leaves, the site is more obvious. Limited views of the site are possible from the local lanes of Buckland Road to the west and Lillechurch Road to the south. Nonetheless, the effect of the development on the wider landscape could be mitigated by structural planting, as shown on the Development Framework Plan.

116. Drawing all these matters together, in terms of character and appearance, the appeal scheme would inevitably adversely affect the currently open and rural character of the landscape. It would result in the urbanisation of agricultural fields, although the impact of the scheme would reduce as the proposed structural planting and landscaping matures. In terms of Policy BNE25(i), the scheme would not maintain or enhance the character, amenity and functioning of the countryside, and so would not accord with that aspect of the policy. On the other hand, Paragraph 113 of the Framework states that landscape protection should be commensurate with status. This undesignated landscape is not of the type that the Framework seeks to protect from any forms of development, sitting at the bottom of the landscape hierarchy in terms of its status. In areas where there is a housing supply deficit, development should be directed to areas of lesser environmental value.

Other Matters

117. A number of objectors have raised concerns in relation traffic safety and congestion [77, 82]. The Council has agreed that safe access to the site can be achieved, subject to various highway improvements being undertaken. These include the provision of a new section of footway on the eastern side of Town Road between the junctions with Tennyson Avenue and View Road; the realignment of the existing carriageway and the provision of a 2 metre wide footway along the site frontage, including a pedestrian crossing island; the provision of a controlled pedestrian crossing to the south of the Town Road/Tennyson Road junction; and the provision of a traffic island at the existing speed limit terminal on Town Road to the south of Cliffe Woods, along with new carriageway surfacing. Such measures could be secured by condition. It is not alleged that residual cumulative transport impacts of the scheme would be severe, in terms of Paragraph 32 of the Framework. The evidence does not suggest that the scheme should fail on highway grounds.
118. Objectors have also raised concerns regarding the overburdening of local services, including education and medical [76, 80]. The appellant's planning obligation provides for financial contributions in respect of education and healthcare provision. The amounts have been calculated using the Council's own formula based on the anticipated need generated from future residents of the appeal site. There is no reason for the approval to be withheld based on these concerns.
119. Concerns have been raised regarding the impact on outlook and privacy at nearby properties, especially from the residents of Mortimers Avenue and Ladyclose Avenue [81]. The Development Framework Plan indicates that an undeveloped margin of around 15 metres would be retained along the boundaries adjacent to these properties. Detailed plans, when drawn up, would indicate the

precise layout and positioning of dwellings, and ensure that there are no adverse effects in terms of privacy and overshadowing. Clearly, the outlook from these properties would change, but there is no reason to suppose the effect would be unacceptable.

120. Objectors have raised concerns in relation to the loss of best and most versatile (BMV) agricultural land [81]. The majority of the site is within the BMV 'Moderate' (Grade 3b) category although a proportion of the site falls within the BMW 'Good' (Grade 3a) category. Both the Council and appellant agree that the loss of agricultural land is not significant enough to be a determining issue in this case, and I see no reason to take a different view [26].
121. A number of other concerns have been raised in respect ecology and nature conservation interests, flood risk, ground conditions / contamination and archaeology [81, 82]. In terms of ecology, no part of the site is covered by wildlife designations. An Ecological Appraisal has been undertaken to determine the habitats present within the site⁸⁶. The Appraisal concludes that the main body of agricultural land is considered to be of low ecological value, but that the hedgerows, ditches and trees on or near to the site boundaries are likely to provide opportunities for a range of local wildlife. No signs of badger activity were identified, nor were any bat roosting habitats identified within the developable area, with commuting and foraging habitats largely restricted to hedgerows and trees forming the site boundaries. Appropriate mitigation measures could be undertaken, secured by condition, to ensure there is no negative effect on nature conservation interests. There is also the opportunity for ecological enhancement and habitat creation through new open spaces proposed within the site.
122. The site is also reasonably close to a range of European and nationally designated sites [12], including SPAs, Ramsar sites, SACs and SSSIs. Such sites are susceptible to damage caused by increasing recreational pressure. However, Natural England (NE)⁸⁷ considers the proposal to be acceptable, subject to appropriate mitigation⁸⁸, including in respect of birds, which can be secured by a planning obligation and conditions.
123. A Flood Risk Assessment has been prepared which confirms that the site falls entirely within Flood Zone 1 where there is a low probability of flooding. Flood and drainage matters can be appropriately dealt with by a condition requiring the submission of a sustainable drainage scheme prior to any development commencing [26].
124. In terms of ground contamination, the site has previously been used for agricultural activities with a low risk of contamination. With regards to archaeology, an archaeological desk based assessment has been carried out and the comments of the County Archaeological Officer sought⁸⁹. In accordance with the advice received, both contamination and archaeological matters can be satisfactorily dealt with by suitably worded conditions [25].

