
Appeal Decision

Inquiry held on 18, 19, 20, 21 and 25 August 2015

Site visits made on 25 and 26 August 2015

by Jessica Graham BA(Hons) PgDipL

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

Decision date: 16 October 2015

Appeal Ref: APP/J2210/A/14/2227624

Land at Bodkin Farm, Thanet Way, Chestfield, Whitstable CT5 3JD

- 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 Eton College against the decision of Canterbury City Council.
 - The application Ref CA/14/01319/OUT, dated 20 June 2014, was refused by notice dated 13 November 2014.
 - The development proposed is a mixed-use development of up to 290 dwellings, primary school, restaurant, office building, community building, gym/fitness centre, 24 unit care home, convenience shop, clubhouse/changing room building and 18.81ha of parks, amenity greenspace, children's play areas, playing fields, allotments and community woodland and associated access, infrastructure, landscaping and cycle/footways.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was made in outline, with details of scale and access provided, but details of appearance, layout and landscaping reserved for future consideration. My determination of this appeal proceeds on that basis.
3. On 11 June 2015 I held a pre-inquiry meeting (PIM), the purpose of which was to consider the arrangements for the inquiry itself. Representatives of both main parties were present. There was no discussion at that meeting of the merits or otherwise of the proposed development.
4. An Environmental Statement (ES) accompanied the planning application. This was reviewed by the Planning Inspectorate on receipt of the appeal, and a Regulation 22 request for additional information was issued on 10 March 2015. In May 2015 the appellant produced an ES Addendum, which responded to the matters raised in the Regulation 22 request, with the exception of a supplementary bat survey. The supplementary bat survey report was provided in July 2015. All of this information was duly publicised, in accordance with the Regulatory requirements, in advance of the inquiry.
5. I am satisfied that the information contained in the ES, the ES Addendum, the supplementary bat survey, and the further evidence I heard at the inquiry on environmental matters, together represents the necessary environmental information for the purposes of the EIA Regulations. I have taken this information into account in determining this appeal.

6. In the course of the inquiry I was provided with evolving drafts of a S106 Agreement between the Council, the County Council and the land owners. The inquiry included a round-table session to discuss the provisions of this proposed Agreement, and a duly executed deed was subsequently provided in accordance with the timetable agreed at the inquiry (Document B). I have taken this S106 Agreement into account in my determination of the appeal.
7. The appeal site falls within the Zones of Influence of the Thanet Coast and Sandwich Bay Special Protection Area (SPA), and the Swale SPA and Ramsar Site. The S.106 Agreement secures mitigation for the adverse effect that the proposed development would otherwise have on these SPAs, through the payment of contributions toward the implementation of the Council's Strategic Access, Management and Monitoring (SAMM) Schemes, as detailed in the submitted evidence. The parties agree that if permission were granted, a condition should be imposed preventing occupation of any of the dwellings until these SAMM Schemes had been implemented. Subject to these provisions, I share Natural England's view that an "Appropriate Assessment" of the proposed development under the Habitat Directive and Habitat Regulations is not required. Paragraph 119 of the NPPF is not, therefore, relevant to this appeal.

Main issue

8. At the PIM on 11 June 2015, I noted that one of the main issues for the inquiry would be whether or not the Council was able to demonstrate a 5 year supply of housing land, and the consequences of that in terms of national and local policy. However, in advance of the inquiry and following the evidence given at Stage 1 of the Examination in Public (EIP) of its emerging Local Plan, the Council advised that it is not currently able to demonstrate a 5 year supply of housing land. My determination of the appeal proceeds on that basis.
9. The Council's eight original reasons for refusing planning permission included concerns about the Chestfield Roundabout; insufficient information concerning the impacts on ecology; the absence of measures to mitigate the impacts of the development on the Thanet Coast and Sandwich Bay SPA and Ramsar Site; the lack of justification for the proposed primary school; the insufficiency of the proposed affordable housing and the lack of a means to secure it; and the lack of mitigation to offset the impact of the development on other local services and infrastructure. At the inquiry the Council confirmed that in the light of further information provided by the appellant, and the provisions of the S.106 Agreement, it considered these concerns could all be adequately addressed either by that Agreement or by appropriately worded conditions. I agree.
10. Having regard to the Council's remaining reason for refusal, and concerns raised by others, I consider the single main issue in this appeal to be:

The effect that the proposal would have upon the character and appearance of the area, having regard to its location within a designated Green Gap.

