



Appeal Decision

Inquiry Held on 16-18 May 2023

Accompanied Site visit made on 17 May 2023

by David Troy BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2023

Appeal Ref: APP/X2220/W/23/3315262 **Land South West of London Road, Deal**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Richborough Estates Limited and BDW Trading Limited against Dover District Council.
 - The application Ref 22/00652, dated 17 May 2022.
 - The development proposed is outline application for the erection of up to 155 dwellings with associated parking and means of access (all matters reserved except for access).
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 155 dwellings with associated parking and means of access (all matters reserved except for access) at Land South West of London Road, Deal in accordance with the terms of the application, Ref 22/00652, dated 17 May 2022, subject to the conditions in the attached schedule.

Procedural Matters

2. The application was made in outline with all matters other than access reserved for future consideration. I have determined the appeal on this basis, treating the submitted plans and details provided as illustrative, insofar as they relate to matters other than access.
3. The appeal has been lodged in response to the Council's failure to issue its decision within the prescribed period. The Council's appeal submissions outline that following the receipt of additional information in respect of highways and ecology, the Council's Planning Committee resolved at their meeting on 23 March 2023, that it would not contest this appeal and had it been in a position to determine the application, it would have granted outline planning permission, subject to appropriate Section 106 Planning Obligations and planning conditions. I return to these matters later.
4. The inquiry sat for 3 days, with an accompanied site visit on the second day. I also carried out unaccompanied site visits before the inquiry opened, and at other times outside the inquiry sitting period.
5. During the Inquiry the Council provided an update on the emerging Dover District Local Plan October 2022 outlining that it had been recently submitted to the Planning Inspectorate for examination. However, as I do not have

evidence before me as to the extent of unresolved objections to the policies in the emerging Local Plan and it has only recently been submitted for examination, having regard to the advice provided in the National Planning Policy Framework (the Framework)¹, I give the policies in the emerging Local Plan limited weight in my decision.

6. I closed the Inquiry in writing on 5 June 2023 following the receipt of a signed and completed legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990. The agreement sets out details for securing planning obligations in respect of local infrastructure, affordable housing provision, sustainable transport measures, Public Rights of Way improvements, strategic mitigation measures in relation to the Thanet Coast and Sandwich Bay Special Protection Area and the provision, on-going management and maintenance of the strategic landscaping and open space. I return to these matters later.

Main Issues

7. The main issues are:

- (i) Whether or not the proposed development would provide a suitable site for housing, having particular regard to the local and national planning policies relating to the location of new development in the District;
- (ii) The effect of the proposed development on the character and appearance of the area including the effect on the local landscape; and
- (iii) The effect of the proposed development on the local highway network and whether it would lead to an unacceptable impact on highway safety.

Reasons

Location of Development

8. The appeal site falls outside of the defined urban confines for the town of Deal, which includes the built-up parts of the parish of Sholden. The appeal proposal does not meet any of the exceptions for allowing development outside of urban boundaries and thereby conflicts with Policy DM1 of the Dover District Local Development Framework Core Strategy (2010) (CS) and, as a consequence, with CS Policies DM11 and DM15 as these relate respectively to managing traffic demand outside the urban boundaries and protecting the countryside.
9. However, it is matter of agreement, that the Council's housing requirement, identified in CS Policy CP2 of 505 dwellings per annum, based on the revoked Regional Spatial Strategy, is out of date and is significantly lower than implied by the more up to date objectively assessed housing need of 611 per annum². The settlement boundaries were drawn tightly in the CS on the basis that there was sufficient land identified in the CS and within the urban areas to meet the Plan's more constrained housing requirement. In this respect, the CS is not consistent with the Framework, as it does not make sufficient provision to meet the identified housing needs in the district³ and the Council acknowledges that CS Policy CP2 concerning the supply of housing is out of date⁴.

¹ Paragraph 48 of the Framework

² Statement of Common Ground (SOCG) Core Document CD9.09 Paragraph 6.6

³ Paragraphs 20 and 68 of the Framework

⁴ SOCG Core Document CD9.09 Paragraph 6.6

10. The Council therefore accept that its settlement boundaries and the evidence base underlying Policy DM1 are out of date⁵ and the blanket policies of restriction on development outside the defined urban confines in Policies DM1, DM11 and part of DM15 that relates to protecting the countryside for its own sake, are inconsistent with the Framework and therefore out of date. It is agreed that, when taken together and read as a whole, the most important basket of development plan policies DM1, DM11 and DM15 for the determination of this appeal are out of date⁶ and as such the tilted balance in paragraph 11d) of the Framework is engaged. In light of the above factors, I afford limited weight to the conflict with CS Policies DM1, DM11 and DM15 and I will consider this further in the planning balance.
11. In terms of securing a sustainable pattern of development, it is matter of agreement between the main parties that the site is locationally sustainable for the development proposed⁷. Based on the evidence before me and my observations during my site visits, the site would be well-related to day-to-day services and facilities in Sholden and Deal and is accessible by a range of transport modes, including a good bus service running by the site along Sandwich Road and London Road. Opportunities exist to improve pedestrian, cycling and public transport links as part of the proposed development.
12. The appeal site is adjacent to the built-up area of Sholden and would not be remote from the services and facilities in Sholden and Deal and the nearby settlement of Dover. There would at least be a choice to use accessible modes of transport to access local services and facilities and additional dwellings in this location would not significantly undermine the aim of CS Policy DM11 to minimise the need to travel and reduce car dependency across the district as a whole. In addition, the proposed development would be consistent with the Framework that seeks to actively manage patterns of growth to ensure that development is focused on sustainable locations (paragraphs 105 and 110).

