



Department for  
Communities and  
Local Government

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

Mr Alister Hume  
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6 March 2017

By email: [info@humeplanning.co.uk](mailto:info@humeplanning.co.uk)

Dear Mr Hume

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

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

**Inspector's recommendation and summary of the decision**

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

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

### **Procedural matters**

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

### **Policy and statutory considerations**

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

### **Main issues**

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

#### *The Planning Policy position*

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

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

#### *Housing land supply*

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

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

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

#### *Whether there are other benefits of the scheme*

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

#### *Other matters*

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

#### **Planning conditions**

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

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

### **Planning obligations**

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

### **Planning balance and overall conclusion**

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

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

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

### **Formal decision**

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

26. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

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

28. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

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

Yours sincerely

*S Jewell*

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

## **Annex A: List of conditions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Trees and Landscaping and Ecology

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

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

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

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

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

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

- 11) No dwelling shall be occupied until a Woodland Management Plan (WMP) for the existing and proposed woodland areas has been agreed in writing by the local planning authority. That part of the WMP for Hall Wood Ancient Woodland shall be in accordance with EDP's Heads of Terms for a WMP (EDP report ref: C\_EDP1997\_07).

The WMP shall include the following:

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

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

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

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

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

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

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

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

The EDS shall include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Highways

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Archaeology

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

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

#### Flood Risk and Drainage

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

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

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

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

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

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

Noise

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

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

Air Quality

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

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

Contamination

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

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

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

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

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

**Date: 5 December 2016**

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

Inquiry opened on 4 October 2016

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

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

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## Abbreviations

<b>ALLI</b>	Area of Local Landscape Importance
<b>AMR</b>	Annual Monitoring Report
<b>AONB</b>	Areas of outstanding natural Beauty
<b>The Council</b>	Medway Council
<b>CIL</b>	Community Infrastructure Levy Regulations
<b>CPRE</b>	Campaign to Protect Rural England
<b>dpa</b>	dwelling per annum
<b>The Framework<sup>1</sup></b>	National Planning Policy Framework
<b>The Guidance</b>	The National Planning Practice Guidance
<b>ha</b>	hectares
<b>LCA</b>	Landscape Character Assessment
<b>LCT</b>	Landscape Character Type
<b>OAN</b>	Objectively Assessed Need
<b>PRoW</b>	Public Right of Way
<b>SHENA</b>	Strategic Housing and Economic Needs Assessment
<b>SLAA</b>	Strategic Land Availability Assessment
<b>SoS</b>	Secretary of State
<b>SPA</b>	Special Protection Area
<b>ZVI</b>	Zone of Visual Influence

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<sup>1</sup> (also referred to when quoted as NPPF)

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

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

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Messrs KD, JC & MC Attwood against the decision of The Medway Council.
- The application Ref: MC/14/2395, dated 8 August 2014, was refused by notice dated 27 January 2016.
- The development proposed is the erection of up to 450 market and affordable dwellings together with provision of access, estate roads and residential open space.

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

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**Procedural Matters**

*Determination*

1. The Secretary of State (SoS) has directed that, in exercise of powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, he shall determine the appeal because it involves proposals for residential development of over 150 units or sites of over five hectares which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

*Inquiry Dates*

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

*Plans and Planning History*

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

### *Environmental Impact Assessment*

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

#### *S.106 Unilateral Undertaking*

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

Education Contribution - £2,226,674

Affordable Housing – 25% to be affordable housing

Healthcare Contribution - £210,577

Open Space Contribution - £290,928

Public Transport Contribution - £201,843

Waste and Recycling Contribution - £69,948

Community Facilities Contribution - £61,519.50

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

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

### **The Site and Surroundings**

9. The appeal site is some 23.93 hectares (ha) of mainly open agricultural land. It is bordered by Lordswood to the south-west and Ham Lane to the north. Beyond Ham Lane is the Elm Court Business Park<sup>2</sup>. The western boundary is formed by the farm building complex at Gibraltar Farm and the woodland 'Hook Wood'. The east/south-east boundary is not marked by any specific feature but runs across an open agricultural field. A byway runs north-west to south-east through the appeal site. This would be retained in the proposed scheme.

### **Planning Policy**

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

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

Policy S4 - Landscape and Urban Design

Policy BNE34 - Areas of Local Landscape Importance

Policy BNE25 - Development in the Countryside

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

### **The Appeal Proposals**

17. The application is described as the erection of up to 450 market and affordable dwellings together with provision of access, estate roads and residential open space. The highways access would be a continuation of North Dane Way which is to the north-east of housing in Lordswood<sup>5</sup>. The emergency access would be from Ham Lane at the opposite side of the site.
18. The scheme is in outline with only access for consideration at this stage and all other matters reserved for subsequent consideration. However, the illustrative Masterplan broadly identifies structural landscaping, open/play space, potential open water storage areas, retention of the public byway across the site, and primary and secondary vehicular routes.

