



# Department for Communities and Local Government

Ms Ros Graham  
Savills (UK) Ltd  
33 Margaret Street  
London  
W1G 0JD

Our Ref: APP/Z2260/A/14/2213265  
Your Ref:

29 October 2014

Dear Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY EAST KENT OPPORTUNITIES AND ROSEFARM ESTATES PLC  
AT LAND AT NEW HAINE ROAD, RAMSGATE, KENT CT12  
APPLICATION REFERENCE: OL/TH/11/0910**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Robert Mellor, BSc DipTRP DipDesBEnv DMS MRTPI MRICS, who held a public local inquiry on 19 and 20 August 2014 into your clients' appeal against the decision of Thanet District Council (the Council) to refuse outline planning permission for mixed-use development for up to 550 dwellings; up to 63,000m<sup>2</sup> class B1 (business) floorspace and sui generis use; a new local centre comprising up to 2,000m<sup>2</sup> convenience retail (Class A1, A2 and A3), community centre facilities up to 1,000m<sup>2</sup> (class D1/D2) and community healthcare up to 1,200m<sup>2</sup> (Class D1) and associated highway works as first described in planning application number OL/TH/11/0910 dated 9 November 2011.
2. On 21 February 2014, the 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 a proposal for residential development of over 150 units on a site of over 5 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. The Secretary of State agrees with the Inspector's analysis and he has decided to allow the appeal and grant outline planning permission, subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers are to that report.

## **Procedural Matters**

4. In reaching this position the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations and the Further Environmental Information which was submitted following the amendment of the application to include a special educational needs school. Having had regard to the Inspector's comments at IR86, the Secretary of State is content that the Environmental Statement complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the application.
5. Having had regard to the Inspector's remarks at IR1-4, the Secretary of State has determined the appeal on the basis of the revised description set out at IR4. He is satisfied that no party has been prejudiced by this approach.

## **Policy Considerations**

6. In deciding this appeal, 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. In this case, the development plan comprises the saved policies of the Thanet Local Plan 2006 (the LP) and the Secretary of State agrees with the Inspector (IR13) that whilst the Statement of Common Ground lists 19 relevant policies, the most pertinent to the principle of the site's development are EC1, EC12 and H1.
7. Having had regard to the Inspector's remarks about the emerging plan (IR20-23), the Secretary of State agrees with him that the Issues and Options Paper published in 2013 carries little weight at this stage (IR23).
8. Other material considerations which the Secretary of State has taken into account include the local evidence documents listed by the Inspector at IR24; the National Planning Policy Framework (the Framework); the Planning Practice Guidance (the Guidance); the Community Infrastructure Levy (CIL) Regulations; and *PPS5 Planning for the Historic Environment Practice Guide*.
9. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LB Act), the Secretary of State has paid special regard to the desirability of preserving those listed structures potentially affected by the scheme or their settings or any features of special architectural or historic interest which they may possess.

## **Main issues**

10. The Secretary of State considers that the main issues in this case are those set out by the Inspector at IR89.

### *Housing Need*

11. The Secretary of State had given careful consideration to the Inspector's remarks at IR90 – 94, including the fact that the Council accepts that it cannot now demonstrate that there is a 5 year supply of housing land (IR94). The Secretary of State sees no reason to disagree with the view of the Council and the Inspector that LP Policy H1

must therefore be regarded as out of date in terms of its ability to provide sufficient housing land to achieve a 5 year supply (IR94). The Secretary of State has had regard to the fact that the appeal site is greenfield, that it is within the built-up area and that it has already been allocated for other built development by LP Policy EC1 (IR95). Like the Inspector, the Secretary of State concludes that the provision of housing, including family and affordable dwellings, and the school and community facilities, would all contribute positively to the social role of sustainable development and that the activity of developing the site would also contribute to the economic role (IR97). He agrees that the need for housing and the lack of a 5 year supply of housing land outweighs the literal conflict with LP Policy H1, which is out of date in this respect (IR97).

#### *Employment*

12. For the reasons given by the Inspector at IR98 – 100, the Secretary of State concurs with his view that, in terms of the Framework, there is no reasonable prospect of securing B2 and B8 development at this location and that the LP policies are out of date in that regard (IR100). He endorses the Inspector's conclusions that the slow and partial take up of this site for B2 and B8 development, the continued availability of other employment land for those purposes and the economic benefits from the retained B1 provision support a mixed development such that the land no longer need be protected by the development plan for solely employment use (IR102)

#### *Environment*

13. The Secretary of State agrees with the Inspector's analysis and with his views that the loss of greenfield agricultural land is outweighed by other considerations in this case (IR103) and that the planning obligation should provide adequate mitigation and avoid a significant effect arising from the development (IR104).

14. Turning to the four Grade II listed buildings close to Haine Road and to the west of the site, the Secretary of State has given very careful consideration to the Inspector's reasoning at IR105 – 108. He shares the Inspector's view (IR109) that the setting of the four GII listed buildings to the west of the site would not be preserved and that the harm to setting and significance could not be fully mitigated and that, having regard to his statutory duty under the LB Act, this is a matter which carries considerable weight against the appeal proposal. However, in common with the Inspector he considers that the residual harm after mitigation would be limited in extent and at most only moderate in the sense that there would be a change in setting leading to a slight loss of heritage significance (IR109).

#### *Infrastructure*

15. The Secretary of State has given careful consideration to the Inspector's comments on the submitted planning obligation and infrastructure at IR85 and IR110 – 113 and to the Councils' remarks at IR49. With regard to the planning agreement between Thanet District Council, Kent County Council, East Kent Opportunities LLP and Rosefarm Estates PLC dated 20 August 2014, he agrees with the Inspector that, provided the contributions for youth services and adult learning are not put to staff costs, the proposal is in accord with LP Policy CF1 and the Framework and that the relevant provisions of the agreement accord with Regulation 122 of the CIL Regulations (IR111). Like the Inspector (IR113), he is satisfied that the proposal is in general accord with relevant provisions of the development plan and the Framework in respect

of traffic and transport and that the residual highways impacts after mitigation would not be “severe” in terms of paragraph 32 of the Framework.

#### **Other Matters**

16. The Secretary of State agrees with the Inspector’s remarks at IR114 -117. He sees no reason to disagree with the Inspector’s analysis about the time to be allowed for commencement of development and for the submission of reserved matters (IR15).

#### **Conditions and Obligations**

17. The Secretary of State has had regard to the Inspector remarks at IR83-84 and IR115 and IR117, the schedule of conditions in the IR, the Framework and the Guidance. He is satisfied that the conditions recommended by the Inspector comply with policy set out in paragraph 206 of the Framework.
18. The Secretary of State has commented on the planning obligation at paragraph 15 above. Having given careful consideration to the submitted obligation, the Inspector’s remarks at IR85 and IR110 – 113, the Framework and the Guidance, he is satisfied that the provisions set out in the obligation accord with the CIL Regulations and with paragraphs 203 – 205 of the Framework.

#### **Planning Balance and Conclusions**

19. The Secretary of State agrees with the Inspector’s overall conclusions at IR118 – 120. Like him (IR118), the Secretary of State concludes that the moderate harm to the setting of nearby listed buildings merits considerable weight, but that this harm is limited and is in fact outweighed by the scheme’s significant benefits which also merit considerable weight. He agrees with the Inspector that the proposal is in conflict with LP Policies H1, EC1 and EC12 (IR119). However, like the Inspector and the Council (IR119), he considers these policies to be out of date in relevant respects. Turning to paragraph 14 of the Framework, the Secretary of State shares the Inspector’s view that there are no adverse impacts in this case that significantly and demonstrably outweigh the benefits of the development (IR120). Overall he is satisfied that the scheme amounts to sustainable development and that planning permission should be granted.

#### **Formal Decision**

20. 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 outline planning permission for mixed-use development for up to 550 dwellings; up to 54,550m<sup>2</sup> Class B1 (business) floorspace; car showroom of up to 8,151m<sup>2</sup>; a new local centre comprising up to 2,000m<sup>2</sup> Class A1 (Shops), Class A2 (Financial and Professional Services) and Class A3 (Cafes and Restaurants), community facilities up to 5,000m<sup>2</sup> (Class D1/D2) and community healthcare up to 1,200m<sup>2</sup> (Class D1), and associated highway works, subject to the conditions listed at Annex A of this letter.
21. 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.

22. 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**

23. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

24. A copy of this letter has been sent to Thanet District Council. A notification letter or e-mail has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Christine Symes**

Authorised by Secretary of State to sign in that behalf

## ANNEX A

### SCHEDULE OF CONDITIONS

#### *Time and Reserved Matters conditions*

1. Approval of the details of the layout, scale and appearance of any buildings to be erected, the means of access to the site and the landscaping of the site, (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority in writing before any phase of the development is commenced.

REASON: As no such details have been submitted.

2. Plans and particulars of the reserved matters referred to in Condition 1 above, shall be submitted in writing to the Local Planning Authority and the development shall be carried out in accordance with the plans and particulars as approved in writing

REASON: In accordance with Section 92(2) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

3. Any application for approval of the reserved matters for the first Phase of the development shall be made to the Local Planning Authority before the expiration of 3 years from the date of this permission. Any application for approval of the reserved matters for any remaining phases shall be made to the Local Planning Authority before the expiration of 5 years from the date of this permission.

REASON: In accordance with Section 92(2) of the Town and Country Planning Act 1990.

4. Each phase of the development shall be begun within two years of the date of approval of the final reserved matters to be approved for that phase.

REASON: In accordance with Section 92(2) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

5. The reserved matters submitted in accordance with Condition 1 shall include the following details to the extent that they are relevant to the reserved matters application in question:-

#### A. Layout

- i. the layout of routes, buildings and spaces;
- ii. the block form and organisation of all buildings;
- iii. the locations and plan form of non-residential buildings;
- iv. the distribution of market and affordable dwellings within that phase including a schedule of dwelling size (by number of bedrooms and floorspace);
- v. the location of dwellings designed to seek to meet the Council's Lifetime Homes guidance;
- vi. full details of the approach to vehicle parking including the location and layout of visitor parking and parking for people with disabilities for each building type together with details of the design approach for access points into, and the ventilation of, any under croft parking;

- vii. full details of the approach to cycle parking including the location, distribution, types of rack, spacing and any secure or non-secure structures associated with the storage of cycles and the location and form of open areas.

B. Access

The access and circulation of modes of travel within the relevant phase or sub-phase, the design of roads and paths and junction layout including the provision of footpaths and cycleway.

C. Scale and Appearance

Scale, form and appearance of the architecture within each phase, in accordance with the design and scale parameters established within the parameter plans and detailed Masterplan to be approved under Condition 7, including frontage design and public/private realm definition and boundary treatments

D. Public Open Spaces

The extent, layout and specification of public open spaces, in accordance with the detailed Masterplan to be approved under condition 7 and including details of street furniture and play space, accompanied by a management plan showing how the relevant areas of public open space are to be laid out, paved, planted, equipped and maintained together with a timetable for their implementation.

E. Landscaping

The landscape design and specification of hard and soft landscape works within each phase, including detailed surveys of all trees, shrubs and hedges on the application site, giving details of all trees of having a trunk diameter of 75mm or more to include species type, spread of crown, height, diameter of trunk and condition assessment, details of existing trees, shrubs and hedges to be retained and details of new trees, shrubs, hedges and grassed areas to be planted, together with details of the species and method of planting to be adopted, details of walls, fences, other means of enclosure proposed, and arrangements to be made for the permanent maintenance of landscaped areas in accordance with the Landscape Management Plan and Specification to be approved under condition 1.

REASON: In the interests of achieving sustainable development, in accordance with Thanet Local Plan Policy D1, and the principles within the National Planning Policy Framework.

