



Appeal Decision

Inquiry held on 22, 23 and 24 September 2015

Site visits made on 21 and 24 September 2015

by Chris Preston BA (Hons) BPI MRTPI

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

Decision date: 07 December 2015

Appeal Ref: APP/A2280/W/15/3002877

Land at Station Road, Rainham, Kent ME8 7QZ

- 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 Mr Hill (McCulloch Homes) against the decision of The Medway Council.
 - The application Ref MC/14/0285, dated 29 January 2014, was refused by notice dated 17 July 2014.
 - The development proposed is residential development (comprising about 90 dwellings).
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Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 90 dwellings at land at Station Road, Rainham, Kent ME8 7QZ in accordance with the terms of the application, Ref MC/14/0285, dated 29 January 2014, subject to the conditions in the schedule appended to my decision.

Procedural Matters

2. The application was submitted in outline with all matters reserved for subsequent approval. A proposed site plan was submitted with the application (drawing No 54-003 revision 00) for indicative purposes, to illustrate one potential layout for the proposed development. That plan depicted access from Station Road and indicated a layout comprising 58 dwellings and 36 flats; a total of 94 units.
3. The description of the proposed development on the application form is for residential development 'comprising about 90 dwellings'. At the Inquiry, the appellants made clear that the reference to 36 flats on the indicative plan submitted to the Council was a typographical mistake. The intention was to indicate 58 dwellings and 32 flats to show a layout comprising 90 units. To that effect, they submitted a revised site plan to the Inquiry (drawing No 54-003, revision A) which was essentially the same plan that had been submitted to the Council, in terms of the indicative layout, but with the number of units shown to be 58 dwellings and 32 flats.
4. The Council raised no objection to the submission of the plan. I accepted that plan on the basis of the appellants' explanation regarding the mistake in the numbers of units shown on the original plan and am satisfied that no party will be prejudiced by my decision to do so. Both plans were submitted for indicative purposes and neither alters the description or nature of the

- development for which planning permission is sought; all matters being reserved for future approval.
5. In terms of the parameters of the proposed development, as described on the application form, the term 'comprising about 90 dwellings' is somewhat unclear. When questioned at the Inquiry, the appellants stated that it was not their intention to construct more than 90 dwellings and that they would be happy for any decision to reflect those intentions. The documents submitted in support of the scheme were compiled on that basis. Thus, for clarity and to accord with the appellants' intentions, I have amended the description within my formal decision to refer to a proposal for 'up to 90 dwellings'.
 6. The application was refused for three reasons. The second reason for refusal related to the Council's concerns that insufficient information had been submitted to assess whether the site was suitable for residential development, in view of potential land contamination. The third reason alleged that insufficient information had been provided with regard to the likely impact upon protected species. A contaminated land assessment was submitted with the appeal¹ and, on the basis of that report, the Council is satisfied that the second reason for refusal is capable of being resolved, subject to the imposition of suitably worded conditions. As such, the Council did not defend the second reason for refusal at the Inquiry.
 7. Ecological surveys relating to potential translocation sites for reptiles were submitted with the appeal in relation to the third reason for refusal². Kent County Council's ecological advice service provided comment upon these surveys and, following that correspondence, Medway Council is satisfied that the third reason for refusal can be addressed through the submission of a planning obligation and condition to secure the translocation of slow worms to an appropriate receptor site.
 8. A signed and dated unilateral undertaking made by the owner of the proposed translocation site was submitted at the Inquiry. The terms of that undertaking require the owner to make the receptor site available for the translocation of reptiles, if required as a result of any condition attached to a planning permission for the proposed development. A suggested condition to secure a 'Reptile Translocation Plan' was put forward by the Council and the appellants at the Inquiry. The Council are satisfied that the mechanism would be adequate to overcome their third reason for refusal and this was not a matter of dispute between the parties at the Inquiry. I shall consider the undertaking and suggested condition in more detail later in this decision.
 9. In addition, a further unilateral undertaking was submitted by the appellants at the Inquiry. The obligations within the undertaking are to make financial contributions towards the cost of providing additional nursery, primary and secondary school places; the provision of a scheme of workforce training or a financial contribution towards the Medway Apprentice Placement Service; financial contributions towards the maintenance of footpaths and vegetation at Great Lines Heritage Park; financial contributions towards open space improvements at Rainham Recreation Ground; financial contributions towards pedestrian accessibility improvements; and a requirement to provide a

¹ Core Document 6.4: Phase II Contaminated Land Assessment Report, prepared by Ecologia, issue date 31 October 2014

² Core Documents 6.5 and 6.6.

minimum of 25% of the dwellings as affordable housing. I will consider those obligations within the main body of my decision.

