



Appeal Decision

Site visit made on 21 November 2023

by **L Wilson BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th January 2024

Appeal Ref: APP/R1038/W/23/3322479

Land to the North and North West of The Homestead, Dark Lane, Calow, S44 5AD

Grid Reference Easting 440831, Grid Reference Northing 370808

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr S Jones, Stancliffe Homes Ltd, against the decision of North East Derbyshire District Council.
 - The application Ref 21/00987/OL, dated 5 August 2021, was refused by notice dated 19 January 2023.
 - The development was originally described as outline planning for up to 65 dwellings with all matters reserved except for means of access.
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Decision

1. The appeal is allowed and planning permission is granted for an outline application for up to 36 dwellings with all matters reserved except for means of access at Land to the North and North West of The Homestead, Dark Lane, Calow S44 5AD (Grid Reference Easting 440831, Grid Reference Northing 370808) in accordance with the terms of the application Ref 21/00987/OL, dated 5 August 2021, subject to the attached schedule of conditions.

Preliminary Matters

2. The description of development in the heading above is taken from the planning application form. During the planning application process the scheme was amended from a market housing scheme to a 100% affordable housing scheme. In addition, the quantum of development originally proposed has been reduced from 65 to 36 dwellings. The Council dealt with the proposal on this basis and so shall I.
3. The main parties were given the opportunity to comment on the description of development in the formal decision above which has been amended from that provided on the application form and decision notice. This is to ensure that it is accurate, precise, and removes words which are not acts of development. The main parties confirmed that they agreed to the altered description of development.
4. I have taken the appeal site address in the heading and formal decision above from the Council's decision notice, and added the grid references from the application form, as this is a more accurate reflection of the site location.
5. Since the appeal was submitted, a revised version of the National Planning Policy Framework (the Framework) has been published. The main parties were given the opportunity to comment on any relevant implications for the appeal. The main parties were also given the opportunity to comment on the schedule

of conditions. In reaching my Decision, I have taken into account the comments raised in relation to these matters.

6. This is an outline application with means of access to be considered. Appearance, landscaping, layout and scale are reserved matters for future approval. I will proceed on the basis that details shown on the submitted drawings in respect of matters that are reserved for future approval are for illustrative purposes, except insofar as the Concept Masterplan confirms the extent of built development¹.

Main Issue

7. The main issue is the effect of the development on the character and appearance of the landscape and countryside, having regard to development plan policies.

Reasons

8. The appeal site is located outside the Settlement Development Limits (SDL) of Calow and therefore is in the open countryside. Policy SS9 of the North East Derbyshire Local Plan 2014-2034 (2021) (LP) seeks generally to direct development to sites within the SDL and to protect the countryside from unacceptable development. It sets out limited categories of development that could be acceptable in countryside locations outside of the SDL. The proposed development would not fall into any of these categories.
9. However, Policy LC3 of the LP allows exception sites for affordable housing to come forward in countryside locations where proposals comply with the criteria set out in the policy. The reason for refusal primarily relates to criterion d) of this policy which requires proposals to have a close association with the built up part of settlements; and are in keeping with the form, size and character of the settlement, and local landscape setting. LP Policy SDC3 seeks to ensure development proposals do not cause significant harm to the character, quality, distinctiveness or sensitivity of the landscape, or to important features or views, or other perceptual qualities such as tranquillity.
10. The site is agricultural land and is divided into three fields (which are referred to as field 1, 2 and 3). Field 1 is adjacent to Dark Lane and contains storage containers which are adjacent to the hedgerow boundary. This part of Dark Lane contains two-storey residential dwellings (including terraced houses, detached and semi-detached properties) which overlook the appeal site. Dark Lane has a limited width and is largely enclosed by hedgerows which results in a rural character and appearance compared to other parts of Calow. Towards the north-west of the site are also residential dwellings, situated on Old School Lane which is a modern estate development. These dwellings have a limited relationship with the countryside due to their orientation and rear garden fencing. The distance between the appeal site and nearby dwellings is moderate.
11. Field 2 is the central parcel of the appeal site. It is defined by hedgerow boundaries linear tree belts and has overhead power lines crossing the land. There is a dilapidated brick structure located adjacent to the northern part of this field parcel. The Homestead dwelling projects into the site and is adjacent to fields 1 and 2. Field 3 forms the western part of the appeal site and is

¹ As confirmed in paragraph 1.2 of the appellant's final comments

defined by hedgerows and hedgerow trees. The boundary vegetation around field 3, and parts of field 2 boundaries, are identified as being 'important' hedgerows². The area towards the south of the appeal site is within the countryside and characterised by historic field patterns, rural lanes, and footpaths.

