
Appeal Decision

Inquiry held on 12, 13, 14 and 15 May and 16 and 17 July 2015

Site visit made on 17 July 2015

by P W Clark MA MRTPI MCMI

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

Decision date: 14 August 2015

Appeal Ref: APP/T2215/A/13/2195591

Land to the north of Hedge Place Road, Stone, Dartford

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Fairview Homes against the decision of Dartford Borough Council.
 - The application Ref DA/12/01150/FUL, dated 17 September 2012, was refused by notice dated 20 February 2013.
 - The development proposed is the erection of 56 dwellings comprising 33 x 3 bedrooms and 11 x 4 bedroom houses and 12 x 2 bedroom flats together with associated landscaping works, parking and infrastructure works.
 - This decision supersedes that issued on 29 October 2013. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 56 dwellings comprising 33 x 3 bedrooms and 11 x 4 bedroom houses and 12 x 2 bedroom flats together with associated landscaping works, parking and infrastructure works on Land to the north of Hedge Place Road, Stone, Dartford in accordance with the terms of the application, Ref DA/12/01150/FUL, dated 17 September 2012, subject to the twenty-two conditions appended to this decision.

Procedural matters

2. At the Inquiry, a signed and dated Deed was submitted releasing the Developer from an earlier Unilateral Undertaking made before the Council adopted its Charging Schedule under the Community Infrastructure Levy Regulations. A replacement signed and dated Unilateral Obligation was submitted which provides for 16 units of affordable housing on site, for the provision of a footway along parts of Hedge Place Road and for relocating an existing road closure in Hedge Place Road from a position west of the site to a position at the eastern end of the site. The Undertaking is qualified by a condition of consistency with the CIL Regulations, which is considered further, below (paragraphs 64 and 73).

Main Issues

3. Several Statements of Common Ground (SOCG), with Dartford Council, with Kent County Council and with the Council of the London Borough of Bexley

reduce the areas of contention. Not all parties subscribe to all the SOCGs. Third parties in particular continue to pursue issues of highway safety. There remain six main issues. They are;

- Whether the site would be a sustainable location for development and the effects of the proposal on;
 - Biodiversity
 - The character and appearance of the area
 - The living conditions of existing residents of Waterstone Park and of potential future residents of the appeal scheme
 - Highway safety
- and on
- Housing Land Supply

Reasons

Sustainable location

4. The National Planning Policy Framework (NPPF) advises that there are three dimensions to sustainable development; economic, social and environmental. Some elements of these three dimensions are not in contention in this appeal; for example, except for residual points about highway safety, the provision of infrastructure would largely be dealt with through the Community Infrastructure Levy (CIL) or through conditions as agreed in the various Statements of Common Ground. Other elements are the subject of particular issues; for example, the biodiversity and the living conditions issues are central to the environmental role of sustainable development, the character and appearance issue is common to both the social and environmental roles and the housing land supply issue is common to both the economic role and the social role.
5. Without covering every aspect of sustainable development, the first issue in this appeal cuts across all three elements; whether the land is of the right type; in the right place; supported by infrastructure providing accessible local services so as to minimise the need to travel thus using natural resources prudently and minimising pollution. These considerations resonate with the four groups of Sustainability Criteria listed in the Council's Windfall Sites Supplementary Planning Document adopted in October 2014. That document, and policy CS10 (4) of the Dartford Core Strategy adopted in September 2011, which it supports, can therefore be seen to align closely with the NPPF.

Land of the right type

6. At the time of the preparation of the Council's Core Strategy, the site was appraised as part of a larger area of land which had been quarried and then filled with waste, generating methane gas. For that reason, it was not considered developable and no further consideration was given to its inclusion as a potential development site.
7. That is now known to be mistaken; the site the subject of this appeal is not previously developed land. It is a greenfield site. Its development would not

therefore follow one of the government's twelve core planning principles that planning should encourage the effective use of land by reusing land that has been previously developed (NPPF paragraphs 17 and 111). The Council's most recent Annual Monitoring Report records that its target that 80% of development be on previously developed land is narrowly being met. However, there is no evidence that development of this site would result in a failure to achieve the Monitoring target, so this consideration is a disadvantage to be weighed in the balance rather than an absolute bar on development of the site.

8. Paragraph 2.7 (2) of the Council's Core Strategy explains that one of its principles is to protect from development those sites and areas which provide wider community and environmental benefits as areas of open land. As noted below, the ecological interest of this site is very limited. Other than public footpaths which bound it, there is no authorised public access, so it offers little community benefit. There is therefore little reason to protect it from development.
9. Although there is apparently no tenancy or licence, the site is currently used, with the landowner's acceptance, as rough grazing for horses, as noted in paragraph 2.1 of the Statement of Common Ground with Dartford Council dated 15 January 2015. This is an agricultural use.
10. Although there is no specific permission for such a use, there does not need to be any specific permission for an agricultural use. As an agricultural use, it is exempt from the definition of open space, contained in footnote 124 of the Council's Core Strategy and so, whether or not it is indicated as a Green Space in an Urban Area on Diagram 8 of the Core Strategy (considered further below), its development would not conflict with subsection (e) of the Council's Core Strategy policy CS14 which seeks to protect from development existing open spaces, whether publicly accessible or not.
11. The NPPF advises that account should be taken of the economic and other benefits of the best and most versatile agricultural land. There is no suggestion that this agricultural land would fall into that category. As an agricultural, greenfield site, its development would be a loss but, not a great loss.

Land in the right place

12. The site is far from being located in remote countryside. It lies within "Ebbsfleet to Stone", one of the three priority areas specified in Dartford Core Strategy Policy CS1 in which development would be focussed in order to promote sustainable patterns of development.
13. Public transport with turn-up-and-go frequencies to both Dartford town centre and Bluewater regional shopping centre is available on London Road to the north of the site but the stops would be some 600m away, a walking time for an average pedestrian of about 8 minutes. Frequent "Fastrack" buses, operating on a partially dedicated right of way and serving other local destinations including nearby railway stations would also be available at stops about 12 minutes walk away on St Clements Way.
14. These times and distances are within the ranges which people are prepared to accept when using public transport but they are rather more than the distances or times which people would regard as an incentive to use public transport

rather than a private car. Those are the indicative distances (400m or a five-minute walk) used in the Council's windfall sites SPD.

