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## Appeal Decision

Inquiry held between 28 November and 1 December 2017

Site visits made on 27 November and 1 December 2017

**by Nick Fagan BSc (Hons) DipTP MRTPI**

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

**Decision date: 16 January 2018**

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**Appeal Ref: APP/X2220/W/17/3174842**

**Land to the north of Sandwich Road, Ash, Kent CT3 2AH**

- 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 Quinn Estates Limited against the decision of Dover District Council.
  - The application Ref DOV/16/00800, dated 6 July 2016, was refused by notice dated 1 February 2017.
  - The development proposed is the erection of 104 dwellings with associated commercial (B1) and nursery (D1) units, hard and soft landscaping, and associated infrastructure (all matters reserved except access to the site)
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### Decision

1. The appeal is dismissed.

### Procedural Issue

2. On the last day of the Inquiry I was handed a signed S106 agreement (the S106) dated 1 December 2017 between the appellant, owners, the Council as Local Planning Authority (LPA) and Kent County Council (KCC). The S106 obliges the owners to pay a variety of financial contributions to both the LPA and KCC prior to commencement or at various stages of the proposed development and to provide one of the affordable housing units as a wheelchair adaptable dwelling. However, since I am dismissing the appeal there is no need to address these matters in any further detail.

### Main Issues

3. The main issues are:
  - (a) Whether the LPA currently has a five year housing land supply (5YHLS);
  - (b) The effect of the proposed development on the character and appearance of the area including the effect on the local landscape and setting of the village within the countryside; and
  - (c) Whether the development would result in the significant loss of Best and Most Versatile Agricultural Land (BMV).

## Reasons

### Housing Land Supply

4. The main parties agree that the 'tilted balance' in paragraph 14 of the National Planning Policy Framework (NPPF) applies in this case irrespective of whether the LPA can demonstrate a 5YHLS. This is because the LPA acknowledges that the Core Strategy (CS) adopted in 2010 does not meet the District's current objectively assessed housing need (OAN) as required by NPPF paragraph 47 since the CS's housing requirement is based on the now revoked South East Regional Spatial Strategy, a 'policy-on' figure, and is therefore out-of-date.
5. So whether there is or is not a 5YHLS is relevant only to the extent that it is one issue amongst others as set out above. But considerable time was given to it at the Inquiry and because any potential absence of a 5YHLS would weigh on the appellant's side of the planning balance I consider it necessary to address the issues of disagreement between the main parties, both in respect of the OAN or requirement and the prospective supply in the next five years.

### *The Requirement*

6. The Council says the annual requirement for its District is 529 dwellings (dpa) based on the recent Strategic Housing Market Assessment (SHMA) compiled by Peter Brett Associates. The base date for this requirement is 1 April 2014, which would also form the base date for the Council's new plan, the Local Plan Review (LPR), which the Council decided to commence work on following agreement at its Cabinet meeting on 1 March 2017. The LPR is not scheduled for adoption before July 2020 according to the September 2017 Local Development Scheme and no draft policies have been formulated to date.
7. The appellant disputes the OAN figure of 529 dpa on the grounds that the market signal uplift of 10% in the SHMA is insufficient when compared to higher uplift figures such as the 30% at Canterbury; that no policy-on uplift figure has been included to take account of economic growth in the area likely to be envisaged in the LPR; and that no uplift figure has been included to deliver the necessary amount of affordable housing (AH) (including any backlog) in the LPR. However it acknowledges that a S78 appeal like this is not the place to test the 529 dpa figure in these respects<sup>1</sup> – the LPR Examination is the place for that.
8. The appellant also argues that the Government's standard methodology<sup>2</sup>, which produced a figure of 594 dpa should be preferred. However, although the consultation sets out the Government's preferred default method for arriving at OAN in the future, there is no certainty that it will be adopted in the revised NPPF. The consultation only closed on 9 November and there are likely to be many opposing responses which will require analysis before the Government decides on whether or not to adopt the proposed or any other standard methodology.
9. The above arguments against the SHMA's figure of 529 dpa are therefore merely speculative, both in terms of the potential application of the standard methodology and the LPR's policies and requirements. The SHMA figure has