### **Other Agreed Facts<sup>6</sup>**

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<sup>3</sup> CD10.6

<sup>4</sup> CD10.5

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

<sup>6</sup> Key matters taken from the Statement of Common Ground CD8.1

19. **Housing Matters:** The site is not allocated for any development purpose in the Medway Local Plan and, as the land lies beyond the designated settlement confines, comprises countryside and is designated as an Area of Local Landscape Importance (ALLI).
20. The parties agree that Medway Council does not have a five year housing land supply. They acknowledge that at a recent appeal for land west of Hoo St Werburgh<sup>7</sup> the Inspector concluded at paragraph 75 of his Decision that Medway's five year housing land supply was within a range of 2.21 and 2.79 years.
21. The Council's Annual Monitoring Report (AMR) for 2014-15 sets out that housing completions in the years 2012-2015 respectfully were: 809, 565, 579 and 483 giving a total of 2436 dwellings.
22. It is recognised by both parties that the Framework supports housing and economic growth with a balanced approach applied through the presumption in favour of sustainable development. Paragraph 49 of the Framework states that relevant policies for housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. Medway Council acknowledges in the officer's report that it does not have sufficient sites to meet the 5-year housing land supply. It is agreed that, in line with the Framework, a 20% buffer should be applied given the recent rate of housing completions that are identified in the Annual Monitoring Report (AMR).
23. The parties agree that the Framework sets out a presumption in favour of sustainable development and that, in the context of Medway and the relationship of the site to the surrounding urban area, the site represents a sustainable location in accessibility terms and would contribute to the supply of housing, including market choice and affordable provision, to meet a persistent record of under delivery relative to annualised targets.
24. There is no dispute that the site is readily deliverable and could make a short term contribution to supply and the agreed timing conditions would help to accelerate delivery.
25. **Heritage Matters:** The site contains no designated or non-designated heritage assets. Nor does it form part of or affect the setting of any conservation area or listed building. It is also agreed that an archaeological investigation condition would safeguard any archaeological potential of the site.
26. **Design and Residential Amenity:** The parties agree that the masterplan accompanying this outline scheme, combined with the distance of separation from existing housing and proposed buffer landscaping, would allow the site to be developed for up to 450 dwellings without material harm to the living conditions of existing residential occupiers in terms of overshadowing, overlooking and conventional expectations of distances of separation required for providing adequate outlook from property windows.
27. **Flood/Drainage and Sewage:** There is agreement between the parties that flooding, drainage and sewerage considerations have been properly addressed

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

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

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

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

#### ***The Appellants' Introduction***

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

#### ***Weight to be attached to the Development Plan***

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

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

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<sup>8</sup> CD11.2

46. **Policy BNE25** is a typical old style countryside policy, premised on the need to protect the countryside for its own sake. It creates an 'in principle' policy objection to any form of development which does not fall within the categories listed in its sub-paragraphs; this position exists irrespective of the quality or value of the countryside in which that development is proposed and of whether the development would cause harm. In all these respects, it is completely inconsistent with the Framework.
47. Further, in circumstances where the Council does not have a five year housing land supply, the Council accepts that it will not be possible to meet Medway's housing needs without the release of greenfield sites beyond the built up area. It is therefore difficult to see how any weight could rationally be attached to the 'in-principle' conflict with policy BNE25.
48. This leaves the first limb of the policy, which states that development in the countryside will only be permitted if it maintains and wherever possible enhances the character, amenity and functioning of the countryside. For the Council it is argued that this part of the policy is consistent with the Framework, in as much as its paragraphs 17 and 109 both seek to protect the countryside. However, the fact that there is an overlap in the subject matter of policy BNE25 and paragraphs 17 and 109 is not enough to make the development plan policy consistent with the Framework, because of the way in which the Framework tells us how the countryside should be protected.
49. In that regard, paragraph 17 of the Framework speaks only of recognising the intrinsic character and beauty of the countryside, which is some way short of requiring the character, amenity and functioning of the countryside to be maintained and enhanced. Paragraph 109 speaks only of protecting valued landscapes, whereas BNE25 applies to all countryside. Moreover, it is implicit in the policy BNE25 criterion (i) requirement that character, amenity and function are maintained and that the policy requires development to cause no harm. In contrast, where there is a shortfall in the five year housing land supply, but meeting housing need conflicts with paragraphs 17 and 109, paragraph 14 tells us how that balance should be struck, in terms which expressly recognise that this may mean doing harm to the countryside.
50. Once these elements are stripped out of policy BNE25, it is difficult to see what is left. Consequently, if one seeks to protect the countryside in a way which is consistent with the Framework, there is no need to look to policy BNE25 to know how to do it: the answer is in the Framework itself. The Council's planning witness confirmed that he was not seeking to resile from the SoCG, which states that little weight should be attributed to policy BNE25. That was also the view of officers when reporting the Mierscourt application to committee<sup>9</sup>, and of the Inspector dealing with the Station Road appeal<sup>10</sup>. Reference to the Audlem Road decision<sup>11</sup> to seek a contrary view ignores the evidence of the Council's witness and SoCG.
51. **Policy BNE34** is accepted by the Council to be a relevant policy for the supply of housing. Nonetheless, the Council seeks to argue that it should be given

