



## Appeal Decision

Inquiry held on 11 – 19 April 2024

Accompanied site visit made on 12 April 2024

**by David Spencer BA(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5<sup>th</sup> July 2024**

---

**Appeal Ref: APP/V2255/W/23/3333811**

**Land at Ufton Court Farm, Tunstall, Sittingbourne, Kent.**

- 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 Hallam Land Management Ltd against the decision of Swale Borough Council.
  - The application Ref 22/505646/OUT, dated 25 November 2022, was refused by notice dated 13 November 2023.
  - The development proposed is construction of up to 290 dwellings, the formation of a new means of access onto Minterne Avenue, new footpaths and cycle routes, the creation of new surface water drainage, new landscaping and habitat creation, ground works and other infrastructure.
- 

### Decision

1. The appeal is allowed, and planning permission is granted for the construction of up to 290 dwellings, the formation of a new means of access onto Minterne Avenue, new footpaths and cycle routes, the creation of new surface water drainage, new landscaping and habitat creation, ground works and other infrastructure at Land at Ufton Court Farm, Tunstall, Sittingbourne, Kent in accordance with the terms of the application ref 22/505646/OUT and the conditions set out in the schedule attached to this decision.

### Procedural Matters

2. The proposal seeks outline planning permission with all matters reserved except for access. Whilst matters of appearance, landscaping, layout and scale would be reserved for future determination, plans to be approved at this outline stage would include a land use parameters plan that would set out the extent of the developable area and a separate green infrastructure plan which would set the broad framework for the 17.33 hectares (ha) of green spaces proposed. The proposal was accompanied by an illustrative masterplan, but this would not form part of any plans to be approved at this stage. The Local Planning Authority (LPA) made its decision on this basis, and so have I.
3. Since the LPA made its decision, the National Planning Policy Framework (NPPF) was updated on 19 December 2023 and various parts of the Planning Practice Guidance (PPG) thereafter. I am satisfied that the main parties have had an appropriate opportunity to consider the relevant updated national planning policy in preparing their evidence for this appeal.
4. An executed agreement pursuant to Section 106 (S106) of the Town and Country Planning Act 1990 (as amended) and dated 7 May 2024 was submitted

after the Inquiry event. The S106 agreement includes obligations concerning community infrastructure (including education and health), off-site highways works, public rights of way improvements, bins, mitigation under the Habitats Regulations, air quality management and First Homes. A separate Unilateral Undertaking (UU) dated 7 May 2024 was also submitted after the Inquiry event. The UU contains obligations relating to affordable housing provision other than First Homes. I return to the matter of the planning obligations later in this decision.

5. In addition to the lengthy accompanied site visit on 12 April 2024, I also visited the area on my own, including the wider viewpoints, on 10 April 2024. At the request of local residents, I specifically observed highway conditions in Minterne Avenue and its side roads at a time to coincide with local schools on the morning of 17 April 2024.

### **Main Issues**

6. The main issues in this appeal are as follows:
  - (1) The extent of the deliverable housing land supply.
  - (2) The effect on the character and appearance of the surrounding area including whether the appeal location is a valued landscape.
  - (3) What is the appropriate provision of affordable housing; and
  - (4) Other matters in the planning balance.

### **Reasons**

#### *The Development Plan and site context*

7. The adopted development plan comprises 'Bearing Fruits 2031: The Swale Borough Local Plan' (the SBLP), adopted in July 2017. The Plan was prepared and examined in the context of the then 2012 NPPF. Whilst there has been some consistency through the revisions of the NPPF, the SBLP nonetheless predates some significant changes in national planning policy including establishing local housing need through the standard method.
8. Policy ST2 of the SBLP, which sets out the housing requirement, includes a requirement for an early plan review<sup>1</sup>. Whilst there have been efforts to prepare a new Local Plan, the latest emerging Local Development Scheme<sup>2</sup> identifies that the Council intend to go back to the drawing board and are at the formative stages of preparing a new Plan, which is pencilled for adoption by early summer 2026.
9. Sittingbourne is identified in the SBLP at the top of the settlement hierarchy and a focus for growth during the plan period. Whilst the appeal site is in the parishes of Borden and Tunstall, the appeal site is at the edge of the built-up area of Sittingbourne. The appeal site is not allocated in the SBLP. For the purposes of the development plan, the appeal site is countryside, outside of the built-up area boundary for Sittingbourne. It is not identified as an Area of High Landscape Value (AHLV), but it is within a designated 'Important Countryside

---

<sup>1</sup> With a new Plan to be adopted by April 2022

<sup>2</sup> March 2024, Appendix 1 to Mr Watson's PoE and at CD12.7 (page 21)

Local Gap' (ICLG). The ICLG is a local spatial planning tool addressing settlement identity, and is not a landscape designation.

**Main Issue 1 - Housing requirement and deliverable land supply**

10. Policy ST2 of the SBLP sets out the housing requirement for the period 2014-31. The figure is 776 dwellings per annum (dpa) and is based on the outmoded method of objectively assessed need. The LPA has not reviewed Policy ST2 to determine whether it remains up to date<sup>3</sup>. Consequently, in accordance with NPPF paragraph 77, the assessment of the deliverable supply of housing land should be measured against a housing requirement based on local housing need (LHN) using the standard method.
11. Whilst the LPA has been preparing a review of the SBLP, at various stages, for some time, there is no dispute that the provisions at paragraph 226 of the NPPF do not apply. Accordingly, the supply of deliverable housing land in the Borough should be measured against a benchmark of at least five years' worth of the local housing need requirement.
12. The Council's latest Housing Land Supply Position Statement covers the period 1<sup>st</sup> April 2023 to 31<sup>st</sup> March 2028<sup>4</sup>. This is the period on which the five year deliverable supply of housing land should be assessed. The statement utilises a LHN figure of 1,086 dpa as at 1 April 2023. On 25 March 2024, revised affordability ratios were published<sup>5</sup>. This would derive a LHN figure of 1,048 dpa for Swale which the LPA submit would give them a 5.13 years deliverable supply, on their assessment. The problem with this approach is that it is only updates one factor in the overall assessment of housing land supply. Without any parallel updating of completions and supply there is not the complete picture. This would result in a skewed outcome that is likely to include the prospect of double counting<sup>6</sup>. As such I do not consider it appropriate, or consistent with NPPF paragraph 77<sup>7</sup>, to partially update the housing land supply position outside of a comprehensive annual assessment process.
13. Planning Practice Guidance (PPG) at paragraph 2a-004-20201216 says under Step 2 when calculating housing need. "The most recent median workplace-based affordability ratios....should be used." For the purposes of calculating housing need, for example when preparing a Local Plan or, where required, when methodically updating the annual housing land supply position statement, that is logical. But I remain of the view, that when assessing deliverable housing land supply, a partial update to only look at the housing need component would not provide a robust picture of the overall situation. The updated ratios are published annually in March at a time that coincides with the end of the typical monitoring period (31st March). This sequencing would allow for LPAs to expediently update annual position statements, particularly where the circumstances are beneficial to them.
14. Given recent Housing Delivery Test performances the 20% buffer does not apply. Consequently, for the purposes of the assessment of deliverable supply, the housing requirement should be 1,086 dpa. This amounts to 5,430 homes

---

<sup>3</sup> Paragraph 1.4, SoCG on Housing Land Supply [CD5.5]

<sup>4</sup> Originally published in November 2023 [CD7.11] and a January 2024 summary update to reflect 2023 NPPF and removal of the 5% buffer [CD7.10]

<sup>5</sup> Reducing the house price to workplace based earnings ratio from 10.95 to 9.6 in Swale

<sup>6</sup> Completions informing the affordability ratio may also still be counted within the supply

<sup>7</sup> Which refers to "identify and update annually a supply of specific deliverable sites...." (my emphasis)

over the five year period. On its figures, the LPA asserts it can demonstrate a 4.95 years deliverable supply against this requirement.

15. The Housing Land Supply Statement of Common Ground (SoCG) [CD5.5] identifies that there is an uncontested deliverable supply of 4,077 homes within the relevant five year period, including an appropriate allowance for additional windfalls in years 4 and 5. As such the disputed supply relates to 17 sites, amounting to the delivery of 1,302 homes. Taking the definition of “deliverable” at the Annex 2 Glossary of the NPPF, the disputed sites fall into the two categories at parts a) and b). I deal with them in that order.
16. As part of the inquiry the LPA has submitted updates in relation to the contested sites and the appellant has had the opportunity to rebut this. The LPAs updates are not introducing new sites or increasing the capacity of sites. The evidence mainly seeks to demonstrate that matters have not stood still since the publication of the LPAs position statement in November 2023. The supply side of the equation for the LPA remains the same. Given the significance of deliverable supply, I consider the LPA should be permitted to present updates to support what they have identified as deliverable as of 1 April 2023. This would be consistent with recent Secretary of State decisions<sup>8</sup>. I accept that introducing new planning permissions approved since 1 April 2023 would skew the data, as set out in the terms expressed in the Woolpit decision<sup>9</sup>. However, looking at the Scott Schedule [CD5.5a], the only site where the LPA has referenced a post April 2023 planning consent is the appeal decision on disputed Site 8. I set out below my reasons for discounting that site in any event.
17. In terms of those contested sites that have detailed planning permission (category a)) the NPPF is clear that these should be considered deliverable unless there is clear evidence that homes will not be delivered within five years. With regards to Land at Otterham Quay (Site 11) progress is being made on discharging various conditions on the November 2020 permission, as set out in the LPAs March 2024 update. As such, the 34 dwellings should remain in the deliverable supply as cautiously profiled by the LPA. Whilst land to the rear of 45-55 High Street (Site 12) has a long planning history, the site benefits from detailed planning consent for 32 units granted in November 2021. It may be the case that there have been no applications to discharge conditions, but there is still time left on the permission (approximately 7 months at the time of the Inquiry event). There is some dispute over whether Listed Building Consent would be separately required, but the LPA advised that this was an informative on the decision rather than a certainty. Overall, I have maintained 32 dwellings on this site within the deliverable supply.
18. Turning to the BMM Weston site on Brent Road (Site 13), this was granted planning permission over 24 years ago. There is no dispute the site has an extant planning consent. The site has subsequently been allocated in the SBLP and more recently through the Neighbourhood Plan process. Whilst the permission is very old, there is very little before me that it cannot be practicably implemented within the five year period and along the prudent delivery projection set out by the LPA. On this basis I have counted the 28 dwellings within the deliverable supply.