Main Issues

10. In view of the above, the main issues are:

- i) The effect of the proposal on the character and appearance of the area;
- ii) Whether the proposal would represent sustainable development and, having regard to the presumption in favour of sustainable development at paragraph 14 of the National Planning Policy Framework, whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

Reasons

Planning Policy Position

11. The development plan for the area is the Medway Local Plan (2003) (the Local Plan). The Local Plan was adopted in 2003 and covered the period between 1996 and 2006. Therefore, it is time expired. Nonetheless, a number of policies were 'saved' following a direction from the Secretary of State (SoS) in 2007³. Two of those saved policies, BNE25 and BNE34, are relied upon by the Council in support of the first reason for refusal.
12. As set out within the Statement of Common Ground (SoCG), the Council cannot demonstrate a five-year supply of deliverable housing land, as required by paragraph 47 of the National Planning Policy Framework (the Framework). In such circumstances, paragraph 49 of the Framework dictates that relevant policies for the supply of housing should not be considered up-to-date. It is common ground between the Council and appellants that policy BNE25 is a relevant policy for the supply of housing.
13. I concur with that view on the basis that the policy is a general policy of restraint which prohibits housing development on all land beyond settlement boundaries. The courts have held that general restraint policies such as BNE25 are clear counterparts to policies within development plans that seek to provide for the distribution of development, as summarised within the *Wenman* judgement⁴. Therefore, in accordance with paragraph 49 of the Framework, policy BNE25 is not up to date.
14. Notwithstanding that the policy is not up-to-date by virtue of paragraph 49 it remains part of the development plan. Paragraph 215 of the Framework states that due weight should be given to policies within existing plans according to their degree of consistency with the Framework. In view of the absence of a five-year supply of housing land, the application of a blanket policy restriction on housing development beyond settlement boundaries is inconsistent with the aims of paragraph 47 of the Framework which seeks to boost significantly the supply of housing. In that context, the weight that I attach to policy BNE25 is reduced substantially.

³ Core Document 5.7

⁴ Paragraphs 49 to 60: *Mark Wenman v Secretary of State for Communities and Local Government & Waverley Borough Council* [2015] EWHC 925 (Admin); Produced at Appendix 5 to the proof of Mrs Allen

15. Paragraph 17 of the Framework identifies a number of core planning principles, including the need to take account of the different roles and character of different areas and to recognise the intrinsic character and beauty of the countryside. Nonetheless, whilst the Framework recognises the value of the countryside it does not expressly prohibit residential development within it or state that planning permission should be limited to certain types of development. Thus, the emphasis within the Framework is substantially different to the restrictive approach of policy BNE25 and this also affects the weight to be attached to the policy in reaching my decision.
16. Policy BNE34 relates to Areas of Local Landscape Importance (ALLI). Unlike policy BNE25 the policy does not prohibit particular forms of development. Under the terms of the policy development will only be permitted if it does not materially harm the landscape character and function of the area; or the economic and social benefits are so important that they outweigh the local priority to conserve the area's landscape.
17. The ALLI designation does not cover the full extent of countryside beyond defined settlement boundaries but does cover a substantial proportion of land within the district⁵. I also note that the designation is drawn tightly around the settlement boundaries of Gillingham and Rainham. Thus, it appears to me that, in geographical terms, the policy is somewhere between blanket policies applying to all countryside, such as BNE25, and 'green wedge' or 'green gap' that are designed to maintain separation between settlements⁶.
18. Nonetheless, it is clear that the aim of the policy is to protect the character and function of landscapes on the urban fringe. It is not a policy that explicitly seeks to restrict housing supply. Moreover, the wording of the policy requires a balance of judgement between any harm to the local landscape and any social and economic benefits arising from a proposal. As such, development could still be permissible under the terms of the policy if harm would arise to the ALLI designation.
19. The balance within the policy is very similar to the approach to sustainable development within the Framework which is based upon social, economic and environmental strands. That approach is built into policy BNE34. To my mind, it is a policy that seeks to protect landscape character and function rather than a policy for the supply of housing.
20. Mr Warner suggested at the Inquiry that he had been unable to find a single example where the Council had granted planning permission on the basis that social and economic factors outweighed harm to the ALLI. As such, he maintained that the Council were, in fact, using the designation as a blanket restriction on housing development beyond settlement boundaries. Insufficient evidence was presented for me to determine whether that was the case. In any event, however it has been interpreted by the Council, I am satisfied that the policy, as written, is not a policy for the supply of housing, for the reasons set out above.
21. With regard to paragraph 215 of the Framework, the balance of social, economic and environmental factors built into the policy is consistent with the