Reasons

11. The appeal site, which extends to some 28.6 ha, is a roughly triangular-shaped area of land on the eastern edge of the built-up area of Swalecliffe and Chestfield. The northern boundary abuts the A2990 Old Thanet Way, while the southern boundary adjoins the rear gardens of the properties on Maydowns Road. The appeal site is bisected by a watercourse known locally as Kite Farm

Ditch. On the western side of Kite Farm Ditch the appeal site is divided into horse paddocks, while the eastern side consists of semi-mature grassland, which rises to the east. In the centre of the appeal site (but excluded from it for the purposes of this proposal) is Bodkin Farmhouse, a Grade II Listed Building, which has vehicular access to the A2990 via a track immediately to the east of the Kite Farm Ditch.

12. The proposed development would retain a "green corridor" along Kite Farm Ditch, incorporating the existing pond. Most of the proposed commercial uses would occupy the western part of the appeal site, together with some of the housing, while the main residential area would extend across the rising ground to the east, as far as the existing hedgerow running north from the end of Maydowns Road. This area would incorporate a village green, a convenience shop, and the community building. The remainder of the site to the east would be retained as green space, including playing fields, allotments and community woodland. The site identified for the potential primary school lies at the edge of this green space. Vehicular access to all of the proposed development would be provided via a new roundabout junction on the A2990 Old Thanet Way, in the vicinity of the existing access track to Bodkin Farm.

The policy context

13. The Development Plan for the area consists of those policies of the Canterbury District Local Plan, adopted in July 2006, which have been saved from expiry by Direction of the Secretary of State. Of particular relevance to this appeal are saved Policies TC26 and R8. The Proposals Map identifies the extent of the Herne Bay and Whitstable Green Gap, and the entirety of the appeal site lies within it. Policy TC26 states that development will only be permitted within this Green Gap where it does not (a) result in a material expansion of the built up confines of the urban areas of Herne Bay or Whitstable; or (b) significantly affect the open character or separating function of the Green Gap; and (c) result in new isolated development within the Green Gap. It goes on to address the circumstances in which leisure or educational uses, and built development ancillary to those uses, will be permitted in the Green Gap.
14. Policy R8 states that within the Green Gaps identified on the Proposals Map, development will only be permitted where it does not (a) significantly affect the open character of the Green Gap, or lead to coalescence between existing settlements; (b) result in new isolated and obtrusive development within the Green Gap. It goes on to address the circumstances in which open sports and recreational uses, and any related built development, would be permitted in the Green Gaps.
15. The Herne Bay and Whitstable Green Gap, then, is the subject of two distinct Development Plan policies: Policy TC26, which deals solely with this specific area, and Policy R8, which covers not only this Green Gap but also the six others identified on the Proposals Map. The designation of the Herne Bay and Whitstable Green Gap stems from the Local Plan Inquiry of 1997, where the Inspector held the long-term retention of the Green Gap separating the coastal towns of Whitstable and Herne Bay to be "an objective worthy of very strong support", and urged the Council to give serious and careful consideration to the need within the Plan for a specific policy to protect the open land between the settlements. Policy TC26 was subsequently included in the current (2006) Local Plan, and the Inspector who held the Inquiry into that Local Plan stated "I find

