



Appeal Decision

Inquiry held on 9 to 12 March 2021

Site visit made on 30 March 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th April 2021

Appeal Ref: APP/G2245/W/20/3260956

Salts Farm, Fawkham Road, Fawkham DA3 7BJ

- 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 A Billings, Westoak Homes against the decision of Sevenoaks District Council.
 - The application Ref: 20/00882/OUT, dated 19 March 2020, was refused by notice dated 20 May 2020.
 - The development proposed is described as an outline planning application for the erection of 26 dwellings - All matters reserved for future consideration (apart from access).
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 26 dwellings - all matters reserved for future consideration (apart from access) at Salts Farm, Fawkham Road, Fawkham DA3 7BJ in accordance with the terms of the application, Ref: 20/00882/OUT, dated 19 March 2020 subject to the conditions in the attached schedule.

Preliminary and Procedural Matters

2. The application is in outline form with all matters reserved for future consideration apart from access. I have dealt with the appeal on this basis and I have treated any details not to be considered at this stage as being illustrative only. It was agreed by the main parties that an updated parameter plan (ref: DHA/14150/09) that was submitted with the appeal was for my consideration.
3. The Council withdrew its reasons for refusal concerning ancient woodland and biodiversity following the submission of additional information with the appeal. This information consisted of the updated parameter plan and an Ecological Assessment (October 2020). The Council also withdrew its reason for refusal in relation to drainage on the basis of a Drainage Technical Note (July 2020). As interested parties and consultees have also raised these matters, they remain considerations and so they are addressed in my decision.
4. The Council also stated that an agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) (S106 Agreement) would address its reason for refusal relating to the provision of affordable housing. The Inquiry proceeded on this basis and included the consideration of a final draft S106

Agreement. A completed and executed version was submitted after the close of the Inquiry. The obligations contained in the S106 agreement relate to affordable housing provision. As such, the matters which remain in dispute between the main parties relate to the Metropolitan Green Belt (Green Belt).

5. The proposal has also been considered by the Secretary of State in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 571/2017). A screening direction has been issued which states that the proposal is not Environmental Impact Assessment development.

Main Issues

6. The main issues are a) whether the proposal would constitute inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (Framework) and development plan policy, and the effect on the purposes of the Green Belt, and b) if it is inappropriate development, whether the harm by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Site and Surroundings

7. The appeal site lies in the Green Belt. It comprises an area of land that was formerly in use as an oil depot and for the parking of coaches and lorries. Many of the structures that related to this use have been dismantled. What is now found on the site is an area of hardstanding and loose stone, around which are some steel containers and the external storage of materials. There is also a modest sized single storey dilapidated building, as well as an area of scrubland towards the northern boundary of the site, and trees and vegetation. The site also benefits from planning permissions¹ for a care home, which the Council agreed at the Inquiry had been implemented. The works that have taken place on the site are the initial foundations and services.
8. There is a gated vehicular access on the Fawkham Road site frontage boundary, which is largely defined elsewhere by trees and vegetation. Along the eastern boundary of the site is a wooded chalk bank, which is designated ancient woodland. This contains an access track. The edge of the settlement of Hartley lies on the far side of the woodland. To the north of the site, there are trees and vegetation and then a railway line embankment, beyond which is the settlement of Longfield. Salts Farm Farmhouse lies to the south of the site.
9. Fawkham Road, as it extends further south from the site has a distinctly rural character, with occasional development that is interspersed with woodland and open fields. Fawkham Road Business Park, opposite the site, is a typical small scale rural enterprise consisting of the re-use of converted buildings. Adjacent to the business park is a pair of semi-detached dwellings with a farmhouse found behind. To the rear of the business park and these dwellings are expansive open fields. Orchard Farm lies between the business park and the railway line.