12. The appeal site is situated within an area of landscape character defined as the Coalfield Village Farmlands landscape type. It displays some of the key characteristics of the landscape type such as being pastoral and of gently undulating landform, hedgerows, and remnant irregular field patterns. Calow is typical of the ridgelines villages of the area, and the red brick terrace housing (Netherleigh Cottages) is characteristic of the ribbon development which is a defining feature of the landscape.
13. A Landscape and Visual Impact Assessment (LVIA) was submitted with the application. In addition, as part of the appeal submission, a Landscape and Visual Matters document has been submitted. As a result of concerns raised by consultants, that were appointed on behalf of the Council to provide comments on landscape and visual matters, the proposal was revised several times. I understand that the latest re-alignment of the development is consistent with the recommendations of the Council's consultant.
14. The LVIA concludes that the local landscape is assessed to have a medium sensitivity to change and the proposed development would result in a minor to moderate adverse effect overall and at year 15 would be minor adverse. The effect on nearby public rights of way would not be significant overall. In contrast, the Council considers that on completion there would be a high magnitude of impact resulting in a major/moderate and significant effect and that the development would continue to have at least moderate effect in the longer term. Having regard to the recommendations of the Council's consultants, it is unclear whether the Council's statement is based on the professional judgement of a qualified and experienced landscape professional.
15. The appeal site is strongly contained, physically and visually, by hedgerows, trees, Dark Lane, and the settlement edge of Calow. Given the extent of nearby residential development, the site forms part of a transitional landscape between the residential edge of Calow and the landscape. The bridleway and Dark Lane separate the site from the SDL. Nonetheless, the site has a close association with the built up area of Calow given the limited distance between the appeal site and nearby built form. Thus, the site is not surrounded on all of its sides by countryside.
16. The existing built form of Calow is visible from the countryside. There are public rights of way (consisting of bridleways and footways) which run along two of the site's boundaries, and there are further rights of way in the wider area. There are direct views of the site from Dark Lane and filtered views from nearby right of ways. There are some breaks, and lower sections, in vegetation which afford greater views of the appeal site from nearby rights of way. From some of these viewpoints, existing built form on Dark Lane and Old School Lane are visible.
17. The Concept Masterplan is for illustrative purposes, except insofar as the plan confirms the extent of built development. It shows that residential development

² Historic Environment Desk-Based Assessment, Lanpro Services, July 2021, 3085/01

would broadly follow the building line from Old School Lane to link to the built form at The Homestead. The development would relate well with the settlement edge of Calow and would not significantly dilute the identity of the settlement and the countryside. The proposed development would not be seen in isolation, and instead would be seen against the backdrop of the existing built form. The scale and proposed areas of residential development of the proposal would be consistent with the context of the site and would not appear unduly prominent or out of context in the landscape.

18. The Concept Masterplan also shows that residential development would be excluded from field 3 and most of field 2. Thus, the historic field pattern would remain largely intact.
19. From the appeal site, and surrounding area, views of St Peter's Church spire are possible. Whilst the proposed development may reduce views of the church spire, these views are not unique to this area.
20. The proposed access would align closely to the existing access track. It would be located towards the northern corner of the appeal site and therefore closely relate to the nearby built up part of Calow. Hedgerow would need to be removed for the access and associated visibility splays. Hedgerows are one of many defining features of the landscape, but the extent of hedgerow proposed to be removed would not be substantial. Thus, the proposed access, and associated works, would have a limited negative impact on the character and appearance of the area. Additional boundary planting could be considered at reserved matters stage to help reduce the visual impact of the development.
21. The Council's case sets out concerns regarding details shown on the Concept Masterplan. The proposed development does not seek approval for appearance, landscaping, layout, and scale as these are reserved matters. The Concept Masterplan is illustrative and is not a technical drawing. Therefore, the technical drawings take precedence.
22. The access details do not include the layout and construction of access roads and driveways within the site, and this would be a matter for subsequent approval. The proposal would result in the loss of hedgerow and trees. Once the reserved matters application is submitted, the Council would be able to assess fully the proposal's effect on hedgerows, trees, and the church spire. Future landscape proposals could detail the treatment of the new settlement edge and its relationship with the countryside beyond. It could also provide new planting, such as replacement hedgerow to mitigate the hedgerow lost as part of the access and where existing hedgerow is weak in places (for example viewpoint 3). I am satisfied that an acceptable layout can be achieved which would respect the character and appearance of the site and its surroundings.
23. The appellant has drawn my attention to planning applications granted planning permission outside of Calow's SDL³. Whilst these developments would also alter the agricultural landscape of Calow and are not reflected within the LP's policies map, they have little impact on how the proposed development would affect the character and appearance of the landscape and countryside. They have also highlighted an appeal decision where an Inspector found a proposed development would be located next to the SDL and would have a

