



Appeal Decision

Hearing held on 17 December 2025

Site visit made on 18 December 2025

by **C Shearing BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02 February 2026

Appeal Ref: APP/V2255/W/25/3372645

Land off Riddles Road, Borden, Sittingbourne, Kent ME9 8HP

- 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 Fernham Homes Operations Limited against the decision of Swale Borough Council.
 - The application ref is 24/503677/FULL.
 - The development proposed is described as 'Erection of 38 no. residential dwellings, together with associated two access points, open space, landscaping, drainage, and infrastructure works.'
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Fernham Homes Operations Limited against Swale Borough Council. This is determined in a separate decision letter.

Preliminary Matters

3. A legal agreement between the Council and the appellant was submitted after the hearing, dated 18 December 2025 (the S106). I have had regard to this document in reaching my decision and the obligations it contains are discussed below.
4. During the course of the appeal the government published a consultation National Planning Policy Framework (the Framework), which sets out changes to the Framework along with other changes to the planning system and accompanied by a Written Ministerial Statement. Both main parties were given the opportunity to comment on the implications of these documents after the hearing and the responses received have been taken into account. This decision refers to the Framework of December 2024, except where stated otherwise.
5. For ease of reference, throughout this decision I have adopted the appellant's terms for the two parts of the appeal site. The southern parcel of land, adjacent to the edge of Borden, is referred to as 'Parcel A', and the northern parcel of land, adjacent to Sittingbourne, is referred to as 'Parcel B'.

Main Issues

6. In light of the S106, the Council confirmed that its third reason for refusal, relating to securing mitigation for impacts on local infrastructure, has fallen away. As this is no longer a matter in dispute between the main parties it is not a main issue of the appeal.

7. Accordingly, the main issues are:

- Whether the site is suitably located for new housing, having regard to the Council's Settlement Strategy and effects on the open countryside;
- Effects on the character and appearance of the area;
- Effects on the separation of settlements;
- The acceptability of the proposed affordable housing; and
- Effects on protected species.

Reasons

Settlement Strategy and Open Countryside

8. Policy ST1 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017 (the LP) requires, among other things, that development proposals accord with the Local Plan settlement strategy. This is set out in Policy ST3, which establishes a hierarchical approach to the location of new development, with the urban centre of Sittingbourne being the primary focus for growth, followed by other urban centres, rural local service centres, and a lesser amount of development in villages with built-up area boundaries.
9. The appeal site lies outside any built-up area boundary and is considered open countryside for the purposes of assessment against Policy ST3. Policy ST3(5) states that development here will not be permitted, unless supported by national planning policy and (my emphasis) able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. Whether the proposal accords with Policy ST3 therefore requires an assessment of the development against those attributes.
10. There are several studies which have included consideration of the quality of landscape surrounding, and including, the appeal site. The Landscape Assessment of Kent, October 2004 includes the appeal site within the Fruit Belt, of which the key characteristics include its agricultural landscape and small scattered villages and farms. At a more localised level, the Swale Landscape Character and Biodiversity Appraisal¹ identifies that historic villages and hamlets in the area maintain rural character despite the influence of modern development. Specifically, it states that the southward expansion of Sittingbourne has somewhat urbanised the northern edges of Tunstall and Borden, but they nonetheless remain rural in character. It refers to the well defined urban edge of Sittingbourne being locally visible and the integrity and setting of some rural settlements is described as sensitive.
11. Most recently, the Council's Landscape Sensitivity Assessment (LSA)² identifies the site as forming part of an area of strong rural character and an important narrow rural separation between the outlying villages and Sittingbourne, forming part of Sittingbourne's rural setting. These are among the factors which inform the

¹ The Swale Landscape Character and Biodiversity Appraisal Supplementary Planning Document Revision A November 2011- Tunstall Farmlands Character Area

² Swale Landscape Sensitivity Assessment October 2019- Area SE4

study's finding of a moderate-high sensitivity to future change from residential development.