¹ Council refs: SE/14/00609/FUL. SE/17/00896/CONVAR

Green Belt Planning Policy

10. The Framework confirms that the Government attaches great importance to Green Belts. The identified fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence.
11. Policy LO1 of the Sevenoaks District Council, Local Development Framework Core Strategy (2011) (Core Strategy) states, amongst other matters, that development will only take place where it is compatible with policies for protecting the Green Belt. It is a matter of dispute between the main parties as to which policies for protecting the Green Belt Policy LO1 is referring. The appellant considers that it is referring to the policies of the former Local Plan that was in place when the Core Strategy was adopted, whilst the Council takes a broader view in terms of national planning policy. I share the Council's position as I see nothing in the reading of the policy that would restrict it only to the consideration of the policies of the former Local Plan. Indeed, precluding the deliberation of national planning policy under Policy LO1 would be somewhat at odds with the great importance that the Government attaches to the Green Belt.
12. Policy LO1 also deals with the distribution of development in the district with regard to that development will be focussed within the built confines of the existing settlements. It is not in dispute that the site lies outside these confines. The appellant drew my attention to that it lies close to Hartley, whilst the Council referred to the associated Core Strategy Policy LO7 which concerns development that is within settlements. The area of dispute between the main parties on this matter relates to the compatibility of these policies with those for the protection of the Green Belt, and the Inquiry continued on this basis.
13. Policy LO8 of the Core Strategy states that the extent of the Green Belt will be maintained. The appellant queried whether Policy LO8 was in fact a Green Belt policy on the basis that it concerns the countryside and the rural economy. As it seeks to maintain the extent of the Green Belt, it is a Green Belt policy. Where I find that Policy LO8 is of less relevance is where it lists the types of development that will be supported provided that it is compatible with policies for protecting the Green Belt. They relate to the rural economy and do not stretch as far as to include housing.
14. The appellant also referred to the lack of a Green Belt policy that affects the type of development proposed, under the Council's Allocations and Development Management Plan (2015) (ADMP). The Council pointed to the fact that the ADMP does not need to repeat the provisions of national planning policy, where this would suffice. I concur with the Council's view because the Framework is already prescriptive about how proposals affecting the Green Belt are to be considered.
15. With regard to the Council's draft Local Plan, the Inspector's Report found that it failed to fulfil the duty to cooperate and recommended that the plan should not be adopted. A number of other concerns were outlined, including in relation to the Green Belt. The Inspector's findings were the subject of Judicial Review proceedings by the Council, but were dismissed. In light of the Inspector's findings, the draft Local Plan attracts limited weight in my decision. This includes the proposed site allocations that the Council put forward and that were referred to at the Inquiry, including housing on the Fawkham

Business Park site, because these were not considered by the Inspector. I deal with the associated evidence base as relevant later in my decision.

Inappropriate Development and Green Belt Purposes

16. Paragraph 145 of the Framework sets out that the construction of new buildings is inappropriate in the Green Belt unless, amongst other exceptions, g) it involves limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would, under the second limb of this exception, not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.
17. The main parties do not dispute that the vast majority of the site constitutes previously developed land. The area of scrubland lies within the curtilage of the developed land within the site and so it falls within the definition of previously developed land, as is set out in the Framework. It is also agreed between the main parties that it is the second limb of paragraph 145 g) that is the relevant part of this exception for my consideration because the proposal includes 40% provision of affordable housing. In this respect, the Council's Strategic Housing Market Assessment (2015) (SHMA) identifies an annual need of 422 households that require such housing.
18. An assessment of whether or not a development would cause substantial harm to the openness of the Green Belt necessitates a 'baseline' to be established to measure any harm against, based on the particular facts of a case. In my view, this includes what is currently on the site and what the site is used for. Due to the clearance of the buildings that have taken place and that it is no longer used for the storage of lorries and coaches, the site itself is largely open even though it is largely enclosed by vegetation along Fawkham Road, the wooded bank and the nearby railway embankment. The remaining building, the containers and external storage only cover a small proportion of the overall site.
19. The appellant considers that the baseline should comprise the last use. However, the use of the site for the parking of coaches and lorries was in 2011 and the associated coach and oil buildings and tanks were demolished in 2015. With the time that has subsequently passed since this use and the removal of these buildings and structures, I am not persuaded that its former state and use represents a reasonable starting position. It is not the existing use of the site because it is no longer in use for these purposes. The appellant also pointed to the care home permission, but the works that have taken place to implement this permission are of a limited nature and the care home building has not been constructed above ground level.
20. In relation to whether the oil depot and the use of the site for the parking of coaches and lorries, and the care home, represent fallback positions, it is for the proposal itself to be considered by way of whether it constitutes inappropriate development, rather than by comparing it to an alternative. The fallback positions are considered later in my decision.
21. The openness of the area is reflective of the dispersed pattern of development and the predominance of open fields, woodland and vegetation. The largely

open form of the site contributes towards these openness qualities in terms of its role and function, with the limited amount of development that remains. Whilst the site lies fairly close to the built form of Hartley and Longfield, they lie outside the Green Belt boundaries.

22. The main parties agree that openness is open textured and a number of factors are capable of being relevant². The Planning Practice Guidance: Green Belt sets out that a judgment is required based on the circumstances of the case, citing such matters that have been identified by the courts. The relevant factors in this case are the spatial and visual implications of the proposal, and its locational context.
23. In this regard, the proposal would considerably alter the existing largely open form of the site by erecting 26 dwellings on it. Whilst I do not rely on the illustrative layouts that have been provided, the number of proposed dwellings would also likely result in a greater dispersal of built development on the site than is currently present. Added to this would be the site infrastructure such as an internal access route, driveways, parking, boundary treatments and the domestic paraphernalia that would come with the residential occupation of each dwelling.
24. The visual effects on openness would be less marked due to the screening afforded by vegetation around the boundaries with the wider Green Belt. Nevertheless, residential development above a single storey height would likely be appreciably visible from the immediate vicinity of the site along Fawkhams Road and neighbouring land, and this visibility would also be apparent due to development extending across the site with the number of dwellings proposed.
25. The locational context would further exacerbate the adverse effect on openness. The railway line and the wooded bank provide a marked degree of separation between the openness and the built form of the adjoining settlements. This would be significantly diminished under the proposal with the incursion of the development onto the site and so the openness would also be harmed in this way. As such, I do not agree with the appellant that the site is separate to the wider Green Belt as regards openness. That function is carried out by the railway line and the wooded bank, and the site lies beyond these features.
26. I was also referred to a number of other planning decisions that concern openness. As I have set out above, such an assessment is dependent on the particular factors of the case and, hence, these decisions do not alter my view. The Council also put forward that due to the test of substantial harm, it is reasonable to consider openness as a distinct head of other harm beyond that which is already set out under this exception. However, this is already implicit in the exception because it already refers to openness and at what level it is to be treated. Accordingly, no further consideration of openness is required.
27. When these factors are taken together, the harm caused by the change to openness would be substantial and so the proposal would not accord with the exception under the second limb of paragraph 145 g). As a consequence, I conclude that in this regard it would constitute inappropriate development in the Green Belt.