³ 18/00777/OL, 22/00638/RM, 20/01005/FL and 22/00384/RM

close association with the built up area⁴. The context of the sites differ to that before me. Therefore, the circumstances of the cases are not directly comparable, and I have considered the appeal proposal on its own merits.

24. To summarise, without doubt the development would change the landscape character as well as the character and appearance of the site due to the change from a greenfield, agricultural site to a developed site. However, the site has a close relationship to the built form of Calow and the proposal would be seen against the backdrop of existing residential development. This would limit the perception of the proposed development and its consequential impacts and effects. The development would not be an alien intrusion into the countryside and would not appear out of place. Overall, there would be some localised harm to the landscape and the countryside, but the harm would not be significant and would reduce over time.
25. Many of the Council's concerns are outside the scope of the appeal and would be considered at reserved matters stage. I am satisfied that a development which would respect the form, scale, and character of the landscape; and would not cause significant harm to the character, quality, distinctiveness or sensitivity of the landscape, or to important features or views, or other perceptual qualities such as tranquillity could be accommodated at the appeal site. The Council would be able to ensure such matters are in keeping with the surrounding settlement through the reserved matters application.
26. For these reasons, the development would not cause significant harm to the character and appearance of the landscape and countryside. Although the principle of general housing development is contrary to Policy SS9 of the LP, the scheme is an exception site for affordable housing and is therefore compliant with Policy LC3 of the LP. Having regard to the criteria set out in development plan policies, the development would be an acceptable form of development in the countryside and would accord with the landscape character criteria of Policies SS9 and SDC3 of the LP. The proposed development would also comply with paragraphs 135 and 180 of the Framework. These state that development should be sympathetic to local character, and planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.
27. Whilst not mentioned within the reason for refusal, the Council has questioned whether the proposal complies with criterion a) of LP Policy LC3 in their statement of case. This states that development proposals for affordable housing will be permitted where they would provide affordable housing which would meet a proven need which is supported by an up to date local housing needs survey.
28. The Council's Housing Officer set out that the Strategic Housing Market Assessment OAN Update 2017 estimates that 236 additional affordable housing units are required each year over the next five years to fully meet affordable housing need in the district. The Council's statement sets out that this figure was a mistake and instead the 2017 Strategic Housing Market Assessment Update indicates that there is a need for 172 affordable dwellings per year up to 2035. They highlight that affordable housing delivery is at least in line with (if not better than) the level expected by LP policy LC2.

⁴ APP/R1038/W/22/3306802

29. The appellant's submission details existing social housing stock in the district and within the Sutton-cum-Duckmanton ward within which Calow is located and a social housing assessment for Sutton-cum-Duckmanton. This shows that few affordable units become available in any one year, and the demand for existing social housing in the area demonstrably outstrips the evidenced demand. Based on the information presented and taking into account the Council's allocation policy, comments from the Council's Housing Officer, and existing commitments, I am satisfied that there is a need for affordable housing in Calow and the proposal complies with criterion a) of LP Policy LC3. The Council has not raised any concerns with any of the other criteria set out in Policy LC3, and I see no reason to disagree.

Other Matters

Objection comments

30. In addition to matters relating to the main issues, I have considered in detail the objection comments which relate to an extensive range of matters. These include: highway safety, wildlife and biodiversity, landscaping, pollution, ground conditions, impacts on Public Rights of Way, cumulative impact of developments, effect on living conditions and impact on wellbeing, heritage, drainage and flooding issues, previous application refused, not eco-friendly dwellings, refuse collection, lack of engagement and comments relating to the Planning Committee meeting.
31. Furthermore, development of brownfield sites and empty buildings should be prioritised, precedent, concerns proposal will be diluted on commercial grounds, residents might not be hospital workers and a representative from the hospital stated that no additional staff accommodation was required, increase crime, disruption to BT cables/ electricity/ water supplies, tenant of a garage at the site, and Green Belt.