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<sup>9</sup> CD11.7

<sup>10</sup> CD11.3 para 14

<sup>11</sup> CD11.4

- considerable weight, on the basis that it is consistent with Framework paragraph 109. The appellants do not share that view.
52. As the 2011 Landscape Character Assessment (LCA) observed<sup>12</sup>, national policy has for some time discouraged the protection of landscape via rigid local landscape designations, and has instead advocated the use of criteria-based policy guidance. Further, as the Gleaming Wood<sup>13</sup> Inspector points out, it should be based on objective landscape character assessment rather than qualitative perception. In contrast, policy BNE34 is clearly based on a rigid designation and, as two Inspectors have now pointed out, there is no evidence that it was ever underpinned by an objective landscape character assessment. In neither respect is it consistent with the Framework.
53. The Framework expects development plan policies to be up-to-date. The ALLI designation dates back to 1992. There is no evidence that the appropriateness of either the designation generally or that the detailed boundaries have ever been reviewed since that time. Further, when the SoS saved the policy in 2007, he did so specifically to give Medway a chance to justify the continued retention of the policy. In the 9 years since that letter, no justification has been forthcoming.
54. Although the 2011 LCA assesses the landscape character of all the ALLIs it makes no recommendations as to the retention of the designation generally or the validity of particular boundaries. That is to be expected given that the LCA's recognition that national policy guidance proposed the replacement of rigid local landscape designations. The LCA was intended to provide the basis for such a replacement policy, not the justification for retaining policy BNE34.
55. The absence of an up-to-date review justification is all the more critical, given the way in which the ALLI designations have been tightly drawn around the main urban areas of Medway. Effectively, policy BNE34 means that any proposal for a sustainable urban extension to meet housing needs will be contrary to policy. However, this conflict is inevitable given that Medway cannot demonstrate a five year housing land supply. In these circumstances, meeting the future housing needs of the district will necessarily involve development within areas designated as ALLIs. Indeed, in resolving to grant permission for the Mierscourt application, the Council has recognised that this is the case. The Station Road appeal decision<sup>14</sup> is to similar effect. Further, as the LCA makes clear, there are significant differences in the quality and importance of the landscape areas within individual ALLIs. This is precisely why the Framework has moved away from the concept of blanket designations and towards a criteria-based approach, informed by objective landscape character assessment.
56. The policy BNE34 approach to balancing harm is markedly different to paragraph 14 of the Framework. Whereas paragraph 14 requires permission to be granted unless the harm significantly and demonstrably outweighs the benefits, in policy BNE34 the presumption is the other way around.
57. Between them, the Council's witnesses accepted that each and every one of these points reduced the weight which should be attached to policy BNE34.

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<sup>12</sup> CD10.5 page 2

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

<sup>14</sup> CD11.3

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

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

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

60. The first question to be considered is whether the appeal site is, or forms part of, a valued landscape. It is common ground that value is not to be equated with popularity, and that what one is looking for is some demonstrable physical attribute which lifts a site out of the ordinary.
61. The appeal site lies within an area which has been designated in a Local Plan as an ALLI which can be taken as evidence that it is valued. However, just as landscapes can be valued even though they are not designated, as the Council's landscape witness agreed, the ALLI designation does not necessarily equate to value. For the reasons set out above, it is necessary to be careful about assuming that the ALLI designation is an assessment of value in the sense referred to in Framework at paragraph 109. Value is not an on or off switch. There is a hierarchy of landscape designations, with higher value placed on national designations such as AONBs. Even within single designations, there will be parts of the landscape that have greater value than others.
62. As their name suggests, ALLIs are a local designation. Consequently, we are not dealing with an AONB, a National Park or even a county-wide designation such as a Special Landscape Area. This does not mean that ALLIs are not valued, but it means that their value is towards the lower end of the spectrum. It is therefore important not to apply the same rigorous standards that would be expected in an AONB.
63. It is necessary to assess whether the landscape in which the appeal site sits has demonstrable physical attributes which raise it above the ordinary. It is common ground between the parties that, when considering whether the appeal site has such attributes, it is helpful to start from the 2011 LCA. As the LCA makes clear<sup>15</sup>, while the ALLI for the Capstone area as a whole has some demonstrable

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<sup>15</sup> CD10.5

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

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

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

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

74. It is common ground that whatever the precise figure, the shortfall against Medway Council's five year housing land supply is significant. In the words of the Moor Street Inspector<sup>16</sup>, the situation is "parlous". Leaving the disagreement over landscape impacts to one side, the appeal proposal site is in a sustainable location. The provision of 450 houses with ready access to jobs, services and public transport would make a valuable and sustainable contribution to Medway's housing needs, and that is a matter to which significant weight should be given.
75. The only area of uncertainty relates to precisely how bad the shortfall in the five year housing land supply is. In this regard, the SoS may take the view that, even on the best estimate, the Council is so far short of its requirement that the exact figure is of limited relevance. However, in Suffolk Coastal, the Court of Appeal indicated that the magnitude of the shortfall will be important in determining the weight to be attached to development which will address that problem.

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

76. In terms of need, the appellants are content to accept the Moor Street Inspector's conclusion that the total requirement (recovering a backlog of 2215 units within the next 5 years and adding a 20% buffer) is 10344, or 2068 dpa.
77. At the Moor Street appeal, the Council claimed a supply of 5587 units, which equates to a 2.7 year supply. However, in the more recent Hoo St Werburgh appeal<sup>17</sup> the Inspector concluded that the 5 year housing land supply was somewhere between 2.21 and 2.79 years. Precisely how this range was arrived at is not clear from the decision letter but, despite the Council's planning witness referring to 2.7 years, the SoCG records that the Council now considers that the correct figure lies within the range identified at Hoo St Werburgh.
78. As the Hoo St Werburgh decision records, the range of 2.21 to 2.79 years was arrived at without any exploration of the supply side. It is this aspect, or the lack of transparency which surrounds it, which results in concern about the robustness of the 2.21 to 2.79 range. In particular, the appellant has been unable to unearth any document which clearly explains what the Council considers its supply side is, and how that figure has been arrived at.
79. A table from the appendices to the 2015 AMR has been submitted<sup>18</sup> which appears to have been the source of the 5587 figure relied on at Moor Street. That table provides a breakdown between sites with planning permission, allocations, sites from the latest Strategic Land Availability Assessment (SLAA) and windfalls. While that document answers some questions, it raises others.
80. In particular, the Housing Trajectory table<sup>19</sup> shows large sites with planning permission for 3649 units. However, elsewhere the 2015 AMR records that the SLAA has identified 12808 sites of which 11481 do not have planning permission, which suggests that there are only 1327 units with planning permission<sup>20</sup>. That is less than one year's supply. The difference is not explained, nor are we able to interrogate the list of large sites to understand what assumptions have been made with regard to phasing.
81. The overall total includes in the five year housing land supply two allocations from the 2003 Local Plan which begin to deliver a projected 232 dwellings starting mid-way through the five year period. However, it is impossible to tell why, having been allocated for 15 years, it is assumed that they should suddenly come to life now. There is no way of identifying the basis on which it has been concluded that the sites from the SLAA are deliverable.
82. In circumstances where it is not possible to interrogate the Council's figure and so test its reliability, the appellants' planning witness has taken an alternative approach based simply on looking at what the Council has managed to deliver over the last five years. He readily accepts that that is not a conventional approach to deciding what is on the supply side, but the reason why he has done it is because it has not been possible to find (and the Council has not been able to provide) any better information from which to work.