Character and appearance of the area

13. The appeal site comprises open agricultural fields on the north-western edge of the built-up area of Sholden. To the north east and south east of the appeal site are the relatively long garden areas associated with the adjacent residential properties.
14. The site is largely open with a number of trees and other mature planting along the boundaries of the site with open countryside to the north-west and west of the site, which adds to the open character of the area. The topography of the site gradually rises from its eastern corner up to its north western edge. It also gently falls from the north eastern edge towards the undulating valley and open countryside to the west of the site. There are two Public Rights of Way (PROW) that run through the site (ED39 and ED48), with an extensive network of PROWs within the immediate vicinity of the site.
15. An extant planning permission for up to 110 dwellings (the 'Phase 1 scheme')⁸ has been granted, but not yet implemented, that abuts and will be accessed from the A258 Sandwich Road to the north-east of the site. The indicative masterplan for the proposed development (the 'Phase 2 scheme') shows that

⁵ SOCG Core Document CD9.09 Paragraph 6.3

⁶ SOCG Core Document CD9.09 Paragraphs 6.3, 6.4 and 6.7

⁷ SOCG Core Document CD9.09 Paragraph 6.26

⁸ 21/00402

the appeal scheme would be accessed via a central spine road routing through the Phase 1 scheme to the principal access onto Sandwich Road. The appeal site comprises of about 11.48 ha, of which 3.08ha forms part of the Phase 1 scheme, which includes the access to Phase 2 on the indicative masterplan.

16. A main objective of the Framework is to take into account the character of different areas, recognising the intrinsic character and beauty of the countryside. Paragraph 174 of the Framework makes it clear that, among other things, valued landscapes should be protected and enhanced. Based on the evidence before me, the site lies in an area which has no national or local designation and as such does not fall within the scope of the valued landscapes under Paragraph 174 of the Framework.
17. The appeal site is located within the Northbourne Landscape Character Area (LCA F2) described as a rural chalk landscape with a gentle ridge and valley topography, with large arable fields interspersed with woodland blocks and the enclosed small settlements of Great Mongeham and Northbourne⁹. Most of LCA F2 lies to the north-west and north-east of Sholden. The relevant characteristics of LCA F2 as they relate to the site are limited to the large modern rolling arable fields, that sit on a local chalk ridgeline and the urban fringe influence of Sholden¹⁰. The Council seeks to protect the qualities of the district's landscape. CS Policy DM16 states that developments that harm the character of the landscape, will only be permitted where allocated for development in the CS, or can be sited to avoid or reduce the harm and/or incorporate design measures to mitigate the impact to an acceptable level.
18. The appeal site due its location on open arable fields, contains few natural landscape features and is heavily influenced by the surrounding built form. The landscape evidence presented by the appellant also states that the site does not contain any cultural or natural heritage features, has no cultural association, and is not notably identified as being tranquil due to its close proximity to the built-up area of Sholden and the busy A258 Sandwich Road. The site has some recreational value, due to the local PROWs running through the site. Overall, the site has been assessed by the appellant as having a medium/low landscape value, applying the objective criteria set out in accordance with the Landscape Institute Technical Guidance Note 02/21 and medium/low sensitivity to change¹¹. The Council having taken advice from independent landscape consultants has not sought to suggest otherwise.
19. The existing landscape character of the site would be permanently changed as a result of the development on this open undeveloped area of land. However, residential development is not out of character with the surrounding land uses. With careful treatment of the layout particularly the disposition of building heights and the choice of boundary and internal landscaping, both of which would be the subject of reserved matters applications, the effect on landscape character would be moderately adverse at Year 1 reducing to minor as the landscape planting matures. The appeal scheme includes structural landscaping along the outer south-western boundary of the site. In this context, whilst there would be some landscape harm through the loss of open arable fields, this would be localised. The wider landscape character would be almost

⁹ Dover District Landscape Character Assessment 2020 CD5.17 Page 108

¹⁰ Landscape and Visual Impact Assessment 2022 CD1.19 Page 10 & Core Document CD9.14 Page 38

¹¹ Core Document CD9.14 Pages 38-41 & 65-68, Tables TG1.1 and TG1.2

untouched if the appeal site were to be developed as proposed. Overall, the harm to landscape character would be minimal and not significant.