12. Despite being tightly enclosed by the housing of Sittingbourne and Borden, the appeal site maintains distinctly rural qualities. Its rural character is derived from its open grassland and the absence of built form, together with its enclosure by predominantly low level post and wire fencing. Together with its use for grazing, these features give a simplicity and tranquillity to the site's character and Riddles Cottage sits harmoniously in this setting as a rural farmhouse. Although I observed no obvious visual connection with the Kent Downs further beyond the M2 to the south, from parts of Borden Lane longer views are possible to the southeast of various tree canopies and open farmland. Together with the enclosure by woodland on the opposite side of Borden Lane, these views contribute to the appreciation of the site's connection to the surrounding countryside and the setting of the settlements. The same is apparent in views from Starveacre Lane back across the appeal site. In turn, I find the site contributes to the factors which informed the LSA's sensitivity of parcel SE4 as 'moderate-high'.
13. Based on what I have seen, I do not consider that the proximity of the site to the edges of the two settlements reduces the rural character of the site. Instead, the stark contrast with the adjacent residential areas emphasises its rural character and relative tranquillity. While the appreciation of this character from Borden Lane will inevitably be diluted to some extent by the new roundabout and its paraphernalia, I do not find this necessarily reduces the site's contribution to the appreciation of the countryside. Overall, for the reasons given, the site contributes positively to the countryside attributes described in ST3.
14. The proposed development on both Parcels A and B would introduce a relatively dense pattern of residential development, permanently enclosing the land. Houses on Parcel A would be set back behind belts of trees and hedgerow planting which, overtime, would provide some screening and provide a visual connection to the nearby woodland. However, the increase in built form on the site, in localised views from the road and from views across the allotments to the south east, would substantially reduce the site's rural qualities. While the proposal would include an area of open space, this would be characterised by paths and paraphernalia associated with its public use, similarly heavily diluting the simple rural character of this part of the site. The proposal would fail to preserve, and would not enhance, the intrinsic value, landscape setting, tranquillity and beauty of the countryside.
15. In conclusion on this main issue, the proposal would not preserve the attributes of the countryside described in Policy ST3 and the development would not be suitably located having regard to the Council's Settlement Strategy. The proposal would therefore conflict with Policy ST1 and consequently Policy ST3 of the LP. There would also be conflict with Policy DM24 part B, insofar as it requires minimisation and mitigation of adverse impacts on non-designated landscapes.

Character and Appearance

16. For the same reasons above, relating to the effects on the character and appearance of the site and its contribution to the countryside setting of Sittingbourne, harm would be caused to the character and appearance of the area. In addition, the proposed layout on Parcel A would be at odds with the character of this edge of Borden, established by the regularity of its deep plots and linear

arrangement which extends away from the centre of the village. While Borden includes cul-de-sacs and clusters of development set among its spinal routes, these are tightly clustered around the centre of the village where there is a more dense pattern of development and smaller, irregular shaped plots. The depth of the development from the road and its plot sizes would appear as an incongruous addition to this part of the village. I observed that those visual effects would be experienced in localised views from Riddles Road and Borden Lane, but also in longer views from behind the site along Starveacre Lane where the homes would extend beyond the line of tall conifers, accentuating their contrast with the established pattern of development in the village.

17. For the reasons given, the proposal would cause harm to the character and appearance of the area. It would be contrary to Policy CP4, which requires development to enrich the qualities of the existing environment by promoting and reinforcing local distinctiveness and strengthening sense of place, and DM14 which requires development to reflect positive characteristics and features of the site and locality and be sympathetic and appropriate to the location.

Separation of Settlements

18. The LP acknowledges that the identity, character and setting of settlements are formed, in part, by their physical separation from one another. The site forms part of the designated Important Local Countryside Gap (the ILCG) which wraps around the southern side of Sittingbourne and which separates and distinguishes it from the surrounding rural villages. Policy DM25 states that within these gaps, unless allocated for development, planning permission will not be granted for development that would undermine one or more of the gap's purposes, as set out in the supporting text.
19. The appeal site occupies the entire width of the ILCG at this point. The main parties agreed that the gap between these settlements is primarily experienced when travelling along Wises Lane and Borden Lane, consistent with the Wises Lane appeal decision³. For the reasons set out above, I have found the appeal site has a rural character. Its heavy contrast with the adjacent developments of Sittingbourne contributes to its value as a visual break and the appreciation of two distinct settlements. For these reasons in combination, the appeal site plays a particularly important role as part of the ILCG.
20. Together the proposed housing on the edges of both Sittingbourne and Borden would significantly narrow the Gap and reduce the perception of space between them. While the landscaped buffers around Parcel A would provide verdant edges to the roads, this would contribute little to the appreciation of the gap since the housing behind it would remain apparent, even once the landscaping were established.
21. The proposed public open space on Parcel B would be the only open space remaining. Given its position, the appreciation of a break between the two settlements when travelling along Borden Lane would be fleeting, particularly given the partial enclosure of the road by new orchard planting. Furthermore, its value as a gap between the settlements would also be heavily reduced by its appearance. At paragraph 7.7.35 the LP acknowledges that public open space is among the development types which could be suitable within the ILCGs, provided their