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<sup>1</sup> Appellant's Opening Statement, paragraph 8 and in cross examination (XX)

<sup>2</sup> As set out in Appendix PB5 to Mr Burley's Proof of Evidence – the Government's Planning for the right homes in the right places: consultation proposals, September 2017

not been tested at Examination due to the very early stage of the emerging LPR. But it is nonetheless the most recent evidence-based analysis of the District's OAN (only published in February 2017), which has been arrived at via a thorough assessment by Peter Brett Associates, acknowledged experts in this field, in compliance with current NPPF and Planning Practice Guidance (PPG).

10. The SHMA's methodology and conclusions have not been challenged by the appellant albeit that it states that it is for the Council to decide whether an uplift to address AH need is required. It is of course quite possible that the SHMA will have to be updated as a result of the release of new demographic projections prior to the pre-submission version of the LPR and that such projections could indicate lower population growth for the District. Again, this is why such matters, which are currently purely speculative, will need more properly to be addressed as part of the LPR Examination rather than in this appeal. For these reasons there is no reason to depart from the SHMA's OAN figure of 529 dpa for the purposes of this appeal
11. The appellant also maintains that a buffer of 20% should be applied to the OAN as a result of persistent under delivery of previous annual housing requirements or targets. It points to the fact that in only one year out of the last nine has the Council met its annual target and that a shortfall of 1,720 dwellings or 37% of the total requirement has been built up over this period ending on 31 March 2017<sup>3</sup>. It also evidences the fact that the Council has consistently overestimated its projected delivery against its actual annual housing delivery in its Annual/Authority Monitoring Reports (AMRs) since 2007/08<sup>4</sup>.
12. That is indeed the case. But 2014/15 is the start of the new plan period. Against the target of 529 dpa there was a shortfall in 2014/15 and 2016/17 and the 2016/17 AMR predicts a shortfall in 2017/18. However, there was a surplus of delivery over supply in 2015/16. Overall since the start of the SHMA and LPR period there is a shortfall of 111 dwellings), a figure considerably less than the individual and cumulative shortfalls in the years before 2014/15, which indicates a significant improvement in delivery from the new base date.
13. It is also important to note that the backlog of unmet need before 1 April 2014 has been incorporated into the new OAN figure as per current best practice and relevant judicial authority<sup>5</sup>. For these reasons the assessment as to whether there has been persistent under delivery should start in 2014/15. By any reasonable assessment, failure to comply with the target of 529 dpa for two out of only a three year period resulting in a delivery shortfall of only some 111 dwellings cannot realistically be regarded as persistent under delivery justifying a 20% buffer. Consequently I agree with the LPA that the buffer should be 5%.

#### *The Five Year Supply*

14. So, this means that the requirement is for 2,893 dwellings in the next five years (529 x 5 + 111 shortfall + 5% buffer). This equates to a 5.65YHLS, which means that if 362 of the 3,255 dwellings that the Council states are

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<sup>3</sup> Summary Position and Update of Mr Burley's Proof – Table 1

<sup>4</sup> Ibid – Table 2

<sup>5</sup> *Zurich Assurance Ltd v Winchester City Council* [2014] EWHC 758 (Admin)

