



Appeal Decision

Hearing held on 9 December 2025

Site visit made on 9 December 2025

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th December 2025

Appeal Ref: APP/M2270/W/25/3366410

Uphill, New Pond Road, Benenden, Cranbrook, Kent TN17 4EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs B & F Gear & Hestia Homes (Cranbrook) Ltd against the decision of Tunbridge Wells Borough Council.
 - The application Ref is 23/02523/FULL.
 - The development proposed is erection of 22 no dwellings with associated access works, tree works, landscaping and parking, following demolition of existing dwelling and outbuildings.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 22 no dwellings with associated access works, tree works, landscaping and parking, following demolition of existing dwelling and outbuildings at Uphill, New Pond Road, Benenden, Cranbrook, Kent TN17 4EJ in accordance with the terms of the application, Ref 23/02523/FULL, and subject to the conditions in the attached schedule.

Preliminary Matters

2. The Council adopted the Tunbridge Wells Borough Local Plan (TWBLP) on 10 December 2025. This supersedes policies cited on the decision notice, including Tunbridge Wells Core Strategy 2010 Core Policies 1 and 6. I have determined the proposal against the policies of the development plan, which includes the TWBLP and Benenden Neighbourhood Development Plan 2022 (BNDP).
3. On 16 December 2025, government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework). Whilst broad changes are proposed as part of this consultation, these proposals could be subject to further change and can only be given very limited weight at this stage. It has therefore not been necessary to consult the parties on the proposed changes, and in my decision, I have had regard to the Framework published in December 2024.
4. At time of its determination of the application, the Council was unable to demonstrate a five-year supply of housing land and considered the provisions of paragraph 11(d) of the Framework to be engaged. However, the parties agree that from the date of the TWBLP's adoption, the Council has a demonstrable five-year supply of housing land. This is a material change in circumstances since the Council's decision.
5. The appellant submitted a deed of unilateral undertaking pursuant to section 106 of the Town and Country Planning Act 1990 as amended (UU), dated 23 May

2025, and a supplemental UU dated 01 September 2025. The UU and supplemental UU secure various planning obligations. Regulation 122(2) of the of the Community Infrastructure Levy Regulations 2010 (CIL regulations) states that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. These statutory tests are reflected in national policy at paragraph 58 of the Framework. I have considered the obligations against the statutory tests at 'Other Matters'.

6. The planning obligations would come into effect on grant of planning permission. However, where I conclude a planning obligation would not comply with the statutory tests, it ceases to have effect, and the owners shall be under no duty to comply with the obligation.

Main Issues

7. The main issue in this appeal is whether the proposal would provide an appropriate mix of housing, with particular regard to affordable housing provision.

Reasons

8. The site comprises a detached dwelling, outbuilding, and large garden. It fronts onto New Pond Road and is near the village centre. The site is allocated for residential development by BNDP Policy SSP2 and contributes to the Council's five-year supply of housing land, with the housing trajectory document anticipating delivery of development in 2028/29¹.
9. The *Report on the Examination of the Tunbridge Wells Borough Local Plan October 2025* (Inspector's Report) explains that a shortfall in identified sites against the minimum housing requirement necessitates an early plan review², which TWBLP Policy STR1 states shall commence within six months. Therefore, delivery of the site is pertinent to the TWBLP's development strategy and would contribute to meeting the area's housing requirement.
10. The borough has a high need for affordable housing which equates to roughly 48% of the annual housing requirement³. Written submissions recognise affordable housing is needed to accommodate people who work in the parish. As articulated by the Council and representatives of Benenden Parish Council during the hearing, affordable housing provision is an important local issue and a key priority of the BNDP.

Affordable housing requirement

11. The site comprises residential land of low density. To the south is medium density development at Horton's Close, beyond which lies higher density development within the centre of the village. To the north of the site is countryside. The site is therefore at the edge of the village.
12. The BNDP extended the "limits to built development" boundary to include the appeal site. Based on its present characteristics, I consider the site does not comprise garden land in the built-up area. The BNDP indicates the site is

¹ Council's document ref: TWLP/157

² Paragraph 321 of *Report on the Examination of the Tunbridge Wells Borough Local Plan October 2025*

³ Paragraph 341 of *Report on the Examination of the Tunbridge Wells Borough Local Plan October 2025*

previously developed land (i.e. “brownfield” land) and I am content this is consistent with the Framework’s definition of previously developed land.

13. BNDP Policy SSP2(1) includes a requirement for “40% affordable housing”. However, Policy H3 of the TWBLP recognises the higher build costs associated with developing brownfield sites and requires sites for major development which are wholly or mainly brownfield land to include a minimum of 30% of the gross number of residential units as on-site affordable housing provision.
14. In addition, Policy SSP2(1) recognises that affordable housing should be delivered in accordance with TWBC policy, acknowledging its relationship to the strategic policies of the development plan. Furthermore, section 38(5) of the Planning and Compulsory Purchase Act 2004 (as amended) requires conflict between policies be resolved in favour of the policy which is contained in the last document to be adopted. Therefore, as a starting point, the 30% rate for affordable housing set by Policy H3 would apply to the appeal proposal.