20. The visual impacts of the proposed development would be experienced from the public footpath across the site, limited stretches from the PROWs to the north-west and in medium views from the areas of higher ground to the west of the site. It is matter of agreement between the main parties that all these views will be localised¹² and I concur with this assessment.
21. Public footpath ED39, that is to be diverted as part of the appeal scheme, crosses the south-eastern corner of the appeal site, and it is inevitable that it would be affected by the development. However, this local amenity footpath connects two parts of the settlement and there is already an expectation of views of the built form on the edge of Sholden in close proximity to the users of the footpath. The new built form associated with the proposed development would still be visible, but with careful consideration of the landscaping and public open space along this footpath, views across the countryside would remain and the visual effects would reduce to no more than moderate along this short stretch of footpath.
22. Turning to the other affected footpaths. Public footpath ED48 running along the north-west boundary of the site, currently has views into the site, the open arable fields to the west and north-west and the existing built form and mature trees and planting on the edge of Sholden. The appeal scheme would result in an extension of the built form along a short section of the footpath.
23. However, this section of the footpath is already affected by a new housing development, currently under construction, on land immediately to the north east of the site (the Pegasus scheme)¹³. It will also be directly impacted by the Phase 1 scheme on the land immediately to the north west of the site. Views along this short section of footpath ED48 into the site, together with the White Cliffs Country Trail along footpath ED37 further to the north-west would be obscured by the new residential development in the Phase 1 scheme and the structural planting proposed along the south-western edge of the appeal site. As such, the visual effects would reduce to no more than moderate along this short stretch of footpath ED48 and would be minimal along footpath ED37.
24. In term of the medium views from the higher ground in the valley and open countryside to the west. A number of PROWs run through this area, including public footpath ED49 on the opposite side of the valley running up to the small settlement of Great Mongeham. The views are currently seen against the backdrop of the existing built form on the edge of Sholden. The appeal scheme would be kept close to the top of the local ridgeline but away from the highest point and avoids the more sensitive valley sides in this location¹⁴. Its location in relation to the higher ground would be consistent with the prevailing settlement pattern of Sholden and Deal. It will be seen in the context of the new residential development that form part of the Phase 1 scheme and Pegasus scheme to the north of the appeal site that will change the skyline in this location once constructed.

¹² SOCG Core Document CD9.09 Paragraph 6.62

¹³ 19/00216

¹⁴ Core Document CD9.14 Table 3.1 Pages 78 and 90

25. Keeping the appeal scheme away from the more visually sensitive valley sides will reduce the visual impact of the scheme from within the valley and the surrounding countryside, as demonstrated by the appellant on the accurate visual representations, which has been accepted by the Council's independent landscape consultants¹⁵. The curved outer south-western edge of the proposed development with extensive areas of open space, landscaping and structural planting, would provide appropriate mitigation to reduce the harm and soften the edge of the development. In addition, it would allow for a green wedge of open space to penetrate the development from the countryside beyond and form part of the proposed development as illustrated on the appellant's Landscape Strategy¹⁶ and Strategic Landscape Masterplan¹⁷.
26. As such, with the careful consideration to the layout and landscaping, the appeal proposal can be appropriately assimilated into the local environment without undue harm and the moderate adverse visual effects at Year 1 on the views from the higher ground to the west, including public footpath ED49, would be reduced to minor impact as the landscape planting matures.
27. Taking the above issues together, there would be a minor adverse impact on landscape and a minor to moderate adverse impact on visual amenity. Overall, in the context of CS Policy DM16, the landscape and visual impacts of the appeal scheme do not indicate to me that it should be refused. The proposed development can be sited to reduce the harm and incorporate design measures to mitigate the impact to an acceptable level. Consequently, subject to the imposition of suitably worded planning conditions and planning obligations to include appropriate landscaping and related mitigation details, there is no conflict with the development plan in this regard.

Highways

28. It is common ground that being directly adjacent to Sholden and Deal, the appeal site is accessible to a good range of services and facilities. However, the appeal proposal would still give rise to a notable increase in the level of traffic which would rely on the surrounding local highway network, including A258 Sandwich Road and London Road. Set against this, the appeal proposal would secure improved connectivity across the appeal site from existing residential areas to the wider bus routes, public footpath and cycle network.
29. The submitted details of the proposed principal access off Sandwich Road and the changes associated with the proposed emergency access off Mongeham Road are uncontested by the Local Highway Authority. The appellant's extensive assessment of the highway impacts¹⁸ are also agreed¹⁹, including the proposal having no unacceptable adverse impacts on the nearby London Road/Mongeham Road junction and London Road/Manor Road junction as a result of the development, and no objections on highway grounds to the likely cumulative traffic generation from the proposed development together with other committed development in the area and forecast future traffic growth.
30. Furthermore, the imposition of the agreed schedule of planning conditions and planning obligations covering access, sustainable transport, pedestrian

¹⁵ Core Documents CD2.08, CD9.14 Page 44 and SOCG CD9.09 Paragraph 6.59

¹⁶ Core Document CD1.19 Plan 5

¹⁷ Core Document CD1.19 Plan 6

¹⁸ Core Documents CD1.07, CD2.02, CD2.10, CD2.11, CD7.03 and CD9.22

¹⁹ Highways and Transport SOCG Core Document CD9.19

connectivity, and other highway related details would adequately safeguard against any unacceptable highway related consequences of the appeal proposal. They would also ensure that the prospective occupants of the new housing enjoy a good level of accessibility to local services and facilities. My assessment of these matters leads me to the same conclusion as the main parties and the Local Highway Authority.

31. In this context, I am satisfied that the concerns raised by Sholden Parish Council and interested parties about the emergency access and the capacity of the local highway network to safely support the appeal proposal are not supported by contrary evidence. Based on the submitted highway evidence, coupled with my own site observations, at different times of the day, I do not find that there will be an unacceptable impact on highway safety, or that the residual cumulative impacts on the road network will be severe.
32. The resulting improvements to pedestrian connectivity across the appeal site from existing residential areas to the wider bus routes, public footpaths and cycle network is a moderate benefit.
33. Overall, in the context of CS Policy DM12 and paragraph 111 of the Framework, the predicted traffic and highway effects of the appeal scheme do not indicate to me that it should be refused. Consequently, subject to the imposition of suitably worded planning conditions and planning obligations to manage access and highway related details and promote sustainable transport, there is no conflict with the development plan or the Framework in this regard.