Highway safety

32. Residents are concerned that the proposal would result in an increase in traffic (which would result in congestion), parking issues and the location of the proposed access is not suitable. They state that Dark Lane is identified as a quiet route on the Chesterfield strategic cycle network, it has become a rat-run which can become congested, and drivers often speed. Photographs have been provided to demonstrate highway issues, including an accident.
33. The proposed access would be adjacent to the bridleway and near the Top Road (A632) junction. Close to this junction on the A632 is a pelican crossing as well as bus stops. There are often vehicles parked close to this junction and along Dark Lane (as many of the dwellings do not benefit from off-street parking). Customers of the sandwich shop, people attending the church, hospital visitors and allotment users also park on Dark Lane. Parked vehicles result in the width of Dark Lane being reduced. Dark Lane is also used by agricultural vehicles, Travellers' vehicles, and also pedestrians (including children), horse riders and cyclists. There is a footway on the north-eastern side of Dark Lane. Dark Lane becomes a single track road with passing places and no footway.
34. The proposed development would increase vehicle movements. The Highway Authority were consulted and did not object to the proposal, subject to

planning conditions. Matters relating to on-site parking would be considered at the reserved matters stage. Conditions could be attached to control construction vehicles, delivery times and to ensure that the development is suitable for refuse vehicles. There is no robust evidence before me to take an alternative view of the Highway Authority. I am satisfied that subject to conditions the proposal would have an acceptable effect on highway safety, including considering the safety of pedestrians, cyclists, horse riders, horses, and also emergency vehicles.

Biodiversity/ landscaping

35. The proposal would result in a loss of habitat area. The submitted Preliminary Ecological Appraisal concludes that the grassland on site is of low nature conservation value, the scrub on site is in poor condition, and four of the hedgerows qualify as 'important' hedgerows. The report sets out a number of considerations and recommendations, including relating to the veteran trees, bats, and birds. The Biodiversity Net Gain Report concludes that the proposal would provide significant gains for biodiversity. The tree survey identified that the site contains a number of mature trees. None of the trees within the site are included within a Tree Preservation Order.
36. Taking into account consultation responses, I am satisfied that subject to conditions, and further information being provided at reserved matters stage, the proposal would have an acceptable effect on biodiversity, ecology, wildlife, hedgerows and trees.

Ground conditions and pollution

37. My attention has been drawn to the findings of an air quality survey carried out by Imperial college London, on behalf of the World Health Organisation. In addition, a resident has highlighted that the field was used by farmers to dip their sheep which may have led to land contamination.
38. The site's ground conditions have been assessed within the Phase 1 Geotechnical & Geo-Environmental Site Investigation document. This found that significant high levels of contamination are not generally expected to be encountered and ground conditions would be suitable for building foundations. A planning condition would ensure that site investigations would be carried out. If the site was found to be affected by contamination or there are land stability issues, then paragraph 190 of the Framework is clear that the responsibility for securing a safe development rests with the developer and/or landowner.
39. An Air Quality Assessment has been submitted with the appeal. All parties have had the opportunity to comment on this document, and I am satisfied that no-one would be prejudiced by my acceptance of it. The document concludes that the overall operational air quality effects of the proposed development are judged to be 'not significant', and that the emissions from the additional traffic generated by the proposed development would have a negligible impact on air quality conditions.
40. A construction method statement could control lighting, dust and construction working hours. Furthermore, a condition could ensure that a lighting strategy is provided. Taking into account consultation responses and the size of the development, the proposal would not result in a significant increase in pollution

(including light, noise, air, dust and land pollution). Thus, in this regard, the proposal would have an acceptable effect on nearby occupiers and livestock.

Living conditions

41. The final layout of the development, and the relationship of the proposed dwellings with the existing dwellings, would be considered at the reserved matters stage. Reserved matters would only be granted where the scheme would not have an unacceptable effect on the living condition of nearby occupiers, with regard to privacy, outlook, sunlight, and daylight. Any disturbance during construction would be temporary, and planning conditions can ensure that construction and delivery hours are restricted. Subject to conditions, I am satisfied that the proposed development can be accommodated at the site without having an unacceptable effect on the living conditions of nearby occupiers, including their health and wellbeing.

Heritage

42. An Historic Environment Desk-Based Assessment was submitted with the application. The spire of St Peter's Church, which is a Grade II listed building, is visible within the site and from the surrounding area. Given there is restricted views between the church and appeal site, suburban setting of the church, the distance between the appeal site and the listed building as well as the intervening built development, the appeal site does not contribute to the understanding of the heritage asset, or how it is experienced. The scheme would have a neutral effect on the heritage asset and would preserve the special interest of the listed building.
43. There is a low potential for archaeological remains and 'important' hedgerows can be retained to minimise any impacts on the legibility of the overall field pattern. Further details relating to the hedgerows would be provided at the reserved matters stage.

