



Appeal Decision

Hearing held on 7 and 8 November 2023

Site visit made on 7 November 2023

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2023

Appeal Ref: APP/U2235/W/23/3325102

Little Gaynes, Faversham Road, Lenham, Kent ME17 2PU.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr J Bond against the decision of Maidstone Borough Council.
 - The application Ref 22/504368/FULL, dated 6 September 2022, was refused by notice dated 23 February 2023.
 - The development proposed is for 4 Social Rent Affordable Homes and 16 Open Market Homes, 1 car port, passing points, a re-aligned access, the retention and enhancement of PROW KH438 and the implementation of a 0.51 Hectare public access Natural Landscape Buffer dedicated as a Local Nature Reserve. The scheme includes a Nutrient Offsetting arrangement with Forestry England to counter the issues relating to the Great Stour catchment area.
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Decision

1. The appeal is dismissed.

Application for costs

2. A costs application was made by Maidstone Borough Council against Mr J Bond. This is the subject of a separate decision.

Procedural Matters

3. On 22 November 2023, a number of emails were submitted to The Planning Inspectorate by the main parties in this appeal. The Council's email (Document 13) confirmed that the Council was unwilling to enter into a legal agreement with the Department for Environment, Food and Rural Affairs and the Forestry Commission in respect of a nutrient neutrality credit scheme. In the absence of a completed tripartite legal agreement between the aforementioned parties, I have no choice but to move forward with determining this appeal.
4. A completed legal agreement under Section 106 of the Town and Country Planning Act 1990 was submitted on and dated 22 November 2023. This was a unilateral undertaking dealing with affordable housing, community facilities in the form of on-site open space, and some elements of nutrient neutrality.
5. The emerging Maidstone Local Plan is presently at examination. I understand that consultation on main modifications has taken place, but the Inspector's Report has not yet been issued. I have had regard to the emerging Local Plan throughout this decision, where relevant.
6. I conducted an unaccompanied familiarisation site visit to Lenham and to the site's immediate surroundings on 6 November 2023.

Main Issues

7. The main issues in this appeal are:

- a) Whether the proposed development is in a suitable location, with particular regard to the development plan and national planning policy;
- b) The effect of the proposed development on the character and appearance of the area, including the Kent Downs Area of Outstanding Natural Beauty;
- c) Whether the proposed development would provide safe and suitable access for refuse collection;
- d) Whether the proposed development would make appropriate provision for affordable housing; and
- e) Whether any harm identified, including conflict with the development plan, would be outweighed by other considerations.

Reasons

Location

8. Located north of the A20, the site is some 50 metres outside the defined settlement boundary for the rural service centre of Lenham and lies within the Kent Downs Area of Outstanding Natural Beauty (AONB) and within the countryside. Lenham's village centre is approximately 300 metres away.
9. Policy SS 1 of the Maidstone Borough Local Plan (adopted 25 October 2017) (MBLP) sets out the borough's spatial strategy. In addition to identifying dwelling and employment floorspace figures, criterion 5 of Policy SS 1 identifies rural service centres, including Lenham. These rural service centres are the secondary focus for housing development with the emphasis on maintaining and enhancing their role and the provision of services to meet local community needs. Criterion 9 of the same policy confirms that in other locations outside defined settlements, protection is to be given to the rural character of the borough avoiding coalescence between settlements. The policy's supporting text recognises the importance of rural service centres continuing to serve their local area by retaining vital services thereby reducing the need to travel.
10. Addressing rural service centres, MBLP Policy SP 5 seeks to focus new housing within the designated settlements, whilst also retaining and improving employment sites and opportunities, resisting the loss of local services and facilities and encouraging the provision of new local services and facilities.
11. Dealing with Lenham specifically, MBLP Policy SP 8 allocates housing sites, makes provision for Gypsy and Traveller pitches, maintains employment opportunities, seeks to enhance key infrastructure, and sets out a broad location for approximately 1,000 homes after 2021. MBLP Policy H2(3) also addresses the broad location for housing growth in Lenham and confirms that housing site allocations and associated infrastructure requirements will be set out in the Neighbourhood Plan or the next review of the Local Plan.
12. MBLP Policy SP 17 deals with the countryside and defines the countryside as all those parts of the plan area outside the settlement boundaries of the Maidstone urban area, rural service centres and larger villages defined on the Policies Map. It confirms that development proposals in the countryside will not be

permitted unless they accord with other MBLP policies and they will not result in harm to the area's character and appearance. It also asserts that great weight should be given to the conservation and enhancement of the Kent Downs AONB and that account should be taken of the Kent Downs AONB Management Plan and the Maidstone Borough Landscape Character Guidelines Supplementary Planning Document.

13. The Lenham Neighbourhood Plan 2017 – 2031 (LNP) was made on 14 July 2021. It includes the Lenham Local Policies Map (LLPM) which defines the settlement boundary for Lenham village and includes Strategic Housing Delivery Sites to deliver the housing requirement previously identified within the broad location of Lenham in the MBLP. I recognise that the 1,000 homes have not yet come forward, but they have been allocated within the LNP.
14. The site does not lie within the LLPM settlement boundary or within any of the identified Strategic Housing Delivery Sites. I understand that the site was not taken forward as an allocation in either the LNP or the emerging Local Plan.
15. LNP Policy CP1 confirms that all proposals for new development in the countryside beyond the settlement boundary will be assessed in terms of visual impact, effect on landscape character and heritage assets, effect on biodiversity, capacity of infrastructure and services, and the relationship of the proposed development to the setting and character of the rural hamlets and settlements within the countryside beyond Lenham village.
16. Dealing with quality of design, LNP Policy D1 seeks to ensure that new development contributes to the creation of high quality places. Amongst other things, Policy D1 requires proposals to demonstrate how they respond to the landscape, local and longer views, the environment and historic assets. The policy also asserts that location, design and site layout of new development should have regard to the role Lenham plays within the setting of the AONB and that development should not detract from the AONB's landscape quality and special characteristics. The size and height of proposed new buildings and their screening by trees and other landscaping will be a key consideration.
17. MBLP Policy DM 5 deals with development on brownfield land. It includes two main criteria, the second of which is most relevant and relates back to the sub-criteria of the first criterion. The policy confirms that exceptionally, the residential redevelopment of brownfield sites in the countryside which are not residential gardens, and which are not of high environmental value and are of appropriate density relative to the area's character and appearance, will be permitted provided that the redevelopment will also result in a significant environmental improvement and the site is, or can be made, accessible by sustainable modes to Maidstone, a rural service centre or larger village.
18. It is agreed that the site is not of high environmental value in itself. I will deal with the aspects of MBLP Policies SP 17 and DM 5 pertaining to character and appearance, density, and whether the proposed development would constitute a significant environmental improvement within the character and appearance section of this decision. Within this part of the decision, I address the extent of brownfield land and the extent to which the site is, or can be made accessible by sustainable modes of transport to Lenham and further afield.
19. The supporting text to Policy DM 5 confirms that a number of brownfield sites in current or previous economic use are located in the countryside outside