⁵ As shown on the Local Plan proposals maps at Appendix 5 to the proof of Mr Warner

⁶ William Davis Ltd v Secretary of State for Communities and Local Government & Amor [2013] EWHC 3058 (Admin) and Cheshire East Borough Council v Secretary of State for Communities and Local Government & Anor [2015] EWHC 410 (Admin)

broad approach to sustainable development in the Framework. The Council have previously assessed the policy to be 'partially consistent' with the Framework⁷ but the committee report that provided the assessment of compliance does not expand on why that was considered to be the case.

22. However, the Medway Landscape Character Assessment (2011) (the LCA) notes the preference within the then extant Planning Policy Statement 7 for a move away from rigid local landscape designations to a criteria based policy approach based on landscape character assessment. That preference has been carried through to paragraph 113 of the Framework which requires local planning authorities to set 'criteria based' policies against which proposals in protected landscape areas will be judged.
23. Policy BNE34 does not set a criteria based approach and the ALLI designations were not based upon a landscape character assessment. The policy does not fully accord with the Framework in those respects. However, it appears to me that the discrepancy relates to the nuances of how landscape should be protected through planning policy as opposed to the fundamental principle of whether those landscapes should be protected.
24. The area has a distinct character, defined as the Gillingham Riverside in policy BNE34 and the Lower Rainham Farmland within the LCA. I can find nothing inherently inconsistent with the Framework in seeking to recognise and protect areas of recognised local landscape character. Thus, whilst the weight afforded to policy BNE34 must be reduced to a degree as a result of the inconsistency with paragraph 113 of the Framework, I am satisfied that its aims are broadly consistent with the Framework as a whole and I attach significant weight to the policy.

The effect of the proposal on the character and appearance of the area

25. The appeal site, known locally as Bakers Field, is a roughly rectangular parcel of land adjacent to Station Road on the northern edge of Rainham. Following the cessation of brickearth extraction the site has been unused, other than for recreational purposes, for a considerable period. In 2002 the Inspector's report regarding the Local Plan noted that ground cover was sparse albeit that there was plenty of vegetation around the perimeter⁸. In the intervening period the level of vegetation has increased and the site is now predominantly overgrown with scrub, with the exception of open pockets within the centre.
26. In other respects, the character of the surrounding area remains largely as described by the examining Inspector in 2002. The site lies to the north of Rainham, within a swathe of mainly undeveloped countryside between the town and the River Medway. The undeveloped character of the site helps to maintain a degree of physical separation between the edge of the town and the cluster of houses situated around the junction between Station Road and Lower Rainham Road. To the east lies an open piece of land known as Woolleys Orchard and to the west, on the opposite side of Station Road, the land remains largely undeveloped, being a mixture of overgrown scrub and equine related uses typical of the urban fringe.
27. With regard to policy BNE34, the site falls within the Gillingham Riverside ALLI. The explanatory text to the policy describes the area as a rural landscape of

⁷ Core Documents 4.6 & 4.7: Planning Committee Report, dated 19 February 2014, with associated table.

⁸ Extract of Inspector's Report included at Appendix 3 to the proof of Mrs Allen

orchards and arable fields with country lanes, situated to the north of Rainham and Twydall. The character of the site and the immediate areas surrounding it do not conform fully with this description. It is not a landscape of orchards and arable fields but is more accurately described within the LCA which identifies the area lying between Rainham and Lower Rainham Road as the 'Lower Rainham Farmland'.