---

<sup>8</sup> CD9.21 – Woburn Sands and CD9.20 - Winsford

<sup>9</sup> CD9.19, paragraph 67, appeal decision 3194926

19. The Conyer Brickworks (Site 14) benefits from an aged extant permission from 2011. The site has transferred ownership and a revised application submitted 4 years ago remains undetermined. The LPA now advise that the site owner intends to submit a Section73 application to amend the 2011 scheme on a smaller part of the site (currently at the pre-application advice stage). I consider this is clear evidence that the current site owner does not seek to implement the 2011 consent. Given there is no alternative detailed permission for the site I have discounted 24 dwellings from the deliverable supply.
20. Land off Sheppey Way (Site 15) was granted full planning consent for 14 units as of November 2020. It is contested that the consent has lapsed but I do not have the clear evidence for this. That would be a matter for the next assessment period and so I still include 14 units in the deliverable supply.
21. With regards to the category b) sites, the issue is largely whether the threshold of "clear evidence" has been met. The PPG at paragraph 68-007-20190722 provides advice on what might constitute "clear evidence". This includes, amongst other things, for large scale sites with outline or hybrid permission, the degree of progress being made towards approving reserved matters. For other sites, it references firm progress being made towards the submission of an application; firm progress with site assessment work; or clear relevant information about site viability, ownership constraints or infrastructure provision.
22. The LPA forecast delivery of some 300 dwellings on Land between Frogal Lane and Lower Road, Teynham (Site 1). The site is allocated in the SBLP and is being brought forward by a volume house builder. A reserved matters permission is pending a decision and all but one of the pre-commencement conditions have been discharged. Whilst both parties agreed that it was not necessary that I visit any of the disputed sites, this is one that I have nonetheless observed. Construction work is currently under way on the access from the A2 into the site. Firm progress is being made to bring the site forward as per the LPAs March 2024 update. The proposed delivery rates align with the Council's average build out rates from their robust monitoring processes. As such 300 dwellings should be counted as deliverable supply from this major site within the assessment period.
23. There are various sites (generally SBLP allocations) where an implementable consent remains subject to either a mechanism for securing planning obligations or a reserved matters application. On the whole, including having regard to the LPAs updates as of March 2024, I find the threshold of clear evidence has not been met to provide confidence of delivery on these sites (Sites 2, 3 and 4) within the identified five year period. Whilst there appears to be some progress being made, and the sites are being brought forward by national housebuilders, it remains that there are no records, statements of common ground or proformas from the developers in terms of their timeframe to bring the sites forward, that are before me. Nor is there is evidence in terms of copies or extracts of Planning Performance Agreements where relevant. Whilst Appendix E of the Housing Supply Position Statement is a schedule of site promoter responses, the evidence is perfunctory, often no more than one sentence confirming the Council's forecast delivery, rather than the sort of evidence identified at PPG paragraph 68-007. Consequently, I have discounted the cumulative deliverable supply of 573 dwellings from these sites.

24. Various sites that form part of the wider regeneration area at Queenborough and Rushenden at Policy Regen 2 ST4 of the SBLP are disputed (Sites 5, 6 and 7). Whilst the LPA have taken a very cautious outlook and only profiled delivery in year 5 on each of the sites, and notwithstanding the involvement of Homes England as master developer, there is not the clear evidence before me that delivery would occur on these sites within the required period. There are no planning applications and little to demonstrate that beyond any site preparatory works there is a clear timeframe to market the sites, nor any positive outcome from any site disposal process. Consequently, I have discounted the 216 units forecast by the LPA to be delivered across these sites.
25. Land at North East Sittingbourne (Site 8) has been allowed on appeal after the base date for the assessment period. The appeal has established outline consent for up to 380 dwellings and the LPA assessing 45 units being delivered in the period. Various stages remain before any implementation could take place including reserved matters and the discharge of conditions. There is not the clear evidence of delivery required in terms of how and when the developer intends to move forward from the outline permission and so I have discounted 45 dwellings from the supply. Along similar lines, I have discounted 10 units of supply from Nil Desperandum (Site 17) where outline planning permission remains to be determined, with access remaining an outstanding issue to be resolved. Similarly, I have also discounted 9 dwellings at Land at Green Barrow Farm (Site 19) where a decision on an outline planning application is still pending after 3 years, with scant evidence that the issues could be satisfactorily resolved within a deliverable timeframe.
26. The planning history and situation at The Lion, Milton Regis appears complex, with an extant outline permission, and an application for full permission pending determination and which is now described by the LPA as "retrospective". The outline consent appears to have lapsed before the relevant period and the full application has not been determined. Matters may have been resolved by the next assessment period, but this is a situation where there is not the clear evidence of delivery, including any certainty that what has occurred at the site would be granted planning permission retrospectively. I have therefore discounted the 10 units.
27. Finally, at Ordnance Wharf, Flood Lane (Site 20), this is a site that has a chequered planning history but does not appear to benefit from an extant planning permission at the time of this Inquiry. Whilst the site is allocated in the Neighbourhood Plan the succession of withdrawn planning applications does not instil confidence on delivery and until such time that there is clear evidence, the asserted deliverable supply of 7 units should be discounted.

#### *Conclusion on Housing Land Supply*

28. Bringing this all together, against the housing requirement over the five year period of 01 April 2023 to 31 March 2028 of 5,430 dwellings, I have found there to be a deliverable supply that would equate to circa 4.1 years' worth. As such, the development plan is not delivering the required number of homes needed by some margin. The degree of shortfall goes to the weight to be ascribed to the benefit of the new homes from the appeal proposal. It also means the most important policies for determining the application are out of date, as set out at footnote 8 to NPPF paragraph 11d).

## **Main Issue 2 - Character and Appearance**

29. The appeal site is a commercial orchard predominantly laid out in regimented rows of young perpendicular apple trees planted along tall post and wire supports. In the north-western part of the site is a block of older pear trees (circa 50 years old), grown in structured rows. The evidence points to these pear trees being at the end of their commercial life. Whilst they are recognised in the arboricultural survey as Category B trees, and so of an age offering some landscape significance, they are nonetheless largely subsumed within the arrangement of young apple trees. The apple trees are replaced on a regular cyclical basis<sup>10</sup>. As such the prevailing character of the appeal site is one of a highly managed, intensive form of food production with a quasi-manicured appearance, including the neat grass strips between the rows of trees.

### *Whether a Valued Landscape?*

30. The NPPF at paragraph 180(a) references “valued landscapes”, which are to be protected and enhanced. The NPPF indicates that this should be in a manner commensurate with their statutory status or identified quality in the development plan. The appeal site has no statutory landscape status. It is some distance from the Kent Downs National Landscape (KDNL), which is to the south of the M2. Nor does it form part of the setting to this landscape<sup>11</sup>.
31. In terms of the development plan, Policy DM24 addresses conserving and enhancing valued landscapes. Designated landscapes are identified as the Area of Outstanding Natural Beauty (now the KDNL) and Areas of High Landscape Value (AHLV) at the Kent and Swale level. The appeal site is not located within an AHLV as identified in the SBLP. This is important because the SBLP specifically addresses “valued landscapes”, including by reference to key landscape characteristics in the Borough. In this context the SBLP cites the ‘Northern Horticultural Belt’ which is primarily defined by horticultural activity with a predominance of orchards. Having taken this into account, the SBLP nonetheless does not formally designate the appeal location in landscape terms. Moreover, recent evidence base intended to inform a review of the SBLP has not recommended that the appeal site be included within an AHLV<sup>12</sup>.
32. Part A of Policy DM24 is the obvious starting point for an “identified quality” in the development plan that would connote a valued landscape as per the text in the brackets at NPPF paragraph 180a. I accept, however, that a valued landscape could exist outside of those areas identified in part A of Policy DM24 of the SBLP. It is conceivable that a valued landscape could apply at a relatively small-scale. That said, the landscape value should be identified in the development plan and bear characteristics that elevate the landscape beyond the ordinary. Moreover, the Landscape Institute’s guidelines caution against the over-use of identifying valued landscapes<sup>13</sup>.
33. The title of the SBLP is “Bearing Fruits” and the Plan regularly references orchards, reflecting that the area has been “the cradle of cultivated fruits since the 16<sup>th</sup> Century”<sup>14</sup>. I am under no doubt that fruit growing, particularly within

---

<sup>10</sup> “The majority of the existing apple trees were planted in 2020.” Paragraph 2.2 - Rebuttal Proof of Mrs Kirk

<sup>11</sup> As agreed in the Landscape Statement of Common Ground [CD5.6] at paragraph 1.7.

<sup>12</sup> Swale Local Landscape Designations, Review and Recommendations 2018 [CD10.11, pages 62 & 65] The appeal site is in search area 05. There was no recommendation to amend the local landscape designations (i.e. extend the existing AHLV to the east to incorporate the appeal location).

<sup>13</sup> CD10.5, Appendix 4, paragraph 4.2.12

<sup>14</sup> Paragraph 2.1.26 of the SBLP

the narrow band of the northern horticultural belt, which wraps around the south of Sittingbourne including at the appeal location, is emblematic of this part of Kent. To take these references on their own, however, as a basis that there is an identified quality in the Plan that supports any such area of commercial orchard being assigned as a valued landscape would be too broad brush an approach. It would potentially envelop appreciable areas of what could reasonably be described as ordinary landscape for this part of North Kent, beyond those extensive parts of the Borough that have already been specifically assessed and identified as AHLV, including parts of the Fruit Belt.

34. Drilling down further into the SBLP, Policy CP4 on design refers to conserving and enhancing landscape by reference to retaining "old orchards and fruit trees". Policy DM29 on Woodlands, trees and hedges seeks to ensure the protection, enhancement and sustainable management of "orchards" in its first sentence. This is reasonably a catchall term to cover at criterion 1 the sustainable management of old orchards and at criterion 2 the provision of new orchards within development proposals.
35. Paragraph 7.7.88 in support of Policy DM29 says the policy seeks to safeguard specifically, amongst other things, "old orchard trees". But I note the wording of the policy separates old orchards from fruit trees (contrary to the wording in Policy CP4). That said, the final element of sub-part 3 in criterion 4 when applied to "fruit trees" says that they should make an important contribution either to the amenity, historic, landscape, townscape or biodiversity value of the site and/or surrounding area.
36. Overall, when looking at the SBLP there is a clear focus on traditional or old orchards. Whilst Policy DM29 refers to "fruit trees", this on its own, as a singular reference, does not lead me to arrive at a conclusion that a commercial orchard falls squarely within an identified quality in the development plan that prompts a valued landscape status. The smaller block of pear trees on the site are not evocative of a traditional orchard<sup>15</sup>.
37. The matter of valued landscape outside of designated landscapes is also addressed in technical guidance from the Landscape Institute (TGN 02/21). In terms of whether there are qualities that give the landscape a significant value, above the ordinary, the evidence here is not persuasive. Whilst there is a gentle undulation across the appeal site typical of this part of the Kent Downs dip slope, the topography is not a distinct or particularly conspicuous dry valley. There is a relative tranquillity and reasonable public access, but these are arguably common characteristics for large tracts of the countryside.
38. The commercial orchard is well-managed and has various qualities, including particular seasonal attributes (spring blossom and autumnal fruits). This is clearly valued by local residents and those using the public footpaths around the site. However, these qualities apply to any commercial orchard, of which there remain others in this part of Kent despite the evidence of their declining extent. Moreover, similar seasonal qualities could be said of other types of farming and horticulture, again leading to a too liberal approach to identifying what might constitute a valued landscape.
39. The modern commercial orchard on the appeal site adjoins the remnants of a traditional orchard immediately to the south. It is submitted that this presents

---

<sup>15</sup> Having regard to the 2010 Natural England Technical Information Note TIN012 [CD10.2]



a time depth, revealing the evolution of orchard land use in the 'Fruit Belt'. This can only be experienced from relatively few perspectives due to intervening boundary vegetation. Moreover, the concept of the time depth, in terms of the changes in orchard character, can be more widely experienced across the Fruit Belt landscape, such that I do not consider there to be a significant value in experiencing them side by side.