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<sup>17</sup> CD10.7

<sup>18</sup> Inquiry Document 9

<sup>19</sup> Inquiry Document 9 p.112

<sup>20</sup> CD10.3 p.4

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

last half century to create Lordswood, the LCA specifically advocates new planting in the Elm Court LCT.

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

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

### ***The Appellants' Conclusion***

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

### **The Case for Medway Council**

#### ***The Council's Introduction***

105. It is common ground that the appeal proposal breaches saved Local Plan policy BNE25, such that under the first limb of s.38(6), the appeal should be dismissed "*unless material considerations indicate otherwise*". The same point also applies if the development breaches policies BNE34 and S4, as the Council maintains.
106. Before jumping to material considerations (primarily that the Council cannot demonstrate a five year housing land supply), it is necessary to consider the nature and extent of the breach of the development plan<sup>21</sup>. Local Plan policy BNE25 is an 'in principle' policy in the sense that it tells the reader that development is not acceptable here. It is not a policy that deals with detail or minutiae, but rather the fundamental question of whether it is acceptable under the Local Plan to build here. Policy BNE34 requires an analysis of the nature of the proposed development in terms of the criteria of the policy. Policy S4 seeks development to respond appropriately to its context, reflecting a distinct local character.

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

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

### ***Housing Land Supply***

110. As made clear in the SoCG, the Council accepts that it cannot demonstrate the requisite five year housing land supply, that the shortfall is substantial and that the housing land supply position is a significant material consideration in the determination of the appeal. Despite the appellants' acceptance of this, some Inquiry time was spent in cross examining the Council's planning witness on housing supply.
111. The SoCG records that the most recent appeal decision<sup>23</sup> concluded that the supply was within a range of 2.21 to 2.79 years. The appellants' planning witness suggested 1.8 years, albeit based on what he accepted was an unusual approach of averaging completions over the last five years and projecting the figure forward over the next five year period. Moreover, this witness stated that if the 'Sedgefield' approach was applied, wherein any backlog is made up over the next five year period, the supply would drop to 1.5 years.
112. Whilst the appellants' figures are not accepted by the Council, given the extent of any difference is readily apparent, and the common ground is that the shortfall is substantial, the Council considers that the Inspector and SoS have sufficient information, when considering the weight to be attributed to policies BNE25 and BNE34 to assess "*the extent to which relevant policies fall short of providing for*" the five year housing land supply, as sought by Suffolk Coastal<sup>24</sup>. In that context, the Council has taken proactive measures of promoting regeneration and is being robust in looking at sites such as Mierscourt Road to address the shortfall prior to the adoption of a new Local Plan.

### ***The weight to be accorded to Local Plan Policies***

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

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

<sup>23</sup> CD10.7 (Hoo St Werburgh)

<sup>24</sup> CD11.2 paragraph 47

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

114. It was accepted by the appellants' planning witness that Policies BNE25 and BNE34 are not out-of-date on the basis of inconsistency in principle with the Framework given that paragraph 215 in respect of protecting the countryside from being built upon is consistent with the fifth core planning principle in Framework paragraph 17 of "*recognising the intrinsic character and beauty of the countryside*" and the environmental dimension of sustainability at Framework paragraph 7. The March 2015 Ministerial letter<sup>25</sup> also makes it clear that it is consistent with the Framework to seek to protect the countryside from being built upon.
115. The Framework means to recognise the intrinsic, the inherent and innate, character and beauty of all countryside as countryside. This has nothing to do with special designations for landscape quality. Some parts of the countryside have a stronger or more distinct character and beauty than others, but the Council takes the view that all countryside is regarded by the Framework as intrinsically characterful and beautiful. Having recognised these intrinsic qualities, it would be nonsensical not to protect the countryside from development – there would be little point of recognising the intrinsic character and beauty of the countryside if one then did nothing with that recognition.
116. Therefore, the countryside protection purpose of BNE25 is consistent with the fifth bullet point of Framework paragraph 17. In the recent Audlem Road decision (in relation to a policy with a similar purpose to BNE25), the SoS concluded the policy to be generally consistent with the Framework and to carry "*reduced but still significant weight*" although it is acknowledged that in the present case it has been agreed that only limited weight should be afforded to policy BNE25 .
117. As to BNE34, the ALLI policy is a landscape character protection policy which is also consistent with the Framework. In the Station Road case, the Inspector found that although "*BNE34 does not set a criteria-based approach and the ALLI designations were not based upon a landscape character assessment*" so that the policy did not fully accord with the Framework in those respects, "*the discrepancy related to the nuances of how landscape should be protected through planning policy as opposed to the fundamental principle of whether those landscapes should be protected*". The Inspector then concluded that "*I can find nothing inherently inconsistent with the Framework in seeking to recognise and protect areas of recognised local landscape character. Thus, whilst the weight afforded to policy BNE34 must be reduced to a degree as a result of the inconsistency with paragraph 113 of the Framework, I am satisfied that its aims are broadly consistent with the Framework as a whole and I attach significant weight to the policy*". It is acknowledged by the Council that the Station Road decision predates the Suffolk judgment, and that the Inspector considered (on the basis