² R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3

28. The appellant queried at the Inquiry whether it was the correct approach to deal with the purposes of the Green Belt separate from openness. This was due to the wording of paragraph 145 g), which does not mention the purposes, and my attention was also drawn to where other exceptions expressly refer to their consideration. Clearly, there is a synergy between openness and purposes, as they both concern protecting Green Belt land. The construction of paragraph 145 g) of the Framework does not, though, prevent the separate consideration of purposes and nor was any legal authority presented that would preclude such an approach. To consider both would seem to be consistent with the level of importance that the Government attaches to the Green Belt. As such, the purposes are for my consideration.
29. Of the five purposes that paragraph 134 of the Framework identifies that the Green Belt serves, it is c) to assist in safeguarding the countryside from encroachment that is in dispute between the main parties. None of the other Green Belt purposes are of particular relevance. It is not in a location where it would cause either the unrestricted sprawl of large built-up areas or neighbouring towns merging into one another. It lies some distance from the nearest historic town and nor can the site be said to be urban in the context of regeneration.
30. The site shares attributes with the countryside in that it is distinct from the built form of the settlements of Hartley and Longfield and as it now contains a limited amount of development. Countryside is not by definition devoid from development, but rather that it is more occasional. The site ably demonstrates this characteristic along Fawkham Road. It forms part of the countryside which is readily appreciated once this road passes under the railway and as the site is approached. It is more readily assimilated into the countryside than the settlements of Longfield and Hartley with the separation provided by the wooded bank and the railway line. As a result, the site contributes to the purpose to assist in safeguarding the countryside from encroachment.
31. With the increase of the amount of development that would result from the proposal in this location, it would result in the encroachment of development into the countryside. The presence of development would be beyond the built up areas of Longfield and Hartley. 'Bridging the gap' to the Fawkham Business Park or a redevelopment of it, does not change the conflict with this purpose.
32. The encroachment which might have previously occurred on the site has been significantly lessened by the dismantling of the buildings that has taken place, as well as the cessation of the historical use. Whether or not the proposal would constitute 'further' encroachment does not alter that, with the increase in the amount of development that would result from the proposal, it would cause encroachment.
33. The Green Belt Assessment Report: Methodology and Assessment (2017), that was used to inform the draft Local Plan preparation, carries limited weight. The parcel of land that the site lies within under the report is too broad to meaningfully inform how it performs against Green Belt purposes. The report acknowledges in its conclusions that it is only intended as an initial high level view. That it identifies the sub-area in the parcel along the eastern edge of Hartley where the site is found as weakly performing needs to be considered in this context. It lacks the more detailed Green Belt assessment that would be

required in order for it to be more fully engaged in considering how the site performs against Green Belt purposes.

34. Thus, the proposal would conflict with the Green Belt purpose under paragraph 134 c) to assist in safeguarding the countryside from encroachment.
35. A small portion of land within the site falls outside of the definition of previously developed land under the Framework. This would be used to form a footpath link under the proposal. It would involve the formalisation of the existing access track through the woodland. With the nature of the anticipated works, this would constitute an engineering operation for the purposes of paragraph 146 of the Framework. The works would be modest in that they are envisaged to involve timber edging on the existing hardcore and a membrane with gravel infill. The footpath link would preserve the openness of the Green Belt and not conflict with the purposes of including land within it. Hence, this part of the proposal would not constitute inappropriate development.

