



Ministry of Housing,
Communities &
Local Government

Mr Paul Burley
Montagu Evans LLP
5 Bolton Street
London
W1J 8BA

Our ref: APP/V2255/W/19/3233606
Your ref: 17/505711/HYBRID

29 April 2021

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY QUINN ESTATES LIMITED AND MULBERRY ESTATES
(SITTINGBOURNE) LIMITED
LAND AT SOUTH-WEST SITTINGBOURNE/WISES LANE, SITTINGBOURNE
APPLICATION REF: 17/505711/HYBRID**

1. I am directed by the Secretary of State to say that consideration has been given to the report of S R G Baird BA (Hons) MRTPI, who held a public inquiry for nine days beginning on 26 November 2019, closed in writing on 23 December 2019, into your client's appeal against the failure of Swale Borough Council to give notice within the prescribed period of a decision on the hybrid application for up to 675 dwellings to include: outline planning permission for up to 595 dwellings including affordable housing; a 2-form entry primary school with associated outdoor space and vehicle parking; local facilities comprising a Class A1 retail store of up to 480 sq. m GIA and up to 560 sq. m GIA of "flexible use" floorspace that can be used for one or more of the following uses – A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes), D1 (non-residential institutions); a rugby clubhouse/community building up to 375 sq. m GIA, 3 standard RFU sports pitches and associated vehicle parking; a link road between Borden Lane and Chestnut Street/A249; allotments: and formal and informal open space incorporating SUDS, new planting/landscaping and ecological enhancement works; and full planning permission for the erection of 80 dwellings including affordable housing, open space, associated access roads vehicle parking, associated services, infrastructure, landscaping and associated SUDS, in accordance with application ref. 17/505711/HYBRID, dated 30 October 2017.
2. On 13 August 2019, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed, and planning permission granted.

Ministry of Housing, Communities & Local Government
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4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and the environmental information submitted before the inquiry. Having taken account of the Inspector's comments at IR1.11-1.22, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Matters arising since the close of the inquiry

6. On 6 March 2020 the Secretary of State received details of an appeal decision in respect of Land west of Barton Hill Drive, Minster-on-sea, Kent which was allowed against the decision of Swale Borough Council.
7. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.
8. On 12 Nov 2020 the Secretary of State wrote to the main parties to afford them an opportunity to comment on the matter of conditions relating to tackling climate change, namely the Council's proposed conditions SC11, SPCC12 and SC14. These representations were circulated to the main parties on 30 November. He also sought views on the proposed precommencement condition on landscaping, SPCC42.
9. The Secretary of State has considered the representations received below in paragraphs 32-36, and his conclusions on them are set out there and at paragraph 45. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.
10. On 12 January 2021 the Council wrote to the Secretary of State stating that it could now demonstrate a Housing Land Supply of 5.02 years. On 12 February 2021 the Council wrote again, stating that it was not yet in a position to be able to demonstrate a five year housing land supply. The Secretary of State has proceeded on that basis.
11. An application for a full award of costs was made by Quinn Estates Limited and Mulberry Estates (Sittingbourne) Limited against Swale Borough Council (IR1.10). This application is the subject of a separate decision letter.

Policy and statutory considerations

12. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

13. In this case the development plan consists of The Swale Borough Local Plan, adopted in July 2017 and the Kent and Medway Minerals Waste Local Plan adopted 2016. The Secretary of State considers that relevant development plan policies include those set out at IR4.2-4.5.
14. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), including the new Swale Borough Council guidance for complying with the climate change planning condition to reduce operational carbon of new dwellings in Swale by 50% (June 2020), as well as those documents set out at IR4.10.
15. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

16. The Swale Borough Local Plan Review 2022–2038 will set the vision and framework for development and needs for the whole of Swale Borough area from 2022- 2038.
17. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. As the Local Plan Review is at an early stage, has not been through examination and unresolved objections to it remain, he affords it limited weight.

Main issues

Highways

18. For the reasons given at IR11.1-11.11, the Secretary of State agrees with the Inspector at IR11.11 that subject to the implementation of mitigation measures, the appeal scheme would not have an unacceptable impact on highway safety or the free flow of traffic on the local or strategic road network contrary to Policy DM6. The Secretary of State notes (IR11.11) that the LPA accepted that it provides no evidence that, either the scheme's residual cumulative impacts would be severe, or its highway safety impacts would be unacceptable. As such he concludes that the proposal is in line with paragraph 109 of the Framework. The Secretary of State notes at IR11.146 that the creation of a link between Borden Lane and Chestnut Street with access onto the southbound A249 has been identified to provide benefits. These include mitigating congestion on the A2 and the provision of an alternative route which, the Key Street/A249 and the Key Street roundabout and the Link would contribute to improving air quality along this key route into and out of Sittingbourne. The Secretary of State agrees with the Inspector that these benefits attract substantial weight (IR11.146).

Effect on the character and appearance of the area

19. The Secretary of State has considered the Inspector's analysis at IR11.12-11.33 and agrees for the reasons given that the appeal scheme would have a significant landscape and visual effect overall, albeit that a significant area is already allocated for development.

He agrees with the Inspector (IR11.32) that whilst those effects would reduce over time, particularly through the proposed extensive landscaping proposals, they would not disappear, and the degree of harm would be at the moderate adverse level and would be significant.

20. He further agrees that whilst the proposal would not result in the merging of settlements, the extent of separation between Sittingbourne and Chestnut Street would be significantly eroded through a permanent loss of open land within the gap (IR11.32). The Secretary of State agrees with the Inspector (IR11.33) that there is conflict with Policies DM 14, 24 and DM 25 and that significant weight should be given to this harm (IR11.154). However, for the reasons given at IR11.20, he also agrees (IR11.33) that there would be no adverse impact on the character or appearance of the Local Green Space, and as such the proposal would be compliant with Policy DM18.

Implications for the supply of Best and Most Versatile Agricultural Land

21. For the reasons given at IR11.34-11.37 the Secretary of State agrees with the Inspector that the development would result in the loss of best and most versatile agricultural land outside of the allocated site (IR11.35). However, for the reasons given the Secretary of State (IR11.155) agrees that as the proposal would not adversely affect the viability of the remaining holding or result in the accumulated loss of Best and Most Versatile agricultural land, the proposal would not conflict with Policy DM 31. The Secretary of State agrees with the Inspector that this is neutral in the planning balance (IR11.155).

5-year Housing Land Supply

22. On 12 February 2021 the Council wrote to the Secretary of State, saying that it was not yet in a position to be able to demonstrate a five year housing land supply. The Secretary of State has proceeded on that basis. The Secretary of State notes (IR11.135) the parties agree that the absence of a 5-year HLS engages the Framework paragraph 11(d) “tilted balance” save potentially for issues including relating to heritage (footnote 6 of the Framework). The Secretary of State agrees. His consideration of heritage issues is set out below.

Meeting housing need including affordable housing

23. For the reasons given at IR11.38-11.44 and IR11.143-11.145, the Secretary of State agrees that a scheme with a greater number of smaller units would not be viable. He notes that the dwelling mix is driven by a viability appraisal which has been independently assessed and not been challenged (IR11.41). The Secretary of State notes (IR11.42) that the appellant accepts that the proposed dwelling mix departs from Policies CP 3 and MU 3 and would attract negative weight.

24. For the reasons given at IR11.43-11.44 the Secretary of State agrees that whilst the proposals would not provide a level of affordable housing consistent with a strict application of Policy DM 8 it would provide 25 more than would be achieved on the allocated site. He notes that the S106 Agreement provides for an Affordable Housing Viability Review (IR11.43), with the potential for additional affordable housing up to a

Policy DM 8 policy compliant level. Nonetheless the proposed provision of affordable housing would conflict with Policy DM 8 (IR11.44).

25. The Secretary of State agrees for the reasons given at IR11.143-11.145 that overall the contribution of the scheme in relation to the provision of housing attracts significant weight (IR11.45).

Impacts on heritage assets

26. The Secretary of State agrees with the Inspector's approach as set out at IR11.45-11.51. For the reasons given he agrees (IR11.51) that without a quantitative measure of the magnitude of traffic, the degree of harm asserted by the Council is unreliable and should be treated with caution.

The Street CA and associated Listed Buildings

27. For the reasons given at IR 11.45-11.57 Secretary of State agrees that the impact of traffic on the Street Conservation Area (CA) and associated listed buildings is such that the effect would be neutral (IR11.57). He further agrees with the Inspector (IR11.58) that given the degree of separation from the development and the scale of proposed boundary screening context, the development would not affect the setting and significance of either the CA or Borden Hall (IR11.58).

Harman's CA and associated Listed Buildings

28. The Secretary of State has considered the Inspector's reasoning at IR11.59 - 11.61. He agrees with the Inspector for the reasons given that development would not affect the setting and significance of either the CA or any of its Listed Buildings (IR11.61).

Hearts Delight CA and associated Listed Buildings

29. The Secretary of State has considered the Inspector's reasoning at IR11.62-11.64. He agrees that given the substantial separation between the appeal site and the Hearts Delight CA, the development would not affect the setting and significance of either the CA or the associated Listed Buildings (IR11.64).

Chestnut Street CA and associated Listed Buildings

30. The Secretary of State agrees, for the reasons given at IR11.68-11.76 that there would be very minor changes to the setting of the Conservation Area and associated Listed Buildings, and that for the link road and roundabout there would be slight changes to the key significant features of the HAs and slight change to the significant components of their settings. He agrees with the Inspector (IR11.80) for the reasons given that this would amount to less than substantial harm, though at the lowest end of that scale.

Other Listed Buildings

31. For the reasons given at IR11.77-11.78, the Secretary of State agrees that there would be no impact on Cryalls Farmhouse. However, he also agrees, for the reasons set out at IR11.79, that there would be a material change to the character of the setting of Riddles

Farmhouse, amounting to less than substantial harm, but at the lowest end of that category (IR11.80).

Heritage conclusions

32. The Secretary of State agrees with the Inspector's conclusions at IR11.150-11.151 that the proposals would result in conflict with Policies DM 32 and 33. In line with the Framework para. 196, the 'less than substantial harm' to Riddles Farmhouse and the Chestnut Street CA needs to be weighed against the public benefits of the proposals. The Secretary of State agrees with the Inspector at IR11.151 that the finding of less than substantial harm to the designated HAs in conflict with Policies DM 32 and 33 attracts substantial negative weight. The Secretary of State's conclusions on this test are set out below.

Implications for biodiversity and climate change

Climate change

33. The Secretary of State has considered the Inspector's conclusions on Climate Change and the imposition of planning conditions at IR11.81-11.99.
34. For the reasons given at IR11.89-93, he agrees with the Inspector that the development meets the energy efficiency standards required by current BRs and would be compliant with Policy DM19 (IR11.93). He notes that the estimated reduction in carbon dioxide emissions would be 2% for Phase 1a and 2% for the Masterplan site, and that the primary school would achieve a BREAM Performance Rating of Very Good (IR11.88).
35. The Secretary of State has carefully considered the case put forward by the Council. He notes their view that the appellants have done the bare minimum and have not pushed the design process beyond the standard estate layout (IR11.93). He has taken into account the Council's commitment to meeting the climate change challenge, including their Climate Change Declaration, adopted in June 2019, which sets out the intention of making the Borough carbon neutral by 2030 (IR11.86). This is set against a background in which there is a national commitment to carbon neutrality by 2050 (IR11.96). The Council considers that all local and national policy and guidance needs updating and the decision maker should not apply the current set of standards (IR11.95). The Secretary of State has further considered the Council's representations of 26 November and 8 December 2020. In particular he notes that the Council's publication of 'Guidance for complying with the climate change planning condition to reduce operational carbon in new dwellings in Swale by 50%' of June 2020. The Council is therefore seeking much higher reductions via proposed conditions SC11 and SPCC12 (IR11.97).
36. The Secretary of State has also carefully considered the Inspector's analysis and has taken it into account. He agrees that the scale and urgency of the climate change emergency is such that tackling climate change is a material consideration to which significant weight should be attached (IR11.99 and IR11.96). He further agrees with the Council's representation of 26 November 2020 that the need for housebuilding to become greener, warmer and more energy efficient has become more urgent.
37. However, overall the Secretary of State agrees with the appellant's case that under the plan-led system it is not possible or desirable to predict what policies might apply in the future and apply them now (IR11.95). While noting the Council's guidance of June 2020 (paragraph 34 above) he considers that it amounts to guidance only, which has not gone

through a public examination process, rather than planning policy, sufficient to justify the imposition of conditions. As such he further agrees with the appellant that there is no existing or emerging LP policy base for proposed conditions SC 11, SPCC12 (IR10.4). Notwithstanding the high-level national commitment to carbon neutrality, and the significant weight attaching to tackling climate change, these conditions also go beyond current and emerging national policy. He therefore considers that the proposed conditions cannot be said to be either reasonable or necessary. They therefore fail to meet the tests set out at paragraph 55 of the Framework and the Secretary of State considers they should not be imposed. However, given that Policy DM19 provides a policy underpinning for the 'Very Good' BREEAM performance rating (IR11.164), the Secretary of State considers that it is reasonable and necessary to impose revised condition 14.

Biodiversity

38. For the reasons given at IR11.100-11.109, the Secretary of State agrees that the proposal is likely to result in a material increase in biodiversity.

Special Protection Areas

39. The Secretary of State is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017 and for the reasons set out at IR11.110-11.114 he agrees with the Inspector that he is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of any affected European site in view of each site's conservation objectives. Those sites are the Medway Estuary and Marshes Special Protection Area and Ramsar Site, The Swale Special Protection Area and Ramsar Site and the Thames Estuary and Marshes Special Protection Area and Ramsar Site. The Secretary of State agrees with the assessment and findings in the Inspector's Annex D. He therefore adopts Annex D as the necessary Appropriate Assessment in his role as the Competent Authority on this matter and agrees that there would be no adverse effect on the integrity of the designated sites.

Conclusion on biodiversity

40. For the reasons set out at IR11.100-11.114 the Secretary of State agrees at IR11.115 the scheme would not have an adverse effect on biodiversity and on the balance of probabilities would result in a biodiversity net gain. As such the development would not conflict with the objectives of Policy DM 28 and Policy MU 3 and national policy.

Other matters

41. For the reasons given at IR11.116-11.121 the Secretary of State agrees with the Inspector that the proposals make acceptable provision for community infrastructure and that there would be no conflict with policy CP6 (IR11.158).

42. For the reasons given at IR11.122-11.131 and IR11.159, the Secretary of State agrees with the Inspector that the proposal would not result in a worsening of air quality, and with the implementation of the Link Road, off-site highway improvements and the damage mitigation measures would result in an overall improvement in air quality. As such the proposal would not conflict with Policy DM6 (2d) and the matter is neutral in the planning

balance (IR11.159). In reaching this conclusion, the Secretary of State has taken into account that he is not imposing conditions SC11 and SPCC12

43. For the reasons given at IR11.132-11.134 the Secretary of State agrees that the layout plan for Phase 1a shows adequate separation between the proposed dwellings on Phase 1a and the existing dwellings such that there would be no loss of privacy or light. He further considers that the remainder of the land to the east and south of Dental Close forms part of the outline application. He agrees with the Inspector that as part of a reserved matters application, the LPA could ensure adequate separation to avoid adverse effects on existing residents. He agrees with the Inspector's conclusion at IR11.134 that there would be no adverse effect on the living conditions of adjoining residents.
44. For the reasons given at IR11.137-11.142 the Secretary of State agrees with the Inspector that whilst the construction period would generate short to medium term economic benefits, whilst allowing for the caveats raised by the Local Planning Authority, the total economic benefits would have a positive effect on the local economy and attracts substantial weight.
45. The Secretary of State agrees with the Inspector at IR11.147 that the provision of facilities for Sittingbourne Rugby Football Club provides for positive social benefits. Further he agrees with the Inspector's conclusion at IR11.148 that when taken all together the economic and social benefits should be accorded substantial weight.

Planning conditions

46. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-10.20, IR11.163-169 and IR11.170—11.172, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. His conclusions on conditions SC11 and SPCC12 are set out in paragraphs 33-37 above. The Secretary of State agrees (IR11.171) that the revised wording of Condition 41 achieves the Council's and appellant's objectives for this condition, and notes that the appellant has agreed to the condition. While he notes that the Council does not agree to the revised wording of the condition (representation of 24 November 2020), the Secretary of State does not consider that The Town and Country Planning (Pre-commencement Conditions) Regulations 2018 supports this as a reason for not imposing the revised condition. The Secretary of State is satisfied that the other conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.

Planning obligations

47. Having had regard to the Inspector's analysis at IR10.21-10.31, the planning obligation, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR11.169 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

Planning balance and overall conclusion

48. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies CP 5, DM 8, 14, 24, 25, 32 and 33 of the development plans, and is not in accordance with the development plan overall. He has gone on to

consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

49. As the Council cannot demonstrate a 5-year supply of housing, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.
50. The material considerations which weigh against the proposal are the harm to landscape and visual impacts, and harm to the setting and significance of heritage assets. The Secretary of State affords the landscape and visual harm significant negative weight, and the finding of less than substantial harm to the designated HAs is conflict with Policies DM 32 and 33 attracts substantial negative weight.
51. The provision of open market housing and affordable housing carries significant weight in favour of the scheme. The economic benefits, the highway improvements, and the relocation of the Rugby Club each carry substantial weight in favour of the scheme.
52. The Secretary of State has considered whether the identified 'less than substantial' harm to the significance of the heritage assets identified is outweighed by the public benefits of the proposal. Overall the Secretary of State agrees with the Inspector at IR11.137-11.151 that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to the significance of heritage assets. He considers that the balancing exercise under paragraph 196 of the Framework is therefore favourable to the proposal.
53. The Secretary of State thus considers that there are no protective policies which provide a clear reason for refusing the development proposed. Further he considers that any adverse impacts would not significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole. As such he concludes that the presumption in favour of sustainable development applies.
54. For the reasons given above the Secretary of State now considers that there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan. The Secretary of State therefore concludes that the appeal be allowed subject to conditions.

Formal decision

55. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex A of this decision letter for up to 675 dwellings to include outline planning permission for up to 595 dwellings including affordable housing; a 2-form entry primary school with associated outdoor space and vehicle parking; local facilities comprising a Class A1 retail store of up to 480 sq. m GIA and up to 560 sq. m GIA of "flexible use" floorspace that can be used for one or more of the following uses – A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes), D1 (non-residential institutions); a rugby clubhouse/community building up to 375 sq. m GIA, 3 standard RFU sports pitches and associated vehicle parking; a link road between Borden Lane and Chestnut Street/A249; allotments: and formal and informal open space incorporating SUDS, new planting/landscaping and ecological enhancement

works; and full planning permission for the erection of 80 dwellings including affordable housing, open space, associated access roads vehicle parking, associated services, infrastructure, landscaping and associated SUDS, in accordance with application ref. 17/505711/HYBRID, dated 30 October 2017.

56. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

57. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

58. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

59. A copy of this letter has been sent to Swale Borough Council and Borden Residents Against Over Development, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Phil Barber

Authorised by the Secretary of State to sign in that behalf

Annex A Schedule of representations

Annex B List of conditions

Annex A - SCHEDULE OF REPRESENTATIONS

General representations

Party	Date
Allyson Spicer	25/07/2020
Allyson Spicer	24/07/2020
Allyson Spicer	23/07/2020
Borden Residents Against Over Development	08/07/2020
Montagu Evans LLP on behalf of the applicant	06/03/2020
Borden Residents Against Over Development resending letter dated 24 th February 2020	17/03/2020
Borden Residents Against Over Development	24/4/21

Reference back to Parties

Party	Date
Montagu Evans	25/11/2020, 4/12/20
Borden Residents Against Over Development	26/11/2020
Borden Parish Council	23/11/2020
Swale Borough Council	26/11/2020, 8/12/20
Allyson Spicer	21/11/2020
Allyson Spicer	24/11/2020

Annex B – CONDITIONS

1. The detailed element (referred to subsequently as Phase 1A and as shown on drawing 1733.10.A4) of the development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which the permission is granted.

2. Before the first submission of reserved matters, a phasing plan for delivery of the development, including the associated highways infrastructure, open space, landscaped buffers and sports/community facilities, shall be submitted to and approved in writing by the local planning authority. The development shall then be implemented strictly in accordance with the approved phasing scheme, unless otherwise agreed in writing by the local planning authority.

3. Details relating to the layout, scale and appearance of the proposed building(s) (“reserved matters”) within a relevant phase (other than Phase 1A), and the landscaping of the site within that phase, shall be submitted to and approved in writing by the local planning authority before any development within that phase is commenced.

