



Appeal Decision

Inquiry Held on 19 - 23 October and 9 November 2021

Site visit made on 21 October and 23 October 2021

by L Gibbons BA (Hons) MRTPI

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

Decision date: 25th March 2022

Appeal Ref: APP/A2280/W/21/3276864

Gibraltar Farm, Ham Lane, Hempstead, Gillingham, Kent ME7 3JJ

- 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 F D Atwood and Partners against the decision of The Medway Council.
 - The application Ref MC/19/0336, dated 25 January 2019, was refused by notice dated 21 January 2021.
 - The development proposed is outline application (with all matters reserved except access) for the erection of up to 450 market and affordable dwellings, nursery and supporting retail space up to 85sqm, with provision of main access to Ham Lane; estate roads; cycle and pedestrian routes; residential and community open space and landscaping; new junction for Lidsing Road/Hempstead Road and realignment and widening of Lidsing Road. Off site related highway works to Westfield Sole Road, Shawstead Road, Hempstead Road, Chapel Lane, Hempstead Valley Drive, Hoath Way roundabout, Hoath Way and M2 Junction 4.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry an application for costs was made by F D Atwood and Partners against The Medway Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application seeks outline planning permission with access only to be determined at this stage. Landscaping, appearance, scale and layout are reserved matters to be considered in the future. Illustrative plans were submitted that amongst other things, identify a potential development layout as well as landscaping and open space.
4. A Case Management Conference was held on 11 August 2021. The purpose of the conference was to provide a structure for the ongoing management of the case and the presentation of evidence. There was no discussion of the merits of the respective cases.
5. During the appeal, the Council confirmed that it was no longer pursuing reason for refusal four relating to the loss of ancient woodland.

6. As part of the appeal process, the appellant submitted additional documents and plans. These are Lighting Assessment (Byway Alterations) Ref 100157 Rev C; Ecology Technical Note: Lighting Strategy Review; proposed Pedestrian and Cycle Route Improvements Ref 18-015-049 Rev H which include access details to and from Lordswood and an Agricultural Land Classification which was required as part of the Environmental Statement (ES). At the Inquiry the Council indicated that they did not object to these, and I accepted the plans and documents for the purposes of determining the appeal. The changes would be minor, and I am satisfied that in accepting these documents and plan there would be no prejudice caused to any interested party.
7. A draft agreement under Section 106 of the Town and Country Planning Act 1990 were submitted by the appellant the appeal as part of the Inquiry and was discussed at the Inquiry. The signed and executed Deed was submitted after the close of the inquiry. I will return to the agreement later in my decision.

Background and Main Issues

8. The appeal site has a planning history which includes an application (MC/14/2395) and a subsequent appeal¹ was granted conditional permission subject to a s106 agreement in March 2017. A further application for an identical scheme (MC/18/0556) was granted permission (subject to a s106 agreement) in 2018. These accepted the principle of residential development in the location of the appeal site.
9. There are differences between the scheme before me and the two scheme which were granted planning permission, this includes changed access arrangements including the provision of the main pedestrian/cycle access between Lordswood and the site, and change in site boundaries to reflect these changes, and the addition of a retail unit and nursery. Several off-site highway works are also proposed as part of this scheme.
10. The main issues are:
 - i) Whether the proposed access would provide a safe and suitable access for pedestrians, wheelchair users and cyclists to and from Lordswood.
 - ii) The effect of proposed lighting on the ecology of the area
 - iii) Whether the proposed development would cause harm to the character, function and appearance of the countryside within the Capstone and Horsted Valleys Area of Local Landscape Importance (ALLI).
 - iv) The extent to which the proposal is consistent with the development plan, and the weight to be attributed to the policies in the emerging development plan; and
 - v) Whether any harm and/or development plan conflict arising would be outweighed by other considerations.