Other Considerations

Housing Land Supply

36. As the Core Strategy is more than 5 years old, under paragraph 73 of the Framework, the Council are to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their local housing need. This amounts to 711 dwellings per year, as is accepted in the Council's Housing Delivery Test Action Plan (August 2020) (Action Plan). The Core Strategy included a much lower figure of 165 dwellings per year and so is not reflective of the up to date situation with regard to the extent of the local housing need.
37. The Action Plan also confirms that the Council cannot demonstrate a 5 year supply of deliverable housing sites. The supply is stated to be 2.6 years, which amounts to a deficit of 2,056 homes. Whilst the appellant considers that the supply situation is worse and that just 1.83 years can be demonstrated, even relying on the Council's published figures, the shortfall against the 5 year supply is severe.
38. There has also been an under delivery of housing in the Council area. The latest Housing Delivery Test (HDT) result published in January 2021 shows that a level of 70% delivery has been achieved. The appellant considers the delivery is at a lower level again, although this is on the basis of an approach that deviates from the method for calculating the HDT result. However, 70% is still substantially below the 95% level identified in paragraph 75 of the Framework, below which the authority is to prepare an action plan to assess the causes of under delivery and identify actions to increase delivery in future years.
39. The Council's grave position as regards providing sufficient housing is compounded by what are limited options for building within urban areas. The Strategic Housing Land Availability Assessment (2018) (SHLAA) identified only 21 sites within identified settlements that would yield a maximum 709 units. The remaining categorised sites that the SHLAA identified are all in the Green Belt. A significant proportion of the Council area is also protected by Area of Outstanding Natural Beauty designations. The site's largely previously

developed land status and its proximity to nearby settlements is favourable for its development for housing in this regard.

40. With the current position of the draft Local Plan, there is a reliance on development management to remedy this detrimental situation. With regard to the proposal before me, it would make a worthy contribution of 26 dwellings to addressing the shortfall. There is also no substantive evidence before me that the proposal would not be deliverable. Indeed, up to the implementation of the care home permission, the site was on the Council's Brownfield Register. Under the Framework, land on the register is that which authorities consider to be appropriate for residential development³. Overall, the proposal would support the Government's objective of significantly boosting the supply of homes. This attracts very significant weight as a consideration in favour of the proposal.

Affordable Housing

41. As I have set out above, there is an affordable housing need of 422 homes per year. Affordability is a key issue identified by the SHMA and this is also reflected in the Supplementary Planning Document: Affordable Housing (2011) and the Consultation Draft version produced in December 2018, which both point to high house prices compared to local annual incomes and earnings. As a result, a not insignificant number of people are unable to afford their own home on the open market, and therefore, require assistance. This results in the high level of need for affordable housing.
42. Against this backdrop, the provision of affordable housing has run at an average rate of 32 homes per year over the 8 years up to 2019, with 18 new units completed in 2018/19. Clearly, there is an under delivery in affordable housing provision and the need is largely unmet. As the proposal would provide 40% affordable housing provision, it would assist in alleviating this shortage.
43. The level of provision is geared towards the proposal complying with Policy SP3 of the Core Strategy which concerns affordable housing. However, the provision of such housing is far more reaching in its effect because of the high level of need and as it would enable provision for those who would not be able to obtain general market housing. It would also contribute to a housing mix on the site. This also attracts very significant weight as a consideration in favour of the proposal.

Fallback Positions

44. For a fallback position to be a relevant consideration, the basic principle is that it must be a real prospect. It does not have to be probable or likely, as a possibility would suffice⁴. For the prospect to be real, there must be a greater than theoretical possibility that the development might take place.
45. With regard to the approved care home, as it is agreed by the main parties that the associated planning permission has been implemented, it is not constrained by a timescale associated with this development commencing.

³ Having regard to criteria in the Town and Country Planning (Brownfield Land Registers) Regulations 2017.

⁴ Mansell v Tonbridge and Malling BC & others [2017] EWCA Civ 1314

46. The Council cast doubt on the possibility of this development taking place. This is on the basis of correspondence from the appellant stating that the approved care home would not meet the business requirements of operators and that the marketing had not yielded interest in relation to the current planning permission. The appellant, though, considers that if an operator could not be found, the approved building would be constructed and then retrofitted for an alternative residential use.
47. Such an approach would likely require planning permission. Paragraph 146 of the Framework identifies that the re-use of buildings provided that the buildings are of permanent and substantial construction is not inappropriate in the Green Belt provided they preserve openness and do not conflict with the purposes of including land within it. As a result, there is a route to the grant of permission under the Framework for the alternative use of the care home, if an operator cannot be found. In drawing these considerations together, there is a greater than theoretical possibility that the development might take place.
48. The approved care home would comprise one large building on the site with an expansive roof area. There would be a fairly large communal car park. Open space would be partly enclosed in a courtyard, and provision would also be made on the side nearest the railway line. With the size and singular form of the building in particular, it would have a greater impact on the openness of the Green Belt. The proposal would be unlikely to take such a dominant form because it would consist of a series of smaller buildings interspersed with spacing and gaps that is typically associated with such a residential development. Similarly, because of the size of the approved care home, the conflict with the Green Belt purpose to assist in safeguarding the countryside from encroachment would be more apparent than with the proposal.
49. Overall, I find that the care home would be significantly more harmful than the proposal in relation to the effect on the openness of the Green Belt, as well as the purpose. This fallback position attracts significant weight as a consideration in favour of the proposal.
50. I am less persuaded about the previous use of the site for an oil depot and the parking of lorries and coaches. This is due to the passage of time since the site was used for these purposes. I have limited substantive evidence before me that such a use for the site is still being sought in light of that the appellant has actively sought other uses, including the proposals that have come forward. It attracts limited weight as a consideration.