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<sup>25</sup> CD11.1 Mr Harouni proof of Evidence Appendix 1

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

118. The Council accepts it cannot demonstrate a five year housing land supply. Thus, by virtue of the Suffolk Coastal case, Framework paragraph 49 applies such that Local Plan policies BNE25 and BNE34 are out-of-date for the purposes of Framework paragraph 49. It is accepted that policy BNE34 is a policy for the supply of housing for the purposes of Framework paragraph 49, such that the weight to be afforded to the policy is reduced. However, the Council's case is that considerable weight should be attached to BNE34 in the present case, because its landscape character protection purpose is consistent with the Framework. This is reinforced as the site falls within part of a valued landscape for the purposes of Framework paragraph 109.
119. The Council acknowledges that the ALLI designations have not been reviewed and that the designations are part of a dated local plan. However, the LCA makes it clear that despite the then (Planning Policy Statement 7: *Sustainable Development in Rural Areas*) national policy approach moving away from local designations, the assessment work within the LCA "*will ensure an appropriate level of protection continues to be provided [for the ALLIs] without a continued need for rigid designation*". It also states it: "*is important that all of these valuable [ALLI] functions continue to be valued and protected, particularly when considering the urban-fringe character areas of Medway*". Thus, the criteria-based LCA 2011 is compliant with the objectives and approach of the Framework in relation to the assessment of effects on the natural environment, and the area assessed within the Capstone and Horsted Valleys LCA includes all of the Capstone, Darland and Elm Court ALLI.
120. The supporting text to policy BNE34<sup>26</sup> makes clear that the ALLIs are areas of landscape that enhance local amenity and environmental quality, providing an attractive setting to the urban area and surrounding villages. The ALLIs are significant not only for their landscape importance but for other specified important functions, including as green lungs or buffers, helping to maintain the individual identity of urban neighbourhoods and rural communities, as green corridors (or links) for the community to reach the wider countryside and as edge or fringe land, needing protection from the pressures of urban sprawl. In this case the function of maintaining biodiversity is not at issue. The landscape character and function of each of the ALLIs is to be protected, with the justification for designating each ALLI set out in order to provide guidance on the landscape features and functions the Council will aim to protect.
121. The Council considers that weight, limited in the case of policy BNE25 and considerable in the case of policy BNE34, should be given to the policies because of the countryside protection purpose, consistent with the approach set out in the Suffolk Coastal case:

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<sup>26</sup> CD10.4

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

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

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

## ***Sustainability***

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

## ***Landscape, Rural Character and Appearance***

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

- Park and to the south. The Council considers that the influence of the motorway, including traffic noise, has been overstated by the appellants and notes that motorways cutting through rural areas are a common feature throughout the country.
130. The appellants consider that road, aircraft noise and services infrastructure serve as constant reminders of proximity of urban area. However, the Council's conclusion is that the noise impacts on the tranquillity of the site are negligible and the electricity pylons are an unremarkable countryside feature. As such, the appeal site and the surrounding area retain a predominantly rural character, characterised by rolling arable farmland, with wooded blocks and a network of narrow country lanes and paths.
131. The Council's landscape witness also considers that the existing residential development at Lordswood can only be glimpsed through breaks in the wooded edge to the settlement. Thus, the influence of the Lordswood development on the character of the appeal site and the Elm Court sub-area is negligible, because it is, in the main, screened in views north and west across the appeal site.
132. It is common ground that the Elm Court Business Park is a detractor, but it is an isolated development and is typical of small industrial or business parks often located in the urban fringe countryside.
133. The LCA assessed the landscape condition of the Elm Court Area as poor, but the landscape sensitivity as high which is consistent with the Kent Landscape Assessment. The high sensitivity assessment is attributable to the perceived development pressure and the visual openness. The appellants' landscape witness agreed on this point but not to the Council's view that high sensitivity is due to the spatial sensitivity of the area. Despite this he accepted that the wider ALLI fulfils such a function, and that this sub-area of course forms part of the ALLI. Although the appellants' disliked the word 'pinch-point', the area is a relatively narrow point of the ALLI and it is, in the Council's view, right to regard the area as spatially sensitive.
134. The appellants draw attention to the low marks attributed to the Elm Court sub character area, compared to the others in the Capstone and Horsted LCA. However, this does not draw attention to the fact that the area is assessed as one of only two sub-areas to have a "coherent" pattern of elements and "high" visibility. Further, Elm Court is one of four "high" sensitivity areas (the other three are moderate). It is also important to note that the LCA does not seek to rank the sub-areas against each other<sup>27</sup> and the recommendation to restore is recognition that the area warrants restoration because of its high sensitivity. The LCA defines sensitivity as a measure of the ability of a landscape to accept change without causing irreparable damage to the essential fabric and distinctiveness of that landscape. The sensitivity categories used were: distinctiveness, continuity, sense of place, landform, tree cover and visibility. As to the appellants' claim that the Elm Court sub-area is the least harmful location for development, it is clear that the LCA makes no such ranking and without a full assessment of the other sub-areas (indeed the other ALLIs), there is no evidence to support the suggestion.