4. The first application for approval of reserved matters referred to in Condition 3 above must be made not later than the expiration of 3 years beginning with the date of this permission; and the last application for approval of reserved matters referred to in Condition 3 above must be made not later than the expiration of 10 years beginning with the date of this permission.

5. The first phase of the development for which outline permission is hereby granted must be begun not later than the expiration of 2 years from the date of approval of the first of the reserved matters to be approved.

6. Each subsequent application for reserved matters approval for any phase of the development shall be commenced within 2 years of the date of the approval for each reserved matter for that approved phase.

7. The detailed element (phase 1A) of the development shall be carried out in accordance with the following approved plans: 2574-313 Rev G, 1733 P230.01.B, 1733.P231.01 A, 1733.P341.02.A, 1733.P341.03, 1733.P341.01.C, 1733.K3.01, 1733.K2.01 A, 1733.H485.01 Rev C, 1733.H470.01A, 1733.H469.01 Rev B, 1733.H455.01, 1733.H455-5E, 1733.H433.01 Rev B, 1733.H431.01 Rev B, 1733.H421.01 Rev B, 1733.H417.01D, 1733.H406.01, 1733.H385.01, 1733.G.02 Rev A, 1733.G.01 Rev A, 1733.BS.01, 1733.B.03, 1733.B.01 Rev

A, 1733.9B.01 Rev B, 1733.10 A4, 1733.09 Rev D, 1733.03A, 1733.01 Rev A4, 14657C Landscape Proposals sheets 1 of 4, 2 of 4, 3 of 4 and 4 of 4.

8. The reserved matters details submitted pursuant to condition 2 shall accord with the Masterplan Parameter Plans, Building Heights Parameter Plan 2574-304 Rev P; Land Use Parameter Plan 2574-300 Rev N; Density Parameter Plan 2574-303 Rev P; Route Infrastructure Parameter Plan 2574-302 Rev S; David Williams Landscape Consultancy Indicative Landscape Strategy Plan (Addendum LVIA Figure 10.8, Drawing No L8 Revision E (For the avoidance of doubt this replaced the Landscape and Ecology Masterplan previously submitted)).

9. No more than 180 dwellings shall be occupied until the community facility/rugby clubhouse and associated pitches have been completed and made available for use.

10. No development, other than as required by Condition 22, in any phase shall commence until details of an indicative timetable for the connection of that phase or part of that phase to the public sewerage system has been submitted to local planning authority. No dwelling in any phase shall be occupied unless in accordance with the approved timetable.

11. ~~NOT IMPOSED – The dwellings hereby approved in Phase 1A shall be constructed to achieve the following sustainability measures: at least a 50% reduction in Dwelling Emission Rate compared to the target fabric energy efficiency rates as required under Part L1A of the Building Regulations 2013 (as Amended); a reduction in carbon emissions of at least 50% compared to the target emission rate as required under Part L of the Building Regulation. Prior to the construction of any dwelling within Phase 1A, details of the measures to be undertaken to secure compliance with this condition shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.~~

12. ~~NOT IMPOSED—Prior to the construction of any dwelling in a subsequent phase (other than Phase 1A), a scheme of sustainable design and construction measures for the dwellings within that phase shall be submitted to and approved in writing by the local planning authority. This shall demonstrate: (a) a reduction in carbon emissions of at least 50% compared to the target emission rate as required under Part L of the Building Regulations 2013 (as amended) for any dwelling within a reserved matters phase approved between the years 2020 and 2023 (inclusive); b) a reduction in carbon emissions of at least 75% compared to the target emission rate as required under Part L of the Building Regulations 2013 (as amended) for any dwelling within a reserved matters phase approved between the years 2024 and 2027 (inclusive) and (c) a reduction in carbon emissions of 100% (Zero Carbon) compared to the target emission rate as required under Part L of the Building Regulations 2013 (as amended) for any dwelling~~

~~within a reserved matters phase approved in or after the year 2028. The development in each phase shall be carried out in accordance with the approved details.~~

13. The residential development hereby permitted shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and no residential unit(s) shall be occupied until details of the measures used to achieve the rate for that unit(s) have been submitted to and approved in writing by the local planning authority.

14. REVISED The non-residential buildings shall be constructed to a minimum of BREEAM new construction “~~Excellent~~ Very Good” Standard or an equivalent standard, and prior to the first use of the building the relevant certification shall be submitted to the local planning authority for each individual non-residential building confirming that the required standard has been achieved.

15. No development (other than as required under condition 22) shall take place in any phase (including Phase 1A) until details of the existing site levels, proposed site levels (including any levels changes to areas to be used as open space, landscaped buffer areas and highways), and proposed finished floor levels for buildings in that phase have been submitted to and approved in writing by the local planning authority and the development shall be completed strictly in accordance with the approved levels.

16. No development beyond the construction of foundations shall take place within a relevant phase (including Phase 1A) until details have been submitted to and approved in writing by the local planning authority for the installation of fixed telecommunication infrastructure and High Speed Fibre Optic (minimal internal speed of 100mb) connections to multi point destinations and all buildings including residential, commercial and community within that phase. The ducting details shall provide sufficient capacity, including duct sizing to cater for all future phases of the development. The infrastructure shall be laid out in accordance with the approved details and at the same time as other services during the construction process.

17. Notwithstanding the Phase 1A detailed drawings no development beyond the construction of foundations within phase 1A shall take place until the following measures to minimise the risk of crime have been submitted to and approved in writing by the local planning authority revised plans providing ground floor windows on the side elevations of dwellings with on-plot parking spaces. The development shall be carried out in accordance with the approved details.

18. No development beyond the construction of foundations shall take place within Phase 1A until written details and samples of the materials to be used in the construction of the external surfaces of the building(s) hereby permitted have been submitted to and approved in

writing by the local planning authority. This shall include a sample panel to demonstrate the appearance of the feature brickwork proposed on the buildings.

19. Details of any means of enclosure to be erected between any dwelling and road frontages within Phase 1A shall be submitted to and approved in writing by the local planning authority and erected prior to the occupation of that dwelling within Phase 1A. Notwithstanding the provisions of Class A, Part 2, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) no gates, fences, walls or other means of enclosure shall be erected or provided in advance of any dwelling fronting on a highway, other than those specifically shown on the approved plans.

20. No development in any phase (including Phase 1A) shall take place, including any works of demolition, until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The approved CMP shall be implemented and adhered to throughout the entire construction period. The CMP shall provide details of:

- measures to manage HGV movements to deter use of the Strategic Road Network during peak hours (0800-0900 and 1700-1800 hours);
- measures to ensure that loose loads arriving / departing from the site are sheeted;
- the means of access for vehicles during construction and the routing of construction and delivery vehicles to and from the site, including temporary traffic management and signage;
- parking and turning areas for construction and delivery vehicles and site personnel;
- loading and unloading of plant, materials and waste;
- storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- wheel washing facilities and measures to deal with mud or spills on the highway;
- measures to control the emission of dust and dirt during construction;
- a scheme for recycling/disposing of waste resulting from demolition and construction works.

21. No construction work audible at the site boundary (for the avoidance of doubt to include piling) in connection with the development (including Phase 1A) shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: Monday to

Friday 0730–1900 hours, Saturdays 0730–1300 hours unless in association with an emergency or with the prior written approval of the local planning authority.

22. No dwelling within Phase 1A shall be occupied until the highway works north of No 35 Wises Lane, as shown on the Wises Lane – Site Access drawing 13-042-038C (or as otherwise agreed) have been completed.

23. No dwelling shall be occupied until a binding agreement has been entered into with the Highway Authorities relating to the part of the highway connection between Wises Lane and Chestnut Street that crosses Highways England land. The agreement shall include and identify areas of land for associated screening landscaping consistent with the David Williams Landscape Consultancy Indicative Landscape Strategy Plan (Addendum LVIA Figure 10.8, Drawing No L8 Revision E). The agreement shall secure the areas for landscaping in perpetuity (such landscaping to be subject to condition 26).

24. No more than 160 dwellings shall be occupied until the length of the internal spine road between Wises Lane and Chestnut Street has been constructed to an adoptable standard and made available for public use.

25. Full details of the design of the roundabout to be installed on Chestnut Street, (as currently shown on drawing 13-042-045D), and associated screening landscaping (which shall include details of species, size, density of planting, and an implementation and long-term maintenance schedule) shall be submitted to and approved in writing by the local planning authority. No more than 160 dwellings shall be occupied until the roundabout as approved is constructed to an adoptable standard and open for public use.

26. No more than 421 dwellings shall be occupied within the development until the spine road between Wises Lane and Borden Lane and the roundabout connection to Borden Lane has been constructed to an adoptable standard and made available for public use.

27. No more than 100 dwellings shall be occupied until a Section 278 Agreement has been entered into with the Highway Authority for delivery of a detailed scheme for signalisation at the junction of Wises Lane and the A2 London Road. All associated works shall be completed within 18 months of being served notice to commence by the Highway Authority provided always that such notice is not served prior to the occupation of the 150th dwelling and not later than the occupation of the 500th dwelling.

28. No development (other than required under condition 22) shall be commenced until a scheme to demonstrate the retention and phasing of road connections during the construction process has been submitted to and approved in writing by the local planning authority. The

scheme shall be designed to ensure the retention of a link between Wises Lane and Borden Lane, via Cryalls Lane (and connecting roads beyond the site) throughout the duration of the development, until the proposed spine road between Wises Lane and Borden Lane has been constructed to an adoptable standard and made available for public use.

29. The layout of the reserved matters for those phases to the south of the boundary with Westlands School shall include the provision of bus layby facilities (of commensurate capacity to the existing layby on the A2) on the spine road to provide pick up and drop off facilities, such layby facilities to be sited a maximum distance of 200 metres from the boundary with Westlands School.

30. No more than 80 dwellings shall be occupied within the development until the following off-site highways works have been completed: works to Borden Lane, as shown on drawing 13-042-071 Rev A; works to Wises Lane (south) as shown on drawing 13-042—044 REV E and improvements for pedestrian crossing at the A2/Adelaide Drive junction as shown on drawing 13-042-073.

31. No more than 421 units shall be occupied until the off-site highways works to Homewood Avenue/Borden Lane/Adelaide Drive, as shown on drawing 13-042-80 REV A have been completed.

32. No more than 150 dwellings shall be occupied until off site highway improvements to the A249 Junction with the A2 Keycol Hill/Key Street (known locally as the Key Street Roundabout) have been completed and opened to public traffic in accordance with C&A Drawing No. 13-042-081 Rev A (Proposed Key Street Roundabout Interim Scheme) or such other scheme of works substantially to the same effect, as may be approved in writing by the local planning authority.

33. No development within any phase (including Phase 1A) shall be occupied or first used until detailed travel plans for that phase, to be based upon the principles as set out in the Framework Travel Plan, have been submitted to and approved in writing by the local planning authority. The Travel Plans shall be implemented in accordance with the approved details.

34. Any reserved matters application(s) relating to layout including residential or commercial buildings, shall include details of all types of vehicle parking proposed. Prior to the occupation of any dwelling/building within that reserved matters parcel, the parking areas

relating to that dwelling/building shall be completed in accordance with the approved details and retained for their intended purpose thereafter.

35. For the purposes of the detailed (Phase 1A) scheme, the area shown on the approved plans as car parking space shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown (other than the erection of a private garage or garages) or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.

36. Any reserved matters application(s) relating to layout that include residential or non-residential buildings, shall be accompanied by details of facilities for the covered secure parking of bicycles for use in connection with those buildings. Prior to the occupation of any dwelling/building the cycle parking facilities for that dwelling/building shall have been provided in accordance with the approved details and they shall be retained thereafter for their intended purpose.

37. The proposed estate road, footways, footpaths, verges, street tree planting, junctions, street lighting (to include measures to limit light spill and use of lighting to minimise impacts upon wildlife), sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking and street furniture, as appropriate, shall be constructed and laid out in each phase (including Phase 1A) in accordance with details to be submitted and approved by the local planning authority in writing before their construction begins in that phase and in accordance with a schedule of house completion and an implementation programme for the agreed works, also to be submitted to the local planning authority for approval in writing.

38. Prior to the occupation of any dwelling or other building, the following works between the dwelling or building and the adopted highway shall be provided; i) Footways and/or footpaths, with the exception of the wearing course; ii) carriageways, with the exception of the wearing course but including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any).

39. No development beyond the construction of foundations shall take place in Phase 1A until full design details for the internal spine road within that phase, to include details of roadside tree planting and verge details, surface materials, and details of chicanes, crossing points and build out margins and which shall include provision of a formal crossing facility to be either a Zebra or Toucan crossing, have been submitted to and approved in writing by the

local planning authority. The crossing facility shall be installed prior to first opening of the spine road within Phase 1A.

40. No development beyond the construction of foundations shall take place in any phase until detailed drawings of the internal spine road within that phase, to include details of tree planting and verge details, surface materials, and details of chicanes, crossing points (including controlled crossing points) and build out margins 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.

41. No development (other than as required under condition 22) shall take place until a detailed scheme of and a timetable for the implementation of advance soft landscaping has been submitted to and approved in writing by the local planning authority. This shall incorporate:

- the areas proposed for advance planting, as shown on the Indicative Landscape Strategy Plan by David Williams Landscape Consultancy and referred to as Figure 10.8, drawing L8 Revision E, and a legal mechanism has been secured for the long-term use and retention of this land for landscaping;

- the soft landscaping scheme shall include proposed trees, shrubs and other features, planting schedules of plants (which shall include native species and of a type that will encourage wildlife and biodiversity), noting species, plant sizes and numbers where appropriate, measures to prevent tree vandalism, and measures to protect the advance planting from construction on the remainder of the site for the duration of such works;

- details of the advance planting for the access road and proposed junction with Chestnut Street, shown as AA-BB on the Indicative Landscape Strategy Plan, shall take into account and indicate relevant working and operational constraints, changes in landform, measures to mitigate impacts upon the Borden Chestnut Street Conservation Area and associated Listed Buildings, and engineering requirements associated with the proposed road and roundabout. Development shall be carried out in accordance with the approved details.

42. Upon completion of the advance landscaping works, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within ten years of

planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the local planning authority, and within the next planting season.

43. The sports pitches hereby permitted shall be grass pitches only and shall not be illuminated.

44. No development (other than as required under condition 22) in any phase (including Phase 1A) shall take place until full details of all existing trees and/or hedges in that phase, details of any trees or hedges proposed for removal, and measures to protect any trees or hedges shown to be retained, have been submitted to and approved in writing by the local planning authority. Such details shall include:

1. a plan showing the location of and allocating a reference number to each existing tree and hedge on the site to be retained and indicating the crown spread of each tree, and extent of any hedge, and identifying those trees and hedges to be removed;
2. details of the size, species, diameter, approximate height and an assessment of the general state of health and stability of each retained tree and hedge;
3. details of any proposed arboricultural works required to any retained tree or hedge;
4. details of any alterations in ground levels and of the position of any excavation or other engineering works within the crown spread of any retained tree;
5. details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree or hedge from damage before or during the course of development.

The development shall be carried out in accordance with the approved details and the approved protection measures shall be installed in full prior to the commencement of any development and retained for the duration of construction works. No works, access, or storage within the protected areas shall take place, unless specifically approved in writing by the local planning authority. In this condition "retained tree or hedge" means any existing tree or hedge which is to be retained in accordance with the drawing referred to in (a) above.

45. Notwithstanding the submitted plans, no development beyond the construction of foundations shall take place within Phase 1A until full details of both hard and soft landscape works proposed within the curtilage of any dwelling or flat have been submitted to and approved in writing by the local planning authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers

where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

46. The hard and soft landscape works within Phase 1A shall be carried out in accordance with the approved details under condition 46. The works shall be carried out prior to the occupation of any dwelling within Phase 1A or in accordance with the programme agreed in writing with the local planning authority.

47. Upon completion of the approved landscaping scheme within Phase 1A, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the local planning authority, and within whatever planting season is agreed.

48. No development (other than as required under condition 22) in any phase (including Phase 1A) shall commence until details of measures to protect/divert public sewers within that phase have been submitted to and approved in writing by the local planning authority.

49. No development (other than as required under condition 22) shall commence in any phase until a detailed sustainable surface water drainage scheme for each phase (including Phase 1A), compliant with the complete drainage strategy as approved (Flood Risk Assessment and Addendum to Flood Risk Assessment dated May 2018), has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme 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 within the curtilage of the site without increase to flood risk on or off-site. The drainage scheme shall also demonstrate that silt and pollutants resulting from the site use and construction can be adequately managed to ensure there is no pollution risk to receiving waters. The drainage scheme shall be implemented in accordance with the approved details prior to first occupation of each phase of the development (or within an agreed implementation schedule).

50. No building hereby permitted in any phase (including Phase 1A) shall be occupied until an operation and maintenance manual for the proposed sustainable drainage scheme is

submitted to (and approved in writing) by the local planning authority. The manual at a minimum shall include the following details:

1. A description of the drainage system and its key components;
2. A general arrangement plan with the location of drainage measures and critical features clearly marked;
3. An approximate timetable for the implementation of the drainage system;
4. Details of the future maintenance requirements of each drainage or SuDS component, and the frequency of such inspections and maintenance activities;
5. Details of who will undertake inspections and maintenance activities, including the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

The drainage scheme as approved shall subsequently be constructed and maintained in accordance with these details.

51. No building in any phase (including Phase 1A) of the development hereby permitted shall be occupied until a Verification Report pertaining to the surface water drainage system for that phase or part of that phase, carried out by a suitably qualified professional, which demonstrates the suitable modelled operation of the drainage system such that flood risk is appropriately managed, has been submitted to and approved in writing by the local planning authority. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; and topographical survey of 'as constructed' features.

52. No infiltration of surface water drainage into the ground is permitted other than with the written consent of the local planning authority. The development shall be carried out in accordance with the approved details.

53. No development (other than as required under condition 22) within any phase (including Phase 1A) approved by this permission shall be commenced prior to a contaminated land

assessment (and associated remediation strategy if relevant) for that phase, being submitted to and approved in writing by the local planning authority, comprising:

- i. a desk study and conceptual model, based on the historical uses of the site and proposed end-uses, and professional opinion as to whether further investigative works are required;
- ii. a site investigation strategy, based on the results of the desk study, shall be approved by the local planning authority prior to any intrusive investigations commencing on site;
- iii. An investigation, including relevant soil, soil gas, surface and groundwater sampling, carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology;
- iv. a site investigation report detailing all investigative works and sampling on site, together with the results of analyses, risk assessment to any receptors and a proposed remediation strategy which shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment, including any controlled waters;
- v. a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (iii) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved.

54. Before any part or agreed phase of the development is occupied, all remediation works identified in the contaminated land assessment and approved by the local planning authority shall be carried out in full (or in phases as agreed in writing by the local planning authority) on site under a quality assured scheme to demonstrate compliance with the proposed methodology and best practice guidance. If, during the works, contamination is encountered which has not previously been identified, then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the local planning authority. The remediation strategy shall be implemented as approved.

55. Prior to any part of the permitted development being occupied a verification report for that phase demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried

out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

56. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

57. No development (other than as required under condition 22) in any phase (including Phase 1A) shall be commenced until a scheme of gas protection measures necessary for that phase, to protect the development from gas concentrations arising from the adjacent former landfill site (now Borden Nature Reserve), has been submitted to and approved in writing by the local planning authority. Such measures shall be based upon further monitoring and assessment of gas concentrations, the details of which shall be submitted with the scheme. The development shall be carried out in accordance with the approved details.

58. No development shall take place (including any ground works, site or vegetation clearance) until an ecological report containing the following updated baseline surveys has been submitted to and approved in writing by the local planning authority:

1. Breeding bird survey. A breeding bird survey following Government standing advice and the method set out in the Baseline Ecological Appraisal, for all the areas of site not originally surveyed;
2. Breeding bird survey. A breeding bird survey following Government standing advice and the method set out in the Baseline Ecological Appraisal for all proposed skylark mitigation area(s);
3. Bat activity survey. A bat activity survey should be undertaken following Government standing advice and the method for 'low suitability sites' set out in the Bat Surveys for Professional Ecologists (Collins, 2016);
4. Reptile survey. A reptile 'presence' survey should be undertaken following Government standing advice and the method set out in Froglife Advice Sheet 10: Reptile Survey (Froglife, 1999);
5. Dormouse survey. A dormouse survey should be undertaken following Government standing advice and the method set out in The Dormouse Conservation handbook (English Nature, 2006).

59. No development shall take place in any phase (including Phase 1A) (including any ground works, site or vegetation clearance) until an updated Badger survey for that phase has

been undertaken (within 6 months prior to commencement of development of that phase) and a report submitted to and approved in writing by the local planning authority.