- deliverable within the next five years are not deliverable then it would not have a 5YHLS.<sup>6</sup>
15. The appellant contests that 402 dwellings from the list of large sites (over 30 dwellings) either with planning permission or the subject of current allocations identified in the 30+ dwellings sites list<sup>7</sup> are not deliverable. It argues that a 10% lapse rate should also be applied to small permitted sites of 10 or fewer dwellings (a figure of 26 dwellings) and to large sites of 11 to 30 dwellings (a figure of 9 dwellings). These figures together (402 + 26 + 9) produce a total of 437 dwellings which the appellant claims to be undeliverable in the next five years. If this was so it would reduce the HLS to 4.87 years ( $3,255 - 437 = 2,818 \div 2,893 = 0.974 \times 5 = 4.87$ ).
  16. Much time was addressed at the Inquiry to the meaning of deliverability in terms of NPPF Footnote 11, relevant parts of PPG and the recent *St Modwen* judgement<sup>8</sup>. It is clear that deliverability is not the same thing as delivery – i.e. the fact that a particular site is capable of being delivered does not mean that it necessarily will be. Footnote 11 is quite clear that “*sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented in five years...*” PPG 3-031 also makes clear that sites allocated for housing in development plans can be included in supply unless there is clear evidence that schemes cannot be implemented within five years. It is against this basis that the appellant’s challenge to the Council’s mooted supply must be assessed.
  17. There are 10 sites in the 30+ sites list where housing delivery within the next five years is disputed. The appellant’s challenge to the Council’s predicted delivery relates to the start date of development and the delivery rate including in some cases the likelihood of more than one housebuilder developing on the site. But apart from relying on generic national build-out rates the appellant offered very little in terms of specific evidence that the predicted delivery on these sites would fail to occur.
  18. Against this the Council’s evidence stated that its delivery assessment on the 30+ sites was based on contacting the sites’ owners, promoters, developers or housebuilders. Mr Emms also added to/ updated the Council’s written comments on the 10 disputed sites during the course of the Inquiry and I note that that build-out rates on many of the disputed sites are no higher than generic national build-out rates. The appellant on the other hand has provided no robust site specific evidence to demonstrate that there is no realistic prospect of the mooted supply being delivered from the disputed sites. Consequently I favour the Council’s supply figures on the disputed sites, with the exception of the two sites below.
  19. The first is Site 15 (Albert Road in Deal), which is also controlled by the appellant and which it says will not start on site until 2019/20 due to the need to resolve foul drainage issues. This would result in the loss of 30 units from the supply.
  20. The second is Site 12 (The Old Sorting Office site in Dover) has permission for 65 Class C2 ‘extra care’ units. The appellant argues these should be removed

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<sup>6</sup> Update of Mr Burley’s Proof, page 3 & Table 4, first row and Mr Emms’s Revised 5YHLS Calculation updated at the Inquiry

<sup>7</sup> Appendix 2 of the HLS Statement of Common Ground (HLS SoCG)

<sup>8</sup> *St Modwen v SSCLG & ERYC [2017] EWCA Civ 1643*, particularly paragraphs 35, 36, 38 & 42 (in Appendix PB16)

because the supply only relates to C3 units and no C2 requirement was included in the overall housing requirement in the CS. I am inclined to give the appellant the benefit of the doubt here because in my experience C2 units are normally addressed separately from the overall housing requirement for C3 units, albeit that the PPG is fairly unclear on this point.

21. I acknowledge that generic lapse rates have been applied in some instances and it is unlikely that 100% of permissions would be built out within 5 years, especially in light of the appellant's evidence that they have not been to date<sup>9</sup>. However, as *St Modwen* has confirmed, it is deliverability and not delivery that is the test. The key question therefore is whether there is no realistic prospect that the sites could come forward with the 5-year period, as per *St Modwen* and confirmed in the subsequent recent Pocklington appeal decision<sup>10</sup> cited by the Council.
22. Apart from the loss of 95 units from Sites 12 and 15 on the 30+ sites list, I cannot conclude from the evidence that there is no realistic prospect that the housing indicated by the Council will not be delivered within 5 years. Indeed there is no evidence at all to suggest that small sites of 10 or fewer dwellings and sites of 11-30 dwellings are not deliverable. At worst my above conclusions would reduce the supply by 95 dwellings, which would still leave a 5.5 YHLS.
23. In any event, even if I was to accept that the appellant's pessimistic assumptions of delivery on the 30+ sites were to some extent merited, so that at worst 50% or 201 units were deducted from the supply and a 10% generic lapse rate was applied to the other sites with permissions, that would only lead to the loss of 236 dwellings (201 + 26 + 9) from the overall supply, which would still leave a 5.2 YHLS.