- a Green Gap to be imperative in this very vulnerable area, separating two seaside towns that have been allowed to sprawl very close together”.
16. The Council’s intention is that the saved policies of the 2006 Local Plan will, in due course, be replaced by new policies in the emerging Canterbury District Local Plan 2011-2031. This emerging Local Plan contains both general development control policies, and site-specific allocations to meet development needs in the district for the period up to 2031. Proposed Policy OS6 exactly replicates the wording of Policy R8 of the 2006 Local Plan, and proposed Policy OS7 replicates the wording of Policy TC26, with the addition of a reference to allotments, and the proviso that there should be no overriding conflict with other Local Plan policies. As in the text supporting Policy TC26, the supporting text to proposed Policy OS7 notes that the Council has successfully sought to protect the built up areas of Herne Bay and Whitstable from coalescence through its application of a Green Gap policy, and records that this approach remains one of the Council’s key objectives for both coastal towns.
17. The emerging Local Plan has reached an advanced stage, but it is material to note that many of the proposed policies in the emerging Local Plan (including Policies OS6 and OS7) are the subject of unresolved objections, and that the Examining Inspector has postponed Stage 2 of the EIP hearings until the Council has completed the additional work set out in his Note dated 7 August 2015. These considerations limit the weight that can be attached to Policies of the emerging Local Plan for the purposes of determining the current appeal. Nevertheless, the emerging Local Plan provides a clear indication of the Council’s intention to continue its existing policy objectives, and decision-making approach, in respect of the designated Green Gaps.
18. The Appellant contends that the current Development Plan policies are of such a vintage that they should also attract limited weight. I appreciate that they were written to accord with the policies of the Kent & Medway Structure Plan, which has long since ceased to form part of the Development Plan. They were also prepared in the context of national planning guidance set out in PPG 3, the precursor to PPS 3, which has itself since been superseded by the publication in March 2012 of the National Planning Policy Framework (NPPF). The Court of Appeal has described the NPPF as a “radical change” from PPS 3.¹
19. However, the NPPF was not intended to usurp the function of the Development Plan. As its introductory paragraphs make clear, planning law still requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. The policies contained in the NPPF constitute material considerations. Paragraph 211 explains that for the purposes of decision-taking, policies in the Local Plan should not be considered out-of-date simply because they were adopted prior to the publication of the NPPF. Paragraph 215 says that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF: the closer the policies in the Local Plan to the policies in the NPPF, the greater the weight that may be given.
20. In the words of a colleague Inspector, the relevant test, with regard to whether a plan is out-of-date, is not one of chronology but of consistency with the NPPF.² Here, the appellant does not in any event seek to argue that the

¹ *Gallagher Homes Ltd v Solihull District Council* [2014] EWCA Civ 1610 (Document CD/CL3)

² Paragraph 38 of appeal ref: APP/N1730/A/14/2226609 (Document LPA 3)

concept of designating and protecting Green Gaps is inconsistent with the NPPF. In my judgment, Policies TC26 and R8 are consistent with the NPPF's principle of taking account of the different roles and character of different areas (paragraph 17), and its advice that Local Plans should identify land where development would be inappropriate (paragraph 157).