6. The application site to which this permission applies is that defined by Drawing WIPL 145486 Fig 1.2 and dated 12 July 2011. The submission of reserved matter applications pursuant to this outline application shall have regard to the principles of the following Parameter Plans received by the Council on 24 September 2013 and the text set out on those Plans to illustrate the development principles:-

PP001 - Illustrative core block structure  
PP002 - Illustrative land use mix concept  
PP001 - Illustrative strategy for development scale  
PP003 - Illustrative landscape and open space strategy

PP004 - An integrated and accessible local centre  
PP005 - Illustrative street types strategy

REASON: For the avoidance of doubt and in the interests of achieving sustainable development, in accordance with Thanet Local Plan Policy D1, and the principles within the National Planning Policy

*Masterplan & Site Wide Strategies*

7. No application for the approval of reserved matters in respect of any phase of the development shall be made unless or until a Masterplan, a Phasing Plan and a Landscape Masterplan for the entire development have first been submitted to and approved in writing by the Local Planning Authority
  - a. The Masterplan shall include or be accompanied by details plans and particulars in relation to the following matters:
    - i. A land uses general layout parameter plan;
    - ii. Densities and building heights parameter plans (which shall substantially accord with Illustrative strategy for development scale numbered PP001 dated received 24 September 2013 and letter received 9 September 2013),
      - Zone A 38-48dph
      - Zone B 35-38dph
      - Zone C 25-35dph
    - iii. Indicative number of units and mix (no. of bedrooms) of residential dwellings in each phase;
    - iv. Road layout and hierarchy for the key estate roads within the development;
    - v. Proposed principal pedestrian and cycle links within the site and linking it to its surround environs including to the Newington Estate;
    - vi. The potential location (or potential locations) for the local centre and any community building within the development.
  - b. The Landscape Masterplan shall:
    - i. identify the approximate location of the main areas of formal and informal open space to be provided within the development;
    - ii. outline the local playspace to be provided within the development and the proposed distribution of play areas within the development and
    - iii. include proposed programme for its delivery linked to the development phases. Such playspace shall be provided at a rate of 0.7 hectares per 1000 population (criteria as stated in Thanet Local Plan 2006 Policy SR5) of which no less than 36% of the area shall be equipped play space;
    - iv. outline a network of native tree planting.
    - v. include a Surface Water Drainage Strategy (including an assessment of the hydrological and hydro geological context of the development, and details of the implementation, timetable, management of Sustainable Urban Drainage Systems across the site);

- vi. include a Water Infrastructure Strategy, outlining site wide provision;
  - vii. include a Green Infrastructure Strategy which shall provide details of the green corridor to be provided through the site along with any further proposals for mitigation in line with the document "*Proposed Mitigation Measures for the potential effects of increased recreational pressure*" dated 4 October 2013 along with a programme for their delivery linked to the development phases
- c. The Phasing Plan shall show the proposed development phases and any sub-phases
  - d. All reserved matters submissions shall accord with the Masterplan, the Phasing Plan and the Landscape Masterplan as approved by the Local Planning Authority. Any references to a phase of the development within this permission shall be taken to be a reference to phases as identified on the approved phasing plan submitted under this condition.

REASON: In the interests of achieving sustainable development, in accordance with Thanet Local Plan Policy D1, and the principles within the National Planning Policy Framework.

#### *Archaeology*

- 8. No development shall take place on each respective phase as approved under Condition 7 until the applicant, or their agents or successors in title, has secured the implementation of:
  - a. archaeological field evaluation works in accordance with a specification and written timetable which has first been submitted to and approved in writing by the Local Planning Authority; and
  - b. following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved in writing by the Local Planning Authority.

REASON: To ensure that due regard is had to the preservation in situ of important archaeological remains in accordance with advice in the National Planning Policy Framework.

#### *Drainage*

- 9. No development shall take place on each phase as approved under Condition 7 until details of the means of foul and surface water disposal have been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with such details as are agreed and thereafter maintained.

REASON: To prevent pollution in accordance with Thanet Local Plan Policy EP13 and guidance contained within the National Planning Policy Framework.

10. No development shall take place on each respective phase until a surface water drainage scheme for that phase, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development and including details of how the scheme shall be maintained and managed after completion, which shall integrate with the Surface Water Drainage Strategy approved in Condition 7, has been submitted to and agreed in writing by the Local Planning Authority for that phase. The scheme shall be subsequently implemented within each phase of the development in accordance with the approved details.

REASON: To prevent the increased risk of flooding, in accordance with the National Planning Policy Framework.

11. No development shall take place on each respective phase as approved under Condition 7 until details of the proposed water infrastructure plans for that phase have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with such details as are agreed and thereafter maintained.

REASON: To prevent pollution in accordance with Thanet Local Plan Policy EP13 and guidance contained within the National Planning Policy Framework.

#### *Contamination*

12. If, during development, significant contamination is found or caused at the site, then this contamination shall be fully assessed and an appropriate remediation scheme agreed with the Local Planning Authority. The approved works shall be implemented within a timetable approved by the Local Planning Authority and shall be of such a nature as to render harmless the identified contamination given the proposed end use of the site and surrounding environment, including controlled waters.

REASON: To ensure that the proposed development will not cause harm to human health or pollution of the environment, in accordance with the advice contained within the National Planning Policy Framework.

#### *Highways*

13. Details pursuant to Condition 1, insofar as they relate to each respective phase of development, shall include proposed roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, accesses, carriageway gradients, driveway gradients and street furniture, and shall be laid out and constructed in accordance with those details as submitted to, and approved by, the Local Planning Authority.

REASON: In the interests of highway safety and to ensure the proper development of the site without prejudice to the amenities of the occupants.

14. Details pursuant to Condition 1, insofar as they relate to each respective phase of development, shall include adequate details of the areas reserved for vehicle loading and unloading, vehicular parking spaces and/or garages, and manoeuvring and turning facilities, and shall be provided in accordance with standards to be agreed with the Local Planning Authority. Such facilities as approved shall be

constructed and made available for use prior to the occupation of the units for which it is provided (by phase) to meet relevant parking and layout standards for each individual phase of development, and thereafter shall be retained for their approved purpose.

REASON: In the interests of highway safety and traffic flow, in accordance with Thanet Local Plan Policy TR16.

15. Details pursuant to Condition 1, insofar as they relate to each respective phase of development, shall include the provision of adequate secure covered cycle parking facilities within the site, in accordance with standards to be agreed with the Local Planning Authority. Such facilities as approved shall be made available for use prior to the occupation of the units for which it is provided (by phase) to meet relevant parking and layout standards for each individual phase of development, and thereafter shall be retained for their approved purpose.

REASON: In the interests of highway safety and to facilitate the use of alternative means of transport, in accordance with Thanet Local Plan Policy TR12.

16. Details pursuant to Condition 1, insofar as they relate to each respective phase of development, shall include the vehicular and pedestrian sightlines for all new junctions and accesses in accordance with standards to be agreed with the Local Planning Authority. The occupation of the part of the development served by the respective access shall not commence until the approved sightlines have been provided and they shall thereafter be restrained from of obstruction.

REASON: In the interests of highway safety.

17. Details pursuant to Condition 1 above shall include the provision of a means of access for pedestrians and cyclists within each phase. No building within that phase shall be occupied until these are constructed and ready for use in relation to each phase.

REASON: In the interests of highway safety and to facilitate the use of alternative means of transport, in accordance with Thanet Local Plan Policies TR11 and TR12.

18. No development shall take place on each respective phase as submitted under Condition 7, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority for that phase. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for and include:
  - a. the parking of vehicles of site operatives and visitors
  - b. construction vehicle loading/unloading and turning facilities
  - c. loading and unloading of plant and materials
  - d. storage of plant and materials used in constructing the development
  - e. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - f. wheel washing facilities and their use

- g. measures to control the emission of dust and dirt during construction a scheme for recycling/disposing of waste resulting from demolition and construction works
  - h. a Construction Environment Management Plan, including details of construction time, enclosures for noise emitting equipment, and siting of stationary noisy or vibrating plant equipment.
19. No residential dwelling or building intended to take access from that road shall be occupied until the carriageways of the proposed roads have been laid out and constructed up to and including at least road base level.

REASON: In the interests of highway safety and to ensure the proper development of the site without prejudice to the amenities of the occupants.

20. No more than 90% of the units within each phase shall be occupied until the carriageways, footways, shared surfaces, footpaths and cycleway serving that phase have been completed with final surfacing, unless the road is an identified construction route in which case the final surfacing shall be completed within 1 month following the cessation of use of that road as a construction route.

REASON: In the interests of highway safety and to ensure the proper development of the site without prejudice to the amenities of the occupants.

#### *Landscaping, Open Space and Play Areas*

21. Not to commence the development on any phase until such time as a Landscape Management Plan and Specification for that phase has been submitted to and approved by the Local Planning Authority detailing:
- a. The precise location and boundaries of the areas of formal and informal open space to be provided within the Phase and timetable for their delivery which shall be substantially in accordance with the approved Landscape Masterplan and its Green Infrastructure Strategy;
  - b. A landscape management plan for those areas including long term design objectives, details of who is to have ongoing management responsibilities for the area and how those arrangements will be secured in perpetuity and maintenance schedules for all landscaped, open space and play areas;
  - c. A detailed specification for any equipped play areas to be provided within the Phase in accordance with the Landscape Masterplan.
  - d. A detailed scheme of native tree planting across the site.

The Landscape Management Plan and Specification shall be implemented and adhered to as approved subject to any minor revisions thereto as may be approved in writing by the Local Planning Authority. The public open spaces shall be laid out and implemented in accordance with the agreed timetable and shall be

permanently retained thereafter in accordance with the management plan and used for public amenity purposes only.

REASON: In the interests of the visual amenities of the area and to adequately integrate the development into the environment, and provide local playspace, in accordance with Policies D1, D2 and SR5 of the Thanet Local Plan, and guidance within the National Planning Policy Framework.

22. All hard and soft landscape works shall be carried out in accordance with the approved Landscape Management Plan and Specification. The works shall be carried out prior to the occupation of any part of the phase of the development to which it relates, or in accordance with a programme of works to be agreed in writing with the Local Planning Authority. Any trees or plants which within a period of 5 years from the completion of the development 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 any written consent to any variation.

REASON: In the interests of the visual amenities of the area and the interests of bio-diversity and ecological potential, and to adequately integrate the development into the environment, in accordance with Policies D1 and D2 of the Thanet Local Plan and the National Planning Policy Framework.

#### *Wildlife*

23. The Green Infrastructure Strategy as approved under Condition 7 shall be implemented as approved subject to any minor revisions thereto as may be approved in writing by the Local Planning Authority. Any green infrastructure shall be laid out and implemented in accordance with the agreed timetable and shall be permanently retained thereafter in accordance with the Landscape Management Plan.

REASON: In the interests of bio-diversity and ecological potential, and to adequately integrate the development into the environment, in accordance with Policies D1 and D2 of the Thanet Local Plan and the National Planning Policy Framework.

24. No development shall commence unless and until a scheme for the offsetting of bio-diversity impacts, including farmland birds, has been submitted to and agreed in writing by the Local Planning Authority. The offsetting scheme shall include:
- Details of the offset requirements of the development;
  - The provision of arrangements to secure the delivery of the offsetting measures (including a timetable for their delivery); and
  - A management and monitoring plan (to include for the provision and maintenance of the offsetting measures in perpetuity).

The scheme shall be designed to offset site level biodiversity impacts or to contribute to the strategic offsetting approach currently in development through the Local Plan, and shall be implemented and maintained as agreed.

REASON: In the interests of preserving and enhancing bio-diversity and ecological potential, and to adequately integrate the development into the environment, in accordance with Policies D1 and D2 of the Thanet Local Plan and the National Planning Policy Framework.

### *Building work*

25. No phase of development shall commence until details and samples of the materials to be used in the construction of the external surfaces of the development permitted in that phase have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out using the approved materials.

REASON: In the interests of visual amenity in accordance with Policy D1 of the Thanet Local Plan.

26. The construction of any phase which includes development fronting the A256 hereby shall not commence until a scheme for protecting the units from noise from the A256 has been submitted to, and approved in writing by, the Local Planning Authority. Unless otherwise agreed, in writing, by the Local Planning Authority such a scheme must demonstrate that the guideline noise levels from Tables 5 and 6 of BS8233:1999 can be achieved. Those parts of the development fronting the A256 shall not be occupied until all works which form part of the approved scheme shall be completed before. The works implemented shall thereafter be retained.

REASON: In the interests of the amenities of residential dwellings in close proximity to the A256 Haine Road, in accordance with National Planning Policy Framework paragraph 17.

### *Uses*

27. No less than 60% of the total number of dwellings within the development shall be a mix of 3, 4 and 5-bedroom houses.

REASON: To ensure the provision of a mix of house sizes and types to meet a range of community needs, in accordance with Policy H8 of the Thanet Local Plan.

28. Subject also to the provisions of Condition 32 below, the development shall provide for not more than 550 dwellings and the gross floorspace provision across the development for other purposes shall not exceed that stated below:

A1 (Shops), A2 (Financial and Professional Services), A3 (Restaurants and Cafes) – 2,000sqm,

Special Educational Needs School – 4,500sqm

Other D1 Community facilities – 500sqm

Community healthcare D1 - 1,200sqm

B1 – 54,550sqm

Car Showroom – 8,151sqm

REASON: In the interests of certainty as to what is permitted.

29. Each residential phase of the development shall not commence until the identification in that phase of a minimum of 15% of housing to lifetime home and wheelchair standards and the specification of such dwellings has been submitted

to and approved in writing by the Local Planning Authority respective phase of development.

REASON: To meet the housing needs of the community in accordance with Policy H8 of the Thanet Local Plan 2006.