40. Reference is made to Kent's identity as the 'Garden of England' and fruit growing comprising part of the "DNA" of this part of Kent and Swale in relation to the "North Kent Plain" (National Character Area 113). Again, encompassing any area of commercial orchard into valued landscape on this basis would be too broad. There is very little that specifically ties the site to a particular historical or cultural association, with fruit growing on the site being a relatively recent enterprise.
41. For the reasons set out above, I conclude that the appeal site is not valued landscape in the terms set out at NPPF paragraph 180a). I note the nearby Swanstree Avenue appeal site was determined to comprise a valued landscape. In clear contrast to the site and location before me, the Swanstree Avenue site is in an AHLV as identified in the SBLP. As such there are material differences.

#### *Landscape Impact*

42. Whilst I have found the appeal site is not a "valued landscape", the site has attributes of landscape value<sup>16</sup>. At the broad level the Landscape Assessment of Kent 2004 (the Kent LCA) addresses the character areas of the county, including the Fruit Belt. More fine-grained assessment is provided in the Swale Landscape Character and Biodiversity Appraisal Supplementary Planning Document (the SPD). The appeal site is within Landscape Character Area 42 'Tunstall Farmlands' in the SPD. The latest Borough level evidence is to be found in the Landscape Sensitivity Assessment 2019 (the LSA), to which the appeal site is within parcel SE04 (South-west Sittingbourne).
43. The Fruit Belt area is clearly a mixed, complex, richly varied and changing landscape, with the Kent LCA identifying that "notably to the south-west of Sittingbourne" the land use is now more typically open arable farmland. The local level of landscape assessment, for the Tunstall Farmlands, also identifies a combination of arable fields and areas of commercial orchards and horticulture. The local level evidence also refers to spatial variations, clearly recognising that even within these small areas of assessment, there are varying degrees of rurality and higher areas of landscape sensitivity.
44. In looking at the characteristic features of the host landscape at the more local level (Tunstall Farmlands) I find the appeal site shares only some of them, in large part the land use, the gentle topography and strong boundary features. On the whole, these are not particularly remarkable at the appeal site, save for the quality of the hedges and trees along the south and west edges of the site.
45. Across the wider host landscape area there is a strong rural character but that recedes at those parts that are at the edge of Sittingbourne, reflecting the visible and perceptible urban influences such as housing, streetlights, garden boundaries and traffic. Accordingly, the 2019 LSA considers that there are small areas of lower sensitivity within the wider SE04 parcel assessed. The

---

<sup>16</sup> As per Mr Lovell's PoE, paragraph 2.15 "ordinary landscapes have value".

LSA does not define where this applies. As the Council submit it may well include the allotments on Riddles Road but that would be a very narrow application. Given the presence of the adjacent housing, I find the appeal site would be a small area of lower sensitivity as per the LSA.

46. The appeal site is also located in Study Area 11 (South-west Sittingbourne) of the Swale Urban Extension Landscape Capacity Study (the SUELCS). This covers the northern part of the Tunstall Farmlands LCA, including the appeal site. Whilst the Study concludes that the wider area has a low capacity to accommodate change, it nonetheless identifies that minor expansion of residential development could be accommodated in small areas that relate well to, or are currently influenced by, the existing urban edge. Specifically, it says that minor residential expansion could potentially be located east of Starveacre Lane and immediately adjacent to the existing urban edge, where orchards are currently managed. The area described is plainly the appeal site. Whilst it would be difficult to describe the appeal proposal as minor, it does nonetheless, confine the built development to approximately a third of the site, and to those parts of the site where adjacent housing exerts a clear urbanising influence.
47. Overall, my assessment is that the site has no more than a medium landscape value with moderate sensitivity to change from residential development.
48. One of the key characteristics of the Tunstall Farmlands area is the loss of traditional orchard to agricultural intensification. Whilst the site does not comprise a traditional orchard, it nonetheless has a functioning, productive horticultural character, which is part of the characteristic mix of land cover in the host landscape. The appeal proposal would result in the loss of orchard trees, including some of modest landscape significance (the older pear trees). This harm would be offset to a small degree by a small area of traditional orchard proposed within the green space.
49. As set out above, a sense of a dry valley at the appeal site is weak. The landform is faintly perceptible on site, revealing little more than a very shallow, broadly scooped depression rather than a distinct valley form<sup>17</sup>. As such there would be negligible harm to this aspect of landscape value. Furthermore, the landscape evidence in the latest 2019 LSA places particular sensitivity on the dry valley to the east (part of the AHLV between Sittingbourne and Rodmersham) and land in the south of the SE04 parcel closer to the KDNL. The appeal proposal would not affect either of these more sensitive parts of the local landscape character<sup>18</sup>.
50. Development would result in on-site attenuation of surface water in accordance with the principles of sustainable urban drainage systems (SUDS). The precise form and position of any SUDS features would be determined at a later stage. Whilst they may not be characteristic of the dry landscape, there are likely to be various parts of the year when they are not holding water. Accordingly, I do not find their presence would be especially harmful to the landscape.
51. The appeal proposal would adhere to the local level landscape guidelines, including conserving the rural setting around the Tunstall Conservation Area, maintaining a landscape gap between the edge of Sittingbourne and Borden and softening the urban edge with native planting. It would also accord with

---

<sup>17</sup> As shown in Figure HDA4 in Mrs Kirk's PoE

<sup>18</sup> As per paragraphs 4.1 and 4.2 of the Landscape Statement of Common Ground [CD5.6]

landscape actions in the Kent LCA for the Fruit Belt which include enhancing the definition in changes of land use with woodland blocks and enhancing the cultural heritage including the creation of traditional orchards.

52. The proposed green space is assessed by the Council as having harmful "suburban park style of open space planting". Landscaping would be a detail for the reserved matters. But the evidence to this appeal indicates that most of the 17.33ha of green space would be given to semi-natural land cover, including structural planting, new and reinforced hedging, meadow grassland and traditional orchard. Observing the character of the remnant orchard to the south and the parkland qualities closer to Tunstall church, I consider the proposed approach to the green space would relate well to these components of the host landscape. Consequently, the proposed green space would not harm the wider landscape character at this edge of Sittingbourne.
53. Whilst I find the landscape at the appeal site to have few remarkable features, the proposal would, nonetheless, result in nearly 9ha of what is currently productive, horticultural land being developed with housing, highway works and urbanising features such as lighting and play areas. This change in character would be harmful to the landscape. The degree of harm would be moderated by the presence and influence of existing development, to which the proposed built development would be well-related. The proposals would retain landscape elements of higher value including the strong vegetated boundaries along Starveacre Lane and footpath ZR140. The appeal scheme has also sought to follow various landscape guidelines in the Kent LCA for the Fruit Belt and for the Tunstall Farmlands LCA.
54. In conclusion, I consider the proposal would have a moderately adverse impact on the landscape character of the site and only a minor impact on the character of the wider Tunstall Farmlands LCA and broader Fruit Belt area. I note the recent Swanstree Avenue appeal identified the orchards there as positively contributing to the character of the area such that the housing proposed would result in a "high adverse effect on the site and surroundings". I have relatively few details on the character and nature of those orchards at Swanstree Avenue compared to highly regimented, uniform and quasi-manicured commercial orchards which dominate this appeal site. As such I have arrived at a different conclusion on landscape harm based on site specific circumstances.

### *Visual Impacts*

55. In terms of visual impacts, the immediate impacts during and immediately after the construction phase would be raw, including the proposed access into the site from Minterne Avenue. These impacts would significantly reduce over time such that by the year 15 post completion point, the combination of the existing and proposed landscape framework would appreciably soften the impact. This would include the proposed structural planting along the southern and western boundaries, including the infilling of the small existing gaps in the otherwise strong boundary hedge to Starveacre Lane. Any residual views of the appeal development from within Starveacre Lane, including that part which forms the footpath across to Borden<sup>19</sup>, would be limited and transitory, including across the appreciable area of proposed green space. The existing urban edge of Sittingbourne is already visible from viewpoints to the west and south-west. Whilst the appeal proposal would bring development moderately

---

<sup>19</sup> Viewpoints 4, 5 and 6

- closer, any residual glimpsed views of the proposed dwellings would consolidate against the built backdrop, rather than starkly introducing development into an unfettered rural panorama.
56. There would be a negligible visual impact from viewpoints to the south including long-distance views from Hearts Delight Road and footpaths extending west from Tunstall village. It may be possible that the development would be glimpsed from within footpath ZR140 but any such views would be fleeting, even to slow moving walkers, and seen in the context of the existing adjacent housing on Sterling Road. To the east, the existing hedgerow boundary to footpath ZR136 would extensively screen the development from users of this path, with any visual impact limited to the proposed points of pedestrian connection into the appeal site. I acknowledge there would be a sensory change in this path, arising from a perception of development beyond, but this footpath already has a prevailing suburban character due to the proximity of housing on Sterling Road and Woodside Gardens, including domestic boundary treatments to this path.
57. I observed the site from within Riddles Road and Borden Lane to the west. These views are over distance and to some extent framed by existing development. Additionally, existing and proposed vegetation would significantly filter these long-distance views such that the appeal proposal would not be harmfully conspicuous.
58. The greatest visual impact would be from within Minterne Avenue at the junction of Riddles Road and College Road and along footpath ZU51 which connects behind dwellings on Minterne Avenue and into Woodside Gardens. With time, landscaping around the proposed road junction and in the north-west corner of the appeal site would appreciably mitigate the visual impact. This would occur at a point where the existing character is already influenced by the existing suburban road layout at the edge of Sittingbourne. The rear boundary of dwellings on Minterne Avenue already provides a strong urban influence on Footpath ZU51. Wider open views across the appeal site would be lost but the impact would be partly mitigated by the proposed green space in this corner of the appeal site. Consequently, the path would not be hemmed in. A sense of wider openness to the west across to the Riddles Road allotments would be retained. Any adverse visual impact resulting from the loss of wider openness to the south would be over a relatively short distance. As such, I find the visual harm from the viewpoints to the north of the appeal site to be limited.
59. The Council advocate that any assessment of visual impact should also include private views from the adjacent dwellings. I accept that these views would fundamentally change, however, I have conventionally dealt with this under 'living conditions' later in this decision, in terms of residential amenity (outlook)<sup>20</sup>. For this main issue, I have focused on the wider public interest, in terms of the viewpoints identified in the agreed zone of visual influence.
60. In conclusion, I find the initial visual impacts would significantly reduce over time, such that by year 15 any residual visual harm would be only minor.