¹ APP/A2280/W/16/3143600

Reasons

Safe and suitable access

11. The proposed footway/cycleway between the appeal site and the built area of Lordswood would be 40 metres long and would run through Hall Wood and then along its boundary to North Dane Way. It would be along the route of an existing byway. Motor vehicles would not be able to use the route and it would be to provide the main access for pedestrians and other users to access the services and facilities in Lordswood. It would also provide part of the route linking Hempstead directly to Lordswood. To my mind it would be a very important part of the scheme in terms of its links to the nearest built area.
12. The proposed route would be lit to ensure that cyclists, pedestrians and other users could use it during the hours of darkness. The route would be a shared space between cyclists and other users. It would not be entirely straight route due to the boundary with the adjoining woodland. It would have no natural surveillance and would partly run through an area of woodland.
13. The original lighting scheme for the proposal before me was devised as a 'P6' scheme using the light selection tool from BS EN1 13201 and as applied in BS5489. The appellant considers the use of the British Standard tool to devise a lighting scheme is sufficient to ensure safety and security for future users.
14. The parties do not agree on whether a lighting scheme should be provided as a brighter 'P4' scheme as proposed by the Council. There is a difference between the parties over the guidance to use to inform the design of a scheme and subsequently which lighting levels should be used.
15. The Institute of Lighting Professionals have issued guidance PLG23/2020. It is agreed that the byway falls with Environmental Zone 3 for the purposes of both PLG23/2020 and BS EN 13201 which is for a suburban area of medium brightness. North Dane Way which route would have a junction with is lit to a P4 level.
16. According to Table 12 of PLG23/2020 this would indicate that a P4 scheme should be provided as opposed to the P6 scheme originally proposed by the appellant. I note that this includes Safe Stopping Distances being used as part of the tool to assess a scheme and that it is not included within other guides such as the British Standard. The assumption in PLG23/2020 is that a cycle speed would be around 24 kilometres per hour (kph).
17. I note the route could be designed and managed to reduce potential conflicts and cycle speed it is more likely that the speeds would be around 10kph. However, this cannot be guaranteed in all circumstances and lighting on a route that would not be straight, would play a key role in ensuring cyclists can see other users in time to stop. Although the criteria are different here to BS EN1 13201 and BS5489, to my mind it does not indicate that it is an inappropriate tool to use.
18. The parties also differ on what the 'traffic' flow would be. This requires an assessment made as to whether this would be busy, normal or quiet. BS5489-1 Code of Practice defines busy as where traffic usage is high, normal where it is the equivalent to a housing estate access road, and quiet which would equate to a residential road mainly associated with adjacent properties. The appellant considers that the flow would be quiet. I note that the numbers of movements

per peak hour not very high. However, taking account of the descriptions of flow and that for cyclists and pedestrians this route is likely to be the equivalent of a vehicle access to the site to be able to access Lordswood, I consider it would be a normal flow of traffic. I note for BS5489 this would equate to a P5 scheme without any additional risk assessment.

19. Pear Tree Lane, Darland is an example of a shared route, including vehicles, which is lit to a P5 level with night-time dimming to P6. It provides a means of accessing public transport for pedestrians and cyclists. I note that this route is longer and without much natural surveillance, but it is a straight road between Banksview Drive and the Waggon at Hale. Although screened by a hedge, the road of Pear Tree Lane also runs alongside it. It does not have the connection to a built-up area with the same level of service and facilities as Lordswood that the appeal scheme would have. It is not therefore directly comparable, and I give it little weight.
20. The Council have proposed the basis of a scheme which would be lit to P4 level including measurements on the vertical illumination plane. I note that BS5489:1 section 7.4.4 refers to lighting for security and safety and that reference to vertical illuminance should only be specified in exceptional circumstances as it is difficult to define 'appropriate observer positions'. I acknowledge that the guidance in LTN1/20 for cycle paths does not mandate lighting as standard.
21. Nevertheless, other guidance in the British Standard including section 7.3 of BS5489:1 sets out that lighting should enable users to orientate themselves, identify other users, detect hazards, discourage crime and engender a feeling of safety and security. It seems to me that these factors would be critical for a route that will be relatively well used, is not straight with a complete lack of natural surveillance, that would have a short stretch through a wooded area, and as a part of a high-quality development. I conclude that a P4 level lighting scheme would therefore be appropriate in this circumstances. The precise details of a scheme could be secured by an appropriate condition, and it would therefore provide a safe and suitable access in accordance with policies BNE1, BNE2, BNE3, BNE8, T2, T3 and T4 of the Medway Local Plan 2003, which amongst other things seek development that maximises personal safety.