Whether exceptional circumstances apply

15. Policy H3 recognises there may be exceptional circumstances where the provision of on-site affordable housing is not viable and sets out those circumstances where a departure from compliance with policy would be warranted.
16. Such exceptional circumstances include: (1) no Registered Provider (RP) will take the units; (2) there is no realistic prospect of providing affordable housing by another means; (3) the values of shared ownership or intermediate rented units would be too high in that particular locality; (4) the provision of the policy-compliant level of affordable housing would make the development unviable.
17. Paragraph 6.346 of the TWBLP indicates that where policy requirements may not be achieved, the onus will be on the applicant to demonstrate robustly the reasons for this, and to provide a full viability assessment to support their proposals. The application was accompanied by a viability assessment report⁴.
18. The appellant’s viability report was reviewed by the Council’s viability assessor⁵. This independent review initially concluded the scheme could viably support a full policy compliant level of affordable housing. However, as explained in the committee report⁶, further review was prompted by subsequent increases in costs, including the BCIS median rate of construction costs. In June 2024, the Council’s viability assessor concluded the scheme is not sufficiently viable to support affordable housing. Therefore, at time of the Council’s decision in February 2025, it was agreed that the scheme could not viably provide affordable housing.
19. As set out by the Statement of Common Ground (SoCG), the parties agree the scheme is not sufficiently viable to support a contribution towards affordable housing. The parties confirm this position was agreed during the application process and continues to remain the case for the purpose of the appeal⁷.
20. The Council suggests the viability report and independent review are now out of date. During the appeal, the appellant provided a Viability Response Statement 31 July 2025 and spreadsheet summary for the purposes of updating the overall

⁴ Financial Viability Appraisal December 2023, S106 Management

⁵ Review of Applicant Submitted Viability Position April 2024, Dixon Searle Partnership

⁶ Paragraphs 10.23 and 10.24 of Planning Committee Report

⁷ Paragraph 2.17(e) of Statement of Common Ground

viability position, based on a market housing scheme with no on-site provision of affordable housing. The updated position reflects estimated increases in gross development value and changes to costs such as reduced planning obligation requirements, higher acquisition costs, and increased build costs.

21. The updated position has not been independently reviewed, and no critique has been provided by the Council. However, the Viability Response Statement sets out how the updated viability position remains consistent with the methodology agreed by the Council's viability assessor. Therefore, I have no compelling reason not to consider the updated position as a credible assessment of the scheme's viability.
22. Paragraph 6.346 of the TWBLP requires it be shown that the correct land value was paid, as exceptional and abnormal costs should be paid for through a reduced land value. The Planning Practice Guidance's (PPG) states that to define land value for any viability assessment, a benchmark land value (BLV) should be established on the basis of the existing use value (EUV) of the land, plus a premium for the landowner⁸. It is evident from the viability evidence that as a large, detached dwelling with spacious garden, the appeal site has a high EUV. The BLV assumption was agreed by the Council's independent assessor.
23. Set against the BLV, the agreed position at June 2024 concludes the residual land value would represent a substantial deficit in viability. The July 2025 update indicates the deficit has increased and presents a poorer viability position than in June 2024. Therefore, the viability evidence continues to demonstrate the scheme is not sufficiently viable to support affordable housing.
24. The PPG considers an assumption of 15-20% of gross development value (GDV) would provide a suitable return to developers⁹. The Council's independent assessor considers profit in this range appropriate at the decision-taking stage¹⁰.
25. The PPG indicates that it is the responsibility of site promoters to consider any costs including their own profit expectations and risks¹¹. The profit level agreed in June 2024 was 12.31%, and the updated position in July 2025 assumes profit of 10.99%. The appellant has therefore already accepted a profit level below the target value. During the hearing it was explained that further reductions in profit level would impede delivery, such as through limiting access to finance. Therefore, the viability evidence demonstrates the developer's profit would be suppressed below the PPG assumption, and therefore I do not consider there would be opportunity to support affordable housing through reductions in profit level.
26. Consequently, the evidence demonstrates the provision of policy-compliant levels of affordable housing, either on-site or as a financial contribution toward off-site provision, would make the development unviable.
27. The appellant took advice from the Council's Affordable Housing & Enabling Officer and engaged with four RPs, of which none were willing to submit a bid for affordable housing stock on the site. In addition, the appellant liaised with a provider of shared equity/ownership schemes whose offer was substantially below open market value which would have a further adverse effect on the scheme's viability, suggesting values would be too high for tenures of this type. In an email

⁸ Paragraph: 013 Reference ID: 10-013-20190509

⁹ Paragraph: 018 Reference ID: 10-018-20190509

¹⁰ Page 20 of Review of Applicant Submitted Viability Position April 2024, Dixon Searle Partnership

¹¹ Paragraph: 002 Reference ID: 10-002-20190509

dated 11 November 2024, the Affordable Housing & Enabling Officer confirms there is no realistic prospect of providing affordable housing by any means, whether a RP or another mechanism.

28. For these reasons, each of the exceptional circumstances 1 to 4, as identified by Policy H3, would apply to the proposal.

Alternative delivery criteria

29. In circumstances where full provision of on-site affordable housing cannot be delivered, Policy H3 requires alternative delivery criteria (a) to (e) be considered in sequential order, as set out below.