#### *Conclusion on 5YHLS*

24. For all the above reasons I conclude that the LPA can currently demonstrate a 5 year supply of deliverable housing sites.

#### Character and Appearance

25. A Landscape Statement of Common Ground (LSoCG) was helpfully given to me at the Inquiry. The landscape and visual assessment methodology follows the standard current approach<sup>11</sup> to such matters and the LSoCG makes clear that it is agreed between the main parties. It includes Tables 1 and 2, which set out the differences between the parties in relation to landscape and visual effects respectively.
26. The 5.73 hectare site comprises a large field in arable cultivation with a much smaller area of rough grassland to the east. It lies on the north eastern edge of the village, opposite the houses and commercial buildings on the south side of Sandwich Road. It falls gently from a high point of 19m AOD midway along the Sandwich Road frontage to about 14m AOD at the north-western corner and 16m AOD at its north east corner both next to the A257 bypass. Its mid-point is about 800m from the centre of the village to the west. There are mature hedgerows and trees along the northern and eastern boundaries;

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<sup>9</sup> Montagu Evans' Non-Implementation/Lapsed permissions, 30 November 2017

<sup>10</sup> CD/E5

<sup>11</sup> In Guidelines for Landscape and Visual Impact Assessment (3<sup>rd</sup> Edition)

otherwise the site is open apart from some sparse hedges to the Public Bridleway (BW466) to the west.

27. Moving west of BW466 is other agricultural land before one approaches the Recreation Ground and the existing residential development on Queen's Road. Although the bypass severs the site and this land from the rest of the surrounding countryside to the north, these fields are clearly perceived as open agricultural land, albeit they are also seen in the context of built development from Sandwich Road, BW466 and all the surrounding footpaths (FPs) discussed at the Inquiry, which I walked during my site visits.
28. CS Policy DM 16 (Landscape Character) states that development that would harm the character of the landscape, as identified through the process of landscape character assessment will only be permitted if: i) it is either in accordance with an allocation and incorporates necessary avoidance/mitigation or ii) it can be sited to avoid/reduce the harm and/or incorporates necessary measures to mitigate impacts to an acceptable level.

#### *Landscape Effects*

29. The most relevant character assessment is that at the local level, the *Dover District Landscape Character Assessment*. Within this the site lies within *Character Area 2: Preston and Ash Horticultural Belt*, which is typified by relatively flat topography; a sense of enclosure by native hedgerows and tree clumps with limited views; a good FP & BW network; patches of mixed agricultural land in fields of different sizes around settlements; arable crops including wheat, root crops and brassicas, and market gardening including large areas of glasshouses to the north of the Ash bypass. The site exhibits many of these characteristics and is hence typical of Character Area 2. Neither the site nor its surroundings are subject to any specific landscape designations.
30. As set out on the LSoCG Table 1 there is no significant difference between the parties' landscape witnesses in respect of the value, susceptibility/condition and hence sensitivity of the site to development. But they disagree fundamentally on the magnitude of change that the proposed development would create.
31. The methodology<sup>12</sup> combines landscape sensitivity with magnitude of change to arrive at a judgement in terms of significance of effect on the landscape<sup>13</sup>. LSoCG's Table 1 has 3 rows (L1, L2 & L3) which contain the two parties' judgements on the site's landscape elements, on its landscape character and on the landscape character of the wider area respectively. The appellant considers the magnitude of change in Year 1 to be *medium*<sup>14</sup> in respect of the site (L2) and *low to negligible* in respect of the wider landscape area (L3). *Medium* is defined as: *Partial loss/alteration or moderate enhancement of the landscape resource*. *Low* is defined as: *Slight loss/alteration of such*; and *negligible* as: *minor loss/alteration or minor enhancement of such*. In contrast the Council consider the magnitude of change to be *high*, which is defined as: *Substantial loss or enhancement of the landscape resource*.