⁸⁶ CD 2.5

⁸⁷ CD 3.7 & 3.16

⁸⁸ As detailed in the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy

⁸⁹ CD 3.8

125. There are Second World War pillboxes along the edge of the site. Paragraph 135 of the Framework requires any effects on the significance of a non-designated heritage asset to be taken into account. The Council has not raised any objections regarding the impact on these non-designated assets, subject to an appropriate condition being imposed and I see no reason to take a different view [25].

Planning Balance and Overall Conclusions

126. The relevant legislation requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The Framework states that proposals should be considered in the context of the presumption in favour of sustainable development, which is defined by economic, social, and environmental dimensions and the interrelated roles they perform. These dimensions give rise to the need for the planning system to perform a number of roles.

127. In this case, the additional housing would be a weighty benefit for the area, by introducing much needed private and affordable housing for local people. It would boost the supply of housing in accordance with the Framework, contributing up to 225 homes, of which up to 25% would be affordable. It would bring about additional housing choice and competition in the housing market. The scheme would bring about social and economic benefits. It would create investment in the locality and increase spending in shops and services. It would result in jobs during the construction phase. The New Homes Bonus would bring additional resources to the Council.

128. The scheme has other advantages, including the provision of open space with an equipped play area that could also be used by the general public. New planting and landscaping, as well as the provision of a pond as part of the sustainable urban drainage system, has the potential to enhance the ecology and biodiversity of the site. New pedestrian routes would be created across the site to supplement the existing public footpath. The obligation provides, amongst other things, for improvements to the public transport infrastructure, including the upgrade of the nearby bus shelter, and the provision of an on-demand responsive 'Click' bus service. Not only would these measures mitigate the adverse effects on the development, they would also convey benefits to the wider population.

129. The development would result in the loss of open agricultural land and would result in the urbanisation of the existing fields. However, the existing landscape is adjacent to, and perceived in the context of, the urban edge of Cliffe Woods. It contains few landscape features of intrinsic value and the Council does not contend that this is a 'valued landscape'. The impact of the scheme would significantly reduce as the proposed structural planting and landscaping matures. There is no reason why the development could not be adequately assimilated over time. Paragraph 113 of the Framework states that landscape protection should be commensurate with status. In areas where there is a housing supply deficit, development should be directed to areas of lesser environmental value.

130. Cliffe Woods is accessible to public transport, including bus and train services. Although provision is not comparable to that of a built-up urbanised area, there are opportunities for residents to use public transport. There is a range of essential shops and other local facilities, which are within walking distance.

Residents of the new development are likely to travel further afield for a wider range of shops, services, leisure opportunities and employment, necessitating trips by private vehicles. That said, residents of the appeal development would be in no different position to other existing residents of Cliffe Woods.