(a) the full affordable housing provision to be provided by the applicant on an alternative site agreed with the Council in (sequentially) (i) the settlement and (ii) the parish of the application site

30. I have been provided no evidence that the appellant controls any other land within the settlement or parish. Therefore, acquiring additional land would represent further cost associated with the development.
31. Furthermore, the settlement and parish are within the rural area and are constrained by designations such as national landscape and village's conservation area. The LBD is tightly drawn, and it is unclear what opportunity for development would exist beyond those sites allocated for development by the BNDP. Therefore, availability of alternative land would impede delivery of the proposed development.

(b) a reduced level of affordable provision on the application site

32. As set out above, the proposal cannot viably support on-site provision of affordable housing. Therefore, a nil rate of affordable housing provision would be justified by the viability evidence.

(c) a variation in the tenure of the affordable housing

33. As discussed above, the viability evidence concludes the scheme, which comprises wholly market housing, results in a substantial viability deficit. The tenure of affordable housing units cannot be varied since none are proposed. Moreover, provision of affordable housing of any tenure would have an adverse effect on development viability, further increasing the viability deficit.

(d) the applicant to make land available elsewhere in (sequentially) (i) the settlement, (ii) the parish, and (iii) the borough to provide the affordable housing for a Registered Provider

34. For the same reasons as criterion (a), to acquire additional land would have an adverse impact on development viability and impede delivery of the appeal site.

(e) a financial contribution in lieu of on-site affordable housing

35. The viability assessment takes account of costs associated with planning obligations. A financial contribution in lieu of on-site affordable housing would increase such costs and would have an adverse effect on development viability. The viability evidence therefore demonstrates the proposal cannot viably support a financial contribution in lieu of on-site affordable housing.

36. Policy H3 includes a requirement for further assessments at agreed stages of development, which I have considered below. A potential outcome of the review mechanism is the capture of any profit increase to secure an affordable housing contribution. However, I cannot be certain that increases in profit would occur. Therefore, provision of a review mechanism is of limited relevance to criterion (e).

Alternative delivery (a)-(e) - conclusions

37. No opportunities exist for alternative delivery of affordable housing. Having regard to the viability evidence and criterion (b), a reduced level of affordable housing to nil (0%) would be justified.

Review mechanism

38. Paragraph 6.347 of the TWBLP sets out an expectation that viability will be re-tested either pre-implementation or part-way through development. Policy H3 includes a requirement for further assessments at agreed stages of development, which paragraph 6.348 indicates will be agreed at the point of determining the planning application.
39. The requirements for a review mechanism provided by Policy H3 fall somewhat short of the clear process and terms of engagement required by the PPG¹². However, the Inspector's Report¹³ identifies a need for assessment at later stages as development progresses and considers re-appraisal is justified because circumstances might change, and therefore Policy H3 seeks to strike a balance between supporting development and delivering affordable housing. For these reasons, I am satisfied that a review mechanism would be necessary to make the development acceptable in planning terms.
40. The evidence shows the proposal would not viably support affordable housing at June 2024, May 2025, and July 2025. I have no reason to consider the viability position would significantly improve at the pre-implementation stage. Therefore, the most appropriate stage for review would be part-way through the development of the site, since this provides greatest opportunity to maximise public benefit.
41. At Schedule 5, the UU requires submission of a revised viability appraisal at the sale of the 17th dwelling or sixty calendar months from commencement of development, and requires this appraisal be independently assessed. Where the profit exceeds 17.5% of GDV, an affordable housing contribution, calculated in accordance with a specified formula, would be required. The Council's statement sets out two methods for the review mechanism. At the hearing, the Council agreed the planning obligation would accord with its proposed 'method two' which focuses on review of a limited number of assumptions.
42. I am satisfied that the obligation is necessary to achieve compliance with Policy H3 and thus would make the development acceptable in planning terms. In addition, the review mechanism is directly related to the development and is fairly and reasonably related in scale and kind since it captures profit increases only above a suitable threshold.
43. In the event the review concludes there is surplus profit available for an affordable housing contribution, the sum would be paid to the Council. The UU is somewhat

¹² Paragraph: 009 Reference ID: 10-009-20190509

¹³ Paragraphs 348 and 349

problematic since it is not binding on the Council and thus provides no mechanism to ensure the contribution would be used for its intended purpose.

44. The submitted evidence reflects the present viability of the scheme and does not attempt to predict future circumstances. Nonetheless, I have little reason to consider the scheme's viability would significantly change in future. Moreover, as a responsible public body involved in the delivery of affordable housing, I have been reassured the Council has the mechanism to ensure the appropriate use of the contribution sought. Therefore, the risk that any potential contribution would be used in a manner which is inconsistent with the CIL regulations is very low.
45. Therefore, in this circumstance I am satisfied the planning obligations at section 5 of the UU, to secure a late-stage review of the scheme's viability and potential affordable housing contribution, would comply with the CIL regulations.