Other Matters

Housing land supply and delivery

34. In relation to the Council's latest housing position, the appellant considers that the development would boost the supply of housing in line with the requirements of the Framework. The appellant's evidence and supporting windfall supply statement²⁰ demonstrates the significant contribution of the windfall housing to the Council's housing delivery targets in recent years. The appellant argues that, whilst the Council can demonstrate a 6.03 years land supply, windfalls account for about 44% of the Council's five year land supply and critically without the windfall component of supply, the Council would only be able to demonstrate 3.4 years of land supply. The appellant outlines that some 47% of completions since 2010/11 have arisen from windfall development and clearly shows the dependency on windfalls, such as those arising from appeal development, to maintain delivery²¹.
35. In addition, the appellant argues that, whilst the Council's Housing Delivery Test (HDT) results in 2021, at 88%, is marginally above the 85% threshold, the point at which the Framework confirms that the shortfall is significant. The appellant's analysis shows that the HDT result, without windfall development, would fall to around 54%, in which case the appellant argues that the tilted balance in Paragraph 11d) of the framework, would be engaged²².
36. Whilst this may be so, based on the Council's appeal submissions and the discussions at the Inquiry, the Council is able to demonstrate a five year supply

²⁰ Core Document CD9.12 Table 9.3 and Appendix 1

²¹ Core Document CD9.12 Table 9.3 Paragraphs 9.15-9.23

²² Core Document CD9.12 Tables 9.4 and 9.5

of deliverable housing sites against the development plan requirement and the latest HDT measurements for the Council are forecast to increase 102% for period 2019/20-2021/22²³. Whilst the delivery of the additional housing as part of the appeal scheme is a positive benefit in favour of the appeal, it is matter to which I attach moderate weight in my decision.

Best and Most Versatile agricultural land

37. It is acknowledged that the appeal site encompasses the Best and Most Versatile (BMV) agricultural land. The Framework requires that account is taken of the economic and other benefits of this land²⁴. The evidence presented at the Inquiry indicated that the majority of the district constitutes high quality agricultural land. In this context, the appellant states that the Council's Core Strategy highlights that there is a higher level of BMV within the district as compared to regional or Kent wide averages and as such the loss of some BMV and the release of further greenfield sites is inevitable if the identified housing requirements of the district are to be met²⁵. This is not disputed by the Council and is matter of agreement between the Council and appellant²⁶. In any event, it is a small area of land in relative terms, and its loss would be of limited consequence in relation to overall resource. As such, I consider that this is matter of limited negative weight in making my decision.

Ecology and Biodiversity

38. At the time of the submission of the appeal there was an outstanding matter relating to the ecological survey information, that was considered out of date. Updated ecological survey information has now been submitted by the appellant and the Council's Ecology Officer has indicated that they have no objections to the proposal, subject to appropriate conditions and mitigation.
39. Although the appeal proposal will result in the loss of the existing agricultural fields, the main parties' evidence confirms that the existing agricultural fields are of limited ecological value due to the nature of the existing activities and management of the agricultural fields. However, the hedgerows and established trees along the boundaries are identified as supporting greater biodiversity. The appeal scheme shows that the boundaries would be retained as a green link that would connect to the proposed open space. The appellant's evidence identifies opportunities to increase biodiversity and create new species rich habitats to support new foraging activity for species on the site.

Section 106 Agreement and Planning Obligations

40. Paragraph 57 of the Framework and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) require that planning obligations should only be sought, and weight attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
41. The signed and completed Section 106 Agreement provided by the appellant shows a financial contribution towards Strategic Access Management and

²³ Core Document CD9.06 Appendix 1 Paragraphs 2.13 and 2.94

²⁴ Paragraph 174b of the Framework

²⁵ Core Documents CD9.06 Appendix 1 Paragraph 2.18 and CD9.12 Paragraph 10.2

²⁶ SOCG Core Document CD9.09 Paragraph 6.96

Monitoring measures in accordance with the Thanet Coast and Sandwich Bay Strategic Access Management and Monitoring Strategy (SAMMS) to mitigate for additional impacts and recreation pressures from residential development on the Thanet Coast and Sandwich Bay Special Protection Area (SPA).

42. Having had regard to the characteristics of the proposed development and the evidence before me, including the advice from Natural England, in making an appropriate assessment, I am satisfied that the proposed financial contribution towards the strategic mitigation measures identified in the Thanet Coast and Sandwich Bay SAMMS is sufficient to ensure it will not adversely affect the integrity of the Thanet Coast and Sandwich Bay SPA. I am satisfied that the proposed contribution is necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development, in accordance with the Framework and the CIL Regulations.
43. The appeal scheme proposes the delivery of 47 affordable units of a range of types and tenures to meet the prioritised needs for affordable housing in the District. This is in accordance with the Council's requirements to provide 30% of the total dwellings as affordable homes as set out in Policy DM5 of the CS.
44. The Council's Core Strategy outlines there is an identified need to deliver 4,200 affordable homes up to the end of the plan period in 2026, which equates to 210 homes per year²⁷. However, the Council's latest Annual Monitoring Report (2020-21) indicates that just 1,186 affordable homes have been completed in Dover District since 2006²⁸. This is exacerbated by the uncontested affordable housing evidence from the appellant which demonstrates an average delivery of just 74 dwellings per year and an enormous shortfall of about 2,174 dwellings in delivery of affordable homes against the CS requirement²⁹.
45. The significance of this particular appeal scheme's level of contribution to boosting an appropriate mix of affordable housing in the district is not disputed by the Council and it is agreed that it should be afforded substantial weight as a material consideration³⁰. The submitted legal agreement contains planning obligations which are capable of securing the appropriate level and mix of affordable housing, management of the nomination rights and local criteria to support the delivery of the affordable homes for local people in the area. The legal agreement, as a mechanism to ensure that the appeal scheme delivers the important housing benefits of the appeal proposal, weighs very heavily in favour of the appeal proposal.
46. The Section 106 Agreement requires the appellant to make a contribution of £864.00 per dwelling towards the costs of works to create additional capacity in the general practice services in the area that would be necessary to mitigate the impact of the development on local health facilities. The Section 106 Agreement makes various commitments through contributions towards local infrastructure including secondary education, community learning, youth services, libraries, social care, waste and outdoor sport facilities. These would be necessary to mitigate the proposal's impact on local infrastructure.
47. The Section 106 Agreement requires the appellant to make a contribution of £120,000 towards the provision of and improvements of pedestrian and cycle