---

<sup>20</sup> See also paragraphs 2.3 and 2.4 of Landscape Statement of Common Ground

### *Conclusion on Character and Appearance*

61. SBLP Policy DM24 seeks to protect the Borough's landscapes. Whilst it is out-of-date due to the housing land supply situation, it is consistent with the NPPF and therefore attracts significant weight.
62. Part A of the Policy is not applicable as the site is not a designated landscape. In accordance with Part B, sub-part 1 of the policy, the appeal proposal has deployed a landscape-led approach to minimise and mitigate adverse landscape and visual impacts. For this and other reasons, the residual harms would not be of threshold to engage sub-part 2 of Policy DM24 in terms of generating a significant adverse impact. Whilst a residual degree of harm is identified, the proposal would nonetheless comply with Policy DM24.
63. Policies ST1, ST3 and ST5 as strategic policies dealing with the spatial strategy refer to landscape and landscape setting, amongst other things. The harm identified would conflict with the landscape aspects of these policies. However, I give only limited weight to this conflict given the proposal would comply with Policy DM24, which is, in my view, the most important policy dealing with landscape. Nonetheless, the moderate harm to the landscape and the minor visual impacts must be weighed in any overall balance in the conclusion.
64. The appeal proposal would result in the loss of a large number of fruit trees, including the older pear trees, which are a characteristic feature of the Tunstall Farmlands LCA and the wider Fruit Belt. Ultimately, Policy DM29 of the SBLP engages a balance at criterion 4(3) when dealing with the loss of trees. As set out above under the first main issue, there is a need for the appeal proposal. As set out later, the benefits of the appeal proposal as identified, would clearly outweigh any adverse impact from the loss of the fruit trees. Overall, there would be no conflict with Policy DM29.

### **Main Issue 3 - Affordable Housing**

65. Policy DM8 of the SBLP sets out the approach to securing affordable housing on development proposals of eleven or more dwellings. The policy is underpinned by viability evidence which has informed a zonal approach such that for Sittingbourne town, urban extensions and Iwade the affordable housing percentage to be sought is 10%. Percentages are set out for other locations including "all other rural areas" where the percentage to be sought is 40%. The areas in Policy DM8 are not defined on the Policies Map.
66. The supporting text to Policy DM8 is at paragraph 7.3.7 states that the affordable housing percentages will be sought on proposals by reference to "different market areas". The paragraph then goes on to say that viability is most affected in housing market areas including Sittingbourne and ".....hence a lower percentage of affordable housing will be sought in these areas".
67. In spatial terms the appeal proposal would comprise an urban extension to Sittingbourne. The evidence that informed the housing market areas referred to in Policy DM8 includes the Local Plan Viability Assessment [CD7.12]. Figure 4.4 of this document shows lower property values in the Sittingbourne postcode areas (ME10) compared to adjoining rural postcodes (ME9). Whilst the scale of Figure 4.4 is challenging, it is nonetheless discernible to identify the appeal site as being predominantly within the ME10 postcode area. In addition, the sales heat map by postcode area in the Addendum Local Plan

Viability Assessment [CD7.13] at Figure 2.1 clearly shows the appeal site within the lower values associated with Sittingbourne rather than the higher ME9 postcode for Borden. Accordingly, the appeal proposal would be within the Sittingbourne town, urban extensions and Iwade local housing market area where the affordable housing percentage to be sought is 10% as set out in Policy DM8 of the SBLP.

68. This conclusion on Policy DM8 is similar to the recent appeal decision at nearby Swanstree Avenue<sup>21</sup>, which also occupies a comparable edge of Sittingbourne location. My attention has been drawn to the Secretary of State decision at Wises Lane, a short distance to the west of the appeal location, which made a distinction at paragraph 11.43 between parts of the site within the proposed allocation and beyond it, in terms of a blended application of 10% and 40%. Policy DM8 does not define "other rural areas" or local housing market areas by reference to parish boundaries. Nor by reference to built-up area boundaries. Paragraph 7.3.6 of the SBLP states that it is the Local Plan viability testing which is reflected in Policy DM8. That viability work was undertaken, amongst other things, on postcode area data analysis. Furthermore, it is not clear whether the Local Plan viability evidence for Policy DM8 was available to the Wises Lane appeal. As such, I have arrived at a different conclusion to the approach taken at Wises Lane for the reasons given.
69. Whilst the percentages in Policy DM8 are not expressed as minima, paragraph 7.3.7 of the SBLP states that where there is a positive change in the overall viability of development, the Council will seek a proportion of affordable housing closer to the assessed level of need, or at higher levels when evidence indicates that this would not compromise the viability of development. This is then set out at criterion 6 of Policy DM8.
70. There is clearly a substantial need for affordable housing in the Borough<sup>22</sup>. The latest 2020 Housing Market Assessment (HMA) identifies an annual requirement for 287 affordable homes in Swale Borough<sup>23</sup>. In the last 3 years there has been a cumulative shortfall of 229 affordable homes against this need. Looking ahead, whether I apply the Council's or appellant's forecasts of affordable housing delivery over the next five years, the situation does not recover, and the cumulative shortfalls are projected to significantly worsen. Allied to this, I note that the Borough Council has very recently declared an affordable housing emergency<sup>24</sup>, reflecting the very real and challenging circumstances for local households finding affordable accommodation in Swale.
71. The appeal proposal intends to deliver 30% of the dwellings as affordable, which would amount to up to 87 affordable homes. The 30% figure was supported by the Council's housing officer and would significantly exceed the relevant 10% figure sought by Policy DM8. There is no evidence before me from the Council that economic conditions have changed and that the 10% figure for Sittingbourne is now inappropriate. Whilst the appellant may be offering a higher percentage than the policy requirement, there is nothing in the policy itself to require an applicant to demonstrate what the maximum theoretically viable affordable housing provision could be. Such an approach

---

<sup>21</sup> Paragraph 42 [CD9.11]

<sup>22</sup> Agreed as an "acute" need, at paragraph 10.9, Affordable Housing SOCG [CD5.7]

<sup>23</sup> Compared to an annual need for 190 affordable homes in the 2015 Strategic Housing Market Assessment prepared for the SBLP.

<sup>24</sup> ID9

would be inimical to the plan-led certainty sought by NPPF paragraph 58 on what contributions should be assumed to be viable, thus avoiding the need for frequent and onerous viability negotiations delaying housing delivery and burdening local authority resources.

72. The 30% affordable housing would be in excess of the 25% overall affordable housing target expressed in the Strategic Housing Market Assessment underpinning the SBLP to help meet the then need for 190 affordable dwellings per annum. As such the appeal proposal is seeking to viably deliver a level of affordable housing closer to the assessed level of need compared to 10% requirement for the location in Policy DM8. As such there would be no conflict with criterion 6 of Policy DM8.
73. Overall, I conclude that the appropriate policy requirement in accordance with Policy DM8 would be 10%. The appeal proposal would comply with Policy DM8. It would also accord with NPPF paragraphs 60 and 63 to boost the supply of homes including addressing the needs of groups with specific housing requirements, such as those requiring affordable housing, and to meet as much of an area's identified housing need as possible, including an appropriate mix of housing types.

#### **Main Issue 4 – Other Matters in the Planning Balance**

##### *Spatial Strategy*

74. The Swale settlement strategy at Policy ST3 seeks to focus new development at Sittingbourne. It is at the top of the settlement hierarchy and intended to be the primary urban focus for growth. Policy ST5 subsequently sets out the Sittingbourne area strategy and provides the framework for individual development proposals in the area, including subsequent allocations in the SBLP. The appeal site is not allocated. Nor is it within the built-up area boundary for Sittingbourne as defined on the Policies Map. Consequently, the site is in countryside where Policy ST3(5) seeks to carefully manage development. The appeal proposal would conflict with Policy ST3(5) and by virtue of not being allocated it would conflict with Policy ST5(4). It therefore also follows that there would be conflict with Policy ST1(4) which states that proposals should accord with the settlement strategy.
75. However, the weight to be given to this conflict with the spatial strategy should be reduced due to various factors. Firstly, the built-up area boundaries are not delivering the required housing need. This is in part a consequence of the SBLP being more than five years old, the review in Policy ST2 not being completed and the housing requirement derived from the LHN now being significantly higher (an uplift of c.40%). The built-up area boundaries are out of date such that some flexibility will need to be applied.
76. Secondly, planning for growth around Sittingbourne, the top-tier settlement, is affected by various constraints. This includes, amongst other things, flood risk to the north, areas of sensitive landscape (including designated AHLVs) and BMV agricultural land. There are also the local level ICLGs. None of this has yet been resolved through an emerging Local Plan (including any alternative spatial strategy) to which any weight can be given. On a simple sieve analysis, having regard to the agreed main issues in this appeal (and the absence of statutory consultee objections to the planning application), the appeal site is not a particularly constrained location in the Sittingbourne context. Whilst the

process of assessing and identifying development sites should be plan-led, for whatever reason, that process has not progressed in Swale, and remains around two years away, at the earliest, from adoption.

77. Thirdly, to the extent that there are constraints, such as ICLG and BMV, the issues are not unique to the appeal site and any reasonable option for edge of settlement growth at Sittingbourne will rub up against them. Since the SBLP has been adopted, housing development has been permitted at the edge of Sittingbourne at Wises Lane<sup>25</sup> (beyond the SBLP allocation) and Swanstree Avenue (a site also within AHLV), reflecting that options exist adjacent to, but beyond, the built-up area boundary in the SBLP for sustainable development (when considered in the round).
78. Fourthly, whilst there are currently no bus services in this part of Sittingbourne, there are facilities within walking distance including various shops and services on Chaucer Road as well as local junior and primary schools. Facilities elsewhere in Sittingbourne would be within walking distance for some residents and within a comfortable cycling distance more generally. This includes the town centre, railway station and secondary schools<sup>26</sup>. Overall, the appeal proposal would be sustainably located.
79. Drawing all this together, I conclude that the proposal would conflict with Policies ST1, ST3 and ST5, because the site is not within the built-up area boundary which seeks to confine development. Encompassed within this harm, as identified by local residents, is the conflict with the certainty to be provided in a plan-led system. That said, LPAs are required to identify a minimum of five years' worth of deliverable housing land. Because Swale cannot demonstrate this, these policies are out of date. The policies should still be given significant weight due to their degree of consistency with national planning policy in terms of securing sustainable patterns of development. Nonetheless, I attach only limited weight to the conflict for the reasons given above. Subject to the consideration of other matters discussed below, I conclude that the appeal site would be an appropriate location for the scale of housing proposed notwithstanding that it is outside the built-up area boundary for Sittingbourne.

#### Agricultural Land Quality

80. The site comprises Best and Most Versatile (BMV) agricultural land, including 42.65% at Grade 1, 25.5% at Grade 2, 21.1% at Grade 3a and 9.3% at Grade 3b. SBLP Policy DM31 sets out the approach to be taken to BMV. The first part of the policy is satisfied because at present the housing need cannot be met on land within the built-up area boundaries. Therefore, in respect of unallocated sites criteria 2 and 3 of the policy apply. It is agreed that there is no lower quality land around Sittingbourne that could be developed in preference<sup>27</sup>. Development on the appeal site would not render the wider agricultural holding unviable, accounting for about only 3% of operations.
81. The Council have referred to two locations in the Borough on previously developed land, Rushenden South on the Isle of Sheppey and a group of Sittingbourne town centre sites as alternative sites. I note the recent

---

<sup>25</sup> That part of the site that was not within the SBLP allocation (paragraph 5.39 of CD9.12)

<sup>26</sup> Figures 37 & 38 in Design and Access Statement [CD1.16] and pages 19-25 & Appendix 3 in Transport Assessment [CD1.21]

<sup>27</sup> Planning SoCG [CD5.4] paragraph 11.1



Swanstree Avenue decision in May 2023 considered these locations to be both suitable and sustainable, notwithstanding the myriad of issues at Rushenden South, such that it was concluded there was a potential to deliver 1,700 homes. These locations were considered in that decision by reference to the housing land supply shortfall. I see no reason to arrive at a different conclusion to the Swanstree Avenue decision on this issue, based on the limited evidence before me.