Lighting and ecology

22. It is agreed between the parties that there is the potential for the woodland that runs along the existing byway proposed to be the footway/cycleway to Lordswood to be a commuting habitat, with the potential for lighting to disrupt bats. The Ecology Statement of Common Ground agreed during the Inquiry states that the issues remaining between the parties include the extent to which any bats using the byway as a commuting habitat would affect the local distribution of species recorded within the site, and whether the surveys carried out to date were adequate.
23. Two lighting columns are proposed to be positioned along the route. They would be 6 metres tall and would project down towards the route with other potential measures to reduce light spill. There is agreement between the parties about the level of lighting that would result from either a P4 or P6 lighting scheme.

24. Regulation 9(2) of the Habitats Regulations 2017 sets out that if a proposed development is found to be acceptable when judged on its planning merits, planning permission should normally be given unless, in the planning authority's view the proposed development would be likely to offend article 12 (11) of the Habitats Directive. Article 12 prevents the deliberate disturbance of species. Circular 06/2005 indicates that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted otherwise all relevant material considerations may not have been addressed in making the decision.
25. Paragraph 174 of the National Planning Policy Framework refers to amongst other things, protecting and enhancing sites of biodiversity, and minimising impacts on and providing net gains for biodiversity. Paragraph 180 indicates that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated or as a last resort, compensated for, planning permission should be refused.
26. Policy BNE37 of the LP refers to where development that would cause a loss directly or indirectly of important wildlife habitats or features will not be permitted unless it meets certain criteria, all of which must be met. Policy BNE39 specifically relates to protected species. This states that development will not be permitted if statutorily protected species and/or their habitats will be harmed. Conditions will be attached, and/or obligations sought to ensure that protected species and/or their habitats are safeguarded and maintained.
27. The Planning Practice Guidance states that an ecological survey will be necessary in advance of the planning application if the type and location of development could have a significant impact on biodiversity and existing information is lacking or inadequate.
28. There is a reasonable likelihood of bats being present in Hall Wood and Hook Wood. Bat surveys were undertaken in 2018 during June, July and September in relation to the previous appeal case. These surveys followed the guidance provided by Natural England and the Bat Conservation Trust in respect of activity surveys for foraging and commuting. I note that assemblages would be valuable at local level and with low to moderate levels of bat activity.
29. A bat survey was undertaken in October 2021 (the October survey). This was along the section of the woodland through which the current byway passes. The appellant raises concerns about the need to do a 'specific' survey. Nevertheless, despite this a survey was undertaken albeit for just one time period. I consider that the requirements for lighting along the route are of particular concern given the level of use it is likely to get and considering my conclusions on the first main issue.
30. Whilst previous surveys covered a wide area, they did not take into account the specific proposal for the access route to Lordswood, and its use, as it was not part of the scheme at that point in time. While the appellant argues that the surveys so far undertaken are sufficient to fully understand the impact of the development on biodiversity interests, I am not convinced that this is the case.
31. The October survey indicated that species diversity was similar to that shown in the previous surveys and there were low numbers of bats recorded. I acknowledge that the Council do not have any concerns with the detailed

methodology used for this survey in terms of the transects and monitor positions. However, given the date of the survey this would not provide an adequate picture of the numbers and types of bats using the byway as a commuting habitat. Although low numbers were recorded at the time, this may also mean that there is the greater potential to affect local population numbers, even accounting for a wide range of 'bat friendly' habitats within the area. It is not therefore possible for me to ascertain from the single survey or previous surveys, the levels of bat activity that might occur within other relevant periods of bat activity and any subsequent impact.