131. The Framework, although seeking to promote sustainable transport, recognises that different policies and measures will be required in different communities, and opportunities to maximise sustainable transport solutions will vary from urban to more rural areas. Parts of Medway, including Cliffe Woods, are more rural in character with less generous provision of public transport and more limited facilities, compared with built-up urban areas. A realistic approach is required to the general travel method of residents, and this should not weigh against the development.
132. The Council refers to the public interest in having a plan-led system for the delivery of housing. However, it is a core planning principle of the Framework that plans should be kept up to date⁹⁰. In addition, the Framework is clear that every effort should be made objectively to identify and then meet the housing needs of an area⁹¹. The Medway Local Plan, adopted in 2003, was only intended to guide development up to 2006. It is based on an out-of-date housing requirement. Its policies are incapable of meeting current housing requirements. In the *Gibraltar Farm* appeal decision, the Secretary of State agreed with the Inspector that greenfield sites outside the defined settlement boundaries would inevitably need to be developed. That situation has not changed.
133. In summary, there would be some conflict with Policy BNE25(i) of the Medway Local Plan in terms of the effect on the landscape. However, the development would offer access by a range of transport modes, as required by BNE25(i), although new residents may also rely on private vehicles. The scheme would be not be located within an existing urban area, as prioritised by Policies S1 and S2. Importantly, though, the Council cannot demonstrate a five year supply of housing. Moreover, Policy BNE25 is not fully compliant with the Framework, and, together with Policies S1 and S2, they are not delivering the necessary provision of housing. This diminishes the weight that can be attached to any conflict with these policies.
134. The significant ongoing housing shortfall attracts substantial weight in favour of granting permission for the proposals, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. I am satisfied that none of the reasons put forward for opposing the development establishes that the harm would be significant or would demonstrably outweigh the benefits. Therefore, notwithstanding any conflict with Policies BNE25, S1 and S2 of the Local Plan, I recommend that the appeal should succeed, subject to the imposition of conditions.
135. In reaching my recommendation, I have carefully considered the serious concerns voiced by many local residents, the Cliffe and Cliffe Woods Parish Council, the Ward Councillors and the Member of Parliament for Rochester and Strood. I appreciate that there is substantial opposition to the scheme.

⁹⁰ Paragraph 12

⁹¹ Paragraph 17, 3rd bullet

However, in this case, I have judged the balance falls in favour of granting permission because the adverse impacts would not significantly and demonstrably outweigh the benefits.

Recommendation

136. I recommend that the appeal be allowed and planning permission be granted subject to the conditions set out in the schedule at Annex A.

ANNEX A

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for the approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission. The development hereby permitted shall begin no later than 12 months from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in general accordance with the following plans: Location Plan 7199-L-01 Rev A; Development Framework Plan 7199-L-03 Rev E; Proposed Access Arrangement P16020-001-D; and the number of dwellings shall not exceed 225.
- 4) Details of appearance, landscaping and layout required to be submitted and approved under Condition 1 shall include details of:
 - i. the design, layout and form of the dwellings, including details of the external surfaces and materials to be used;
 - ii. fencing, walling, boundary treatments and means of enclosure of the dwellings;
 - iii. a scheme of hard and soft landscaping, including additional planting along the boundaries of the site, the specification of trees, hedges, and shrub planting, and details of species, density and size of stock;
 - iv. all trees and hedgerows on the land and details of those to be retained and how they will be protected during construction;
 - v. existing and proposed ground levels;
 - vi. the internal road layout and car parking provision; and the layout of proposed pedestrian routes within the site, including details of the works proposed to existing Public Right of Way RS72;
 - vii. the public realm including the colour, texture and quality of surfacing of footpaths, roads, parking areas and other shared surfaces;
 - viii. refuse / recycling storage and collection points;