30. Any school use within the development shall be restricted to that of a school for special educational needs with associated or ancillary residential component.

REASON: To ensure the development does not prejudice the surrounding area in terms of traffic and environmental impacts, in accordance with the National Planning Policy Framework.

*SEN conditions*

31. The development to which this planning permission relates so far as it permits the construction of a Special Educational Needs School shall not be implemented if any part of the development for which planning permission was granted by Kent County Council on 16 July 2014 pursuant to planning application reference no. TH/14/475 is begun. Should that development be begun, the quantum of community facilities permitted under this permission shall be limited to 1,200 sq m of community healthcare (class D1) and 500sqm of other community facilities (class D1).

REASON: In the interests of certainty and to avoid the duplication of facilities and an increase in peak hour traffic movements above forecast levels.

32. Notwithstanding the description of the development and the floorspace limitations set out in condition 28, should the Special Educational Needs School be delivered on the site either pursuant to this planning permission or pursuant to the planning permission granted by Kent County Council on 16 July 2014 pursuant to application no. TH/14/475, then the quantum of development shall be reduced to a level where no more than 644 AM vehicle trips can be expected to be generated. For the purposes of calculating whether no more than 644 AM vehicle trips can be expected to be generated by the quantum of development it shall be assumed that:

- a. 10 dwellings comprised in the development generate 3 trips;
- b. 110sqm of non residential floorspace comprised in the development generates 1 trip.

REASON: To ensure the development does not prejudice the surrounding area in terms of traffic and environmental impacts, in accordance with the National Planning Policy Framework.



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# Report to the Secretary of State for Communities and Local Government

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRTPI MRICS

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

Date 24 September 2014

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**Town and Country Planning Act 1990**

**Thanet District Council**

**Appeal by**

**East Kent Opportunities and Rosefarm Estates Plc**

Inquiry held on 19 & 20 August 2014

Land at New Haine Road, Ramsgate, Kent CT12

File Ref: APP/Z2260/A/14/2213265

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**File Ref: APP/Z2260/A/14/2213265****Land at New Haine Road, Ramsgate, Kent CT12**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by East Kent Opportunities and Rosefarm Estates Plc against the decision of Thanet District Council.
- The application Ref OL/TH/11/0910, dated 9 November 2011, was made in outline and was refused by notice dated 23 October 2013.
- The development proposed was first described in the application a: 'Mixed-use development for up to 550 dwellings; up to 63,000sqm class B1 (business) floorspace and sui generis use; a new local centre comprising up to 2,000sqm convenience retail (Class A1, A2 and A3), community facilities up to 1,000sqm (Class D1/D2) and community healthcare up to 1,200sqm (Class D1) and associated highway works'.

**Summary of Recommendation:** It is recommended that the appeal be allowed.

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## Abbreviations used in this Report

DL	Decision Letter Paragraph
DPD	Development Plan Document
dph	Dwellings per hectare
EH	English Heritage
EIA	Environmental Impact Assessment
ES	Environmental Statement
FEI	Further Environmental Information
Framework	National Planning Policy Framework
ha	hectare
IR	Inspector's Report
km	Kilometre
LDF	Local Development Framework
LP	Thanet Local Plan 2006
LPA	Local Planning Authority
m	Metre
NE	Natural England
PPG	Planning Practice Guidance
PPS	Planning Policy Statement
RSS	Regional Spatial Strategy
SEI	Supplementary Environmental Information
SoS	The Secretary of State for Communities and Local Government
SoCG	Statement of Common Ground
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
TSHA	The Setting of Heritage Assets – English Heritage
XIC	Evidence in Chief
XX	Cross examination

## PROCEDURAL MATTERS

1. The planning application was amended in September 2013 to increase the floorspace for community facilities from 1,000sqm to 5,000sqm. This was to allow for the inclusion of a Special Education Needs (SEN) school of 4,500sqm which is to be relocated from Laleham Gap School. The sui generis use was identified as a car showroom.
2. The amended description in the Statement of Common Ground is: '*Application for outline permission for mixed-use development for up to 550 dwellings; up to 63,000sqm class B1 (business) floorspace; car showroom; a new local centre comprising up to 2,000sqm convenience retail (Class A1, A2 and A3), community facilities up to 5,000sqm (Class D1/D2) and community healthcare up to 1,200sqm (Class D1) and associated highway works with all matters reserved.*'
3. At the Inquiry the main parties agreed that:
  - Floorspace figures are gross external
  - The car showroom use is to be limited to 8,151sqm, to be subtracted from the B1 Business use
  - The residual amount of B1 business development floorspace would be 54,550sqm meaning that the total business floorspace including the car showroom would be 62,701sqm.
  - If the SEN school is implemented, then the amount of other business and/or residential development would need to be reduced by condition in order to limit the number of A.M. peak hour vehicle movements from the development as a whole to 644.
  - As convenience retail floorspace could not encompass A2 and A3 space, the relevant part of the description should be amended from '2,000sqm convenience retail (Class A1, A2 and A3)' to '2,000sqm Class A1 (Shops), Class A2 (Financial and Professional Services and Class A3 (Cafes and Restaurants)'. The Statement of Common Ground indicates that the convenience retail element would be up to 500sqm.
  - A separate planning permission has also been granted for the SEN school.
4. For the above reasons the appeal should be determined on the basis of the following revised description:

*'Mixed-use development for up to 550 dwellings; up to 54,550sqm class B1 (business) floorspace; car showroom of up to 8,151sqm; a new local centre comprising up to 2,000sqm Class A1 (Shops), Class A2 (Financial and Professional Services and Class A3 (Cafes and Restaurants)', community facilities up to 5,000sqm (Class D1/D2) and community healthcare up to 1,200sqm (Class D1), and associated highway works.'*

5. Apart from the principle of development all matters are reserved for subsequent determination. The only formal application drawing defines the boundaries of the application site with a red line. It is numbered WIPL 145486 Fig 1.2 and dated 12 July 2011. The application was also accompanied by a set of

illustrative drawings which indicate the suggested form, layout and scale of the development<sup>1</sup> but these may be amended at the reserved matters stage. These drawings are amplified by the Design and Access Statement<sup>2</sup>.

## THE SITE AND SURROUNDINGS

6. The site is an area of about 23.8ha of flat greenfield land that is in mainly agricultural use. The landowners comprise Rosefarm Estates PLC and East Kent Opportunities LLP. The latter is a joint venture partnership between Kent County Council and Thanet District Council which aims to bring forward economic growth and regeneration in East Kent.
7. The land is bisected by the A256 New Haine Road, a modern 2-lane single carriageway road that was built to support the development of this and adjacent land to the north and south for employment use. The road bypasses the older Haine Road which runs parallel to the west and is a narrower road of rural character. There is a scatter of houses and other development along Haine Road including Grade II listed farmbuildings at Rose Farm and the Grade II listed farmhouse at Haine Farm. In the development plan the defined built up area boundary includes the appeal site and the built development on Haine Road whilst excluding the open countryside beyond to the west.
8. To the north west, and also served off New Haine Road, is a recent free-standing office development occupied by a SAGA call centre. To the north is the recent extensive Westwood Cross retail and leisure development. That is occupied by many of the national retail chains including both Marks and Spencer and Debenhams department stores as well as numerous smaller shops, a multiplex cinema and other facilities. The complex is approximately equidistant from the town centres of Margate, Broadstairs and Ramsgate and it attracts custom from all three towns. There is free car parking and also frequent bus services including a circular link service which connects Westwood Cross and the 3 towns. A large Sainsbury's superstore is under construction on land adjoining the retail complex and served off a roundabout on New Haine Road.
9. To the east the site adjoins the extensive Jacky Baker's Sports Ground. To the south east, and adjoining the likely location of the proposed SEN school, is a modern secondary school known as the Marlowe Academy together with the adjoining Marlowe Innovation Centre. To the south and served off New Haine Road are modern business developments of offices and other units. Further south and east are residential areas including the large Newington housing estate that is not well connected to the Westwood retail and leisure facilities.

## THE PROPOSAL

10. The proposal is for a mixed development including business, residential and community uses as described above. It would be on greenfield land within the defined built up area. The application is accompanied by illustrative plans which suggest that the development fronting the New Haine Road spine road would be at higher density and would include both B1 office type buildings and the higher density housing. This would be flanked by housing at lower densities with the

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<sup>1</sup> At folder 3 of the appeal submission.

<sup>2</sup> Folder 1 of the appeal submission

lowest density adjoining the existing development along Haine Road. There would be a local centre with community facilities towards the southern end of the development where it would also be accessible to residents in adjoining housing areas. The Special Educational Needs school would be built on land adjoining the Marlowe Academy. That is likely to be constructed using the separate planning permission that has been granted for that purpose.

11. Some Ordnance Survey base plans suggest that the development would include part of the Jacky Baker Sports Ground. However an area of land which was previously included in the sports ground has already been taken out of use in association with the previous planning permission for employment development. That land was replaced by land to the north of the sports ground with no overall loss of recreation provision.

## **LOCAL PLANNING POLICY AND EVIDENCE**

### *The Development Plan*

12. The Secretary of State is required by Section 38(6) of the Planning and Compulsory Purchase Act 2004 to determine the appeal in accordance with the provisions of the development plan unless material considerations indicate otherwise. Such considerations may include national policy.
13. The only relevant development plan policies are those currently contained in the Thanet Local Plan 2006 (the LP). Whilst the Statement of Common Ground lists some 19 relevant policies, the most pertinent to the principle of the site's development are EC1, EC12, and H1.
14. LP Policy EC1 allocates several sites for economic development. The allocated Eurokent Business Park includes the appeal site and also some of the land to the north and south that has already been developed for business, leisure and retail purposes. The allocation related to 103,000sqm of employment generating floorspace. The same policy also allocated another large nearby site of 46ha for similar B1, B2 and B8 development at Manston Business Park adjacent to Manston Airport. That site is partially developed for those purposes and is also promoted by East Kent Opportunities LLP but it retains capacity for further such development.
15. LP Policy EC12 provides for the retention for employment use of the allocated EC1 sites and also other existing employment sites that are listed in the policy.
16. LP Policy H1 provides that permission for new residential development will only be granted on allocated sites or otherwise where there is no conflict with development plan policies. In particular permission for residential development on non-allocated sites will only be granted on previously developed land within built-up areas. The policy also requires that adequate infrastructure and access are available.
17. LP Policy H14 is referred to in the reasons for refusal and seeks affordable housing provision for developments of 15 or more units with a negotiation starting point of 30% provision.
18. LP Policy CF2 is also referred to in the reasons for refusal and seeks contributions to new and upgraded community facilities which are fairly and reasonably related in scale and kind to the proposed development.

19. Other LP policies set out requirements relating to design, transport and other matters.

#### *The Emerging Plan*

20. The Thanet Core Strategy reached the Issues and Options stage in October 2009 but did not progress further. It suggested the retention of 15.5ha of land at this site for Class B1 business floorspace (some of which has already been developed) together with the development on the appeal site of 400-600 houses. However, following changes to national policy and the revocation of the South East Plan, the Core Strategy was withdrawn.
21. The Council is now preparing a new Thanet Local Plan. An Issues and Options consultation was carried out in 2013. It suggests that only 30% of employment growth is expected to be in the traditional B use classes found on business parks and noted that 74 hectares of employment land was allocated in the LP whereas only 26ha would be needed by 2031 based on past take up rates and only 3-15ha based on a range of employment growth scenarios considered by consultants. However the document postulated that a choice of sites would provide flexibility, attract investment and accommodate unforeseen needs. Car showroom uses did not merit allocations but it was suggested that there should be flexibility to accommodate them on business parks.
22. The Issues and Options Paper published in 2013 discussed 5 dwelling forecast scenarios based on different levels of economic growth and migration. Whilst it did not specify the current housing requirement, the Paper confirmed that meeting future housing requirements to 2031 will almost certainly mean some greenfield land in the existing countryside will be needed.
23. The Issue and Options document did not include specific proposals for the appeal site. It is a material consideration but it is at an early stage and merits little weight.

#### *Local Evidence*

24. Base evidence for the emerging Local Plan includes: the Strategic Housing Market Assessment for the East Kent Sub-Region (SHMA)(Document 6), the Housing Topic Paper (Document 7); the Thanet District Council Employment Topic Paper (Document 8); and the Thanet District Council Employment Land Review and Appendices (Documents 10 and 10A). The Annual Monitoring Reports (AMR) are also relevant (Documents 4 and 5).
25. The SHMA concluded amongst other things that there is a local oversupply of flats in Thanet and that there is a need for more houses and family dwellings. There is also a large unmet need for affordable housing.
26. The Employment Land Review 2010 concluded amongst other things that most employment growth in the B use classes would take place in the B1 and B8 uses. B1 (offices) development is likely to occur in town centres and business parks or alongside residential development. B8 development would occur close to the strategic road network. According to the Employment Topic Paper, a subsequent Economic and Employment Assessment estimated the land and floorspace requirements as low. Moreover, only 30% of new jobs are expected to be created on business park type developments. Whilst the AMR 2011-2012 concluded that there was then a 7 year housing supply (141%) against the

South East Plan requirement, the AMR 2013-2013 did not include a housing requirement against which the assessed supply could be measured. According to the AMR 2012-2013, only a small proportion of the 117.34 ha of new employment land that was allocated in 2006 had since been taken up.