Summary and conclusions

46. The PPG indicates that the weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case¹⁴. At time of the Council's decision, it was agreed that the scheme cannot viably provide affordable housing. The submitted evidence demonstrates the scheme's viability has worsened since the Council's decision and confirms the scheme remains not sufficiently viable to support affordable housing. Therefore, the viability assessment carries significant weight in my decision.
47. Policy H3 acknowledges that in exceptional circumstances the provision of on-site affordable housing would not be viable. As set out above, exceptional circumstances are engaged in determination of the appeal proposal. Opportunities for alternative delivery of affordable housing were explored, as specified at Policy H3(a)-(e), but none exist. The scheme cannot viably support affordable housing and Policy H3(b) permits a reduced level of affordable provision on the site. The policy does not prohibit a reduction in affordable housing provision to a nil rate.
48. The proposal is accompanied by a planning obligation to secure a late-stage review to capture any uplift in profit above the target value as an affordable housing contribution and therefore would comply with the requirement of Policy H3 to provide further assessment at agreed stages of the development.
49. Unless found viable by the late-stage review, the proposal would not provide the minimum percent of on-site affordable housing identified by either Policy SSP2 or Policy H3. However, delivery of this allocated site is of strategic importance to the implementation of the TWBLP's development strategy and, as noted in the Inspector's Report, Policy H3 seeks to strike a balance between supporting development and delivering affordable housing. The reasons for the omission of affordable housing provision are fully justified by evidence in accordance with the requirements of Policy H3. Consequently, I conclude the proposal would provide an appropriate mix of housing.
50. The proposal would therefore comply with BNDP Policy SSP2 and TWBLP Policy H3 which together require the provision of affordable housing, unless exceptional circumstances indicate otherwise.

¹⁴ Paragraph: 008 Reference ID: 10-008-20190509

Other Matters

National Landscape

51. The site is within the High Weald National Landscape (HWNL). The statutory purpose of National Landscapes is to conserve and enhance the natural beauty of the area. As relevant authority, section 245 of the Levelling-up and Regeneration Act 2023 requires I 'seek to further' the statutory purposes of Protected Landscapes, including National Landscapes.
52. The committee report explains that prior to the Council's determination, changes to the design and layout were made to overcome objections raised by the High Weald Joint Advisory Committee. The site has an existing residential character and the Landscape and Visual Impact Appraisal (LVIA) concludes the development would be well-integrated into the overall pattern and settled rural character of the village. The proposed housing would abut the settlement edge and respond sensitively to the east-west orientation of built form within the village and would be visually well-contained by planting along the boundaries, enclosure provided by off-site woodlands, and by existing housing at Hortons Close.
53. No harm was identified by the Council in respect of effects on the HWNL. I am satisfied the evidence demonstrates that the proposal would conserve the natural beauty of the HWNL and therefore would be consistent with the statutory duty.

Heritage assets

54. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (PLBCA Act) requires I have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. In addition, section 72(1) (PLBCA Act) requires that, with respect to any buildings or other land in a conservation area, I pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
55. The Built Heritage Statement (BHS) indicates that the site lies immediately east of the Grade II listed Benenden Registered Park and Garden (RPG). In addition, the site lies a short distance to the north, and is thus outside of, the Benenden Conservation Area (CA). The BHS advises no other built heritage assets have potential to be affected by the proposed development as a result of intervening distance and modern built development, and I have identified none myself.
56. The RPG's designation extends around 119ha and is centred on a former mansion of mid-late 19th century date and mainly consists of grass with mature parkland trees. Woodland occupies the north-east, and dense treelines border much of the park. A large late 19th-century lake lies in the southwest, and in the southeast corner, is New Pond Lake, enclosed by dense woodland. The RPG's significance arises from its historic evolution as the landscaped park of a major estate, reflecting changing fashions over time. The park includes several Grade II listed buildings which contribute strongly to its character and historic interest. These structures, along with earlier features like the icehouse and Hempstead House, enhance the park's architectural and group value.
57. The site has no notable visual relationship with the RPG. The proposed development would not be readily appreciable from within the RPG. Partial,

glimpsed views of the development may be possible from within the park in winter months. However, such minor visual change would not notably change the overall experience of being within the parkland. The proposal would also not alter the intrinsic design or historic interest of the park. The proposed development is not considered to result in any harm to the significance of the RPG and represents a neutral change to a very small part of the immediate south-eastern setting.

58. The CA is a traditional rural village with a strong historic character. It features numerous listed buildings, mainly from the 17th to 19th centuries, alongside notable earlier structures like the medieval Church of St George and the 15th-century Old Manor House. Architecture reflects local vernacular styles, with timber frames often re-faced in brick, tile hanging, red-tiled roofs, and historic chimneys adding visual interest. The historic core is centred along The Street, its junctions, and The Green near the church, while the southern part includes modern housing and open paddocks. Mature trees, dense treelines, brick walls, and railings define plot boundaries. The CA's significance is derived from its collective architectural and historic value and its clear identity as a traditional rural Kentish village. It retains a traditional character with different phases of historical development, from manorial residences to terraced labourers' cottages, reflecting the village's expansion within an agricultural landscape.
59. The site is separated from the CA by two modern residential streets. From New Pond Road, the site's western boundary is seen as an extensive, dense treeline which makes a very minor positive contribution to the significance of the CA. The proposed access and pedestrian footpath are likely to be visible in northward views from the boundary of the CA on New Pond Road. This visual change would represent a slight intensification of modern built form north of the CA. However, the proposed built form within the site would not be perceptible from within the CA. The proposals would not alter the intrinsic architectural or historic interest of any built heritage asset from which the CA derives its significance and would not change the overall experience of being within the CA. The slight intensification of existing modern built form off New Pond Road occurring through the proposed development would not diminish the significance of the CA or its setting.
60. For these reasons, I am satisfied the proposal would preserve heritage assets and their settings and would be consistent with the duties of the PLBCA Act.