²⁷ Core Strategy CD5.01 Infrastructure Table Page 56

²⁸ Core Document CD5.09 Table 17 Page 22

²⁹ Core Document CD9.12 Pages 53-57 Table 9.6

³⁰ Core Document SOCG CD9.09 Paragraph 6.35

connection in the vicinity of the site and £948 towards travel plan monitoring. These would be necessary to mitigate the proposal's impact on the local highways network and to promote sustainable transport.

48. The Section 106 Agreement requires the appellant to contribute £23,710 towards Public Rights of Way (PROW) improvements within and around the site. The existing public footpaths run through or adjacent to the appeal site. Interested parties have raised concerns about the impact on the PROWs, including the diversion of footpath ED39 to accommodate the new development. However, no objections were received from Kent County Council's PROW and Access Service to the proposal, subject to appropriate conditions and measures. I am satisfied that the submitted legal agreement would secure appropriate PROW improvements and mitigation to address this at an appropriate stage in the delivery of the appeal scheme.
49. The Section 106 Agreement includes various provisions and obligations that cover the provision, on-going management and maintenance of the strategic landscaping and open space, including the provision of a locally equipped children's play area within the development.
50. I am satisfied that the proposed contributions set out above are necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development, in accordance with the Framework and CIL Regulations. The contributions in the Section 106 Agreement and how they would be spent are supported by the relevant local plan policies, representations from the Council's consultees, appeal statements, CIL compliance statements and the Statements of Common Ground between the main parties.

Other issues

51. Various references have been made in evidence and submissions to other planning decisions and judgements, all of which have been considered. Each turns on its own individual facts and, whilst generally relevant to varying degrees, none dissuade me from the assessments and conclusions based upon the particular circumstances of this appeal.
52. I have noted the objections raised by Sholden Parish Council and interested parties to the proposal. These include the impact on the landscape and character of the area, loss of agricultural land and use of a greenfield site contrary to local and national policies, land not being allocated for development in the emerging Local Plan, unsustainable location, local infrastructure and the cumulative impact of the proposal on the services and facilities in conjunction with other developments, highway safety, traffic, proposed emergency access, public rights of way, wildlife and biodiversity, built heritage and archaeology, and the impact on the amenities of local residents.
53. However, I have addressed the matters relating to the location of the development, character and appearance of the area, including the landscape setting, highways safety and local infrastructure in the main issues and other matters above. No objections were received from the Local Highways Authority, Council's independent landscape and highway consultants nor the local infrastructure providers, subject to appropriate conditions and planning obligations being secured. It is a matter of agreement, that ecological and

archaeological matters can be dealt with through the imposition of conditions to ensure that the proposed development is not harmful to these interests³¹.

54. The other matters raised are not being contested by the Council. I am satisfied that these matters would not result in a level of harm which would justify dismissal of the appeal and can be dealt with by planning conditions or through the Section 106 Agreement where appropriate. In addition, I have considered the appeal entirely on its own merit and, in the light of all the evidence before me, this does not lead me to conclude that these other matters, either individually or cumulatively, would be an over-riding issue warranting dismissal of the appeal.

Conditions

55. Having regard to the Framework and Planning Practice Guidance, I have considered the suggested planning conditions submitted and agreed by the Council and the appellant during roundtable discussion at the Inquiry³². In addition to the detailing of the reserved matters and standard time limit conditions (1, 2 & 3), I have specified the approved plans and details of the land covered by this permission as this provides certainty (4 & 5).
56. The conditions relating to the mix and type of housing, building heights of no more than two storeys and the restrictions on roof designs and enlargements are necessary in order to allow for a design led approach and high quality development in the interests of the character and appearance of the area and to protect the landscaping setting of the site (6,7 & 8). A condition based on secure by design principles is necessary to promote a development that is safe and secure for its residents (9). A condition relating to the provision and details of a proposed children's play area on the site is necessary in order to safeguard the amenities of future occupants of the development (10).
57. A condition relating to a detailed Tree Protection Plan and Arboricultural Method Statement and the protection of the existing trees and hedges on the site are necessary in order to ensure their survival and to protect the visual amenity of the trees and hedges on the site (11). Conditions relating to the submission of a method statement for protection of wildlife and protected species during the site clearance and construction works, ecological design strategy and habitat management and monitoring plan are necessary to ensure the protection and enhancement of wildlife and biodiversity on the site (12, 13 & 14). There is some potential for archaeological remains so a scheme of investigation on the site would be necessary to ensure proper assessment and recording (15).
58. Details of surface water, foul and sustainable drainage arrangements are necessary in order to ensure adequate drainage facilities are provided, to mitigate against potential flooding and the pollution of the water environment and to comply with the submitted Flood Risk Assessment and Sustainable Drainage Statement (16, 17 & 18). Conditions to deal with any unexpected contamination and unexploded ordinance found on the site are necessary in the interest of public safety (19, 20 & 21).
59. For the construction period, a condition requiring the submission of a Construction Management Plan is necessary in order to mitigate the