³ Wises Lane- Council's reference 17/50511/HYBID, Appeal reference APP/V255/W/19/3233606

purposes are not undermined or the need to protect the countryside compromised. The proposed public open space would include features characteristic of open space within a settlement, including a circular route of paths and managed landscaping including the formal orchard planting and natural playspace. As a consequence, while providing a physical gap between the settlements, I agree with the Council that the space would not function as maintaining the sense of separation. Its value against the ILCG purposes relating to rural open character and safeguarding the open and undeveloped character, would be severely limited.

22. Together, the new housing and the design of the new public open space would result in the substantial loss of the visual break and perception of a gap between the Sittingbourne and Borden, nearing coalescence. The development in its entirety would conflict with the ILCG purpose to safeguard the open and undeveloped character of the areas and prevent encroachment and piecemeal erosion by built development or changes to the rural open character.
23. The design, layout and plot sizes within each Parcel would be visually distinct, in turn maintaining some visual distinction in the character of Borden and Sittingbourne. However, this alone would not be effective in maintaining the separation of the settlements for the purposes set out in the LP. I have had regard to the decisions relating to development at Ufton Court Farm⁴ and Wises Lane⁵, which similarly affected the ILCG. However, in both cases the effects on the gap and its purposes were notably different and, in the case of Wises Lane, the harm identified was balanced against the benefits of that particular scheme. As such, different circumstances applied.
24. In conclusion on this main issue, the proposal would result in the substantial loss of separation between the settlements, contrary to one or more of the ILCG purposes. The proposal would conflict with Policy DM25.

Affordable Housing

25. Policy DM8 of the LP sets varying affordable housing targets depending on location. In this instance, the policy requires provision of 10% affordable housing in Sittingbourne and 40% in rural areas, which would include Borden. Given the appeal site spans both housing market areas, the Council have not objected to the use of a 'blended' approach to affordable housing provision across the site as a whole. Nonetheless, the proposal would entail all the affordable housing provision on the edge of Sittingbourne, and no affordable housing to Borden, which would be at odds with the policy requirement.
26. While the mix of affordable housing sizes on Parcel B would not fully align with the Council's identified need⁶, they would nonetheless offer a range of unit sizes. Parcel B would include a mix of affordable tenures, as well as three market homes, and would be set among the context of other adjoining houses, where it would contribute to creating a mixed community. Parcel A, in contrast, would be entirely market homes, clearly discernible by their gated access, scale and plot size. In considering the appeal scheme as a whole, the affordable homes would not be integrated across the development or support notions of mixed and balanced communities. Other developments have been evidenced where clusters of

⁴ APP/V2255/W/23/3333811

⁵ App/V2255/W/19/3233606

⁶ Housing Market Assessment, cited in the Council's Statement of Case.

affordable homes have been approved, however the distances and visual distinctions involved are not as significant as those before me. While there is a benefit to the managing parties in the close proximity of those homes, it is not apparent that this necessitates the layout and stark separation of tenures before me. I accept, however, that Policy DM8 does not specifically require integration.

27. Nonetheless, for the reasons given, there would be conflict with DM8 in the location of the affordable homes and the settlements which they would form a part. The proposal would also conflict with Policy CP3, cited in the Council's statement, as well as the Developer Contributions SPD, which seek inclusive and mixed communities. I accept that the quantum of affordable homes provided would be more than the average which would otherwise be sought by Policy DM8 across the two market areas, and this is considered in the balancing exercise below.