60. No development (other than as required under condition 22) shall take place (including any ground works, site or vegetation clearance) until a revised skylark mitigation strategy has been submitted to and approved in writing by the local planning authority and a legal agreement has been secured to deliver any off-site mitigation required. This mitigation strategy should be informed by appropriate update baseline surveys and in line with the guidance set out by the RSPB and under Countryside Stewardship's option AB4 for Skylark plots. The mitigation strategy must include but not necessarily be limited to:

1. the location of the mitigation site(s);
2. the method of creation within the mitigation site(s);
3. the management methods (for 10 years) for the mitigation site(s);
4. a mechanism to secure the mitigation for the 10-year period.

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

61. No development shall take place (including any ground works, site or vegetation clearance) until a site-wide Construction Ecological Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP should describe measures that should be adopted to safeguard retained on-site and off-site ecological features and to mitigate any adverse effects on habitats and species during site preparation, demolition and construction works. The CEMP shall be designed and used to inform and guide the development of the scheme on the ground, and raise awareness of ecological constraints during construction works, in order to protect and enhance the existing ecology of the Site. It should include detailed measures across all phases including timing and methods of works and relevant mapping and set out any requirements for update surveys during the construction period. It should set out the details of the person responsible for the implementation of the CEMP, sign off procedures, and include the appointment of an Ecological Clerk of Works. The measures shall be consistent with all ecological mitigation required during construction set out within the Environmental Impact Assessment.

62. Within 6 months of the commencement of development of any phase (including Phase 1A), a detailed Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the local planning authority for that phase. The detailed LEMP shall be updated at each phase to incorporate and review approved management plans for earlier phases, and upon development of the last phase shall provide a single detailed LEMP for the

entire development. This shall be carried out by experienced ecologists, and shall contain, but not necessarily be limited to, the following information for that phase:

1. A review of existing specific species surveys undertaken;
2. Description and evaluation of features to be managed;
3. Ecological trends and constraints on site that might influence management;
4. Location and details of habitats to be created and managed to mitigate and enhance biodiversity;
5. Aims and objectives of management;
6. Appropriate management options for achieving aims and objectives;
7. Prescriptions for management actions, together with a plan of management compartments;
8. Map showing the management compartments for any mitigation or enhancement areas;
9. Preparation of a work schedule to implement the LEMP in each phase, (including an annual work plan capable of being rolled forward over a thirty-year period);
10. Details of the body or organisation responsible for implementation of the plan;
11. Ongoing monitoring and remedial measures.

The detailed LEMP shall set out (where the results from monitoring show that conservation aims and objectives of the LEMPs are not being met) how contingencies and/or remedial action will be identified, agreed and implemented for that phase so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The development in each phase shall be carried out in accordance with the approved details.

63. Public Footpath ZR119 shall be upgraded to a width of no less than 3 metres and surfaced in accordance with a scheme to be submitted to and approved in writing by the local planning authority. No occupation of any dwelling within a phase containing the public footpath shall take place until the length of Public Footpath ZR119 within the site has been dedicated as a Public Bridleway, (through the provision of the Highways Act 1980 (s25 or s26)), and the upgrading has taken place in accordance with the approved details.

64. No dwellings or buildings shall be occupied in any phase (including Phase 1A) until a scheme for the surfacing of all Public Rights of Way (PROWs) within that phase has been

submitted to and approved in writing by the local planning authority, and such approved works have been completed. All PRowS must be of a width of no less than 2.5 metres.

65. The layout and landscaping of the reserved matters for the phase of development (as approved under condition 2) adjacent to Cryalls Farmhouse, shall incorporate an area of open space and landscaping to the south and west of Cryalls Farmhouse, such area to be no less in size than as shown on the illustrative masterplan drawing 2574-401 Rev J.

66. Before the submission of reserved matters for any phase (excluding Phase 1A), the applicant (or their agents or successors in title) shall secure and have reported a programme of archaeological field evaluation works for that phase, in accordance with a specification and written timetable which has been submitted to and approved by the local planning authority.

67. Following completion of archaeological evaluation works for the site (or parts of the site that have been agreed with the local planning authority, no development shall take place in any phase (including Phase 1A) until the applicant or their agents or successors in title, has secured the implementation of any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording for that phase in accordance with a specification and timetable which has been submitted to and approved by the local planning authority.

68. Within 6 months of the completion of archaeological works on any part of the site, for that part of the site a Post-Excavation Assessment Report shall be submitted to and approved in writing by the local planning authority. The Post-Excavation Assessment Report shall be in accordance with Kent County Council's requirements and include: a description and assessment of the results of all archaeological investigations that have been undertaken in that part (or parts) of the development; an Updated Project Design outlining measures to analyse and publish the findings of the archaeological investigations, together with an implementation strategy and timetable for the same; a scheme detailing the arrangements for providing and maintaining an archaeological site archive and its deposition following completion. The measures outlined in the Post-Excavation Assessment Report shall be implemented in full and in accordance with the agreed timings.

69. Before development commences (other than as required under condition 22), a soil management strategy for the site shall be submitted to and approved in writing by the local planning authority. The Strategy shall be undertaken by an appropriately experienced soil specialist and shall provide details for soil handling (including when soils are dry enough to be handled), soil storage, measures to retain and safeguard soil resources on the site. The strategy shall be designed to accord with in the Defra advice – "Construction Code of Practice

for the Sustainable Use of Soils on Construction Sites (including accompanying Toolbox Talks)". The development shall be carried out in accordance with the approved details.

70. No development (other than as required under condition 22) shall be commenced until further details of the scheme of air quality mitigation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall provide:

- i. a costed scheme of mitigation measures, to be not less than the equivalent value of the calculated damage cost value. This should follow the recommendations within the Kent & Medway Air Quality Partnership Air Quality Planning Guidance; and
- ii. a timetable for implementation of the proposed mitigation.

Development shall be carried out in accordance with the approved scheme.

71. No dwelling in any phase (including phase 1A) shall be occupied until a scheme for electric vehicle charging within that phase has been submitted to and approved in writing by the local planning authority, and such scheme shall include as a minimum:

- (a) active electric vehicle charging points to all dwellings with parking facilities within their curtilage;
- (b) active electric vehicle charging points to be provided to a minimum of 10% of all other residential parking spaces within that Phase;
- (c) active electric vehicle charging points to be provided to a minimum of 10% of all non-residential parking spaces within any phase.

No dwelling/building shall be occupied/used until the electric vehicle charging point for that dwelling or building has been installed (whether for an individual property or a communal point).

72. No gas boilers shall be fitted in the dwellings hereby permitted other than a low emission boiler of a minimum standard of <40mgNOx/kWh. No dwellings in any phase (including Phase 1A) shall be occupied until details of the boilers to be installed in that phase have been

submitted to and approved in writing by the local planning authority, and the development shall be carried out in accordance with such details.



The Planning Inspectorate

Report to the Secretary of State for Housing, Communities and Local Government

by **S R G Baird BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Date: 13 February 2020

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY

QUINN ESTATES LIMITED AND MULBERRY ESTATES (SITTINGBOURNE) LIMITED.

SWALE BOROUGH COUNCIL.

Inquiry held on 26 November 2019

Land at south-west Sittingbourne/Wises Lane, Sittingbourne

File Refs: Report APP/V2255/W/19/3233606

File Ref: APP/V2255/W/19/3233606
Land at south-west Sittingbourne/Wises Lane, Sittingbourne

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on a hybrid application for Thanks (all matters reserved except for access) and full planning permission.
- The appeal is made by Quinn Estates Limited and Mulberry Estates (Sittingbourne) Limited.
- The application Ref 17/505711/HYBRID is dated 30 October 2017.
- The development proposed is a hybrid application for up to 675 dwellings to include:

outline planning permission for up to 595 dwellings including affordable housing; a 2-form entry primary school with associated outdoor space and vehicle parking; local facilities comprising a Class A1 retail store of up to 480 sq. m GIA and up to 560 sq. m GIA of "flexible use" floorspace that can be used for one or more of the following uses – A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes), D1 (non-residential institutions); a rugby clubhouse/community building up to 375 sq. m GIA, 3 standard RFU sports pitches and associated vehicle parking; a link road between Borden Lane and Chestnut Street/A249; allotments: and formal and informal open space incorporating SUDS, new planting/landscaping and ecological enhancement works; and

full planning permission for the erection of 80 dwellings including affordable housing, open space, associated access roads vehicle parking, associated services, infrastructure, landscaping and associated SUDS.

Summary of Recommendation: The appeal is allowed, and planning permission granted.

1. Preliminary Matters

- 1.1. The inquiry was adjourned on the 12 December 2019, to allow the local planning authority (lpa) to respond in writing to the appellants' application for costs, to allow the parties to complete a S106 Agreement, to provide outstanding plans, and provide suggested conditions. The inquiry was closed in writing on 23 December 2019.
- 1.2. On the 13 August 2019, in exercise of his powers under S79 and paragraph 3 of Schedule 6 of the above Act, the Secretary of State (SoS) directed that he would determine this appeal. The reason for the direction is that the appeal involves proposals for residential development of over 150 units or on sites of over 5ha, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
- 1.3. On the 29 August 2019, lpa resolved that had it been able to determine the application it would have been refused for 3 reasons. The putative reasons for refusal (RfR) are set out at Annex A.
- 1.4. A Case Conference was held on 24 September 2019. The purpose of the conference was to provide a structure for the ongoing management of the case and the presentation of evidence. There was no discussion of the merits of the respective cases.

- 1.5. The matters to be addressed were;
 - a. the effect on the safety and free flow of traffic on the surrounding highway;
 - b. the effect on the character and appearance of the development and the surrounding area;
 - c. the implications for the supply of the Best and Most Versatile (B&MV) agricultural land;
 - d. whether the development would meet the housing needs of the area including the provision of affordable housing;
 - e. the effect on heritage assets;
 - f. the implications for biodiversity and Climate Change;
 - g. the implications for community facilities and infrastructure;
 - h. the effect on air quality;
 - i. the implications for neighbours' living conditions;
 - j. the supply of land for housing and the implications for the application of planning policy;
 - k. benefits associated with the development; and,
 - l. the planning balance.
- 1.6. Other than Topic j, the supply of land for housing and the implications for the application of planning policy, which was dealt with by way of Position Statements provided, the remaining the remaining topics were heard at the inquiry (Docs 46 & 47).
- 1.7. The inquiry sat for 9 days from 26 November 2019. Unaccompanied site visits were made before and after the inquiry. An evening session was held in Borden Parish Hall on Thursday on 28 November 2019. An accompanied site visit was made on Wednesday 4 December.
- 1.8. In the Statement of Common Ground (SoCG), the list of application drawings for the outline part of the application does not include drawings relating to the means of access. The lpa and the appellants confirmed that the relevant drawings showing the means of access should be added to the list of application drawings (Doc 38). These are, Drawing Nos. 13-042-074 July 2017 (CD A28); 13-042-38C April 2017 (CD 29); 13-042-044E June 2017 (CD 30) and 13-042-045 Rev D (CD A90).
- 1.9. A completed S106 Agreement was submitted on 20 December 2019 (Doc 14).

- 1.10. An application for costs was made by Quinn Estates Limited and Mulberry Estates (Sittingbourne) Limited against Swale Borough Council. This application is the subject of a separate Report.
- 1.11. I have had regard to the Environmental Statement (ES) dated September 2017 (CDs A76, A11, A12 & A12 a-j) and Supplementary Environmental Information submitted in May and June 2018 (CDs A15, A16, A17, A18, A19 & A20) submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA). On 10 October 2019, The Planning Inspectorate issued a Regulation 25 notice requiring the submission of further information (Doc 35). The appellants responded on the 1 November 2019.

LPA Submissions

- 1.12. There is an issue about the quality of the evidence in respect of the ES. The Guidelines for Environmental Impact Assessment 1993 IEA Guidance¹ remains valid, which the ES says it has applied (CD A.11, paragraph 7.23 of the Transport Chapter; CD D3 section 10). However, despite quoting the IEA guidance that lists high-sensitive receptors (children, elderly, disabled, schools, hospitals, historical buildings etc), the ES does not identify highly sensitive receptors. The ES, Table 7.2, identifies the categories of receptors it intends to consider, and then fails to apply it. Rather it puts all receptors in the Low category of sensitivity. The work should have been redone based on accepted categories of sensitive receptor and not limited to people walking on footways, people driving cars and people waiting at bus stops in the Low category (CD A11 Tables 7.3, 7.4 and text at paragraphs 7.144 & 145). There is a similar lack of evidence to show how the magnitude of transport impacts have been identified. The SoS made a request for further information under Reg.25 (Doc 35). However, rather than do that work, the appellants declined to provide the further information (Doc 36).
- 1.13. In response, the appellants ask the SoS to consider work done by Highways England (HE) for the proposed M2 Junction 5 improvements and (b) the 2003 Blewett case (Doc 31 & Doc 48). The appellants suggest that HE adopted the same approach as the appellants, combining groups of differing sensitivity i.e. Non-Motorised Users (NMUs) and give it one indication of sensitivity (Doc 32 Table 13.3) and uses the same Significance of Effects Matrix as the appellants (CD A 11, page 30 Table 7.4). However, the environmental assessment of a major road scheme differs from that for a mixed use residential/commercial scheme. Whilst NMUs are given a single measure of sensitivity, it is "High" and not as the appellants' ES generalises all pedestrian sensitivity as "Low" (Doc 32 Appendix Table 13.2 & CD A11, page 30 Table 7.3). This is both contrary to the guidance and fails to identify and mitigate potential significant adverse transport environmental effects. Significance is the product of both sensitivity and magnitude and if either or both are lacking/unreliable then significance is also unreliable, and mitigation cannot be properly determined.

¹ Institute of Environmental Management & Assessment.

The appellants provide no justification to show how the significance of transport environmental impacts has been identified.

- 1.14. Turning to Blewett, this is a case under the old EIA Regulations, and the broad thrust of paragraph 41 is that an ES can still be described as such even though it may well be deficient, and provision can be made through the publicity and consultation processes for any deficiencies to be identified. That does not address what happens when a request for further information is made to resolve a deficiency. That is an exercise in judgment by the decision maker, which here is the SoS, that further information is required.
- 1.15. There are 2 ways to approach this:
- (a) the ES submitted and as supplemented is legally complete, and the “*environmental information*”² provided during the appeal process can address any deficiencies so that the SoS has the necessary information about the likely significant environmental effects of the proposed scheme. This can be from several later sources than the ES. In fact, the appellants have not provided any further information and nor have any other parties. The lpa’s evidence is of the examples of where it is missing about more sensitive receptors e.g. near the school, or the narrow footways in Borden Lane.
 - (b) the ES is still incomplete, despite the SoS’s formal request for further information, and it is not possible to answer the necessary test that “*The relevant ... the Secretary of State or an inspector must not grant planning permission or subsequent consent for EIA development unless an EIA has been carried out in respect of that development*” (reg.3, 2017 Regulations).

Appellants’ Response

- 1.16. The appellants responded to the Reg 25 request (Doc 36). The appellants accept that the reference to the “Low” sensitivity of people walking at Table 7.3 of the ES is unfortunate, but that categorisation is not material to the conclusion reached. The IEA Guidance is not prescriptive, paragraph 1.11 of the guidelines indicates that they are intended to, “*...complement professional judgement and the experience of trained assessors.*”
- 1.17. In the identification and evaluation of key effects the ES considers “pedestrians” in terms of delay, amenity, fear and intimidation and safety. For these purposes both medium and high (children, the elderly and disabled) sensitivity pedestrians were considered together. Pedestrians should not have been seen to relate only to medium sensitivity “*people walking*”. The lpa’s implied implications of the unfortunate reference are not carried forward into the actual assessment (CD A11 paragraph 7.145). The potential impact on what the lpa describe as highly sensitive receptors is implicit in the ES assessment and would be an ongoing process with the Highway Authority.

² Defined in the 2017 Regulations.

This is common practice in highway assessment and design, where the requirements of more vulnerable users, which can be consistent with high sensitivity users, is intrinsic to the assessment process. The outcome of this is evidenced in the mitigation proposals, which include specific consideration to high sensitivity groups i.e. pedestrian crossings include dropped kerb and tactile paving for the elderly, disabled and partially sighted to specifically mitigate the impact of these groups. An example of this is the proposed mitigation to the junctions of Borden Lane with Adelaide Drive and Homewood Avenue, where a pedestrian crossing has been proposed to the south-west of the Adelaide Drive/Borden Lane junction (CD A93).

- 1.18. The above, is shown in the approach HE takes in the assessment of the M2 Junction 5 improvements. There, when considering severance, HE combined groups of differing sensitivity (Doc 31 paragraph 8). These are referred to as NMUs, which can be considered commensurate with "pedestrians" in the appellants' ES. In Table 13.3 of HE's ES, all NMUs are given one indication of sensitivity (Doc 32). Whilst some sub-divisions of sensitivity grouping occur, this is not with respect to severance or for matters relevant to the appellants' ES transport chapter. HE's ES sets the expectation of determining significance with respect to the same matrix provided by the appellants' ES (CD A11, page 30 Table 7.4). The matter of severance is discussed in paragraphs 13.10.52 to 13.10.55 of the HE's ES, with a summary provided in Table 13.23. In neither case is the individual sensitivity of sub-groups within the wider grouping of NMUs considered in determining significance of impact (Doc 31).
- 1.19. The legal test for the validity of an ES is explained at paragraph 41 of Blewitt: *"In an imperfect world it is an unrealistic counsel of perfection to expect that an applicant's environmental statement will always contain the "full information" about the environmental impact of a project. The Regulations are not based upon such an unrealistic expectation. They recognise that an ES may well be deficient and make provision through the publicity and consultation processes for any deficiencies to be identified so that the resulting "environmental information" provides the local planning authority with as full a picture as possible. There will be cases where the document purporting to be an environmental statement is so deficient that it could not reasonably be described as an environmental statement as defined by the Regulations ... but they are likely to be few and far between."* (Doc 48)
- 1.20. The lpa's challenge to the ES does come close to meeting that high legal bar, especially considering the explanations in the appellants' response to the Regulation 25 request, the appellants' evidence and the comparison with to HE. The lpa has only been able to argue that there is a deficiency with the ES based on its own flawed and unsubstantiated RfRs and on the inadequate evidence of its last-minute witnesses. Whilst the lpa suggest that the Blewett case is out of date or irrelevant, both points are wrong. The Blewett principle remains an accurate statement of the law. It does address Further Environmental Information, because the purpose of FEI is to ensure that there is a legally adequate Environmental Statement, and the standard for judging that adequacy is found in Blewett.

Inspector's Conclusions on the ES

- 1.21. As the Ipa succinctly put, significance is the product of both sensitivity and magnitude and if either or both are lacking/unreliable then significance is also unreliable, and mitigation cannot be properly determined. The mismatch between ES Table 7.2 – Receptor Classification of Sensitivity and Table 7.3 Sensitivities and Classifications for each link in the Study Area is, what the appellants with hindsight acknowledge, something that could have been expressed better. Similarly, on a first read, the conclusions at ES paragraph 7.145 appear opaque and capable of misinterpretation (CD A11 page 72). However, as Blewett indicates, in an imperfect world perfection is unrealistic.
- 1.22. The appellants' response to the Regulation 25 request and the testing of the evidence, clarify ES paragraph 7.145. Moreover, having regard to the mitigation measures already proposed, e.g. the proposed pedestrian crossing on Borden Lane, I consider this mitigates the unfortunate contradiction in Tables 7.2 and 7.3. My conclusion on this is reinforced by paragraph 4.31 of the Guidelines for the Environmental Assessment of Road Traffic which says, "*assessment of severance should pay full regard to specific local conditions, e.g. whether crossing facilities are provided...*" (Doc 34). Thus, having had regard to all the above, I consider the information contained within the ES meets the requirements of the regulations.
- 1.23. The list of documents includes opening and closing submissions and proofs of evidence from the 4 main parties. The proofs of evidence are as originally submitted and do not take account of how that evidence may have been affected by cross-examination or subsequent discussions and agreement between the various parties. In reporting the cases for the main parties, I have used as the basis for their cases the opening and closing submissions.