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<sup>27</sup> CD10.5 p122

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

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<sup>28</sup> CD1.9

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

140. In the medium term, the LVIA concludes that the development would result in a low overall magnitude of change with a consequent minor to minor/negligible adverse residual effect. That conclusion is largely based on the perceived benefits of the proposed landscape infrastructure mitigation, as it matures. However, the Council notes that that mitigation would come at the cost of the loss of a substantial area of open countryside and spatial harm, in terms of the large reduction in the rural gap/green wedge between Lordswood and Hempstead.
141. Moreover, while the proposed landscape infrastructure on the south eastern boundary shown on the illustrative masterplan and the photomontages<sup>29</sup> would help to mitigate some of the adverse visual effects, it does not follow any existing topographical feature but simply cuts across the field. The proposed boundary is arbitrary. Indeed the LVIA acknowledges that the boundary is arbitrary, because it follows the administrative boundary between Maidstone and Medway and is not representative of any change in landscape character further south. The need to plant a dense tree belt to screen the development is a consequence of the arbitrary or artificial nature of the boundary and it would result in the enclosure of the southern end of the Capstone Valley. Therefore, the Council considers that in the medium term (15yrs +), the overall residual landscape effect would be moderate adverse.
142. In terms of visual effects, the LVIA identifies a significant adverse effect (major or major/moderate adverse) from seven out of 10 of the representative viewpoints in the short term (1-15 years). The Council’s six additional viewpoints reinforce the findings of the LVIA that the development would result in significant adverse visual effects. Indeed, all six would experience major or major/moderate adverse effects in the short term.<sup>30</sup>
143. Although the LVIA and appellants’ landscape witness both describe the significant visual effects as geographically confined, the Zone of Visual Influence (ZVI) is not particularly geographically small, it extends approximately 1km north and south of the site and across the entire width of open countryside between Lordswood and Hempstead. As the viewpoints show, views from within the visual envelope tend to be relatively wide and expansive. It is also relevant to note that several of the viewpoints are from PRow, where similar views would be experienced over substantial lengths of each route, for example some 400m of footpath RC11 between viewpoints 8 and 16, and similar lengths of footpath RC28/KH34 and byway KH41<sup>31</sup>. Views from these rights of way are highly sensitive to change. Further, the development would be very prominent in the

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<sup>29</sup> CD11.9 (Appendix 10)

<sup>30</sup> CD11.9 (Appendix 7)

<sup>31</sup> See the appellants’ landscape witness’s Plan 2

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

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

### **The Council's Conclusion**

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

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

### **The Case Advanced by Others Appearing at the Inquiry**

150. **Mrs Vanessa Jones**, who is the chair of Bredhurst Parish Council and Bredhurst Woodland Action Group, explained that this proposal would impact on the Kent Downs AONB. Bredhurst is on the edge of that AONB in, she considers, a beautiful location. The residents of Bredhurst value the arable farmland which forms the appeal site and want it to be kept as rural land. Whilst traffic figures are not questioned, the traffic along the lanes is of concern. In particular she notes that there are no footpaths. The vehicles used by the occupiers of the proposed 450 additional dwellings would have a devastating effect on the existing community and change the rural character of the area.
151. **Mrs Pauline Bowdery** is the Clerk to Boxley Parish Council and spoke on behalf of the Parish Council, reading out a statement<sup>32</sup>. The Parish Council supports Medway Council's decision. In particular, she explains that what is important about the ALLI is the patchwork of different habitats with open flatter land being necessary to enjoy the sweeping views. Moreover, open spaces can be improved with hedges. It is not reasonable to suggest monotonous fields should be improved by developing 450 houses and tree planting. The fact that Elm Court Business Park exists as a detractor does not justify further development. The proposed development would extend urban frontages into the countryside. The proposed tree belt is only proposed as it would be required for mitigation. Further, the screen planting would take a long time to establish, it might not achieve the extent of screening predicted and for half of the year, when trees are not in leaf, the screening effect would be reduced.
152. Lordswood already has a clearly defined boundary. The proposed development would be at a pinch point in the ALLI and would impact upon the whole of the ALLI as 50% of the land at the pinch point would be developed. As a result development here would erode the function of the green wedge in terms of preventing coalescence between Lordswood and Hempstead.
153. The site is rural regardless of how quiet it might be. In this respect it is no different from the North Downs AONB which is rural even though in many parts noise can be heard from motorways or high speed rail and the M20 can be glimpsed.
154. The Parish Council do not understand why there is no case being made on traffic grounds or on the lack of medical facilities. One surgery has closed and another may close altogether as staff retire and money will not solve the problem of retiring doctors. In terms of traffic, people from the development would use private cars as buses use circuitous routes, get stuck in traffic and are costly. People would not walk to Hempstead because it is a 60mph road without footways and is too far, particularly with heavy shopping. Traffic at the beginning/end of school day indicates the difficulty of relying on public transport.