21. The appellant rightly points out that the housing Policies, and the Green Gap boundaries, set out in the current Local Plan were designed for the 2001-2011 plan period and make no provision for development needs post-2011. For the reasons set out above, I am not persuaded that policies should be regarded as out of date solely on that chronological basis. Rather, the NPPF makes specific provision for circumstances in which relevant policies for the supply of housing should be considered out of date. In the context of ensuring that the Local Plan meets the area's objectively-assessed housing need, paragraph 47 of the NPPF requires local planning authorities to identify – and update annually – sufficient housing land to deliver five years' worth of housing. Where, as here, a local planning authority is unable to comply with that requirement, paragraph 49 provides that relevant policies for the supply of housing should not be considered up-to-date.
22. This in turn will have consequences for the decision-taking process set out in paragraph 14 of the NPPF. However, in this case, the Council and the appellant agree that Local Plan Policies TC26 and R8 are not "relevant policies for the supply of housing", and so should not be deemed out-of-date by operation of paragraph 49 of the NPPF.
23. The appellant drew my attention to the fact that the Council has made allocations, in the emerging Local Plan, for development on greenfield land within areas of valued landscape and within designated Green Gaps, and points out that this demonstrates how the functional Green Gap, and qualitative landscape designations, have had to give way to the development needs of the district.
24. I see nothing unusual in that. The first of the 12 core planning principles set out at paragraph 17 of the NPPF is that planning should be genuinely plan-led, with Local Plans setting out a positive vision for the future of the area. It seems to me entirely appropriate that in drawing up its emerging Local Plan the Council should have grappled with the importance of making adequate accommodation for development needs, and in some cases concluded that these took priority over other considerations. No doubt those conclusions will be the subject of rigorous testing at the EIP. The fact that the principle of protecting designated areas from development has been outweighed by other considerations in some parts of the district does not, in my judgment, undermine or weaken the validity of that general principle, and nor does it set any form of precedent for other sites within similarly designated areas. Each development proposal must be considered on the basis of its own merits.
25. Taking all of this into account, I find no reason to conclude that in the circumstances of this particular case, any reduction should be made in the weight afforded to Local Plan Policies TC26 and R8. They give effect to the Council's longstanding and continuing objective of maintaining separation between the built-up areas of Whitstable and Herne Bay, and remain extant and relevant policies of the adopted Development Plan.

The impact on the character and appearance of the area

26. There is no dispute that the designation of the Herne Bay and Whitstable Green Gap was intended to protect the open space between the two settlements, rather than to protect any particular landscape qualities or features. The Green Gap designation reflects the susceptibility of this landscape to particular land uses, rather than being an indicator of valued landscape. The importance of the Green Gap, then, lies in its separating function.
27. The appeal site lies within an indentation on the eastern boundary of Whitstable, formed by a spur of residential development on Maydowns Road to the south, and employment development at St Augustines Business Park along the A2990 to the north. The appellant contends that the proposed development would represent a rounding-off of the pre-existing building line and would not, overall, result in a material expansion of the built-up confines of the urban area of Whitstable in such a way as to narrow the Green Gap, nor materially reduce the physical or perceived separation of Whitstable and Herne Bay.
28. As to the perception of separation, the A2990 runs alongside the northern boundary of the appeal site, and is the route that connects Whitstable and Herne Bay. At present, road users travelling east along this road, once past the petrol station, have glimpses through the hedgerow boundary on the southern side of the road to the paddocks of the appeal site beyond. That hedgerow gives way to a line of poplars as the entrance to the nursery on the opposite side of the road is approached, allowing much clearer views of the land behind them, and thus an appreciation of its openness. Once level with the entrance to Bodkin Farm, the sense of being within a Green Gap between settlements becomes much more apparent as the rising land to the east of the access provides clear views over open fields.
29. The proposed development of these paddocks and fields to the south of the road would completely remove the perception of openness currently experienced along this stretch of the A2990. The sense of being within a Green Gap between two settlements would be replaced with a sense of being part of the urban area of Chestfield and Swalecliffe. The appellant rightly points out that the development would delay, rather than remove entirely, the experience of passing through open countryside between Whitstable and Herne Bay. Nevertheless, given the length of the appeal site frontage along the A2990, that delay would be significant. Rather than glimpsing paddocks once past the petrol station, and becoming increasingly aware of the open land to the south, road users would have views of buildings behind a noise bund until they were some 0.7km further east along Old Thanet Way, when these would begin to give way to more open views over playing fields.
30. From public rights of way within the Green Gap, such as Public footpath CW68 which runs for part of its length alongside the rear garden boundaries of the properties in Maydowns Road, the openness of the appeal site currently contributes significantly to the experience of being within a Green Gap. As a consequence of the proposed development, the open views available to walkers looking north from CW68 – over horse paddocks in the western section of the appeal site, and across open fields and out to sea over the roofs of industrial units from the central section of the site – would be replaced by close views of housing, and rear garden boundaries, broken up by occasional trees.