15. Likewise, walking times and distances to facilities such as local shops, schools, employment areas and doctor's surgeries range from 10 to 20 minutes; acceptable rather than notably convenient. Public open space and children's play areas are provided much closer, at Waterstone Park, adjacent to the site. A remarkable benefit is the nearby presence of the Bluewater Regional shopping centre, which also provides considerable employment opportunities. This would be within a twenty minute walking distance of the site, which would make the proposal unusually well-favoured in terms of access to a facility of such significance.

Supported by infrastructure

16. Paragraph 2.24 of Tania Smith's evidence to the Inquiry asserts that much of Dartford's physical infrastructure is operating on or near full capacity. But its Core Strategy policy CS11 is predicated on expanding Dartford's housing, employment and infrastructure in a balanced way. The Council's most recent Annual Monitoring Report records that, for the Borough as a whole, its indicator 6 suggests the range of key community services was not diminished and that in terms of local access to shopping, indicator 9 shows positive availability. It also records progress in the provision of transport infrastructure. As noted in paragraph 2.30 of Tania Smith's evidence on behalf of the Council, there is no suggestion that the infrastructure to serve this site does not have the necessary capacity, or that adequate capacity would not be provided through the operation of the CIL regime. I have no reason to disagree.

Minimising the need to travel

17. The Council's most recent Annual Monitoring Report records that public transport, cycling and walking as major modes of transport appear less popular in the Borough than in other areas of Kent at present. There are variations between different parts of Dartford, as shown by the Census data for different wards.
18. The appeal site would be located within the extensive and heterogeneous Stone Ward but would be adjacent to the compact and more homogenous Castle Ward. These show different characteristics; more walking and bus use in Stone Ward, less walking and greater rail use in Castle Ward. Both show increases in walking and public transport use between 2001 and 2011.
19. It may be thought that, as a new development, the appeal scheme would have more in common with the recent development predominating in Castle Ward. But the submitted data only shows difference in the proportions of travel by various modes; there is no information to show that either ward experiences a lesser need to travel overall and so, no conclusion can be drawn from this evidence on the question of whether the location of the site would minimise the need to travel.
20. Although Core Strategy policy CS15 requires major new residential development to provide a travel plan, the Statements of Common Ground agree with the view expressed in the appellant's submitted transport statement that a travel plan is not required for this development, given its overall scale. Accordingly, I do not adopt the suggestion of a condition to require the same.

Nevertheless, the appellant has offered to provide transport information as part of its welcome packs given to the first occupants of their new dwellings. This can be required by condition (22).

21. The proximity to local supporting infrastructure and sources of employment has already been noted. The Council's most recent Annual Monitoring Report (AMR) records progress on transport infrastructure provision. The requirement of policy CS4 (2) for developments at Stone to demonstrate through a travel plan adequate traffic measurements to address capacity issues on London Road is now overtaken by the introduction of the CIL charging regime and the pooling limitations of regulation 123. Indicator 7 of the AMR shows that the Borough has retained its pre-eminence as the most sought after location in Kent for employment development. In consequence, there is no reason to suppose that the balanced and sustainable pattern of land use and transport sought by policy CS11 and the third of the Core Strategy's key principles would not be maintained if this development were to proceed.

Conclusion in respect of location

22. The Council's Windfall Sites SPD contains a further, non-locational, criterion of combating climate change. Paragraph 2.27 of Tania Smith's evidence asserts that the scheme provides appropriate policy compliant measures with regard to water efficiency and reductions in energy use. I have no reason to disagree. These are set out in the recommendations of the appellant's submitted energy statement and in its sustainability statement, both prepared by Think Three Ltd and can be secured by conditions (17 and 18).
23. With these conditions in place, I conclude that the site would be a sustainable location for development. It would accord with Core Strategy policy CS1 which seeks to focus development in three priority areas. Good public transport facilities are at a reasonable distance. Although it is a greenfield site, its loss would not be greatly significant in agricultural terms. Landscape effects are considered separately, below. It would otherwise comply with subsections (a), (c) and (d) of section 4 of Core Strategy policy CS10 which sets out considerations for assessing windfall sites. It would comply with the locational aspects of policy CS11 which seeks to achieve the delivery of a balanced relationship between homes, jobs and infrastructure. Its development would not be in conflict with part (e) of Core Strategy policy CS14 (1) which seeks to protect and enhance existing open spaces.

Biodiversity

24. Despite criticism by the Council of its adequacy, the only substantive evidence of the ecological interest of the site is provided by the appellant. In summary, this shows that the habitat is of negligible value and that, such as it is, the biodiversity value of the site is associated with its boundary features; either hedgerows themselves or taller ruderal vegetation close to the boundaries.
25. The site is largely bounded by hedgerows, or the remains of hedgerows. The best preserved of these is on its south side, fronting Hedge Place Road. Even this is suffering from the effects of dutch elm disease and has become gapped in places. Whereas it is proposed to preserve and even strengthen the hedgerows on the rest of the site, it is proposed to remove this southern hedgerow in its entirety. Nevertheless, the evidence before me suggests that despite the parties' earlier agreements to the contrary, the hedgerow is not

“Important” within the terms of regulation 4 of the Hedgerows Regulations 1997 and so could be removed at will. Its removal would represent habitat loss, both in terms of the individual plants which comprise the hedge and in terms of its potential for nesting birds and foraging bats but I am satisfied that the enhancements proposed to other boundaries, which can be secured by condition (12), would adequately compensate for the loss.