Protected Species

28. Both parcels of the appeal site comprise predominantly grassland in part suppressed by horse grazing and adjoining mixed off-site hedgerows offering limited connectivity across the site itself. The application was accompanied by an Ecology Impact Assessment (ECIA) which included consideration of potential species on and near the appeal site following a site visit and an earlier preliminary ecological appraisal. In summary, its recommendations included precautionary and mitigation measures to address the potential effects of the development on species including bats, badgers, hedgehogs, reptiles and nesting birds which could reasonably have been secured by planning conditions. The ECIA did not suggest that further surveys of any protected species, or wider effects, were necessary given the site's characteristics and the findings of the associated site visit. As part of the appeal documentation the appellant's ecological specialist considered those earlier findings to remain correct. Those documents acknowledge Borden Nature Reserve and have regard to a 'zone of influence' as an area over which ecological features may be subject to significant effects. That document was reviewed by the County Council Biodiversity Officer who commented specifically on the adequacy of the document during the course of the application⁷ and raised no concerns.
29. It is not in dispute that badgers are active in the vicinity of the site, potentially using the appeal site for some commuting or foraging. However, there is very little substantive evidence to demonstrate that the appeal site has particular value for this purpose and the appellant's ecologist considers any use for foraging is unlikely to be significant based on their observations. While I note the comments of local residents, it remains that there is not substantive or convincing evidence before me which would lead me to doubt the findings of the appellant's technical evidence and the County Council's Biodiversity Officer.
30. There would be a significant reduction in open space arising from the proposal and the site would undoubtedly be different in terms of how it derives its ecological value. However, in the absence of any detailed evidence to the contrary, I am not convinced that an unacceptable 'squeezing' of the corridor for wildlife would occur or amount to harm as a result of this proposal. Unlike the existing situation, future landscaping and open space would be managed to ensure it remains available for this purpose. Overall, I am satisfied that subject to appropriate planning conditions and landscape management provisions in the S106, the effects of the proposal on

⁷ Ecological Advice Service' comments 31 October 2024, 20 May 2025 and 13 June 2025

badgers and other species including bats and hedgehogs, would be acceptable. The proposal would comply with policies CP7 and DM28 of the LP which relate to biodiversity considerations and conservation of the natural environment.

Other Matters

Planning Obligations

31. The only obligation in dispute is the contribution to the Borden Nature Reserve to the west of the appeal site. New occupants of the development would be very likely to use this area for recreation, in turn increasing the need for management and maintenance to prevent harm to its habitats. I see no strong reason why its lack of a formal planning designation would remove this need and I have been provided with Management Plans⁸ which set out details of ongoing management. I am satisfied that the contribution would be necessary and directly related to the development. A contribution of £60 per dwelling is referred to. While a similar amount was agreed on the Wises Lane decision, I do not have details before me as to how that figure was derived and I cannot be certain that the contribution would be fairly and reasonably related in scale and kind to the development. For this reason the contribution would not meet the necessary tests for a planning obligation⁹.
32. The S106 includes a number of other obligations, including contributions towards infrastructure, at both Borough and County level, relating to sports facilities, healthcare, education at varying levels including libraries as well as waste collection and a contribution to improving the junction of the A249 with Key Street. An associated monitoring fee is also included. Based on what I have seen, including representations from the County Council, I am satisfied that those obligations meet all of the required tests and are necessary to mitigate the effects of the proposed development, compliant with policies CP5, CP6 and DM17 regarding health, recreation and community facilities. The S106 also includes provisions for the delivery of the affordable housing and delivery and management of open space, as well as contributions towards designated Special Protection Areas (SPA). Overall, I find these acceptable having regard to the tests, and there is not substantive evidence to support that greater contributions should be made.

Heritage

33. The appeal site is close to a number of designated heritage assets and I have had regard to the relevant statutory duties in considering matters of heritage¹⁰. Riddles Cottage and Posiers, further south along Borden Lane, are both grade II listed buildings. Riddles Cottage derives significance from its age, as a remnant of the 17th century development of the area, and the openness of the appeal site forms part of its immediate setting across which its significance as a rural dwelling is appreciated. While Riddles Cottage would be adjacent to the proposed open space, its setting would nonetheless be urbanised to some degree by the associated paraphernalia and its rural setting and sense of isolation diluted by the increased proximity of housing. The adjacent new orchard planting would reinstate the appreciation of the building within a working landscape. However, given the visual and functional separation of Riddles Cottage from the orchard, its value as

⁸ Borden Nature Reserve 'Proposed Management Plan 2021- 2024' and 'Management Plan 2025- 2028'

⁹ As set out in paragraph 58 of the Framework

¹⁰ Section 66(1) and Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

an enhancement would be limited. Considered as a whole, the proposal would amount to less than substantial harm to the significance of Riddles Cottage for the purposes of assessment against the Framework and this would be at the lower end of the scale.