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- ix. measures to minimise the risk of crime; and
 - x. an open space masterplan for the site, including long term design objectives, management responsibilities and maintenance schedules.
- 5) The landscaping works shall be carried out in accordance with the approved details agreed by the local planning authority, and any trees or plants which within a period of 5 years from the date of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the local planning authority gives written approval to any variation.
 - 6) No dwelling shall be occupied until an external lighting strategy has been submitted to and approved in writing by the local planning authority. The strategy shall ensure adequate illumination of roads and paths and avoid unnecessary light pollution. The strategy shall: (i) identify areas and features on site that are particularly sensitive for bats, and (ii) provide details of how and where external lighting will be installed so that lit areas will not disturb and prevent bats using their territory, including breeding sites and resting places. The strategy shall be implemented and thereafter managed and maintained in accordance with the approved details.
 - 7) No development shall commence until a scheme for a sustainable surface water drainage strategy has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details.
 - 8) The dwellings shall not be occupied until a travel plan to promote and encourage the use of alternative modes of transport to the car has been submitted to and approved in writing by the local planning authority. The travel plan shall include raising awareness in respect of cycling, walking, car share initiatives, car clubs and provide details of a nominated travel plan co-ordinator. The scheme shall include, for the first occupier of each dwelling, the provision of a travel information welcome pack to raise awareness in respect of sustainable modes of transport.
 - 9) No development shall take place until a construction management plan has been submitted to and approved in writing by the local planning authority. The plan shall provide for: details of how construction traffic will access the site; the proposed hours and days of working; proposals to minimise disruption to the adjacent local area from ground works, construction noise and site traffic; the parking of vehicles of site personnel, operatives and visitors; loading and unloading of plant and materials; the contractors' site storage areas and compounds; vehicle wheel washing facilities; measures to guard against the deposit of mud or other substances on the highway; a strategy for the minimisation of noise, vibration and dust (including from any piling works); and site contact details in case of complaints. The approved details shall be adhered to throughout the construction period.
 - 10) No development shall commence until a detailed schedule of highway works (to be undertaken in general accordance with Plan P16020-001-D) has been submitted to and approved in writing by the local planning authority. The dwellings shall not be occupied until the works have been undertaken

in accordance with the approved details, and they shall be permanently retained thereafter. The works shall include:

- i. the provision of a new section of footway on the eastern side of Town Road between the junctions with Tennyson Avenue and View Road;
 - ii. the realignment of the existing carriageway and the provision of a 2 metre wide footway along the site frontage, including the provision of a pedestrian crossing island;
 - iii. the provision of a controlled pedestrian crossing to the south of the Town Road/Tennyson Road junction;
 - iv. the provision of a traffic island at the existing speed limit terminal on Town Road to the south of Cliffe Woods, along with new carriageway surfacing; and
 - v. ensuring no obstruction, structure or erection exceeding 0.6 metres in height within the sightlines of the new site access with Town Road.
- 11) No development shall commence until an ecological management strategy has been submitted to and approved in writing by the local planning authority. The strategy shall include: details of objectives to achieve ecological enhancement of the site; details of measures for encouraging biodiversity within the site; review of site potential and constraints; details of works to achieve objectives; details of the body or organisation responsible for implementation; the timetable for implementation; details of aftercare and long term maintenance; details of monitoring and remedial measures; details of a legal and funding mechanism by which the implementation of the Strategy will be secured. The strategy shall be carried out as approved.
- 12) No development shall take place until a programme of archaeological work has been secured and implemented in accordance with a written scheme of investigation, which shall first have been submitted to and approved in writing by the local planning authority.
- 13) No development shall take place until a scheme relating to the two pillboxes on the site has been submitted to and approved in writing by the local planning authority. The scheme shall provide details for the protection of the pillboxes, and how they will be utilised in the future. The scheme shall be carried out as approved.
- 14) If during the course of development, contamination is found to be present on the site, then no further development (unless otherwise agreed in writing by the local planning authority) shall be carried out until the developer has submitted and obtained written approval from the local planning authority for a remediation strategy detailing how the contamination shall be dealt with. The remediation strategy shall be implemented as approved, verified and reported to the satisfaction of the local planning authority.