26. A low population of lizards and slow worms has been identified in areas of taller vegetation, which has spread somewhat between the dates of the appellant’s two surveys. It is proposed to capture and translocate the reptiles to an enhanced habitat, some 3m wide, along the western boundary of the site. This can be secured by condition(9). Such a measure is not uncommonly used so the Council’s doubts about its likely success are unconvincing. Overall, I am satisfied that the proposal would represent no loss of biodiversity in terms of reptiles.
27. Because the site is small and no specific bat roosting opportunities were observed, a bat survey would not be expected. The removal of the southern hedgerow would represent a loss of potential foraging habitat but new and strengthened planting along other site boundaries would provide alternative and enhanced opportunities for bats. Hedge Place Road and Sandy Lane are both already lit by public street lighting but likely bat use of the hedgerow on the opposite side of Hedge Place Road to the site and of new and enhanced planting around the site would require careful design of a lighting scheme, which can be secured by condition (20). The provision of bat boxes as suggested in the appellant’s Phase 1 Habitats Survey would be a positive enhancement in comparison with the present situation and could also be secured by condition (10). I have considered the Council’s preferred suggestion of bat bricks or tiles but consider that bat boxes are more likely to be welcomed by potential owners and occupants of the dwellings.
28. Likewise, for birds, the removal of the southern hedge would represent a loss of potential habitat for nesting but new and strengthened planting along other site boundaries would compensate. The addition of bird boxes, which can be secured by condition (10), would be an enhancement.
29. A single stag beetle was found on one of the appellant’s surveys of the site. Despite little evidence of the prevalence of the species, mitigation proposals are made, which can be secured by condition (9), to translocate larvae or beetles found during site clearance to the site boundary. The details of the landscaping proposals, which can also be secured by condition (12), include features specifically intended to accommodate and attract stag beetles.
30. It should not be presumed that the use of most of the open areas of the site for domestic gardens precludes ecological interest. As the appellant’s submitted Phase 1 Habitats Survey reports, it is increasingly the case that individual gardens are becoming much more biodiverse in species than the countryside. This is because occupants put in their own mix of native and introduced species that collectively increase the food plants for insects and other invertebrates.
31. Precursor evidence produced in preparation for the Core Strategy envisaged a single Biodiversity Opportunity Area extending from Beacon Wood Country Park and Darenth Country Park in the south, through the Bluewater shopping Centre, across the appeal site and its neighbouring former landfill areas and encompassing Stone Park and the eastern end of Stone Lodge to the north.

Despite all parties' previous agreement that the site is included within a Biodiversity Opportunity Area and a Green Space in Urban Areas indicated in diagram 8 of the Core Strategy, close examination of the diagram shows that, in contrast to the precursor evidence, the Core Strategy itself indicates four distinct Biodiversity Opportunity Areas, separated by non-designated areas. The non-designated area separating the Biodiversity Opportunity Area encompassing Bluewater from that to the north aligns with Hedge Place Road and the development fronting it.

32. Core Strategy Diagram 8 is just that; a diagram. Its designations are mostly indicative and are so described. Although based on an Ordnance Survey map, its details cannot be registered onto an Ordnance Survey map base. Nevertheless, the intention to have a break between two designated Biodiversity Opportunity Areas is clear. Accordingly, I am not convinced that the whole of the site, or any part of it, is actually designated as a Biodiversity Opportunity Area or as a Green Space in Urban Areas in the Core Strategy.
33. Be that as it may; the parties agree that Biodiversity Opportunity Areas are not intended as a bar to development, simply that development within them should enhance biodiversity. I have noted that the appeal proposal would include not just mitigation for habitat loss but also enhancements which would contribute to the achievement of the Councils' Green Grid in addition to whatever contribution would be made through the CIL process.
34. I conclude that whether or not any of the site is included within a defined Biodiversity Opportunity Area, the development proposed would provide enhancements and so would comply with those parts of Core Strategy policy CS14 (1) (c) and (e) which require them. I have already concluded that the proposal would be excluded from the open space protection elements of policy CS14 (1) (e) because of the site's current agricultural use.

Character and appearance

Landscape

35. Much of the local planning authority's criticism related to the process by which the appeal scheme was designed. But I am considering whether the outcome of whatever process was followed would be acceptable in planning terms by reference to the development plan and other material considerations. What it boils down to is whether it would be acceptable, as the Council's advocate put it in her closing submission, that a 100 year old hedge would be removed, to be replaced partly with front gardens defined by (low box) hedges and the rest with parking spaces and whether or not there should remain a connectivity of open space between the cliff face of Bluewater to the south and the filled land to the north, separating the two developed areas of Hedge Place Road and Waterstone Park.
36. The Natural England publication "*An approach to Landscape Character Appraisal*" advises that the term landscape applies equally to natural, rural, urban and peri-urban areas. The Landscape Assessment of Kent, to which both parties refer, was prepared some ten years earlier than Natural England's advice, so it is perhaps not surprising that the Local Character Area (Dartford and Gravesend Fringes) in which the appeal site is included does not equally apply to natural, rural, urban and peri-urban areas but is geographically defined by the exclusion of the extensive urban edges of Dartford and

Gravesend and so is limited to natural and rural pockets of land that have become isolated from the wider countryside.

37. When defined in that way, it is not surprising that any residential development included within its defined boundaries is said to have a high negative impact on the area and that road networks and urban development are said to devalue the sense of place. Consequently, I am not convinced that this Assessment necessarily provides an objective appraisal in line with modern best practice; it appears to be based on the presumption that development is inimical to the landscape.
38. Notwithstanding this presumption against development inherent in the quoted extracts from the Landscape Assessment of Kent, the condition of the defined landscape character area is described therein as very poor and its sensitivity is considered to be low. Actions recommended are to create a number of elements including a new landscape framework to existing and retained farmland, an edge to existing urban areas and cohesive landscape elements which embrace the urban nature of the area.
39. Remnant hedgerows are noted as a characteristic feature of the Landscape Character Area, which I can confirm from my site visit. In that context, the removal of the hedge on the southern boundary of the site would be a loss of landscape character, although some found the enclosure it presently provides to Hedge Place Road intimidating and a cause of insecurity.
40. But the much more substantial hedge on the opposite side of Hedge Place Road would remain. This includes trees which are seen on the skyline when viewed across Bluewater from the A2 road to the south and so are a significant structural element in landscape terms. The appellant's uncontested verified views show that these would continue to be seen from the south forming a structural break in the landscape between the older development of Hedge Place Road and Plantation Close to the west and the newer development of Waterstone Park to the east, of which the appeal proposal would appear as a part.
41. When viewed from the north, the appellant's uncontested verified views show that the same trees would continue to be seen on the skyline behind the houses in Hedge Place Road and Barnfield Close. The development would be seen to have a slight separation from Waterstone Park. This would be consistent with the description of individual but linked communities described in policy CS4 (1) of the Core Strategy which the Council seeks to promote in the Ebbsfleet to Stone area. The enhanced northern and western hedgerows proposed in the appellant's landscaping plans would help form a new landscape framework to the existing and retained agricultural grazing land on the former landfill areas and an edge to the urban area, in the way sought for this character area by the Landscape Assessment of Kent.
42. I conclude that the proposal's effect on the character and appearance of the area would be acceptable in terms of landscape. It would comply with policy B3 of the Dartford Local Plan adopted in April 1995. This requires development proposals to incorporate appropriate hard and soft landscaping, incorporating existing trees where possible.