34. The Framework therefore requires this to be weighed against the public benefits of the scheme, and I must give great weight to the asset's conservation. In this instance those public benefits would include new housing and affordable homes, as well as publicly accessible open space. I am satisfied that the extent of these benefits would outweigh the harm to the designated heritage asset.
35. Turning to Posiers, this is a substantial and attractive detached property located further south along Borden Lane and it sits among a group of other detached houses within generous plots which line the eastern side of the road. The property is therefore experienced within that context. Given the distance of the appeal scheme from Posiers, together with the intervening houses and structures and the very limited intervisibility between the two, the proposal would preserve its setting and the way in which the listed building is experienced.
36. The Conservation Areas of The Street and Harman's Corner exist around the centre of Borden. While these are rural in their character, given the distance of the appeal site from them, and as their setting is derived from the adjoining residential development and land, I do not consider the appeal site forms a part of their setting within which their significance is experienced. I am satisfied that harm to potential archaeological remains could be avoided through suitably worded conditions, which would be a proportionate response here.

Habitat Sites

37. The site lies close to the North Kent coastline, which encompasses three SPA's, being the Thames Estuary and Marshes, Medway Estuary and Marshes and the Swale SPA. These are designated European sites which could be potentially impacted by the development. As the appeal is being dismissed on other grounds, it is not necessary to complete an Appropriate Assessment, since Regulation 63(1) of the Habitat Regulations indicates the requirement is only necessary where the competent authority is minded to give consent¹¹. For the purposes of the balancing exercise below, I have assumed this matter is capable of resolution and does not weigh against the proposal.

Planning Balance

38. The LP is over five years old but the weight to be attached here does not hinge upon its age, since the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. In any event, the main parties agree that, given the absence of a five year land supply for housing, the provisions of paragraph 11d) of the Framework are applicable to the appeal.
39. In respect of 11d)i. I have not found that the application of policies in the Framework that protect areas or assets of importance provide a strong reason for refusing the development proposed. As such, a balancing exercise is required under 11d)ii. This states that permission should be granted unless any adverse

¹¹ Conservation of Habitats and Species Regulations 2017

impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to the key policies listed in footnote nine.

40. In undertaking this balance I am mindful of the weights given by Inspectors on other appeal decisions in the area. However, it is reasonable that the weight in many instances will vary, given the differences between the schemes including their quantum of development and different effects.
41. As set out above, the proposal would conflict with the Council's Spatial Strategy for the location of new homes. Importantly, that strategy is based on a housing need of 776 dwellings per year, far below the current housing target. The Council's Housing Land Supply Position Statement 2025¹² identifies the need for a minimum of 1,064 homes in the Borough per year plus a 5% buffer, equating to 5,586 homes over a 5 year period. It sets out that the Council currently have a land supply of 3.97 years, representing a shortfall of 1,149 homes.
42. Despite the commitment in LP Policy ST2 to a review of the LP in 2022, this has not been completed and the Council accept there is no prospect of an emerging Local Plan being adopted until at least October 2027. As a consequence, there is significant uncertainty surrounding when and where new homes will be built in the Borough. Given these factors, I consider the Spatial Strategy to be out of date and I give limited weight to the conflict with those associated policies.
43. The most notable harm of the proposal would arise from the effects on the ILCG. As above, the proposal, including its public open space, would very substantially erode the gap between Sittingbourne and Boden, reducing it to a fleeting view of trees and public open space when travelling along a very limited section of Borden Lane. This harm would be long lasting, permanently diluting the separation of the settlements. Given the importance of the gap to the identity of those settlements and their setting, the proposal would conflict with paragraph 135 of the Framework which, among other things, requires development to add to the overall quality of the area, be sympathetic to the surrounding built environment and landscape setting, and maintain a strong sense of place. While acknowledging that the ILCG is not a landscape designation, for the reasons set out, this part of the ILCG has value for these purposes.
44. I appreciate that, given the context of housing need above, settlement growth at Sittingbourne is likely to have implications for the ILCG, however, decisions such as that for Wises Lane¹³ reflect options which exist for sites affected by this constraint and where a lesser degree of harm would arise. Overall, I give the harm to the ILCG very substantial weight. There would also be harm to the character and appearance of the area, to which I give significant weight given the value of the site to the rural setting of Sittingbourne and Borden. This would conflict with paragraph 129 of the Framework, which seeks efficient use of land taking into account, among other things, the desirability of maintaining an areas prevailing character and setting.
45. The parties also agree the proposal would entail the loss of Best and Most Versatile agricultural land, in conflict with LP Policy DM31. However, the site is not in productive agricultural use and the proposal would not adversely affect a wider

¹² Housing Land Supply Position Statement 2025/ 2026, November 2025

¹³ APP/V2255/W/19/3233606

agricultural holding. I also acknowledge the proposal would displace the existing grazing facilities which I understand form part of a rural enterprise. Based on the information before me, and the level of the losses involved, limited weight is given to those adverse effects.