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<sup>12</sup> Contained in Appendix A of Mr William's Proof & Appendix A of the Report on Landscape and Visual Matters (CD/B14)

<sup>13</sup> Ibid, specifically Table 4.0

<sup>14</sup> Ibid, these terms are defined in the text prior to Table 4.0

32. I fail to understand how the construction of an estate of 104 houses can be judged to be a partial loss or alteration of the site. The site is currently an open field, an important part of the village's countryside setting. The development would adversely urbanise this setting such that the northern edge of Ash would henceforward be largely defined by the bypass rather than by open fields. The appellant argues that the creation of a linear village green along the length of the site's southern frontage and the introduction of significant new planting/landscaping along its eastern, northern and western boundaries will compensate for such a loss by Year 15. But that is not illustrated by the Year 15 computer generated images (CGIs). Even if it were possible to fully screen or disguise the proposed development behind new landscaping it would undoubtedly result in a *high* magnitude of change to the site. In any case the landscaping in the proposed linear village green would not screen the development from view, nor should it attempt to do so.
33. In terms of the wider landscape area (L3) I accept that the proposed development would not particularly affect the wider countryside in Character Area 2 to the north of the bypass because the appellant is seeking to bolster this boundary by a wider and higher landscaped bund. Nonetheless, the wider area must include the agricultural fields to the west, which together with the site, form an arc of undeveloped open countryside around the northern edge of Ash. This arc of arable land is a fundamental part of the village's setting within the wider countryside. The proposed development of the site would remove a significant part of this arc of arable land and significantly compromise the rural setting of the northern part of the village. The proposed development's significant incursion into it cannot therefore realistically be described as *low to negligible* as those terms are defined.
34. The appellant's judgements range, in respect of the long term landscape effect from Year 15 when the scheme's landscaping will have matured, from *moderate beneficial* on L1 through to *negligible to slight beneficial* on L3<sup>15</sup>. So the appellant argues, at worst, that the effect on the landscape would be *negligible* – and only on the wider area outside the site and immediate surrounding area. *Negligible* is defined as: *Typically the landscape receptor has a very low sensitivity with the proposals representing a very low magnitude of change that may be adverse or beneficial although the effect of either change would not be significant.* In terms of the effect on the site itself at Year 15 the appellant's judgement is *slight beneficial*, which is defined as: *The removal of some existing incongruous landscape element and/or the introduction or restoration of some potentially valued landscape elements [that] would reflect landscape character and result in some improvements to landscape condition.*
35. However, there are no incongruous landscape elements on the site and it does not need restoration. The introduction of a large new housing estate on the site would project a spur of intensive urban development into the countryside despite the substantial areas of landscaped open space around its edges. It would only be bounded on its southern side by existing village development.
36. In my view it would compare unfavourably with the existing allocated sites in Ash, including the Chequer Lane site because that site is bounded on its eastern and southern sides by existing residential development which already

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<sup>15</sup> These terms are defined in the text under Table 4.0 Ibid

extends northwards as far as the bypass. The other allocated sites are infill sites within the confines of existing built development in the village, much of which is brownfield land. I agree with the Council that the landscape sensitivity of the site and wider landscape is *medium*, not *very low* as per the above definition of *negligible*, and the magnitude of change is *high* so the effect is *moderate/substantial*. This is deemed, under the methodology, to be a significant effect. I agree it certainly would be, both in terms of the site itself and the wider landscape area.