settlement boundaries, where countryside restraint policies apply. It asserts that exceptionally, the Council will consider proposals for residential development on brownfield sites in rural areas against key considerations, but it also states that residential gardens in urban and rural areas are excluded from the definition of a brownfield site. The glossary of the National Planning Policy Framework (the Framework) does not clarify whether non-urban gardens are brownfield land or not. As the Framework is silent on this matter and the definition of brownfield land has not changed over a number of iterations of the Framework, I see no reason to disagree with the Inspector who examined the MBLP or the Inspector for the Firwood appeal¹ that the supporting text of the MBLP would not be inconsistent with the Framework in this regard.

20. The extent of brownfield land is not agreed. The Council considers that the bungalow, hardstanding, access and some storage buildings fall within brownfield land, while the paddock, residential garden and a large unauthorised building for the storage of roofing materials on the eastern side of the site would not. It was confirmed by the appellant that the large storage building had been erected during the Covid-19 pandemic and that this building was likely to be removed in the near future. The appellant would also include the office building within the garden as brownfield land. Notwithstanding the differences between the parties, it is evident that some of the proposed development, including the provision of housing, would take place on land which would fall outside the definition of brownfield land.
21. Turning to the matter of accessibility by sustainable modes of transport to Lenham, the appellant argues that the site is highly sustainable with a walking distance of only 300 metres to essential services such as shops, public houses, a church, a surgery and community centre in the village centre. Furthermore, Lenham has an hourly bus service between Maidstone and Ashford. Primary and secondary schools are located within the village and there is a railway station with hourly services between Ashford, Maidstone, and London.
22. However, Faversham Road is a 60mph road with little street lighting and limited and inconsistent pavement. Though the road has a 60mph speed limit, average speeds of vehicles entering and leaving Faversham Road are considerably lower as they wait to join the A20 or to manoeuvre around cars parked on the Faversham Road carriageway at Hill Crescent. Faversham Road is used by not only cars, but also heavy goods vehicles and tractors. Lying between the site and the village centre, the A20 is a heavily trafficked, 50mph road with limited lighting close to the Faversham Road junction. Traffic conditions locally are worsened significantly when Operation Brock is in place.
23. Lenham Parish Council has noted that a number of recorded personal injury accidents, including five serious accidents and one fatality, have occurred at the junction of the Faversham Road and A20 over the last ten years. It was also highlighted that further unrecorded near misses regularly take place. The speed limit for this part of the A20 was reduced from 60mph to 50mph in 2019 and changes were made to remove the slip road onto Faversham Road and introduce a pedestrian refuge on the A20. Notwithstanding these changes, the Parish Council considers the junction to be dangerous.
24. While there is a central pedestrian refuge on the A20 west of the Faversham Road junction with dropped kerbing on either side of the road, the pedestrian

¹ APP/U2235/W/22/3305441, decision issued 10 March 2023.

refuge to the east of the same junction is not presently served by dropped kerbing. Although the village's centre is only a short distance away from the site and even with suggested improvements to the footway close to the site at the Faversham Road/A20 junction, the A20 provides a significant barrier to sustainable travel on foot or by bicycle.

25. I experienced the visibility, speed and frequency of vehicles outside rush hour on two occasions during the hearing and when I crossed the A20 to and from the site the day before the hearing. These experiences represent a snapshot in time, but I consider the pedestrian and cyclist experience to be at best poor. It is unlikely that someone with mobility difficulties would be able to cross safely and it would be understandable if parents did not want their children to walk or cycle to school and cross this junction. Despite the site's proximity to services and facilities, it is likely that many journeys made by future residents would involve driving to local services, including journeys to school and the station.
26. The mapping extract from the Kent Historic Landscape Characterisation shows the site forming part of the settlement from around 1800. The A20 was opened in 1927 and has physically and visually separated Hill Crescent, Cross View Cottages, the cemetery and the site from the village since that time. The AONB was designated in 1968 and the site, the cemetery, Hill Crescent and Cross View Cottages were included within the AONB boundary. While the appellant is frustrated about the exclusion of the aforementioned properties from the settlement boundary, the proper place for altering settlement boundaries is during development of a Local Plan or Neighbourhood Plan.
27. I have also been referred to a legal judgment² where the appellant opines that whether a site lies within a village is a matter of planning judgement and not solely determinative on whether it falls within a defined settlement boundary. This legal judgment dealt with what is now paragraph 149 e) of the Framework with regard to Green Belt policy on limited infilling in villages. This appeal does not deal with land within the Green Belt, and the legal judgment is of limited relevance. Even if it was of relevance, I am not convinced that it would constitute limited infilling given its position relative to the pattern of existing development around the Faversham Road junction and its size and scale.
28. The site lies outside the settlement boundary. Though the appellant considers the settlement boundary to be arbitrary, it is reasonable to assume that the settlement boundary was drawn in the way that it was to reflect the strong barrier formed by the A20 and the change in landscape character north of the A20 within the AONB. This would in essence balance the areas considered most suitable for development against the need to protect the environment. As such, it is not possible for me to conclude against this main issue on locational matters without assessing the effect of the proposed development on the area's character and appearance, including the Kent Downs AONB. I will conclude on the locational main issue below.

Character and appearance

29. Located within and on the boundary of the Harrietsham to Lenham Vale Landscape Character Area and East Lenham Vale Landscape Character Area³ and within the Kent Downs Hollingbourne Scarp and Vale Landscape Character

² Julian Wood v SSCLG and Gravesham Borough Council [2015] EWCA Civ 195.