Character and Appearance

51. The site currently has a somewhat dilapidated appearance. The proposal would represent a visual betterment in this regard as the developable area of the site would approximate to where the site is most compromised in terms of its appearance. There is no substantive reason why the reserved matters could not deliver a scheme that in character and appearance terms would represent an improvement on the current state of the site. Beyond the site boundaries, such an improvement would be less apparent as the current state of the site is not easily visible. This attracts moderate weight as a consideration in favour of the proposal.

Economic and Other Factors

52. The proposal would provide for employment and economic activity during construction. There would be the potential for skills development and the training of those that are involved at that stage. The spend of the future occupiers would also benefit the local economy through the usage of local services that supply household goods, leisure and transport. The weight to be attached to a specific proposal as regards supporting economic growth depends on its particular contribution within the broader ambit of where paragraph 80 of the Framework states that significant weight should be placed on the need to support economic growth and productivity. With the type and size of the development, economic considerations also attract moderate weight in favour of the proposal.
53. Other factors that have been put forward in its favour attract minimal weight. In relation to access and traffic generation, the benefits were predicated on the fallback position of the oil depot and the parking of lorries and coaches which, as I have set out above, is unlikely to resume. With regard to whether the proposal would have strong and defensible boundaries, as I have also set out earlier in my decision, there is already separation from the nearest settlements provided by the wooded bank and the railway line. Land decontamination and biodiversity measures would be required to bring the proposal forward and for it to be not unacceptable in these terms. The same applies in relation to the location of the site and the proposed footpath link into Longfield to access local services. Else, it would represent an unconnected area of residential development.

Other Matters

Accessibility to Services

54. The proposed footpath link would enable ready access to the nearest shops and services in the centre of Longfield, as well as to the railway station. They would be accessible from the site on foot within a 5 to 10 minute walk. The services include supermarkets, a post office, a bank, a chemist, and food and drink outlets. The railway station offers fairly frequent services to London Victoria and the Kent coast. A number of local bus services also operate from outside the station. The proposed footpath link would also negate the need for pedestrians to use a more circuitous and less safe route under the railway bridge on Fawkham Road.
55. Accessing these services via the proposed footpath link would require using a footbridge over the railway. This would be unlikely to dissuade most of the future occupiers because of the close proximity of the services. Indeed, existing residents to the south of the railway line already utilise this footbridge for access. I would accept, as was said by the Parish Council at the Inquiry, that future occupiers may be less inclined to use this route to carry out their full weekly shop. However, what is of more importance is whether the proposal would be in a suitable location so that it would encourage the use of modes of transport other than the car. I find this to be the case with the proposed footpath link and the proposal would be in a location that would be accessible to services.

Ancient Woodland

56. No built development is proposed within 15 metres of the ancient woodland, in accordance with Natural England standing advice. The updated parameters plan shows the developable area in order that this position is maintained and the plan would inform the layout at the reserved matters stage. With regard to the use and management of the proposed woodland buffer, this is a matter which can be dealt with through a management strategy and measures to protect the ancient woodland, and which the main parties agree can be dealt with through the imposition of planning conditions. The Ecological Assessment indicates that such measures would involve new growth saplings, shrub species and chalk grassland. These would accord with the satisfactory management of the ancient woodland.
57. The proposed footpath link would pass through the ancient woodland. As it would follow the route of the existing access track, it would not be unacceptable in this regard, subject to a condition dealing with its details. On this basis, the proposal would not result in the loss or deterioration of the ancient woodland.

Protected Species

58. In addition to the ancient woodland, biodiversity matters also concern the impact on reptile habitat on the site, in relation to grass snake, slow worm and the common lizard. These are protected species under the Wildlife and Countryside Act 1981. There is a reasonable likelihood of protected species being affected based on the totality of ecological evidence that is before me, that has included surveys, as well as various assessments. The principal impact on the reptiles would concern the temporary loss of suitable habitat to the northern and eastern boundaries whilst works are underway and the permanent loss of habitat in areas of construction.
59. The translocation of the reptiles would take place into the woodland buffer, prior to construction. This would provide a similar sized area of enhanced habitat. Measures are proposed in relation to the vegetation, a pond and mosaic habitats, conservation management and features aimed at reptile use, such as log piles. These are matters which can be dealt with by way of planning conditions in relation to ecology mitigation and management. Therefore, the proposal would not have an adverse effect on protected species.

Drainage

60. The proposed means of surface water drainage would involve the use of Sustainable Urban Drainage techniques, with the intention of dealing with surface water at source so as not to increase the risk of flooding elsewhere. The Drainage Technical Note sets out the use of a swale and soakaways. The calculations now reflect the comments of the Lead Local Flood Risk Authority that were made during the planning application. This gives sufficient assurance that drainage is a matter that can be dealt with through planning conditions to minimise the risk of flooding. Thus, the proposal would not be unacceptable by way of drainage and flood risk.