28. The LCA describes a character of small to medium scale fields with a mixture of orchards, arable and rough grazing, with neglected pockets of land and a gradual trend towards suburbanisation in localised areas. In the immediate context, the appeal site and the land on the opposite side of Station Road represent neglected pockets of land and Woolleys Orchard, to the east, is used occasionally for car boot sales but not for any agricultural purpose.
29. Station Road is one of a number of roads branching northwards from Rainham to connect with Lower Rainham Road; others include Berengrave Lane to the west and Otterham Quay Lane to the east. Residential development straddles the side of all of these routes representing the northward expansion of the town into the countryside beyond. Therefore, although the site is within the designated ALLI, the pockets of neglected land, trend towards suburbanisation and urban fringe character are moderating factors when attributing value to the landscape. Taking account of those factors, I concur with the findings of the Landscape and Visual Assessment (LVIA) prepared on behalf of the appellants which describes the landscape value as 'medium'⁹, with a 'medium' sensitivity to change.
30. Nonetheless, the areas of undeveloped land to the north of Rainham, of which the appeal site forms a part, help to provide a clear distinction to the edge of the settlement. In the immediate context, the site forms the only break between the northern extent of Rainham, at Finwell Road, and the cluster of dwellings at the junction between Station Road and Lower Rainham Road. To my mind, that cluster of development is distinct from Rainham and has a rural character, being surrounded on all sides by undeveloped land.
31. Despite the frontage of the site being relatively short in length, the vegetation adjacent to Station Road, in combination with that on the opposite side of the carriageway, provides a strong sense of enclosure. When travelling past the site there is a clear feeling of being within the countryside, and that the town has been left behind. In that sense, the site contributes positively to the character of the area. In visual terms, the maturing vegetation across the site is an attractive feature in its own right, representing a green buffer between two areas of built development. The wooden fencing that has been erected to the front of the site does not detract unduly from the pleasant green backdrop.
32. One of the key functions of the Gillingham Riverside ALLI, as described in the explanatory text to policy BNE34, is that it provides an important green buffer separating the built-up area of Rainham from areas of nature conservation importance and recreation along the Medway estuary. Development of the site would erode the buffer between Rainham and the housing development further to the north and would result in the extension of the town up to Lower Rainham Road. The collection of houses around the Lower Rainham Road junction would be subsumed within the town and the present gap between town and country would be lost.

⁹ Lloyd Bore Landscape and Visual Impact Assessment, revision A. Core Document 6.2

33. It would also impinge on the continuity of the open spaces at Woolleys Orchard to the east and the paddocks and scrubland to the west. The coherence of the open spaces to the north of Rainham has already been disrupted by the development to the north-west of Otterham Quay Lane, on the opposite side of Woolleys Orchard, as described within the LCA¹⁰. The appeal proposal would have a similar effect and would effectively leave Woolleys Orchard as an isolated pocket of open space, in between housing developments, in contrast to the current situation where a continuous run of undeveloped land stretches from east to west, providing a rural setting to the north of the town. Thus, despite its relatively small scale, the appeal site plays an important function in maintaining the landscape character of the local area.
34. I recognise that it would be possible to incorporate landscaping along the frontage of the site as part of the detailed design and that would mitigate the effects of the proposal to some extent but would not ameliorate the full extent of the change from undeveloped land to a substantial residential estate. In landscape terms, the loss in continuity in the open belt of land to the north of the settlement would remain harmful.
35. However, although the development would disrupt the continuity of the green buffer to the north of Rainham, it would not bring residential development closer to the Medway estuary because of the housing that already exists immediately to the north of the site. Thus, whilst there would be some harm to the function of the buffer between the town and the estuary, the effects would be modest and localised in extent.
36. The other relevant function of the ALLI is that it provides residents within an extensive urban area with access to an attractive rural landscape. There is a relatively thin strip of land between the town and the Medway estuary to the north. The site is within close proximity of the southern fringe of the town and is likely to be experienced frequently by residents travelling past it, either on foot, cycle or car. When passing the front of the site there is a sense of being within the countryside, as described above. Informal access has also been granted and footpaths across the site indicate that people frequently use the area for recreational purposes. I note that those rights of access are concessionary and could be removed at any point by the landowner.
37. Notwithstanding that point, even without such access rights, I consider that the site contributes positively to the function of the ALLI purely as a result of the benefits of providing an attractive and undeveloped environment on the edge of the conurbation. If developed for housing the site would no longer perform that function. Those travelling northwards along Station Road would be predominantly within an urban environment as opposed to one of a rural character. The experience of being within the countryside would be pushed further to the north beyond Lower Rainham Road. The detrimental effects in that regard are likely to be most keenly felt by residents residing in the local area and the proposal would not have any significant wider ramifications on that particular function of the ALLI beyond the local context.
38. In visual terms, the presence of existing built development at the junction of Station Road and Lower Rainham Road prevents clear views of the site from the north on footpaths and roads close to the estuary. The visual effects would be most noticeable at close range, particularly from Station Road and Finwell

¹⁰ Core Document 5.5, page 68

Road. As set out above, the vegetation alongside Station Road provides an attractive green backdrop and adds to the definition of the urban/ rural edge. Consequently, I disagree with the assessment of view 3 within the LVIA which describes the visual condition as 'ordinary' and not visually pleasant.