46. Turning to the benefits, the most notable benefit would be the delivery of new homes. Given the context of the Council's housing land supply set out above and ongoing uncertainty on the matter, this is of particular importance here. The Framework acknowledges the important contribution which small and medium sized sites can make to meeting the housing requirement of an area and that they are often built-out quickly.
47. Those homes would be well related to the existing settlements, with both Sittingbourne and Borden identified in the LP as locations suitable for future development of varying extents. In particular, all new homes would be well connected to Sittingbourne which is identified as the largest town in the Borough and with the greatest range of services and facilities, as well as the new facilities approved as part of the nearby Wises Lane development. All the new homes would be linked to these facilities, and also those in Borden, by a continuous lit footpath and the routes would be attractive to cyclists. Future occupants could also access bus routes further afield in Sittingbourne, providing accessibility to onward public transport links. Together these would provide reasonable and attractive alternatives to private car use. Accordingly, the development would offer a genuine choice of transport modes and reduce the need to travel, in line with the aims of paragraphs 110 and 115 of the Framework. Those homes would include four level access homes and the bungalows could accommodate older occupants. The proposed homes would make a tangible contribution to the housing shortfall and, in combination, I give the above factors significant weight.
48. Turning to the affordable housing, evidence provided by the Council suggests an acute need for new affordable homes, with a need recently described as 'consistently well below what is required and fails to meet affordable housing need year on year'¹⁴. While there are important shortfalls regarding its location and distribution across the development, the proposal would nonetheless deliver 15 affordable homes of a tenure and size supported by the Council and which would meet an identified need and include accessible homes. Given the context of the affordable housing crisis in the Borough, considered as a whole, I give the delivery of affordable homes significant weight in favour of the proposal. This delivery aligns with paragraph 66 of the Framework, similarly among the key policies referenced in paragraph 11d)ii.
49. The Council state that the provision of open space is a policy requirement, however I do not have details of the extent that would be required by the policy for this scheme, or whether the proposal exceeds it. Nonetheless, as a new area of publicly accessible space which could serve and contribute to the well-being of local residents, I give this moderate weight as a benefit of the scheme.
50. The scheme would provide new planting and biodiversity net gain, even if in part off-site, and there would be economic benefits arising from ongoing expenditure into the local economy by future occupants, including in the rural community of Borden. There would also be some economic benefit arising from the construction

¹⁴ Report titled 'Affordable Housing Delivery' to Housing, Health and Communities Meeting 28th October 2025

period, albeit for a limited period and the Framework acknowledges the importance of schemes of this size to Small and Medium Enterprise housebuilders, which includes Fernham Homes. To these factors I give moderate weight, given the scale of the proposal. I have not given weight to the benefit of new Council Tax receipts, since these would help fund services required by the new occupants.

51. Where the proposal has been found to be acceptable in other respects, these are neutral matters rather than benefits. Other than in respect of affordable housing and open space, the other obligations contained in the S106 would provide mitigation for the effects of the development, rather than providing benefits. The appellant considers the development on Parcel A would provide efficient use of the land. However, given the conflict with paragraph 129, discussed above, I have not given this weight in favour of the proposal.
52. In conclusion, the benefits and adverse impacts of granting planning permission would be numerous. Having considered all matters, taken together the weight of the adverse impacts would significantly and demonstrably outweigh the benefits. Accordingly, the proposal would not benefit from the presumption in favour of sustainable development set out in the Framework.