Highway Safety

61. The proposal would involve the creation of a new vehicular access onto Fawkham Road. With the closure of the existing access, there would be a

greater separation between the accesses into the site and the business park on the opposite side of the road. On the basis of the trip generation from 26 dwellings, there would be on average approximately 8 movements per hour during the 12 hour weekday period. The AM and PM peaks would be predicted to be 11 and 10 vehicles, respectively. Whilst Fawkham Road is fairly narrow, and is of a single width construction under the railway bridge, it would be able to accommodate this moderate level of traffic generation without an undue effect on highway safety. With regard to pedestrian safety, the proposed footpath link would negate the need for the future occupiers to attempt to utilise Fawkham Road where there is no footway. Overall, the proposal would not be unacceptable in highway safety terms.

Section 106 Agreement

62. The obligations in the Section 106 Agreement solely concern affordable housing. It binds the owner to covenants with the Council. The provision of no less than 10 affordable housing properties under the related obligation, as rounded to the nearest whole number, would accord with Policy SP3 of the Core Strategy. At the Inquiry, the Council confirmed that it utilises such a rounding approach in implementing this policy. Monitoring costs are included and are justified having regard to that local planning authorities can now recover their costs in this regard.
63. Having regard to the evidence before me on the established need for affordable housing, it has been demonstrated that the obligations are necessary in order to make the development acceptable in planning terms, directly related to the development, and reasonable in scale and kind. They accord with the tests that are set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations (as amended, 2019). Accordingly, I have taken them into account in my decision.

Balancing Exercise

64. The proposal would constitute inappropriate development in the Green Belt because it would not accord with the exception that is set out in the second limb of paragraph 145 g) of the Framework. As a consequence, it would cause substantial harm to the openness of the Green Belt. It would also not accord with the Green Belt purpose to assist in safeguarding the countryside from encroachment.
65. Paragraph 144 of the Framework states that substantial weight is to be given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Apart from the Green Belt, no other harm arises in this case.
66. Against this harm, it is necessary to balance the other considerations. In this case, these are very substantial. They relate to the contribution of the proposal to the Council's housing land supply deficit and deliverability, affordable housing provision, the fallback position of the approved care home, character and appearance betterment, and the economic benefits.
67. Drawing these factors together, I find that the other considerations clearly outweigh the harm that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the development.

68. As such, I conclude that the proposal would comply with Policies LO1 and LO8 of the Core Strategy because it is compatible with policies for protecting the Green Belt and as the general extent of the Green Belt is to be maintained. It would accord with the development plan as a whole and significant weight is given to the accordance with these policies. It would also comply with the Framework as regards protecting the Green Belt because very special circumstances exist.
69. The presumption in favour of sustainable development is set out in paragraph 11 of the Framework. Whilst the proposal accords with a development plan, it is not one that is up-to-date. The Core Strategy's housing requirement is not reflective of the current local housing need and as a consequence of the Council's position in relation to housing land supply and the HDT, footnote 7 of paragraph 11 d) applies in that the policies which are most important for determining the application are out-of-date. This includes Policies LO1 and LO8, as well as Policy SP3 in relation to affordable housing.
70. The main parties have agreed a longer list of most important policies through the Agreed Statement of Common Ground. However, this is a case where some of the "most important" policies as set out above are more important than others in determining the appeal because of the bearing they have on the decision to be made. I therefore give more weight to these policies when considering the overall "basket" of policies.
71. In these circumstances, paragraph 11 d) starts from a position of granting permission unless under i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 6 sets out what these policies are and they include land designated as Green Belt. In this case, they do not provide a clear reason for refusing the development proposed because very special circumstances exist. I do not have cause to then consider paragraph d) ii because the outcome would be the same. The proposal therefore accords with the presumption in favour of sustainable development.
72. In relation to the balance under Section 38(6) of the Planning and Compulsory Purchase Act 2004, I have found that the proposal is in compliance with the development plan. There are no material considerations that indicate that the decision should be made other than in accordance with the development plan.

Conditions

73. I have imposed conditions which concern the statutory time limit and the reserved matters. In the interests of certainty, I have also imposed a condition concerning the approved plans that reflect that access is a matter before me, as is the parameter plan.
74. I have also imposed conditions in relation to land contamination in the interests of public health and pollution. Drainage conditions are also imposed in the interests of providing satisfactory drainage infrastructure and minimising flood risk, and protecting groundwater resources. A condition related to piling is also imposed in the interests of protecting groundwater and pollution control.
75. Conditions are imposed by way of the implementation of the approved access, visibility splays, highways related matters on-site and car parking, in the