³ As described in the Maidstone Landscape Character Assessment (March 2012, amended 19 July 2013)

Area⁴, the site lies at the base of the escarpment of the North Downs within the Kent Downs AONB and close to the AONB's boundary with the A20. To the west and south-west of the site, terraced and semi-detached two-storey housing at Hill Crescent turns the corner of Faversham Road and the A20, while the terraced two-storey Cross View Cottages are located to the south of the site and the access to Lenham Cemetery. The cemetery is located to the east of the site, with its access track skirting the site's southern boundary.

30. Lying above the sunken lane of Faversham Road on land which slopes upwards to the north, the site comprises a bungalow and its garden and driveway, garages, storage spaces and structures used by a roofing company, and a meadow and paddock area to the site's eastern side. The site is accessed via a private driveway which runs parallel to Faversham Road. The driveway is accessed across the roadway into the cemetery.
31. A public footpath KH438 runs parallel to the site's western boundary, between a domestic brick wall and fencing and hedges and trees to Faversham Road. Other public rights of way (KH288A, KH288B, KH389, KH433) traverse the slope of the escarpment to the east and west of the site. The North Downs Pilgrims Way (KH219) is located over 300m to the north of the site and passes the Grade II listed Lenham Cross war memorial on a partially hedged track. Screened from Faversham Road by vegetation, parts of the northern and southern site boundaries are currently made up of mature, non-native planting. The site's north-eastern boundary is presently more open, with intervisibility with the escarpment of the AONB and the Lenham Cross.
32. The proposed development would remove all existing buildings and structures and would introduce 20 houses with their residential gardens, car parking and access roads, and additional landscaping and planting.
33. The Framework addresses the need to conserve and enhance the natural environment at Chapter 15. Paragraph 174 of the Framework confirms that planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan).
34. Paragraphs 176 and 177 of the Framework address AONBs. Paragraph 176 asserts that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas. The scale and extent of development within AONBs should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas. My attention has also been drawn to a legal judgment⁵ which reasserted the importance of conserving and enhancing an AONB's landscape and scenic beauty. Paragraph 177 of the Framework refers to major development. It has been agreed by the main parties in this instance that the proposed development would not be

⁴ As described in the Kent Downs Landscape Character Assessment Update 2020

⁵ Monkhill Limited v SSHCLG and Waverley Borough Council [2021] EWCA Civ 74

- major development. The Planning Practice Guidance⁶ (PPG) further confirms the need to have regard to the purposes for which the AONB was designated and to take account of management plans for AONBs.
35. MBLP Policy DM 1 and DM 30 address design. Policy DM 1 requires proposals to deliver good design and sets out criteria to address detailed design matters such as landscape character and creating a safe and secure environment. Policy DM 30 deals with design principles in the countryside and includes a range of criteria on design and character. It also states that account should be taken of the Kent Downs AONB Management Plan (2016 – 2026) (the Management Plan) and the Maidstone Borough Landscape Character Guidelines Supplementary Planning Document.
36. The Management Plan sets out the aims, policies and actions for the AONB's conservation, enhancement and management. Principle SD1 of the Management Plan seeks to ensure that policies, plans, projects and net gain investments affecting the AONB take a landscape led approach, are long term, framed by the Sustainable Development Goals appropriate to the Kent Downs, cross cutting and recurrent themes, the vision, aims and principles of the Management Plan. Principle SD2 of the Management Plan looks to conserve and enhance the AONB's local character, qualities, distinctiveness and natural resources in the design, scale, siting, landscaping and materials of new development, redevelopment and infrastructure. Principle SD9 states that the particular historic and locally distinctive character of rural settlements and buildings of the AONB will be maintained and strengthened and new developments will be expected to apply appropriate design guidance and to be complementary to local character in form, siting, scale, contribution to settlement pattern and choice of materials.
37. The Management Plan identifies the long arc of the North Downs chalk ridge as being the AONB's most dominant element, consisting of the steep, south-facing scarp slope rising above the Gault clay vale below. It confirms that spectacular views are offered along the chalk escarpment across the Vale of Holmesdale. Indeed, the scarp along with the dramatic views it affords was a key target for the original designation of the Kent Downs AONB. Given the prominence of the scarp landform, it is particularly sensitive to development.
38. Key characteristics identified for the Kent Downs Hollingbourne Scarp and Vale Landscape Character Area include the steep south facing scarp with the low lying vale to the south, a field pattern of large regular fields at the base of the scarp and smaller, less regular field patterns around villages, with historic lanes and tracks across the vale and crossing the scarp. Scarp woodlands lie on the upper slopes rather than within the lower fields, which are mostly in arable use.
39. In addition, the Harrietsham to Lenham Vale Landscape Character Area is defined by a number of key characteristics, including topography sloping upwards to the north across the foothills and lower slopes of the North Downs; a mosaic of mixed farmland divided by non rectilinear hedgerow boundaries; series of drains running south, often defined by ribbons of native vegetation; blocks of native woodland; and large scale industrial and commercial

⁶ Paragraph 8-039-20190721: What are the statutory duties of local planning authorities in relation to National Parks, the Broads and Areas of Outstanding Natural Beauty?; and Paragraph 8-040-20190721: Do planning policies and decisions need to take account of management plans for National Parks, the Broads and Areas of Outstanding Natural Beauty?