³¹ SOCG Core Document CD9.09 Paragraphs 6.78 and 6.93

³² Core Document CD10.7

environmental impact of development works and to protect the amenities of occupants of neighbouring properties (22).

60. A range of highway improvements are necessary to limit highway impact and to encourage and promote sustainable transport including access and visibility splays (23 & 24), emergency access provision (25), car and cycle parking arrangements (26), footpaths and carriageways provision (27), public rights of ways management and improvements (28) and submission of a travel plan (29). The travel plan shall include details of how 13 no. 28 day Megarider bus tickets (or equivalent) shall be provided to each household on first occupation of each dwelling in order to promote sustainable modes of travel. A condition relating to electric vehicle charging infrastructure is necessary in order to promote sustainable transport and reduce greenhouse gas emission (30).
61. I consider all the conditions to be reasonable and necessary to the development of the site. I have reworded some of them for consistency and have reordered them for clarity. Some of the particular requirements involve work to be done before development can start on site or before the development can be occupied. These measures are so fundamental to the acceptability of the proposal that it would be otherwise necessary to refuse planning permission.

Overall Planning Balance

62. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan, unless material considerations indicate otherwise. There is conflict with the development plan, but the policy conflict is limited as I have set out above and the tilted balance in paragraph 11d) of the Framework is engaged.
63. In terms of the adverse impacts, there would be minor adverse impact on landscape and a minor to moderate adverse impact on visual amenity, although the development can be sited to reduce the harm and incorporate design measures to mitigate the impact to an acceptable level. The proposal would have limited negative effect in terms of the loss of the Best and Most Versatile agricultural land.
64. I acknowledge that there is some conflict with the development plan, albeit that the conflict is reduced, and limited weight is afforded to the conflict with CS Policies DM1, DM11 and DM15 as described above. The proposal accords with the overall aims of all other relevant development plan policies set out in the CS. Other potentially adverse effects would be overcome or satisfactorily mitigated by planning conditions and the Section 106 Agreement.
65. Against that, the proposal would provide 155 new dwellings, of which 47 would be affordable. The evidence before me demonstrates an ongoing acute and continuing extremely bleak outlook for local affordable housing provision. The capability of the appeal proposal to contribute significantly to addressing the existing and predicted very serious shortfalls in affordable housing is a significant social benefit carrying substantial weight in favour of this appeal.
66. It is common ground between the main parties that the additional housing attracts positive weight, having particular regard to the emphasis the Government places on the delivery of housing in the Framework. It is appreciated the contribution the appeal proposal would make to windfall

housing delivery and that the appeal scheme could be brought forward quickly through the early deliverability of the site. Nevertheless, for the reasons described above, the Council is able to demonstrate a five year housing land supply at present and as such the delivery of the new housing in this sustainable location would have social and economic benefits which carry moderate weight in favour of the proposal.

67. The site is of limited ecological value and the ecological, landscaping and Green Infrastructure provision would offer the opportunity to promote the health and well-being of the local people and the biodiversity in the area, key social and environmental objectives of the Framework carrying moderate weight. High levels of public open space are to be secured through the conditions and legal agreement. Furthermore, a biodiversity net-gain of around 20% for habitats units and 237% for hedgerows units is proposed³³ and this could be delivered as part of the green infrastructure proposals. The Framework only requires a net-gain, and the proposal therefore goes significantly beyond current policy requirements. Consequently, this aspect of the biodiversity proposals is a moderate benefit of the appeal scheme.
68. The contributions towards public open space, while necessary to mitigate the impact of the additional population from the development, would also be available to all residents in the local area. These contributions together with the provision of a children's play area within the development are social benefits of the scheme which carries moderate weight.
69. The commitment to higher energy efficiency, sustainable construction and sustainable transport measures are clear environmental benefits, representing a move towards a low carbon economy and promoting more sustainable means of travel. These are key objectives of the Framework and are environmental benefits that carry moderate weight. The economic benefits of development would include investment in construction and related employment for its duration. There would also be an increase in subsequent local household expenditure and demand for services. The additional population would increase spending in the local economy to provide long term support for local shops and services, supporting a prosperous economy. This is a key objective of the Framework and are economic benefits that carry moderate weight.
70. Consequently, overall, in my view, the adverse impacts arising from this development do not significantly and demonstrably outweigh the scheme's benefits. The proposal would therefore represent a sustainable form of development when assessed against the Framework read as a whole, which is a material consideration in favour of the development. The factors above collectively provide the material considerations to grant planning permission other than in accordance with the development plan in this specific case.