2. The Site and Surroundings

- 2.1 The site and its surroundings are described in detail in the ES (CD A11), the Head of Planning's (HOP) report to the Planning Committee (CD B1), the Design and Access Statement (CD A10) and the Statement of Common Ground (SoCG) (Doc 67).
- 2.2 The site is an irregular area (some 47.5 ha) of land to the south and west of the built-up edge of Sittingbourne and housing areas served off Wises Lane, Dental Close and Maylam Gardens to the north, Cryalls Lane, Auckland Drive, Russell Close, Hamilton Crescent and Borden Lane to the east and Cryalls Lane to the south (CD 1; LPA 10 Appendix A Figures 1 & 2). The site includes several large arable or parts of arable fields (Grades 1 to 3a) separated by hedgerows. Most of the site is relatively flat lying between 30 to 40m Above Ordnance Datum. The land gently rises to the south forming part of the dip slope of the Kent Downs, to the north, the land falls gently northwards toward Milton Creek. Adjoining Cryalls Lane to the east and Borden Lane to the south-east are areas of young scrub/coppice woodland. To the south, the open farmland/countryside extends up to the village of Borden. To the west the open farmland/countryside extends towards Chestnut Street and the A249 dual carriageway (Maidstone Road). Wises Lane crosses the central parts of the site. A network of public rights of way (PRoW) cross through the site – footpaths ZR117, ZR118, ZR119, ZR120, ZR121, ZR122 and ZU43.
- 2.3 The northern boundary of the site is defined partially by a steel fence and landscaped boundary with Westlands School, and by a mature landscaped buffer area to the south of Maylam Gardens. The northern boundary of the site then follows the line of Wises Lane up to No 11, crosses the road, and turns southwards following the southern edge of Dental Close. The application site then narrows in depth and continues west, dropping downhill to Chestnut Street and the A249. The site boundary then turns back in an easterly direction, passing to the north of Hooks Hole Farm. It turns south and borders the dwelling at Hooks Hole Cottage, before continuing east through the centre of an open field to Wises Lane. The application site then wraps around (but excludes) Wises Oast and Orchard Cottages, before continuing east past the Borden Nature Reserve, located to the south of Cryalls Lane, and back to the boundary with Borden Lane.
- 2.4 The western end of the would be 80m from Chestnut Street, part of which is a Conservation Area (CA). The built-up area of Borden village to the south, parts of which are in 2 CAs, would be some 150m from the site.

3. The Proposals

- 3.1 The application seeks outline planning permission for the erection of up to 595 dwellings, a 2-form entry primary school, a retail unit, a flexible use commercial unit, sports pitches and clubhouse/community facility, open space and new highways infrastructure in the form of a Link Road (LR) leading from Borden Lane to Chestnut Street, with an access onto the southbound A249.
- 3.2 In addition, full planning permission is sought for 80 dwellings, with associated landscaping and open space on land to the south of Wises Lane and Dental Close. In total, the total number of dwellings on the site would be up to 675 units of which 12% (81 units) would be provided as affordable housing (AH).
- 3.3 The outline application is submitted with all matters reserved except for the points of access onto Borden Lane (CD A28) and Chestnut Street (CD A90). Whilst these drawings show the likely design of the access points in the form of roundabouts, they would be subject to further detailed design approval.
- 3.4 The application includes Masterplan Brief with a series of parameter plans to provide a basis for development of the site and subsequent reserved matters applications. The illustrative Masterplan shows how the site could be developed (CD A4).
- 3.5 The parameter plans (CDs A5, A6, A7, A8 & A9), set out the principles for development of the site, which include:
 - i. the provision of a LR running east to west through the development, connecting Borden Lane to Chestnut Street, with a direct arm from the proposed Chestnut Street roundabout to the A249 south;
 - ii. housing to the north and south of the LR, split into sections separated by green fingers of open space running north to south. The plans provide details of density, height and character area parameters for housing development, with areas of lower density and height towards the southern, western and eastern fringes of the site;
 - iii. a Local Centre providing a retail unit of up to 480 sq. m, and a flexible use commercial building of up to 560 sq. m to be used for one or more of the following uses – Class A1 (retail), Class A2 (financial and professional services), Class A3 (restaurants and cafes) and Class D1 (non-residential institutions);
 - iv. a one-form entry primary school with land capacity to provide 2-form entry, to be sited to the south of the LR and adjacent to the Local Centre;
 - v. the provision of sports pitches and open space to the southern boundary of the site. This would include a facility proposed for the relocation of Sittingbourne Rugby Football Club, comprising a clubhouse and 2 rugby pitches, and further pitches to the west. The pitches to the west would form part of the wider public open space within the development. The clubhouse would offer opportunities for wider community use falling under Class D2 (Assembly and Leisure) of the Use Classes Order;

- vi. strategic woodland and landscape buffers located primarily on the southern and western boundaries of the site;
- vii. retention of, and provision of public access to, the Local Green Space (LGS) to the far east of the site, footpath improvements to the space and the provision of allotments on land adjacent to Auckland Drive;
- viii. the retention of Cryalls Lane on its current alignment;
- ix. a network of secondary roads and tertiary streets serving the proposed housing from the LR;
- x. a network of footpaths and cycle paths throughout the site, some new, some utilising existing public footpaths, including diversions to existing Public Rights of Way (PRoW).

3.6 The site would be developed in phases. The phasing proposes that:

- a. Phases 1a, 80 dwellings, & b (89 dwellings) would be delivered on land to the south of Dental Close and west of Wises Lane;
- b. Phase 2a (80 dwellings) & 2b (47 dwellings) would take place on land to the south and west of the site and includes the LR connection to Chestnut Street which would be delivered prior to occupation of a defined number of dwellings on the site;
- c. Phase 3 (127 dwellings) would be in the centre section of the site to the south of Maylam Gardens;
- d. Phase 4 (126 dwellings) to the south of Westlands School. These phases would deliver most of the open space and sports facilities on the southern boundary of the site; and
- e. Phase 5 (126 dwellings) is shown to the east of the site and adjacent to Cryalls Lane and includes the open space adjacent to Borden Lane and Auckland Drive. The LR connection onto Borden Lane would be delivered prior to occupation of the 422nd dwelling on the site.

3.7 The indicative accommodation schedule shows the provision of 43, 1/2-bed apartments; 47, 2-bed dwellings; 226, 3-bed dwellings; 350, 4-bed dwellings and 9, 5-bed dwellings.

3.8 The full application (Phase 1A) proposes 80 dwellings on land adjacent to Wises Lane, Maylam Gardens and Dental Close (CD A39, A47-A74). This scheme would comprise a mix of detached, semi-detached, terraced and flatted residential units, mainly of 2-storeys in height, some 3-storey dwellings and a 3-storey flat block, and some units with rooms in the roof space. The 2-storey units would generally measure between 8 and 8.5m in height, the 3-storey dwellings up to 10.3m and the 3-storey flats up to 11.5m. Eleven units would be provided as affordable housing (AH).

3.9 The housing layout for Phase 1A would be split into 2 blocks, one comprising 21 dwellings to the south of Dental Close, and the other being an oval-shaped

block containing 59 units (CD A71). The existing route of Wises Lane would be modified at a point just south of Dental Close and would be realigned in a south-westerly direction. This new road would split the 2 housing blocks. The existing route of Wises Lane through to the roundabout at Maylam Gardens would be maintained to provide access to existing properties and to some units within Phase 1A. A section of Wises Lane south of the Maylam Gardens Roundabout to the LR would be closed to vehicular traffic and used as a cycleway/footway.

- 3.10 Part of the proposed LR would be constructed under the Phase 1A development. The LR would run to the south and west of the larger proposed housing block, with a junction link to the new section of Wises Lane. Areas of open space including pond/open drainage features would be sited around this junction arrangement. The LR would link the new section of Wises Lane with the old section further to the south. Phase 1A also includes 1.2ha of open space including a play area to the south and east of the development.
- 3.11 The development would include a series of off-site highways works, as agreed with Kent County Council (KCC) and HE. The main works are:
1. the installation of traffic lights at the Wises Lane/A2 London Road junction;
 2. the localised widening of Wises Lane;
 3. the installation of a double mini-roundabout at the Borden Lane, Homewood Avenue and Adelaide Drive junctions;
 4. the installation of a dedicated lane from Maidstone Road onto the M2 London-bound carriageway at the Stockbury Roundabout (if the M2 Junction 5 works proposed by HE do not materialise);
 5. the reconfiguration of the Key Street roundabout, including part signalisation, closure of the existing slip road onto the A249 south, use of the Chestnut Street arm to access the A249 south via the new roundabout at the site entrance, and widening and marking-out of lanes; and
 6. improvements to pedestrian crossing facilities at Borden Lane/A2 London Road and Adelaide Drive/Borden Lane.
- 3.12 The scheme includes a commitment to make financial contributions towards works to Riddles Road and Cryalls Lane, to restrict use by through-traffic through a Traffic Regulation Order process.

4. Planning Policy and Guidance

Development Plan Policy

- 4.1 The development plan for the area includes Bearing Fruits, The Swale Borough Local Plan, adopted in July 2017 (CDs C2 & 3) and the Kent and Medway Minerals Waste Local Plan adopted 2016 (CDs 27 & 28).
- 4.2 Paragraphs 5.5 and 5.6 of the Statement of Common Ground (SoCG) list the policies considered relevant to the determination of the application. In brief these are: Policy ST 1 – delivering sustainable development in Swale; Policy ST 2 – development targets for jobs and homes; Policy ST 3 – Swale settlement strategy; Policy ST 4 – meeting local plan targets; Policy ST 5 – the Sittingbourne area strategy; Policy CP 2 – promoting sustainable transport; Policy CP 3 – delivering a wide choice of quality homes; Policy CP 4 – good design; Policy CP 5 – health and wellbeing; Policy CP 6 – community facilities to meet local needs; Policy CP 7 – providing for green infrastructure; Policy CP 8 – conserving / enhancing the historic environment; Policy MU 3 – land at South-west Sittingbourne; Policy DM 6 – managing transport demand and impact; Policy DM 7 – vehicle parking; Policy DM 8 – affordable housing; Policy DM 14 – general development criteria; Policy DM 17 – open space, sports and recreation provision; Policy DM 18 – local green spaces; Policy DM19 – sustainable design and construction; Policy DM 21 – water, flooding and drainage; Policy DM 24 – conserving and enhancing valued landscapes; Policy DM 25 – Important Local Countryside Gaps; Policy DM 26 – rural lanes; Policy DM 28 – biodiversity and geological conservation; Policy DM 29 – woodlands, trees and hedges; Policy DM 31 – agricultural land; Policy DM 32 – development involving listed buildings; Policy DM 33 – development affecting a conservation area; and Policy DM 34 – scheduled monuments and archaeological site.
- 4.3 In addition, the lpa considers that Policy DM 20 - renewable and low carbon energy is relevant.
- 4.4 Of the various policies mentioned above, the putative RfR specifically refer to Policies, CP 3, CP 4, MU3, DM 6, DM 8, DM 24, DM 25, DM 26, DM 28 DM 31, DM 32 and DM 33 (Annex A).
- 4.5 In the Kent and Medway Minerals Waste Local Plan, Policy DM 7 seeks to safeguard mineral resources. KCC, as the Minerals and Waste Planning Authority, has no objections to the grant of planning permission on the grounds of mineral safeguarding (Doc 67 KCC Initial Response 2 January 2018).

National Planning Policy & Planning Practice Guidance

- 4.6 Agreed relevant National Planning Policy Framework (Framework) Policy is listed at paragraphs 5.7 and 5.8 of the SoCG. The relevant sections are: Section 1 – Introduction paragraph 2; Section 2 - Achieving Sustainable Development paragraphs 7, 8, 10, 11 and 12; Section 4 - Decision Taking paragraphs 38,39,47, 54 to 57; Section 5- Delivering a Sufficient Supply of

Homes paragraphs 59, 61, 62, 64, 73 to 75; 38; Section 8 – Promoting Healthy and Safe Communities paragraphs 91, 92, 94, 95, 96, 98 and 99 to 101; Section 9 - Promoting Sustainable Transport paragraphs 102 to 104 and 108 to 111; Section 11- Making Effective Use of Land paragraphs 112, 117,118, 122, 123; Section 12 – Achieving Well Designed Places paragraphs 124, 127 to 130; Section 14 – Meeting the Challenge of Climate Change paragraphs 148 to 150, 153; Section 15 – Conserving and Enhancing the Natural Environment paragraphs 170, 174 to 177, 178, 180 and 181; Section 16 – Conserving and Enhancing the Historic Environment; Section 17 – Facilitating the Sustainable Use of Minerals paragraph 204 and Annex 1.

- 4.7 The Ipa submits that paragraph 171 of Section 15 – Conserving and Enhancing the Natural Environment is also relevant.
- 4.8 The putative RfR specifically refers to Framework paragraphs 54, 56, 61, 62, 108, 109, 110, 127, 150, 170, 175, 181 and 193 to 196 (Annex A).
- 4.9 Relevant Planning Practice Guidance (PPG) is listed at paragraph 5.9. These are: Air Quality; Appropriate Assessment; Climate Change; Conserving and Enhancing the Historic Environment; Design; Environmental Impact Assessment; Health and Wellbeing; Healthy and Safe Communities; Housing and Economic Land Availability Assessment; Housing for older and disabled people; Land affected by contamination; Noise; Natural Environment; Open space, sports and recreation facilities, public rights of way and local green space; Planning Obligations; Renewable and low carbon energy; Use of Planning Conditions; Viability; and Water supply, wastewater and water quality.

Other Relevant Local and National Guidance

- 4.10 These are listed at SoCG paragraphs 5.10, 5.11 and 5.12. These are: The Swale Landscape Character and Biodiversity Appraisal 2011; The Chestnut Street Borden Conservation Area Appraisal 1999; The Street, Borden Conservation Area Appraisal 1999; Harman’s Corner Borden Conservation Area Appraisal 1999; Hearts Delight Conservation Area Appraisal 1999; Air Quality Planning Technical Guidance December 2016 (this has now been updated in 2019 guidance); Developer Contributions SPD 2009; Building For Life 12; and Swale Urban Extension Landscape Capacity Study June 2010 and The Setting of Heritage Assets.

5. The Case for the Appellants

The material points are: -

- 5.1 The planning merits of this scheme have not changed since January 2019 when the Planning Committee resolved to approve it, following the HoP's recommendation (CDs B1 & B2). Borden Parish Council (BPC) acknowledged that the HoP's report was comprehensive and impeccably reasoned. Given that the Ipa can no longer show a 5-year housing land supply (HLS), it acknowledged³ that the case in favour of the scheme has grown stronger. Notwithstanding the submissions from some Councillors, there is no sound planning justification for the reversal in the Ipa's position.
- 5.2 The Ipa desperately needs new homes (Docs 46 & 47). Land to the south-west of Sittingbourne has been endorsed both by the Ipa and the LP Inspector (LPI) as a sustainable and environmentally acceptable location for those homes (CD D6). The putative RfRs are vague, unevidenced and, in most cases, contradicted by the expert advice received from independent consultees, none of whom support the Ipa's case at this appeal. The Ipa says that the RfRs were "*carefully drawn*" (Doc 5 paragraph 123). Whilst the SoS will form a view, the appellants have found them impenetrable and unclear. That conclusion was proven by the repeated need for "*clarifications*" of the putative RfRs, which then turned out to clarify very little.
- 5.3 Because of a housing shortage and persistent under-delivery, the Ipa is a 20% buffer authority and the Framework paragraph 11(d)(ii) tilted balance is engaged¹. It is common ground that the appeal should be allowed, unless the scheme's harms significantly and demonstrably outweigh its benefits. Here, the balance weighs decisively in favour of allowing the appeal.
- 5.4 The scheme provides substantial betterment over the Policy MU 3 allocation, and that betterment requires the LR to ease congestion on local roads (Issue a). That easing of congestion would improve local air quality, and improve neighbours' living conditions (Issues h and i). The LR requires land outside the Policy MU 3 area, homes outside the Policy MU 3 area, and a percentage of affordable housing which allows the LR to be funded (Issue c & d). The scheme would sit acceptably within its local landscape (Issue b). The scheme would have only minor, less than substantial impacts on the significance of HAs (Issue e). The scheme demonstrates a positive outcome in terms of ecology, which would give rise to a biodiversity net gain (Issue f). The scheme provides a comprehensive package of on and off-site infrastructure and community facilities (Issue g). There is a substantial housing shortage in Swale (Issue j). The tilted balance weighs in favour of allowing the appeal (Issues k & l).

³ X-Examination of Mr Rushe.

The Policy MU 3 scheme is fundamentally flawed

- 5.5 The lpa's case rests on 2 key unevidenced and incorrect assumptions: that a Policy MU 3 compliant scheme would be deliverable; and the appeal scheme would be more harmful than a notional policy compliant scheme.
- 5.6 On the first assumption, evidence on whether the Policy MU 3 allocation is deliverable is clear and not contested. If the Policy MU 3 allocation is to come forward it needs KCC's support as highway authority. However, KCC does not support it. In January 2019, KCC confirmed that the Policy MU 3 allocation has a "*fundamental flaw*" for which there is "*no mitigation solution*" (CD A40 page 254). Based on KCC's advice, the HoP reported that the Wises Lane/A2 London Road junction and the A2 London Road/A249 junction, "*...would be subject to unacceptable highways impacts in a MU 3 scenario.*" (CD B1 paragraph 8.163). That view was reached with knowledge of the Wises Lane/A2 London Road mitigation scheme (CD A92), and the likelihood that the Housing Infrastructure Fund (HIF) bid for the A249 improvements would be successful. Other than confirmation of the HIF funding, nothing has changed.
- 5.7 The fundamental flaws with the Policy MU 3 allocation and its unacceptable highways impacts is neither a new point nor has it come from the appellants. It was the lpa's position earlier this year, informed by expert advice, that the Policy MU 3 allocation could not come forward acceptably. Nothing material has changed since then. The lpa confirmed⁴ that it had not sought to assess the deliverability of the Policy MU 3 allocation or an update from KCC on its January 2019 rejection of the Policy MU 3 allocation (CD A40 page 254). Moreover, the lpa confirmed⁵ that there was no evidence that post-dated the January 2019 work from the HoP and KCC to rebut the conclusion that the Policy MU 3 allocation is undeliverable in highways terms.
- 5.8 There is no highways evidence before the SoS to contradict the views of the HoP and KCC in January 2019 that a Policy MU 3 allocation is undeliverable. The lpa called⁶ that conclusion, one based on "*feeble foundations*". That is a totally unjustified criticism because the lpa has no evidence to contradict the view from KCC, the expert consultee. Further, the lpa acknowledged⁴ that it had not undertaken any comparison between the highways impacts of the appeal scheme against the Policy MU 3 allocation. Thus, based on KCC's advice, an application which followed the Policy MU 3 allocation would have to be refused.
- 5.9 The lpa acknowledged⁷ a comparison which assessed the Policy MU 3 allocation against the appeal scheme would have been "*helpful*"; an answer that under-sells the position. Given the way the lpa has presented its case, such a comparison is essential. However, the lpa presented no evidence to support the assumption that the Policy MU 3 allocation can come forward without the

⁴ X-Examination of Mr Bamber - Highways.

⁵ X-Examination of Mr Rushe - Planning.

⁶ Doc 5 paragraph 14.

⁷ Inspector's question to Mr Bamber.

LR. This is the fatal flaw in the lpa's case. Despite the evidence, the lpa's position is that the LR "*is not essential*" (Doc 5 paragraph 5). Thus, the core of the lpa's case is; assertion without assessment; speculation without evidence.

- 5.10 The above does not mean that Policy MU 3 loses legal force as an allocation, a point the lpa alluded to (Doc 5 paragraph 17). However, the lpa's planning witness⁸ disagreed with that submission. The Policy MU 3 site remains allocated demonstrating the principle of development on that part of the land. However, if delivery of the Policy MU 3 allocation is unlikely and the lpa has no evidence to the contrary, then the lpa's approach to "*net benefits*" which is predicated on the likely delivery of the Policy MU 3 allocation as an alternative scheme falls away (LPA18).
- 5.11 The lpa criticises the appellants for not raising points on the deliverability of the Policy MU 3 allocation in their Statement of Case. However, it is the lpa not the appellants who seek to justify the planning case with reference to the Policy MU 3 allocation as an alternative scheme. The need to consider whether the Policy MU 3 allocation can or will come forward as allocated arises in response to the lpa's planning evidence. The lpa says that it could not have expected to have prepared evidence on a point that was not in dispute (Doc 5 paragraph 12). However, the lpa's planning evidence and its approach to "*additionality*" made the deliverability of the Policy MU 3 allocation centre stage (LPA18); something the appellants are entitled to respond to.
- 5.12 The appellants failure to issue a legal challenge against the LP based on any alleged legal deficiency, is totally irrelevant (7.15). The appellants' approach was not to challenge the plan, but to work with the lpa to achieve a positive outcome. The wisdom of that became obvious when the HoP recommended approval (CD B1).
- 5.13 Homes are still desperately needed in Swale, and the LP Inspector (LPI) determined that land to the south-west of Sittingbourne is a sustainable place to locate them. However, if those homes are to come forward as the LP intends, a solution is required that can make their impacts on the highways network acceptable.