### *Visual Effects*

37. Visual effects are the development's effects on people, in this case the effects on the five groups of people outlined in Table 2 of the LSoCG (rows 2.1-2.5). These encompass views from the contended Viewpoints (VPs) by users of public rights of way and, in the case of row 2.5, private views from the properties on Sandwich Road.
38. In terms of views from the Sandwich Road properties it is agreed that their sensitivity is *high*. But by Year 15 the appellant argues that, depending on the particular view, the residual visual effect would be *moderate/slight to slight* because the magnitude of change would be *medium to high*. In contrast the Council considers the magnitude of change to be *very high* and the effect, even in year 15, to therefore be *substantial adverse*<sup>16</sup>.
39. Even with the linear village green and tree planting to the southern edge of the site there is no doubt that many if not most of the views from the properties on Sandwich Road would be radically affected, especially from their upper floor windows. There could and would be no disguising the development and the comparison between the existing open field as against the development of predominantly two storey houses would be very great and would, even when the new landscaping had matured, be *substantial and adverse*.
40. The views from VPs 11 and 12, from FP108A to the south east (Row 2.2) may only be *moderate* at Year 15 because a large area of newly planted trees would interrupt views of the new housing estate from here but they would be unlikely to block them entirely. These views could certainly not be described as *neutral to slight beneficial* as the appellant suggests because these are defined as no discernible deterioration or a barely discernible improvement in the view respectively<sup>17</sup>.
41. I turn to row 2.1, the near distance views from pedestrians and drivers on Sandwich Road. I disagree with the appellant that the sensitivity of these receptors are *low*; views from VPs 1, 3, 4, 9 & 10 are views from the principal eastern road into and out of the village and people using this route (locals and visitors) will have at least a partial interest in their surroundings, which translates into a *medium* sensitivity<sup>18</sup>. Most of these VPs are very near the site – apart from VPs 3 & 4. But even taking the latter into account the sensitivity of these receptors is at least *medium* and the magnitude of change at least *high*, which translates into a *moderate/substantial adverse* visual effect. A moderate adverse effect is defined as: *Typically proposed changes would cause a noticeable deterioration in the existing view from moderately sensitive visual*

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<sup>16</sup> Ibid, Table on page 12 (of Appendix A to Mr Williams's Proof)

<sup>17</sup> Ibid, text below Table

<sup>18</sup> Ibid, Tables 5.0 & 6.0



*receptors*. A substantial adverse effect is defined as: *Typically proposed changes would cause a pronounced deterioration in the existing view from highly visual receptors*. Either way this would be a significant adverse effect.

42. Row 2.3 sets out the effect on key VPs from BW466 next to the western edge of the site. This is a paved well-used BW including by local dog walkers as I was able to witness on my site visits and it also occupies a dip in the local topography so that, despite the proposed boundary planting to this side of the site, the new dwellings and the new commercial building would be on higher ground. As such the view from VP2 would be significantly affected by the new commercial building and that from VPs5a & 5b by the new dwellings. Consequently I agree that the sensitivity of walkers on this BW is *high* and the residual effect even at Year 15 would be *substantial adverse*, as the Council argues.
43. Finally, Row 2.4 of Table 2 assesses the effects on the users of FPs 53A, 106, & 107/465 and from the Recreation Ground and Rugby Club beyond to the west. The land here is at a similar AOD height to the site if not slightly higher and there are clear views of the site from these locations, especially from VP20 and from the whole length of FP106. These FPs also appear to be well used and I agree that users of them have a *high* sensitivity, despite the presence of peripheral development on the south side of Sandwich Road. The view from here will be changed across a wide panorama by the undoubtedly *high* magnitude of change delivered by the proposed development. I again prefer the Council's judgement of a *substantial adverse* visual effect because boundary landscaping at year 15 would not in any significant way screen the total impact of the development from these VPs.
44. I have taken into account the distances agreed between the parties between the above VPs and the boundary of the site as well as the built development as set out on the Illustrative Site Layout Plan (Drawing No 22191A\_11-D). This is because, although layout is a reserved matter, the appellant relies on this layout to argue that there would be no significant visual effects. However, for the above reasons I disagree.

#### *Conclusion on Character and Appearance*

45. For the above reasons the proposed development would significantly harm the character and appearance of the area including the local landscape and setting of the village within the countryside.
46. The site is not allocated for development in the CS or LALP so it needs to satisfy CS Policy DM 16 ii) – that the development can be sited to avoid/reduce the harm and/or incorporates necessary measures to mitigate impacts to an acceptable level. The wording of this Policy is slightly ambiguous because the proposals set out in the appellant's Landscape Strategy Plan L4 would reduce the harm to less than if they were absent from the scheme. But, for the above reasons, they would not avoid the significant harm that would result and would not mitigate the impacts to an acceptable level. Consequently I conclude that the scheme would breach Policy DM 16.
47. CS Policy DM 1 (Settlement Boundaries) states that development will not be permitted on land outside the urban boundaries and rural settlement confines on the proposals map unless specifically justified by other development plan policies, functionally requires such a location or is ancillary to existing

development. As indicated above, the site is outside the village confines and fails to fulfil the listed exceptions, so the proposed development would fail to comply with DM 1.