- development. The East Lenham Vale Landscape Character Area also includes medium to large sized fields of arable and pasture, and field boundaries and roads run against and along the contours.
40. The Guidelines for the Harrietsham to Lenham Vale Landscape Character Area is to conserve and restore this landscape of recognised high sensitivity and visibility, while the advice is to conserve the East Lenham Vale Landscape Character Area. Further development along the A20 corridor is to be resisted, while it is also necessary to conserve the undeveloped foreground and rural setting of the AONB. For East Lenham Vale, there is also recognition of the need to conserve the defined boundary between Lenham's compact settlement and the surrounding rural area.
 41. Many of the existing buildings on the site are relatively low in scale and are concentrated on the site's western side, in keeping with the ribbon development along the junction of Faversham Road. In contrast, the proposed development would have far greater site coverage and density, including residential development on existing paddock and garden land on the eastern side of the site. This would reduce the extent of existing neutral grassland within the site. In volume and bulk, the proposed development would also be considerably larger than the existing development.
 42. When viewed from the A20 junction and Faversham Road itself, the proposed development would be elevated above the sunken lane and the roofscape and some of the buildings would be visible through the planted boundary treatments, particularly in Winter. This would be more visually obtrusive than the existing development, particularly from the adjoining footpath KH438. This would alter the rural character of Faversham Road within the AONB.
 43. Even though the proposed development would introduce landscaping to the site's boundaries and at its northern end surrounding the housing at plots 19 and 20, the proposed development would extend considerably beyond the footprint of the existing buildings and structures. The proposal would undermine the characteristically rural, open, green and undeveloped nature of the site and permanently change it from the presently relatively unobtrusive housing and other buildings and structures associated with the roofing company to a housing estate. This would reduce the rural nature of the site and result in the direct loss of undeveloped land on the escarpment of the AONB. This would visually encroach on the tranquillity of the cemetery and on the AONB itself.
 44. Though it is possible to see the site from higher up the slope within the AONB, it is presently not particularly visible in localised views or from the wider landscape due to the height, scale and position of buildings, the existing coniferous hedging and other boundary treatments. During the site visit, the presence of a white caravan on site helped highlight the site's location.
 45. However, given its position above Faversham Road and its location on the slope adjacent to arable fields and the cemetery, the proposed development would be visible from public footpaths in the AONB to the north-west, north, and north-east due to the increased site coverage by buildings and changes to tree planting. This would be very noticeable in views from public footpaths KH219, KH288A, KH288B, KH389, and KH433 as illustrated in the appellant's Landscape and Visual Impact Assessment. Many of the views from footpaths would experience a greater magnitude of effect than the appellant's LVIA

indicates either at year 1 post-construction or at year 15 post-construction. Furthermore, the significant change within the site as a result of the proposed development would be evident from localised views within the cemetery.

46. New, deciduous native tree planting would form part of the proposed development. While the introduction of native screening would represent an environmental improvement over some of the existing boundary treatments which comprise coniferous, non-native trees, the extent of the proposed development and its effect on the AONB would not be satisfactorily mitigated by proposed tree planting. Not only would there be lesser mitigation in the early years of implementation, but the trees would lose their leaves for some months of the year, reducing their positive effect. Notwithstanding the effects of screening, harm would remain due to the site coverage and bulk of the proposed development.
47. Turning to detailed design and appearance, the design approach is to create a Kent farmstead with a large farmhouse (plot 8) located close to the entrance to the site from Faversham Road, buildings taking the form of terraced and semi-detached farmworkers' cottages (plots 1 – 7, 17 and 18), converted workshops (plots 9 – 12), a hay barn (plots 13 – 16) or a threshing barn (plots 19 – 20).
48. The hay barn, the threshing barn and the workshops would all be of considerable bulk and scale. Their significant ground to eaves height and substantial roof forms paired with their large footprints would appear excessively large within the site. In the case of the barns, their consistent patterns of fenestration would be overly regimented for the building typology.
49. While the farmhouse and the cottages would be of a more appropriate design for their respective building typologies, the proposed roofscape of the cottages would be extensive. Together, plots 1 - 8 would have a bulky and dominant appearance in views of the Faversham Road frontage from higher points along the public footpaths to the north-east. Though tree planting is proposed to enhance existing planting, it is likely that the extensive roofscape would remain visible from the AONB, particularly when the trees are not in leaf.
50. The proposed parking and access would dominate the centre of the site, with formal parking bays serving the plots. The proposed layout would give rise to extensive areas of hardstanding with poor juxtaposition of front and rear gardens serving different plots. The communal parking court for plots 9 – 12 would have a particularly poor relationship with the plots it would serve, while the parking for plots 1 – 8 would be located at the ends of rear gardens and the fronts of these plots would be served by separate footpaths some distance from the parking. The parking layout for all these plots would result in poor passive surveillance, a matter which is symptomatic of poor design. Even if the fencing of rear gardens was low post and rail fencing and hedging, it would be difficult to prevent further fencing being installed for privacy. This would result in the proposed development having a more suburban appearance.
51. In addition to the extent of hardstanding, the Council has also commented on the likely external lighting, the engineering alterations to the access, and the character of the layout resulting in an urban form of development. While I concur with the Council's concerns about the rural nature of the site, I recognise that lighting could be addressed by means of condition to mitigate risks of light pollution within this intrinsically dark landscape in the AONB.

52. The appellant has provided officer reports for planning permissions 20/501240/FULL at Gibbs Hill Farm, Headcorn and 20/505350/FULL at Warmlake Nursery, Sutton Valence. Although these permissions relating to new dwellings lie within the countryside, it is evident that both are outside the AONB and are not within a highly sensitive landscape. As such, they are not directly equivalent to the appeal before me. With regard to the appeal decision⁷ at Ham Lane, this site is not within the AONB and again is not directly comparable to this appeal. The appellant also refers to MA/17/500357 Land to North of Old Ashford Road where 150 new homes were permitted. While I appreciate that this site lies outside but within the setting of the AONB and does not appear to have significant landscaped buffers to the A20, this does not indicate that I should allow harm to occur at the site. While the Heathlands Garden Village masterplan, Land South of Sutton Road (18/505429/REM), and other housing sites in Lenham have also been referred to, the scale and form of development proposed in this instance is not comparable.
53. In conclusion, the proposed development would significantly harm the character and appearance of the area, including the Kent Downs AONB. Accordingly, it would conflict with MBLP Policies SP 17, DM 1 and DM 30, LNP Policies CP1 and D1, and SD1, SD2 and SD9 of the Kent Downs AONB Management Plan and paragraph 176 of the Framework as set out above. I understand that Policy SP9 in the emerging Local Plan has been amended through the main modifications to make reference to significant harm rather than harm referenced in MBLP Policy SP 17. However, given the level of harm I have found, there would also be conflict with this emerging policy.
54. Having found harm in relation to the effect of the proposed development on the character and appearance of the area, including the Kent Downs AONB, I will now conclude in relation to the locational main issue. I conclude that the proposed development would not be in a suitable location, with particular regard to the development plan and national planning policy. As such, it would be contrary to MBLP Policies SS 1, SP 17 and DM 5 and LNP Policies CP1 and D1 as set out above.