APPEARANCES

FOR THE COUNCIL

Mr Robert Williams of Counsel, Instructed by Medway Council

He called

Steven Sensecall Carter Jonas

John Etchells John Etchells Consulting

FOR THE APPELLANT

Ms Thea Osmund-Smith of Counsel, Instructed by Gladman Developments Ltd

She called

David Schumacher PRIME Transport Planning

Tim Booth Planning Director, Gladman Developments Ltd

Gary Holliday FPCR Environment & Design Ltd

FOR CLIFFE AND CLIFFE WOODS PARISH COUNCIL

Chris Fribbins Clerk to the Parish Council

INTERESTED PERSONS

Roger Brown Representative of SAVE Cliffe Woods Campaign & Local Resident

Ray Styles Local Resident

Greg Kitsell Local Resident

David Wolfson Local Resident

Josephine Brown Local Resident

Robert Norton Local Resident

David Johnson Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Comparison of Landscape and Visual Assessments of the Council and Appellant
2. Gladman Developments Ltd v Daventry DC [2016] EWCA Civ 1146
3. Bloor Homes East Midlands Ltd v SSCLG & Hinckley and Bosworth Borough Council [2014] EWHC 754 (Admin)
4. Extract of Planning Practice Guidance relating to Brownfield Registers and Permission in Principle
5. Note on admission arrangements for Cliffe Woods Primary School for September 2018
6. Detailed Access Plan showing trees to be retained
7. Opening Statement on behalf of the Appellant
8. Opening Statement on behalf of the Council
9. Council Committee Planning Report relating to land at Otterham Quay Lane, Rainham, Kent (Ref MC/16/2051)
10. Notes for a statement from SAVE (Save Agricultural Village Environment) by Mr Roger Brown
11. Note showing bookings at Cliffe Woods Community Centre
12. Historic Map of Cliffe Woods
13. Updated Statement of Common Ground, dated 29 November 2017
14. Submissions of David Wolfson
15. Extracts of various legal agreements relating to the provision of bus services
16. Department for Transport Note TAG Unit M1.2 Data Sources and Surveys
17. Planning Obligation Note: explaining provisions and compliance with CIL Regulations
18. Note about 'ArrivaClick'
19. Note regarding local activities in Cliffe Woods, by Mr Booth
20. Development Framework Plan (7199-L-03 Rev E) – annotated with dimensions
21. Submissions of Mr Robert Norton
22. Submissions of Mr David Johnson
23. Note of Dianne Foreman, Chair of Governors, Cliffe Wood Primary School
24. Map showing additional viewpoints of site
25. Schedule of suggested conditions

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26. Note by Arriva regarding 'Click Service'
 27. Closing Submissions on behalf of Cliffe and Cliffe Woods Parish Council by Mr Chris Fribbins
 28. Closing Submissions on behalf of Medway Council
 29. SSCLG & Reigate & Banstead Borough Council & Tandridge District Council v Redhill Aerodrome Ltd [2014] EWCA Civ 1386
 30. Closing Submissions on behalf of the Appellant
 31. Completed Planning Obligation dated 13 December 2017

Proofs of Evidence submitted by the Council

Mr Steven Sensecall	Proof & Appendices (Planning)
Mr John Etchells	Proof & Appendices (Landscape)

Proofs of Evidence submitted by the Appellant

Mr Tim Booth	Proof & Appendices (Planning)
Mr Phil Rech	Proof & Appendices (Landscape)
Mr Gary Holliday	Addendum to Mr Rech's Proof (Landscape)
Mr David Schumacher	Proof & Appendices (Highways and Transport)

Evidence submitted by Cliffe Woods and Cliffe Woods Parish Council

Mr Chris Fribbins	Statement of Case & Appendices
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CORE DOCUMENTS LIST

CD1 Original Planning Application Documents

- 1.1 Planning Application Form and Notice Letters
- 1.2 Location Plan - Dwg No. 2013-076-100 (Superseded)
- 1.3 Development Framework Plan 7199-L-03 Rev D (Superseded)
- 1.4 Access Plan P16020-001B (Superseded)
- 1.5 Design and Access Statement (Superseded)
- 1.6 Ecological Appraisal (Superseded)
- 1.7 Landscape and Visual Appraisal (Superseded)
- 1.8 Arboricultural Assessment (Superseded)
- 1.9 Phase 1 Desk Based Site Investigation (Superseded)
- 1.10 Flood Risk Assessment (Superseded)
- 1.11 Foul Drainage Analysis (Superseded)
- 1.12 Transport Assessment (Superseded)
- 1.13 Travel Plan
- 1.14 Archaeological Assessment (Superseded)
- 1.15 Noise Screening Report
- 1.16 Air Quality Method (Statement)
- 1.17 Planning Statement (Superseded)
- 1.18 Statement of Community Involvement (Superseded)
- 1.19 Socio Economic Report
- 1.20 Heritage Statement