31. Thus, while the construction of development within the triangular-shaped indentation formed by the appeal site might reasonably be described as a rounding-off or filling-out of the existing building line, which would retain the minimum separation distance between Whitstable and Herne Bay, that does not equate to the development having no significant effect upon the open character, or separating function, of the Green Gap. The construction of up to 290 dwellings may not be a numerically large increase in the context of the 14,000 dwellings of the settlement as a whole, but in my judgment it would still constitute a material expansion of the built-up urban area on this side of Whitstable.
32. Similarly, while the development area of the appeal site is only around 3.5% of the total area of the Green Gap, I consider that the loss of this particular area of open land would, for the reasons set out above, significantly reduce the extent of the A2990 from which those travelling between Herne Bay and Whitstable would perceive themselves to be within a Green gap separating the two settlements. They, and walkers on the footpaths that pass alongside and close to the appeal site, would experience a marked and permanent change in the open character of this part of the Green Gap. The fact that these impacts would be localised does not, in my judgment, preclude their effect from being significant.
33. I accept the appellant's point that those parts of the proposal which relate to educational and leisure uses, including such built development as is incidental to and necessary for those uses, are not in conflict with the provisions of Local Plan Policy TC26 (or, I add, Policy R8). However, I consider that the other aspects of the proposal would result in a material expansion of the built-up confines of the urban area of Whitstable and would significantly affect – indeed, would harm – the separating function of the Green Gap, as well as its open character. In these respects I conclude that the proposed development would conflict with the objectives of Local Plan Policy TC26.
34. The appellant sought to argue that Core Strategy Policy R8 is a more generic Green Gap policy which does not add anything to Policy TC26, such that focus should fall on the latter as the more relevant; it also maintained that the proposal would not in any event conflict with Policy R8. However, as discussed under the heading “the policy context” above, I consider that Policy R8 remains an extant and relevant policy of the adopted Development Plan. I have not been provided with any convincing reason why it should be afforded less weight, or considered less relevant, than Policy TC26: the text of the policy itself makes it clear that it applies to the Green Gaps identified on the Proposals Map, and those include the Whitstable and Herne Bay Green Gap. I have found that the currently proposed development would significantly affect the open character of that Green Gap, and it follows that the proposal would therefore conflict with Policy R8, which seeks to prevent development which would have such an effect.

Other material considerations

35. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on decision makers, when considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

The NPPF explains that consideration needs to be given to the impact that proposed development would have on the significance of any heritage assets affected, pointing out that significance can be harmed or lost through alteration or destruction of the heritage asset, or development within its setting.

36. Bodkin Farmhouse, which is located in the middle of the appeal site but excluded from it for the purposes of the current proposal, is Listed Grade II. While the surrounding fields are no longer in an agricultural use associated with the use of the former farmhouse, they make a contribution to its significance in terms of providing a green setting and a reminder of the former agricultural use of Bodkin Farmhouse. The proposed development includes a variety of measures to enhance the landscape around the farmhouse, but as the appellant acknowledges, the loss of the surrounding fields to built development will have an adverse effect on the setting and thereby the significance of this heritage asset, removing the visual link to its historic agricultural function.
37. I share the appellant's view that in terms of the guidance set out in the NPPF, the level of harm caused would be "less than substantial". Nevertheless, following the clarification provided by the Court of Appeal,³ a conclusion that a development proposal would fail to preserve the setting of a Listed Building is a consideration that must carry considerable weight and importance in the overall planning balance.
38. However, the proposed development would also bring a number of benefits that need to be weighed in the overall planning balance. The scheme would provide public access to some 18.8 ha of open space, together with opportunities for recreation, including the upgrading of existing public rights of way and the creation of new ones. There would also be ecological improvements, in terms of habitat creation and management. The provision of allotments, a community building and junior sports pitches, with changing rooms for public use, would benefit new and existing residents and the proposed care home would help to address an identified need for this type of facility in the local area. The appellant's calculations indicate that the proposed employment uses would generate 233 local jobs, and support a further 24 jobs through increased spend in the local area, while construction of the development would generate 133 local jobs. The option to use part of the site for the provision of a Primary School would provide the County Council with flexibility in meeting its obligation to provide educational facilities for the area.
39. Further, the S.106 Agreement secures 30% of the proposed dwellings as affordable housing. This is less than the 35% affordable housing provision required by the Council's adopted "Development Contributions" Supplementary Planning Document, a discrepancy which originally formed one of the Council's reasons for refusing planning permission, although the Council subsequently withdrew that reason for refusal as a result of its changed position on the provision of affordable housing in the emerging Local Plan, which reduced the requirement from 35% to 30%.
40. Ordinarily, and in districts where the Council is able to demonstrate a 5 year supply of housing sites, it would not necessarily follow that provision of affordable housing at a level that merely met the specified requirement – rather than significantly exceeding it – should carry additional weight in favour of a development proposal: after all, any development site coming forward