39. To my mind, the visual condition of the existing frontage to Station Road should be considered as 'Good'; the same value attributed to views from Finwell Road. The sensitivity of those localised views to change would also be high given the current attractive condition and the fact that residential development would bring about a substantial change from undeveloped land to a residential suburban estate. Consequently, I consider that the degree of effect from those viewpoints would be substantially greater and more harmful than suggested within the LVIA.
40. However, that harm would be localised. In the wider context, taking account of the sensitivity of the landscape and the scale and magnitude of the likely change, I concur with the findings of the LVIA that the effect on landscape character would be moderate¹¹. That degree of change would represent material harm to the landscape character and function of the ALLI, contrary to the aims of sub-section (i) of saved policy BNE34. Whether any economic or social benefits exist to outweigh the local priority to conserve the area's landscape is a matter that I shall consider in the wider planning balance on the second main issue.
41. The proposal would also be contrary to the aims of saved policy BNE25 but, for the reasons given, I attach limited weight to any conflict in that regard.
42. In the terms expressed at paragraph 17 of the Framework, I consider that the proposal would cause harm to the intrinsic character of the area. Paragraph 109 of the Framework seeks to protect and enhance valued landscapes but does not define what constitutes a 'valued landscape'. To my mind, designation within a Local Plan is indicative that a landscape is valued locally. Whilst the immediate character of the landscape surrounding the site does not conform to the wider Gillingham Riverside ALLI landscape, as described in the Local Plan, the site plays an important role in the function of the ALLI for the reasons set out. The reduction in the green buffer at the edge of Rainham and the urbanisation of the countryside on the edge of the settlement would therefore represent harm to a valued landscape, contrary to the aims of paragraph 109 of the Framework.

Whether the proposal would represent sustainable development and, having regard to the presumption in favour of sustainable development at paragraph 14 of the National Planning Policy Framework, whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole

43. Paragraphs 18 to 219 of the Framework, taken as a whole, constitute the Government's view of what sustainable development means in practice for the planning system. Paragraph 7 identifies three dimensions to sustainable development, economic, social and environmental, and paragraph 8 notes that these roles are mutually dependent and should not be looked at in isolation.

¹¹ Paragraph 5.8 of the LVIA

44. In my consideration of the first main issue I have identified that the proposal would cause harm to the character and appearance of the countryside and would harm the function of the Gillingham Riverside ALLI. That harm would represent environmental harm for the purposes of the three stranded definition of sustainable development. For the reasons given above, I attach moderate weight to that harm.
45. It is common ground that the Council cannot demonstrate a five year supply of deliverable housing land. Furthermore, as set out within the SoCG, there was a substantial shortfall in housing delivery, when set against housing requirements, in previous years. The table produced at paragraph 4.15 of the SoCG shows that the housing delivery target was only met in 3 out of 23 years and that the Council has failed to achieve its target in 4 out of the last 5 years. On the evidence presented, this represents persistent under-delivery.
46. A 'Further Statement of Common Ground' with regard to housing land supply was submitted at the Inquiry. The parties agree that the shortfall in housing land supply is likely to be significant. They also agree that the Council cannot demonstrate a five-year supply of affordable housing, that the shortfall in that regard is likely to be significant, and that the provision of affordable housing in general is a significant benefit to be weighed in the planning balance. On the information presented, I see no reason to depart from that conclusion. Ninety dwellings, 25% of which would be affordable, would represent a substantial contribution towards local housing supply and I attach significant weight to the benefits in that regard.
47. The site is situated in a sustainable location within close proximity of the existing settlement of Rainham. It is within walking distance of the train station and local shops and the sustainable location of the site is an environmental benefit that weighs in favour of the proposal. The provision of housing would bring economic benefits in the short term, through employment and investment related to construction activity, and the longer term, through the spending power of local residents that would benefit local shops and businesses
48. It is also common ground that there would be no unacceptable highway impacts with regard to access from Station Road, traffic flows or general highway safety. All matters are reserved for future approval and details of access do not form part of the application. The appellants have indicated that vehicular access would be formed from Station Road and not from Finwell Road. A suggested condition was put forward to that effect. They have also indicated that it would be possible to widen the width of the carriageway at Station Road, across the site frontage, to facilitate the free passage of traffic. Full details of that matter would be required under a future reserved matters application but, on the basis of the information before me, I am satisfied that satisfactory access arrangements could be achieved.
49. Similarly, with careful attention to design and layout, I am satisfied that the site could accommodate the proposed quantum of development without undue harm to the living conditions of neighbouring residents by way of overlooking or loss of privacy. The contaminated land assessment provided by the appellants demonstrates that the land can be made suitable for residential purposes, subject to conditions to secure any necessary remediation.