## National Policy, Guidance and Law

27. The National Planning Policy Framework (the Framework) sets out Government planning policy and replaces a number of previous policy statements. Amongst other things it includes policies on the natural and historic environment, design, and the use of planning conditions and it sets out a presumption in favour of sustainable development. Whilst it acknowledges the S38(6) duty in relation to the development plan, it is capable of being a material consideration. In that regard paragraph 215 provides that: '*due weight should be given to relevant policies in existing plans according to the degree of consistency with the Framework (the closer policies in the plan to the policies in the Framework, the greater the weight that may be given)*'.
28. Paragraph 14 of the Framework provides that where the development plan is out of date 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 this framework taken as a whole, or*
  - '*specific policies in this Framework indicate development should be restricted*'.
29. Section 1 of the Framework at paragraph 20 provides amongst other things that local planning authorities should plan proactively to meet the development needs of business and support an economy for the 21st century. However paragraph 22 also provides that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Paragraph 32 provides amongst other things that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are 'severe'.
30. Paragraph 47 of the Framework provides amongst other things that local planning authorities should use their evidence base to ensure that their local plan meets the full, objectively assessed needs for market and affordable housing in the housing market area and should identify, and update annually, a supply of specific deliverable sites sufficient to provide 5 years worth of housing against their housing requirements. Paragraph 134 provides that less than substantial harm to a heritage asset such as a listed building should be weighed with the public benefits of a scheme.
31. Paragraph 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development, and that relevant policies for the supply of housing should not be considered up to date in the absence of a five year supply.
32. Planning Practice Guidance (PPG) was published in March 2014. It includes a range of other relevant topics. The PPG is guidance which amplifies, but does not change, national policy. It did not replace the PPS5 Planning for the Historic

Environment Practice Guide which currently remains material to the heritage considerations.

#### *Statute*

33. A statutory duty separate from national policy is that S66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides at subsection (1): *"In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."*

The Court of Appeal<sup>3</sup> has recently interpreted this to mean that considerable weight and importance should be accorded to preserving the setting of listed buildings.

## **PLANNING HISTORY**

34. Outline planning permission was granted in 1997 for the following development on the appeal site: '*Erection of buildings and layout of estate roads including diversion of public footpath TR26 in association with mixed use development for business and commerce. Comprising use classes A2 (financial and professional) premises in excess of 930sqm (10,000sqft); B1 (business), B2 General Industrial and B8 (storage and distribution) together with sport, leisure and recreation (outline application).*' Subsequent applications were submitted for the discharge of conditions and some development has taken place that relates to the discharge of conditions. The development which has occurred has included the road, the SAGA call centre, the SEEDA innovation centre business units to the south, and a car part supplier called Grupo Antolin to the north. However the latter premises were subsequently vacated and demolished and that site was included in the current Sainsbury's development site.
35. It appears that not all details for the 1997 permission were approved within the relevant time frame. The Appellant maintains that the permission has been implemented but does not rely on the permission as a fallback position. It has nevertheless been agreed between the main parties that the permission should be employed as a benchmark for the assessment of the traffic impact of the development now proposed.
36. The site remains allocated in the development plan for business development and as a site to be protected for employment use. However the planning application was submitted in 2011, after the Core Strategy Issues and Options Document had in 2009 suggested a mixed development for the site including both housing and employment.
37. The Council's officers were in negotiation with the Appellant on the development for almost 2 years after the submission of the planning application. The application was taken to committee in October 2013 with a recommendation that the committee undertake a site visit. But instead the Committee resolved to refuse planning permission for 2 reasons:

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<sup>3</sup> East Northants DC, English Heritage & National Trust v SSCLG & Barnwell Manor Wind Energy Ltd [2013] EWHC 473 (Admin) [2014] EWCA Civ 137

- '1. *The application site does not constitute previously developed land and as such the proposed residential development would involve the release of greenfield land, where there is no identified need, contrary to policy H1 of the Thanet Local Plan 2006 and the National Planning Policy Framework, which seeks to concentrate development on brownfield land at appropriate locations within the confines of existing urban areas and rural settlements.*
2. *The proposed development, in the absence of a legal agreement to secure contributions for community facilities, measure to mitigate recreational impact on designated sites of ecological importance and the provision of affordable housing would be contrary to Thanet Local Plan Policies H14 and CF2 and guidance within the National Planning Policy Framework'.*
38. In June 2014, after the submission of the appeal, the Thanet District Council Planning Committee confirmed that the position of the local planning authority now is that the need for housing is such that the development would in principle amount to sustainable development in accordance with the National Planning Policy Framework. This was on the basis that the Council could not demonstrate a 5-year supply of housing land. It followed the case of *Hunston Properties Ltd vs St Albans District Council* which established that the Council could not rely on the housing requirement figures of the withdrawn South East Plan. The Council then withdrew the first reason for refusal and continued negotiations on a S106 agreement to address the second reason.

## **OTHER AGREED FACTS**

39. A Statement of Common Ground was drafted by the Appellant and submitted before the Inquiry but was only agreed by the Council on the first day of the Inquiry (Document 3). Whilst it includes a list of 'appeal drawings', the plans listed there were agreed at the Inquiry to be only illustrative.

## **THE CASE FOR THANET DISTRICT COUNCIL**

*[These submissions are edited from the Council's Closing Statement with some additions from the evidence to the Inquiry]*

40. The Council's case at this Inquiry is limited because it has formally withdrawn the first reason for refusal, and the second reason for refusal has been overcome by the provision of an executed S106 agreement, which provides for the various contributions explained in Mr Livingstone's proof and appendices.
41. In those circumstances, the Council considers that the refusal of planning permission cannot be sustained. The Council's position is that the Inspector should recommend to the Secretary of State that this appeal be allowed, and planning permission granted subject to conditions.

### ***Principle of the development (former reason for refusal 1)***

42. The Council's first reason for refusal, now withdrawn, related to a conflict between the proposal and policy H1 of the Thanet Local Plan 2006. That policy seeks to restrict the locations in which new housing will be considered acceptable. It is not in dispute that the appeal proposal is contrary to policy H1.

43. However, paragraph 47 of the Framework states that LPAs should maintain a five year supply of housing land, meeting (so far as they can consistently with policies in the Framework) the full, objectively assessed needs for market and affordable housing in the area. Paragraph 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development, and that relevant policies for the supply of housing should not be considered up to date in the absence of a five year supply.
44. Following the Judgment of the Court of Appeal in *Hunston Properties Ltd v SSCLG [2014] JPL 599*, it became apparent to the Council that it could no longer rely upon a housing requirement in the Local Plan based upon the revoked South East Plan. Rather, the adequacy of its supply fell to be assessed against its objectively assessed needs for housing. As a result, the Council accepts that it cannot demonstrate a five year supply of housing. It follows that policy H1 is to be treated as out of date; and the principle of the development settled by reference to the test in paragraph 14 of the Framework, as Mr de Lotbiniere explained in his evidence in chief as the Appellant's planning witness.
45. Once policy H1 is treated as being out of date, the Council considers that the planning balance lies in favour of the grant of planning permission, there being no other reason for refusal, and certainly there being no consideration with significantly and demonstrably outweighs the benefits in terms of the provision of sustainable development.
46. In those circumstances, it is unnecessary to consider in detail the Council's housing requirement for the purposes of disposing of this appeal. The Council notes the report submitted by the Appellant from Pioneer Property Services Ltd but does not agree with elements of the analysis. As a result it does not agree with the conclusion that its housing land supply equates to a 1.9 year supply. However, given the agreement that there is a shortfall in housing land supply, the outcome should remain the same regardless of the quantum of the shortfall. As a result, it was unnecessary for the Council to cross-examine on the issue, and indeed Mr Livingstone was not cross-examined on the queries he raised in respect of the report. The resolution of that (limited) dispute is not necessary for the determination of the appeal.
47. As Mr Livingstone explained in evidence, the Council does not have a formal position as to its housing land supply. It is in the process of preparing its 2013/14 AMR. Whilst it does not fundamentally disagree with the Pioneer report, it would question some of the calibrations particularly with respect to job forecasts and vacancy rates. Mr Livingstone's evidence, which is not a formal position of the Council, is that the supply is probably around 2.5 years. However, as explained, the precise level of shortfall need not be identified in order to establish that policy H1 should be treated as out of date, in accordance with paragraph 49 of the Framework. Accordingly, the Inspector is invited to recommend that the Secretary of State find that the precise level of the shortfall has not been clearly established, but that there clearly is a shortfall.

#### ***Section 106/conditions (former reason for refusal 2)***

48. The Inspector now has an executed S106 agreement which provides for the contributions referred to in Mr Livingstone's Proof of Evidence.

49. As to the justifications for the obligations in the S106 agreement (and hence compliance with regulation 122), these have been explained in Mr Livingstone's Proof and (so far as they relate to contributions payable directly to KCC), in KCC's written representations. They are not repeated here in full. The Inspector raised an issue as to the Youth Services contribution. The youth services contribution as defined in the S106 focuses on capital costs; as does App 5 to the KCC representation to this Inquiry. The staffing costs referred to in the Mouchel representation of August 2013 are not, on the basis of the definition in the s 106 and in App 5, sought through this contribution. The contribution meets actual additional capital costs arising from the development.
50. Following discussion, a list of conditions is largely agreed. It seems that the only outstanding dispute between the parties relates to the time limit (draft conditions 4 & 5). The default position in S92 TCPA 1990 is that there should be a 3 year period for the submission of all reserved matters and that the development shall be begun within 2 years of the approval of the final reserved matter. The Appellant seeks a 7 year period for submission followed by a 2 year period for implementation (i.e. 4 years longer than the normal position). No clear justification has been advanced by the Appellant for a longer period. Indeed it is suggested that the scheme can come forward to address the Council's five year housing land supply shortfall, which is inconsistent with a permission which need not be begun in 9 years time. The PPG suggests that one reason for shortening the normal period is when "*it would encourage the commencement of development and non-commencement has previously had negative impacts*". There is a history of failure to deliver the development of this site, and there is no justification for permitting its further delay.

### **Conclusion**

51. For the reasons outlined the Council, having reviewed its case, considers that this appeal should be allowed and permission granted subject to the conditions and contributions discussed at the Inquiry.

### **WRITTEN REPRESENTATIONS AND CONSULTATION RESPONSES**

52. The Officer Report to Committee on 23 October 2013 summarised the representations that had been received at the application stage. These included objections from 16 interested persons on grounds which included:
  - Departure from the Thanet District Local Plan 2006 and/or prematurity to the emerging Thanet Local Plan
  - Potential increased traffic congestion
  - Loss of agricultural land and greenfield space
  - Lack of need for the housing or community facilities
  - Amenity impacts on Haine Road properties
  - Detriment to job creation
  - The A256 New Haine Road creates too much of a barrier to movement across it
  - There should not be development on the Jacky Baker's Sports Ground

53. **Ramsgate Town Council and Broadstairs & St Peters Town Council** had no objection. **Ramsgate Society** objected due to lack of need for greenfield housing, insufficient road capacity and prematurity to a Masterplan. **Manston Parish Council** objected due to traffic concerns and because of the need for jobs. The **Campaign for the Protection of Rural England** objected on grounds that the decision should be made through the Local Plan process. **Spokes East Kent Cycle Campaign** welcomed the indicated provision for cycling.
54. **Kent County Council Highway Authority** acknowledged that the appeal site is allocated for major development in the LP and that the construction of New Haine Road as part of the development has already mitigated local traffic impacts in the area. Whilst acknowledging that the site's development has the potential to make traffic congestion worse it would have an almost negligible additional impact compared to the allocated employment scheme. Further highway improvements are also proposed at Staner Court, Leigh Road and Sprating Lane that would mitigate impacts. The Highway Authority therefore did not object to the scheme.
55. The Officer Report summarises other internal and external consultation responses. Notably the Council's **Conservation Team** recognised a potential impact on the Grade II Listed Haine Farmhouse due to the potential massing, height and scale of the commercial element of the development adjacent to the listed building but considered that it can be mitigated through sensitive design and scale of adjacent buildings and by landscaping.
56. The Council's **Housing Services Manager** supported the proposal for the affordable housing provision and for its potential to support the regeneration and integration of the nearby Newington Housing Estate.
57. The **Kent Wildlife Trust** (KWT) objected that a Habitats Regulation assessment should be undertaken to consider the individual and in-combination impacts of the development and details of the green infrastructure and mitigation measures be provided to ensure appropriate mitigation to alleviate the impact on the integrity of the European Network. **Natural England** initially objected to a potential significant effect on the Thanet Coast and Sandwich Bay Special Protection Area. However Natural England confirmed in a letter to the Council dated 10 October 2013 that the proposed mitigation would avoid the likelihood of a significant effect on the SPA arising from this development and consequently it is unnecessary to undertake an appropriate assessment. An email of 8 January 2014 from the Council's case officer to the Appellant notes that KWT did not respond to the mitigation measures in writing but it was understood that Natural England had liaised with them directly before they responded that they had no objection.
58. Other consultee responses are summarised in the officer report.
59. At the appeal stage there were representations from 5 interested persons and one other request for a copy of the decision. There was support from the **Leader of Kent County Council** which has an interest in the development through its involvement in EKO, one of the Appellants. There was an objection from a **Mr Hibeer** on traffic infrastructure grounds. **Councillor Driver** (Green) of Thanet District Council objected due to traffic congestion, pollution and the loss of agricultural land. He considers that sufficient brownfield land is available

for an adequate housing stock but has provided no supporting evidence. **Kent County Council** submitted evidence in support of the need for infrastructure contributions of relevance to County services.