The scheme provides substantial betterment over the Policy MU 3 allocation, and that betterment requires the LR to ease congestion on local roads.

- 5.14 The solution to Policy MU 3's fundamental flaw is the provision of the LR. The suggestion of a LR is not new. Policy MU 3 refers to a "*linked road between Wises Lane (A2) and Borden Lane*" (CD C2 Policy MU 3 (6a)). The extension of that link to Chestnut Street has enormous benefits, which the lpa has recognised since at least 2017. The lpa's submission to the LP inquiry was that there was "*no in-principle objection*" to a variation of Policy MU 3 to include a LR to Chestnut Street, and that extending the allocation offers "*additional benefits*" (APP21 Appendix PB4 paragraph 31). These benefits include; (a) significant improvements to Key Street/A249 and the Key Street roundabout,

⁸ Re-Examination of Mr Rushe.

which are supported by KCC and HE; (b) the enhanced role of the LR mitigating current conditions on the A2 east of Key Street and as a means to reduce the attractiveness of the rat-running alternative to the A249 via the rural area; (c) increased land to provide for landscape and visual mitigation; (d) increased housing provision; and (e) improved accessibility to local services with the inclusion of neighbourhood facilities, together with the earlier provision of the school and additional sporting opportunities.

- 5.15 The lpa invited the LPI to "*investigate*" the MUX1a proposal (effectively the appeal scheme), as a way of securing the "*significant additional highways benefits*" (APP21 Appendix PB3, paragraphs 9 & 10). The LPI did not reject the MUX1a proposal on its merits. The LPI declined the lpa's request, on the basis that she was restricted to considering the plan as submitted for examination (APP21 Appendix PB5, paragraph 16). Since the merits of the appeal scheme have been endorsed by the HoP and a full range of consultees including KCC and HE.

VISSIM modelling

- 5.16 This scheme was supported by a comprehensive TA (CD A12(b) Appendix 7). Subsequently, KCC asked for that TA to be supplemented with a micro-simulation (VISSIM) model that was to follow a detailed brief (CD A12(b) Appendix 7, APP25 Appendix JW10). VISSIM modelling is an industry standard and its key parameters and outputs were detailed in a TA Addendum (TAA) (CD A20 Section 6 & Calibration/Validation Report). To interrogate the thousands of parameters, specialist software is required, along with a copy of the VISSIM model. KCC had full access to the model files, and the TAA reports. KCC concluded that the VISSIM model had, "*assisted all parties in gaining an understanding of the operation of the network and any issues therein*" and it was "*clear and robust*" and supported the view that "*the submitted application offers considerable betterment to that of the 2031 reference case*" (CD A40 page 120).
- 5.17 Almost all the lpa's original concerns on trip assignment, queuing into the A249 and reassignment onto Wises Lane, have been superseded by the VISSIM modelling, and were before KCC. Moreover, the appellants' sensitivity testing demonstrates that the lpa's criticisms, even if accepted, do not alter the overall conclusion (APP24 Appendix JW8).
- 5.18 The lpa accepts that the appellants' work shows that the network will operate well and can accommodate development traffic without any significant worsening of, and indeed with betterment in relation to queue lengths or delays. The lpa's caveat is that it has been unable to verify whether the VISSIM model is robust. Whilst KCC and HE had full access to the model, the lpa never asked for it and acknowledged that it did not have the software to analyse it. It is not the appellants' fault that the lpa is not technically able to assess industry standard transport modelling as requested by KCC. The overall validity of the forecast VISSIM was raised in the lpa's Technical Note on transportation, which was supposed to clarify its nebulous putative RfR (CD D2). However, the only point raised on VISSIM was a minor and factually

incorrect point about queue validation in the base model, which the appellants dealt with in evidence and was not challenged.

- 5.19 The lpa's comparison of VISSIM to a "Black Box", says more about the lpa's inexperience with this model than it does about the VISSIM itself. Whilst the lpa was unwilling or unable to interrogate the model, it was reviewed by KCC. The model satisfied KCC's brief. The position is simple, if the lpa had acquired the appropriate technical ability, then the model could have been reviewed. Indeed, if the lpa had genuine concerns about the validity of the VISSIM model as the basis for their pRfR from the outset, logically it would have appointed someone able to interrogate it and who would have been instructed specifically to do so from the start. However, the lpa failed to obtain this expertise. The position is clear, KCC were right to accept that the modelling is clear and robust and there is no evidence to suggest otherwise.
- 5.20 To support the "Black Box" theory, the lpa introduced HE's Statement of Case in respect of the forthcoming M2 Junction 5 inquiry (Docs 30 & 32). Whilst a VISSIM model was used as the basis for the final scheme design appraisal, HE also used the wider Lower Thames Area Model (LTAM), a strategic model based on SATURN, to derive the forecast demand for future year scenario testing. Much of the model reporting is on this and not the VISSIM model. Accordingly, it cannot reasonably be compared to the model forecasting report for the appeal scheme.
- 5.21 HE's reports do not give the reader a complete or comprehensive breakdown of the coding of the forecast network parameters of the VISSIM model. To do so would be entirely impractical. HE's report selectively provides outputs on journey times, queuing and overall network performance in the summary tables in the same manner as the appellants' forecast reporting in the TAA. HE's report does not provide any direct outputs from the VISSIM model, nor does it provide the specific input files suggested to be lacking from the appellants' report. This confirms that the appellants' approach is entirely consistent with industry good practice (Doc 31).

Rat-running

- 5.22 Rat-running is a much-used term, which none of the lpa's evidence sought to define. The lpa confirmed⁹ that it provides no evidence of, how much rat-running exists, how much would be caused by a Policy MU 3 compliant scheme, or how much would be caused by the appeal scheme. It is ironic that, given the lpa's criticisms of the appellants' work, there was no objective evidence from the lpa to substantiate this part of its case. That is particularly surprising given that the scheme's ability to improve the rat-running situation over a Policy MU 3 compliant scheme was one of the "*additional benefits*" which the lpa drew to the attention of the LPI (APP21 Appendix PB4 paragraph 31(2)). Moreover, the lpa accepts that its concern would be largely be resolved by the M2 Junction 5 improvements, which are reasonably certain to occur. Further, the lpa accepts that, if required, its concern can be dealt with

⁹ X-Examination of Mr Bamber.

by a planning condition. This begs the question of why it is included as a putative RfR.

Framework Paragraph 109

- 5.23 Framework paragraph 109 is the key test. This says *“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”* The lpa accepts¹⁰ that it provides no evidence that either, the scheme’s residual cumulative impacts would be severe, or its highway safety impacts would be unacceptable. The lpa failed to provide evidence to substantiate its reason for refusal. However, the lpa goes further, accepting that if the modelling was sound, a question on which it was unable to assist, but which KCC answered, then the evidence confirms there would be no severe effects. That position has the support of KCC, HE and the HoP who reported that:

“The scheme would have locally significant impacts upon travel patterns, being purposefully designed to take a proportion of traffic from the A2 and Key Street roundabout and re-route this through the application site. The modelling evidence provided demonstrates that, subject to the delivery of highways infrastructure works as set out at the appropriate times, this would result in considerable betterment compared to the 2031 reference case. It would also result in considerable betterment in highways terms compared to the allocated Policy MU 3 Local Plan proposal – which cannot offer a Link Road or connection to Chestnut Street, and even delivers betterment compared to a scenario where no development takes place on the site. The scheme has the potential to help unlock identified problems in local highways infrastructure as identified in the Local Plan, in a way that could not be achieved solely through development of the allocated site under Policy MU 3. In fact, KCC Highways advise that the detailed analysis for the Wises Lane/A2 junction for this application suggests that this junction, and that of the A2/A249 would be subject to unacceptable Highway impacts in a Policy MU 3 scenario.

The scheme would result in more traffic using some local roads, however the highways impacts arising from this are considered acceptable, subject to the mitigation specified.

The impact on the Strategic Road Network is acceptable to Highways England, subject to securing the mitigation measures put forward by the developer at Key Street and on Maidstone Road by the Stockbury Roundabout.

Overall, I would conclude that the proposal would deliver considerable highways benefits to the operation of the A2 and Key Street roundabout.” (CD B1 paragraphs 8.163-166).

- 5.24 The appellants’ evidence is to be preferred, and there is no evidence to support dismissing the appeal on highways grounds. Moreover, contrary to BPC’s

¹⁰ X-Examination of Mr Bamber.

report, the lpa accepts that the scheme is sustainable in terms of, pedestrian access to local facilities and access by bicycle and bus (CD D3). Whilst Borden Residents Against (over) Development (BRAD), not the lpa, criticises the measures aimed to promote sustainable transport, those criticisms are misplaced. The suggested planning conditions require on-site provision of a range of pedestrian facilities, footways, cycleways, improvement of Public Rights of Way (PRoW), the provision of electric vehicle charging points, cycle parking and a Travel Plan with a substantial budget and a range of off-site mitigation works. The relevant roads within the scheme would be designed to accommodate new bus services. BRAD's assertion that the appellants accept the lpa's evidence that trip generation rates would be unusually high is wrong (Doc 10 paragraph 27).

Easing of congestion will improve local air quality, and improve neighbours' living conditions

- 5.25 Inevitably, any new development can have an impact on air quality. However, that has been accounted for by the lpa through the Policy MU 3 allocation. The LPI confirmed that impacts on air quality had been considered when allocating sites for development, and that the need to protect air quality had been balanced appropriately with the overall benefits of the strategy (CD 6 paragraph 35). What matters is where those impacts arise and how they are managed. This is not merely, as the lpa asserts, a question of "moving the traffic around". Reducing congestion and improving air quality in sensitive areas like AQMAs to ensure that breaches of the objective limits are avoided is an enormously important policy objective and legal obligation. The lpa's key assumption that more homes = more cars = worse impacts is crude and wrong.
- 5.26 The SoS has the appellants' comprehensive and robust expert assessments (CDs 12 & 15; APP5-7). This work shows that the scheme would at most local receptor locations have a beneficial impact on air quality, with no risk of exceeding the relevant objective levels (APP5 paragraphs 5.40 & 6.5). Independent experts commissioned by the lpa concluded that the appellants' work is robust, that the proposed mitigation is appropriate, and that its model is recognised and detailed (CD A34 paragraphs 4.20-4.21). Moreover, the Council's Environmental Protection Team Leader undertook a further review and concluded that there is no "air quality issue" with this scheme, and that local air quality "may well benefit" (CD A40 page 106). The University of Kent's work for BPC was criticised as "fundamentally flawed." (CD A40 page 228). KCC has concluded that the scheme would reduce congestion through Key Street, which would support the Air Quality Action Plan, and has noted that as congestion eases, air quality should improve (CD A40 page 172). The HoP concluded that there would be no unacceptable air quality impacts from this scheme, and that there may be positive benefits.
- 5.27 Weighed against all that expertise is the evidence of the lpa's "expert" witness (LPA5-7). This witness has no professional qualification in air quality management and the submissions made on behalf of BPC at the time of the

application were not supported by the lpa and its expert advisers. The lpa subsequently engaged BPC's advisor.

- 5.28 The lpa fails to address relevant local guidance on air quality (CD D10), nor does it address any of the relevant criteria to determine whether the scheme's impacts would be acceptable within the terms of Policy DM 6. The lpa's evidence is predicated on the assumption that the scheme would perform worse in air quality terms than the Policy MU 3 allocation (LPA5 paragraph 29). However, a Policy MU 3 compliant scheme is not deliverable and the lpa has not attempted any comparison between such a scheme and the appeal scheme; a fact the lpa's air quality witness¹¹ was unaware of. Moreover, the lpa's air quality evidence does not undertake any analysis between a Policy MU 3 compliant scheme and the appeal scheme. The evidence which attempts that comparison suggests that the scheme would improve local air quality over a Policy MU 3 compliant scheme (CD A40 page 172).
- 5.29 The lpa debates the calibration of the appellants' modelling with reference to receptors on Keycol Hill. However, the scheme would ease congestion on Keycol Hill, a point that was not challenged (APP6 Appendix D). Thus, if Keycol Hill is a particularly sensitive area worth debating, this reduction is a good reason to allow this appeal. In any event, the appellants have adopted a "worst case" approach based on the lpa's monitoring data. Similarly, the lpa spent time on micro-disputes that led nowhere. Lengthy debate about proportions of heavy goods vehicles amounts, as the lpa accepted¹¹ to be a debate about the extent to which the appeal scheme would benefit the existing situation. So even if the lpa is right, it cannot substantiate a refusal.
- 5.30 The appellants' use the correct prevailing wind direction, as confirmed by the University of Kent (APP7 paragraph 2.7). In any event, the sensitivity test shows the point makes no difference to the overall assessment (APP8 page 4). The approach to terrain accords with the relevant best practice guidance. The total damage cost calculation has been queried by the lpa, but not substantively challenged (APP5 paragraph 5.30). The change was as a result of updated DEFRA guidance (CD D20). The lpa asserts with no evidential foundation that the appellants should have used the "high" range of costs rather than the "central" costs. However, even if had been done, the mitigation on offer very substantially exceeds the calculated costs.
- 5.31 The lpa suggests that many of the items listed in the Mitigation Table¹² should be removed based on double counting (APP5 Page 24 Table 12). This is wrong, measures either have the effect of mitigating air quality impacts or they do not. If they do, they should be included in the mitigation tables. There is no requirement in the guidance or anywhere else for the measures to be introduced solely for the purpose of mitigating air quality. Green infrastructure may be introduced for landscape or visual reasons. But it can also fulfil a mitigation function; that is recognised in the Air Quality Planning Practice Guidance (PPG) at paragraph 008 (CD C5). The same goes for the highway's

¹¹ X-Examination of Professor Peckham.

¹² Mrs Banks' proof, Table 12, p.24.

improvements. They have been proposed to facilitate a deliverable and acceptable scheme, but they also ease congestion and take traffic away from congestion hot-spots with higher levels of air pollutants. Thus, they have an obvious mitigation role to play. Similarly, EV charging points, as expressly acknowledged in the PPG, contributing to a travel plan, cycle and walking route funding and low NOx boilers all have a role to play.

- 5.32 The lpa suggests that the Air Quality PPG required the effect of every element of air quality mitigation to be quantified. That is wrong, the lpa's approach emerges not from the PPG but from the Gladman case (CD E6). But this is wrong too. In that case, an Inspector found the relevant scheme would have an adverse effect on air quality and found that no evidence had been supplied to show the effectiveness of the measures to mitigate that adverse effect. However, the Court did not find that such evidence must be supplied, in every case or at all. It found simply that the Inspector's approach was within the legitimate scope of his planning judgment on the facts before him; no more, no less (CD E6 paragraphs 53 & 57). The Court called the decision as to whether mitigation measures would be effective a "*classic matter of planning judgment.*" (CD E6 paragraph 53).
- 5.33 Here, the effectiveness of the mitigation on offer is in no real doubt. However, it is viewed, the mitigation very substantially exceeds the damage cost. The reductions in congestion and consequential improvements in local air quality in what are currently trouble-spots would bring substantial benefits for the living conditions of local people. As the HoP found, there would be no material harm to residential amenity in relation to noise, unacceptable impact on outlook, light or privacy to existing properties (CD B1 paragraph 8.124).

Providing that LR requires (i) land outside the Policy MU 3 area, (ii) homes outside the Policy MU 3 area, and (iii) a percentage of affordable housing which allows the road to be funded

- 5.34 The LR is required to allow homes to come forward on this site as the LP expects. The land take outside Policy MU 3 allocation is required to deliver that LR and the homes on that land are required to pay for it. All of that was subject to detailed viability appraisal by the appellants, which was independently reviewed by the lpa and is unchallenged at this inquiry. The HoP summarised the position in this way: "*The application sets out that the additional 80 dwellings are necessary to cover the additional infrastructure costs generated by this development, namely the additional on and off-site highways infrastructure. This has been demonstrated in a viability appraisal which has been reviewed by a consultant on behalf of the lpa. The consultant has concluded that the 80 additional units are required to make this development viable, in order to provide a marginally competitive return to the landowner for the development as a whole.*" (CD B1 Paragraph 8.38).
- 5.35 Because of the extensive highways infrastructure costs, the scheme delivers 81 much-needed affordable homes (AH) on-site. That is the most it can viably deliver (CD B1 paragraph 8.48). In consequence, this provision complies with Policy DM 8(6) on affordable housing. In addition, the S106 Agreement allows

for an independent review mechanism which could require the delivery of more AH, if market conditions change.

- 5.36 The above requires a further 13.8ha of Grade 2 B&MV agricultural land outside the Policy MU 3 boundary. That loss is justified in circumstances where: the higher-grade land (Grade 1) is already located within the Policy MU 3 site; the Policy MU 3 allocation shows the overriding need for this development which cannot be met within the built-up area, and that development of agricultural land is necessary to meet this need. Overall, if homes are to be brought forward here as the LP intends, they need the LR, and the LR requires the land and homes, that are proposed outside the Policy MU 3 site.
- 5.37 The consequence of the above is that the scheme complies with Policy DM 31 (APP2 paragraphs 5.12-5.19). Framework paragraph 170 refers to the need to recognise the value of B&MV land. The 13.8ha of B&MV land required for the appeal proposal would generate an annual gross margin of some £13,400 per annum (APP2 paragraph 5.26). That figure is unchallenged and is to be weighed in the tilted balance.

The scheme would sit acceptably within its local landscape

- 5.38 Most of the site has already been allocated for housing, and there is no landscape objection in relation to most of the appeal site, which falls within the allocation¹³. The lpa's concern relates to the "net difference" brought about by developing the unallocated portion of the site. There is little between the appellants, the lpa and Huskisson Brown who provided an independent review of the LVIA (CD A41). Such differences as there were often, as the lpa acknowledged¹³, amounted to ½ a degree of overall magnitude between them, or even less. The lpa asserts that it is inappropriate to characterise the difference between the landscape experts as a matter of professional judgment (Doc 5 paragraph 36). The difficulty with that view is that in answer to a question by the Inspector the lpa's witness agreed that these were differences of professional judgment.
- 5.39 On the lpa's case: the appeal site is a medium quality landscape which is generally pleasant but unremarkable; it is not a "valued" landscape under Framework paragraph 170; it contains no demonstrable physical attributes (APP9 paragraphs 3.4.2. & 4.2.5). Albeit the unallocated part of the site falls within the Policy DM 25 Important Local Countryside Gap (ILCG), the lpa accepted¹³ that the ILCG designation is not a reflection of the landscape's quality. Indeed, the ILCG extends all the way around the south of Sittingbourne and makes no distinction between areas of higher or lower landscape quality. To that extent, the ILCG Policy is inconsistent with Framework paragraph 170, which treats landscapes differently depending on their quality. The lpa agreed¹³, accepting that the weight attributed to the ILCG Policy should be reduced.

¹³ X-Examination of Mr Etchells.

- 5.40 The HoP found, the effect on the gap would be limited: *"In my opinion, the area of unallocated land to the south of the site does not undermine the ILCG as it is used to provide open space and landscaping on the periphery of the site. However, the development of land to the west would erode the gap between Sittingbourne and Chestnut Street, through the additional 80 dwellings proposed and, to a lesser extent, the highways infrastructure works. The effect of this would be reduced by topography and the extent of landscaping proposed, particularly to provide a buffer to the additional dwellings proposed. A physical gap between the two settlements of approximately 400m would be retained, and the topography and landscaping would be likely to visually screen the two settlements from each other. However, I would conclude on this matter that the development would still result in the erosion of an Important Local Countryside Gap, and that some harm would therefore occur."* (CD B1 paragraph 8.107).
- 5.41 Thus, on the lpa's case, the only adverse effects from the scheme which would be more than slight are limited to the site itself and its *"immediate surrounds"* (LPA10 Appendix E, Table 1). The lpa accepted¹⁴ that there are *"no wide-ranging views"*. Even then, by year 15, the lpa predicts slight-to-moderate effects on the immediately surrounding landscape (against neutral-to-slight for the appellants). Most important, that is to be compared to the lpa's finding of slight effects for the area surrounding the Policy MU 3 site; only half a degree of difference between the 2 landscape experts (LPA10 Appendix E, Table 1).
- 5.42 For visual effects, even on the lpa's approach, all the receptors experience only negligible, slight or moderate impacts after 15 years, which for a residential scheme of this scale is remarkable in itself. What is really telling are the limited differences between the appeal scheme and Policy MU 3 allocation (LPA 10 Appendix E Table 2 final and penultimate columns). For most receptors, there is no material difference at all. Substantial change in this landscape is inevitable. The lpa accepts¹⁴ this and that the decision maker should have regard to the inevitability of that change when reaching a view on whether the appeal scheme is acceptable.
- 5.43 Through the Policy MU 3 allocation, the lpa has already decided that this landscape can acceptably accommodate significant change. Indeed, the lpa's expert advisers confirmed at the time of the LP inquiry that: *"The extension of proposed residential development further westwards, together with a primary road link connecting to Chestnut Street, and the introduction of a neighbourhood centre, is likely to be capable of being satisfactorily accommodated in landscape and visual terms..."* (CD D24, paragraph 10.1, 2nd bullet). Overall, the agreed message appears to be that there would not be major differences in landscape or visual terms between the impacts of the appeal scheme and Policy MU 3 allocation.
- 5.44 A very substantial landscaping scheme is proposed, with advance planting to ensure that green buffers are achieved at the earliest opportunity. The scheme

¹⁴ X-Examination of Mr Etchells.

would improve the number, quality, diversity and distribution of tree cover (CD A14 paragraph 3.3.1). This planting would provide an improved green edge to the south of Sittingbourne. The Ipa's Greenspaces Manager has confirmed that: "...overall, the masterplan provides a variety of open space typologies (allotments, semi-natural green space, play areas etc) that more than meet quantitative standards contained in the new Open Spaces Strategy." (CD B1 paragraph 6.23).