50. Furthermore, I am satisfied that a mechanism to secure the translocation of slow worms can be secured through the imposition of a condition to require a 'Reptile Translocation Plan'. The landowner of a suitable receptor site has submitted an obligation to the effect that he would be willing to allow for the translocation of slow worms and the mechanism put forward provides sufficient surety that the development can be undertaken without causing environmental harm to the local slowworm population.
51. Consequently, in the overall balance, the proposal would result in significant social benefits in terms of housing provision and associated economic benefits. It would result in moderate harm to the character and appearance of the local area. However, with regard to other environmental matters, the site is well located in terms of shops, services and transport links and can be developed without undue harm to ecological assets. Based upon the three-stranded definition of sustainable development at paragraph 7 of the Framework, and paragraphs 18 to 219, taken as a whole, I consider that the proposal would represent sustainable development.
52. Moreover, with regard to the presumption in favour of sustainable development at paragraph 14 of the Framework, the significant benefits of granting planning permission would not be significantly and demonstrably outweighed by the adverse impacts that I have identified.
53. In the context of saved policy BNE34 of the Local Plan I consider that the social and economic benefits of the proposal, as described above, are of sufficient importance to outweigh the material harm to the character and function of the area, particularly considering the pressing need for housing and the aim of paragraph 47 of the Framework to provide a significant boost to housing delivery. Accordingly, the proposal would not contravene the terms of the policy which contains a requirement to balance environmental, social and economic factors.

Conditions

54. In advance of the Inquiry the Council put forward a list of suggested conditions which they thought should be attached if I were minded to allow the appeal. Following discussions between the Council and the appellants an amended set of conditions was submitted on the third day of the Inquiry. That revised list was considered in a round table discussion. I have included those conditions that meet the tests set out at paragraph 206 of the Framework, making amendments to wording, where necessary, in the interests of precision.
55. I have attached statutory conditions relating to the time limit for the commencement of work and the submission of reserved matters details. As the application is submitted entirely in outline, a condition to ensure compliance with the submitted plans is unnecessary; full details and plans will need to be submitted as part of the reserved matters details and the suggested layout at this stage was submitted for indicative purposes. As set out within my procedural note, the appellant confirmed at the Inquiry that the proposal was for outline permission for up to 90 dwellings. For the avoidance of doubt, I have attached a condition to limit the number of dwellings to that level.
56. Landscaping is one of the reserved matters and, as such, a specific landscaping condition is unnecessary. Landscaping matters, including consideration of subsequent management, could be considered fully as part of any reserved

matters application. The application was put forward on the basis that a specified amount of open space/ play space (0.531 hectares as a minimum) would be provided on site. That level of open space was considered to be acceptable by the Council and no contrary evidence has been submitted that would lead me to conclude that it would be insufficient to meet the needs of the development. I am satisfied that the suggested condition is necessary, for the avoidance of doubt as to the nature of the proposal, and to ensure that an acceptable level of on-site open space is provided as part of the scheme.