Density

43. Although paragraph 4.5 of the Council's Core Strategy advises that the Council believes that design criteria which determine the quality of residential layouts, rather than density standards, should guide the development of sites, that did not prevent the Council's representatives from presenting an argument about the compatibility of the character and appearance of the proposal with that of neighbouring areas in terms of its density.
44. But density, as a measure of character and appearance, has attributes which can make it misleading as a tool of evaluation. It is highly sensitive to matters of definition; whether measured in terms of dwellings per hectare or habitable rooms per hectare; whether measured to back edge of pavement (as appellant originally did) or to the centre of surrounding highways (as is conventional); whether including or excluding incidental open space; whether including or excluding communal facilities such as parks, play areas, schools and community halls (which tend only to be provided on larger sites, thus invalidating comparisons with smaller sites). For these reasons, I concur with the view expressed in the Council's Core Strategy that it is important that density standards do not become the prime determinant of the form of development.
45. When measured on a like for like basis and conventionally to the centre of surrounding roads, the proposal would be comparable to Waterstone Park and within the indicative range of Core Strategy policy CS17 (4) (c). It would exceed the density of Barnfield Close when measured in dwellings per hectare but as the dwellings in Barnfield Close are of a different type, that is not surprising.
46. But, for the reasons stated, I prefer other measures of character and appearance. In form, the flat-roofed nature and three storey height of the flats proposed at the east end of the site will have much in common with those of Waterstone Park adjacent. The two storey (to eaves) height and pitched roof form of the houses on the rest of the site will be more consistent with those of Barnfield Close against which they would be seen along Hedge Place Road. Direct frontage access to the internal access road, or to Hedge Place Road, would be provided in accord with Local Plan policy B1 (e).
47. The Council criticises the disposition of parking spaces largely along the frontages yet that is a characteristic shared with Barnfield Close and the rest of Hedge Place Road where most frontages have been paved to provide off-street car parking. The removal of the hedge fronting Hedge Place Road would be consistent with its character to the west of the site, where suburban frontages with low boundary treatments prevail on the north side of the road, facing a substantial retained hedge on its southern side.
48. There would still be differences; the proposal consists of terraces, Barnfield Close comprises detached houses. The latter include hipped roofs; the proposal would not. But, as Core Strategy policy CS4(1) envisages a chain of distinctive and individual but linked communities, identical character is not sought.
49. Although not complying precisely in every respect with the words of Local Plan policy B1, the policy itself simply lists matters to be taken into account. I am satisfied that the proposal would adequately do so. There would be a

reasonable balance between the number of car parking spaces to be provided to accord with Local Plan policy T23, whilst avoiding an excess so that surface parking would be limited, in accordance with the advice of the Kent Design Guide. I conclude that in terms of both landscape and built form, the effects of the proposal on the character and appearance of the area would be acceptable.

Living conditions

50. The Council's concerns with the living conditions of potential future residents are largely confined to two points, namely the adequacy of the communal private space provided for the flats at the corner of Hedge Place Road and Sandy Lane, and the adequacy of separating distances for providing privacy between dwellings facing each other across the access road. A third party is concerned with privacy between the proposed flats and those existing in Waterstone Park.
51. At their closest point to the existing flats in Waterstone Park, the flats proposed on the corner of Sandy Lane and Hedge Place Road would have windows to a kitchen and a living room directly facing the windows and balconies of properties in Woodpecker Drive at distances of about 15-16m. But the windows proposed are shown to be fitted with obscured glazing, which would provide privacy. A condition (2) can require the development to be carried out in accordance with the approved plans. Other adjacent flats in the proposed block would have windows facing Woodpecker Drive at more than 20m separation.
52. Side windows lighting service rooms or circulation spaces in certain houses (on plots 13, 15 and 40) would directly face other properties at close range. These can be required by condition (21) to be fitted with obscure glass to ensure privacy, without detriment to living conditions of a habitable room. Such would not be acceptable where the window concerned would be the principal or only window to a habitable room. In such cases, distance, or another design feature, must provide privacy.
53. Neither the Council's development plan nor the Kent Design Guide has distance standards to achieve privacy but 20m is often taken as a rule of thumb for what may be acceptable. It would be a considerably greater distance than the 9m separating an existing balcony in Woodpecker Drive from the rear of an existing house in Stonechat Mews which I was shown on my site visit. Houses on plots 42, 43 and 44 would face balconies at Woodpecker Drive and the rear gardens of Stonechat Mews at a distance of about 16-17m but the site's strengthened eastern hedgerow would intervene to reinforce privacy.
54. The relationship between the rear windows of the houses on plots 33 and 40 would be about 18m, a little less than the rule of thumb for what would be an acceptable face to face relationship. But in this case, the elevations would be slightly angled away from each other, so the relationship would not be directly face to face.
55. To one side of the outlook from plots 13 and 15 would be the rear gardens of plots 10, 11, 17 and 18. Conversely, beyond the 7-8m depth of their own rear gardens, houses on plots 10, 11, 17 and 18 would face towards those of plots 13 and 15. But it is common in a residential area that neighbouring gardens can be seen in a sidelong glance from the upper windows of a terraced house or are seen from the upper windows of houses in a side street at right angles.