5.45 Policy DM 24 does not require no harm to the local landscape. If harm is minimised and mitigated, the Policy can be passed. Here, any harm would be comprehensively mitigated. That there would remain, at most, only slight-moderate landscape and visual impacts on the immediate. This may explain why the Ipa decided to allocate a substantial number of homes on this site in the first place. It is why the HoP was right to find that: "*The development of additional land beyond the site allocation and subject to this application would result in some adverse landscape impacts. The area shown for additional housing would add further built form, but such impacts would be localised and would be mitigated by buffer landscaping.*" (CD B1 paragraph 8.102).

5.46 Overall, even on the Ipa's evidence: the effects on most landscape and visual receptors would be reduced and in some cases, substantially reduced by the time the proposed landscaping has matured; and there are only minor differences, and sometimes no difference at all, between the effects of the Policy MU 3 allocation, which has already been judged to be acceptable, and the appeal scheme (LPA10 Appendix E – Tables). In the end whilst there is a "net difference" between Policy MU 3 allocation and the appeal scheme in landscape and visual terms, that difference is only a limited and localised difference which would be substantially mitigated through planting.

The scheme will have only minor less-than-substantial impacts on the significance of heritage assets.

The Policy MU 3 comparison

5.47 The impacts of the Policy MU 3 allocation on the historic environment were rigorously assessed at the LP inquiry. It had been, the Ipa recorded, a "*particular focus of concern,*" but the view was that any harm to historic assets would be less than substantial and fell to be weighed against "*the benefits arising from the proposals in terms of new housing provision and community benefits.*" (APP21 Appendix 4 paragraph 25). There were no in-principle concerns from the Ipa's heritage officers, KCC or Historic England (APP21 Appendix 4 paragraph 25)'.

5.48 The Ipa's heritage case is all about rat running. However, at the LP inquiry part of the Ipa's case in favour of the "*additional benefits*" offered by the MUX1a site was that the LR would alleviate rat-running (APP21 Appendix 4 paragraphs 28 and 31(2)). Indeed, that point was highlighted in an agreed commentary on heritage matters by Ipa and KCC Conservation and Archaeological officers: "*The option to link to the southbound carriageway of the A249 just before Chestnut Street could therefore make a worthwhile contribution to the objective of reducing the levels of rat-running in this area*

and as such its early implementation should be pressed for." (APP21 Appendix 4, paragraph 6(1). The lpa's heritage witness¹⁵ was unaware of any of this. Moreover, the lpa agreed¹⁶ that if the SoS accepted the joint position of the lpa and KCC, and supported by the appellants' highway expert, i.e. that the appeal scheme would contribute toward reducing rat-running as against the Policy MU 3 scheme, then the heritage reason for refusal makes no sense. Neither the lpa's heritage nor highways experts had any evidence to the contrary. Both accepted they had not sought to compare the appeal scheme's impacts on rat-running to a Policy MU 3 compliant scheme. Neither of these experts gave any evidence on: what rat-running means; how much of it exists now; how much would exist in the future without any development; (d) how much would be created by a Policy MU 3 compliant scheme or how much is alleged would be created by the appeal scheme. On that basis alone, the putative RfR fails. Indeed, the lpa accepted¹⁶ that if this scheme would reduce rat-running compared to a Policy MU 3 scheme, that is a heritage benefit which should weigh positively in the planning balance.

Failure to quantify impacts

- 5.49 The heritage putative RfR is predicated on "*significant vehicle movements*" and "rat-running" i.e. and not on any effects brought about by the proposed operational development itself. Neither the lpa's highways witness nor the heritage witness gave any evidence on what they think "*significant*" means, or how vehicle movements associated with this scheme would compare to a Policy MU 3 scheme, which the lpa deems to be acceptable.
- 5.50 The search for evidence in the lpa's case, rather than assertion, speculation and circular repetition, of this word "*significant*" is futile. The lpa has assumed that there would be a "*potential*" impact of "*increased*" vehicle movements (LPA16 Appendix B paragraph 4). But when tested on how great that potential is, or how large the expected increase was the lpa's heritage witness did not know. Reliance was placed on the evidence of the lpa's highways witness; but he could not provide the evidence either. Thus, the word "*significant*" in the heritage putative RfR has been asserted but never evidenced.
- 5.51 Without any of the above, the lpa cannot possibly assess the magnitude of any heritage harm derived from vehicle movements. It makes no sense for the lpa to claim, that somehow it can assess the impacts qualitatively with no idea of their quantitative extent, or merely on the basis that a significant effect was a noticeable one. There is a very wide spectrum. It might be that a noticeable effect at one end of the spectrum is not harmful or that an effect at the other end of the spectrum causes harm. A judgment is required to know where the impact falls on that spectrum. Otherwise the effect, positive, negative or neutral, simply cannot be ascertained. This is such a simple and transparent principle of planning judgment that it should not need to be explained.
- 5.52 The lpa's heritage witness¹⁵ accepted that the number of vehicular movements mattered in heritage terms i.e. only a few extra movements may be

¹⁵ X-Examination of Ms Rouse.

imperceptible and that thousands of movements may cause a high magnitude of harm. Matters of degree are important. They are important even to the lpa's heritage witness as the evidence is based on a scale which relies on quantitative thresholds e.g. "minor", "moderate", "major" (LPA16 Appendix B paragraph 6). However, the lpa produced no reliable evidence on which category applied. In contrast, the appellants' evidence is clear. Before the heritage impacts can be assessed, the amount of actual change in traffic, particularly at the AM peak must be understood. Otherwise, the SoS is asked to rely on assertions without evidence. The appellants' evidence on both those points was not challenged and the putative heritage RfR is unsubstantiated.

Section 72

- 5.53 There would be no direct impacts on any LBS. The settings of LBs are protected by S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, there is a duty to 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. That duty will be met by applying the policies in the Framework heritage chapter i.e. the paragraph 196 balance for less-than-substantial harm (CD E2 paragraph 128). The lpa acknowledged¹⁶ that if the Framework 196 balance is passed in favour of allowing the appeal, that is the only relevant statutory duty under the Listed Buildings Act.
- 5.54 The lpa raises S72(1), which says: "*In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*" The position is simple:
- (a) here, the relevant "*function*" is the decision for the SoS under S79(1) of the Town and Country Planning Act 1990 to allow or dismiss the appeal;
 - (b) that decision does not relate to whether an appeal should be allowed "*with respect to*" either "*any building*" or "*other land*" in a CA.
 - (c) the setting of a CA is protected by Policy, to the extent that setting contributes to their historic significance, Framework paragraphs 189 and 194 apply, but it does not engage S72. This is not a "moot" point. It is a basic point of statutory construction. If there is no caselaw confirming that the lpa is wrong to rely on S72, that is because the lpa's position is so obviously wrong. The appellants do not accept that S72 could be engaged here (Doc 5 paragraph 74).

The Assets

- 5.55 The appellants' evidence is that there would be no visual harm to the HAS arising from the scheme and that is consistent with, the Policy MU 3 allocation, and the putative RfR which focuses only on traffic movements.

¹⁶ X-Examination of Mr Rushe.

Impacts derived from traffic movements

Borden (The Street) CA and associated LBs

- 5.56 It is uncontested that the appeal scheme would reduce traffic movements through this CA (CDB01 paragraph 8.203). They include "rat-running" and are without the further benefits of the M2 Junction 5 works. So again, the putative RfR makes no sense. The key elements of the CA's significance are the: *"traditional village scene: an historic church, an old 'manor house' surrounded by large mature trees, picturesque timber-framed buildings and other cottages grouped along the village street, a public house and a village greenspace."* (CA Appraisal, CD C10 paragraph 21).
- 5.57 None of the above would be affected by the scheme. The CA appraisal picks out the western approach to the village for mention, which again would be entirely unaffected by this scheme. It notes that: *"This simplicity has been lost from the other entrances into the village, which have been much changed by modern development and are now rather more suburban in character."* (CD C10 paragraph 17). Identifying a rural aspect in the northern approach to the village, the lpa picked a spot surrounded by the Policy MU 3 allocation. With this allocation, the lpa accepts that significant development can be appropriately located here, and it has failed to have regard to that baseline in any assessment. The lpa's submits¹⁷ that the significance of the CA and LBs would suffer harm at the lower end of the moderate scale. This is defined as *"considerable change to the significant components of its setting"* (LPA16 Appendix B paragraph 6). This is untenable and without even a hint of an evidential foundation. The idea that the CA's historic interest would be *"considerably changed"* for the worse by a small reduction in traffic is bizarre.

Chestnut Street CA and associated LBs

- 5.58 The same points arise for here. The lpa made no assessment of the actual degree of likely change. The scale of change would be insignificant in heritage terms i.e. an increase from 6.5 vehicles a minute in AM peak to 8.5 vehicles (CD B1 paragraph 8.203). That impact is without the M2 Junction 5 improvements in place. With those improvements, which the lpa acknowledges are reasonably certain to come about, there would be less traffic through the CA in 2031 with the appeal scheme in place. Again, the heritage putative RfR makes no sense. There would be no harm; indeed, there is likely to be betterment of the existing situation.
- 5.59 Visual harm to the CA arising from the Chestnut Street roundabout is a new and bad point not referred to in the putative RfR, SoC or the "clarificatory" emails. The area north of the CA is already urbanised by parked cars, traffic noise, the A249, the sub-station, substantial agricultural buildings and signage directing drivers to the motorway. Moreover, with the structural landscaping in place, the chances of seeing either the LR or the roundabout from the Chestnut Street CA would be nil.

¹⁷ X-Examination of Ms Rouse.

Other assets

- 5.60 Harman's Corner CA and LBs: here, given that through traffic would be reduced, the putative RfR makes no sense (CD B1 paragraph 8.203).
- 5.61 Heart's Delight CA: is not raised in the putative RfR, the SoC or "clarifications". There is no evidence that traffic would increase through this CA and it is well removed from the site. The figures for Borden and Harman's Corner suggest it is likely to reduce.
- 5.62 Cryalls Farmhouse: although the lpa's heritage expert finding no harm to this HA, the appellants endorse the conclusion in the HoP's Report, that limited, less than substantial harm to the setting of the farmhouse would occur (LPA15 paragraphs 6.4.13 & CD B1, paragraphs 8.188-8.189). However, that harm should be viewed in light of Policy MU 3's acceptance of anything under "substantial" harm to Cryalls Farmhouse is acceptable (CD C2 Policy MU 3(5)).
- 5.63 Riddles Farmhouse: although the lpa's heritage expert finds no harm to this HA, the appellants endorse the HoP's finding of "limited" less than substantial impact to its setting (LPA15 paragraph 6.4.13 & CD B1 paragraphs 8.190-191).
- 5.64 Thatch Cottage: the appellants agree with the HoP's conclusions, that the farmhouse is outside the core of the Borden CA set well within its own boundaries (CD B1 paragraphs 8.193-8.194). Its setting has already become partially suburbanised. Any impacts should be measured against the yardstick of Policy MU 3. Given the substantial distance and screening between the cottage and the appeal scheme, the appellants and the HoP conclude the asset would not suffer any harm. The lpa's heritage witness puts the potential harm at "minor" (LPA15 paragraph 6.4.11).
- 5.65 Overall, there is evidence to support limited less-than-substantial harm to Cryalls Farmhouse and Riddles Farmhouse, even though the lpa identifies no harm to either. However, there is no evidence to support a finding of harm to any other assets; and to the contrary the evidence suggests small levels of heritage benefit to the CAs, by reducing rat-running through them by 2031, particularly after the M2 Junction 5 improvements.
- 5.66 On the lpa's case, the heritage impacts are low and substantially outweighed by the public benefits of this scheme. Thus, as confirmed by the lpa¹⁸, the Framework paragraph 196 balance tilts in favour of granting permission.

There is a positive ecological outcome giving rise to a biodiversity net gain.

Overview

- 5.67 The ecological assessment of this site has gone on for many years, as has the scrutiny of that work by KCC's Ecological Advice Service, the lpa's expert ecological advisers. In contrast, the lpa's ecology witness made his first visit

¹⁸ X-Examination of Mr Rushe.

to site 2 days before and 10 days evidence was to be submitted, without the benefit of a site visit, and reached the view that he was able to defend the putative RfR. This is a surprising view for him to reach so quickly, given that almost all the attacks made on the appellants' work are matters which were raised months/years earlier by KCC, and dealt with to its satisfaction.

- 5.68 It is also surprising because the lpa's putative RfR was indecipherably vague, with no references to any species or habitats said to be under-surveyed. That vagueness was not cured by the lpa's SoC. It was, the appellants had hoped, remedied by one of the lpa's "clarifications." (CD D39). But that hope was in vain. The lpa's witness had apparently seen that clarification when the instruction was accepted. However, he apparently did not consider himself bound by it and did not so much as mention it in his proof. That explains the need for 2 rebuttals on ecology from the appellants.
- 5.69 Although the lpa's ecology witness¹⁹ claimed to have known about KCC's requests for further information and its support for this scheme, that is not referred to in the written evidence, even when it was directly relevant to the issues being reopened. Disagreeing with KCC's support for the scheme is not a reason for not mentioning it. The attempt to undermine the validity of KCC's advisory role to the lpa was completely unsubstantiated. KCC do not always visit a site, although the witnesses' own instruction has shown, visiting a site is not critical to deciding whether a case can be supported or not. The scope of KCC's function is set: "*The following is provided by Kent County Council's Ecological Advice Service (EAS) for Local Planning Authorities. It is independent, professional advice and is not a comment/position on the application from the County Council. It is intended to advise the relevant planning officer(s) on the potential ecological impacts of the planning application; and whether sufficient and appropriate ecological information has been provided to assist in its determination.*" (CD A40 page 193).
- 5.70 The lpa is wrong to suggest that KCC were forced to accept survey material "at face value" and forced simply to "assume" that the relevant guidance had been followed. There are several examples of KCC asking for further information or further work to be done to enable them to be satisfied that the ecological information supporting the scheme is enough. It is telling that even when the lpa contacted KCC to try to bolster its evidence for this appeal, KCC has not withdrawn its support, or amended its position that the submitted ecological information "provides a good understanding of the ecological interest of the site." (CD A40 page 193).
- 5.71 The lpa confirms that it now takes no objection in relation to roosting bats, badgers, overwintering birds or amphibians (including great crested newts).
- The relevant Policy tests
- 5.72 At times in the lpa's evidence, one could be forgiven for thinking that unless the presence of any possible species had been ruled out with certainty, the

¹⁹ X-Examination of Mr Newbold.

SoS would have to refuse permission. That is wrong, the starting point is the "reasonable likelihood" test at paragraph 99 of ODPM Circular 06/2005: which reads, "...developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development." (CD D15). That is consistent with and supported by the "clearly justified" test at PPG paragraph 018 on the Natural Environment: "As with other supporting information, local planning authorities should require ecological surveys only where clearly justified. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity." (CD C05 page 69).

- 5.73 The above guidance is consistent with paragraph 3.13 of CIEEM Guidelines for Preliminary Ecological Appraisal, which states that: "EcIA can be undertaken without detailed survey information for a given ecological feature, where: 1) the outcomes of the survey can be reasonably predicted, or would make no material difference to the assessment of likely significant effects; and 2) appropriate mitigation can be designed and secured on the basis of the information available." (APP10 Appendix 1).

Bats and breeding birds

- 5.74 The lpa's points are about the area of the appeal site subject to survey and level of survey work undertaken. All of this has been raised before and thoroughly ventilated with KCC. The dates, times and areas of the original surveys were clearly set out in the ecological appraisal sent to KCC (CD A.12(f) Table 2.1, Table 2.3 and survey area plan ECO5). KCC raised queries on survey times and areas for bats and breeding birds and dealt with by the appellants in a Technical Note (CD A40 pages 36/37 & CD A19 from page 8). KCC was content and took no further objection on these points.
- 5.75 The lpa accepts that the appeal site has a "low suitability" for bats (LPA12 paragraph 3.1.7). In consequence the relevant professional guidance requires ecologists to "make a professional judgment on how to proceed based on all of the evidence available", noting that "it may or may not be appropriate for bat activity surveys to be carried out in low suitability habitats." (APP11 Appendix 2, page 58, footnote (a) to table 8.3). In this case a survey was carried out, and it was carried out to KCC's approval.
- 5.76 Similarly, on the survey area for breeding birds, the appellants explained why the area surveyed could safely be extrapolated out to the rest of the site. That too was accepted, correctly, by KCC. The lpa identifies nothing new that could lead the SoS to conclude that KCC got it wrong.

Reptiles

- 5.77 The lpa accepts that most of the site is of low suitability for reptiles (LPA12 paragraph 3.1.12). The appellants' assessment identified 2 small sub-optimal areas with potential for reptiles, due to their lack of basking opportunities or their isolated position (CD A12(f) page 34 paragraph 5.6.3-4). Albeit the presence of reptiles was judged unlikely, the appellants acknowledged that small numbers could be present. On this basis, the appellants' approach,

accepted by KCC, was to scope out the need for surveys but adopt a precautionary approach to mitigation. This is consistent with Circular guidance, the PPG and CIEEM Guidelines.

Dormouse

- 5.78 This species is not mentioned in the putative RfR, the SoC, or any of the lpa's "clarifications". The site is too isolated from existing Dormouse population for there to be any likelihood of their presence on this site. There is no evidence that Dormice cross roads of more than 12m. Here, the A2 is some 20m wide at the relevant point and the A249 is wider still. To the east, the residential areas offer no realistic prospect of connectivity for Dormice. To the south, the relevant habitats are too fragmented. Dormice live at low densities (around 2.2 adults per ha) so a relatively large area (around 20ha) of suitable habitat is needed to sustain a viable population (CD D31 pages 9 & 10). This is much larger than the wooded habitats within the site (around 4ha based on an average hedgerow width of 4m). Dormice may occur in areas of habitat smaller than this, although normally only where they are located adjacent to, or have good connectivity to the more substantial core habitat areas.
- 5.79 Here, areas of possible habitat for Dormice are 700m to the south-west along Chestnut Street before reaching more substantial wooded areas (East of "Cold Store"), or over 1.5km to the south-east (Highsted Quarries). However, Dormice do not travel far from their nests (usually less than 70m) and require a good diversity of tree and shrub species within this area to maintain a sequence of foods through the active season (CD D31 paragraph 4.20). Here, the connecting habitats between the Cold Store and the site are not large enough to make them likely habitats for Dormice. The same is true for potential connections to the south and south-east, given that these comprise hedgerows which are narrower in width. The appellants' evidence is quite clear that habitats within and connected to the site are not large enough, of sufficient quality, or sufficiently well connected to support a viable population of Dormice, and the site is too distant from more suitable habitat for dispersal to be likely. The lpa's late addition to its ecology case is misconceived.

Skylark Mitigation

- 5.80 The appellant's skylark mitigation plan is robust, has been scrutinised and re-scrutinised by KCC and judged acceptable (CD A43 & APP10 Appendix 3). A strong body of research shows that measures such as skylark plots can significantly increase skylark density and nesting success within winter cereal fields such as those at the site. Thus, further surveys are not necessary to establish current capacity. Apart from the western parcel, the relevant area enclosed by trees/woodland is well in excess of the relevant 10ha threshold.
- 5.81 In any event and acknowledged by KCC, smaller parcels can still have benefits as part of the overall mitigation strategy (LPA13 Appendix 1). Even where not suitable for breeding, areas may still be of benefit as foraging habitat and KCC

has, correctly, acknowledged that it is not necessary to mitigate at a 1:1 ratio. Given the wider benefits of the strategy, most of which do not appear to be contested, the proposal provides enough mitigation. The lpa has not said anything new which could lead the SoS to take a different view. Even if it had, this is a matter which the lpa accepts can be dealt with by condition, so it should never have formed part of the putative RfR.