- interests of highway safety and the free flow of traffic. A condition is imposed in relation to the construction phase for the same reason.
76. A condition related to cycle parking is imposed in the interests of promoting modes of transport other than the car, as well as for character and appearance reasons. A condition concerning the footpath/cycleway link is imposed in relation to safeguarding the ancient woodland, for character and appearance reasons and in the interests of promoting modes of transport other than the car. A condition concerning electric charging points to encourage the use of low emission vehicles is imposed in the interests of air quality and pollution control.
77. A condition is imposed in relation to an acoustic assessment for the purposes of providing suitable living conditions for the future occupiers of the proposal by way of noise from the railway line. A condition is imposed concerning the assessment of air quality in the interests of pollution control.
78. Conditions are also imposed in relation to ecological mitigation, management and monitoring in the interests of protecting biodiversity. Conditions are also imposed with regard to measures to protect the ancient woodland and the management and monitoring of the associated buffer, for safeguarding purposes. Conditions are also imposed concerning archaeological work in the interests of protecting this interest and in relation to the levels for the purposes of protecting the character and appearance of the area.
79. I have not imposed conditions by way of landscape works as landscaping is a reserved matter and, similarly, in relation to the numbers of storeys of the dwellings as scale is also a reserved matter. I have also not imposed a condition in relation to the number of dwellings as the operative part of the description of development already fixes the number for the purposes of this planning permission. Such conditions would not be necessary.
80. I have also not imposed a condition requiring the submission of further access details as they are already before me, and so I have conditioned their implementation. I have also included implementation clauses in a number of the conditions and also avoided duplication and sought to be more precise in the matters that the conditions deal with, as was discussed at the planning conditions round table session at the Inquiry on a topic by topic basis.

Conclusion

81. The potential harm to the Green Belt by reason of inappropriateness, and in relation to the conflict with one of the purposes of the Green Belt, is clearly outweighed by other considerations. Very special circumstances therefore exist to justify the proposal. Accordingly, the proposal is in accordance with the relevant policies of the development plan and the Framework, and the application of the policies in the Framework that relate to land designated as Green Belt do not provide a clear reason for refusing the development proposed. Having regard to all matters that have been raised, the appeal should be allowed subject to the conditions.

Darren Hendley

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Giles Atkinson

Of Counsel, instructed by Martin Goodman, Head of Legal & Democratic Services, Sevenoaks District Council

He called

Mr Michael Holmes BSc, MA, LRTPI

Principal Planning Officer at Sevenoaks District Council

FOR THE APPELLANT:

Mr Mark Westmoreland Smith

Of Counsel, instructed by Mr David Bedford, DHA Planning Ltd

He called

Mr David Bedford BA (Hons), Pg Dip, MA, MRTPI

Director, DHA Planning Ltd

INTERESTED PARTIES:

Laura Evans

Chair, Fawkham Parish Council

INQUIRY DOCUMENTS

- 1 Statement of Common Ground and Annex 1 – Agreed Viewpoints – agreed version dated 8 February 2021
- 2 Deed of Planning Obligation by Agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) (draft)
- 3 Community Infrastructure Levy (CIL) Compliance Statement on behalf of Sevenoaks District Council
- 4 Opening Statement and Appearances on behalf of the Appellant
- 5 Opening Statement on behalf of the LPA
- 6 Reasons for the agreed conditions document
- 7 Email from the appellant dated 11 March 2021 titled 'FW: Salts Farm Inquiry – Points of Clarification'
- 8 Planning Practice Guidance: Green Belt
- 9 Sevenoaks District Council, Affordable Housing Supplementary Planning Document Consultation Draft December 2018
- 10 Email from Fawkham Parish Council dated 11 March 2021 titled 'Salts Farm appeal - cessation of use in 2011'.
- 11 Closing Submissions on behalf of the LPA
- 12 Closing Statement on behalf of the Appellant

DOCUMENTS RECEIVED FOLLOWING THE CLOSE OF THE INQUIRY

- 13 Deed of Planning Obligation by Agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) (completed and executed version)

SCHEDULE OF CONDITIONS

- 1) Details of the 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 takes place 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 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: DHA/14150/01 Site Location Plan, 11567 H-02 Rev P1 Access Design, DHA/14150/09 Ecology Parameter Plan but only in respect of those matters not reserved for later approval.
- 5) The development shall be carried out in accordance with the Reassessment Report carried out by Geosphere Environmental Ltd (report reference number 2813,CO/REPORT/TP,PD/02-01-2020/V3 - dated 02 January 2020).
- 6) No occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.
- 7) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and has obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.
- 8) The development hereby permitted shall not be commenced until such time as a scheme to connect the development to a foul surface water drainage system has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved prior to the occupation of the development and be thereafter maintained.
- 9) Where infiltration is to be used to manage the surface water from the development hereby permitted, it will only be allowed within those parts of the site where information is submitted to and approved in writing by the local planning authority to demonstrate that there is no resultant unacceptable risk to controlled waters and/or ground stability. The development shall only then be carried out in accordance with the

approved details prior to the occupation of the development and be thereafter maintained.

- 10) Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall be based upon the Drainage Technical Note prepared by DHA dated July 2020 and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site. The drainage scheme shall also demonstrate (with reference to published guidance):

i) that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters; and

ii) appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

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

- 11) No building (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved in writing by the local planning authority. The Report shall demonstrate the suitable modelled operation of the drainage system where the system constructed is different to that approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.
- 12) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.
- 13) The access details hereby approved under 11567 H-02 Rev P1 Access Design shall be carried out prior to the occupation of the development hereby permitted and be thereafter maintained.
- 14) Prior to the first occupation of the development hereby permitted, visibility splays at the access of 49 metres x 2.4 metres to the north and 54 metres x 2.4 metres to the south shall be provided and maintained thereafter with no obstructions over 1.05 metres above carriageway level within the splays.