Access for refuse collection

55. The site is accessed from Faversham Road, a two-way minor road which is bounded by hedges and trees beyond Hill Crescent on the road's western side and along the boundary of the site on the eastern side of the road. The land levels change along the road with the land rising up away from the A20. The existing site access runs parallel to the Faversham Road boundary and crosses the vehicular access to the cemetery, adjoining a parking space outside neighbouring Cross View Cottages. The proposed vehicular access would be aligned to emerge onto Faversham Road parallel to the cemetery access.
56. The Council has raised concerns that the proposed access arrangement would not allow refuse freighters to access the site on land only in the ownership of the appellant or the adopted highway and that one of the visibility splays would cross land outside the appellant's control outside the cemetery and at Cross View Cottages. Though I have been provided with a Highway Definitions Plan by the appellant, it remains unclear whether the manoeuvring of large vehicles such as refuse freighters would occur fully on land in the ownership of the appellant or the adopted highway.

⁷ APP/U2235/W/15/3131945, decision issued 24 June 2016.

57. I saw at my site visits that cars and vans were parked on the carriageway of Faversham Road outside 10 and 11 Hill Crescent opposite the site. Unlike neighbouring houses, these properties do not have off-street parking. It was evident from the site visit that, dependent on the direction of travel, large vehicles such as refuse freighters would be likely to experience difficulty in entering or leaving the site due to the presence of parked vehicles on the road.
58. Reference has been made by the Council to a negatively-worded condition that would prohibit development from taking place until a Stage 2 road safety audit had been carried out and its recommendations had been implemented. However, the findings and recommendations of the Stage 2 road safety audit are unknown. Indeed, it may advise the introduction of new carriageway markings such as double yellow lines opposite the proposed access, requiring consultation as part of a Traffic Regulation Order. Given that the outcome of the proposed Grampian condition is unknown, I consider it would not be reasonable to impose such a condition in this instance.
59. I conclude that it has not been satisfactorily demonstrated that the proposed development would provide safe and suitable access for refuse collection. Consequently, it would be contrary to MBLP Policy DM 1, which amongst other things, requires that a proposal can safely accommodate the vehicular and pedestrian movement generated by the proposal on the local highway network and through the site access. Additionally, there would be conflict with paragraph 110 of the Framework which requires that safe and suitable access to the site can be achieved for all users.

Affordable housing

60. MBLP Policy SS 1 deals with the spatial strategy and seeks provision of 17,660 new dwellings between 2011 and 2031. The supporting text to the policy confirms that of paramount importance is the evidence that determines the borough's objectively assessed needs for housing, including affordable housing. MBLP Policy ID 1 on infrastructure delivery sets out infrastructure priorities for residential development and makes affordable housing the top priority. It generally seeks to deliver infrastructure on-site, but recognises that it may be necessary to deliver off-site provision or via in-lieu financial contributions.
61. MBLP Policy SP 20 addresses affordable housing. On housing sites providing more than 11 units, this policy sets target rates of 40% affordable housing within the countryside, rural service centres and larger villages. Within that 40% target, it envisages a tenure split of 70% affordable rented housing, social rented housing or a mixture of the two; and 30% intermediate affordable housing (shared ownership and/or intermediate rent). The policy also confirms at criterion 6 that where it can be demonstrated that the affordable housing targets cannot be achieved due to economic viability, the tenure and mix of affordable housing should be examined prior to any variation in the proportion of affordable housing. This policy also refers to the Council's Affordable and Local Needs Housing Supplementary Planning Document (ALNHSPD), which it confirms will contain further detail on how the policy will be implemented. The ALNHSPD was adopted in July 2020.
62. The MBLP policies predate the Government's introduction of First Homes. The PPG⁸ confirms that First Homes are the Government's preferred discounted

⁸ Paragraph 70-001-20210524: First Homes definition and eligibility requirements What is a First Home?

- market tenure and should account for at least 25% of all affordable housing units delivered by developers through planning obligations.
63. The appellant has presented two options in respect of affordable housing. The first option would provide four affordable homes only. The first option would comprise some 20% of the housing within the proposed development and would represent only half of the 40% expectation for affordable housing (eight units) set out in MBLP Policy SP 20. It would not provide any First Homes, but the unilateral undertaking refers to the four homes being social rent, local need, affordable rent or shared ownership.
64. It is evident that the appellant has had discussions with the Council's Housing Delivery team within Regeneration and Economic Development in order to assist in the Council's aim to develop its own social rented portfolio. It was established through these discussions that the Council could only pay approximately 50% of the monies for eight homes that one would expect from a traditional housing association. This resulted in an agreement dated 12 November 2020 with the Housing Delivery team that the Council would purchase four homes for use as social rented properties.
65. The ALNHSPD at paragraph 15.3 confirms that the Council only expects a viability assessment to be submitted for a Policy SP 20 site in unusual circumstances. In such circumstances, the onus is on the developer to demonstrate why in their case the site-specific circumstances mean the MBLP policy is not viable, together with clear bespoke evidence. No such viability evidence or site-specific circumstances have been provided.
66. Despite the appellant's attempts to manipulate the tenure mix of the four affordable homes, the first option would not make appropriate provision for affordable housing.
67. The second option would provide eight affordable homes, comprising two First Homes, four affordable rent homes, and two social rent homes. While the second option would seek to make provision for First Homes, I am perturbed by the quality and extent of the unilateral undertaking in this regard, with particular reference to the absence of mention that the first sale must be at a price no higher than £250,000 and that the person the house is sold to must meet the First Homes eligibility criteria⁹. I am therefore not convinced that the First Homes element of the second option would be properly secured.
68. Paragraph 8.3 of the ALNHSPD outlines that the Council's preference is for social rent and this will be the initial assumed tenure for rented units. However, the Council accepts that the delivery of social rent has been difficult and that the most common rented tenure delivered is affordable rent. The Council notes that viability work supporting the MBLP assumed a tenure split of 70% affordable rent/30% intermediate and did not include social rent. Paragraph 8.13 of the ALNHSPD states that where a developer can demonstrate that the affordable housing targets in policy are not economically viable, the Council will be flexible regarding the tenure split and/or total percentage of affordable housing if this results in the provision of social rent on site.
69. There remains some difference between the main parties on the appropriate mix of affordable homes within the second option as the Council has confirmed

⁹ Paragraph 70-002-20210524: First Homes qualifying criteria What are the First Homes criteria?

that social rent would represent the most appropriate rent tenure to best meet local housing needs. Though the second option would provide some social rented units, it appears that limited negotiation on tenure has taken place and no demonstration of viability or lack thereof has been made by the appellant. Additionally, the unilateral undertaking has been signed and completed and I am therefore not in a position to consider further alternatives.