60. **CRG Thanet Ltd** are the developers of the nearby Richborough Gate housing allocation to the north west of Westwood Cross where there is outline planning permission for 1,020 dwellings and reserved matters approval for 3 of the 5 phases. Persimmon Homes is currently constructing the initial phase. CRG Thanet Ltd objects to the subject development on the grounds in summary that:

- The development is not required to meet local housing requirements in advance of the new Local Plan. This is on the basis that there is sufficient supply to meet the South East Plan Requirement and that delivery at Richborough Gate will be above the Council's estimate unless undermined by the appeal proposal. Forecast local needs in Thanet are being met and higher estimates of need depend upon in-migration that will not be met without sufficient employment provision
- Richborough Gate was allocated to support economic growth by providing housing to attract employment-led in-migration and investment
- The local housing market and interest from housebuilders is weak and dependent on subsidies such as Homebuy and cannot withstand significant injections of supply
- To allow the appeal would pre-determine what level of in-migration is appropriate and the distribution of employment land in the District
- In accordance with paragraph 22 of the Framework it had not been demonstrated that there is no reasonable prospect of the employment allocation being taken up
- The appeal site should be remarketed for employment and only be released for housing if after further time employment uses are not secured
- Richborough Gate needs to be progressed before the EKO development in order to ensure the required infrastructure is provided (e.g. the Westwood Link Road<sup>4</sup>)
- There would be duplication of community centre and healthcare facilities with viability and logic implications
- There should be EKO contributions towards the Westwood site facilities including the primary school
- The development is not considered to be sustainable in relation economic and social roles due to the likely harm to the housing market and employment provision and to uncertainty over social infrastructure provision

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<sup>4</sup> The Westwood Link Road has now been constructed and is in use.

## THE CASE FOR EAST KENT OPPORTUNITIES AND ROSEFARM ESTATES PLC

*[These submissions are edited from the Appellant Company's Closing Statement with some additions from the evidence to the Inquiry]*

### **Section 1 - Introduction**

61. The planning system is tasked with bringing about beneficial, sustainable development for the benefit of the economy and the population in the vicinity of the site. Policy can establish the framework for consideration of such development but what really matters is action, action that actually brings about change. Unfortunately the LPA in this case have taken a remarkably long time to consider whether to grant planning permission for a development which should go ahead. Therefore the application took two years to be considered, resulted in a refusal and now this year the LPA have come to the view that planning permission should be granted. That is correct.
62. But the important point to concentrate on for the Inspector and the Secretary of State is that development needs to come forward by action - i.e. the actual grant of planning permission. This is particularly important in a district such as Thanet which has high levels of deprivation for the South East. What is needed is action through investment and that is what this development will do if permitted.
63. That is also the aim and aspiration of EKO and Rosefarm who are intent on bringing about beneficial development. Indeed EKO is an organisation solely tasked by Kent County Council and Thanet District Council to bring about beneficial regeneration.
64. This is a rare appeal indeed:
  - This appeal site is very large and significant;
  - The development is very large and significant;
  - The principle of development of this land has been accepted for nearly 20 years.
  - The LPA agree that planning permission should be granted;
  - There is almost no third party objection to the grant of planning permission.
65. The application has been subject to many months of scrutiny by the LPA and other statutory consultees. There is now no difference between the Appellant and the Local Planning Authority in that planning permission should be granted, as confirmed in the Council's closing submissions.
66. The overarching aim of Government Policy is to bring forward sustainable development in order to bring about economic growth and the proper and full provision of housing as required after an objective assessment of the up to date 5 year requirement. A Housing Requirements Report was commissioned by the Appellants from Pioneer Housing and Development Consultants. It points out that the 2011-based CLG household projections suggested a need for 707 additional homes each year and that the higher economic growth scenarios and the identified high level of need for affordable housing would suggest a higher

overall requirement which Pioneer suggests should be 830 dwellings per annum. On that basis Pioneer estimate that there is only a 1.9 year's supply.

### ***Section 2 - Why planning permission should be granted***

67. The view of the Appellants is that planning permission should be granted for the following reasons:
68. Reason 1 - The land needs a use - There is a problem with this land which needs to be solved namely there is an underutilised and large parcel of land in a very sustainable location which is suitable for development and the owners seek to see it developed.
69. Reason 2 - The planning system seeks to build sustainable economic development in accordance with the Framework. This development will bring forward a very large sustainable mixed use development and could not be more compliant with the Framework. The different elements of use are acceptable and also in combination will ensure a properly planned development which will enable people to live, work and shop in the one location. It is a powerful combination.
70. Reason 3 - The site has been considered acceptable for development by the LPA for nearly 20 years in both development control decisions and development plan decisions. The land received planning permission in 1997. That decision was reinforced by various development plans - 1998 Local Plan, 2006 Local Plan and the Emerging Core Strategy 2009. Those judgments were right namely this land can contribute to the economic health of this district and should continue to do so.
71. Reason 4 - Development of this site will represent sustainable development as strongly suggested by the Appellant's planning witness. That is correct. The LPA does not make any allegation that the site is not sustainable. That is important. If each three criteria are examined then the development meets the aspirations to aid economic, social and environmental sustainability. The proposal will bring significant investment into the district. The proposal will bring forward much needed new houses and up to 165 affordable housing units. The proposal will have no material harm on environmental issues.
72. Reason 5 - Paragraph 14 of the Framework is engaged and there is a presumption in favour of the grant of planning permission which clearly indicates that the government's starting point is that planning permission should be granted unless those benefits are outweighed by adverse impacts.
73. Reason 6 - There is a pressing need for additional housing in Thanet DC - paragraph 47 is a key if not the key component of the Framework. The LPA have not got a five year Housing Land Supply. Pioneer Housing and Development Consultants have looked at this issue in great depth (Document APP7). They are one of the leading consultancies in the field. Their view is that there is a strong and urgent need for additional housing. The LPA accepts largely that evidence save for a couple of minor points. Therefore the evidence before this inquiry shows it to be between 1.9 to 2.5 years. That is a compelling shortfall that is required to be addressed now. That amounts to a compelling need for further housing.

74. Reason 7 - There is a pressing need for additional affordable housing in Thanet DC. There are many thousands on the affordable housing waiting list in Thanet. There is a compelling need for additional affordable housing. This development will contribute up to 165 houses which will greatly assist that need.
75. Reason 8 - The site will provide important employment land. There is nearly 54,000 square metres of B1 employment floorspace. It will be considered in the context of a mixed use development, a new local centre and the Westwood Cross centre all of which will assist in bringing forward the employment floorspace.
76. Reason 9 - There are no site specific issues that justify refusal of planning permission - this application has been scrutinised for many years and all matters have been considered such as air quality, traffic, car parking, noise, landscaping, impact on listed building, design and archaeology. Now in August 2014 there is no objection to the development which justifies refusal.
77. Reason 10 - There are no adverse impacts within the terms of paragraph 14 that justify refusal - therefore there are no matters which lie on the other side of the paragraph 14 balancing exercise. Every relevant authority has been consulted and no consultee has alleged that planning permission should be refused on this basis. This inquiry has addressed in particular the impact on Listed Buildings on Haine Road. The view of the LPA and the relevant authorities is that there will be no harm to the setting of such listed buildings if planning permission is granted.
78. Reason 11 - There is therefore a compelling case in the public interest for the grant of planning permission - The benefits of the proposal are very significant. A problem site will be beneficially developed and that amounts to a compelling case in the public interest.
79. Reason 12 - The consequences of a refusal are serious - The effect of a refusal would be very powerful. This very significant area of land would remain undeveloped and underutilised. Consequently this land will be subject to much uncertainty and neglect if permission is refused. It is very difficult to envisage when and what type of use will be found for it in the future. That would represent material harm. The land instead of bringing about material benefits would remain as a testament to the planning system and its inability to find constructive solutions.
80. Reason 13 - The position of the LPA is not to oppose the grant of planning permission - the LPA have sensibly and importantly reviewed their position and concluded that planning permission should be granted. This should be given very significant weight by the Inspector and the Secretary of State. S106 LPA now says it is adequate and appropriate in all respects. It satisfies the Regulation 122 requirements and would also afford benefits to the wider community.
81. Reason 14 - The balancing exercise is overwhelming in favour of the grant of planning permission. There are very many benefits from the grant of planning permission and no identifiable harm. Therefore the balancing exercise is compellingly in favour of granting planning permission for the appeal

82. For those 14 powerful and compelling planning reasons the Appellant asks that the Inspector recommends to the Secretary of State the grant of planning permission for this development.

## CONDITIONS

83. In the event that the Secretary of State decides to allow the appeal and grant planning permission than a recommended schedule of planning conditions is attached. The conditions were discussed at the Inquiry and minor changes have been made to the suggested conditions. Reasons for each condition are included in the schedule. One condition to be highlighted is Condition 32 which provides that the amount of business or residential development may need to be reduced if the SEN school is built in order to control the amount of peak hour traffic.
84. There is a dispute between the parties as to how much time should be allowed for the submission of all reserved matters (Document 11). This is addressed below in the reasoning on other matters.

## SECTION 106 AGREEMENT

85. There is a completed S106 Agreement between Thanet District Council, Kent County Council, East Kent Opportunities LLP, and Rosefarm Estates PLC (Document 16). This provides variously for:

- The provision of 30% affordable housing of which 70% would be for affordable rent and 30% shared ownership
- A bus service contribution to support new bus services serving the development
- A community learning contribution to support the expansion of adult education services to serve the development
- An education contribution for the construction of a new primary school at Westwood or within 2 miles of the site
- A highway contribution, mainly to provide additional capacity at junctions on the A256
- A landscape management plan
- A contribution to additional bookstock at Broadstairs library
- The creation of a management company
- An open spaces and play area scheme
- A PCT contribution for the development and expansion of new primary care health services infrastructure within 2 miles of the site
- A Special Protection Areas mitigation contribution towards off-site mitigation and a warden scheme within the SPA and the Sandwich Bay and Hacklinge Marches and Thanet Coast SSSIs

- A sports and recreation contribution for the improvement and enhancement of recreational and sporting facilities at the adjacent playing fields
- A green travel plan
- A youth services contribution for use in youth outreach work centred on the Westwood Richborough Gate Community Building or which may include other outreach services including a youth bus.

## **ENVIRONMENTAL STATEMENT**

86. The application was accompanied by an Environmental Statement (ES) prepared in accord with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011, as amended, and comments from statutory consultation bodies and representations duly made about the ES and the likely environmental effects of the proposed development<sup>5</sup>. Following the amendment of the application to include a special educational needs school, further environmental information (FEI) was submitted and subject to further consultation before the application was determined and was also subject to consultation. The ES and FEI are considered to be in satisfactory and in accordance with the requirements of the regulations.