³ Barnwell Manor Wind Energy Ltd v E Northants DC & Ors [2014] EWCA Civ 137

would face the same Policy requirement to provide the same proportion of affordable housing.

41. However, the particular circumstances of the current proposal include not only the acknowledged shortfall in the Council's five-year housing land supply, but also the examining Inspector's Note on the main outcomes of the Stage 1 Hearings of the emerging Local Plan⁴, which states that it is not clear that 30% affordable housing would be achievable on all of the strategic allocations, and asks the Council to reassess whether the 30% provision is justified in all cases. In these circumstances, and given the acknowledged need for affordable housing in the area, the fact that 30% of the dwellings here proposed would be secured as affordable is a material consideration that carries some weight in favour of granting planning permission for the current scheme.
42. Another benefit to weigh in the balance is that the residential component of the proposed development would help to address the existing shortfall in the Council's five-year housing land supply. However, the extent of the weight that attaches to this benefit again needs to be assessed in the light of current circumstances. If the Council were still several years away from adopting a Local Plan that made provision for sufficient housing to meet its need, there would be considerable benefit in bringing forward housing development now, to help address the danger that the shortfall might otherwise continue for years. But that is not the case here. The Council has drawn up a replacement Local Plan which identifies (among other things) how it proposes to meet its housing requirement, and that emerging Local Plan has been through the first stage of its EIP.
43. The examining Inspector's note on the main outcomes of those Stage 1 Hearings explains his concern about the likelihood that on adoption the Plan would not have a 5-year housing land supply, and consequently would be unsound unless this can be remedied. The note sets out the further steps that the Council needs to take in this regard, including assessment of whether strategic omission sites or other SHLAA sites are capable of early delivery. The Inspector identifies three sites for consideration. These do not include the current appeal site, but that does not preclude its consideration by the Council.
44. Had the examining Inspector considered that the current deficiencies in the emerging Local Plan's housing provision could not be mended, it would have been open to him to advise the Council that the Plan should be withdrawn and rewritten. Instead, he has provided the Council with an opportunity to undertake actions that would remedy the identified deficiencies, and postponed the Stage 2 hearings until that work is complete.
45. The current position, then, is that the Council is reviewing its evidence of the deliverability of the sites intended to make up its housing land supply, and assessing whether others might also contribute. The evidence that it brings forward in this regard will need to be published for consultation, and will no doubt be subject to robust scrutiny. In this context, with an emerging Local Plan part-way through EIP and work ongoing to correct its identified deficiencies on housing supply, I attach less weight to the benefit of addressing the present housing site shortfall through permitting the current proposal than would be the case if the emerging Local Plan were not so well advanced.