70. Notwithstanding the policy-compliant number of affordable homes within the second option, when taking the issue of First Homes and the tenure mix into account, I find that the second option would not make appropriate provision for affordable housing.
71. In conclusion, the proposed development would not make appropriate provision for affordable housing. This would conflict with MBLP Policies SS 1, SP 20, and ID 1, the ALNHSPD and the PPG as set out above.

Other considerations

72. Paragraph 11 of the Framework sets out a presumption in favour of sustainable development and confirms that for decision-taking this means approving development proposals that accord with an up-to-date development plan without delay; or where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless one of two criteria apply. The first criterion relates to the application of Framework policies that protect areas or assets of particular importance and whether they provide a clear reason for refusing the development proposed, while the second criterion refers to whether any adverse impacts of approving development proposals would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
73. In relation to out-of-date policies, footnote 8 of the Framework clarifies that this includes, 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 of the Framework).
74. There is dispute as to whether the Council can demonstrate a five year supply of deliverable housing sites. The MBLP is over five years old and the emerging Local Plan has not yet been adopted. It has not been evidenced by the appellant that the most important policies within the MBLP in respect of this appeal are out-of-date in terms of their content.
75. In preparing for the hearing, the main parties provided a number of different supply calculations. The latest supply figures for both the main parties were submitted only a few days before the hearing took place. As the PPG¹⁰ advises that for decision-taking, the latest available evidence should be used, I allowed the submission of both main parties' figures. The Council's position is that it has a 6.0 year supply, while the appellant considers the supply to be either 4.86 years or 5.12 years, depending on the extent of the buffer.
76. The remaining matters of dispute between the main parties on housing land supply are based on the proposed stepped trajectory for the emerging Local

¹⁰ Paragraph 68-004-20190722: How can an authority demonstrate a 5 year supply of deliverable housing sites?

Plan and on whether the Council should be using a 5% or 10% buffer. No sites are in dispute and no specific sites were discussed at the hearing.

77. The Council's latest figures published on 1 November 2023¹¹ provide the Council's five year housing land supply as of 1 April 2023. The figures are based on a starting point of 1,157 dwellings per annum. This figure has been generated using the standard method, including the affordability ratio for 2020. It has been agreed by the Inspector examining the emerging Local Plan that it is appropriate to use that affordability ratio given the timing of the updated affordability ratios some eight days prior to the submission of the emerging Local Plan for examination. The Inspector examining the emerging Local Plan has also put forward a stepped trajectory which has been the subject of Main Modifications consultation¹². This stepped trajectory is used in the Council's latest figures and involves an annual requirement of 1,000 dwellings per annum from 2023/24 to 2027/28.
78. Following the publication of the Council's latest figures, the appellant provided their own updated supply positions on 3 November 2023. The appellant disagrees with the use of the 1,000 dwellings per annum figure and considers that the standard method figure of 1,157 dwellings per annum should be used instead as the emerging Local Plan has not yet been adopted.
79. With regard to the buffer, the appellant has referred to paragraph 74 of the Framework, which sets out three buffers. Of these three buffers, only the two lower buffers are contended and the highest 20% buffer is not. Within this paragraph, the two relevant buffers are the 5% buffer which is applied to ensure choice and competition in the market, and the 10% buffer which is applied where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for fluctuations in the market during that year.
80. The PPG¹³ sets out further information on how a five year housing land supply can be confirmed as part of the examination of plan policies. This involves the application of a minimum 10% buffer. It generally involves the Council making clear through the plan-making process that they wish to confirm their five year supply through the adoption of the plan. Following adoption of a Local Plan, the Council may then wish to submit an annual position statement to the Planning Inspectorate for consideration. This is separate from the examination process.
81. The Council has stated that it is not seeking to confirm its five year supply through plan-making and it has not and does not intend to submit an annual position statement. As such, I see no reason to apply the 10% buffer.
82. With the 5% buffer in play, the difference between the main parties is reduced to a 0.88 year gap in five year supply. However, taking either party's figure of 5.12 or 6.0, the Council would have a five year supply. Accordingly, it is not necessary for me to apply paragraph 11 d) of the Framework.
83. In terms of further other considerations, the suggested footway works which could be secured by means of condition would represent a minor benefit. In respect of the proposed landscaping of part of the site and provision of a semi-

¹¹ Annual Housing Delivery Update 2023 and 5-year supply table.

¹² Consultation took place from 29 September to 13 November 2023.

¹³ Paragraph 68-010-20190722: How can a 5 year housing land supply be confirmed as part of the examination of plan policies?

natural open space with scope for play equipment for young children, this would in my view be of limited attractiveness for use by the wider community. This is due in the main to the difficulty that people would face in reaching the site on foot. As such, I give this benefit moderate weight. Biodiversity net gain across the site would also have moderate weight.

Other Matters

84. The Stodmarsh Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site is located some 20km from the proposed development. Stodmarsh SAC, SPA and Ramsar site is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) and has been designated to protect populations of wetland invertebrate species, nationally rare and scarce plants, and to safeguard overwintering and breeding populations of various avian species associated with marshland habitats.
85. Situated within the Upper Great Stour sub-catchment and upstream of the Stodmarsh SAC, SPA and Ramsar site, the proposed development comprises new residential development with additional occupiers and therefore additional nutrient load from the increase in wastewater, surface water, and/or the change in the land use of the development land.
86. The Habitats Regulations require that a competent authority makes an Appropriate Assessment of the implications of the plan or project on the integrity of the sites in view of their conservation objectives. Given my findings on the main issues in this appeal, I have not carried out an Appropriate Assessment and reached any findings in this decision on the measures put forward by the appellant to address the implications of the proposed development as the proposed development is unacceptable for other reasons.
87. Numerous concerns have been raised by local residents with regard to the effect of the proposed development on the locality. I have not addressed these matters in further detail as I am dismissing the appeal for other reasons.