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<sup>5</sup> Folder 1 of the Appeal submission

## INSPECTOR'S CONCLUSIONS

*Figures in square brackets [ ] refer to other paragraphs in the report.*

### The Main Considerations

87. The application was recovered for the decision of the Secretary of State for Communities and Local Government (SoS). Although no specific reasons have been given to me for the recovery, this type of case is often recovered if it would be a development of major importance having more than local significance or because it includes residential development of over 150 units, or a site of over 5 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.
88. The SoS is required to determine the application in accordance with the development plan unless material considerations indicate otherwise. National policy is an important material consideration.
89. At the Inquiry, and having regard to the reasons for refusal and to local and national policy, I have identified the main considerations to be: whether this would be a sustainable development having regard to the economic, social and environmental roles of sustainable development and in particular:
  - i. whether, having regard to the supply of housing land, there is a social or economic need for the housing (including affordable housing)
  - ii. whether considerations of economic viability and/or the availability of other employment land and any economic benefits support a mixed development such that the land no longer need be protected by the development plan for solely employment use.
  - iii. whether the proposal including any S106 obligation provides adequate mitigation or compensation for any adverse environmental effects, including any effects on wildlife and heritage.
  - iv. whether the proposal makes adequate and justified provision for affordable housing and for the social and other infrastructure that is needed to support the development (including, education, health, transport, recreation, libraries, community learning and youth services).

#### *Housing Need*

90. The Framework includes a requirement to maintain a 5-year supply of housing land [30, 31]. The Officer Report to the Planning Committee in October 2013 did not make any reference to the housing supply position at that time. However the most recent Annual Monitoring Report (AMR) then was the AMR 2011-2012 which had concluded that the supply of deliverable housing was 141% of the requirement as defined by the South East Plan; the equivalent of about 7 years supply [26].
91. The South East Plan housing requirement of 7,500 homes over a 20 year period to 2026 equated to an average of 375 homes per annum. This had been typically been exceeded each year in Thanet. However the Strategic Housing Market Assessment in 2009 had identified that a high proportion of recent

housing had been developed as flats and there was a comparative lack of family housing as well as a substantial need for affordable housing [25].

92. The AMR 2012-2013 established the supply position at April 2013 but was not published until February 2014. Whilst it confirmed that the annual strategic housing requirement up to 2011 had been based upon the South East Plan it did not define any requirement for the subsequent period against which the estimated supply could be assessed. It said that this would be a matter for the emerging Local Plan which however remains at a very early stage. The Issues and Options Paper published in 2013 discussed 5 dwelling forecast scenarios based on different levels of economic growth and migration.
93. The national Planning Practice Guidance chapter on '*Housing and Economic Land Availability Assessment*' advises that where there is no robust recent assessment of full housing needs, the household projections published by the Department for Communities and Local Government (DCLG) should be used as the starting point. A Housing Requirements Report was commissioned by the Appellants from Pioneer Housing and Development Consultants (Document APP7). It points out that the 2011-based DCLG household projections suggested a need for 707 additional homes each year in Thanet. The Report concluded that the higher economic growth scenarios and the identified high level of need for affordable housing would suggest a higher overall requirement which Pioneer suggests should be 830 dwellings per annum. On that basis Pioneer estimate that there is only a 1.9 year's supply [66].
94. The Council accepts that, having regard to the outcome of *Hunston Properties Ltd v SSCLG [2014] JPL 599*, they can no longer rely on the revoked South East Plan figure [44]. Whilst they dispute the Pioneer calculation and suggest that the supply position could be better than 1.9 years, they cannot offer any specific alternative housing requirement against which to assess supply. The Council nevertheless accepts that it cannot now demonstrate that there is 5 year's supply [38,44]. Neither can CRG Thanet Ltd demonstrate that there is a 5 year supply since they also rely on South East Plan figures [60]. LP Policy H1 must thus be regarded as out of date (as the Council accepts [44]) in the terms of its ability to provide sufficient housing land to achieve a 5 year supply.
95. Policy H1 provides that housing development on unallocated land should only be on previously developed land within the built up area [16]. However the Issues and Options Paper confirmed that meeting future housing requirements to 2031 will almost certainly mean some greenfield land in the existing countryside will be needed. In this case the land is greenfield but it is not within the defined countryside as it is within the built-up area [22]. Moreover the appeal site has already been allocated for other built development by LP Policy EC1 [34].
96. Should the SEN school development go ahead, as is likely, this could potentially reduce the amount of housing to be provided if the combined traffic generation from all development on the site is to be kept to levels that would not result in undue congestion in the area in the morning peak hour [38 ]. However the formula agreed between the parties means that the necessary reduction in traffic movements would be more readily achieved by a modest reduction in business floorspace rather than the proportionately greater reduction that would be required if this were to be achieved by a reduction in dwelling numbers.

97. It is concluded on this matter that the provision of housing, including family and affordable dwellings (the latter in accordance with LP Policy H14), and the school and community facilities, would all contribute positively to the social role of sustainable development. The activity of developing the site would also contribute to the economic role. There are thus significant social and economic benefits need for the housing. The need for housing has increased as compared to the former South East Plan requirement. That and the associated lack of a 5 year supply of housing land outweighs the literal conflict with LP Policy H1, which is out of date in this respect, as the Council accepts [44].

*Employment*

98. The Framework requires local planning authorities to plan proactively to meet the development needs of business [29]. The proposal would be in literal conflict with the provisions of LP Policies EC1 and EC12. However these were not cited in the reasons for refusal and this was not part of the Council's case at the inquiry [14,15]. In this case the appeal site has been available for almost 20 years to provide large level sites for B1, B2 and B8 development. Whilst there has been some development for B1 use, the take-up of the site for B2 and B8 purposes has been very limited [26]. Other land remains allocated and available nearby at Manston Business Park for very similar development [14].
99. Subject to traffic generation limits the proposed mixed development could still provide up to more than half the 103,000sqm of business floorspace originally allocated [14], whilst also releasing land within the built up area for needed housing. The retained B1 floorspace is likely to be occupied more intensively than other types of business use, particularly B8 storage, and thus the site would still remain capable of providing a substantial amount of employment. That would continue to complement the provision of new housing nearby at Richborough Gate [60]. Changes in the character of the surrounding area since the land's allocation for employment, and in particular the expansion of the Westwood Cross shopping and leisure centre, have made the area less suitable for B2 and B8 development in terms of the noise and other impacts of B2 development and heavy vehicle movements serving both types of development.
100. There has already been some B1 development at New Haine Road in the form of the SAGA call centre and the smaller B1 developments at the southern end of the site [34]. Retail and leisure developments at Westwood Cross have also provided significant employment. But the longstanding allocation of the site for A2, B1, B2 and B8 employment has not been effective in delivering and/or retaining jobs in B2 or B8 businesses. The Grupo Antolin car components business proved very short lived [34]. It is concluded in the terms of the Framework that there is no reasonable prospect of securing B2 and B8 development at this location and that the LP policies are out of date in that regard [29, 60]. Moreover any such inward investment requiring large level greenfield sites is likely to be capable of being accommodated at the large nearby Manston allocated site which has ample available land and better vehicular access to the strategic road network [14].
101. There is evidence to support the view that there will remain sufficient employment land in Thanet if this site is partially developed for other purposes including housing [26]. The inclusion of substantial B1 employment provision within the mixed use development would retain the potential to provide

significant numbers of new jobs with a significant contribution to the economic role of sustainable development, even if some floorspace reduction proved necessary to limit traffic generation and associated congestion in the morning peak hour [83].

102. I consider that the slow and partial take up of this site for B2 and B8 development, the continued availability of other employment land for those purposes and the economic benefits from the retained B1 provision support a mixed development such that the land no longer need be protected by the development plan for solely employment use.

#### *Environment*

103. The appeal site is mainly farmland with few landscape features. There would be the opportunity at the reserved matters stage to retain and enhance some features such as the small amounts of hedging in the detailed design and layout of the scheme. The identified need for housing and the other development, and the facts that the site: lies within the defined built up area in the development plan; is in a sustainable location close to complementary facilities and transport links; and is already allocated for built development, outweigh the loss of greenfield agricultural land [6, 52, 59].

104. There is some evidence that, unless mitigated, the additional residents to be accommodated in the scheme would generate recreational demands elsewhere that could potentially affect sites of nature conservation interest in the wider area [57]. However the Council and the Appellant have negotiated an SPA Mitigation Contribution towards such off-site mitigation as part of the S106 Agreement and Natural England [85]. This should provide adequate mitigation and avoid a significant effect arising from the development.

105. There are four Grade II listed buildings close to Haine Road to the west of the site. These comprise a barn, a coach-house and a cart shed at Rose Farm and the early 18<sup>th</sup> century farmhouse at Haine Farm. The Environmental Statement concluded that there would be a moderate adverse impact on the setting of the Rose Farm buildings of moderate/large magnitude. This was because the farm buildings would no longer be understood within an agricultural landscape. For Haine Farmhouse there was assessed to be a minor adverse impact on setting of moderate slight magnitude on the basis that notable development had already occurred around the farm. That development includes the large SAGA office building. The ES considered that these impacts could be mitigated by scheme design and the Appellant has suggested that this could include siting lower density housing in the western part of the development and using separation and planting to moderate the effects. Nevertheless the ES concluded that there would still be an adverse impact on setting of moderate adverse magnitude. As the setting of the listed buildings would not be preserved in the terms of the S66 duty [33], this merits considerable weight and importance in the planning balance. The parties' planning witnesses agreed at the Inquiry that the effect on significance of the heritage assets would be less than substantial in the terms of paragraph 134 of the Framework [30].

106. On my site visit I saw that Haine Farmhouse is screened from the appeal site in most views by mature trees and by other unlisted buildings, including barns with corrugated sheet roofing and unsightly silos. Where it can be seen from the appeal site in glimpsed views this is in the context of the large modern

SAGA office building. Some intervening screen planting reduces direct intervisibility between those premises. The most prominent public elevation of Haine Farmhouse, and from where its significance can best be appreciated, is on its west side fronting Haine Road where the farmhouse faces open fields and from where the appeal development would be less apparent. From Haine Road the farmhouse is partially screened by trees and a tall boundary wall. The open fields lie outside the defined built up area and this aspect of the setting of the farmhouse would not be affected by the proposed development.

107. Of the Rose Farm buildings, the barn is an attractive 17<sup>th</sup> century thatched and timber framed building which is in use as a farm shop. Its setting, and that of the adjacent dilapidated coach-house, is already compromised by the siting by an adjacent shipping container and a number of unsightly mobile homes on the eastern side of the barn adjoining the appeal site. The cart shed to the south is also in a dilapidated condition and it appears that the active agricultural use of all 3 buildings may already have ceased. In any event they are likely to require a new use whether the farmland on the appeal site is developed for its proposed use or for the employment use allocated in the development plan (and previously permitted) which would likely have required the development of larger scale buildings on the adjacent land than the houses now proposed.
108. The Inquiry was informed that there are no relevant saved policies in the development plan concerning listed buildings.
109. It is concluded that the setting of the listed buildings is already compromised. The development would result in the loss of their agricultural setting (as would the allocated use of the site) with an associated (less than substantial) adverse impact on the significance of these agricultural buildings in the terms of the Framework. The effects on setting can be mitigated by design measures at the reserved matters stage to ensure that new buildings are not out of scale and that some open land is retained between the listed buildings and new built development to retain some of their open setting. Planting near the site boundary would reduce intervisibility. The allocated use would likely result in large scale buildings similar to the SAGA building. In these circumstances it is concluded that the setting would not be preserved (which merits considerable weight due to the S66 duty), and the harm to setting and significance could not be fully mitigated. However the residual harm after mitigation would be limited in extent and at most only moderate in the sense that there would be a change in setting leading to a slight loss of heritage significance.

#### *Infrastructure*

110. Various local plan policies such as LP Policy CF2 seek provision for necessary community infrastructure to support new development [18]. The S106 agreement makes extensive provision for education, recreation, library, health and other services to support the development and its social role [85]. Whereas the Richborough Gate developers were critical of the potential for duplication of services with their scheme [60], the wording of the agreement allows that most contributions can typically be used off-site, including by way of contribution to facilities to be developed at Richborough Gate itself.
111. Some of the original supporting evidence from Kent County Council and its agents Mouchel had suggested that contributions to some services may be used to fund staff costs [59]. That would not be appropriate to meet on-going

requirements as the one off payments would not be a sustainable means of long term funding for such running costs during the life of the development.

Running costs are more appropriately funded from normal taxation which would include the council tax or business rates to be paid by future occupiers. The wording of the S106 agreement itself does not explicitly refer to the use of contributions to fund staff costs although it is slightly ambiguous in its references to how the youth services and adult learning contributions would be used. However, so long as those contributions are not put to staff costs it is considered that the proposal is in accord with LP Policy CF1 and the Framework and that the relevant provisions of the agreement accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

112. The S106 agreement also includes a contribution for bus services [85]. It would be appropriate to support such services in the early years of the development before it is fully occupied and when fares revenue would be low. The provision of such services would provide an alternative to use of the car and would help to make the development environmentally sustainable. The S106 agreement also makes appropriate provision for off-site highway improvements and for a Green Travel Plan [85]. It is acknowledged that some objectors have concerns about existing traffic congestion which can occur in the area and the Highway Authority recognises that traffic generation and congestion could increase [52, 53, 59]. However congestion would already be worse had New Haine Road not been built to serve the planned development of this land and the permission can be conditioned to ensure that peak hour traffic generation does not exceed what was likely to have occurred had the employment development of the site been fully implemented. That many residents would be able to walk or cycle to the local centre and the more extensive facilities at Westwood means that they are less likely to access those facilities by car, as would likely be the case were the housing to be provided elsewhere in Thanet. The Westwood link road associated with the Richborough Gate development is already available for use and which relieves pressure on the main road junction [60]. The Highway Authority does not object [54].