56. Windows in the front elevations of houses on plots 13, 14 and 15 would directly face those of houses across the access road on plots 5 and 6 at a distance of about 8m. This would clearly not afford privacy but expectations of privacy to windows facing onto a public street are normally reduced in any event so I do not regard it as a failing which must lead to the dismissal of the appeal.
57. The flats proposed would have no individual private amenity space. Core Strategy policy CS17 (1) (b) requires locally important criteria to be addressed in the design of homes. These include usable private amenity space, usually provided as a balcony, patio or roof garden in flats. Core Strategy policy CS18 (1) (b) requires that where flats/apartments are provided, the accommodation is designed to a high quality, with the provision of private amenity space, such as balconies or roof gardens, wherever possible. The use of phrases such as "usually provided as" and "wherever possible" in these policies suggests that although individual private amenity space would normally be expected, the provision of communal private amenity space, as proposed in this scheme, would not be unacceptable.
58. The scheme proposes 107 sq m of communal private open space for the flats. This would equate to 9 sq m per flat. There would also be a smaller area of 45 sq m on the street frontage. I do not disagree with the Council's description of this provision as "limited" in quantity but neither Core Strategy policy nor the Kent Design Guide specifies any quantitative minimum.
59. The Council also criticises the small size of the 200 sq m of communal public open space which would be provided. But, in contrast to much larger developments such as Waterstone Park which are required by policy CS14 (1) (b) to contribute substantially to the Green Grid network, sites of less than 2 ha will be considered on a site by site basis. Waterstone Park has been provided. It benefits the appeal scheme. There is no need for its duplication, even on a pro-rata basis. Through its CIL contribution, the proposal would subscribe to one of the greenspace projects listed in policy CS14 (d).
60. It is clear from the above analysis that this appeal scheme is tightly designed and would be to some extent parasitic on the public open space already provided in the neighbouring Waterstone Park. But that is not a reason to dismiss the appeal. I conclude that the effect of the proposal on the living conditions of existing residents of Waterstone Park and on potential future residents of the appeal site would be acceptable. The scheme would comply with the relevant parts of Core Strategy policies CS14, CS17 and CS18 in that respect.

Highway safety

61. A member of the public who participated in the Inquiry was concerned that reportedly chaotic parking conditions at Waterstone Park would be replicated in the appeal scheme, to the detriment of highway safety. A substantial number of local residents, principally residing in Hedge Place Road and its tributaries, made written representations to the effect that parking and traffic conditions in Hedge Place Road are presently unacceptable and would be exacerbated by the proposal.
62. A comparison of the parking arrangements at Waterstone Park with those in the appeal scheme shows a number of improvements, including the substitution of undersized garages too small to accommodate modern cars by

larger, open car ports, less likely to be appropriated for storage purposes. Provision would not be excessive; numbers proposed are based on the former Kent County Council standards and so would be three (appellant) or six (Council) car and six van spaces below the recommendations of the Council's Parking Standards Supplementary Planning Document adopted in July 2012 but not enough for the Council or the Highway Authority to have raised objection to the scheme. It is expected that there would be some reliance on parking on-street in Hedge Place Road. To that end a Parking Management Scheme is recommended, which can be secured by condition (14). It would also be necessary to ensure, by conditions (15 and 16), that the car parking and cycle storage facilities shown on the approved drawings are provided before the dwellings are occupied.

63. Many of the residents of Hedge Place Road who made written representations were under the misapprehension that the proposed removal of the present road closure would lead to the creation of a through route to Waterstone Park and a consequently substantial increase in traffic using Hedge Place Road. That misapprehension overlooks the proposal to relocate the road closure towards the eastern end of the site.
64. Kent County Council observes that highway conditions in Hedge Place Road can sometimes appear chaotic and it advises on the need for a footway to be provided for safety reasons where presently lacking. This would be provided through the Unilateral Undertaking made which would thus, in that respect, comply with CIL regulation 122. The County Council agrees with the appellant's predictions that the development proposed would only result in an additional car every two to three minutes along Hedge Place Road in peak hours and considers that there would not be any significant safety or capacity impact arising from the proposed development on the wider highway network.
65. I have no reason to disagree and so I conclude that, with the condition (14) requiring a Parking Management Plan in place, the effects of the proposal on highway safety would be acceptable. The parties agree that a Travel Plan is not required, so any resultant infringement of Core Strategy policy CS15 (h) which requires major new housing development to provide one, is not a reason to dismiss the appeal. Likewise, a minor infringement of Local Plan policy B1 which requires adherence to the Council's car parking standards is not a cause to dismiss the appeal, for the reasons stated above. The scheme would comply with Local Plan policy T23 which requires adequate off-street parking.

Housing Land Supply

66. Although the Council had the opportunity to set an alternative, locally derived housing target in its Core Strategy, it chose to perpetuate that set by the now abolished South East Plan, which is derived from the requirements and needs of a wider area. It is unchanged by the absence of requests from neighbouring authorities to assist in providing for their objectively assessed needs under the duty to cooperate. Unusually, therefore, the Dartford Core Strategy sets a capacity-based housing target in terms of "up to" a maximum of 17,300 between 2006 and 2026, rather than a local needs-based target of a minimum which is to be exceeded but it is a target, nonetheless. In this respect, my view is consistent with that taken in the "Knockhall Road" decision (APP/T2215/A/13/2203710), to which I was referred.