Planning balance

88. For this appeal, significant harm would arise in respect of the effect of the proposed development on the character and appearance of the area, including the Kent Downs AONB. The proposed development would not be in a suitable location. Furthermore, it has not been demonstrated that it would provide safe and suitable access for refuse collection, or make appropriate provision for affordable housing.
89. I have found that the Council has a five year housing land supply and that it is not necessary to apply paragraph 11 d) of the Framework. Nevertheless, the provision of 20 houses would represent a moderate benefit. The other considerations regarding footway works, provision of semi-natural open space, and biodiversity net gain together carry no more than moderate weight. These benefits as a whole would be insufficient to outweigh the harms identified.
90. Despite the proposed development's merits, these do not clearly outweigh the conflict with the development plan and national policy in the Framework with regard to the totality of harm. In conclusion, the proposal would conflict with MBLP Policies SS 1, SP 17, SP 20, ID 1, DM 1, DM 5, and DM 30, LNP Policies CP1 and D1, SD1, SD2 and SD9 of the Kent Downs AONB Management Plan,

the ALNHSPD, the PPG, and paragraphs 110 and 176 of the Framework as set out above. As such, the appeal fails.

Conclusion

91. For the reasons set out above, the appeal is dismissed.

Joanna Gilbert

INSPECTOR

Appearances

For the appellant:

Guy Osborne	Country House Homes
Theo Osborne	Country House Homes
David Parfitt MA MSc CMLI	Landscape Architect
Roland Cooper	Considine

For the Council:

Marion Geary	Principal Planning Officer, Maidstone Borough Council
Katie Miller MRTPI	Planning Manager, Kent Downs Area of Outstanding Natural Beauty Unit

Interested parties:

Sandra Eaves	Local resident
Kim Hobbs	Local resident
Deborah Kapaj	Local resident
Paul McCreery FRTPI	Lenham Parish Council
Graham Milborrow	Local resident
Robert Nash	Local resident
Janetta Sams	Councillor

Documents provided during and after the hearing:

- Document 1: CIRIA C808 Using SuDs to reduce phosphorus in surface water runoff, 2022
- Document 2: Landscape Institute Technical Guidance Note 1/20 Reviewing Landscape and Visual Impact Assessments (LVIAs) and Landscape and Visual Appraisals (LVAs), 10 January 2020
- Document 3: Natural England, Lowland mixed deciduous woodland (undated)
- Document 4: Credit Purchase Agreement between Forestry Commission and Country House Homes Limited dated 30 June 2023
- Document 5: Highway Definitions Plan dated 6 February 2023
- Document 6: Appellant's Response to the Council's Cost Claim
- Document 7: Council's Final Comments on Costs
- Document 8: Email from Council dated 16 November 2023 enclosing further information on costs and conditions
- Document 9: Schedule of Amended Conditions
- Document 10: Email from Kent County Council Highways, Transportation and Waste dated 16 November 2023
- Document 11: 500/JB/035 Proposed Offsite Pavement Extension dated November 2023
- Document 12: Email sent by Guy Osborne and received by The Planning Inspectorate on 22 November 2023 at 16.12 with regard to the legal agreements
- Document 13: Email sent by Marion Geary and received by The Planning Inspectorate on 22 November 2023 at 16.41 with regard to the legal agreements
- Document 14: Email sent by Theo Osborne and received by The Planning Inspectorate on 22 November 2023 at 16.52 with an enclosure of Part 1 of a S106 unilateral undertaking
- Document 15: Email sent by Theo Osborne and received by The Planning Inspectorate on 22 November 2023 at 16.53 with an enclosure of Part 2 of a S106 unilateral undertaking
- Document 16: Email sent by Theo Osborne and received by The Planning Inspectorate on 22 November 2023 at 16.54 with an enclosure of Part 3 of a S106 unilateral undertaking
- Document 17: Email sent by Guy Osborne and received by The Planning Inspectorate on 22 November 2023 at 16.57 regarding the intention to seek Judicial Review



Costs Decision

Hearing held on 7 and 8 November 2023

Site visit made on 7 November 2023

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2023

Costs application in relation to Appeal Ref: APP/U2235/W/23/3325102 Little Gaynes, Faversham Road, Lenham, Kent ME17 2PU.

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Maidstone Borough Council for a partial award of costs against Mr J Bond.
- The appeal was against the refusal of planning permission for 4 Social Rent Affordable Homes and 16 Open Market Homes, 1 car port, passing points, a re-aligned access, the retention and enhancement of PROW KH438 and the implementation of a 0.51 Hectare public access Natural Landscape Buffer dedicated as a Local Nature Reserve. The scheme includes a Nutrient Offsetting arrangement with Forestry England to counter the issues relating to the Great Stour catchment area.

Decision

1. The application for a partial award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive. The applicant considers that the appellant has behaved unreasonably both procedurally and substantively and that a partial award of costs is warranted. Lenham Parish Council, while not making their own application for costs, supports the applicant's claim. I shall address procedural matters first, before turning to substantive matters.
3. The applicant submits that the appellant has behaved unreasonably on a procedural basis with regard to nutrient neutrality and housing land supply.
4. The appellant's Nutrient Assessment 3135/P03 dated 29 September 2022 referred to a water usage rate of 94 litres per person per day (lpppd). Prior to the applicant reaching their decision on 23 February 2023, the appellant produced a further Nutrient Assessment 3135/P05 dated 21 February 2023. This second Nutrient Assessment considers a water usage rate of 120lpppd. This would comprise a standard water usage rate of 110lpppd with an additional 10lpppd contingency. It was accompanied by an email from the appellant to the applicant on the same day which did not seek a lower water usage rate. However, the appellant's statement of case continued to argue for a lower water usage rate of 94lpppd. Furthermore, at the point that the main