1.21 Soils and Agriculture Report (Superseded)

CD2 Post Application Documents

- 2.1 Location Plan Rev A
- 2.2 Development Framework Plan Rev E
- 2.3 Access Plan Rev C
- 2.4 Design and Access Statement
- 2.5 Ecological Appraisal
- 2.6 Landscape & Visual Impact Assessment
- 2.7 Arboricultural Assessment
- 2.8 Phase 1 Site Investigation
- 2.9 Flood Risk Assessment
- 2.10 Foul Drainage Analysis
- 2.11 Transport Assessment
- 2.12 Archaeological Assessment
- 2.13 Planning Statement
- 2.14 Statement of Community Involvement
- 2.15 Soils and Agriculture Report
- 2.16 AADT Traffic Figure
- 2.17 Access Management Strategy
- 2.18 Access Plan Rev D
- 2.19 Air Quality Damage Costs
- 2.20 CGMS response to Historic England
- 2.21 Ecological Appraisal December
- 2.22 Trip Distribution Data
- 2.23 Stage 1 Road Safety Audit
- 2.24 Technical Note

CD3 Consultation Responses

- 3.1 Kent Police
- 3.2 PROW Team
- 3.3 Footpath Officer
- 3.4 Highways England
- 3.5 Southern Water
- 3.6 KCC Ecological Advice
- 3.7 Natural England
- 3.8 Archaeological Officer
- 3.9 Historic England
- 3.10 Southern Water
- 3.11 KCC Biodiversity
- 3.12 Friends of the North Kent Marshes
- 3.13 Parish Council
- 3.14 Highways
- 3.15 Highways England
- 3.16 Natural England 2

CD4 Relevant Correspondence

- 4.1 Email from Chris Butler regarding updated reports
- 4.2 Email from D Stoddart to Kevin Bown re: Technical Note
- 4.3 Email from D Stoddart to Chris Butler re: revised Access Plan
- 4.4 Email from D Stoddart to Chris Butler re: Stage 1 RSA
- 4.5 Email from K Bown to D Stoddart re: removal of highway objection
- 4.6 Email from D Harris to P Hilldrup re: outstanding consultee responses

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- 4.7 Email from P Hilldrup to C Butler re: planning committee dates
 - 4.8 Email from C Butler to P Hilldrup re: removal of Natural England objection
 - 4.9 Request for Screening Request
 - 4.10 Screening Request Response

CD5 Decision Notice and Committee Report

- 5.1 Committee Report
- 5.2 Decision Notice

CD6 Plans for Determination

- 6.1 Location Plan - Rev A
- 6.2 Development Framework Plan - Rev E

CD7 Development Plan

- 7.1 Local Plan Proposals Map
- 7.2 Medway Local Plan 2003
- 7.3 Medway Saved Policies

CD8 Emerging Local Plan Documents

- 8.1 Local Plan Development Options

CD9 Development Plan SPG / SPD and Evidence Base

- 9.1 December 2016 AMR
- 9.2 Medway SHMA Final Report
- 9.3 SLAA Report and Maps February 2017
- 9.4 Guide to Developer Contributions 2014

CD10 Relevant Appeal Decisions

- 10.1 Land at Gibraltar Farm, Ham Lane, Hempstead, Gillingham APP/A2280/W/16/3143600
- 10.2 Not required
- 10.3 Not required
- 10.4 Land off Lucks Lane Buckden APP/H0520/W/16/3159161
- 10.5 Land off Rusper Road, Ifield APP/Z3825/W/15/3019480
- 10.6 Land off Chapel Lane, Norton in Hales APP/L3245/W/15/3004618
- 10.7 Land off Banady Lane, Stoke Orchard APP/G1630/A/14/2223858
- 10.8 Tadgedale Quarry, Mucklestone Road, Loggerheads APP/P3420/W/16/3149399
- 10.9 Not required
- 10.10 Land off Chester Road Malpas APP/A0665/A/13/2193956
- 10.11 Land off Churton Road Farndon APP/A0665/A/13/2196893
- 10.12 Land off Gipping Road and Church Road Stowuplands APP/W3520/W/15/3139543
- 10.13 Land off Yatt Road North Lea APP/D3125/W/15/3136376