82. It is agreed that the appeal proposal would constitute only 0.17% of the BMV land total in Swale. Approximately two-thirds of the site would be retained as green space and so the BMV land resource here would not be wholly lost. Nonetheless, the development of nearly 9 hectares of the highest grade agricultural land would be a material loss of this valuable resource, which would be harmful.
83. In conclusion, there would be a conflict with Policy DM31 of the SBLP and with it, Policy ST1(11g) and ST5(11) which provide the strategic overview. The NPPF does not preclude the loss of BMV land but does require at paragraph 180b) that the environmental, economic and other benefits of BMV are recognised. Given the very small proportion of the overall BMV resource within the Borough that would be affected, I ascribe only limited weight to the environmental and economic harm arising from the loss of highest quality agricultural land.

#### *Important Local Countryside Gap (ILCG)*

84. The appeal site is located within an ILCG that separates the urban edge of Sittingbourne, the settlement at Borden and the rural nucleus of settlement around the church at Tunstall. Policy ST5 of the SBLP sets out the area strategy for Sittingbourne and at criterion 6 seeks to maintain the individual character and separation of important local countryside gaps around Sittingbourne in accordance with Policy DM25. The purposes of the ILCGs are set out at paragraph 7.7.34 of the SBLP. Policy DM25 of the SBLP emphasises that ILCGs have been defined on the Policies Map to retain the individual character and setting of settlements and says that planning permission will not be granted for development that would undermine one or more of their purposes.
85. Due to a combination of the substantial area of green space proposed within the appeal site and the intervening agricultural land outside of the appeal site, the appeal proposal would not result in the physical coalescence of Sittingbourne with either Borden or Tunstall. A sizeable gap would be retained to the rural settlement at Tunstall with no visual intervisibility.
86. With regards to Borden the extent of the gap would be narrowed. But it would be slightly bigger than the gap to be retained between the Wisers Lane housing development and Borden<sup>28</sup>. The concern that there would only be one field left between the edge of Sittingbourne and Borden, and an asserted erosion of a critical part of the gap, pessimistically discounts the scale of green space proposed within the appeal site. Moreover, the intervening large arable field to the west of the appeal site, would be unaffected. This field occupies a shallow crest in the landform, further limiting visual intervisibility and maintaining a tangible sense of separation between Sittingbourne and Borden.

---

<sup>28</sup> Figure HDA2 (April 2024)

87. Furthermore, existing vegetation along the western boundary of the appeal site would be retained and strengthened, further maintaining verdant and visual separation between the proposed houses on the appeal site and Borden. This strong boundary would correspond with the existing tall evergreen vegetation at Ferndale Stables, which already significantly limits any intervisibility with the nearest parts of Borden to the appeal site.
88. Overall, in terms of the first purpose of the gap, the separate identities and characters of Borden and Tunstall would be maintained. There would be no merging or actual coalescence. Nor, for the reasons set out above would there be a perception of coalescence, including from within Starveacre Lane, Riddles Road or the footpath from Starveacre Lane across to Borden.
89. The significant majority of the appeal site would remain open and undeveloped. The SBLP at paragraph 7.7.35 states that not all forms of development are discouraged within the ILCGs and includes, amongst other things, public open space, community woodland and recreation. These uses would be acceptable provided the purpose of the gap would not be undermined or the need to protect the countryside compromised.
90. The LPA submit that any assessment of the impact of such uses in paragraph 7.7.35 must be considered on an individual land use basis, and not as part of a mixed-used development with the <290 houses. In this case, there would be a clear disaggregation between that part of the development which would be residential in character and that which would be principally green space. This would be set through the parameter plans for approval at this stage. As such I consider it would be appropriate to consider separately the impact of the area of proposed green space within the ICLG as part of a mixed use development, given its strategic scale (17.33ha).
91. Whilst the details of how the green space would be laid out are a reserved matter, the Green Infrastructure plan for approval at this stage shows a combination of structural woodland and scrub planting and significant areas of amenity grassland including meadow grassland and a modest area of traditional orchard for community use. The area is shown to be criss-crossed by pedestrian and cycle paths. What is proposed at this stage for the green spaces within the appeal site is entirely compatible with the character of the gap at this location. The proposed structural planting would tie-in with the lines of trees and small bands of woodland elsewhere within and adjoining the gap. Overall, the extent and form of the proposed green space would provide for a more varied environment with enhanced public access in a way which would not undermine the purpose of the gap.
92. The proposed 8.87ha of built development and the presence of the access arrangements from Minterne Avenue would conflict with the second and third purposes of safeguarding the open and undeveloped character of the area and preventing encroachment and piecemeal erosion by built development. However, the extent of the conflict and resultant harm would be moderated by the scale of the green space proposed and the positioning of the built development in locations that would be well-related and in part contained by the adjacent residential development at the edge of Sittingbourne.
93. Overall, the proposal would conflict with Policies ST3(5) and DM25 of the SBLP, in that there would be encroachment into an area to be safeguarded for its open and undeveloped character, contrary to the purposes of the ILCG.

However, due to the housing land supply, Policy DM25 is out of date. The objective of the policy is generally consistent with the NPPF in terms of optimising the use of land, particularly within urban areas, and, by avoiding coalescence of settlements, maintaining a strong sense of place. As such the policy should be given significant weight.

94. Overall, the harm and degree of conflict with the second and third purposes would be modest, for the reasons given. The proposal would also pre-empt any decision on this ILCG through strategic plan-making (the fourth purpose). But as set out above, given a new Local Plan remains some way off and the spatial strategy of the SBLP is not delivering against the scale of housing needed I find the conflict with this purpose to be significantly diminished. Therefore, the cumulative extent of the conflict with Policies ST3(5) and DM25 would be limited.

### *Highways*

95. Vehicular access to the site would be secured at point where Minterne Avenue, College Road and Riddles Road currently converge around a sharp sweeping bend close to the Beauty of Bath public house. The detailed layout plans show this being reconfigured to form a roundabout with a new arm providing direct access into the appeal site. I find the proposed roundabout arrangement would represent an improvement on the current highway layout, including for safer pedestrian movements. I also attach appreciable weight to the fact that the Local Highways Authority have not objected to the proposed access arrangements having had regard to the comprehensive Transport Assessment submitted with the proposal [CD1.21].
96. Concern is raised regarding the proposed closure of Riddles Road to through traffic. Riddles Road is a narrow highway, largely without footways and generally functions as a local connector from Borden Lane through to Minterne Avenue. The proposed closure would not be seriously detrimental to wider traffic movements given the alternative routes would not represent a significant detour. Vehicular access would still be maintained to the allotments from Borden Lane. By removing through traffic, Riddles Road would be enhanced as a route for pedestrians and cyclists.
97. Vehicular traffic from the development would utilise either College Road or Minterne Avenue to gain access to the wider road network. Both roads are constructed to a generous width with footways and street lighting. I find little to demonstrate that these roads, more generally, could not safely or appropriately accommodate the likely number of vehicular trips generated by the appeal proposal.
98. On Minterne Avenue, I observed that the local schools cause extensive on-street parking and that this spreads into the nearest side roads, notably Woodside Gardens and Roseleigh Road. I observed that the degree of parking associated with the schools interrupts the free flow of vehicular traffic along Minterne Avenue, albeit without significant delays. Whilst my site visit can only represent a snapshot in time, I generally observed that the on-street parking is an intense but a relatively short-lived phenomenon. There is little evidence that it has generated particular highway safety problems, including any arising from the contraflow traffic movements. Whilst the appeal proposal would add to the volumes of traffic on Minterne Avenue at school times, from everything I have

read and witnessed, it would not have an unacceptable impact on highway safety or result in severe residual impacts on the overall highway capacity.

99. Overall, I find the appeal proposal in relation to transport and highways would accord with Policy DM6 of the SBLP. There is no reason to refuse the appeal on highway grounds as set out at paragraph 115 of the NPPF.

#### *Living Conditions*

100. The outlook from those properties on Woodside Gardens and Sterling Road which directly back onto the appeal site would fundamentally change from the commercial orchard to a housing development with its associated open space and landscaping. The sense of wider openness at the rear of these properties, many of which have low boundaries to the appeal site, would be significantly affected. The parameter plans show bungalows corresponding to the rear of properties on Woodside Gardens which would be an appropriate design response and to some extent lessen the impact of development dominating the outlook from these properties and maintaining an acceptable (but significantly reduced) degree of openness.
101. In respect of that part of Sterling Road where existing dwellings directly back onto what is shown to be built development (at a maximum 2 storeys) there is not a similar design response in the parameter plans. However, the precise layout, scale and landscaping of the development, including boundary treatments, is not part of this proposal. As such a final layout would be able to appropriately respond to the varying depths of rear gardens on this part of Sterling Road to protect the living conditions of existing residents in respect of outlook and privacy. The LPA would have control of this through the approval reserved matters. This part of the appeal proposal gives me the greatest concern regarding the living conditions of existing residents given the relatively shallow depths of some of the rear gardens on this part of Sterling Road. This would require a very careful design response in any detailed scheme, which can flex given what has been applied for is up to 290 homes (my emphasis). However, I cannot conclude at this outline stage that the impact would be so significantly harmful as to warrant refusing the development at this outline stage, when such matters of detail are not before me.
102. Elsewhere, there are a small number of properties on Minterne Avenue which back onto the site. An area of green space is proposed within that part of the appeal site closest to these properties further maintaining a reasonably open outlook. Similar applies in respect of those properties on Sterling Road that directly back onto footpath ZR136. These properties also have reasonably long rear gardens. The footpath boundary to the appeal site at this location is a tall hedge beyond which the proposed parameter plans show green open space buffering the proposed built development. When taking all this together, I am satisfied that those dwellings on Sterling Road bordering footpath ZR136 would retain reasonable levels of outlook and privacy. In respect of adjoining properties on Hales Road, the outlook would remain largely unchanged due to the extensive area of green space proposed in this part of the appeal site.
103. A number of properties have gates on their rear boundaries that provide access to the appeal site and in particular a generous grass strip around the perimeter of the commercial orchard. I have no compelling evidence that this arrangement has been formalised or would need to be preserved. As set out elsewhere, detailed matters of layout and landscaping would be reserved for

future determination. As such I do not consider whatever access is occurring on the site to prohibit the principle of development.