32. North Dane Way is already lit in the area close to the byway where it emerges from Hall Wood and it is a wide road. It is common ground that the lighting here will disrupt any bats currently commuting along the byway, this would be the case closer to North Dane Way. This may result in changes to bats flight patterns across the byway. I accept that bats are roosting in the urban area in Lordswood, and I also note the potential for North Dane Way to act as a barrier to bats that may use that route. However, the extent to which this happens has not been ascertained as an assessment of the light on the vertical plane would be necessary to confirm this.
33. I also note that common pipistrelles fly at heights between 2 metres and 10 metres and other bats also vary their flying heights. The majority of bats recorded in the 2018 surveys and the October survey were common pipistrelles. I note that these bats are less sensitive to light than myotis and brown long eared bats, but nevertheless they are still sensitive. Bats may also make movements to avoid light within the scope of their normal minute to minute flight pattern and I accept that bats flying above the height of the columns would not be affected due to the light pointing downwards.
34. I accept that the Council did not raise any concerns in respect of the information contained within the Environmental Statement. I also note that a condition relating to the provision of a bat sensitive lighting plan could be attached to planning application 21/502751/OUT in relation to a P4 lighting scheme and that the Kent Ecology Unit have not raised any concerns in respect of that particular application.
35. However, I must deal with the scheme before me, and it remains the case for this appeal that there is a risk that bats could avoid using the commuting habitat altogether. It would need to be ensured that any agreed P4 lighting scheme is fully taken into account having regard to adequate bat surveys. It would not be reasonable to attach a survey requirement as part of a condition in any approval.
36. The surveys carried out do not provide the necessary certainty on the use of the byway as a commuting habitat by bats and in turn whether it would affect the local distribution of species recorded within the site. Accordingly, I conclude that it has not been demonstrated satisfactorily whether any bats which may be present would be adequately protected and the extent to which they may be affected by the proposed development. Consequently, I find that the scheme would conflict with policies BNE37 and BNE39 and it would not accord with the Framework which seeks to conserve and enhance the natural environment.
37. Concerns are raised by local residents about the effect of the proposal on other species. The Ecological Appraisals that accompany the planning application provides a reasonable analysis in relation to birds and plants and the conclusions

are adequate in these respects. In respect of dormice, the more optimal habitats within the area would not be affected by the provision of lighting along the byway, and I am satisfied that there would be no harm to this species as a result of the scheme. Were other matters satisfactory a condition could be attached relating to a Site Wide Ecological Mitigation Strategy.

Character and the Area of Local Landscape Importance

38. The appeal site is located in the countryside outside of the settlement boundary and is between the urban areas of Lordswood and Hempstead. The area in which the appeal site lies is predominantly open with little development. Buildings in the area include Gibraltar Farm and its associated buildings, Gibraltar Cottages, the Elm Court Garden Centre and associated development. Despite this, the area is generally open and has a rural character.
39. The site is farmed as one single field with some woodland boundaries including Hall Wood as ancient woodland. The existing byway intersects the site, and several rights of way are close to the site as well as a number of informal pedestrian routes. The site is generally flat although the north part of the site is slightly more rolling as it dips towards Gibraltar Farm.
40. The buildings at Gibraltar Farm are not widely visible as they are set within a dip in the landscape. Beyond is a ridge of rising land with the Capstone Valley Farm Country Park. This has a number of leisure uses including a ski slope. Darland Banks is a steep ridge which marks the edge of the open countryside. Elm Court Garden Centre close to the appeal site contains a garden centre, some light industry and commercial uses. Elm Court is visible in the area to some extent.
41. To the east of the site, open and agricultural land extends towards Junction 4 of the M2 motorway. There are no views of the motorway and traffic can be heard from this but in the main it is not an overly intrusive feature of the site and surrounds. Lordswood urban area lies to the southwest of the site, it is fairly well screened by Halls Wood, Hook Wood and a line of trees. The Lordswood Leisure Centre is further to the west, but the building and pitches are enclosed by woodland and trees. The North Downs are further to the southeast of the site.
42. The site is within the Capstone Downs character area as set out in the Kent Landscape Assessment 2004. The Medway Landscape Character Assessment 2011 places the site within the Capstone and Horsted Valleys principle landscape area, and is a type relating to predominantly arable farmland, large fields and woodland blocks.
43. The main overall characteristics of the area include the distinctive setting for the Country Park, a green wedge for urban communities to access the wider countryside with health and social benefits, and prevention of coalescence between Lordswood and Hempstead [check where this comes from]. Issues include pressure for development, potential fragmentation and degradation and pressure on the narrow rural lanes that are present in the area. The Elm Court character area also includes the appeal site which refers to gently undulating farmland, indistinct field pattern and urban elements to the landscape.
44. The site is within the southern part of the Capstone, Darland and Elm Court Area of Local Landscape Importance (ALLI). ALLI are set out in Policy BNE34 of