Planning obligations

61. The UU and supplemental UU set out various planning obligations for the purpose of mitigating the effects of the proposed development, as discussed below. All contributions are to be paid to either the Borough Council or Kent County Council (KCC). It is evident that the UU and supplemental have been drafted following extensive engagement with those bodies, and it is agreed by the main parties that the UU and supplemental UU secure all requested and agreed contributions towards related infrastructure improvements. Nonetheless, the Council and KCC are not bound by either agreement. Whilst a bilateral agreement would have provided a more robust mechanism, I will accept that as responsible public bodies the Council and KCC would use the contributions for their intended purposes.
62. TWBLP Policy OSSR2 requires new housing development provide publicly accessible open space in accordance with specified minimum standards of the Recreation Open Space Supplementary Planning Document 2006. Where open

space cannot be provided on site in full, Policy OSSR2 requires off-site provision. The Allotment Contribution and Adult and Youth/Public Open Space Contribution would facilitate off-site provision and enhancement of open space of these typologies, at Benenden allotments, Benenden playground, Benenden recreation ground, and The Green.

63. The proposal predates the introduction of the national mandatory Biodiversity Net Gain (BNG) and is not subject to this statutory requirement. However, TWBLP Policy EN9 requires development achieve a minimum 10% gain in biodiversity. The development would result in a loss of habitat units on site, and therefore the BNG Contribution would be necessary to provide off-site provision of biodiversity improvements in the borough in accordance with the BNG hierarchy.
64. Since preparation of the UU, KCC indicate their needs have changed. KCC confirm that the Community Learning contribution set out in the UU (May 2025) no longer reflects the values calculated to mitigate the impact of the development. This contribution would not comply with the statutory tests of the CIL regulations and therefore should be disregarded.
65. Community learning generally operates from one central location per district. KCC has assessed there to be a shortfall in the provision for this service in the area. Increased enrolment arising from population growth associated with the development will place additional demand on this service, and therefore mitigation is necessary. The supplemental UU contains a Community Learning & Skills contribution calculated at a per dwelling rate in accordance with the KCC Developer Contributions Guide 2023 (DCG) which requires major residential development contribute toward the provision of community learning and skills.
66. KCC has assessed the proposed development would have an increased demand on the Kent Youth and Early Years Services. The Integrated Children's Services Contribution, calculated per dwelling in accordance with the DCG, is necessary to provide additional resources and equipment in the borough to enable expansion of capacity within hubs and provision of outreach work in the vicinity.
67. The education needs of the number of primary school pupils expected to occupy the development, cumulatively with other new development, can only be met by the provision of a one-form entry expansion of a primary school project or projects for existing primary schools in the area. All Special Education Needs and Disabilities (SEND) infrastructure in Kent is currently at capacity. The Primary Education contribution and SEND Contributions have been calculated per dwelling and are necessary to meet education needs arising from the development.
68. KCC identify the development will generate additional clients and library users and additional resources are required to cope with this additional demand. The Library Contribution, calculated per dwelling in accordance with the DCG, is necessary to address the direct impact of the development on library and related registration and archive services.
69. The proposed development will result in additional demand upon the Social Care services for elderly people and adults with learning and/or physical disabilities and/or mental health problems. All available Social Care capacity is fully allocated and there is no spare capacity to meet additional demand arising from this, or any other, developments. The Adult Social Care contribution, calculated per dwelling in

accordance with the DCG, is necessary to address the effects of the development on adult social care.

70. Existing Household Waste Recycling Centres and Waste Transfer Stations are over capacity and additional housing development is having a significant impact on the manageability of waste within Kent. The Waste Contribution is calculated on a per dwelling basis in accordance with the DCG.
71. The monitoring contribution is necessary to ensure the development complies with the planning obligations.

Other considerations

72. Prior to the Council's decision, despite being unsupported by the viability evidence, an £85,000 contribution toward affordable housing was offered to secure a recommendation for approval and avoid the cost and delay of the appeal process. The appellant no longer proposes this contribution. It is not included within any planning obligation and is not relevant to my determination of the appeal proposal which relies on the submitted viability evidence.
73. It was suggested an alternative scheme design may offer greater potential to secure affordable housing provision. However, affordable housing is not the only consideration, and as set out above, the design seeks to respond to its landscape setting. Moreover, I must determine the proposal that is before me.
74. Concerns were raised regarding the relationship between plots near the northern boundary and adjoining field. The boundary would be extensively screened by trees and vegetation obscuring sight lines.
75. The availability of services in the village was questioned by a local resident. However, there is no substantive evidence before me to suggest there would not be sufficient capacity of local services, and no objection has been raised by the Council or statutory consultees in regard to this matter. As illustrated by the layout plan, the development would incorporate on-site recreation space, and a new footway is proposed to provide pedestrian connectivity to the village centre.