104. Overall, the outlook for many of those properties that directly back onto the appeal site would fundamentally change and a sense of wider openness be reduced, in some cases significantly. However, through the parameter plans at this stage and the ability to consider the issues of outlook, light levels and privacy through detailed matters of layout, scale, appearance and landscaping, I conclude there would be no significant harm to the living conditions of occupiers of existing dwellings that adjoin the site. As such there would be no conflict with Policy CP4 of the SBLP which requires good design. Achieving well-designed places includes ensuring that there is a high standard of amenity for existing and future users. There is scope and flexibility within the parameters at this outline stage to achieve that on a scheme of up to 290 dwellings on the area shown for built development, such that I am able to conclude that the appeal proposal would accord with NPPF paragraph 135 f).

### *Biodiversity*

105. The site has no statutory biodiversity designations, but it is bounded along its western and southern boundaries by established native hedgerows, which provide connections to the wider countryside. Survey work reveals that the site is used by commuting and foraging bats and a very small number of trees have moderate roosting potential. Subject to measures to retain and buffer these trees and the hedgerows, together with the careful management of external lighting, all of which could be secured by condition, I am satisfied there would be no harm to protected bat species.

106. In addition, there are badger setts<sup>29</sup>, the location of which was clearly evident on the accompanied site visit. Given its location there would be no direct disturbance. There would be potential to envelop it within the 17.33ha of green space proposed with sufficient buffering from the nearest proposed homes. The appeal proposal would not inhibit the ability of the badgers to forage in adjoining countryside. Careful protection would be required during the construction phase, including updated survey work and any necessary licences from Natural England, and this could be secured by condition. Additionally, the details of the green infrastructure, which, again, could be secured by condition, should provide for foraging opportunities as well as strategic planting that would minimise recreational disturbance close to the setts. Badgers are protected by bespoke legislation<sup>30</sup> but with the appropriate mitigation identified I am satisfied that there would be no harm to the existing populations at the appeal site.

107. The application preceded the statutory requirement to secure biodiversity net gain (BNG). Nonetheless, given the scale of green infrastructure proposed it has been calculated that a degree of BNG would be secured<sup>31</sup>. The baseline of the site reasonably records it as having limited botanical diversity and moderate fauna activity. Overall, I find the BNG calculations to have been reasonably calculated. Conditions could be imposed to ensure delivery. As such the BNG gain, which is not a statutory requirement for the scheme, would be a modest environmental benefit weighing in favour of the appeal proposal.

---

<sup>29</sup> Survey work has identified a main sett and a subsidiary sett

<sup>30</sup> Protection of Badgers Act 1992

<sup>31</sup> Set out at paragraph 4.12 of the Planning SoCG [CD5.4]

108. The site is proximate to internationally designated sites, notably the Swale and Medway Estuary and Marshes Special Protection Areas (SPAs) and Ramsar sites. The planning application was accompanied by a shadow Habitats Regulation Assessment (HRA). This confirmed a likely significant effect on the qualifying features of these habitats arising from recreational pressure could not be ruled out. An appropriate assessment under the Regulations is therefore required to consider whether adverse impacts could be suitably mitigated.
109. A mitigation mechanism in the form of a payment to contribute towards the North Kent Strategic Access Management and Monitoring Strategy (SAMMS) has been established. This is reflected at criterion 5 of Policy CP7 of the SBLP. The submitted S106 contains a planning obligation reflecting the required per dwelling contribution (index-linked) for SAMMS, which would be payable prior to any occupation of the proposed dwellings. Additionally, the appeal proposal would provide a substantial and meaningful area of green space (17.33ha) which would be attractive to meet some of the demands for informal recreational activity arising from the appeal proposal, including dog-walking. Accordingly, I am able to conclude that effective mitigation would be secured such there would be no adverse impact on the qualifying features of the Swale and Medway Estuary and Marshes SPAs and Ramsar sites.
110. Overall, in respect of biodiversity, the appeal proposal would accord with Policies ST5(9), CP7 and DM28 of the SBLP.

#### *Planning Obligations*

111. A final, signed S106 and a separate UU were provided on 7 May 2024. As set out above the obligation for the SAMMS financial contribution would be necessary to enable a positive conclusion for the HRA. I have therefore taken it into account. I have also found that the proposed 30% affordable provision would be consistent with development plan policy. As such, the obligation to provide 40% affordable housing would not be necessary to make the development acceptable in planning terms. I have therefore not taken the obligation into account. In respect of the obligations in so far as they would provide 30% affordable housing, including First Homes provision, these would meet the necessary tests and ensure the proposal would accord with Policy DM8 of the SBLP and NPPF paragraph 66.
112. A significant concern for the local community is the impact of the appeal proposal on local health and education infrastructure. In respect of health, The Council's CIL Compliance Statement sets out how the obligation for a financial contribution of £360 per person would meet the relevant tests, when applying formula from the NHS Clinical Commissioning Group. Specific projects are identified for nearby medical centres in Sittingbourne which are reasonably related to the appeal site. I find the obligation would meet the relevant tests and so I have taken it into account.
113. Kent County Council (KCC) have sought financial contributions towards both primary and secondary education provision, including towards land acquisition costs for a new secondary school. The justification for the sums sought (on a per dwelling basis) for education is comprehensively set out in their correspondence collated on 6 February 2024. It reflects the justified need to create additional capacity to accommodate likely pupil numbers generated by the appeal proposal. The primary education contribution would be towards new provision within the Sittingbourne Planning Groups, most likely at a

consented site at Wises Lane, a short distance from the appeal site. Secondary provision would be at North-West Sittingbourne, a strategic allocation in the SBLP but within an appropriate catchment area. The obligations for education would meet the necessary tests and so I have taken them into account.

114. KCC have also identified various off-site highways works including at the A2/Swanstree Avenue junction, Key Street and Dover Street/St Michaels Road junction. The justification for the £174,432 sought is set out in a detailed statement [CD5.38] and reflects modelling work undertaken for the appeal proposal and where relevant aligned to Local Transport Plan 4. The obligation and the sum sought would meet the necessary tests in mitigating impacts arising from the development and so I have taken it into account. A separate sum is identified for public rights of way (PROW) improvements<sup>32</sup> in the vicinity of the appeal site. This sets out in some detail the schedule of works and costs for each component element. I find these to meet the relevant tests. To my mind, the improvements that would be secured to the local PROW network would go beyond immediately mitigating user demand generated by the appeal proposal and would secure a benefit to the wider community in terms of better access, including for less able persons. I consider the obligation in relation to PROW would give rise to a small, wider social and environment benefit.
115. Elsewhere, obligations to KCC would provide for adult social care, community learning, youth services, libraries and household waste facilities. KCC have submitted a comprehensive CIL compliance statement, together with additional information such I have assessed the obligations to have met the relevant tests and so I have taken them into account. An obligation to the Borough Council would cover the capital cost of the provision of bins, as set out in the context for Policy CP6 of the SBLP and would meet the relevant tests. Finally, air quality is a notable issue in Sittingbourne and so an obligation making financial contributions towards assessing and mitigating impacts from emissions directly related to the development would be justified in accordance with Policy DM 6 of the SBLP. The financial contribution identified has been developed in line with SBCs Air Quality and Planning Technical Guidance 2021. Accordingly, I find the obligation meets the tests and I have taken it into account.
116. Overall, I find various obligations, as set out above, would meet the tests at CIL Regulation 122<sup>33</sup>, in terms of necessity, and being fairly and reasonably related in scale and kind. I have therefore taken these obligations into account. Most of the obligations are necessary to mitigate the impacts of the development and so neutral in any planning balance. Where positive benefits would arise from the obligations these have been identified and would need to be inputted into the overall planning balance. Because of the proposed obligations there would be no harm in relation to infrastructure capacity and so the appeal proposal would comply with Policies CP6, CP7 and DM6 of the SBLP.

#### *Social, Economic and Environmental Benefits of the proposal*

117. The appeal proposal would deliver up to 290 homes, of which up to 87 would be affordable homes. There is not a five year supply of deliverable housing land and the shortfall against the local housing need as identified in this appeal is notable. In terms of addressing the shortfall, there is no short-term prospect of a new Local Plan resolving the shortfall in housing land supply. As such I

---

<sup>32</sup> Breakdown of costs dated 21 September 2023

<sup>33</sup> Community Infrastructure Levy Regulations 2010 – Regulation 122(2) – repeated at NPPF paragraph 57

give the social benefit of the additional market housing significant weight. The 30% affordable housing, as secured through the planning obligations, would make a meaningful contribution towards addressing the acute needs in the Borough and would irrefutably amount to a substantial social benefit weighing in favour of the appeal proposal.

118. The appeal would give rise to modest economic benefits. This would mainly comprise employment during the construction phase. I give moderate weight to this economic benefit.
119. The appeal proposal would deliver 17.33ha of green space. There is no formalised public access to the current orchard site, which is a highly managed and somewhat one-dimensional environment. The proposed green space would offer a variety of habitats and experiences for the wider community. As such I give limited weight to the social and environmental benefit of the scale and nature of open space proposed. Improvements would be secured to the local public rights of way network to the social and environmental benefit of the wider local community. I give this limited weight.
120. The proposal would also result in a net gain in biodiversity, as sought by various policies in the SBLP. No figure is identified in the SBLP and the minimum 10% statutory requirement does not apply. As such, the scale of gain calculated would be a modest environmental benefit.

#### Interested Parties

121. Borden Parish Council, Borough Councillors, including the Council Leader and the Chair of the Planning Committee, and local residents all spoke against the appeal at the Inquiry. There were a significant number of written objections to both the planning application and in response to consultation on the appeal. The various planning issues raised in these representations have been discussed above.

#### Conclusion

122. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF makes clear that the planning system should be genuinely plan-led.
123. I have concluded that the proposal would conflict with SBLP Policies ST1, ST3 and ST5 which seek to confine housing development to within the built-up area boundaries. The proposal would also conflict with SBLP Policy DM25 which seeks to protect important local countryside gaps and Policy DM31 regarding BMV land.
124. On the other hand, it would not conflict with Policies DM24 and DM29 in respect of landscape and trees. It would also accord with Policy DM6 which seeks to manage traffic demand and impact (including in relation to air quality), Policy CP4 on good design, Policy CP6 on infrastructure required to serve the development, and Policies CP7 and DM28 which seek to avoid harm to protected sites and to secure BNG where possible. It would also accord with Policy DM8 regarding the provision of affordable housing.
125. Nonetheless, I find that the conflict with those policies that seek to provide a clear spatial strategy for the Sittingbourne area, including avoiding piecemeal



expansion and encroachment into important local countryside gaps, means that the proposal would conflict with the development plan as a whole.

126. I am therefore required to consider whether there are other considerations that indicate a decision other than in accordance with the development plan. In this case the approach to decision making set out in paragraph 11(d)(ii) of the NPPF is engaged. There is no conflict with policies of the NPPF that protect areas or assets of particular importance. It follows that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
127. The appeal proposal would accord with the policies of the NPPF relating to boosting the supply of housing (including an appropriate mix of housing types for the local community), transport and securing sustainable patterns of development, biodiversity, habitats and air quality. The proposal would therefore accord with the policies of the NPPF taken as a whole.
128. For the reasons given above, I attach limited weight to the conflict with Policies ST1, ST3 and ST5 in relation to built-up area boundaries, limited weight to the conflict with Policy DM25 on ICLGs, moderate weight to the landscape harms identified, limited weight to the visual harms identified, and limited weight to the conflict with Policy DM31 on BMV.
129. On the other hand, I attach significant weight to benefit of delivering market housing, substantial weight to the benefit of the 30% affordable housing proposed, moderate weight to the economic benefits, limited weight to the environmental benefits of the open space and enhanced recreational routes and limited weight to the benefit of the biodiversity net gain that would be secured.
130. My overall assessment is that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits. This finding outweighs the conflict with the development plan. The appeal should therefore be allowed, and planning permission granted.