Net gain

- 5.82 Framework paragraph 170(d) requires “*decisions*” to “*provide net gain for biodiversity*”. Albeit the Government is consulting on new requirements in the draft Environment Bill, there is at present no national policy or guidance which prescribes a single method for calculating net gain nor a requirement to achieve a particular level of net gain. The lpa obviously accepts this is a scheme that could provide the 10% net gain it seeks because it has suggested a condition to that effect. Ass such this should never have been a RfR.
- 5.83 The lpa is keen to put all its eggs in the basket of the DEFRA’s beta Biodiversity Metric. A risky thing to do, given the repeated health warnings in the user guide itself: “*The biodiversity metric 2.0 ...is being initially released as a beta version because we are seeking feedback on its real-world application, whether that be the calculation tool or documentation, in order that improvements can be made, and bugs fixed.*” (CD C32 Foreword page 7);
- “*All biodiversity unit calculations come with some ‘health warnings. ...The metric is not a substitute for expert ecological advice.*” (CD C32, paragraph 1.6);
- “*The metric and its outputs should therefore be interpreted, alongside ecological expertise and common sense...*” (CD C32, paragraph 2.22);
- “*Principle 6: The metric is designed to inform decisions. Decisions and management interventions need to take account of available expert ecological advice and not just the biodiversity unit outputs of the metric.*” (CD C32, paragraph 2.22).
- 5.84 In its beta-testing form, the matrix over-incentivises habitats which can be established quickly and punishes those which take longer (e.g. scrub versus woodland) e.g. an arable field achieving a negative score if targeted for woodland planting. These are perverse results. They emphasise the importance of focussing not only on the spreadsheets but on qualitative ecological advice. The appellants have made a qualitative ecological assessment of net gain at some 15.9%; the lpa has not (APP9 page 24, Table 6.1 paragraph 6.5.1).
- 5.85 What the lpa did do, or so it says, is to conduct a quantitative assessment leading to a 20% net loss (LPA12 paragraph 3.2.10). However, the lpa does not produce this modelling and the assertion could not be tested. In contrast, the appellants’ modelling was set out and, in the end, even applying sensitivity-tests for all the lpa’s concerns, the model produces a net gain of

some 12.9% when allowance is made for sports pitches to be grassed. The If the SoS thinks it necessary, that 10% net gain can be secured by condition.

The scheme provides a comprehensive package of on and off-site infrastructure and community facilities.

- 5.86 Sittingbourne Rugby Union Football Club identified the social benefits associated with supporting and enhancing a club like this (Doc 17). The Club plays such a positive role in the community and the lives of its younger members, and its support of the Government's objectives for active and healthy lifestyles are obvious and profound.
- 5.87 Residents' representations highlight difficulties in arranging an appointment with a GP. Whilst it is not for one piece of development to solve that problem on its own, a S106 Agreement contribution of £583,200, following the request of the Swale NHS Care Commissioning Group, is substantial and much needed (CD A40, page 159). As is the over £3m contribution toward a new primary school, again at the level required by the KCC as education authority, and a further £3m secondary education contribution. The highways contributions are substantial, over £1.345m toward the Key Street roundabout works, and over £885,000 toward the south-bound on-slip to the A249. In addition, more significant works are proposed through condition and S278 agreements, i.e. the LR and signalisation works to the Key Street roundabout. The S106 Agreement includes a wide range of other important contributions, all of which respond to requests from the relevant consultees (Doc 14).

There is a substantial housing shortage in Swale

- 5.88 The Framework paragraph 59 objective of significantly boosting the supply of homes has been at the heart of national planning policy since 2012. The courts have accepted that the prioritising of meeting objectively assessed housing needs in the original Framework was a radical shift in Government Policy. The point applies with force here because even on the lpa's figures, they are several hundred homes short of the requisite 5-year housing land supply (HLS) (CD C15 Table 1). The position is starker still, the appellants' table of slippage is conservative, but it shows that the lpa's position overestimates its supply by at least another 672 homes over the next 5 years (CD D19, Table HLSPS-2). The lpa makes the unusual point that all of this is the appellants' fault. It says that, "*Had the appellants submitted a planning application that was compliant with the adopted Local Plan, this would have further increased the supply by approximately 600 dwellings and that would enable the lpa to have a 5-year Housing Land Supply (5.2 years).*" (CD D10, second paragraph 8).
- 5.89 Another of the lpa's basic errors, which it overlooks is the undeliverability of the Policy MU 3 allocation and the phasing plan for this scheme. Some 564 units are already in the lpa's housing land supply trajectory, but they fall outside the 5-year monitoring period (CD C15 page 83). In any event, the lpa accepts that it has a hole in housing delivery. The appeal scheme can play an important difference and on the lpa's case, it is a critical difference, in its attempts to establish a 5-year HLS. This is an unusual case; the effect of the

lpa's position that allowing this scheme could be the difference that pushes it over the top into the requisite 5-year HLS. As a result, the Framework paragraph 11(d)(ii) "tilted balance" is engaged and as part of that tilted balance, the delivery of a substantial number of market and affordable homes attracts substantial weight.

The tilted balance weighs in favour of allowing the appeal.

Development Plan

- 5.90 This scheme meets and improves on the detailed prescriptions set out in Policy MU 3. The scheme accords with the development plan taken as a whole. However, the most important policies for determining the appeal (including Policy MU 3) are rendered out of date by Framework Footnote 7. There is agreement²¹ that there is no clear reason for refusing permission under Framework paragraph 11(d)(i), which means that the appeal falls to be determined under Framework paragraph 11(d)(ii).

lpa's approach to the tilted balance in Framework paragraph 11(d)(ii).

- 5.91 The lpa's approach focussing on "net" benefits, or what is called "additionality" is fundamentally flawed, which it appears the lpa has acknowledged²⁰. The lpa agreed that this approach assumed that a Policy MU 3 compliant scheme could come forward without the LR. However, the lpa accepted that this assumption had been reached without any evidence from its highways witness. The lpa agreed that the assumption had been made without even realising that KCC had found the Policy MU 3 scenario to be fundamentally flawed, or that the HoP had described it as unacceptable. The lpa acknowledged that there was no evidence that post-dated KCC's response or the HoP's view to contradict their findings. The lpa agreed that if KCC's and the HoP's findings were accepted that a Policy MU 3 compliant scheme would be unlikely to be granted planning permission. This means, applying the approach in paragraphs 15 and 16 of the Carroll case, that the lpa's assumption should carry little or no weight as an alternative scheme (Doc 26). Whilst the lpa submits that the Carroll case is of "limited assistance", the lpa's planning witness²³ confirmed, quite rightly, it accurately represented his professional understanding of the current approach to alternative schemes (Doc 5 paragraph 16).
- 5.92 The SoS will need to weigh all the benefits, and not just the "net" benefits. The lpa's planning evidence cannot be relied on for that exercise because it only sought to address the "net" benefits. The lpa's "significant muting" effect does not apply to the weight to be given to planning benefits and would need to be significantly bolstered (LPA18 paragraph 3.17 & Doc 5 paragraph 120).
- 5.93 The lpa accepted²³ that whilst it addresses "net" benefits, it had (other than in respect of landscape) balanced those against "gross" harms for the entirety of the scheme and acknowledged that this was not a fair comparison. The language of Framework paragraph 11(d)(ii) is simple, any benefits should be

²¹ X-Examination of Mr Rushe.

weighed against any harms. It does not, as the lpa accepted, specify that only “*net*” benefits should be weighed or that only some of the development’s benefits should be weighed or only those which we think might not be delivered through an alternative scheme. That all the benefits must be weighed against all the harms is the correct approach and it flows from a simple reading of simple words in the Policy.

- 5.94 If the SoS takes the approach of weighing any benefits of the scheme against any harms, the lpa agreed that its planning evidence cannot be relied on to inform that exercise, because that is not the exercise that it had undertaken. That is another hole in the lpa’s evidence. The lpa’s evidence has not even sought to undertake the tilted balance exercise on the proper basis. If the SoS wants evidence on the correct approach to be taken to the tilted balance, the appellants’ planning evidence is the only place it can be found (APP20).

Striking the tilted balance at Framework paragraph 11(d)(ii)

- 5.95 This is a large site at the heart of the development plan. New homes are required urgently, and the LPI confirmed that this is a sustainable location.

Affordable Housing

- 5.96 The LP makes clear that there is a “...*considerable unmet need for affordable housing...*” (CD C2 paragraph 7.3.3). The appeal scheme proposes 81, an increase of 25 units over the 56 expected by Policy MU 3. The lpa acknowledged²² that the scheme complies with Policy DM8(5)(c) on AH. Moreover, the lpa accepts that the AH offered by this scheme is the maximum provision of AH which the scheme can viably deliver (CD B1 paragraph 8.48).

- 5.97 In Sittingbourne, where 10% AH is sought, it would take a scheme of 250 units to provide the 25 extra units of AH that this development provides (CD C2 Policy DM8(1)). The value of achieving so much more AH on this site is heightened by the fact that almost 30% of new homes are allocated in Sheppey, where there is no expectation of any AH. Thus, the scheme makes a significant contribution to meeting what is a considerable unmet need in a Borough where, in several areas, it seeks no AH at all. The lpa accepted²² that AH provided by the development would amount to a substantial benefit.

Market Housing

- 5.98 Market housing is a hugely important benefit. Interested persons articulated their fears of insufficient affordable homes for the next generation. The need is profound, not just in Swale or even in Kent but across the UK. On the lpa’s case, allowing this scheme would “*push it over the top*”, into being able to show a 5-year HLS as required by the Framework. That is a benefit which the lpa acknowledged²² should attract substantial weight.
- 5.99 The units to be delivered beyond the Policy MU 3 allocation amount to “windfall”. The lpa requires a substantial number of windfall units to meet its

²² X-Examination of Mr Rushe.

housing targets. This scheme would make an important contribution to those windfall figures. The lpa accepts that it is important that windfall development comes forward, in sustainable locations; at scales capable of delivering affordable housing; and in locations unlike Sheppey where the lpa is expecting the delivery of no affordable housing. That the appeal scheme meets those criteria is an acknowledged benefit²³ which should attract substantial weight. Mr Rushe agreed to that in cross-examination. Other than for Phase 1A, the mix of those units is not fixed by the outline permission.

Community Uses

- 5.100 There are wide-ranging community benefits associated with the appeal scheme. These include a facility for the rugby club, a flexible range of A-class uses and a new 2-form entry primary school. All that supports and exceeds, the expectations of Policy MU 3. Given the S106 Agreement, the lpa no longer pursues putative RfR(2)(g).
- 5.101 Although BPC and BRAD criticise the level of community engagement, the facts on that are straightforward (CD A44). BRAD submits that the appeal should be dismissed for an alleged failure to produce a Masterplan. That point is wrong and not pursued by the lpa. The Policy MU 3 requirement is for development to take place in accordance with a Masterplan and it does (CD A4). That Masterplan was developed, as Policy MU 3 requires, in consultation with stakeholders (CD A44 & CD A10). This a point that is agreed with the lpa, so not one of the principal controversial matters in the case. The appellants ask the SoS to deal expressly with this issue, given that an identical point has recently been run unsuccessfully by BRAD's advocates in a court challenge against a scheme in Canterbury.

Framework paragraphs 196 and 11(d)(i)

- 5.102 The scheme's benefits easily outweigh what is, even on the lpa's case, harm at the low-end of the category of less than substantial heritage harm. The Framework paragraph 196 test is passed, and the appeal should be determined against the "tilted balance" at Framework paragraph 11(d)(ii). On this the lpa's planning witnesses hedged saying, "*it is difficult to see what 'public' benefits (as per Framework paragraph 196) can flow into the balance*" (LPA18 paragraph 4.110). However, the lpa's witness subsequently confirmed²³ that, in his view, the public benefits outweigh any heritage harms. Thus, the balance at Framework paragraph 196 weighs in favour of allowing the appeal and there is no clear reason for refusing permission within the meaning of Framework paragraph 11(d)(i) and Footnote 6. For that reason, notwithstanding comments in his proof that the tilted balance is "*not engaged*", the lpa's planning witness accepted that the tilted balance at Framework paragraph 11(d)(ii) is engaged (LPA18 paragraph 2.21).

Striking the tilted balance

²³ X-Examination of Mr Rushe.

- 5.103 There would be limited and localised harm to the local landscape which would substantially reduce over time, limited less than substantial harm to the setting of 2 listed buildings and the loss of 13.8ha of B&MV agricultural land over and above the Policy MU 3 allocation, which would otherwise generate a margin of around £13,400 per annum. The other allegations of harm have not been made out. Indeed, the evidence suggests substantial betterment, in terms of highways congestion, rat-running, air quality, landscape buffers and ecological mitigation.
- 5.104 Most of the application is in outline so detailed matters of layout are not relevant. Nonetheless, the HoP was right to report that the Parameter Plans create a "*a strong landscape framework for the site, with substantial sports, open space and landscape buffer areas*", and offer "*opportunities to provide variation and interest, and to create character areas within the site*" (CD B01, paragraphs 8.77-8.88). BRAD's evidence on the detailed merits of the Masterplan are irrelevant given that it is only illustrative. The time for determining the detailed questions of design that BRAD raises will be at the reserved matters stage. BRAD's concerns on the amount of community facilities are misconceived. The scheme offers substantially more in quality and quantity of such uses than is expected by or required by Policy MU 3.
- 5.105 The lpa's evidence on climate change is based on the idea that local and national policy and guidance needs "*updating*" and that "*the current set of standards and guidance*" should not be applied (LPA1 paragraphs 12.3 & 4.1e). In planning law terms, that is a nonsense. Section 38(6) requires the appeal to be determined in accordance with the current development plan, and other material considerations including the current versions of the Framework and PPG. This is a plan-led system, it would not be possible, desirable or legal for the SoS to try somehow to predict what policies may pertain in the future, and then apply those. Nor should matters which can be dealt with either through planning conditions or under different regimes, i.e. buildings regulations feature in a RfR. On Climate Change, the lpa sought to apply irrelevant statutes and policies. The lpa²⁴ accept that Policy DM 20 does not apply here.
- 5.106 The appellants submitted with the application a comprehensive Economic Benefits Statement (CD A46). This indicated that a mix of housing types would attract further working age population to the Borough and through the provision of local employment opportunities would boost the economic vitality of the area. Construction jobs generated monthly during the construction phase would be some 140 and 98 indirect jobs. The direct gross value added (GVA) would be some £59m and indirect GVA would be some £46m a total of some £105m over the construction period. In terms of the completed development, the GVA generated by the resident population would some £31m and the additional commercial expenditure per annum would be some £13m. It is estimated that the scheme would generate a New Homes Bonus of some £4.8m, Council Tax receipts of some £1.3m per annum and some £64,000 per annum in Business Rates. On site employment would create some 65 jobs.

²⁴ X-Examination of Mr Rushe.

- 5.107 In addition to the above, the social and environmental benefits associated with this scheme are compelling. Whilst new homes would alter the local landscape, those changes would be acceptable, particularly in the light of the change anticipated by Policy MU 3, and the substantial landscaping scheme proposed, would mitigate and, in many cases, enhance the quality of the local landscape. The Ipa accepts that, the provision of affordable and market housing should attract substantial weight. The additional highways benefits, with associated heritage and air quality benefits, providing the sports facilities, future-proofing the school all weigh further in favour of granting permission (APP20 Section 6).
- 5.108 Allowing the appeal accords with the development plan taken as a whole. In any event, other material considerations, particularly the tilted balance at Framework paragraph 11(d)(ii), indicate that permission should be granted.

6. The Case for Swale Borough Council

The material points are: -

Introduction

- 6.1 This is not a simple case to determine. Although there is a LP allocation for significant development that covers most of the appeal site, the appellants are promoting a scheme that does not accord with the development plan. Thus, for most of the time that this application has been with the lpa, the Framework presumption would have been for refusal; not an easy starting point for any application. The result of the February 2019 Housing Delivery Test (HDT) changed the HLS position, and the appellants were able to gain support from the Framework's tilted balance in favour of the grant of permission.
- 6.2 The broad background is set out in the Statement of Common Ground (SoCG (Doc 67)). Apart from the issue of urban design addressed by the BRAD party, the putative RfRs are an accurate reflection of the main issues in this appeal. Most of the concerns about the level of information provided remain, and the appellants have failed to respond to the declaration of a Climate Change emergency (CD D29). The lpa looked at the right planning balance and was correct to decide that this proposal should be refused.
- 6.3 The lpa's concerns about urban design is focused on the effect of the LR, and the effects on traffic, air quality, ecology, heritage and climate change. These have been addressed under the individual issues, and the lpa does not seek to make a broad design point.

The Relevance of the Policy MU 3 Allocation

- 6.4 The lpa's case concentrates on the additional impacts that this scheme would have over and above a Policy MU 3 compliant scheme. The lpa accepts this is baseline and it is a proper approach to assess the additional elements in light of that. The LR, the Chestnut Street roundabout and a further 80 dwelling houses would need separate assessment on their own terms.
- 6.5 The appellants acknowledge that it was not part of their original case to say that the Policy MU 3 allocation is undeliverable. This is an accurate reflection of the appellants' SoC, and of the history of what has been said by the appellants. As such the lpa could not expect to have prepared evidence on a point that was not in dispute. There is an allocation, Policy MU 3, that has been found to be sound. At the LP inquiry, the appellants supported the allocation (APP21 Appendix 4 paragraph 26). No point was made in the Planning Statement, which seeks to draw support from Policy MU 3 (CD A45 paragraph 4.19). It is not the reason given for why the Policy MU 3 allocation was not considered as a reasonable alternative by the ES Addendum nor is a point made in the Planning or the Transport Proofs of Evidence (CD A35, APP20 & APP23). However, the appellants now say that there is a highway issue that makes Policy MU 3 undeliverable (APP25 & Doc 1).

- 6.6 Despite the above contradiction, the appellants' point is built upon feeble foundations. There is a sentence in the KCC letter of January 2019, which responded to the appellants' ES addendum (CD A40 pages 253 & 254 & CD A35). However, KCC's comment is not based on any new modelling or work. The KCC letter only refers to the same work that was before the LPI in January 2017 (CD A37). The letter was submitted and considered at a time when all parties, the appellants and KCC included, considered the allocation to be deliverable and considered by the LPI. All the work since then has been on the MUX1A²⁵ extended site. It would be for any applicant to do further work on the Policy MU 3 site. The position is that there are 2 possible acceptable schemes, and that the appeal scheme was thought to deliver greater highway benefits is as far as the lpa's submission to the LPI went (APP26 Appendix 13 & CD D6).
- 6.7 The reference to the Carroll case is of limited assistance (Doc 26). There is indeed no "one size fits all" rule about the relevance of alternative schemes (Doc 26 paragraph 19). The Carroll case does not address the point that a local plan allocation is present and relied upon "in principle" by the developers to support his own larger scheme. This scheme does cause harm and there is an alternative scheme, Policy MU 3, which avoids some of the harm and reduces other harm. Furthermore, if a Policy MU 3 compliant scheme was truly undeliverable, it would be grounds to remove it from the LP, and there would be no support for the appellants' appeal scheme.

Housing Land Supply

- 6.8 This is Topic 1 in the SoCG, and the detailed figures are covered in 2 documents (Docs 46 & 47). The position remains as stated, that the lpa's latest HLS position statement for 2018/19 was published in February 2019 and it demonstrates a 4.6-year supply (CD C15). Whilst the lpa is collating new data to inform the next statement, it not available to inform the SoS. Likewise, the work on the LP review continues, which includes a new SHLAA. Again, this is not available to inform the SoS. The appellants, using October as a reference point, would discount some of the sites included in the February 2019 document, but does not make allowance for any additions or windfalls: a point made in the lpa's HLS note (Doc 46).
- 6.9 The lpa's HLS note is an accurate reflection of what could have been the case i.e. this site could have delivered houses within the 5-year period had a lesser scheme been pursued (Doc 46 paragraph 116). It is ironic that if a Policy MU 3 compliant scheme had been promoted instead of the appeal scheme, it could have been added to the HLS and mathematically there would be a 5-year HLS. This inquiry is because that was not the appellants' choice.
- 6.10 The lpa accepts that it cannot show a 5-year HLS. This is not as a result of the LP and its recently-adopted trajectory, but by virtue of the Framework's HDT and a 3-year timeframe to assess delivery rates. The HDT results and

²⁵ The reference given to the appellants' site during the Local Plan Inquiry.

the associated 20% buffer mean that there is no 5-year HLS. As a result, the Framework paragraph 11(d) "tilted balance" is engaged save potentially for issues relating to heritage (Framework Footnote 6). However, where there is still disagreement, the way that balance is applied to the relevant LP policies is a matter of judgment.