the Local Plan. Paragraph 174 of the Framework indicates that planning policies and decisions should protect and enhance valued landscapes, and in a measure commensurate with their identified quality in the development plan. Paragraph 174 also refers to recognising the intrinsic character and beauty of the countryside. Recent appeal decisions² have regarded the ALLI as a valued landscape and having regard to the Framework I see no reason to disagree with this, albeit I consider that the value is at the lower end of the hierarchy indicated in the Framework.

45. Policy BNE34 refers to not only the landscape importance but also to other important functions. There are several criteria which include the ALLI providing green lungs and buffers, green corridors, land needing protection from urban sprawl and as habitats for wildlife.
46. This ALLI is recognised for its local landscape value and includes a substantial area of undeveloped land, it is referred to in the accompanying text of the policy as a substantial tract of undeveloped land extending from the North Downs as a green wedge into the heart of the urban area. The spatial aspects of the ALLI are recognisable in the site and its surroundings, with the site being part of rural land close to the urban area of Lordswood, the links it provides to other green areas and preventing coalescence with Lordswood and Hempstead.
47. The previous appeal decision set out that that scheme would cause harm to the character and appearance of the area. The scheme before me would involve an increase in the site area, with the inclusion of Hall Wood and the land needed to provide the proposed footway/cycleway to Lordswood and land to accommodate the main access, and off-site highway works. The scheme would comprise up to 450 new homes, a nursery and retail space, parking and landscaping. Ham Lane would be widened and would appear more urban in nature, and there would changes to the surrounding rural roads as part of the package of off-site highway measures.
48. The development would be highly visible and would be prominent in an area of land within the visual envelope close to the appeal site, which is currently rural land within the ALLI. This would be visible from the views across the site including from Hall Wood and also to the west of the site. It would result in the loss of the features the area is assessed as having, including the open arable land and diminish the role that the woodland blocks in this area. Proposed landscaping as shown in the illustrative Landscape Strategy and other mitigation in the form of significant green infrastructure proposals would begin to mature over time. However, there would be reduced screening during winter months and some additional elements of the proposal including the widening of Ham Lane and new junctions would remain visible elements of the scheme, and this would remain the case over time.
49. Users of the rights of way within and around the site would have some significant adverse effects where the experience will change completely from walking in the countryside to that of a new residential area. The changes will be significant also for residential properties overlooking the site.
50. The proposed development would occupy a relatively small proportion of the overall ALLI. There would remain land undeveloped land between Hempstead

² APP/A2280/W/19/3240399 and APP/A2280/W/18/3214163

and Lordswood and on the eastern part of the site and Hempstead. Therefore, the role of the ALLI in this respect will not be significantly affected.

51. I conclude that the proposal would cause harm to the character and appearance of the local area, and it would conflict with policy BNE25 and some provisions of policy BNE34. However, when considered against the ALLI as a whole this would not be critical, despite the additional elements of the proposed scheme in comparison to the previous scheme. In addition, Policy BNE34 also allows for development in ALLI if the social and economic benefits are so important that they outweigh the local priority in respect of the landscape. I return to this matter later in my decision.