Further Matters

53. In undertaking the above assessment I am mindful of the consultation version of the Framework, on which I asked the main parties to comment. In particular this contains policies which may alter the weight of the considerations here, for example given the proximity of the development to Sittingbourne and its rail links. It nonetheless also includes policies relating to context and the environmental qualities of land, which would be applicable here. In considering these factors however, it is relevant that the document is only in a consultation form at this stage and there is not certainty surrounding the final form which its policies may take. Accordingly, I give it only very limited weight at this time and it does not amount to a reason to alter the above assessment.
54. I am aware of other matters raised by the interested parties which have not been addressed in detail in this decision. These include the effects on occupants of the nearest properties and effects on mineral safeguarding. However, it is not necessary for me to address those matters further since they would not alter the outcome of the appeal.

Conclusion

55. For the reasons given, the proposal would conflict with the development plan and there are not material considerations of sufficient weight, including approaches in the Framework, which indicate a decision should be made other than in accordance with it.

C Shearing

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

James Maurici	KC, Landmark Chambers
Matthew Woodhead	DHA Planning
Danielle Lawrence	DHA Planning
Richard Hammond	Pegasus Group (Design)
Karl Goodburn	Bennu Environmental Ltd (Ecology)
Steve Baughen	Fernham Homes

FOR THE LOCAL PLANNING AUTHORITY:

Ian Harrison	Planning Manager, Swale Borough Council
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INTERESTED PARTIES, INCLUDED:

Sarah Brooker	Local Resident
Mr Keith Middleton	Local Resident
Vivien Smith	Local Resident and Borden Wildlife Group
Mrs Astin	Local Resident
Cllr Lee Small	Borden Parish Council



Costs Decision

Hearing held on 17 December 2025

Site visit made on 18 December 2025

by **C Shearing BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02 February 2026

Costs application in relation to Appeal Ref: APP/V2255/W/25/3372645

Land off Riddles Road, Borden, Sittingbourne, Kent, ME9 8HP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Fernham Homes Operations Limited for a partial award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for 'Erection of 38 no. residential dwellings, together with associated two access points, open space, landscaping, drainage, and infrastructure works.'
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Decision

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

Reasons

2. The application for a partial award of costs was made in writing by the applicant the evening before the hearing. During the hearing the applicant confirmed they no longer wished to pursue the second ground for costs ('Ground 2') and accordingly I shall only consider the first ground for costs, relating to ecology matters. The Council provided its response to the application verbally at the hearing and the applicant gave their final comments.
3. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The applicant considers the Council behaved unreasonably in respect of its second reason for refusal, relating to effects on protected species, which went against officer advice. Members of the Planning Committee were entitled to reach a different view from its officers and this is a fundamental principle of local decision making.
5. However, the application and appeal were accompanied by technical reports prepared by suitably qualified specialists. It was stated by an interested party during the hearing that it was disappointing those documents were not reviewed by an independent party. However, this did occur as the documents were reviewed by the Biodiversity Officer of the County Council, who was consulted three times on the application and commented specifically that the ECIA¹ was sufficient and that

¹ Ecological Impact Assessment, August 2024

no ecological surveys were required in respect of protected or notable species. The Officer's Report clearly recounts those findings to the Planning Committee².

6. It is not clear, based on what I have seen, why a contrary view was subsequently reached or that there was conflicting technical evidence to contradict, or draw into doubt, the applicant's findings and the conclusions of the Biodiversity Officer. The committee minutes refer to generalised concerns for wildlife corridors. It is not clear in what way the technical information provided by the applicant was inadequate, or why the matter could not be reasonably addressed by the imposition of planning conditions as suggested. This is similarly not substantiated in the Council's case, which refers to the presence of badgers in the surrounding area, which was already acknowledged within the ECIA. The potential effects of habitat 'squeezing' were also put forward during the appeal, although not supported by any compelling evidence to demonstrate the proposal would cause harmful effects.
7. As such, the Council failed to produce evidence to substantiate its second reason for refusal, and made vague, generalised assertions about the proposal's impact, which were unsupported by any objective analysis. These are both among the examples of unreasonable behaviour given in the PPG. As set out in the appeal decision, the ecological impacts of the proposal were capable of being dealt with by condition. In turn, the Council's behaviour caused the applicant to incur unnecessary expense in the appeal process, through the need to respond to the second reason for refusal.
8. For the reasons given, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the Council's second reason for refusal and a partial award of costs is therefore warranted, as set out in the PPG.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Swale Borough Council shall pay to Fernham Homes Operations Limited the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the second reason for refusal, such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Swale Borough Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

C Shearing

INSPECTOR

² 'Report to Planning Committee 17th July 2025