## Conditions

131. A schedule of suggested planning conditions was submitted prior to the inquiry event<sup>34</sup>. There was then some subsequent updating of the schedule as the event progressed<sup>35</sup>. These updates were discussed at the round table sessions. I have considered the suggested conditions having regard to the PPG and paragraphs 55 and 56 of the NPPF. Some conditions require matters to be approved before development commences. This is necessary either to control impacts that would arise during construction or because the details to be approved could affect the design in a way that would need to be resolved at an early stage. The appellant has provided written agreement to the pre-commencement conditions.
132. In addition to the standard time limit conditions (2 & 3) for the submission of reserved matters and commencement of the development, a condition (1) defining the remaining reserved matters to be approved and a condition (4) requiring the development is carried out in accordance with the approved plans are both needed in the interests of proper planning and for the avoidance of

---

<sup>34</sup> CD5.9

<sup>35</sup> IDs 11 & 12

- doubt. Despite the description of what has been applied for and the plans approved at this outline stage, a condition (5) controlling the quantum of housing development and a condition (7) requiring details of the levels and gradients are also necessary for similar reasons.
133. A condition (8) requiring details of how 'secure by design' would be achieved is necessary for public safety. Various conditions (9, 10, 11) are all necessary to ensure that biodiversity at the site is protected, that survey work remains up to date and that from the latest survey work appropriate mitigation is secured, including where necessary through the provision of new habitat. A further condition (12) would necessarily secure ongoing arrangements for the management, maintenance and monitoring of agreed plans for landscape and ecological enhancements. The condition enables management arrangements to be secured through appropriate planning obligations under Section 106 of the Town and Country Planning Act 1990. The condition is negatively constructed such that it would require the obligations to be completed prior to the LPA issuing any written approval for the management scheme. As such I find the condition would meet the tests at PPG paragraph 21a-005-20190723. Finally, a condition (14) is necessary to secure the biodiversity net gain (BNG) in accordance with the assessment work accompanying the planning application. Whilst a level of BNG is not mandatory for the scheme, the delivery of the gain would be consistent with Policies ST1, ST5(10) and CP7 of the SBLP.
134. A separate condition (13) is necessary requiring details such as landscaping, play areas, SUDS layout and footpath and cycle path provision within the proposed green space to be submitted and approved as part of the landscape reserved matters. This condition is necessary in the interests of proper planning and to achieve a well-designed place. Given the presence of tree specimens along the site boundary, a condition (15) requiring an arboricultural method statement and tree protection plan is necessary. Given the history of settlement and human activity in this part of Kent, a condition (16) requiring a precautionary approach to archaeology is also necessary.
135. Given the adjoining residential areas, conditions (17, 18 and 23) limiting hours of construction work and requiring a Construction Method Statement are all necessary to protect residential amenity. A separate condition (19) to carefully manage those construction techniques that have the potential to impact groundwater resources is also necessary to safeguard this important environmental resource. Similarly, given the presence of an agricultural building on the site and other potential sources, conditions (20 and 21) requiring a precautionary approach to potential contamination is necessary to protect the environment and human health.
136. Construction traffic to the site would need to negotiate access via a residential area, therefore a condition (22) requiring a Construction Management Plan is necessary in order to protect residential amenity and ensure highway safety. Various conditions (24, 25, 26, 27, 28, 29 and 30) are all necessary to ensure highway safety and that the development would be accessed in accordance with the plans approved at this stage. The conditions would also allow for subsequent details to be approved on matters of layout such as parking spaces, footpaths, verges and visibility splays and to be implemented prior to occupation. These conditions are all necessary in the interests of highway safety. Whilst the site is sustainably located, a condition (31) requiring a travel plan is also necessary to ensure appropriate modal shift

can be secured in the interests of well-being, air quality and the wider benefits of reducing dependency on the private car.

137. Conditions (32 and 33) requiring surface water drainage details and confirmation of the effectiveness of the detailed design are both necessary to reduce the risk of flooding at the appeal site and elsewhere. The conditions do not need to cover the surface water drainage in relation to access arrangements from the public highway which would be separately covered by a S278 mechanism. Conditions (6 & 34) requiring various sustainability measures are justified in order to meet development plan policy requirements and the required transition to a low carbon and reduced water consumption future. A condition (35) requiring a soil resource plan is necessary to ensure the high-quality soil at the site is protected and where appropriate retained at the site. Finally, a condition (36) requiring details of an affordable housing scheme is required to ensure delivery in accordance with Policy DM8 of the SBLP, recognising that this detail remains to be agreed, given the mechanism for provision (other than First Homes) is set out in a UU rather than an bilateral agreement.

138. There is one suggested condition that I have not imposed. This relates to high-speed fibre optic installation (up to 1000mb). There is little before me to demonstrate that such a condition would be necessary or to explain why developers would not seek to deliver new homes without the benefit or selling point of optimum internet provision in any event.

*David Spencer*

Inspector.

#### APPEARANCES

##### FOR THE LOCAL PLANNING AUTHORITY:

Emmaline Lambert, Of Counsel

And

Rowan Clapp, Of Counsel

Instructed by Head of Mid Kent

Legal Services

They Called:

Martin Carpenter BA(Hons) MRTPI

Director, Enplan

For the round table discussions:

Landscape

Rupert Lovell BSc (Hons) MA CMLI

Senior Consultant for Landscape  
Architecture, Jacobs

Housing Land Supply

Stuart Watson BA MA MRTPI

Interim Planning Policy Manager,  
Swale Borough Council

Planning Conditions and Planning Obligations

Cathy Fishenden  
Simon Greenwood

Enplan  
Planning Consultant – Majors Team,  
Swale Borough Council  
Solicitor, Mid Kent Legal Services

Matthew Martin

FOR THE APPELLANT:

Zack Simons, Of Counsel

Instructed by Owen Jones of LRM  
Planning

Assisted by  
Isabella Buono, of Counsel

He Called:

Annie Gingell BSC(Hons) MSc MRTPI

Associate Director, Tetlow King

Owen Jones BA(Hons) MSc MRTPI PIEMA

Director, LRM Planning

Ian Dimbylow<sup>36</sup>

Director, RPS

For the Round Table Discussions:

Landscape

Tanya Kirk BSc (Hons), PGDip, CMLI

Director, Hankinson Duckett  
Associates

Housing Land Supply

Ben Pycroft BA(Hons), DipTP, MRTPI

Director, Emery Planning

Planning Conditions and Planning Obligations

Kate Coventry MRTPI  
Oliver Martin

Principal Planner, LRM Planning  
Director, Bickley-Martin

INTERESTED PARTIES:

Nicola Butlin  
Sarah Booker  
Cllr Mike Baldock  
Cllr Simon Clark  
Cllr Tim Gibson  
Mr Hodges

Parish Councillor, Borden Parish Council  
Local Resident  
Borough Councillor  
Borough Councillor  
Borough Councillor  
Local Resident

---

<sup>36</sup> To respond to Interested Parties' representations on Highway and Transport matters

**Inquiry Documents (IDs) submitted at the event:**

- 1 Opening Statement for the Local Planning Authority
- 2 Opening Statement for the Appellant
- 3 Statement of Nicola Butlin, Borden Parish Council
- 4 Statement of Sarah Booker
- 5 Figures from Borough Councillor Simon Clark
- 6 Inspector's Report into the Examination of the Swale Borough Local Plan 2017
- 7 Updated Supplementary Proof of Evidence of Mr Carpenter on Affordable Housing.
- 8 Kent Habitat Survey 2012
- 9 Meeting of Swale Borough Council – Affordable Housing Emergency
- 10 Note on the planning background regarding Healthcare Provision at Bell House, prepared by Ceri Williams MRTPI, Swale Borough Council
- 11 Amended Condition 4 and a further 2 proposed conditions
- 12 Appellant suggested revisions to Conditions 11-15
- 13 Revised final draft S106 Agreement, including new Schedule 6
- 14 Revised final draft Unilateral Undertaking
- 15 Appellant's written agreement to the terms of the proposed pre-commencement conditions
- 16 Closing Submissions for the Local Planning Authority
- 17 Mead Realisations Ltd v SSLUHC & North Somerset Council [2024] EWHC 279 (Admin)
- 18 Monkhill Ltd v SSLUHC & Waverley Borough Council [2019] EWHC 1993 (Admin)
- 19 Wavendon Properties Ltd v SSHCLG & Milton Keynes Council [2019] EWHC 1524 (Admin)
- 20 St Modwen Developments Ltd v SSCLG, East Riding of Yorkshire Council & Save our Ferriby Action Group [2017] EWCA Civ 1643
- 21 Closing Submissions for the Appellant

**Documents submitted after the Inquiry event**

- 22 Engrossed S106 Agreement dated 7 May 2024
- 23 Unilateral Undertaking dated 7 May 2024

**Schedule of Conditions**

1. Details relating to the landscaping, layout, scale, and appearance of the development hereby approved (hereinafter called the 'reserved matters') shall be submitted to and approved by the Local Planning Authority before any development is commenced and the development shall be carried out as approved.
2. Application for approval of reserved matters referred to in Condition (1) above must be made to the local planning authority no later than the expiration of three years beginning with the date of the grant of outline planning permission.

3. The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
4. The development hereby approved shall be carried out in accordance with the following approved drawings:
  - Land Use Parameters Plan 244-UW-P-003 Rev H
  - Green Infrastructure Parameter Plan 244-UW-P-004 Rev H
  - Proposed Site Access Plan JNY11458-RPS-0100-001D
  - Emergency Access Plan JNY11458-RPS-0100-008 B
  - Site Location Plan 244-UW-P-001 Rev F

5. The quantum of residential units to be constructed for the development hereby approved shall be limited to a maximum of 290 units.
6. The reserved matters application submitted pursuant to Condition 1 above, shall be accompanied by a fully detailed energy and sustainability scheme. This scheme shall be based upon the strategy set out in the Sustainability and Energy Statement prepared by Brookbanks.

No development shall take place until approval of the above scheme of energy generation on site has been granted in writing by the Local Planning Authority.

Thereafter the development shall be implemented in full accordance with the approved details.

7. The details submitted pursuant to condition (1) (the reserved matters) shall include plans and sections, indicating as appropriate, the levels, gradients, and method of construction.
8. The details submitted pursuant to condition (1) (the reserved matters) shall include details demonstrating how the development meets the principles of 'secure by design'.
9. The details pursuant to condition (1) (the reserved matters) shall include a lighting design plan for biodiversity. The lighting design plan will:
  1. Identify those areas/features on site that are particularly sensitive for wildlife;

2. Show how and where external lighting will be installed in accordance with the specifications outlined in Appendix E of the Ecological Impact Assessment prepared by FPCR (dated October 2022).