The development plan

52. Paragraph 11(d) of the Framework indicates that where the most important policies for determining a proposal are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. This is known as the 'tilted balance'.
53. Whether policies are out of date is referred to in Footnote 8 of the Framework as including for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74). It is common ground between the two parties that the Council are unable to demonstrate a five-year supply of housing land and that the scale of the shortfall is considered to be significant. The Council have also not met the Housing Delivery Test.
54. Policies S1, S2, BNE25, BNE34, BNE37 and BNE39 are the most important development plan policies for the purposes of determining this appeal. Policy BNE34 seeks to protect the countryside however, it does include an internal mechanism which allows development if the harm to an ALLI is outweighed by economic and social benefits, and it is consistent with paragraph 174 of the Framework. Policies BNE37 and BNE39 are also consistent with the Framework in respect of biodiversity, and I give them full weight.
55. However, policies S1 and S2 prioritise housing towards the urban areas, and as the scheme before me would provide housing in the countryside, the proposal conflicts with these policies. Policy BNE25 allows certain types of development in the countryside, and again the proposed development would conflict with this policy. However, these three policies are out of date due to the significant shortfall in the five-year housing land supply and are not consistent with the Framework in seeking to boost the supply of housing land.
56. In this situation policies S1, S2 and BNE25 are out of date due to the lack of a five-year supply of housing land as they restrict the supply of housing land, the 'tilted balance' is to be applied and I return to this later in my decision.
57. The emerging Local Plan is at an early stage in the process. There has been no examination and the plan has not been the subject of a Regulation 19 consultation. The progress on the plan was delayed in early October 2021 with more evidence to be produced before more formal consultation. I note that the Council have secured funding through the Housing Infrastructure Fund for infrastructure improvements that would enable the delivery of sites including

land on the Hoo Peninsula. I accept that the Council have a vision and ambitions for the future development of its area including aiming to deliver on housing need. However, given the uncertainty of the production of the Local Plan, and its subsequent effect on the progress of any sites which may be included within the plan, I give the plan no weight.

Other matters

Affordable Housing

58. The proposal would make provision for 25% affordable housing. This would be secured through the provision of the section 106 agreements for the site with type and tenure specified. The provision of affordable housing would accord with Policy H3 of the Local Plan.

Infrastructure

59. The s106 agreement provides for contributions towards highway safety and sustainable transport measures, these are bus service provision, the provision of link footway and cycleway between Lidsing Road and Hempstead, and towards pedestrian crossing and traffic calming on Hempstead Road. Also provided is a contribution towards the improvement of the local Public Right of Way network.
60. I note local residents' concerns about the provision of some services and facilities within the area. In terms of education, contributions are made in respect of primary and secondary schools in the areas closest to the appeal site. Provision for nursery education is also proposed to be made in the form of an on-site nursery. Other contributions relate to the provision of an additional local compactor, towards youth services programmes in the Lordswood area, redevelopment of the Splashes Leisure Centre and open space. There is also a contribution towards health provision at Hempstead included within the s106 agreement. The contributions are calculated in line with the applicable policies within the Local Plan and in accordance with the Council's Developer Contributions and Obligations Supplementary Planning Document (2018) to mitigate the impacts of the development.
61. The contributions would meet the requirements of the Framework and the Community Infrastructure Levy Regulations 2010 (CIL Regulations) in that that they would be directly related to the development, fairly and reasonably related in scale and kind and necessary to make the development acceptable. I have taken it into account in coming to my decision.

Special Protection Areas

62. The appeal site lies within 6 kilometres of the Thames Estuary and Marshes Special Protection Areas (SPA), the Medway Estuary and Marshes SPA, and the Swale SPA on the coastline of North Kent. The Conservation of Habitats and Species Regulations 2017 requires that where a plan or project is likely to result in a significant effect on a Special Area of Conservation (SAC), Special Protection Area (SPA) or Ramsar site, and where the plan or project is not directly connected with or necessary to the management of the site, a competent authority is required to make an Appropriate Assessment (AA) of the implications of that plan or project on the integrity of the site in view of its conservation objectives. As the competent Authority, I have undertaken an AA.