48. CS Policy DM 15 (Protection of the Countryside) states that development which would result in the loss of, or adversely affect the character or appearance of the countryside will only be permitted subject to a number of exceptions. The proposal would satisfy criteria v) that it would not result in the loss of ecological habitats but criterion v) is dependent on it satisfying one of the previous four criteria, which it would not do. In particular there is no certainty that it could not be accommodated elsewhere – criterion iv). For these reasons the proposal would also be contrary to Policy DM 15.

#### Best and Most Versatile Agricultural Land (BMV)

49. There is no disagreement that the vast majority of the site (96%) comprises Grade 1 (57%) or Grade 2 (39%) BMV. NPPF paragraph 112 states that LPAs should take into account the economic and other benefits of BMV. It also states that where significant development of agricultural land is demonstrated to be necessary, LPAs should seek to use poorer quality land.
50. Evidence shows that 45% of land in Dover District constitutes Grade 1 and 2 BMV, higher than the national (12.9%) and the Kent County (29.5%) averages. This indicates to me it is probable in the future that allocations may well be necessary on such BMV and so, as agreed between the main parties, the loss of such land is not a reason in itself to warrant dismissal of the appeal. The site area would comprise less than 0.04% of Grade 1 and 2 land in the District. In the absence of any other harm such a loss would be minimal.
51. The appellant also provided evidence that the bypass had severed the site from its previous main supply of water, the Hill's Court Pond to the north<sup>19</sup>. It argues that the loss of this source of irrigation means that only cereal crops can be grown on the land, which makes it marginal in economic terms. However, the appellant's letter makes clear that potatoes and beans are grown on the adjoining fields to the west suggesting the availability of some other source of irrigation. I also have no evidence that alternative methods of irrigation have been explored. Consequently I only give limited weight to the appellant's above arguments.
52. In conclusion, the loss of this small percentage of BMV land in the District is not determinative. However, such a loss would be added to the harm to the character and appearance of the area and, with the presence of a 5YHLS, the loss of such Grade 1 and 2 BMV is not currently necessary to achieve the aim of significantly boosting the supply of housing.

#### **The Planning Balance**

53. As set out above, the proposed development would be contrary to CS Policies DM 1, DM 15 and DM 16. I accept that DM 15 is essentially a 'counterpart' policy to DM 1 because the countryside is defined as those areas outside of urban boundaries or rural settlement confines, albeit none of these policies are

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<sup>19</sup> Appendix PB23

'policies for the supply of housing' for the reasons clearly set out in the *Suffolk Court of Appeal* judgement<sup>20</sup>.