Conclusion

71. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

David Troy

INSPECTOR

³³ Core Document CD7.04

APPEARANCES

FOR THE APPELLANT:

Sarah Reid KC	King's Counsel, King's Chambers
Mike O'Brien	Director, Pinnacle Planning Ltd
Wendy Lancaster	Director, Tyler Grange Group Ltd
Gerard McKinney	Director, Hub Transport Planning Ltd
Oliver Martin	Solicitor, Bickley Martin Limited

FOR THE COUNCIL:

Andrew Sommerville	Planning Consultant representing Dover District Council
Daniel Thorman	Principal Solicitor, Dover District Council

INTERESTED PARTIES:

Kevin Lynch	Sholden Parish Council
Peter Jull	Interested Party

DOCUMENTS SUBMITTED DURING THE INQUIRY:

- CD10.1 Draft minutes to the Planning Committee meeting 23 March 2023
- CD10.2 Officer Report to the Planning Committee meeting on 23 March 2023
- CD10.2a Officer Report - Appendix A
- CD10.2b Officer Report - Appendix B
- CD10.2c Officer Report - Appendix C
- CD10.3 Appellant's Opening Statement
- CD10.4 Council's Opening Statement
- CD10.5 Dover District Council CIL Compliance Statement
- CD10.6 Kent County Council CIL Compliance Statement
- CD10.7 Suggested Draft Conditions 17 May 2023

Schedule of Conditions

- 1) Approval of the details of the layout, scale, landscaping and appearance ("the Reserved Matters") shall be obtained from the Local Planning Authority in writing before development commences; and the development shall thereafter 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 commence not later than 2 years from the date 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:
 - Drawing ref. 359 P02 Land Use Parameter Plan
 - Drawing ref. T18516.001 G Site Access Layout
- 5) No dwellings shall be constructed under this planning permission on the part of the application site which is shown as "Phase 1 Residential development" on the approved Land Use Parameter Plan (Drawing Reference: 359 P02).
- 6) Prior to or concurrent with the first reserved matters application submitted, details of the mix of type and size of the affordable dwellings and market dwellings to be provided shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 7) No building on the site shall have a height taller than two storeys. No dormer windows shall be constructed above first floor level.
- 8) Notwithstanding the provisions of Class B, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking, and re-enacting that Order with or without modification), no dwelling on the site shall be enlarged through an addition or alteration to its roof.
- 9) No development shall commence until a scheme of measures based on secured by design principles has been submitted to and approved in writing by the Local Planning Authority. The measures shall be carried out in accordance with the approved details and thereafter retained.
- 10) No more than 50% of the dwellings shall be occupied until a children's play area has been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
- 11) No development shall commence unless and until a tree and hedge protection scheme has been submitted to and approved in writing by the Local Planning Authority. The protection scheme shall identify the retained trees and hedges and where excavations or changes to land levels or underground works are proposed that might affect the root protection area, the scheme shall detail the appropriate working methods (the arboricultural method statement) in accordance with British Standard BS 5837: 2012 (Trees in relation to design, demolition and construction). The scheme for the protection of the retained trees and hedges shall be carried out as approved.

In this condition "retained tree or hedge" means an existing tree or hedgerow which is to be retained in accordance with the submitted and approved plans and particulars.

If any retained tree or hedgerow is cut down, uprooted or destroyed or dies within 5 years of the completion of development, the tree/hedgerow shall be replaced by a tree/hedgerow of a similar type and species in the next planting season after the damage or loss.

- 12) No development shall take place (including any site or vegetation clearance) until a method statement for the protection of reptiles, badgers, nesting birds and hedgehogs during site/vegetation clearance and construction works has been submitted to and approved in writing by the Local Planning Authority. The method statement shall be informed by up-to-date ecological surveys of the site (if more than two years has elapsed since the last surveys).
- 13) No development shall take place (including any groundworks, site or vegetation clearance), until an ecological design strategy (EDS) has been submitted to and approved in writing by the Local Planning Authority. The EDS shall include:
 - i. specific biodiversity aims and objectives;
 - ii. a 'biodiversity gain plan' to demonstrate how a minimum of 10% biodiversity net gain will be achieved on the site;
 - iii. biodiversity enhancement measures for the site, including native species landscaping, hibernacula for herpetofauna and invertebrates, hedgehog boxes, specifications for hedgehog highways for walls and fences, and the inclusion of building-integrated bat and bird boxes; and
 - iv. a timetable / programme for carrying out the measures of the EDS.The EDS shall be implemented in accordance with the approved details and measure thereafter retained in perpetuity.
- 14) Prior to occupation of the development hereby approved, a habitat management and monitoring plan (HMMP) shall be submitted to and approved in writing by the Local Planning Authority. The HMMP shall provide details of:
 - i. management of habitats to achieve biodiversity net gain in accordance with the Ecological Design Strategy;
 - ii. management of all other habitats to sustain the specific biodiversity aims and objectives of the ecological design strategy

The HMMP shall be informed by and include: i) a description and evaluation of features to be managed; ii) details of ecological trends and constraints on the site that might influence habitat management; iii) specific aims and objectives of management; iv) management actions across the habitat areas of the site; v) an annual work plan; and vi) details of the organisation(s) management mechanisms responsible for implementation of the HMMP.

The HMMP shall be carried out in accordance with the approved details.