113. It is considered that the proposal is in general accord with relevant provisions of the development plan and the Framework in respect of traffic and transport and that the residual highways impacts after mitigation would not be 'severe' in terms of the paragraph 32 of the Framework [29].

## **Other Matters**

114. Several representations seek that a decision on the development of the appeal site is deferred until the emerging Thanet Local Plan is adopted [52, 53]. However little weight can be given to that plan at its present early stage. The national Planning Practice Guidance in its chapter on '*Determining Planning Applications*' advises that arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. That does not apply here where a 5 year housing supply cannot be demonstrated and where the supporting evidence to the emerging plan indicates that all of the land need not be retained for employment. To delay the scheme further would prevent it addressing the current need for market and affordable housing. There is a lack of evidence to support claims that sufficient brownfield land is available in Thanet to address

all housing needs as some claim [59]. This site is within the built up area and the Issues and Options paper for the emerging Local Plan itself indicated a need to release more greenfield land in the countryside, that is, outside the present built up area.

115. The default period for the submission of reserved matters is usually 3 years with a further 2 years allowed within which development should have commenced. The Appellant is seeking a 7 year period for the submission of reserved matters on the basis that this would be a large multi phase development and a significant amount of work would be needed to design and submit all reserved matters for every phase. The Council only accepts that argument in part and considers that there is a need to avoid further delay in the development of the site. As part of the justification for the development is that it would contribute to meeting the 5 year housing supply, I agree with the Council that a 3 year time limit would be appropriate for the first phase and a 5 year time limit would be appropriate for the submission of reserved matters for the remaining phases.

116. All other matters raised have been taken into account. In particular the loss of agricultural and greenfield land was addressed when the site was allocated for development in the development plan and when planning permission was granted for that development. Any amenity effects for the Haine Road residents such as light, outlook and privacy, and also the need to secure satisfactory crossing arrangements for the main road through the development, are matters that would more suitably be addressed at the reserved matters stage [52].

117. The County Council's suggested amendments to conditions concerning green infrastructure provision (Document 13) are simultaneously over complex and imprecise and lack evidential support in terms of necessity. The details of a scheme in relation to green infrastructure would be better addressed by negotiation at the reserved matters stage.

### **Planning Balance and Conclusions**

118. Overall it is concluded that this would be a sustainable development in terms of social and economic considerations. The moderate harm to the setting of some listed buildings detracts from the development's contribution to environmental sustainability and merits considerable weight. However the harm is limited having regard to the present setting of those buildings, the limited intervisibility with Haine Farmhouse in particular, and the scope for mitigation at the design stage. In this case that harm is outweighed by the significant benefits of the development in addressing social and economic needs for housing, employment and community facilities which also merits considerable weight.

119. The proposal accords with some LP policies. It is in conflict with LP Policies H1, EC1 and EC12 which however I consider to be out of date in relevant respects, as the Council agrees.

120. It is concluded that this would overall be a sustainable development to which the Framework's presumption in favour should apply. Paragraph 14 of the Framework provides that where the development plan is out of date then permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against Framework

policies. In this case I have identified no adverse impacts that significantly and demonstrably outweigh the benefits of the development [31].

**Recommendation**

121. For the above reasons and having regard to all other matters raised, it is concluded and recommended that the appeal should be allowed.

*RPE Mellor*

INSPECTOR

## SCHEDULE OF CONDITIONS

### *Time and Reserved Matters conditions*

1. Approval of the details of the layout, scale and appearance of any buildings to be erected, the means of access to the site and the landscaping of the site, (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority in writing before any phase of the development is commenced.

REASON: As no such details have been submitted.

2. Plans and particulars of the reserved matters referred to in Condition 1 above, shall be submitted in writing to the Local Planning Authority and the development shall be carried out in accordance with the plans and particulars as approved in writing

REASON: In accordance with Section 92(2) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

3. Any application for approval of the reserved matters for the first Phase of the development shall be made to the Local Planning Authority before the expiration of 3 years from the date of this permission. Any application for approval of the reserved matters for any remaining phases shall be made to the Local Planning Authority before the expiration of 5 years from the date of this permission.

REASON: In accordance with Section 92(2) of the Town and Country Planning Act 1990.

4. Each phase of the development shall be begun within two years of the date of approval of the final reserved matters to be approved for that phase.

REASON: In accordance with Section 92(2) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

5. The reserved matters submitted in accordance with Condition 1 shall include the following details to the extent that they are relevant to the reserved matters application in question:-

#### A. Layout

- i. the layout of routes, buildings and spaces;
- ii. the block form and organisation of all buildings;
- iii. the locations and plan form of non-residential buildings;
- iv. the distribution of market and affordable dwellings within that phase including a schedule of dwelling size (by number of bedrooms and floorspace);

- v. the location of dwellings designed to seek to meet the Council's Lifetime Homes guidance;
- vi. full details of the approach to vehicle parking including the location and layout of visitor parking and parking for people with disabilities for each building type together with details of the design approach for access points into, and the ventilation of, any undercroft parking;
- vii. full details of the approach to cycle parking including the location, distribution, types of rack, spacing and any secure or non-secure structures associated with the storage of cycles and the location and form of open areas.

B. Access

The access and circulation of modes of travel within the relevant phase or sub-phase, the design of roads and paths and junction layout including the provision of footpaths and cycleway.

C. Scale and Appearance

Scale, form and appearance of the architecture within each phase, in accordance with the design and scale parameters established within the parameter plans and detailed Masterplan to be approved under Condition 7, including frontage design and public/private realm definition and boundary treatments

D. Public Open Spaces

The extent, layout and specification of public open spaces, in accordance with the detailed Masterplan to be approved under condition 7 and including details of street furniture and play space, accompanied by a management plan showing how the relevant areas of public open space are to be laid out, paved, planted, equipped and maintained together with a timetable for their implementation.

E. Landscaping

The landscape design and specification of hard and soft landscape works within each phase, including detailed surveys of all trees, shrubs and hedges on the application site, giving details of all trees of having a trunk diameter of 75mm or more to include species type, spread of crown, height, diameter of trunk and condition assessment, details of existing trees, shrubs and hedges to be retained and details of new trees, shrubs, hedges and grassed areas to be planted, together with details of the species and method of planting to be adopted, details of walls, fences, other means of enclosure proposed, and arrangements to be made for the permanent maintenance of landscaped areas in accordance with the Landscape Management Plan and Specification to be approved under condition 1.

**REASON:** In the interests of achieving sustainable development, in accordance with Thanet Local Plan Policy D1, and the principles within the National Planning Policy Framework.

6. The application site to which this permission applies is that defined by Drawing WIPL 145486 Fig 1.2 and dated 12 July 2011. The submission of reserved matter applications pursuant to this outline application shall have regard to the principles of the following Parameter Plans received by the Council on 24 September 2013 and the text set out on those Plans to illustrate the development principles:-

PP001 - Illustrative core block structure  
PP002 - Illustrative land use mix concept  
PP001 - Illustrative strategy for development scale  
PP003 - Illustrative landscape and open space strategy  
PP004 - An integrated and accessible local centre  
PP005 - Illustrative street types strategy

REASON: For the avoidance of doubt and in the interests of achieving sustainable development, in accordance with Thanet Local Plan Policy D1, and the principles within the National Planning Policy

*Masterplan & Site Wide Strategies*

7. No application for the approval of reserved matters in respect of any phase of the development shall be made unless or until a Masterplan, a Phasing Plan and a Landscape Masterplan for the entire development have first been submitted to and approved in writing by the Local Planning Authority
- a. The Masterplan shall include or be accompanied by details plans and particulars in relation to the following matters:
- i. A land uses general layout parameter plan;
  - ii. Densities and building heights parameter plans (which shall substantially accord with Illustrative strategy for development scale numbered PP001 dated received 24 September 2013 and letter received 9 September 2013),
    - Zone A 38-48dph
    - Zone B 35-38dph
    - Zone C 25-35dph
  - iii. Indicative number of units and mix (no. of bedrooms) of residential dwellings in each phase;
  - iv. Road layout and hierarchy for the key estate roads within the development;
  - v. Proposed principal pedestrian and cycle links within the site and linking it to its surround environs including to the Newington Estate;
  - vi. The potential location (or potential locations) for the local centre and any community building within the development.
- b. The Landscape Masterplan shall:
- i. identify the approximate location of the main areas of formal and informal open space to be provided within the development;
  - ii. outline the local playspace to be provided within the development and the proposed distribution of play areas within the development and

- iii. a include proposed programme for its delivery linked to the development phases. Such playspace shall be provided at a rate of 0.7 hectares per 1000 population (criteria as stated in Thanet Local Plan 2006 Policy SR5) of which no less than 36% of the area shall be equipped play space;
  - iv. outline a network of native tree planting.
  - v. include a Surface Water Drainage Strategy (including an assessment of the hydrological and hydro geological context of the development, and details of the implementation, timetable, management of Sustainable Urban Drainage Systems across the site);
  - vi. include a Water Infrastructure Strategy, outlining site wide provision;
  - vii. include a Green Infrastructure Strategy which shall provide details of the green corridor to be provided through the site along with any further proposals for mitigation in line with the document "*Proposed Mitigation Measures for the potential effects of increased recreational pressure*" dated 4 October 2013 along with a programme for their delivery linked to the development phases
- c. The Phasing Plan shall show the proposed development phases and any sub-phases
  - d. All reserved matters submissions shall accord with the Masterplan, the Phasing Plan and the Landscape Masterplan as approved by the Local Planning Authority. Any references to a phase of the development within this permission shall be taken to be a reference to phases as identified on the approved phasing plan submitted under this condition.

REASON: In the interests of achieving sustainable development, in accordance with Thanet Local Plan Policy D1, and the principles within the National Planning Policy Framework.

#### *Archaeology*

- 8. No development shall take place on each respective phase as approved under Condition 7 until the applicant, or their agents or successors in title, has secured the implementation of:
  - a. archaeological field evaluation works in accordance with a specification and written timetable which has first been submitted to and approved in writing by the Local Planning Authority; and
  - b. following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved in writing by the Local Planning Authority.

REASON: To ensure that due regard is had to the preservation in situ of important archaeological remains in accordance with advice in the National Planning Policy

Framework.

*Drainage*

9. No development shall take place on each phase as approved under Condition 7 until details of the means of foul and surface water disposal have been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with such details as are agreed and thereafter maintained.

REASON: To prevent pollution in accordance with Thanet Local Plan Policy EP13 and guidance contained within the National Planning Policy Framework.

10. No development shall take place on each respective phase until a surface water drainage scheme for that phase, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development and including details of how the scheme shall be maintained and managed after completion, which shall integrate with the Surface Water Drainage Strategy approved in Condition 7, has been submitted to and agreed in writing by the Local Planning Authority for that phase. The scheme shall be subsequently implemented within each phase of the development in accordance with the approved details.

REASON: To prevent the increased risk of flooding, in accordance with the National Planning Policy Framework.

11. No development shall take place on each respective phase as approved under Condition 7 until details of the proposed water infrastructure plans for that phase have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with such details as are agreed and thereafter maintained.

REASON: To prevent pollution in accordance with Thanet Local Plan Policy EP13 and guidance contained within the National Planning Policy Framework.

*Contamination*

12. If, during development, significant contamination is found or caused at the site, then this contamination shall be fully assessed and an appropriate remediation scheme agreed with the Local Planning Authority. The approved works shall be implemented within a timetable approved by the Local Planning Authority and shall be of such a nature as to render harmless the identified contamination given the proposed end use of the site and surrounding environment, including controlled waters.

REASON: To ensure that the proposed development will not cause harm to human health or pollution of the environment, in accordance with the advice contained within the National Planning Policy Framework.

*Highways*

13. Details pursuant to Condition 1, insofar as they relate to each respective phase of development, shall include proposed roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, accesses, carriageway gradients, driveway gradients and street furniture, and shall be laid out and constructed in accordance with those details as submitted to, and approved by, the Local Planning Authority.

REASON: In the interests of highway safety and to ensure the proper development of the site without prejudice to the amenities of the occupants.