Footpaths

44. As already stated, there are a number of footpaths close to the appeal site. The overall design of the scheme and its interaction with the right of way network would be considered at the reserved matters stage. The proposal would provide a financial contribution towards the upgrading of public rights of way and greenways in the vicinity of the site to enhance connections. Taking into account consultation responses, I am satisfied that the development would not have an unacceptable effect on nearby public rights of way.

Drainage and flooding

45. A Flood Risk Assessment was submitted with the application. The site is within Flood Zone 1 and is not at significant risk of flooding from any source. The indicative plans suggest a SuDS attenuation basin in the southern corner of the site. The concerns raised can be addressed by planning conditions, and I am satisfied that the development would be acceptable in terms of drainage and flooding.

Infrastructure

46. Residents highlight that local services are stretched (for example at the hospital, the school is oversubscribed, there is limited availability at the doctors

surgery, and there is no local dentist) and there are limited shops and facilities in Calow. There have been numerous planning applications granted permission for large schemes in the locality, and some of these have been built or currently being built. There is no robust evidence before me that the cumulative impacts of the proposal before me and other development would have an unacceptable impact on infrastructure and local services.

Other general matters

47. A previous outline application for a residential development was refused by the Council⁵. I have not been provided with full details of that case but the circumstances are not directly comparable with the appeal proposal. For example, the LP has been adopted since and that scheme was not an exception site for affordable housing.
48. Whilst planning policy supports the re-use of brownfield land and vacant building, my role is to determine the appeal based on the planning merits and impacts of the proposed development before me. Each development proposal must be considered on its own merits. Whilst I have found this scheme to be acceptable, it would not set a precedent and it does not follow that other schemes would be permitted elsewhere in the local area.
49. Any alterations to the scheme (for example due to viability) would be a matter for the decision maker and would be assessed against planning policy, and all other material considerations. Paragraph 140 of the Framework states that local planning authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme.
50. The proposal before me does not include air source heat pumps, solar panels, rainwater collection, or increased insulation. As part of the reserved matters a condition could ensure that a scheme for mitigating climate change could be secured.
51. The appeal site is not situated within the Green Belt, as suggested by some objectors. The matters relating to engagement, the Planning Committee meeting, occupancy, representative from the hospital stated that no additional staff accommodation was required, crime and anti-social behaviour, no contact from the appellant regarding garage tenancy, and disruption to infrastructure are not matters that would justify withholding planning permission.

Planning obligations

52. A completed s106 agreement has been provided which makes provision for a number of obligations were the appeal to succeed. The s106 includes obligations relating to the affordable housing, as well as financial contributions for primary and community care services, public open space, bus stop, bus taster tickets, parking monitoring, Public Right of Way and Greenway, and a Travel Plan Monitoring fee. Based on the evidence before me, I am satisfied that the signed legal agreement, submitted with the appeal meets the relevant tests⁶.

⁵ 15/00154/OL

⁶ Set out in Regulation 122(2) of the CIL Regulations 2010 and Paragraph 57 of the Framework

Benefits

53. The site is located adjacent to the SDL of Calow. Calow is identified as a Level 2 Settlement within the LP which categorises Level 2 Settlements as having a good level of sustainability. The appeal site has good access to public transport links and there are local services and facilities within walking distance of the site.
54. The development would deliver up to 36 dwellings that would contribute towards housing supply in the district. I understand that the Council presently has 6.94 years housing land supply. Nonetheless, having regard to the Framework and local planning policy, the required five year supply does not represent a maximum number.
55. The development would result in economic benefits during the construction phase and once operational. Given the scale of the development, I give moderate weight to the economic benefits.
56. The proposal would also provide social benefits as it is a 100% affordable housing scheme, which would meet an identified need and comply with paragraph 60 of the Framework. The provision of open space and improved and new Public Rights of Way could also provide social benefits. Given the need for affordable housing, the scheme is in outline and considering the scale of the development, I give moderate weight to the social benefits.
57. The development would also provide environmental benefits. Biodiversity net gain (BNG) is a requirement of policy and given the outline nature of the proposal, the actual amount of net gain is yet to be fully established. Additional tree and hedgerow planting could contribute to the overall BNG and result in an enhancement to the existing character of the site. The development would also result in sustainable transport improvements. Given the scheme is in outline and considering the scale of the development, I give limited weight to the environmental benefits.