- 15) No application for the Reserved Matters shall be submitted before (i) a programme of investigative archaeological work, which has been submitted to and approved in writing by the Local Planning Authority, has been carried out and completed; and (ii) the recorded findings/evaluation of that investigative archaeological work, including any safeguarding measures necessary to ensure preservation in situ of any important archaeological remains, have been presented to, and agreed in writing by, the Local Planning Authority.
- 16) No development shall commence until a surface water drainage scheme based on sustainable drainage principles, effective long-term maintenance of the scheme and an assessment of the hydrological and hydrogeological context of the development, based on the submitted Flood Risk Assessment (BWB, May 2022) and Sustainable Drainage Statement (BWB, May 2022), has been submitted to and approved in writing by the Local Planning Authority.

The scheme shall identify methods to manage surface water runoff; set out the proposed methods to delay and control the surface water discharged from the site, preventing pollution of the receiving groundwater and/or surface waters; and outline a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The implementation of the surface water drainage scheme shall be phased in accordance with the scheme which has been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the corresponding part of the drainage scheme to that dwelling is operational. The scheme shall thereafter be managed and maintained in accordance with the approved details.

- 17) No building hereby permitted shall be occupied within each phase of the surface water drainage scheme until a verification report, which corresponds to that phase of the scheme, has been submitted to and approved by the Local Planning Authority. The verification report shall be prepared by a suitably competent person and demonstrate that the drainage system constructed is consistent with that which was approved for that phase. The verification report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings, with information pertinent to the installation of the drainage measures; and an operation and maintenance details for the sustainable drainage scheme as constructed.
- 18) No dwelling shall be occupied until adequate foul drainage provision for that dwelling has been carried out in accordance with details that have been submitted to and approved in writing by the Local Planning Authority.
- 19) No development shall commence until a ground investigation and contamination report has been submitted to and approved in writing by the Local Planning Authority. The report shall include investigation, sampling and/or evaluation of soils and water and shall set out a scheme of remediation or mitigation, as necessary. The approved scheme of

remediation (if necessary) shall be carried out, with details to verify the successful implementation of the remediation works to be submitted and approved in writing by the Local Planning Authority before the development commences.

- 20) If, during the course of construction of the approved development, unforeseen contamination on the site is found to be present or caused, the occurrence shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development or relevant phase of development is resumed or continued.
- 21) No development shall commence until an unexploded ordinance site assessment has been submitted to and approved in writing by the Local Planning Authority. Should the assessment identify the presence of unexploded ordinance, the report shall set out how that unexploded ordinance is to be dealt with; and development on the site shall not commence until a report to verify that the unexploded ordinance has been addressed to no longer pose a risk to public safety has been submitted to and approved in writing by the Local Planning Authority.
- 22) No development shall commence, until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. The CMP shall include and provide for:
 - the location of access points for site traffic, parking of construction vehicles and vehicles of site operatives and visitors, together with directional signage on and off site, and loading and unloading of plant and materials;
 - wheel washing facilities;
 - a scheme for the prevention of surface water discharges onto the highway;
 - timing of HGV movements to/from site (it should be noted that such movements will not be permitted during school drop-off and pick-up times);
 - any temporary traffic management (as to be agreed with Kent County Council's Streetworks Team and may need to include temporary parking restrictions, signage, etc.);
 - the location and size of site compounds and areas for storage of plant and materials used in constructing the development;
 - the location and form of temporary buildings and temporary lighting, details of the erection and maintenance of security hoardings;
 - measures to control the emission of dust and dirt during construction;
 - measures for the control of noise and vibration during construction, including delivery and construction working hours;
 - procedures for maintaining good public relations, including complaint management procedures, community consultation and liaison.

- The approved CMP shall be adhered to throughout the construction period.
- 23) No development shall commence until final details of the visibility splay for the principal access onto Sandwich Road have been submitted and approved in writing by the Local Planning Authority. Thereafter development shall only be carried out in accordance with the approved details; the splays shall be retained as such; and there shall be no obstruction within these splays over 0.6m in height.
 - 24) No development shall be occupied until the principal vehicular access to the site from Sandwich Road and has been provided in accordance with the approved plans.
 - 25) No dwelling shall be occupied until details of the emergency access provision onto Mongeham Road have been submitted to and approved in writing by the Local Planning Authority. The approved emergency access provision shall be completed in accordance with the approved details prior to occupation of more than 50% of the dwellings.
 - 26) No dwelling shall be occupied until the car parking and cycle parking for that dwelling have been provided in accordance with the approved plans.
 - 27) No dwelling shall be occupied until (i) footways and/or footpaths between a dwelling and the adopted highway (with the exception of the wearing course) and (ii) carriageways between a dwelling and the adopted highway (with the exception of the wearing course) including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any), have been provided in accordance with the approved plans.
 - 28) Development shall not commence until a 'public rights of way management and improvement scheme', in respect of public rights of way EE389/ED48 and EE390/ED39, has been submitted to and approved in writing by the Local Planning Authority. That 'public rights of way management and improvement scheme' shall relate only to land identified within the approved Land Use Parameter Plan (Drawing Reference 359 P02) and be carried out and completed in accordance with the agreed timetable.
 - 29) Within three months of construction of development above ground level, a Travel Plan to reduce dependency on the private car shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include details of how 13 no. 28-day Megarider bus tickets (or equivalent at the time of occupation) will be provided to each household of the development on first occupation of each dwelling. Thereafter, the provisions of the Travel Plan shall be implemented and adhered to throughout the life of the development, or that of the Travel Plan itself, whichever is the shorter.
 - 30) Development shall be carried out in accordance with details of electric vehicle charging infrastructure (with specific provision for each dwellinghouse) that have been submitted to and approved in writing by the Local Planning Authority before any occupation of development.