Conditions

76. The SoCG includes a list of suggested conditions which I have considered against the Framework's tests. The list confirms the appellant's agreement to all pre-commencement conditions.
77. As set out at paragraph 6.346 of the TWBLP, where policy requirements are not met due to viability constraints, permission should be granted for a maximum of two years. This would enable changes in viability to be reassessed for future proposals, in the event development does not commence, and therefore I have imposed this reduced time limit for commencement. In the interests of certainty, I have included a condition requiring the development be carried out in accordance with the approved plans.
78. To protect living conditions, public safety and the environment during construction, I have included a condition requiring submission of a Construction and Environmental Management Plan. In addition, I have included a condition requiring assessment of risk and remediation of land contamination.

79. In the interests of highway safety, I have included conditions requiring vehicle parking and turning areas, access, and visibility splays be provided and retained for that purpose. In addition, I have included a condition requiring submission of details of the internal road and footpath layout and off-site highway works.
80. To maintain the character and appearance of the area, including conservation of the HWNL, I have included conditions to secure a scheme of soft and hard landscaping, implementation of a planting programme, and to retain and protect trees and hedgerows. For the same reasons, I have included conditions requiring submission of design details, ground levels, and external lighting.
81. To provide a suitable standard of accommodation for future occupants, I have included a condition requiring noise levels conform to relevant standards, and to secure obscure glazing of certain windows.
82. In the interests of biodiversity and the natural environment, I have attached conditions requiring submission of a Landscape and Environmental Management Plan and a scheme of avoidance, mitigation, and enhancement of biodiversity.
83. To minimise flood risk, I have included conditions requiring submission of a surface water drainage scheme, verification report, and off-site drainage.
84. To conserve any below-ground heritage assets and artefacts, I have included a condition requiring a programme of archaeological investigation.
85. To reduce emissions, I have included a condition requiring provision of electric vehicle charging points.
86. I have not imposed the suggested condition to remove permitted development rights. Paragraph 55 of the Framework indicates planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Such a condition would not be necessary to make the appeal proposal acceptable in planning terms and would not comply with the Framework.

Conclusion

87. For the reasons given above, having regard to the development plan taken as a whole and all other relevant material considerations, I conclude the appeal should be allowed.

E Dade

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than two years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos: 23003 - S101 Site location Plan; 23003 - P112B Plots 10 & 11 Plans & elevations; 23003 - P113A Plots 12 & 13 Plans & Elevations; 23003 - P117A Plots 17 & 20 Plans and Elevations; 23003 - P118B Plots 21 & 22 Plans & Elevations; 23003 - P119A Bins stores plans and elevations; 23003 - P120 Plot 16 Plans and Elevations; 23003 - P105A Proposed site sections; 23003-C102E - Colour site layout; 23003-C106E - Colour street scenes; 23003-P102F - Proposed site layout; 23003-P103D - Proposed site layout, demolitions; 23003-P106E - Proposed street scenes; 23003 -P110C - Plots 1-9 Proposed plans; 23003-P111C - Plots 1-9 Proposed elevations; 23003-P115C - Plots 14 & 15 plans and elevations; 7029-MJA-SW-XX-DR-C-001 P2 - Foul & Surface Water Strategy; Figure 7 - Landscape section through Northern boundary; Figure 8 - Landscape section through the eastern site boundary; 2301027-04 D – Proposed site access with associated visibility splays, relocation of change in speed limit and new footway; 2301027-05 C – Proposed footway.
- 3) No works shall take place until a Construction and Environmental Management Plan has been submitted to and been approved in writing by the Local Planning Authority. The plan shall demonstrate the adoption and use of the best practicable means to reduce the impact during the construction phase. The plan shall include:
 - An indicative programme for carrying out the works
 - Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the hours permitted under the Mid Kent Environmental Code of Development Practice.
 - Mitigation measures as defined in BS 5228, Noise and Vibration Control on Construction and Open Sites shall be used to estimate LAeq levels and minimise noise disturbance from construction works.
 - Measures to minimise the production of dust on the site.
 - Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s)
 - Maximum noise levels expected 1 metre from the affected façade of any residential unit adjacent to the site
 - Design and provision of site hoardings
 - Management of traffic visiting the site including temporary parking or holding areas.
 - Measures to minimise the potential for pollution of groundwater and surface water.
 - Measures to prevent the transfer of mud and extraneous material onto the public highway including provision of wheel washing facilities
 - Measures to manage the production of waste and to maximise the re-use of materials
 - The location and design of site office and storage compounds.
 - The location of vehicle access points to the site during construction works.