Conclusion on other matters

58. I understand that the prospect of the site being developed has been unsettling for residents. The Council did not refuse the planning application on the concerns raised within the other matters. Subject to appropriate planning conditions, there is no credible evidence before me that would lead me to an alternative conclusion to the Council on the other matters raised, or that could justify the dismissal of the appeal on these grounds. Furthermore, the identified benefits weigh in favour of the proposed development.

Conditions

59. I have assessed the Council's suggested conditions, and those suggested in consultation responses. In light of guidance found in the Planning Practice Guidance, where necessary the wording of the conditions have been amended for clarity and precision.
60. In addition to the standard implementation condition, a condition specifying the reserved matters is also required to provide certainty regarding the timescales for the implementation of the development and to provide clarification regarding the scope of future reserved matters applications.

61. It is necessary to attach a condition specifying the approved plans as this provides certainty. To avoid confusion, and given the outline nature of the proposal, I have omitted the reference to the concept masterplan in this condition. To ensure that the development has an acceptable impact on the character and appearance of the landscape and countryside, I consider it necessary to limit the built development, to that shown in the masterplan, and to restrict the number of dwellings.
62. In the interest of the character and appearance of the site and the surrounding countryside landscape; and to provide adequate outdoor recreation space, conditions relating to landscaping are necessary. Similarly, to ensure satisfactory living conditions for existing and future occupiers, and in the interest of the character and appearance of the site and the surrounding countryside landscape, a condition relating to levels is necessary.
63. To provide accessible and adaptable homes, a condition relating to Building Regulations Optional requirement M4(2) is necessary. A condition relating to employment and training opportunities is necessary to enhance employment, training and skills within the community in line with the Council's Working Communities Strategy.
64. In the interest of delivering sustainable development and in accordance with the North East Derbyshire Interim Sustainable Buildings Policy and the Framework, a condition relating to a scheme for mitigating climate change is necessary. A condition requiring a travel plan is necessary in the interests of encouraging sustainable travel.
65. In the interest of highway safety and the living conditions of nearby occupiers, conditions relating to construction hours and a construction method statement are necessary. Furthermore, the construction method statement requires details of lighting in the interest of protecting wildlife and limiting light spill into the surrounding countryside. Conditions relating to the internal roads and footways, site frontage, vehicular access, surfacing, boundaries, and parking facilities are necessary in the interest of highway safety.
66. Conditions relating to contamination are necessary to protect the health of the occupants of the new development and in order to prevent contamination of controlled waters and the environment. Conditions relating to drainage are necessary in the interest of satisfactory and sustainable drainage; and to ensure that flood risk is not increased.
67. A condition requiring a lighting strategy is necessary in the interest of protecting wildlife and limiting light spill into the surrounding countryside. In the interest of providing a net biodiversity gain, conditions requiring a Biodiversity Enhancement and Management Plan and Construction Environmental Management Plan are necessary.
68. I have not included the conditions relating to affordable housing as the s106 Agreement would secure the delivery of the affordable housing, which would comply with the affordable housing definition set out in the Framework.
69. The Committee report sets out a list of notes for the appellant to be aware of in relation to informatives included within consultation responses.

Conclusion

70. I realise that this decision will come as a disappointment to those who objected against the proposed development. However, taking everything into account, there is no compelling reason to withhold planning permission in this case. Consequently, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal succeeds.

L Wilson

INSPECTOR

Richborough

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be limited to no more than 36 dwellings and shall be carried out in accordance with the following approved plans:
 - 2147.02 (Location Plan);
 - 20-537-FS01 (Feasibility Plan- Site Access);
 - LTP/4080/P1/01.01 Rev A (Dark Lane/Top Road Visibility Splay Drawing); and
 - LTP/4080/P1/01.02 Rev 0 (Site Access/Dark Lane Visibility Splay Drawing).
- 5) The built development of the development hereby permitted shall be limited to the light brown coloured area which is annotated "Residential development parcels up to two storey" shown on the Concept Masterplan Rev C (dated November 2022).
- 6) At least 20% of the dwellings hereby permitted shall be accessible and adaptable dwellings meeting requirement M4(2) of the Building Regulations 2015 or any subsequent government standard and a scheme for accessible and adaptable dwellings shall be submitted concurrently with the reserved matters application(s). The scheme shall include details of which plots will be compliant and detailed floor plans and layouts showing how each plot meets the requirements of M4(2). The approved scheme shall be implemented in accordance with the approved details before any of the identified dwellings are occupied and shall be retained for the lifetime of the development.
- 7) A scheme of landscaping shall be submitted to the local planning authority for approval as part of the reserved matters. The scheme shall provide for new planting (including details of replacement hedgerow and tree planting) together with the retention of existing trees and hedgerows (to be identified) and detail the treatment of the new settlement edge. All planting, seeding or turfing in the scheme of landscaping, as approved, shall be carried out in the first planting and seeding season following the first occupation of 50% of the dwellings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased