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<sup>32</sup> Inquiry Doc 6

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

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

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

### **Written Representations to the Inquiry**

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

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

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

### **Written Representations at the Application Stage**

166. **Petitions:** The Council received four petitions of objection at the application stage. The committee report advises that the largest of these was signed by 2,730 people objecting to the proposal on the grounds of loss of local beauty spots, loss of farmland and additional strain on local schools and medical services. Three petitions of 169 signatories were received on grounds of additional pollution, impact on the local highway leading to reduced highway safety, impact on the character and appearance of the area and AONB, loss of a green lung providing relief to the adjoining urban areas and preventing coalescence, loss of ancient woodland, loss of habitat reducing flora and fauna, extra demand on education and healthcare, impact on local water supply, asbestos risk from the nearby waste transfer station and no benefits from the scheme for the existing residents.

167. **Letters of objection:** At the application stage the committee report records 295 letters of objection from 285 respondents, with a further 74 letters of objection reiterating objections and adding to them. In addition to the matters raised by the letters above the following objections are made:

- i) the proposed development would not be a natural extension to the urban area which is well contained;
- ii) the occupiers of Gibraltar Farm and Gibraltar Farm Cottages would be surrounded on three sides by residential development;

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

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

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

### **Conditions and Obligations**

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

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

171. The conditions include a shortened timescale for the submission of reserved matters and commencement given the pressing need for housing. It is for the Council to be prompt in discharging conditions to get progress made on site. The timing and phasing conditions proposed by the parties have been adjusted for clarity and to avoid conflict between conditions. I have omitted the suggested electric car charging point condition as there is no formal policy basis for it nor is it a pre-requisite for making the proposal acceptable in planning terms, although I accept it is a laudable suggestion and the appellants did not object to it.
172. I have reorganised the conditions into clear subject groups and altered pre-commencement style conditions to other trigger points where it is appropriate.
173. **The s.106 Unilateral Undertaking** provides for education, healthcare, open space, public transport, waste and recycling, community facilities and Medway SPA contributions as set out in the details at paragraph 7 above. It also commits to providing 25% affordable housing.
174. I have had regard to this planning obligation in the light of the tests set out in the s.122 of the Community Infrastructure Levy Regulations 2010 and repeated in the Framework at paragraph 204. These state that a planning obligation may only be sought if it is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development. In this regard a CIL compliance checklist has been provided by the Council<sup>33</sup>. The approach to seeking contributions is set out in the Council's Medway Council Guide to Developer Contributions (2014)<sup>34</sup>.
175. In terms of the education contribution it is derived from a formula based on the likely number of children arising from the proposed development. The calculations are based on charging rates per type of pupil. It is calculated that the scheme would result in the need for 44.55 nursery places (£377,396). This would be used at one or more of Swingate Primary, Hempstead infants or new provision. For primary education 109.35 places are sought (£930,010). This would be used at one or more of Lords Wood Primary Academy, St Benedict's RC School or new provision. The secondary provision would require 66.95 places (£919,269). This would be used at Walderslade Girls and Greenacre Boys Schools or a new provision. This results in the total contribution of £2,226,674. The calculations are set out in Inquiry Document 1 and the sums are fairly and reasonably related to the development based on Education Department confirmation that there is inadequate capacity within schools in this area, a calculated pupil product ratio and costs. The schools proposals identified would be necessary to provide capacity through expansion and extension. No issue arises with regard to other projects or pooling of s.106 monies. This contribution accords with the Council's Medway Council Guide to Developer Contributions.

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<sup>33</sup> Inquiry Document 1

<sup>34</sup> CD10.5

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

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

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

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

### **Inspector's Conclusions**

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

#### ***The Main Considerations***

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

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

### **The Planning Policy Position**

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

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

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

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

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

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

### **Housing Land Supply**

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

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

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

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

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

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

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

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

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

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

### **Whether there are other Benefits of the Scheme**

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

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

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

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

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

### **Other Matters**

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

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

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

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

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

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

### **The Planning Balance**

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

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

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

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

### **Recommendation**

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

*Zoë H R Hill*

Inspector

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

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

### FOR THE APPELLANT:

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

### INTERESTED PERSONS:

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

### INQUIRY DOCUMENTS:

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

### CORE DOCUMENTS

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

- 1.6 Environmental Screening Opinion
- 1.7 Planning Statement
- 1.8 Design and Access Statement (EDP1995\_04a)
- 1.9 Landscape and Visual Impact Assessment (Volume 1 EDP1995\_04a)
- 1.10 Landscape and Visual Impact Assessment Volume 2 L\_EDP1995\_04a
- 1.11 Ecological Appraisal. C\_EDP 1995\_05a.
- 1.12 Archaeological and Heritage Assessment. EDP 1995\_03a
- 1.13 Arboricultural Assessment. T\_EDP 1995\_02a. July 2014
- 1.14 Transport Plan Amended. GC/HB/P14-630/10
- 1.15 Residential Travel Plan. GC/CS/P14-630/02
- 1.16 Flood Risk Assessment. GL/HB/P14-630/03
- 1.17 Utilities Assessment. PL/HB/P14-630/04
- 1.18 Site Ground Investigation. Appendix C to FRA CD DOC GF1.16
- 1.19 Residential Travel Plan Amended. GC/CS/P14-630/11
- 1.20 Furneaux & Co. Agricultural Land Classification (P889)
- 1.21 Ecology Addendum Report. (C\_EDP 1995\_06)
- 1.22 LinSig Output M2 J3 (Scheme Model with Lodge Hill Mitigation Scheme)
  - 1.22.1 LinSig Output M2 J3 (Base Model (Existing Junction) Without Development)
  - 1.22.2 LinSig Output M2 J3 (Base Model (Existing Junction) With Gibraltar Farm + Lodge Hill)
  