57. The response from the County Council's archaeological officer identified that the site lies within an area that has known archaeological potential. Accordingly, a condition is necessary to secure a programme of archaeological work for the areas of the site that have not been disturbed by previous brickearth extraction. As set out above, in the interests of providing a satisfactory residential environment, conditions are also necessary to ensure the remediation of any contamination on site, in accordance with a detailed scheme that should be submitted to and approved in writing by the local planning authority.
58. The application has been put forward and assessed on the basis that vehicular access would be formed from Station Road. Finwell Road is presently a quiet residential cul-de-sac and, in the interests of highway safety, the amenity of residents of Finwell Road, and for the avoidance of doubt as to the nature of the development proposed, I am satisfied that a condition is necessary to ensure that vehicular access would be from Station Road. Details of the design of that access and any other highway related alterations would be considered at the reserved matters stage. A condition has been suggested to the effect that the level of car parking within the site should accord with 'adopted parking standards'. The wording of the condition is not precise and does not specify whether the parking standards referred to are those existing at present or any that may apply at the time of any reserved matters application. Accordingly, the condition does not meet the test of precision. In any event, I consider that it would be more appropriate to consider the level of car parking at the reserved matters stage once the detailed layout and housing mix are known. I am not satisfied that it is necessary to attach a condition at this stage.
59. A condition to secure a construction management plan is necessary in the interests of highway safety and residential amenity. No compelling reason was put forward for the suggested condition relating to the need for underground ducts for dwellings or the removal of permitted development rights for overhead cables or distribution poles. The Planning Practice Guidance advises that permitted development rights should only be removed in exceptional circumstances¹². Detailed design would be considered at the reserved matters stage and I can find nothing exceptional to justify the suggested condition with regard to the provision of services to proposed dwellings.
60. For reasons set out above, a condition is necessary to ensure that a Reptile Translocation Plan is implemented, in accordance with details that have been submitted to and approved in writing by the local planning authority. An alternative site has been identified and the landowner is content to accept the translocation, as identified by unilateral undertaking. The Council sought that undertaking because they were not satisfied that the requirement to provide

¹² Paragraph 017, Reference ID: 21a-017-20140306

on-going management on third party land could be adequately secured through the provisions of a condition. I am satisfied that the condition and associated obligation provide sufficient surety that the scheme could be implemented to provide adequate protection for slowworms.

Unilateral Undertaking

61. Two unilateral undertakings were submitted, as summarised in my procedural paragraphs above. I have considered the obligations with respect to regulation 122 of the Community Infrastructure Levy Regulations (2010) (the CIL Regulations) and advice at paragraph 204 of the Framework. The provision of an affordable housing scheme to secure 25% affordable housing is directly related to the development, reasonable in scale and kind and necessary to make the development acceptable in planning terms, having regard to the Framework and saved policy H3 of the Local Plan.
62. Based upon the consultation response from the Council's children's services team I am satisfied that there is a need for financial contributions towards education provision to mitigate the impact of the proposal on nursery, primary and secondary education. The proposed contributions are calculated on the basis of formulae within the Medway Council Guide to Developer Contributions (2014) (the Contributions Guide). Those formulae are based upon relatively up to date costs associated with providing education facilities and calculated pupil ratios for new development.
63. No evidence has been presented that would lead me to doubt that the method of calculating the level of contribution is fairly and reasonably related to the proposed development. The relevant obligations require that the contributions would be spent at specific local nursery primary and secondary schools and the Council's CIL Compliance Note¹³ confirms that no more than 5 obligations have been entered into in relation to those schools. I have no reason to doubt that position and am satisfied that the education contributions meet the relevant tests and would accord with saved policy S6 of the Local Plan.
64. At the Inquiry, the Council accepted that the obligations in respect of training and workforce development would not, of themselves, be necessary to make the development acceptable in planning terms. Whilst I can appreciate the benefits of local workforce training in an economic and social sense, it is not clear how the need for on-site training is directly related to the impact of the proposed development or necessary for it to be acceptable in planning terms. Accordingly, I am not satisfied that the obligation meets the required tests and have not afforded it any weight in reaching my decision.
65. Little information is before me with regard to the quantum or condition of open space at the Rainham Recreation Ground or the condition of footpaths and vegetation within Great Lines Heritage Park. Thus, whilst the proposal would no doubt increase demand for local recreation facilities, I cannot determine whether there are any qualitative or quantitative defects in existing facilities that would need to be remedied in order to accommodate any demand that may arise from the proposal. As such, the information presented does not demonstrate that the contributions are necessary to make the development acceptable in planning terms and I have not afforded those contributions in that regard any weight in reaching my decision.

¹³ Inquiry Document 3

66. Similarly, little information has been presented to demonstrate why improvements would be necessary at the Station Road/ Tilbury Street and Station Road/ William Street/ Henry Street/ Wakely Road junctions as a result of the proposed scheme. No specific schemes for those junctions have been presented and, on the face of the information before me, I am not satisfied that the proposed contributions are necessary to make the development acceptable in planning terms and have not afforded the contributions any weight in reaching my decision.
67. The obligation with regard to the provision of a receptor site at Trenchman's Wharf is necessary to make the development acceptable in planning terms. It is also related to the proposed development and reasonable in scale and kind to the likely impact.