⁴ Provided as Appendix AA to the main parties' Joint Statement on Housing Land Supply

46. It is important to be clear that this attribution of weight is not founded on any concern about "prematurity", in the terms discussed in the PPG: the development here proposed is not so substantial that to grant permission for it now would undermine the plan-making process. Rather, I consider that the advanced stage of the emerging Local Plan, and the reasonable prospect that it will be found sound once the examining Inspector is satisfied that it makes adequate provision to meet housing requirements for (at least) the next five years, simply indicates that less weight should attach to the benefits of bringing forward housing sites outside the plan process than would be the case if the emerging Local Plan was still at a very early stage.
47. Mr Hewett, who gave evidence on housing land supply on behalf of the appellant, cast doubt on the Council's calculations of delivery rates from various housing sites. While I found him a credible and helpful witness, I am mindful that his evidence was limited to such information as he was able to glean from contact with other developers, some of whom were unwilling to communicate with him. I am told that for the purposes of the emerging Local Plan EIP, developers entered into Statements of Common Ground with the Council as to the numbers of houses they would be delivering in the five year period, but that information (and information concerning the delivery timetable, and funding, of the "Sturry crossing") is not before me. Nor should it be. Put simply, it is not for me, as the Inspector appointed to determine this S.78 appeal, to seek to draw definitive conclusions on the Council's housing supply position. That is a matter which should be – and indeed is being – addressed through the Local Plan process.
48. A number of local residents raised concerns about the potential impact upon existing flooding problems on and near Maydowns Road, and on Old Thanet Way. While the proposed development would change the runoff characteristics of the site I am satisfied, on the basis of the Flood Risk Assessment and supporting information provided as part of the ES, and the response provided by the Environment Agency, that these concerns could be adequately addressed by a condition requiring the Council's prior approval of a detailed sustainable drainage scheme, to include provisions for its future management and maintenance.
49. In addition to securing the affordable housing, and other benefits discussed above, the S.106 Agreement makes provision for various financial contributions. The effect of such planning obligations is of course limited to addressing the adverse impact that the proposed development would otherwise have on local services and infrastructure and the nearby Ramsar site and SPAs, and to securing its compliance with Development Plan policy. In other words, the financial contributions constitute mitigation, and cannot carry any positive weight in favour of granting planning permission. For the purposes of determining this appeal, then, it is not necessary to consider in detail the extent to which they comply with the relevant regulatory tests.

Conclusions

50. I have found that the proposed development would conflict with Local Plan Policies TC26 and R8, both of which are relevant and up-to-date policies of the adopted Development Plan, and are consistent with the policies of the NPPF. I do not share the appellant's view that despite this conflict, the proposal would accord with the Development Plan "as a whole". I appreciate that in some

cases, a minor conflict with one particular policy may, in the context of according with other relevant policies, be considered insufficient reason to determine that the proposal does not accord with the overall Development Plan. However, in this particular case, the proposal concerns an appeal site in a Green Gap, and there are two specific policies which address the type of development considered acceptable in the Green Gap. In my opinion, the extent of the conflict I have identified with these policies would constitute a significant departure from the Development Plan.

51. It is therefore necessary to consider whether there are other material considerations which indicate that my decision should be made otherwise than in accordance with the Development Plan. I am mindful that the NPPF is a material consideration in planning decisions, and that paragraph 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development. Paragraph 14 sets out what that presumption means for decision-taking, its advice being set out in the form of two bullet points, with footnotes.
52. Since I have found that in the current case there are relevant policies of the Development Plan which are not out of date, the advice of the second bullet point (which deals with circumstances where the Development Plan is absent, silent, or relevant policies are out-of-date) is not applicable here. The first bullet point advises that approving development proposals that accord with the Development Plan, without delay, will give effect to the presumption in favour of sustainable development. I have found that the currently proposed development does not accord with the Development Plan, and so I conclude that it does not benefit from the presumption in favour of sustainable development.
53. The proposed development would bring a number of benefits, discussed above, which together carry substantial weight in its favour. However, it is also the case that the proposal would fail to preserve the setting of a Listed building, and this is a consideration that must carry considerable weight. Weighing all of the relevant material considerations in the balance, I conclude that they are not sufficient to overcome the conflict with the Development Plan, and on that basis planning permission should not be granted.
54. It is perhaps worth noting that had I concluded that Local Plan Policies TC26 and R8 should be regarded as out-of-date, such that the second bullet point in the "decision-taking" guidance of paragraph 14 would be applicable here, the assessment then required would be whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. In my judgment the adverse impacts would significantly and demonstrably outweigh the benefits, such that planning permission should not be granted.