- 2.1 Illustrative Masterplan. 1995/77d
- 2.2 Illustrative Masterplan. Amended Version 1 1995/97a
- 2.3 Site Plan EDP 1995/74b
- 2.4 Parameter Plan 5 Advance Planting Amended. edp 1995/99
- 2.5 Parameter Plan 2 Access Plan Amended. 1661-SK-006 Rev A
- 2.6 Site Section Plan EDP/1995/79a
- 2.7 Open Space Breakdown EDP1995/102 dated 03 Dec 2015
- 2.8 Application Boundary Site Plan EDP 1995/74c (Amended August 2016)
  
- 3.1 Covering email updating ecological report
- 3.2 Letter to case officer (G. Gould)
- 3.3 Letter to case officer (G. Gould) with appended letters by BTF Lister
- 3.4 Letter to case officer (G. Gould) clarifying transport + S106 position
- 3.5 Gleaming Wood Drive, Lordswood appeal decision
- 3.6 Email to case officer clarifying points before committee
- 3.7 Email to case officer (G. Gould) with extract from Autumn Statement
- 3.8 Email from Noel Filmers (Medway Council) to Appellant
- 3.9 Email to case officer
- 3.10 Letter from case officer seeking clarification on open space contribution request
- 3.11 EDP email to case officer (G. Gould) clarifying open space
- 3.12 Email from Medway's G. Gould to G. Warren re S106
- 3.13 Email from Medway's G. Gould confirming open space

- 4.1 Planning Committee Report
- 4.2 Planning Committee Supplementary Report
- 4.3 Minutes of the Meeting
- 4.4 Decision
  
- 5.1 Appeal Application Form
- 5.2 Appeal Notification to Ownership
- 5.3 Appeal Covering letter
  
- 6.1 Appellants Statement of Case
- 6.2 LPA Statement of Case
  
- 7.1 LPA Planning Evidence Proof of Evidence – Majid Harouni
- 7.2 LPA Planning Evidence Summary of Proof – Majid Harouni
- 7.3 LPA Landscape Proof of Evidence – David Withycombe
- 7.4 LPA Landscape Summary Proof of Evidence – David Withycombe
- 7.5 Appellant Planning Evidence Proof of Evidence – Graham Warren
- 7.6 Appellant Planning Evidence Summary Proof of Evidence – Graham Warren
- 7.7 Appellant Planning Evidence Proof of Evidence – Duncan McInerney
- 7.8 Appellant Planning Evidence Summary Proof of Evidence – Duncan McInerney
  
- 8.1 Statement of Common Ground September 2016
  
- 9.1 List of Agreed Draft Conditions
- 9.2 Signed but Undated s.106 Unilateral Undertaking
  
- 10.1 Medway Local Plan Update
- 10.2 Medway Council Issues and Options (2012-35)
- 10.3 Medway Council Annual Monitoring Report
- 10.4 Medway Local Plan (saved policies) (S4, BNE25, BNE34)
- 10.5 Medway Landscape Character Assessment Mar11 Main Report
- 10.5.1 Medway Landscape Character Assessment Mar11 Appendices
- 10.5.2 Medway Landscape Character Assessment Mar11 Map
- 10.6 Medway Developers Contribution Guide
- 10.7 Appeal Decision Land West of Hoo St Werburgh
  
- 11.1 LPA Planning Evidence Appendix 1 Minister of State for Housing Letter 27th March 2015
- 11.2 LPA Planning Evidence Appendix 2 Suffolk Coast Hopkins Judgement
- 11.3 LPA Planning Evidence Appendix 3 Appeal Decision Land at Station Road, Rainham
- 11.4 LPA Planning Evidence Appendix 4 Appeal Decision Muller Properties Group
- 11.5 LPA Planning Evidence Appendix 5 Appeal Decision Moor Street, Rainham

- 11.6 LPA Planning Evidence Appendix 6 Appeal Decision Land Off Bath Road, Leonard Stanley
- 11.7 LPA Planning Evidence Appendix 7 Land East of Mierscourt Road, Committee Report 01-06-2016
- 11.8 LPA Planning Evidence Appendix 8 Land North of Peninsula Way, Chattenden, Rochester, MC-15-3104
- 11.9 LPA Planning Evidence Landscape Proof of Evidence Appendices – David Withycombe
- 11.10 Appellant Planning Evidence Proof of Evidence Appendices – Graham Warren
- 11.11 Appellant Planning Evidence Proof of Evidence Appendices Parts 1 - 13 – Duncan McInerney
  
- 12.1 Illustrative Masterplan [EDP 1995/125] (dated 5 Sept 2016)
- 12.2 Site Plan / Application Boundary Plan [EDP 1995/74d] (dated 5 Sept 2016)
- 12.3 Informative to Application Boundary Plan [EDP 1995/124a] (dated 5 Sept 2016)

## Appendix 1 – Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Trees and Landscaping and Ecology

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

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

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

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

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

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

- 11) No dwelling shall be occupied until a Woodland Management Plan (WMP) for the existing and proposed woodland areas has been agreed in writing by the local planning authority. That part of the WMP for Hall Wood Ancient Woodland shall be in accordance with EDP's Heads of Terms for a WMP (EDP report ref: C\_EDP1997\_07).

The WMP shall include the following:

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

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

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

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

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

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

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

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

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

The EDS shall include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Highways

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Archaeology

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

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

#### Flood Risk and Drainage

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

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

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

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

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

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

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

#### Noise

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

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

#### Air Quality

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

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

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

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

Contamination

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

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

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## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

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

### **SECTION 3: AWARDS OF COSTS**

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

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.