- parties submitted their Statement of Common Ground on nutrient neutrality on 30 October 2023, the main parties were still expressing differences in relation to water usage rates, even though the appellant acknowledged at the hearing that the nutrient budget calculator had factored in 120lpppd.
5. The appellant acknowledges that a typographic error was made in relation to whether the phosphorus load was increased or decreased. While the appellant referred to securing additional phosphorus and nitrogen credits, these did not materialise. Instead, the appellant's arguments at the hearing centred on lowering water usage rates below the lowest rate applied via Building Regulations and on management of phosphorus through sustainable drainage in addition to committing to some phosphorus and nitrogen credits via a legal agreement.
 6. It is unfortunate that the applicant suggested that a legal agreement was the most appropriate way to confirm the water usage rate only at the hearing. Since the hearing, the appellant has provided a completed unilateral undertaking which confirms that the development would be constructed to adhere to the water usage rate of 120lpppd in the second Nutrient Assessment.
 7. However, given that the appellant's technical evidence within the second Nutrient Assessment was at the time of the appeal based on the 120lpppd, it was unreasonable of the appellant to continue to make the lower water usage argument prior to and during the hearing. This resulted in wasted expense for the applicant in respect of undertaking further work on lower water usage in producing their statement of case, the Statement of Common Ground on nutrient neutrality, and preparing for and participating in the hearing in relation to this element of nutrient neutrality.
 8. Turning to housing land supply, the appellant provided detailed submissions within their statement of case on the applicant's five year housing land supply, though the appellant did not clearly evidence that adopted policies within the Maidstone Borough Local Plan 2017 did not carry full weight. These detailed submissions were followed by further work on housing land supply at my request as part of a Statement of Common Ground on this topic. It was disappointing that I had to request a further Statement of Common Ground at a relatively late stage in the appeal process, but this occurred as the main parties had failed to work together effectively to set out the specific, remaining areas of dispute in respect of housing land supply.
 9. Following the submission of the Statement of Common Ground on housing land supply, the applicant published an updated five year housing land supply position¹ on 1 November 2023. Having received the applicant's update, the appellant provided their own latest position on housing land supply on 3 November 2023. It was at this point where the appellant confirmed their wish not to spend a great deal of time on housing land supply at the hearing.
 10. Although the Firwood appeal² is recent, involved cross-examination, and was not legally challenged, it was not unreasonable for the appellant to disagree with that decision as set out in their statement of case. The applicant may disagree with the appellant's contentions in this regard, but disagreement does not render the appellant's viewpoint automatically unreasonable.

¹ Annual Housing Delivery Update 2023 and 5-year supply table.

² APP/U2235/W/22/3305441, decision issued 10 March 2023.

11. I consider the Council presently has a five year housing land supply. However, this view is based on the evidence provided by both main parties in early November 2023. It is clear from the numerous different housing land supply figures within the evidence that circumstances have evolved. This is not unusual. It was frustrating, but not unreasonable for the appellant to mention on 3 November 2023 that the matter of housing land supply was no longer as significant as it originally appeared to be. Accordingly, the time expended by the applicant on housing land supply was neither unnecessary nor wasted.
12. With regard to the applicant's substantive grounds for costs, these pertain to the appellant's affordable housing position and that the applicant considers that the proposed development had no reasonable chance of succeeding, as the proposed development is clearly not in accordance with the Development Plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise.
13. The applicant considers that the proposed development is contrary to Maidstone Borough Local Plan 2017 (MBLP) Policy SP 17 and to national and local policies which aim to protect rural character and appearance and require conservation and enhancement of the Kent Downs Area of Outstanding Natural Beauty in which the site lies. Further to this, the applicant considers that the appellant placed unreasonable reliance and weight on pre-application advice which was not wholly positive. Notwithstanding my appeal decision which finds that the proposed development conflicts with relevant local and national planning policies and that there are no material considerations which indicate planning permission should be granted, it was not unreasonable for the appellant to submit an appeal as their interpretation of the situation was plainly different on matters which are to some extent subjective.
14. With regard to affordable housing, the applicant contends that the appellant has failed to apply national planning policy and has also inaccurately applied local policy. Despite the applicant's officer report and decision notice referring to concerns about the policy requirements of MBLP Policy SP 20, the number of affordable homes offered and the tenure mix of those homes, including national policy on First Homes, the appellant did not address these matters in their statement of case or in the main Statement of Common Ground. It was not reasonable to remain largely silent on these issues. Indeed, it was not until the submission of the Statement of Common Ground on affordable housing on 30 October 2023 that it became clear that the appellant was willing to offer eight affordable homes rather than the four affordable homes within the description of development, with scope for First Homes within that offer.
15. The appellant did interact with Maidstone Borough Council's Housing Delivery Team, but it appears that the appellant did not communicate with the appropriate part of the Council. The National Planning Policy Framework has contained expectations of at least 10% of homes being for affordable home ownership since 2018. Furthermore, not only was the PPG altered following the publication of the First Homes Written Ministerial Statement on 24 May 2021 to include considerable information on First Homes, but it was also made clear in the officer report in February 2023 that no information on First Homes had been submitted as part of the application and that insufficient information had been submitted to the applicant to allow for viability review processes to be carried out on affordable housing numbers and tenure mix.

16. It is set out in MBLP Policy SP 20 that where it can be demonstrated that the affordable housing targets cannot be achieved due to economic viability, the tenure and mix of affordable housing should be examined prior to any variation in the proportion of affordable housing. The Affordable and Local Needs Housing Supplementary Planning Document (July 2020) (ALNHSPD) contains further detail on how MBLP Policy SP 20 should be implemented. Chapter 15 of the ALNHSPD provides detail on how viability issues will be addressed.
17. In failing to address the local and national policy context in place, the appellant was negligent. This represents unreasonable behaviour and has given rise to wasted time and expense in the appeal process as the applicant had to continue to address points of local and national policy on affordable housing which were extant and applicable, but which the appellant appeared unwilling to engage with.
18. While the appellant's starting point for discussion with the Housing Delivery Team appears to have been policy compliant in terms of the number of affordable housing units only, the culmination of those discussions placed only one offer on the table. That offer was for four affordable housing units, all of which would be for social rent. In moving the goalposts at a very late stage in appeal proceedings to introduce an alternative of eight affordable housing units and to discuss tenure alternatives on the second day of the hearing, the appellant fundamentally altered their case. This was unreasonable and led to wasted time and expense for the applicant in preparing the Statement of Common Ground on affordable housing, and in preparing for and participating in the hearing with regard to affordable housing.
19. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of lower water usage and affordable housing and a partial award of costs is therefore warranted in respect of lower water usage in producing the Statement of Common Ground on nutrient neutrality, preparing for and participating in the hearing in relation to this element of nutrient neutrality, and with regard to the work undertaken by the applicant on affordable housing as part of the appeal process.

Costs Order

20. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr J Bond shall pay to Maidstone Borough Council, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of lower water usage and affordable housing as set out above; such costs to be assessed in the Senior Courts Costs Office if not agreed.
21. The applicant is now invited to submit to Mr J Bond, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Joanna Gilbert

INSPECTOR