67. It does not follow that anything less than the maximum satisfies the target; the wider justificatory and explanatory text of the Core Strategy makes it clear that the words "up to" are included because analysis suggests uncertainty in respect of environmental outcomes and the capacity of infrastructure and services to address growth should forecasts indicate that this level of delivery is likely to be exceeded. Nevertheless, the Core Strategy itself only includes a trigger for management action to remedy any shortfall in delivery if forecasts indicate delivery is falling below local housing need levels of 11,700 homes.
68. Paragraphs 47 and 49 of the National Planning Policy Framework do not make that distinction, advising that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites against their housing requirements. Although the NPPF policy is that housing targets should meet full objectively assessed needs, there is nothing to preclude housing targets being set at a higher level, as is the case in Dartford.
69. From evidence given at the Inquiry it is quite clear that although the Council has granted planning permissions for nearly sufficient housing to meet all its local housing needs even though it is only about half-way through the plan period, those permissions are on sites which will be built out in periods extending long beyond the timescale of the Core Strategy. Nevertheless, in terms of specific deliverable sites, the Council continues to claim that it has identified sufficient land to meet both its trigger point for management action and its Core Strategy target for the next five years.
70. Its Core Strategy target is phased, with target delivery rates peaking in the third of a four-phase delivery period. Previous shortfalls are addressed on the Liverpool method over the whole period of the plan rather than the first five years because the target is not a needs-based figure. This method is also applied to its five years housing target calculation and no "buffer" is applied, resulting in a five-year target of up to 6450. Although the appellant argues for a different basis of calculation, the accuracy of this figure is confirmed in evidence. I have no quarrel with the use of the Liverpool method, for the reasons given by the Council.
71. The Council's intervention trigger point of 4040 is calculated on a different basis, because it is a needs-based figure, using the Sedgfield method for addressing shortfalls and adding a 5% buffer. Shortfalls in delivery were not considered persistent at the time of the Knockhall Road decision. Although shortfalls have persisted for two further years, completion rates have picked up somewhat and there has been a step-change in the annual target, so I am not convinced that a verdict of persistent underdelivery is yet justified.
72. The Council's record in forecasting its delivery against target is poor, as demonstrated by the appellant's uncontroverted evidence. For that reason, I do not accept the Council's prediction that delivery rates will increase to double or treble those of the recent past. I am more persuaded by the appellant's evidence that possible delivery in the next five years is 6172. Even that represents a doubling of recent delivery rates and so I do not disagree with the appellant's description of it as hugely ambitious. Nevertheless, the appellant accepts that it is realistic and I have no reason to disagree.
73. Even that hugely ambitious expectation of delivery fails to meet the Core Strategy target for the next five years. It follows that, in line with national

policy expressed in the NPPF, I should not regard the Council's policies for the supply of housing as being up to date. Paradoxically, that would include Core Strategy policy CS10 (4) for the assessment of windfall sites with which I have found this appeal proposal to comply but, in practice, the outcome is the same because NPPF paragraph 14 advises that where relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole. I have previously noted that policy CS10 (4) of the Dartford Core Strategy can be seen to align closely with the NPPF.

74. Both the appellant and the Council produce tables showing recent housing delivery; the appellant against the Core Strategy target, the Council against the trigger for management action. At nine-twentieths of the way through the plan period, delivery shows a 32% shortfall against the Core Strategy target and an 18% shortfall compared with the Council's trigger for management action. Whichever way it is looked at, management action is needed to increase delivery.
75. Paragraph 3.21 of the Council's Core Strategy advises that an element of supply from windfall sites can enable early delivery of housing and increase flexibility. That is a measure of the beneficial effects on housing land supply which this proposal would have.
76. Affordable housing is proposed comprising a total of 16 units. That represents 29% of the dwellings proposed. It would be marginally below the 30% required by Core Strategy policy CS19 but the Council does not contest the shortfall. As its provision is a policy requirement, its inclusion in the Unilateral Undertaking would be CIL compliant.
77. I conclude that the shortfall of affordable housing provision would be marginal and not such as to justify dismissing the appeal. The effect of the proposal on the supply of housing overall would be beneficial. The proposal would therefore accord with Core Strategy policy CS10 which provides for housing development.

Conclusions and conditions

78. The overall planning balance would be as follows. As a greenfield site, the land would not be of the preferred type for development but its loss would not be greatly significant. It would be in the right place, supported by infrastructure. The balanced and sustainable pattern of land use and transport sought by policy CS11 and the third of the Core Strategy's key principles would be maintained. The balance of ecological effect would be marginally positive. So would its landscape effects. The living conditions it would provide would be acceptable. It would not have an unacceptable effect on highway safety. Its benefits in terms of housing provision would be unqualified at a time when management action to increase delivery rates is called for.
79. The appeal proposal would therefore perform the three roles of a sustainable development. I conclude that the adverse impacts of granting permission would not significantly or demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole; indeed, rather the reverse and so, the appeal should be allowed.

80. In the event of the appeal being allowed the parties suggested that a number of conditions would be required. I have considered these in the light of advice contained in national Guidance and in the light of the model conditions contained in the otherwise now superseded Circular 11/95, *the Use of Conditions in Planning Permissions*, preferring the wording of the latter where appropriate. The need for some of these has already been referred to. I have also taken account of the various recommendations made in the appellant's documents supporting the application and appeal. In some cases, I have modified the trigger point to be "before occupation" rather than "before commencement" after a careful consideration of the point during development at which the issue becomes critical.
81. Because management action is needed to increase housing delivery rates in Dartford, the usual period for commencement is reduced from three years to two (condition 1). Kent County Council and the appellant's own archaeological desk based assessment both identify the archaeological potential of the site, so an investigation is required (condition 3).
82. The land to the north of the site is known to be producing landfill gas, so a scheme to protect the proposed properties is necessary (condition 4). For the same reason, and to prevent the exercise of permitted development rights which might otherwise omit landfill gas protection, certain permitted development rights need to be withdrawn (condition 5). For the same reason also and because the site overlays an aquifer used for the extraction of drinking water, details of surface water drainage which might otherwise provide a route for landfill gas or might risk contamination of controlled waters are necessary (condition 6). A condition (7) to control the use of piling on site is sought by Thames Water in order to reduce the risk of damage to nearby water supply infrastructure. Although there is no suspicion that the land is contaminated in any way, the proposed use would be a sensitive one and so a condition (19) is imposed to provide for action in the event that contamination is found during construction.
83. Although, as discussed above, Hedge Place Road, which would form the only permanent access to the site for vehicles, would be capable of accommodating the day to day requirements of the development once completed, no information is available to show that special management measures might not be needed during the construction phase. For that reason a Construction Method Statement is required (condition 8).
84. Two suggested conditions would require the submission of details of measures to protect and monitor biodiversity interests during construction and afterwards. Given the limited ecological interest of the site and the comprehensive recommendations for mitigation and enhancement which are proposed by the appellant, these seem excessive and unnecessary. All that would be necessary is to ensure that the mitigation and enhancement proposals made are carried out and then retained (condition 9). (Note that the Wildlife Matters document referred to in the condition is the version dated 26 July 2012 submitted with the appeal, not the slightly earlier version dated 23 July 2012 included as an appendix to Mr Patmore's Proof of Evidence).
85. Materials for the dwellings are adequately described in section 8 of the Design and Access Statement. Materials for the hard landscaping are adequately described in section 9 of the Design and Access Statement and on the