- 15) No development hereby permitted shall take place on the site until full details of the proposed roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients and street furniture for the site have been submitted to and approved in writing by the local planning authority. The site shall be laid out and constructed in accordance with the approved details prior to the occupation of the development and be thereafter maintained.
- 16) Prior to the occupation of the development hereby permitted, details of vehicle parking spaces and/or garages and the driveway gradients in accordance with the requirements of Kent Residential Parking Standards (IGN3) shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to the occupation of the dwelling to which it relates and be thereafter maintained.
- 17) Prior to the occupation of the development hereby permitted, details of secure and covered cycle parking facilities for the dwellings shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to the occupation of the dwelling to which it relates and be thereafter maintained.
- 18) Prior to the occupation of the development hereby permitted, details of the footpath / cycleway link between the site and Cheyne Walk in the north-east corner of the site shall be submitted to and approved in writing by the local planning authority. The details shall include the minimum width of the link and street lighting. The development shall be carried out in accordance with the approved details prior to the occupation of the development and be thereafter maintained.
- 19) Prior to the first occupation of the development hereby permitted, details for the provision of facilities for the safe charging of electric vehicles for each dwelling and each shared parking area shall be submitted to and approved in writing by the local planning authority. The facilities shall be installed in accordance with the approved details prior to the occupation of the dwelling to which it relates and be thereafter maintained.
- 20) No development hereby permitted shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Construction Management Plan shall provide for:
 - i) the routing of construction and delivery vehicles to / from the site;
 - ii) the parking and turning areas for construction and delivery vehicles, and for the vehicles of site personnel;
 - iii) the timing of the deliveries;
 - iv) wheel washing facilities; and
 - v) temporary traffic management and signage.

The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

- 21) No development hereby permitted shall be carried out on the land until an acoustic assessment has been submitted to and approved in writing by the local planning authority. The assessment shall be undertaken to demonstrate that the guidance of BS8233:2014 (or equivalent if replaced) has been met for internal and outdoor space of the development. The development shall be carried out in accordance with any mitigation measures recommended by the assessment including specified timescales for their implementation and shall be thereafter maintained.
- 22) No development hereby permitted shall be carried out on the land until an air quality damage cost analysis and details of any air quality mitigation measures to the amount calculated have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the proposed air quality mitigation measures including specified timescales for their implementation and shall be thereafter maintained.
- 23) Prior to works commencing on site (including vegetation clearance) a review and, if necessary, an update of the ecological mitigation detailed within the Ecological Assessment carried out by Bakerwell (report reference number KEDA 37423 dated October 2020) shall be submitted to and approved in writing by the local planning authority. It shall include the following:
- i) Current preliminary ecological appraisal of the site;
 - ii) Updated reptile surveys if conditions on site have changed significantly;
 - iii) Letter confirming the reptile mitigation is still appropriate or an updated mitigation strategy;
 - iv) Confirmation of when works will commence;
 - v) Details of who will carry out the works;
 - vi) Details of management to be carried out on site if construction works do not commence immediately after the completion of the reptile mitigation; and
 - vii) specified timescales for the implementation of the works.
- The works must be carried out in accordance with the approved details.
- 24) No development hereby permitted shall be carried out on the land until an ecological management and monitoring strategy has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details including specified timescales for its implementation.
- 25) No development hereby permitted shall be carried out on the land until details of measures to safeguard the ancient woodland have been submitted to and approved in writing by the local planning authority. These details shall include:
- i) the protection of the chalk face of the bank along the boundary of the site, to be provided both during construction and post-construction; and

ii) how the ancient woodland buffer will be established and protected during the construction period.

The development shall be carried out in accordance with the approved details including specified timescales for their implementation.

- 26) Within 6 months of works commencing on site a detailed management and monitoring plan for the ancient woodland buffer shall be submitted to and approved in writing by the local planning authority. The plan shall include the following:
- i) Overview of habitats/species within the site;
 - ii) Map showing the habitats to be managed;
 - iii) Overview of the management to be implemented;
 - iv) Detailed management prescriptions;
 - v) Timetable for management implementation for the first 5 years;
 - vi) Details of what and when habitat and species monitoring will be carried out;
 - vii) Timings of management plan reviews;
 - viii) Details of how it will be funded; and
 - ix) Details of who will be carrying out the work.

The works must be carried out in accordance with the approved details.

- 27) No development hereby permitted shall be carried out on the land until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been previously submitted to and approved in writing by the local planning authority.
- 28) No development hereby permitted shall be carried out on the land until details have been submitted to and approved in writing by the local planning authority of the existing and proposed ground levels detailing any changes to levels and including finished ground floor slab levels. The development shall be implemented in accordance with the approved details.