55. I conclude that the appeal should be dismissed.

Jessica Graham

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Ground, of Counsel instructed by Mr P Devonald, Principal Planning Solicitor to the Council

He called:

Mr D Campbell RTPI Deputy Team Leader, Development Management

Mr P Devonald, Mr P Campion, Mr K Chan, Ms S Bramley, Mr B Fitzgerald and Mr R Thompson assisted at the S.106 discussion session.

FOR THE APPELLANT:

Miss M Cook, of Counsel instructed by Mr J Bowles of Porta Planning LLP

She called:

Ms M Fisher BSc(Hons) MA CMLI	Director, LDA Design
Mr G D Bellamy BSc CEng MICE	Partner, Bellamy Roberts
Mr M Hewett	Senior Partner, Intelligent Land
Mr J C Bowles BSc(Hons) DipTP	Partner and Joint Principal, Porta
DipSurv MRTPI	Planning LLP

Ms H Hutton and Mr S Clyne assisted at the S.106 discussion session.

INTERESTED PERSONS:

Cllr J Samper	Chestfield Ward Member, Canterbury City Council
Mr J E Page	Local resident
Mr C S Brown	Local resident
Ms A Sparkes	Clerk to Chestfield Parish Council
Mr S Bailey	Chairman of Chestfield Parish Council

DOCUMENTS SUBMITTED AT THE INQUIRY

By the Council:

- LPA 1 Appeal decision refs: APP/B1930/A/12/2180486 & APP/B1930/A/13/2201728 (as CD CL14)
- LPA 2 Appeal decision ref: APP/D2510/A/14/2218774 (as CD CL15)
- LPA 3 Appeal decision ref: APP/N1730/A/14/2226609 (as CD CL16)
- LPA 4 Set of draft conditions suggested by the Council (without prejudice)
- LPA 5 Statement on behalf of the Council concerning CIL Regulation 122
- LPA 6 Copy of the Press Release issued by the Council in response to the Inspector's letter following Stage 1 of the Examination in Public of the emerging Local Plan
- LPA 7 Note of clarification from the County Council, concerning the requested S.106 contributions
- LPA 8 Copy of the closing submissions made on behalf of the Council

By the appellant:

- APP 1 Copy of a letter from Stagecoach dated 14 August 2015
- APP 2 A3 copy of Masterplan
- APP 3 A3 copy of Phasing Plan
- APP 4 Mr Hewett's calculations of the Council's five-year housing land requirement (using both Sedgefield & Liverpool approaches)
- APP 5 Copy of the opening submissions made on behalf of the Council
- APP 6 Copy of the application for planning permission and listed building consent, and supporting plans, submitted for redevelopment of buildings at Bodkin Farm
- APP 7 Copy of the closing submissions made on behalf of the appellant

By other interested persons:

- IP 1 Statement by Mr C S Brown, dated 19 August 2015
- IP 2 Statement by Mr J E Page
- IP 3 Set of colour photographs provided by Mr Page
- IP 4 Copies of e-mail correspondence between Mr Brown and the Environment Agency
- IP 5 Mr Brown's update on the Examination in Public of the emerging Local Plan, and further commentary on the appellant's Transport Assessment, dated 16 August 2015
- IP 6 Copy of Mr Brown's e-mail to the Council dated 14 August 2015, concerning difficulties in viewing the appeal material
- IP 7 Speaking notes of Ms A Sparkes, providing the Parish Council's comments on the S.106 Agreement and conditions
- IP 8 Statement by Mr S Bailey

Jointly produced documents:

- A Final list of suggested conditions
- B S.106 Agreement between the land owners, Kent County Council and Canterbury City Council, dated 27 August 2015