Overall Conclusion

68. The proposal would result in moderate harm to the character and appearance of the area and the function of the Gillingham Riverside ALLI. However, the social and economic benefits of the scheme would significantly outweigh that harm such that the proposal would comply with the terms of saved policy BNE34 of the Local Plan. It would be contrary to the aims of saved policy BNE25 but, for the reasons given, little weight can be afforded to that policy. The benefits of the proposal represent material considerations to outweigh any conflict with the development plan in that regard. Despite conflict with saved policy BNE25, when assessed in the round, I am satisfied that the proposal would not conflict with the aims of the development plan as a whole.
69. Furthermore, the proposal would represent sustainable development and the presumption in favour of sustainable development applies. Having regard to paragraph 14 of the Framework the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits.
70. I have noted the planning history of the site, including previous appeal decisions and examining Inspector's reports. However, those decisions and reports pre-date the publication of the Framework and were not made in the same context as the current proposal, particularly with regard to the pressing need for housing and the requirement to significantly boost housing supply. Accordingly, the planning history has not been a significant factor in my decision.
71. In view of the above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Chris Preston

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Graeme Keen of Counsel Instructed by the Borough Solicitor

He called

Mr David Withycombe MSc CMLI	Landscape consultant commissioned by Medway Council
Mrs Caroline Allen BA (Hons) PGDip	Senior Planner, Medway Council

FOR THE APPELLANTS:

Mr Richard Turney of Counsel Instructed by Kingsley Smith LLP

He called

Mr Julian Bore BA Hons MPhil CMLI	Of Lloyd Bore Ltd
Mr Iain Warner BSc Hons MRTPI	Of Tetlow King Planning
Mr Stephen Hinsley BA Hons MRTPI	Of Tetlow King Planning

INTERESTED PERSONS:

Mrs Margaret Francis	Local resident
Mr Alan Peterkin	Local resident
Mr James Monday	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1) Transcript of the statement of Mrs Margaret Francis
- 2) Further Statement of Common Ground, signed and dated 22 September 2015
- 3) Medway Council Compliance Note re Community Infrastructure Levy
- 4) Copies of Local Plan policies relevant to discussion regarding the unilateral undertaking
- 5) Medway Council Guide to Developer Contributions (2014)
- 6) Minutes of the meeting of the Cabinet of Medway Council of 15 July 2014, relating to the Council's adoption of the Guide to Developer Contributions (2014)
- 7) List of suggested conditions
- 8) Updated list of Core Documents, dated 23 September 2015
- 9) Unilateral Undertaking, signed and dated 24 September 2015, made by Palm Developments Ltd
- 10) Unilateral Undertaking, signed and dated 24 September 2015, made by McCullochs (CI) Ltd

SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No more than 90 dwellings shall be erected on the site.
- 5) The details submitted pursuant to condition 1 shall only provide for vehicular access to be derived via Station Road.
- 6) The details submitted pursuant to condition 1 shall include not less than 0.531 hectares of open space and play space.
- 7) No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable that has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved specification.
- 8) A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be prepared, and submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 9) The approved remediation scheme, submitted pursuant to condition 8, shall be carried out in accordance with its terms prior to the commencement of any development (other than development required to enable the remediation process to be implemented) unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority shall be given not less than two weeks written notification prior to the commencement of the remediation scheme works. Following completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the development.
- 10) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it shall be reported in writing immediately to the Local Planning Authority. An

investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, any necessary remediation shall be undertaken in accordance with the details so approved.

- 11) 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 parking of vehicles of site operatives and visitors
 - ii) dust management
 - iii) measures to ensure public access to the highways and footways adjoining the site at all times during construction
 - iv) measures to control noise and vibration levels during the construction period, including the predicted noise levels and a methodology for monitoring the levels during the period of works
 - v) the days of the week and times of the day when construction work at the site and construction traffic movements to and from the site will be undertaken
 - vi) measures to protect the public highway from mud and debris
 - vii) traffic routing for construction vehicles
- 12) No development shall take place until a Reptile Translocation Plan has been submitted to, and approved in writing by, the local planning authority. The Reptile Translocation Plan shall include:
- i) the identification of a receptor site for reptiles
 - ii) details of how reptiles would be captured and translocated to the designated receptor site
 - iii) a management plan for the receptor site which shall identify any measures required to enhance the capacity of the receptor site to accommodate translocated reptiles
 - iv) details of a monitoring plan over a period of five years; and
 - v) a timetable for implementation

Thereafter, the Reptile Translocation Plan shall be carried out in accordance with the details so approved.