approved site layout drawings. There is no necessity for a condition to require the further submission of details but a condition (2) would require the development to be constructed in accordance with the approved submitted details. Although adequate details of the boundary installations around the site are given on the approved site layout and a 1.8m high brick wall is indicated in places within the site, no other details of plot boundary division within the site are given. A condition (13) is therefore necessary to ensure that these are provided.

86. Although the approved drawings show details of trees and hedgerows to be retained and Mr Keen's Tree Constraints Plan shows root protection areas for all trees, whether to be retained or not, there is no proposal to protect during construction the trees and hedgerows to be retained. The mitigation for loss of biodiversity is for a considerable amount of new planting to be provided. Some of this includes selective removal and replanting of the eastern hedge. Conditions (11 and 12) are necessary to secure these matters.

P. W. Clark

Inspector

Richborough Estates

CONDITIONS

- 1) The development hereby permitted shall begin not later than two years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: (all prefixed FNH399 followed by either a slash or underscore) numbered P/300, P/301 revision B, P_310 revision B, P_311 revision A, P_312 revision A, P/320 revision B, P/321, P/322 revision A, P/330 revision B, LS/02A, LS/03A and an unnumbered drawing headed Trees in Driveways and in accordance with the details of materials given in sections 8 and 9 of the submitted Design and Access Statement dated September 2012.
- 3) No development or site clearance shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 4) No development shall commence until a scheme for protection of properties from landfill gas has been submitted to and approved in writing by the local planning authority in accordance with section 10.2 of the Geoenvironmental and Geotechnical Interpretative Report by CGL dated August 2012. Details shall be provided of but not exclusive to the following;
 1. Fully suspended and ventilated ground floor slab
 2. A proprietary gas-resistant membrane across the whole floor slab
 3. A basal gas-resistant membrane at the bottom of the sub-floor void within the area designated Worst Case CIRIA Characteristic Situation 3 on Figure 5 of the CGL Ground Gas Summary Report – Revision 5, dated April 2013
 4. Construction of roads, paved areas and hardstandings
 5. Patio construction
 6. Slab construction suitable for sheds or greenhouses
 7. Services and soakaways

The installation of the gas protection measures at the site shall be carried out by specialists, where appropriate, and each element of the measures will be subject to validation by an independent environmental consultant approved by the local planning authority prior to the commencement of the work to be validated. The validation shall be carried out in accordance with paragraph 12.1 of the Geoenvironmental and Geotechnical Interpretative Report by CGL dated August 2012 and will be submitted to the local planning authority for agreement prior to the occupation of that dwelling. The local planning authority shall be given ten days notice of the installation of the gas resistant membranes and the opportunity to monitor the installation of the remedial measures as they are carried out. The details shall be implemented prior to occupation of each dwelling hereby approved and thereafter maintained in accordance with the approved details.

- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other revoking and re-enacting of that Order), no extensions, alterations or other form of enlargement of the dwellings hereby permitted, no erection of porches, outbuildings, hardstandings, storage tanks, gates, fences, walls or other means of enclosure shall take place without the prior written permission of the local planning authority.
- 6) No development shall commence until details of the foul and surface water drainage systems for the development, including drainage of the parking areas have been submitted to and approved in writing by the local planning authority. No infiltration of surface water drainage into the ground is or will be permitted unless it is demonstrated with the written approval of the local planning authority that there would be no resultant unacceptable risk to controlled waters. The details shall be implemented as approved prior to first occupation of the development and shall be retained operational thereafter.
- 7) No piling shall take place unless details have first been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 8) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the location of site offices
 - ii) the parking of vehicles of site operatives and visitors
 - iii) the routeing and means of access for larger vehicles
 - iv) the loading and unloading of plant and materials
 - v) storage of plant and materials used in constructing the development
 - vi) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - vii) the days and hours of construction work
 - viii) wheel washing facilities
 - ix) measures to control the emission of dust and dirt during construction
 - x) a scheme for recycling/disposing of waste resulting from demolition and construction works
- 9) No other works of site clearance or development shall take place until the translocations and mitigations for reptiles (lizards and slowworms) and for stag beetles specified in Technical Appendix WM11 of the Phase 1 Habitats Survey by Wildlife Matters dated 26 July 2012, in paragraphs 4.22 and 4.44 of Mr Patmore's Proof of Evidence Biodiversity for Inquiry dated 12 May 2015, in section 6 of the Reptile Population Assessment Survey and Mitigation Report by ADAS dated December 2014 and as shown on approved drawings, FNH399 LS/02A and FNH 399 LS/03A have been effected. The measures shall be appropriately protected during construction and retained thereafter.