63. The proposal is likely to have a significant effect either alone or in-combination on these sites. This relates to recreational disturbance arising from increased visitor pressure on the over-wintering birds that use these sites. The Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) 2014, sets out a series of measures to mitigate the impact on the SPAs. Natural England have advised that contributions based on an interim tariff should be provided, and the required contribution is included within the s106 agreement for the proposal.
64. I am satisfied that the contribution would be required to avoid an adverse effect on the integrity of these European Sites. The proposed development would therefore accord with policy BNE35 of the LP and paragraphs 181 and 182 of the Framework.

Ancient woodland

65. The proposed pedestrian/cycle route would not result in any direct loss of ancient woodland or removal of trees. The surface of the route is currently a mix of compacted surface and some hard surfacing. Surfacing of the proposed route would ensure that damage to the roots of trees would be avoided and appropriate methods would be used to install other necessary infrastructure such as lighting cables. These measures could be secured by appropriate conditions. There would be no conflict with Policy BNE37 of the LP in respect of ancient woodland habitats and it would be in accordance with the Framework at paragraphs 130 and 180.

Traffic and Highway Safety

66. Concerns are raised by local residents about the impact of the proposed development on the local roads in the area. In terms of the increase in traffic as a result of the proposal, the methodology used to assess traffic movements is adequate. Changes in how the traffic will flow as a result of the package of highway and transport measures have also been assessed. The residual cumulative impacts would therefore not be severe.
67. Access to the site would be from Ham Lane and this would necessitate associated changes to Ham Lane/Capstone Road and Lidsing Road/Hemptead Road including pedestrian crossings and islands and an extension of the 40 miles per hour speed limit on Capstone Road, passing bays would be provided on Westfield Sole Road. Hoath Way roundabout would also be improved to increase capacity and encourage its use, and the roundabout at Junction 4, M2 would also be improved.
68. The Highways Authority do not object to the proposal subject to the package of measures included within the s106 agreement and suitable conditions and I have not been presented with detailed evidence that would indicate the conclusion of the Transport Assessment and package of measures are deficient. The proposal would be in accordance with Policies T1, T3, T4, T6 and T13 of the Local Plan, and the Framework where it relates to sustainable transport measures.

Flood risk

69. The appeal site is located within Flood Zone 1 which is at the lowest risk of flooding although I note that some areas of the site are subject to low surface water flood risk. A Flood Risk Assessment and additional information

accompanies the planning application. Subject to suitable conditions relating to details of sustainable drainage and long-term maintenance and management of these features and finished floor levels, the proposal would be in accordance with the Framework in respect of flood risk.

Air pollution

70. A number of local residents raise concerns about air quality within the local area and surroundings. As part of the planning application, air quality was addressed in the Environmental Statement and an 'Emissions Mitigation Calculation' undertaken. Mitigation measures have been proposed in the form of the installation of low NOx boilers, electric vehicle charging points for dwellings and communal areas. It is also proposed to implement a travel plan which would help to reduce the reliance on the private car. These measures could be secured by suitable conditions and the scheme would be in accordance with Policy BNE24 of the Local Plan which refers to development not being permitted if it would have unacceptable effects on health amongst other things. It would be in accordance with paragraph 181 of the Framework where it relates to air quality and mitigation.

Loss of agricultural land

71. The appeal site is mainly agricultural land which is graded at 3 as 'good to moderate'. Paragraph 170 requires a balance of the value of the economic and other benefits of the best and most versatile agricultural land. Given the scale of the housing requirement within Medway, the loss of the agricultural land is necessary and would therefore not conflict with the Framework in this respect.