14. Details pursuant to Condition 1, insofar as they relate to each respective phase of development, shall include adequate details of the areas reserved for vehicle loading and unloading, vehicular parking spaces and/or garages, and manoeuvring and turning facilities, and shall be provided in accordance with standards to be agreed with the Local Planning Authority. Such facilities as approved shall be constructed and made available for use prior to the occupation of the units for which it is provided (by phase) to meet relevant parking and layout standards for each individual phase of development, and thereafter shall be retained for their approved purpose.

REASON: In the interests of highway safety and traffic flow, in accordance with Thanet Local Plan Policy TR16.

15. Details pursuant to Condition 1, insofar as they relate to each respective phase of development, shall include the provision of adequate secure covered cycle parking facilities within the site, in accordance with standards to be agreed with the Local Planning Authority. Such facilities as approved shall be made available for use prior to the occupation of the units for which it is provided (by phase) to meet relevant parking and layout standards for each individual phase of development, and thereafter shall be retained for their approved purpose.

REASON: In the interests of highway safety and to facilitate the use of alternative means of transport, in accordance with Thanet Local Plan Policy TR12.

16. Details pursuant to Condition 1, insofar as they relate to each respective phase of development, shall include the vehicular and pedestrian sightlines for all new junctions and accesses in accordance with standards to be agreed with the Local Planning Authority. The occupation of the part of the development served by the respective access shall not commence until the approved sightlines have been provided and they shall thereafter be restrained from of obstruction.

REASON: In the interests of highway safety.

17. Details pursuant to Condition 1 above shall include the provision of a means of access for pedestrians and cyclists within each phase. No building within that phase shall be occupied until these are constructed and ready for use in relation to each phase.

REASON: In the interests of highway safety and to facilitate the use of alternative means of transport, in accordance with Thanet Local Plan Policies TR11 and TR12.

18. No development shall take place on each respective phase as submitted under Condition 7, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority for that phase. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for and include:
  - a. the parking of vehicles of site operatives and visitors
  - b. construction vehicle loading/unloading and turning facilities
  - c. loading and unloading of plant and materials
  - d. storage of plant and materials used in constructing the development
  - e. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - f. wheel washing facilities and their use
  - g. measures to control the emission of dust and dirt during construction a scheme for recycling/disposing of waste resulting from demolition and construction works
  - h. a Construction Environment Management Plan, including details of construction time, enclosures for noise emitting equipment, and siting of stationary noisy or vibrating plant equipment.
19. No residential dwelling or building intended to take access from that road shall be occupied until the carriageways of the proposed roads have been laid out and constructed up to and including at least road base level.

REASON: In the interests of highway safety and to ensure the proper development of the site without prejudice to the amenities of the occupants.

20. No more than 90% of the units within each phase shall be occupied until the carriageways, footways, shared surfaces, footpaths and cycleway serving that phase have been completed with final surfacing, unless the road is an identified construction route in which case the final surfacing shall be completed within 1 month following the cessation of use of that road as a construction route.

REASON: In the interests of highway safety and to ensure the proper development of the site without prejudice to the amenities of the occupants.

#### *Landscaping, Open Space and Play Areas*

21. Not to commence the development on any phase until such time as a Landscape Management Plan and Specification for that phase has been submitted to and approved by the Local Planning Authority detailing:

- a. The precise location and boundaries of the areas of formal and informal open space to be provided within the Phase and timetable for their delivery which shall be substantially in accordance with the approved Landscape Masterplan and its Green Infrastructure Strategy;
- b. A landscape management plan for those areas including long term design objectives, details of who is to have ongoing management responsibilities for the area and how those arrangements will be secured in perpetuity and maintenance schedules for all landscaped, open space and play areas;
- c. A detailed specification for any equipped play areas to be provided within the Phase in accordance with the Landscape Masterplan.
- d. A detailed scheme of native tree planting across the site.

The Landscape Management Plan and Specification shall be implemented and adhered to as approved subject to any minor revisions thereto as may be approved in writing by the Local Planning Authority. The public open spaces shall be laid out and implemented in accordance with the agreed timetable and shall be permanently retained thereafter in accordance with the management plan and used for public amenity purposes only.

**REASON:** In the interests of the visual amenities of the area and to adequately integrate the development into the environment, and provide local playspace, in accordance with Policies D1, D2 and SR5 of the Thanet Local Plan, and guidance within the National Planning Policy Framework.

22. All hard and soft landscape works shall be carried out in accordance with the approved Landscape Management Plan and Specification. The works shall be carried out prior to the occupation of any part of the phase of the development to which it relates, or in accordance with a programme of works to be agreed in writing with the Local Planning Authority. Any trees or plants which within a period of 5 years from the completion of the development 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 any written consent to any variation.

**REASON:** In the interests of the visual amenities of the area and the interests of biodiversity and ecological potential, and to adequately integrate the development into the environment, in accordance with Policies D1 and D2 of the Thanet Local Plan and the National Planning Policy Framework.

#### *Wildlife*

23. The Green Infrastructure Strategy as approved under Condition 7 shall be implemented as approved subject to any minor revisions thereto as may be approved in writing by the Local Planning Authority. Any green infrastructure shall be laid out and implemented in accordance with the agreed timetable and shall be permanently retained thereafter in accordance with the Landscape Management Plan.

REASON: In the interests of bio-diversity and ecological potential, and to adequately integrate the development into the environment, in accordance with Policies D1 and D2 of the Thanet Local Plan and the National Planning Policy Framework.

24. No development shall commence unless and until a scheme for the offsetting of bio-diversity impacts, including farmland birds, has been submitted to and agreed in writing by the Local Planning Authority. The offsetting scheme shall include:
  - a. Details of the offset requirements of the development;
  - b. The provision of arrangements to secure the delivery of the offsetting measures (including a timetable for their delivery); and
  - c. A management and monitoring plan (to include for the provision and maintenance of the offsetting measures in perpetuity).

The scheme shall be designed to offset site level biodiversity impacts or to contribute to the strategic offsetting approach currently in development through the Local Plan, and shall be implemented and maintained as agreed.

REASON: In the interests of preserving and enhancing bio-diversity and ecological potential, and to adequately integrate the development into the environment, in accordance with Policies D1 and D2 of the Thanet Local Plan and the National Planning Policy Framework.

*Building work*

25. No phase of development shall commence until details and samples of the materials to be used in the construction of the external surfaces of the development permitted in that phase have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out using the approved materials.

REASON: In the interests of visual amenity in accordance with Policy D1 of the Thanet Local Plan.

26. The construction of any phase which includes development fronting the A256 hereby shall not commence until a scheme for protecting the units from noise from the A256 has been submitted to, and approved in writing by, the Local Planning Authority. Unless otherwise agreed, in writing, by the Local Planning Authority such a scheme must demonstrate that the guideline noise levels from Tables 5 and 6 of BS8233: 1999 can be achieved. Those parts of the development fronting the A256 shall not be occupied until all works which form part of the approved scheme shall be completed before. The works implemented shall thereafter be retained.

REASON: In the interests of the amenities of residential dwellings in close proximity to the A256 Haine Road, in accordance with National Planning Policy Framework paragraph 17.

*Uses*

27. No less than 60% of the total number of dwellings within the development shall be a mix of 3, 4 and 5-bedroom houses.

REASON: To ensure the provision of a mix of house sizes and types to meet a range of community needs, in accordance with Policy H8 of the Thanet Local Plan.

28. Subject also to the provisions of Condition 32 below, the development shall provide for not more than 550 dwellings and the gross floorspace provision across the development for other purposes shall not exceed that stated below:

A1 (Shops), A2 (Financial and Professional Services), A3 (Restaurants and Cafes) – 2,000sqm,

Special Educational Needs School – 4,500sqm

Other D1 Community facilities – 500sqm

Community healthcare D1 - 1,200sqm

B1 – 54,550sqm

Car Showroom – 8,151sqm

REASON: In the interests of certainty as to what is permitted.

29. Each residential phase of the development shall not commence until the identification in that phase of a minimum of 15% of housing to lifetime home and wheelchair standards and the specification of such dwellings has been submitted to and approved in writing by the Local Planning Authority respective phase of development.

REASON: To meet the housing needs of the community in accordance with Policy H8 of the Thanet Local Plan 2006.

30. Any school use within the development shall be restricted to that of a school for special educational needs with associated or ancillary residential component.

REASON: To ensure the development does not prejudice the surrounding area in terms of traffic and environmental impacts, in accordance with the National Planning Policy Framework.

*SEN conditions*

31. The development to which this planning permission relates so far as it permits the construction of a Special Educational Needs School shall not be implemented if any part of the development for which planning permission was granted by Kent County Council on 16 July 2014 pursuant to planning application reference no. TH/14/475 is begun. Should that development be

begun, the quantum of community facilities permitted under this permission shall be limited to 1,200 sq m of community healthcare (class D1) and 500sqm of other community facilities (class D1).

REASON: In the interests of certainty and to avoid the duplication of facilities and an increase in peak hour traffic movements above forecast levels.

32. Notwithstanding the description of the development and the floorspace limitations set out in [CONDITION 28], should the Special Educational Needs School be delivered on the site either pursuant to this planning permission or pursuant to the planning permission granted by Kent County Council on 16 July 2014 pursuant to application no. TH/14/475, then the quantum of development shall be reduced to a level where no more than 644 AM vehicle trips can be expected to be generated. For the purposes of calculating whether no more than 644 AM vehicle trips can be expected to be generated by the quantum of development it shall be assumed that:

- a. 10 dwellings comprised in the development generate 3 trips;
- b. 110sqm of non residential floorspace comprised in the development generates 1 trip.

REASON: To ensure the development does not prejudice the surrounding area in terms of traffic and environmental impacts, in accordance with the National Planning Policy Framework.

## APPEARANCES

## FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Turney of Counsel, instructed by the Solicitor to Thanet District Council  
He called Mr Iain Livingstone Planning Officer, Thanet District Council  
BA(Hons) MSc MRTPI

**FOR THE APPELLANT:**

Mr Sasha White of Queen's Counsel, instructed by Ms Roz Graham of Savills  
He called Design Consultant, Savills  
Mr Peter Frankum BA(Hons) DipPI DipUD MA  
Mr Nick de Lotbiniere BSc Planning Consultant, Savills  
MPhil MRICS MRTPI

## INTERESTED PERSONS:

Ms Rebecca Hooper Ramsgate Resident

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

1. Opening submissions on behalf of the Appellant
  2. Opening submissions on behalf of the Local Planning Authority
  3. Statement of Common Ground
  4. Annual Monitoring Report 2011-2012
  5. Annual Monitoring Report 2012-2013
  6. Thanet Local Plan Issues And Options 2013
  7. Thanet District Council Housing Topic Paper
  8. Strategic Housing Market Assessment for the East Kent Sub-Region
  9. Thanet District Council Employment Topic Paper
  10. Thanet District Council Employment Land Review and 10A Appendices
  11. Appellant's suggested conditions following LPA draft and Inspector's comments
  12. Suggested amendments to conditions (LPA)
  13. Suggested amendment to conditions (Kent County Council)
  14. Hampton Bishop Parish Council v Herefordshire Council (CoA) 2014
  15. Derwent Holdings Ltd v Trafford Borough Council (CoA) 2011
  16. S106 Agreement
  17. Closing submissions by Mr Turney
  18. Closing submissions by Mr White
  19. Email from Cllr Driver dated 18 August 2014 concerning attendance at Inquiry

## **APPELLANT'S INQUIRY DOCUMENTS**

- |      |   |
|------|---|
| APP1 | Frankum Summary   |
| APP2 | Frankum Proof   |
| APP3 | de Lotbiniere Summary   |
| APP4 | de Lotbiniere Proof   |
| APP5 | Jones Summary (Highways) [Written submission only]              |
| APP6 | Jones Proof (Highways) [Written submission only]                |
| APP7 | Housing Requirements Report by Pioneer Property Services Ltd.   |
| APP8 | Volume A Shared Appendices to proofs (A1-A12) [Lever Arch File] |

APP9 Volume B Shared appendices to Proofs (B1-B14) [Lever Arch File]

**COUNCIL'S INQUIRY DOCUMENTS**

LPA1 Livingstone Proof

**OTHER INTERESTED PERSONS' WRITTEN SUBMISSIONS FOR APPEAL**

- OIP1 Statement and appendices by Kent County Council in support of Infrastructure Requirements
- OIP2 Submissions by Teal Planning on behalf of CRG Thanet Ltd as developers of Richborough Gate housing development
- OIP3 Letter from Cllr I Driver
- OIP4 Letter from Leader of Kent County Council
- OIP5 Letter from Mr Hibeer (Broadstairs resident)
- OIP6 Mr Hill's request for copy of decision



# Department for Communities and Local Government

## 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 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**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from the date of the decision.

### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

### **SECTION 3: 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 report of the Inspector's report of the inquiry or hearing within 6 weeks of 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.