- 10) No dwelling shall be occupied until details and locations of four bird boxes and four bat boxes to be erected on houses in accordance with the recommendations of the submitted Phase 1 Habitats Survey by Wildlife Matters dated 26 July 2012 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. The bird and bat boxes shall be installed before the first occupation of each dwelling concerned and thereafter retained in accordance with the approved details.
- 11) In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans; and paragraphs (i) and (ii) below shall have effect until the expiration of 5 years from the date of the first occupation of the final dwelling to be occupied.
- (i) No retained tree or hedgerow plant shall be cut down, uprooted or destroyed, nor shall any retained tree or hedgerow be topped or lopped other than in accordance with the approved plans and an arboricultural method statement to be submitted to and approved in writing by the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard [3998 (Tree Work)].
 - (ii) If any retained tree or hedgerow plant is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
 - (iii) The erection of fencing for the protection of any retained tree or hedgerow plant shall be undertaken in accordance with plans and particulars to be submitted to and approved in writing by the local planning authority before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
- 12) All hard landscape works shall be completed in accordance with the approved details prior to the occupation of any part of the development and soft landscape works shall be completed in accordance with the approved details during the first planting season (from October to the following March inclusive) following the first occupation of any part of the development or in accordance with a programme to be submitted to and agreed in writing by the local planning authority. If any tree, hedge, shrub or grassed area is removed, diseased, vandalised, uprooted or destroyed or dies within five years, such shall be replaced within the next planting season.
- 13) No dwelling shall be occupied until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be

erected. Development shall be carried out in accordance with the approved details. The boundary treatment of each dwelling shall be completed before the relevant dwelling is first occupied.

- 14) No dwelling shall be occupied until a Parking Management Strategy to determine the allocation of spaces, areas and accesses to each dwelling and proposals for its implementation 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 and retained thereafter in accordance with the approved details.
- 15) No dwelling shall be occupied until its car parking space or spaces and access thereto together with any turning area required has been laid out in accordance with the approved drawings.
- 16) No flat shall be occupied until space has been laid out in accordance with the approved site layout plan for bicycles to be parked.
- 17) No dwelling shall be occupied until it has been completed in accordance with the recommendation for water use set out in section 4 of the submitted Sustainability Statement dated September 2012 prepared by Think Three Ltd.
- 18) No dwelling shall be occupied until it has been completed in accordance with the recommended Energy Strategy set out in the submitted Energy statement dated 5 September 2012 prepared by Think Three Ltd
- 19) If, during the site clearance and construction, contamination is encountered which has not previously been identified, then no further development shall be carried out (unless otherwise agreed in writing with the local planning authority not to be affected by the discovered contamination) until an assessment of the discovered contamination together with a remediation scheme has been submitted to and approved by the local planning authority and the remediation scheme has been implemented as approved.
- 20) Prior to the installation of any street or public lighting on the site, details shall be submitted to and approved in writing by the local planning authority to show how it will minimise its impact on foraging bats. The lighting shall be installed and subsequently retained in accordance with the approved details.
- 21) Before the first occupation of the dwellings on plots 13, 15 and 40 hereby permitted the windows in their flank elevations shall be fitted with obscured glass with a minimum obscurity level of 3 as referred to in the Pilkington Textured Glass Range leaflet and shall be permanently retained in that condition.
- 22) Before the first occupation of each dwelling, the potential future occupants shall be provided with an information pack detailing local bus and rail services, journey planning services, local employment, shopping, health and leisure facilities and walking and cycling routes to access them.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Estelle Dehon, Of Counsel	Instructed by Dartford Borough Council
She called	
Paul Nicholls BA (Hons)	Senior Development Control Planner, Dartford
DipTP MRTPI	Borough Council
Helen Forster BSc(Hons)	Biodiversity Officer, Kent County Council
MCIEEM	
Ruth Childs BSc(Hons)	Landscape Officer, Kent County Council
MSc	
Tania Smith	Infrastructure Delivery Officer, Dartford Borough Council

FOR THE APPELLANT:

Timothy Corner QC	Instructed by Vincent and Gorbing, Chartered Architects and Town Planners
He called	
Amanda Reynolds BArch	Architect and Urban Designer
MA (UD) Architect RIBA	
Mark Cooper BA(Hons)	Principal, Mark Cooper Associates
DipLA CMLI	
Jago Trevelyan Keen	Consultant, Ian Keen Limited
MSc DipArb MArborA	
MICFor MIOD	
James Patmore	Regional Director REC Ltd
BSc(Hons) CEnv CEnv	
CIEEM CBipol MSB	
Margaret Theobald BSc	Technical Director – Head of Transport Planning
DipHTE MCIHT	for Development, AECOM
Martin Friend BSc(Hons)	Managing Director, Vincent and Gorbing,
MTP MRTPI	Chartered Architects and Town Planners

INTERESTED PERSONS:

Maddie Cross	Local resident
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Additional DOCUMENTS submitted to reopened Inquiry

- 1 Legal submissions for the appellant
- 2 Legal submissions on behalf of Dartford Borough Council
- 3 Notice of date, time and place of Inquiry
- 4 Dartford Five year Housing Land Supply 2015
- 5 Extract from Guidelines for Landscape and Visual Impact Assessment
- 6 Extract from National Planning Practice Guidance
- 7 [2009] EWCA Civ 1365
- 8 Maddie Cross Statement
- 9 Maddie Cross photographs
- 10 Maddie Cross Surveys
- 11 Extract from Dartford Messenger

- 12 Extract from s106 agreement dated 16 October 2000
- 13 Extract from s106 agreement dated 16 March 2004
- 14 Proposed planning conditions
- 15 Extract from BS 5837:2012
- 16 Drawing number 1147.WP-D-1105 revision A
- 17 IHT Guidelines for Providing for Journeys on Foot
- 18 Screen dump of Arriva Buses service announcement
- 19 TfL Measuring Public Transport Accessibility Levels Summary April 2010
- 20 Note in respect of the s106 Unilateral Undertaking
- 21 E-mail from Leigh Johnson dated 8 May 2015
- 22 Enlargement of Core Strategy diagram 8
- 23 Ebbsfleet Green Residential Phase 1 Reserved Matters Planning Statement
- 24 Service Level Agreement 1 July 2015
- 25 Planning Practice Guidance; Housing and Economic development Needs Assessments
- 26 Dartford Borough Council AMR February 2015
- 27 Signatories to the Service Level Agreement
- 28 [2014] EWHC 754 (Admin)
- 29 Proposed Planning Conditions
- 30 Proposed Planning Conditions
- 31 Deed of Release
- 32 Unilateral Undertaking

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