shall be replaced in the next planting season with others of similar size and species.

- 8) The details to be submitted to the local planning authority for approval as part of the reserved matters shall include a scheme for the delivery and future maintenance of all on site open space, including a landscape management plan and a timetable for implementation relative to the completion of dwellings hereby permitted. The open space shall be implemented as approved, and shall be maintained in accordance with the approved scheme thereafter.
- 9) The details to be submitted to the local planning authority for approval as part of any reserved matters shall include a scheme for mitigating climate change through the sustainable design and construction of the dwellings including the provision of sources of renewable energy. The climate change scheme shall be implemented as approved, and shall be retained thereafter.
- 10) The reserved matters application(s) shall include details of vehicle parking and secure cycle parking facilities for occupants and visitors. The vehicle and cycle parking facilities shall be provided prior to the first occupation of any dwelling and shall thereafter be retained.
- 11) No development shall take place until details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 12) No development shall commence until a scheme to enhance and maximise employment and training opportunities during the construction period of the development, including a timetable for implementation, has been submitted to and approved in writing by the local planning authority. Thereafter the scheme shall be operated in accordance with the approved details.
- 13) No development shall commence until a Biodiversity Enhancement and Management Plan (BEMP) has been submitted to, and approved in writing by the local planning authority. The BEMP shall include measures to enhance and sympathetically manage the biodiversity value of onsite habitats and shall be in accordance with the details provided in the Biodiversity Net Gain Report (prepared by FPCR, dated January 2022) and the Preliminary Ecological Appraisal (prepared by Wildscapes, dated November 2021). The BEMP shall be suitable to provide to the management body responsible for the site and shall include the following:
 - i. Description and location of features to be retained, created, enhanced and managed.
 - ii. Aims and objectives of management.
 - iii. Management methods and practices to achieve aims and objectives.
 - iv. Prescriptions for management actions.
 - v. Preparation of a work schedule (including a five-year work plan capable of being rolled forward in perpetuity).

- vi. Details of the body or organization responsible for implementation of the plan.
- vii. A monitoring schedule to assess the success of the enhancement measures.
- viii. A set of remedial measures to be applied if conservation aims and objectives of the plan are not being met.
- ix. Habitat enhancements for roosting bats and nesting birds.
- x. Details including a plan showing the location of hedgehog gaps in gardens.
- xi. Requirement for a statement of compliance upon completion of planting and enhancement works.

The BEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan shall be secured by the developer with the management body(ies) responsible for its delivery. The approved plan shall thereafter be implemented in accordance with the approved details and shall be retained thereafter.

- 14) No development shall take place (including ground works or vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP: Biodiversity shall include the following:
- i. Risk assessment of potentially damaging construction activities.
 - ii. Identification of "biodiversity protection zones".
 - iii. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction.
 - iv. The location and timing of sensitive works to avoid harm to biodiversity features.
 - v. The times during construction when specialist ecologists need to be present on site to oversee works.
 - vi. Responsible persons and lines of communication.
 - vii. The role and responsibilities on site of an ecological clerk of works or similarly competent person.
 - viii. Use of protective fences, exclusion barriers and warning signs.
- The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.
- 15) No development shall take place until details have been submitted to and approved in writing by the local planning authority of the foul and surface water drainage for the site. The foul and surface water drainage shall then be installed in accordance with the approved details prior to first occupation and shall be retained thereafter.
- 16) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on

the site, whether or not it originates on the site. The assessment shall include:

- i. a survey of the extent, scale and nature of contamination;
- ii. the potential risks to:
 - a. human health;
 - b. property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - c. adjoining land;
 - d. ground waters and surface waters;
 - e. ecological systems; and
 - f. archaeological sites and ancient monuments.