- The arrangements for public consultation and liaison during the construction works.
 - Measures for controlling the use of site lighting whether required for safe working or security purposes.
- 4) The area shown on the approved plans as vehicle parking space, garages and turning shall be provided, surfaced and drained in accordance with details submitted to and approved in writing by the Local Planning Authority before the first occupation of the dwelling being served, and shall be retained for the use of the occupiers of, and visitors to, the development, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this reserved parking, garaging and turning space. The approved details shall be implemented in full, prior to the first occupation of the dwellings.
- 5) Notwithstanding the plans submitted, prior to commencement, a soft and hard landscape scheme designed in accordance with the principles of the Council's landscape character guidance, as well as the High Weald AONB Management Plan and Design Guide, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall show all existing trees, hedges and blocks of landscaping on and immediately adjacent to, the site, including highway trees and land, and shall indicate whether they are to be retained or removed. It shall provide details of onsite replacement planting to mitigate any loss of amenity and biodiversity value. The landscape scheme shall specifically address the need to provide a landscape buffer to the northern boundary of the site and will include details on numbers, species, size, cultivation and locations, together with a program of implementation. The scheme shall also provide details of all new hard landscaping (surfacing materials for roads, parking spaces, footpaths, kerbing, and the thresholds to entrances) along with all boundary treatments within the development. The approved scheme shall be implemented in accordance with an agreed programme of implementation.
- 6) The dwellings shall not be fully occupied until all planting, seeding, turfing and hard landscaping specified in the approved landscape scheme has been fully completed, or completed in accordance with an agreed programme of implementation. All such soft landscaping shall be carried out during the planting season (October to February). Any seeding or turfing which fails to establish or any trees or plants which die or become so seriously damaged or diseased that their long-term amenity value has been adversely affected shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme.
- 7) All existing trees, hedges or hedgerows shall be retained, unless shown on the approved drawings as being removed. All hedgerows on and immediately adjoining the site shall be protected from damage for the duration of works on the site. Any trees, or parts of hedgerows removed without the Local Planning Authority's prior written consent or which die or become, in the opinion of the Local Planning Authority, seriously diseased or otherwise damaged within five years following contractual practical completion of the approved development shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the

first available planting season, with plants of such size and species and in such positions as may be agreed in writing by the Local Planning Authority.

- 8) Notwithstanding the details submitted, no development shall take place until details of tree protection in accordance with British Standard BS 5837:2012 have been submitted to and approved in writing by the Local Planning Authority. These details shall be set out in a standalone Arboricultural Method Statement (AMS) and Tree Protection Plan (TPP) or, where appropriate, a combined AMS/TPP or set of statements and plans.

The approved AMS and TPP shall be provided to the site foreman prior to commencement of development, and all contractors on site shall be made aware of the specified tree protection measures. The AMS and TPP shall cover all trees to be retained which could be impacted by the development, and shall include specific measures to protect these trees through all phases of the development, including measures for:

- the location of site facilities and materials storage;
- demolition of existing structures/hard surfaces;
- changes in ground levels, including the location of construction spoil;
- excavation, including for drainage and other services;
- installation of new hard surfaces; and
- preparatory works for new landscaping where these may encroach into root protection areas and/or present canopy spreads;
- details of reporting during construction.

All demolition and construction activities shall be carried out in accordance with the approved AMS and TPP, unless otherwise agreed in writing by the Authority.

- 9) Notwithstanding the submitted drawings and all supporting documentation, prior to the commencement of above ground works, detailed plans and information regarding the following aspects of the proposed development. The development shall be carried out in accordance with the approvals:
- a) Details relating to typical architectural details including porches, windows reveals, eaves, dormers, door and window types, shall be window glazing and joinery (including recess depths dimensions) and dormer windows and location of utility boxes and meters (which shall not be positioned on principle elevations);
 - b) Written details including source/ manufacturer, and photographic samples of bricks, tiles, all roofing and cladding materials and all other materials to be used externally;
 - c) The positions, design, heights, materials and type of boundary treatment;
 - d) The storage and screening of refuse and recycling areas;
 - e) Cycle storage;
 - f) Details of street furniture.

- 10) Prior to commencement of above ground works, details of the existing and proposed ground levels, and finished slab levels for the dwellings, shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 11) The development hereby permitted shall not be commenced until the following components of a scheme to deal with the risks associated with contamination of the site shall have been submitted to and approved, in writing, by the local planning authority:
1. A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site.
 2. A site investigation, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 3. A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (2). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
 4. Closure Report is submitted upon completion of the works. The closure report shall include full verification details as set out in 3. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean; Any changes to these components require the express consent of the local planning authority. The scheme shall thereafter be implemented as approved.
- 12) Prior to the commencement, a scheme to demonstrate that the internal noise levels within the residential units and the external noise levels in back garden and other relevant amenity areas will conform to the standard identified by BS 8233 2014, Sound Insulation and Noise Reduction for Buildings, shall be submitted to and approved in writing by the Local Planning Authority. The work specified in the approved scheme shall then be carried out in accordance with the approved details prior to occupation and be retained thereafter.
- 13) Prior to the occupation of details of the external lighting to be installed shall be submitted to and approved in writing by the Local Planning Authority. External lighting shall be installed in accordance with the approved details, and no further external lighting shall be installed.
- 14) Prior to the first occupation of the dwellings, details of a Landscape and Environmental Management Plan (LEMP) for the site in accordance with BS42020 Biodiversity to include details of the management for the development as well as the

long term management of the open space and boundary hedging/landscaping, shall be submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall include the following, as a minimum:

- a) A plan identifying the extent of the area to be covered by the LEMP, which shall include the whole application site, except private residential properties.
- b) Ecological trends and constraints on site and wider environmental issues that might influence management and in particular consider the likely effects of climate change.
- c) Landscape and ecological aims and objectives of the management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions for each identified habitat and feature covered.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward for the lifetime of the development) with recommendations for periodic review.
- g) Details of the body or organisation responsible for implementation of the plan and the resources both financial and personnel by which the LEMP will be implemented. This shall include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured post development with the management body(ies) responsible for its delivery.
- h) Ongoing monitoring and remedial measures including regular review by accredited professionals including setting out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning landscape and biodiversity objectives of the originally approved scheme.
- i) Details of community engagement connected with raising awareness of and/or volunteering for the management of retained and created habitats and features on site for biodiversity;
- j) Soil management.