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

10. No development will take place (including any ground works, site or vegetation clearance), until a detailed ecological mitigation strategy is submitted to the LPA for written approval. It must be based on the Ecological Impact Assessment (FPCR; October 2022) submitted as part of the application and include the following information:
  - a) Updated ecological walk over survey
  - b) Recommended specific species surveys
  - c) Overview of ecological mitigation
  - d) Detailed methodology to achieve mitigation.
  - e) Maps demonstrating the proposed mitigation is achievable.
  - f) Timetable for the proposed works.
  - g) Details of who will carry out the works.
11. Prior to works commencing within the site a detailed landscape and ecological mitigation strategy shall be submitted to the LPA for written approval. As appropriate it shall be based on the Green Blue Infrastructure Strategies, Figure 33 on page 93 of the Design and Access Strategy (Urban Wilderness 2023) and the Ecological Impact Assessment (FPCR: October 2022) submitted as part of the application and include the following information:
  - a) Overview of the landscaping planting and habitat creation/enhancement works
  - b) Detailed methodology to achieve the landscape planting and habitat creation / enhancement works.
  - c) Information demonstrating the works are in alignment with the landscape and ecological mitigation strategy approved pursuant to condition 10.
  - d) Plans demonstrating the proposed landscape planting and habitat creation / enhancement areas.
  - e) Timings of the proposed works.
  - f) Details of who will be carrying out the works.
  - g) Interim management plan for the habitat creation / enhancement areas.

The development shall be carried out in accordance with the approved details.

12. Prior to occupation of the development a detailed Landscape and Ecological Management, Maintenance and Monitoring Scheme for the Landscape and Ecological Establishment and Enhancement Plan approved pursuant to condition 11 shall be submitted to the LPA for written approval. It shall include the following:
- a) Overview of landscape and habitats areas to be managed and the associated management and maintenance aims and objectives.
  - b) Appropriate management options for achieving the aims and objectives.
  - c) A specification for the management and maintenance of the approved areas of landscape and habitat
  - d) A timetable for management and maintenance activities necessary for the prescribed specification (capable of being a 5 year rolling management plan).
  - e) A statement demonstrating that the specification and timetable prescribed by criterion d) of this condition is in accordance with the ecological mitigation strategy approved pursuant to condition 10.
  - f) Details of the proposed monitoring.
  - g) Details of management plan reviews.

Such a scheme may be supported by appropriate planning obligations under Section 106 of the Town and Country Planning Act 1990 as may be necessary to ensure the management and/or maintenance (and related funding) proposals included in the scheme, with any such legal documents to be completed prior to the written approval of the scheme. As appropriate such a planning obligation shall prescribe the details of who will carry out the management, maintenance and monitoring scheme and the mechanisms to fund this.

The Landscape and Ecological Management and Maintenance and Monitoring Scheme shall be implemented as approved.

13. Pursuant to Condition 1, applications for the approval and landscape reserved matters shall include the following details: hard and soft landscaping comprising semi-improved meadow grassland, damp grassland and wetland, traditional community orchard, structural woodland and scrub, and informal play and equipped playspace, sustainable drainage basins and swales, pedestrian and cycles routes. Such details shall be in accordance with the Landscape and Ecological Establishment and Enhancement Plan pursuant to Condition 11.
14. The details submitted pursuant to condition (1) (the reserved matters) shall incorporate details of how the development will achieve a net biodiversity gain, based upon Figure 5 "BNG Proposed Habitats" of the Ecological Impact Assessment prepared by FPCR (dated October 2022). This will include a native species-only landscape scheme, integrated bird bricks and details of the degree of Biodiversity Net Gain. The approved details will be implemented and thereafter retained for a period of 30 years.



15. Prior to the commencement of the development hereby approved an arboriculture method statement and tree protection plan in accordance with the BS5837:2012 shall be submitted to and approved in writing by the Local Planning Authority. The approved arboriculture method statement and tree protection plan shall be adhered to throughout the construction phase of the development.
16. Prior to any Reserved Matters application, the applicant (or their agents or successors in title) shall secure and have reported a programme of archaeological field evaluation works, in accordance with a specification and written timetable which has been submitted to and approved by the local planning authority.

Following completion of archaeological evaluation works, no development shall take place until the applicant or their agents or successors in title, has secured the implementation of any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the local planning authority.

The archaeological safeguarding measures, investigation and recording shall be carried out in accordance with the agreed specification and timetable.

Within 6 months of the completion of archaeological works a Post-Excavation Assessment Report shall be submitted to and approved in writing by the local planning authority. The Post-Excavation Assessment Report shall be in accordance with Kent County Council's requirements and include:

- a. a description and assessment of the results of all archaeological investigations that have been undertaken in that part (or parts) of the development;
- b. an Updated Project Design outlining measures to analyse and publish the findings of the archaeological investigations, together with an implementation strategy and timetable for the same;
- c. a scheme detailing the arrangements for providing and maintaining an archaeological site archive and its deposition following completion.

The measures outlined in the Post-Excavation Assessment Report shall be implemented in full and in accordance with the agreed timings.

17. No construction work (excluding impact pile driving dealt with by condition 18), in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: -

Monday to Friday 0730 - 1800 hours, Saturdays 0800 - 1300 hours unless in association with an emergency.

18. No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday, or Bank Holiday, nor on any other day except between the following times:
  - Monday to Friday 0900 - 1700 hours unless in association with an emergency.
19. Piling or any other foundation designs using penetrative methods shall not be undertaken other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated by a piling risk assessment that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details submitted to and approved in writing by the Local Planning Authority.
20. No development shall commence until a strategy to deal with any potential risks associated with contamination of the site has been submitted to, and approved in writing by, the Local Planning Authority. The development will be implemented in accordance with the approved strategy. This strategy will include the following components:
  - i) A preliminary risk assessment which has identified:
    - all previous uses;
    - potential contaminants associated with those uses;
    - a conceptual model of the site indicating sources, pathways, and receptors; and
    - potentially unacceptable risks arising from contamination at the site.
  - ii) A site investigation scheme, based on (i) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  - iii) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (ii). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance, and arrangements for contingency action. Any changes to these components require the express consent of the Local Planning Authority. The scheme shall thereafter be implemented as approved.

- iv) A Verification Report shall be submitted upon completion of the works and shall include full verification details as set out in the verification plan. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site.

Any changes to these components require the express consent of the local planning authority. The scheme shall thereafter be implemented as approved.

- 21. If, during development, contamination not previously identified 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 a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.
- 22. Prior to the commencement of the development, a Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority (who shall consult with National highways). Thereafter the construction of the development shall proceed in strict accordance with the approved CMP unless otherwise agreed in writing by the local planning authority (who shall consult National Highways). The CMP shall include the following information:
  - (a) Routing of construction and delivery vehicles to / from site
  - (b) Parking and turning areas for construction and delivery vehicles and site personnel
  - (c) Timing of deliveries
  - (d) Provision of wheel washing facilities
  - (e) Temporary traffic management / signage
- 23. Prior to the commencement of the development, a Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The document shall be produced in accordance with the Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites, the Control of Dust from Construction Sites (BRE DTi Feb 2003) and the Institute of Air Quality Management (IAQM) 'Guidance on the Assessment of Dust from Demolition and Construction'. The construction of the development shall then be carried out in accordance with the approved methodology.
- 24. The details submitted pursuant to condition (1) above shall provide details of:

- a) the provision of residential vehicle parking and turning space in accordance with the Swale Borough Council Parking Standards (May 2020),
- b) the provision for one secure and sheltered bicycle store for each dwelling within the site.

The development will be implemented in accordance with the approved details.

- 25. The access details shown on the approved Site Access Arrangements Plan (JNY11458-RPS-0100-001 D) shall be completed prior to the occupation of any buildings hereby approved, and the access shall thereafter be maintained.
- 26. No occupation of any dwelling shall take place until the highways works to provide a footway and 5.5m wide carriageway along the site frontage, as indicated on drawing JNY11458-RPS-0100-001 D, have been completed in accordance with a Section 278 agreement with the Highway Authority, unless otherwise agreed in writing by the Highway Authority.
- 27. An application shall be made to progress a Traffic Regulation Order for a road closure on Riddles Road between Starveacre Lane and Borden Lane as indicated on drawing JNY11458-RPS-0100-019, and the scheme implemented in accordance with the outcome of the application prior to the occupation of any dwellings hereby approved.
- 28. The proposed roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking and street furniture to be laid out and constructed in accordance with details to be submitted to and approved by the Local Planning Authority.
- 29. Completion of the following works between a dwelling and the adopted highway prior to first occupation of the dwelling:
  - (a) Footways and/or footpaths, with the exception of the wearing course;
  - (b) Carriageways, with the exception of the wearing course but including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any).
- 30. The development hereby permitted shall not be occupied until the visibility splays shown on the approved Site Access Arrangements Plan (JNY11458-RPS-0100-001 D) have been provided with no obstruction to visibility at or above a height of 0.9 metres above the nearside carriageway level. The visibility splays shall thereafter be maintained free of obstruction at all times.

31. The development hereby permitted shall not be occupied until a Travel Plan, to reduce dependency on the private car, has been submitted to and approved in writing by the Local Planning Authority (who shall consult with National Highways). The Travel Plan shall include such details as required by DfT Circular 01/2022, particularly paragraph 44, objectives and modal-split targets, a programme of implementation and provision for monitoring, review and improvement. Thereafter, the Travel Plan shall be implemented and adhered to throughout the life of the development, or that of the duration of the Travel Plan, whichever is the shorter.
32. Development shall not begin in any phase, aside from access arrangements, until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall demonstrate that due consideration has first been given to the possibility of utilising infiltration techniques and that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of within the curtilage of the site without increase to flood risk on or off-site. Should the use of infiltration prove to be beyond being reasonably practical then any surface water leaving site shall not exceed a discharge rate of 3.32 litres a second for all rainfall events as set out in the Flood Risk Assessment at Table 9.3. The drainage scheme shall also demonstrate that silt and pollutants resulting from the site use and construction can be adequately managed to ensure there is no pollution risk to receiving waters.

The drainage scheme shall be implemented in accordance with the approved details prior to first occupation of the development.

33. No building on any phase, aside from site access arrangements, (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The Report shall demonstrate that the drainage system constructed is consistent with that which was approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.
34. The development hereby permitted shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and no residential unit(s) shall be occupied until details of the measures used to

achieve the rate for that unit(s) have been submitted to and approved in writing by the local planning authority.

The development shall be carried out in accordance with the approved details.

35. No development shall commence until a Soil Resource Plan has been submitted to and approved in writing by the local planning authority. This shall set out how soils on the site are to be protected during construction and then recycled/reused in the new development layout. The soil protection/mitigation measures shall be implemented as per the Soils Resource Plan and then permanently adhered to throughout the construction and development of the site.

36. No development shall take place until a scheme for the provision of affordable housing (including First Homes) has been submitted to and approved in writing by the local planning authority. The scheme shall include: the numbers, type, size, tenure mix and location (by reference to a plan) on the site of the affordable housing and First Homes provision relating to the development.

The development shall be carried out in accordance with the approved details.

**Schedule ends.**