Other planning applications and health and wellbeing

72. I acknowledge comments made by the residents and MPs about the number of planning applications being submitted for housing development in the local area and including Lidsing Garden village proposals. However, each planning application and appeal should be determined on its individual planning merits.
73. As part of the proposal, access to the wider countryside would remain and the proposal would incorporate a large amount of open space, landscaping and areas of parks and gardens, as well as play space. Therefore, the scheme would not significantly adversely affect the health and well-being of existing residents and future occupiers of the site.

Balance and Conclusion

74. In accordance with paragraph 11 d (i) the application of policies in the Framework that protect areas or assets of particular importance do not provide a clear reason for refusing the schemes. The Framework confirms that decisions must be taken in accordance with the development plan unless material considerations indicate otherwise.
75. I attach limited weight to the conflict of the scheme with S1, S2 and BNE25 as these policies I have found to be out of date by virtue of the significant lack of a five-year housing land supply. In respect of Policy BNE34, there would be social and economic benefits in terms of the provision market and affordable homes, and the overall function of the ALLI would be retained, and I conclude that the proposal would comply with this element of BNE34. I have also found that subject to an appropriate P4 scheme for lighting the pedestrian/cycle route

to Lordswood, the scheme would not cause harm in respect of providing a safe and suitable access.

76. I give significant weight to the provision of market and affordable housing separately provided the scheme. There would be economic benefits during the construction period by the provision of jobs and it would also contribute to the economy over the lifetime of the development through local household expenditure. I give these moderate weight as these benefits would apply to all relevant schemes within the area. The scheme would provide a nursery and a small retail unit on the site, these would be benefits which would mainly serve the residents of the development, and I give them little weight.
77. Contributions and the additional provisions other than affordable housing set out in the section 106 agreement are neutral considerations because they are needed to make the development acceptable. Landscaping and open space would be provided, I attach limited weight to these. There are proposals to manage the woodland and to improve the quality through the provision of a Woodland Management Plan and this would have moderate weight.
78. However, it has not been demonstrated this scheme would not adversely affect the local distribution of bat species and it would therefore not comply with policies BNE37 and BNE39. In this case, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. Material considerations here do not indicate a decision to be taken other than in accordance with the development plan. For these reasons, the appeal is dismissed.

L Gibbons

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

James Neill of Counsel instructed by Medway Council

P Canavan	Carter Jonas
H Foster	Kent County Council
J Etchells	Jon Etchells Consulting
D Meyrick	Hoare Lea Lighting
W Simpson	Medway Council

FOR THE APPELLANT

Robert Walton of Queens Counsel instructed by Hume Planning

K Attwood	on behalf of F D Attwood & Partners
B Connelly	EDP
A Hume	Hume Planning Consultancy
J Joseph	Joseph Lighting
H Lucking	Corylus Ecology
J Wilde	C&A Consulting Engineers Ltd

INTERESTED PARTIES

R Dines
G Holden
A Wilcox

DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Appellants Opening Statement
- 2 Councils Opening Statement
- 3 Statement by R Dines
- 4 Protected species and development advice for local planning authorities, Natural England
- 5 Natural Environment section, Planning Practice Guidance
- 6 Email from Hume Planning to Medway Council dated 8 November 2020 regarding Tree Survey and other matters

- 7 Signed Lighting Statement of Common Ground dated 2 July 2021
- 8 Ecology Statement of Common Ground
- 9 Draft conditions dated 21 October 2021
- 10 Key Plans List
- 11 CIL Compliance Statement
- 12 Bundle of documents and emails to Medway Council relating to the need for conditions on environmental protection, flood risk and green space, and planning obligations
- 13 APP/A2280/W/17/3175461 Land at Town Road, Cliffe Woods
- 14 APP/2280/W/19/3240339 Land at Orchard Kennels, off Meresborough Road, Rainham
- 15 Bundle of Documents relating to the Site Visit (Itinerary and Plans)
- 16 Councils Closing Submissions
- 17 Appellants Closing Submissions

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- 1 Signed and dated s106 agreement
- 2 Final draft conditions
- 3 Statement from A Wilcox
- 4 APP/A2280/W/20/3259868 Land off Pump Lane, Rainham