15) Prior to commencement, a scheme of avoidance, mitigation, and enhancement of biodiversity on the site shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall take account of any protected species that have been identified on the site, shall take into account the recommendations of the submitted Preliminary Ecological Assessment and other Mitigation Strategy reports/Surveys and take account of any protected species that have been identified on the site and shall have regard to the enhancement of biodiversity generally. It shall be implemented in accordance with the approved proposals within it and shall be thereafter maintained in perpetuity.

16) Prior to the commencement of development, a detailed sustainable surface water drainage scheme for the site shall be submitted to and approved in writing by the Local Planning Authority. The detailed drainage scheme shall be based upon the Flood Risk Assessment and Drainage Strategy dated September 2023 and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site. The drainage scheme should also demonstrate that an effective outfall for surface water is provided for the development layout. This information may include details of surveys to confirm the location of the existing ditch to the west of the site and/or details of any works that may be necessary to deliver an effective outfall for surface water.

The drainage scheme shall also demonstrate (with reference to published guidance):

- that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

17) Prior to the occupation of any hereby approved dwelling, a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, shall be submitted to and approved in writing by the Local Planning Authority. The Report shall demonstrate that the drainage system constructed is consistent with that which was approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

18) Information shall be submitted to (and approved in writing) by the Local Planning Authority that demonstrates that off-site surface water drainage works are appropriately secured and protected and subsequently implemented prior to the occupation of any phase of the development.

19) Prior to first use of the vehicle access hereby approved, the access shall be installed in accordance with drawings 2301027-04 D & 2301027-05 C along with the visibility splays within which there shall be no obstruction to vision 0.9m above the level of the adjoining highway within the splays. The access and visibility splays shall be maintained as such thereafter.

20) Notwithstanding the details submitted, no above ground works shall commence until details of the internal road layout, to include footpaths, drainage, gradients and street furniture and visibility splays have been submitted to and approved in writing

by the local planning authority. The development shall be carried out in accordance with the approved details.

- 21) Prior to the first occupation of the development pedestrian visibility splays of 2m x 2m with no obstruction over 0.6m in height above the footway level shall be installed as shown on drawings 2301027-04 D & 2301027-05 C. These splays shall thereafter be retained.
- 22) Notwithstanding the details submitted, prior to commencement of development, full details of the off-site highway works to include works to relocate the speed restriction and installation of footway, shown on drawings including drawings 2301027-04 D & 2301027-05 C shall be submitted for approval and the approved scheme shall be implemented in accordance with the agreed timetable for implementation and retained in accordance with the approved details thereafter.
- 23) Prior to the commencement of development, the applicant, or their agents or successors in title, will secure:
- i) archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved by the Local Planning Authority; and
 - ii) further archaeological investigation, recording and reporting, determined by the results of the evaluation, in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority;
 - iii) programme of post excavation assessment and publication.
- 24) Before the first occupation of the buildings hereby permitted the windows(s) on the upper floors of the south west elevations of Plots 1-13 shall be fitted with glass that has been obscured in the manufacturing process to Pilkington level 3 or higher and shall be non-opening up to a maximum height of 1.7m above internal floor level in accordance with a scheme to be submitted to and approved in writing by the local planning authority. Both the obscured glazing and the non-opening design shall be an integral part of the manufacturing process and not a modification or addition made at a later time. The windows shall thereafter be retained as such.
- 25) Two electric vehicle "rapid charge" points relating to the parking spaces (of 22kW or faster) shall be provided in accordance with "TWBC Electric Vehicle Charging Points for New Development (2020)." Details of the provision of these electric vehicle charging points shall be submitted to and approved in writing by the Local Planning Authority. The charging points shall be provided in accordance with the approved details prior to first use of the new parking facilities the subject of this application.

END OF SCHEDULE

APPEARANCES

FOR THE APPELLANT:

- Tom Rumble, MRTPI from Woolf Bond Planning
- Robin Furby, S106 Management, Viability Specialist
- Lee May, DMH Stallard, Solicitor

FOR THE LOCAL PLANNING AUTHORITY:

- Jennifer Begeman BA BTP MRTPI, Principal Planning Officer
- Lucinda Roach BA (Hons) DipTP Cert UD DMS MRTPI, Development Manager

INTERESTED PARTIES:

- Nichola Thomas on behalf of Benenden Parish Council
- Graham Beveridge on behalf of Benenden Parish Council
- Cllr Tom Dawlings, local ward councillor
- Cllr Hugo Pound, local ward councillor

DOCUMENTS

- Recreation Open Space Supplementary Planning Document July 2006 (Costs Updated for Financial Year 2013/2014), Tunbridge Wells Borough Council