CD11 Relevant Judgements

- 11.1 SSCLG v Telford and Wrekin Council [2016]EWHC 3073 (Admin)
- 11.2 Suffolk Coastal District Council [2017] UKSC 37
- 11.3 Phides Estates Ltd & Shepway District Council [2015] EWHC 827 (Admin)
- 11.4 SSCLG v Stroud District Council [2015] EWHC 488 (Admin)
- 11.5 SSCLG v Forest of Dean District Council [2016] EWHC 2429 (Admin)

CD12 Other Core Documents

- 12.1 Email from D Harris minor change to wording Reason for Refusal
- 12.2 Planning Committee minutes 25.10.17
- 12.3 Medway Village Infrastructure Audit January 2017
- 12.4 GLVIA 3
- 12.5 National Character Area Profile 113 ' North Kent Plain'
- 12.6 Landscape Assessment of Kent (October 2004)
- 12.7 Kent Historic Landscape Characterisation (May 2001)
- 12.8 Medway Landscape Character Assessment (March 2011)
- 12.9 Correspondence from Brendan Doyle June 2016 (from pre application discussions)
- 12.10 Illustrative Masterplan (extracted from CD2.4)
- 12.11 Gravesham Landscape Character Assessment (May 2009)
- 12.12 Email from Chris Butler providing update on S106 contributions
- 12.13 Developer contributions: Public Realm
- 12.14 Greenspace Services s106 Open Space
- 12.15 NHS Property request for contributions
- 12.16 Public Realm request for contributions
- 12.17 s106 Contributions – Chatham projects
- 12.18 s106 Contributions Rainham project
- 12.19 s106 Chatham Town Centre
- 12.20 s106 Rainham High Street
- 12.21 CLG Housing Need Consultation
- 12.22 Rochester Committee Report



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

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 for permission 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

With the permission of the High Court 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. 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 for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: 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 Inspector's report of the inquiry or hearing within 6 weeks of the day after 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.

Appendix 4

Extract from Medway Authority Monitoring Report (AMR)

Published December 2018

(Covering the Monitoring Year 1st April 2017 – 31st March18)

Housing

The preparation of the new Local Plan involves defining a housing target to address the development needs of Medway's communities up to 2035. Government has reviewed policy for calculating local housing needs in recent years. This has created uncertainty in defining the appropriate housing target for the new Local Plan.

The council's current housing target of 1,000 homes a year was adopted in 2014. We recognise that this needs to be updated with the production of the new Local Plan. Our evidence base document, North Kent Strategic Market Assessment, identified an Objectively Assessed Need for housing of 1,281 homes a year. The government's standard method for calculating Local Housing Need currently indicates a need for 1310 homes a year. However at the time of producing this AMR, the government is consulting on a revised methodology, which could result in a further uplift in the figure. The outcome is expected next year. Given the current uncertainty, we are presenting information in this report against the council's adopted housing target of 1,000 homes a year. We will be revising this figure next year with the update of government policy and the publication of the draft plan.

Net additional dwellings a) in previous years b) for reporting year c) in future years

In 2017/18 680 units were completed, which was below the annual requirement of 1,000.

Net additional dwellings in previous years			
	Completions	Requirement	Surplus/deficit
2013	565	1,000	-435
2014	579	1,000	-421
2015	483	1,000	-517
2016	553	1,000	-447
2017	642	1,000	-358
2018	680	1,000	-320
2013-2018	3,502	6,000	-2,498

Number of new and converted dwellings on previously developed land

In 2017/18, 601 residential completions were on previously developed land (PDL), which represents 88% of all residential completions, which is much higher than in previous years.

Number of new and converted dwellings on previously developed land (net)		
	Percent units on PDL	Units on PDL
2013/14	64%	369
2014/15	64%	309
2015/16	74%	411
2016/17	86%	549
2017/18	88%	601