54. However, *Suffolk* acknowledges that if relevant policies are out-of-date, which the Council acknowledges the CS policies relevant to housing supply are in this case as set out in paragraph 4 above, then the tilted balance in NPPF paragraph 14 is engaged. This means, in this case (because it is accepted that no NPPF Footnote 9 policies are engaged), that permission should be granted unless any impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
55. But the adoption of the tilted balance does not, as NPPF paragraph 12 makes clear, change the statutory status of the development plan (DP) as the starting point for decision making<sup>21</sup>. Proposals that conflict with the DP should be refused unless material considerations indicate otherwise.
56. The scheme would deliver important benefits. In terms of social benefits it would deliver 104 residential units to meet the needs of existing and future generations, 30% of which would be affordable in a District whose need for AH is pressing; it would also provide commercial and D1 floorspace which would benefit the local area including in terms of providing a new premises for the Ash Scout Group, who will soon need to find alternate premises.
57. Economic benefits would comprise temporary construction jobs on site, permanent jobs in the B1/D1 building and increased expenditure on local shops/services by new residents. Environmental benefits would include the creation of new public open space on site and ecological benefits in the way of new tree and shrub planting and the like.
58. I acknowledge that a 5YHLS is not a ceiling on allowing additional housing development where there would be no significant harm and that Ash is defined as a Local Centre and one of the largest villages in the District with good bus services and a range of shops and services.
59. However there would be significant harm to the character and appearance of the area added to which would be the unnecessary loss of BMV. CS Policies DM 15 and DM 16 accord with the core principle of the NPPF to recognise the intrinsic character and beauty of countryside (paragraph 17, bullet point 5). More appropriate sites have been allocated within Ash in the LALP, which would have less landscape impact and there is no need to allow development at present outside the confines of the settlement boundary and breach CS Policy DM 1, given the primacy of the DP. The significant harm to the local landscape and loss of BMV would conflict with these Policies and with the NPPF and would, in the presence of a 5YHLS, significantly and demonstrably outweigh the above material benefits of the scheme.
60. For these reasons the proposal should be dismissed.

*Nick Fagan*

INSPECTOR

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<sup>20</sup> CD/E1 – *Suffolk Coastal District Council v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East Borough Council* [2017] UKSC 37, in particular paragraphs 43, 44, 57, 63 and 86

<sup>21</sup> S70(2) Town & Country Planning Act 1990 & S38(6) Planning and Compulsory Purchase Act 2004

## **APPEARANCES**

### FOR THE APPELLANT

Jeremy Cahill QC (No 5 Chambers), *instructed by* Karen Cooksley of Winkworth Sherwood, called:

- David Williams, DWLC
- Paul Burley, Montagu Evans

### FOR THE LOCAL PLANNING AUTHORITY

Graeme Keen, Counsel (Landmark Chambers) *instructed by* Head of Legal Services, Dover District Council (DDC), called:

- David Green, Amey
- Mike Ebbs, Head of Regeneration & Development, DDC
- Vic Hester, VLH Associates

### INTERESTED PERSONS

- Christine Wood for Ash Scouts Group
- Ian O'Connell, Local Resident
- Chris Burnside, Local Resident
- Mary Smith, Local Resident & Committee Member of Ash Neighbourhood Plan Group
- Pearl Thorne, Local Resident
- Jan Connor, Local Resident & Footpath monitor
- Chris Turner, Deputy Chair of Ash Parish Council & Local Resident
- Martin Porter, Ash Parish Councillor
- Christine Haggart, Clerk to Ash Parish Council

*End of Appearances*

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## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1 Allocated Site LA21 – Ownership Information
- 2 Approved Illustrative Masterplan of Chequer Lane residential development
- 3 SHMA Part 2 – Objectively Assessed need for Affordable Housing
- 4 Written statements of residents’ objections read out at the Inquiry
- 5 Opening Statement of behalf of DDC
- 6 Opening Statement on behalf of Appellant
- 7 Landscape Statement of Common Ground (LSoCG)
- 8 Table of agreed viewpoint distances together with A1 copies of plans
- 9 Statement of Common Ground on Housing Land Supply (HLS SoCG)
- 10 Updated summary of Paul Burley’s HLS evidence, dated 30 November 2017
- 11 Revised version of 2016/17 5YHLS calculation by Mike Ebbs with additional column inserted by Paul Burley, dated 28 November 2017
- 12 Record of the special meeting of the Council’s Cabinet held on 20 November 2017
- 13 Updated list of Non-Implementation/Lapsed Permissions by Paul Burley, dated 30 November 2017
- 14 Housing trajectory up to 2037, dated 30 November 2017
- 15 Schedule of agreed conditions
- 16 CIL compliance statement by Vic Hester
- 17 Signed 106 agreement dated 1 December 2017
- 18 Closing submissions on behalf of DDC with appended copy of *Barwood Land* judgement
- 19 Closing submissions on behalf of Appellant
- 20 CGI Viewpoint location plan and existing views from the 3 viewpoints

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*End of Documents*