- 17) No development shall take place where (following the risk assessment approved by condition 16) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out, and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority, before the development is occupied.
- 18) Any contamination that is found during the course of construction of the approved development that was not previously identified 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 is resumed or continued.
- 19) Demolition or construction works shall take place only between 07:30 – 18:00 on Mondays – Fridays, 07:30 – 13:00 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 20) No development exceeding demolition and site clearance shall commence until a construction method statement has been submitted to, and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:
 - i. Parking of vehicles of site operatives and visitors;
 - ii. loading and unloading of plant and materials;

- iii. storage of plant and materials used in constructing the development;
 - iv. Routes for construction traffic;
 - v. delivery, demolition and construction working hours;
 - vi. Method of prevention of debris being carried onto highway;
 - vii. Wheel washing facilities;
 - viii. measures to control the emission of dust and dirt during construction;
 - ix. lighting;
 - x. Pedestrian and cyclist protection;
 - xi. temporary traffic restrictions;
 - xii. Size of HGV for construction activities.
- 21) No development exceeding demolition and site clearance shall commence until details for the design and construction of the residential estate roads and footways have been submitted to, and approved in writing by the local planning authority. The details shall include plans showing the layout and dimensions of carriageway/s and footway/s, swept path assessments for refuse and fire tender vehicles, a waste strategy management document, drainage and gradient details, surfacing details, details of road radii, turning head dimension and details for visibility spays at junctions and driveways, cross-corner visibility, forward visibility and pedestrian visibility. The estate roads and footways shall be implemented as approved, and shall be maintained in accordance with the approved details thereafter.
- 22) No works above foundation level shall commence until a lighting strategy has been submitted to and has been approved in writing by the local planning authority. The strategy shall include measures to safeguard bats and other nocturnal wildlife. The strategy shall provide details of the chosen luminaires and any mitigating features such as dimmers, PIR sensors and timers. A lux contour plan shall be provided to demonstrate acceptable levels of light spill to any sensitive ecological zones/features. The approved scheme shall be implemented before first occupation of any dwelling and thereafter retained.
- 23) The first 5m of the access road shall have a bound surface and shall not be surfaced with a loose material (i.e. unbound chippings or gravel). There shall be no gates or other barriers within 5m of the nearside highway boundary, and any gates shall open inwards only.
- 24) No dwelling hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged

- from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii. include a timetable for its implementation; and,
 - iii. provide, 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.
- 25) Prior to the first occupation of any dwelling a verification report carried out by a qualified drainage engineer shall have been submitted to and approved in writing by the local planning authority. The report shall demonstrate that the drainage system has been constructed in accordance with the approved scheme, provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).
- 26) Before first occupation of any dwelling, Dark Lane shall have been upgraded to 5.5m carriageway width in accordance with the details shown on drawing LTP/4080/P1/01.01 Rev A (Dark Lane/Top Road Visibility Splay Drawing), and shall thereafter be retained.
- 27) Before first occupation of any dwelling, the new vehicular access to the site shall have been formed in accordance with drawing LTP/4080/P1/01.02 Rev 0 (Site Access/Dark Lane Visibility Splay Drawing), and shall have been provided with visibility sightlines extending from a point 2.4m from the carriageway edge, measured along the centreline of the accesses, for a distance of 43m in each direction measured along the nearside carriageway edge. The access shall thereafter be retained. The land in advance of the visibility sightlines shall thereafter be retained throughout the life of the development free of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.
- 28) No dwelling hereby permitted shall be occupied until a Travel Plan has been submitted to and approved in writing by the local planning authority. The Travel Plan shall set out proposals (including a timetable for implementation) to promote travel by sustainable modes and, once approved, shall be implemented in accordance with the details and timetable set out therein. Reports demonstrating the implementation of the Travel Plan shall be submitted annually, on each anniversary of the date of the planning permission, to the local planning authority for five years following the date at which the first dwelling is occupied.
- 29) The carriageways of the estate roads shall have been constructed as approved pursuant to condition 27 to at least road base level prior to building works commencing on any dwelling intended to take access from that road. Before first occupation of any dwelling, the carriageway and footway leading to it shall have been constructed up to and including base course surfacing. Until final surfacing is completed, the footway base course shall be provided in a manner to avoid any upstands to gullies, covers, kerbs

or other such obstructions within or abutting the footway. The carriageways, footways and footpaths in front of each dwelling shall be completed with final surface course within twelve months (or three months in the case of a shared surface road) from the occupation of such dwelling.

- 30) The development shall be carried out in accordance with the details set out in the Flood Risk Assessment (prepared by Eastwood and Partners, dated September 2020).

Richborough