- 6.11 As confirmed by the Court of Appeal, the appropriate balance, even on the tilt, needs to be struck, and a balance can only be struck if the considerations on either side of it are given due weight (CD E4 paragraph 47). The weight given to relevant restrictive policies would be less if the shortfall in the housing land supply is large, and more if it is small. Other considerations will be relevant too: the nature of the restrictive policies themselves, the interests they are intended to protect, whether they find support in Framework policies, the implications of their being breached, steps being taken to address the shortfall, or how much the application will assist in that.
- 6.12 Councillor Truelove, the Leader of the Council, is right in saying that "*these proposals undermine the local plan process*". This site should be reassessed as part of the early review, and alongside alternative sites, and the overall LP traffic work. That review work has already started and supports what is said in the Ipa's housing action plan (CD C19). It is still necessary to take account of the plan-led, longer term view. The position is no different to where the Ipa was at the LP stage, when the approach to HLS was found to be sound. The housing trajectory was always "humped" and the appellants' criticism of the delivery of housing year on year ignores this (APP19). That is what was found to be sound, and it reflects the proper planning of the area.

Housing Provision

- 6.13 This scheme would not provide the appropriate mix of housing for the needs of the area. This point has been eloquently made in the public sessions and by local objectors. It applies to the detailed permission, Phase 1a, and the viability issue gives little scope, if any, to vary any mix. The appellants state that the scheme would not be viable if a greater number of smaller units were included (APP20 paragraph 4.35). This skew to larger dwellings is indeed a consideration that has negative weight (APP20 paragraph 4.38). Putative RfR 2(e) summarises one of the harms arising from this development (Annex A).
- 6.14 There is a great need for new AH, and the trade-off with funding the LR is not welcomed. Whilst the Ipa accept²⁶ the AH is a substantial benefit to be weighed in the planning balance, the trade-off is not a reasonable justification for the development of further housing on a new greenfield site, as if it was some form of enabling development. The scheme does not provide the required numbers of AH (Annex A putative RfR 2(d)). There was a doubt at the beginning of the inquiry whether there were additional funds available as they are no longer needed to help fund the provision of the new A249 works,

²⁶ X-Examination of Mr Rushe.

because of the successful HIF bid. The appellants confirmed that funding would remain available and can be assessed as part of the viability review provisions set out in the S106 Agreement.

Character and Appearance

- 6.15 The adverse visual and landscape impact of this development south-west of Sittingbourne has always been controversial. The lpa acknowledges that the Policy MU 3 allocation itself would to some degree conflict with the general landscape protection policies because it would involve development of a green field site and there would be some landscape and visual harm (LPA9 paragraph 8.13). However, the Policy MU 3 allocation would not conflict with Policy DM 25, as that is tied to a specific area, and the allocated site is not within the Important Local Countryside Gap (ILCG) it protects.
- 6.16 There would be harm to the landscape from development within the open countryside beyond the LP allocation (Annex A, RfR 2(a)). The appeal scheme would have greater overall landscape and visual effects than a Policy MU 3 compliant scheme (LPA9 paragraph 6.7.1). The scheme would be larger, affect a larger area, and take up more of the ILCG. The lpa's analysis notes that whilst it is important to assess the level of effects from the appeal scheme, the additional effects of developing this scheme rather than the allocation would be significant in themselves. The additional effects would be felt principally at the north-western end of the site, where there would be moderate to substantial adverse effects for the appeal scheme. In contrast, here the localised landscape effects would be negligible for a Policy MU 3 compliant scheme. The north-western end of the site is visually separate and within a separate Landscape Character Area (LCA). If considered as a standalone development, then these effects would be significant.
- 6.17 There would be significant effects on the functioning of the ILCG between Sittingbourne and Chestnut Street, with physical development within the gap, loss of openness and the sense of separation and suburbanisation of its character. The difference between the appellants' ES and the lpa's assessment on the landscape is at LPA9 Table 6.1. In terms of Landscape Value, whereas the ES conclusion is that there would be a Moderate Impact (CD A18 paragraph 10.123), the lpa's assessment that there would be a Medium to High Impact, when account is taken of the function of the landscape in forming part of the ILCG, is more accurate. In terms of Landscape Sensitivity, there is agreement that this is Moderate to High (CD A18 Table 10.4 & LPA9 page 66, Table 6.1), and that Landscape Change would be Medium (CD A18, Appendix 10.7, Table 10.6.2). That said, the landscape change would be at the lower end of the range, for the allocated site. Both the lpa and appellants accept that the Landscape Effects in Year 1 would be Moderate to Substantial Adverse (CD A18 paragraph 10.160 & LPA9 page 66, Table 6.1). However, the Landscape Effects in Year 15 would still be Slight to Moderate Adverse for the appeal scheme and less for the allocated site (Slight Adverse), rather than the Neutral to Slight Adverse identified (CD A18, Appendix 10.7, Table 10.6.3). It is notable that the ES does not assess the localised effects at the north-western end of the site, whereas the

lpa does and identifies that there will be a Moderate to Substantial Adverse effect for the appeal scheme as compared to a Negligible effect for the Policy MU 3 allocation (LPA9 page 66, Table 6.1).

- 6.18 In terms of the relevant policies and LCAs, there is some agreement between the lpa and appellants' landscape evidence. In Year 1, a Policy MU 3 compliant scheme would have Moderate Adverse effects, and the appeal scheme would have effects half a category higher. It is agreed that the appeal scheme would in general be more harmful. The appellants' suggestion that the "half to one category" or so of difference between the witnesses might be thought to be "just a matter of professional judgement" is not an appropriate conclusion in this case. That only applies if you use a general, averaged, global assessments of the effect of the scheme. The use of a global average by the ES is a misleading indicator. The overall assessments are averages, so logically there will be some areas with higher levels of effects. Furthermore, as this is a long site (1.6 km), there are parts which are not inter-visible or experienced as whole.
- 6.19 At the north-western end of the site, the differences between the parties are not half to one category, the difference is between moderate to substantial adverse for the appeal scheme and negligible for the allocation (LPA9 page 66, Table 6.1). The appellants do not have an alternative assessment of that localised difference nor do they specifically disagree with the lpa's assessment. Here, the differences are not just of professional judgement. There would be a significant difference in effects, because the appeal scheme involves a significant quantum of development at that point, where a Policy MU 3 compliant scheme involves none.
- 6.20 On the land to the north-west, outside the Policy MU 3 allocation, the appellants have downplayed the quality of the landscape so that the effects of the LR and roundabout would be limited. The appellants say that the barn and substation are "*notable detracting features*", though it would be difficult to identify the substation (APP16 paragraph 3.22). The appellants reverse the normal way this would be analysed; it is clearer to say that the absence of the 80 added dwellings, the extra length of road and the roundabout would lead to a reduction in landscape and visual impacts (APP16 paragraph 5.7 iii & iv). The appeal scheme causes additional, "extra over" harm.
- 6.21 A clear distinction can be drawn between the 2 LCAs, the Tunstall Farmlands and the Borden Mixed Farmlands, where a Policy MU 3 compliant scheme would have a negligible impact whereas the appellants' scheme would directly encroach into a different area. At the north-western edge, the scheme would breach a natural boundary identified by the landscape character assessments. It would extend development into a different sort of landscape, which relates more to the village of Chestnut Street and has a different character to the remainder of the site to the east, which is predominantly within the Policy MU 3 allocation.
- 6.22 There is an inconsistency in the appellants' evidence where it was said that the housing in the appeal scheme had been set back to the east from the line

- of Footpath 117 so that "*it doesn't impinge on the valley landscape*" to the west. Notwithstanding that, it was then repeatedly said, in terms of landscape effects, visual effects, and effects on the ILCG, that housing in a Policy MU 3 compliant scheme would affect the valley landscape of the Borden Mixed Farmlands, would affect views to the east from the footpaths and would affect the landscape of the ILCG, despite the housing being around 170m further to the east than the additional housing, on the far side of a tall hedge, outside the Policy MU 3 allocation.
- 6.23 At the eastern end, the SoCG records, one of the changes from the Policy MU 3 allocation is "*...upgrading of the access point onto Borden Lane to a roundabout*" (Doc 67 paragraph 4.7 Bullet Point 19/7). The highway evidence confirmed that it was not a foregone conclusion that the access point from Borden Lane would need to be a roundabout. The lpa is correct in analysing this as an additional adverse impact.
- 6.24 The appellants have assessed high level adverse visual effects on several viewpoints, and the lpa is in general agreement on that. Where the lpa disagrees is in the assessment of effects at Chestnut Street, where the effects of the allocated site on views from the west are overstated (LPA9 paragraph 6.4.4). The comparative visual assessment takes a different approach, between who are receptors and considering the viewpoints (LPA 9 Section 6.4 & CD A18 Page 88 Table 10.7). From the appellant's Viewpoints 24 and 25, from School Lane, the sensitivity is said to be Medium. However, the receptors here would include pedestrians, motorists and residents, all of whom would have different levels of sensitivity (CD A18 Page 88 Table 10.7). Similarly from Viewpoint 1, Wises Lane, this is a view from the road, and this is given a level of Medium Sensitivity, which it can be for road users, but if it is supposed to represent effects on nearby residential properties then, on the appellants' own methodology, it should be of High Sensitivity (LPA17 Appendix B page 8). This is not separated out in the assessment.
- 6.25 It is difficult to reconcile the appellants' evidence where it is said that the differences between the 2 scenarios in views to the east would be "*slight in most cases*", despite the fact that Viewpoint 17, from Public Footpath ZR 117, would be right on the edge of the new housing, but 170m away and with a hedge in between for a Policy MU 3 compliant scheme (APP16 paragraph 5.52 & CD A18 Page 88 Table 10.7). Both Footpaths 117 and 118 would be crossed by the new road for the appeal scheme, but not in a Policy MU 3 compliant scheme.
- 6.26 The appellants significantly underestimate the difference between the 2 scenarios and say that there would be no significant difference by Year 15 (APP 16 paragraph 5.62). In Year 15, Footpaths 117 and 118 would cross the LR, but in a Policy MU 3 compliant scheme they would continue to run across an undeveloped field. Moreover, the appellants say that the effects for either scheme would be neutral to slight beneficial by Year 15; even though nothing happens in this area under a Policy MU 3 complaint scheme (APP16 paragraph 5.20). The Addendum ES says that there would be Slight Adverse to Neutral effects in Year 15 from the scheme and it does not claim any

benefits at all in the ES (CD A18 page 102 Table 10.10 Line 2). The Addendum ES is an accurate assessment of the likely significant impacts.

- 6.27 The appellants highlight “*benefits*” that would be “*lost*” under a Policy MU 3 compliant scheme (APP16 paragraph 6.6). The first is the rugby pitches, which whilst they may constitute a recreational benefit, the development of rugby pitches within the countryside is not a landscape benefit. The second appears to be about the green corridor, but the Policy MU 3 allocation includes a similar green corridor along its southern side, albeit not extending all the way to Chestnut Street.
- 6.28 When it came to the effects on the ILCG, this is not assessed in the text of the Addendum ES, other than a statement that the appeal proposals “*accord*” with LP policies (CD A18 paragraph 10.211). The Addendum ES does include some assessment of effects on the landscape character of the gap, but it does not address the issue of development within the gap and how that affects its function (CD A18 Table 10.6.2). That assessment is found in the lpa’s evidence where it concludes that there would be a Significant Adverse effect, for the gap between Sittingbourne and Chestnut Street, and a Minor Adverse effect, for ILCG between Sittingbourne and Borden.
- 6.29 The appellants have underplayed the harm to the ILCG and ignored the effects of the road and roundabout at the western end on the gap. The appellants set out the distances that the ILCG represents and assert that a 400m gap would still be identified (APP APP17 Appendix E). The relevant distances are 90m, in terms of what is left of the gap, as the introduction of the LR is the main feature (LPA10 Appendix D Line A).
- 6.30 There is a debate about the weight to attach to the ILCG Policy. The policy serves an important landscape function and was found sound as part of the LP, which was written and assessed in the context of the 2012 Framework. The 2019 Framework is more protective of the countryside, the provisions in Framework 170(b) were not in the 2012 Framework. Whilst the lpa acknowledges that the site is not a “Valued Landscape” the lpa has carefully assessed the remaining value that needs to be considered (LPA9 paragraphs 4.2.5 & 4.2.6). The lpa has clearly considered what area could be allocated for development without significantly compromising the continued function of the gap, and drew the line shown on the Proposals Map accordingly (LPA9 paragraph 4.3.7). Accordingly, both Policies DM 24 and DM 25 remain consistent with the Framework.

Highways

- 6.31 The lpa has a continuing issue about the information that has not been provided. The lpa’s highways witness previously produced a report for BPC in October 2018, which identified serious concerns (CD D3). These concerns were picked up by the lpa, who concluded that the submitted TA failed to adequately address the highways impacts arising from the development. There is a lack of clarity regarding key elements of the traffic proposals, flaws in the modelling work, a lack of consideration of rat running and the impact

- on the wider local road network, inadequate environmental assessment work, and the failure to provide adequate and appropriate mitigation. The lpa concluded that the application had failed to demonstrate that the scheme would not cause unacceptable highway impacts, contrary to LP Policies DM 6, DM 26 and MU 3, and Framework paragraphs 108 and 109.
- 6.32 Frustration with the highway consultees is reflected in the Committee minutes (CD B4 page 7). The absence of responses from HE and KCC to BPC's report referred to in the HoP's report, should not have been taken as a positive, but as an insufficient basis to draw any conclusions (CD B1 paragraph 6.06). The appellants²⁷ made no response either. The lpa's evidence shows BPC's concerns were well-founded and serious. The SoS's request for further EIA information shows that these concerns are shared (Doc 35).
- 6.33 Despite the exchange of information and emails between the highways witnesses in the run up to this inquiry, the lpa's concerns remain outstanding. There is an absence of the relevant information, and as a result the lpa has had to present a negative case i.e. that the application fails to show that the scheme would not cause unacceptable highway impacts.
- 6.34 The problem that lpa has and the SoS faces is making sense of the "black box" of the traffic model without insight into what has been done in terms of the assumptions. The TA was superseded by the TAA (CD A12(b), CD A20). The TAA includes the bespoke micro-simulation, using VISSIM, done by private consultants to a brief prepared by KCC (APP25 Appendix 10).
- 6.35 Information requested by the lpa was not forthcoming. The Validation Report deals with the base model alone and there is no systematic assessment that identifies those parts of the network where transport environmental impacts may be a cause for concern (CD A20 Annex A). The extent of the study network is vague rather than being assessed using standard techniques and thresholds. There is no report on the future years even though this will see a very different highways network, with changes to Wises Lane, the Key Street roundabout, and a LR. There are no matrices for future years and nothing on what assumptions have been made or how it has changed, what parameters have been assumed, what the inflows are, what junctions were specified, and what saturation flows. The lpa's concern is that it has not had the information to assess whether the assumptions have been reasonable. It is the classic Garbage in – Garbage Out issue that applies to all modelling work. Thus, it cannot be said that the model is robust and reliable, nor can it be reported that the appellants' conclusions are correct.
- 6.36 The appellants' response to the lpa's concerns is that their VISSIM does not produce a comprehensive report as one would expect with the older models such as ARCADY. However, this has not prevented others who are similarly required to justify their work in public as shown by the HE SoC for the M2 Junction 5 inquiry demonstrates (Docs 30, 31 & 32).

²⁷ X-Examination of Mr Wilde.

- 6.37 Although the VISSIM model cannot be properly interrogated, the lpa has continued to try to assess the effects. In so doing, some obvious errors have emerged. There are discrepancies which are not properly dealt with in the application. The assignment of traffic to an on-slip that is not there (337 vehicles in the AM peak, and 476 vehicles in the PM peak on JW52), defies reasonable explanation (APP24 Appendix JW3, page 99). This incorrect information will have affected what HE and KCC scrutinised.
- 6.38 The appellants²⁸ responded to the concerns about traffic generation from the area, from the schools, and the trip distribution, and the cumulative effect of those concerns with what is presented as the sensitivity modelling. That is, if the model results can be accepted and as far as the lpa is concerned that is a major "if". The lpa's concerns about queueing on the merge/diverge at the Key Street roundabout prompted work and an analysis of the signalisation to reduce the queueing; a reduction from 1,844m to 650m (APP23).
- 6.39 The LR junction with Chestnut Street should not open until the M2 Junction 5 improvements have been implemented and given the appellants' objection cannot be dealt with by condition. If the scheme progresses past a certain point without these improvements, there would be a significant increase in rat running in Chestnut Street and through Borden, on a route that was not available before, as an alternative to the congested routes on the A2 (LPA3). There is a risk that there could be a severe impact or an impact on safety³⁰. The lpa's case is based on the witness's own experience and local evidence. The residents' assessment is relevant as is the professional judgment of the lpa's highways witness based on knowledge and drivetimes²⁹. The only numbers in the appellants' evidence are for the increase in southern journeys on Chestnut Street, but there is none for the other routes, and none for any northerly journeys; a point picked up by BPC.³⁰
- 6.40 The position is that there are 2 possible acceptable schemes. No more work has been done to promote a Policy MU3 compliant scheme, although there is apparently a means to use the bespoke VISSIM model to assist - to compare the dis/benefits of the LR, by 'switching' it on and off in the model. This is something the appellants have not done, even though it was part of the KCC design brief. However, the lpa concludes that matters have improved as the A2/Wises Lane improvements have been identified, and it is likely that the Key Street Roundabout changes will happen with the HIF funding. The lpa's case is that there are significant benefits that can be achieved without LR, so that the LR is not an essential.

The Effect on Air Quality

- 6.41 The starting point on this topic has been the lack of clear information about the likely effects of this development. The lpa had the work of Professor

²⁸ APP23.

²⁹ X-Examination of Mr Bamber.

³⁰ The appellants' heritage witness Dr. Miele did refer to some numbers, but these were not presented at the highways topic session or by Mr Wilde and are not therefore referred to here.

- Peckham before it, and the appellants' modelling work. However, that work is no longer being relied on. The putative RfR states that, the air quality modelling submitted with the application is inadequate, the negative impact of existing air quality exceeds guidelines for health, and the additional negative impact of the proposed development underestimates the likely true impact on health contrary to Policy DM 6 and Framework paragraph 181.
- 6.42 The appellants have done new work on the model using the real-world data now available. The appellants have had a chance to discuss with the Ipa's witness his concerns about its reliability, the assumptions that are made about the receptors, the underlying traffic mix (the HDV point) and issues with the wind direction information (Doc 25]. However, there is still an issue regarding the quality of the information that has been submitted and the actual likely effects of the new development. There are differences in outcomes of modelling based on the assumptions put into each model which have produced varying predictions for future NO₂ levels. The Key Street Roundabout is an example of where the models diverge. Thus, if you do not know the level of impact, you cannot assess the level of mitigation required.
- 6.43 The evidence contains a multiplicity of numbers on the damage cost and mitigation. The damage cost calculation has been undertaken using the DEFRA Air Quality Damage Cost Guidance, which has changed over time, the latest being January 2019 [CD D20]. Whilst many of the elements of the calculation have remained constant, such as the level of traffic assumed, emissions have changed. In the ES, the Damage Cost Figure was £412,548 (CD A11 paragraph 8.133). In the May 2018 ES Update, with the predicted increase in NO_x, the Damage Cost Figure was £481,639 (CD A15 paragraph 8.135). Now, the appellants, using the latest DEFRA Central Damage Cost Value, show that the Damage Cost Figure drops to some £312,225 (APP5 paragraph 5.28). The DEFRA guidance has 3 Damage Cost ranges and if the High Damage Cost Range, Road Transport, Urban Small, is used the Damage Cost Figure would be £1,044,564.87³¹ (CD D20 pages 10 & 11).
- 6.44 The effects of the mitigation proposed is questionable. The HoP's report acknowledged that the substantial increase in air pollution would require mitigation (CD B1 paragraph 8.236). There, the assertion appears to be that there is more than enough mitigation being provided, when judged against the "*damage cost value calculation*". However, as the Gladman's court case emphasised (CD E6), the decision maker will need to be satisfied about what the effect of any measures may be, and the appellants must demonstrate what the reduction in emissions will be.
- 6.45 The quality of the mitigation proposed is doubtful. No additional work is proposed to the roads, or to the landscaping, as a result of the air quality issue³². The proposals relating to better quality of domestic heating boilers deals only with boiler emissions and is not an answer to the traffic impacts.

³¹ The central value for NO_x is £8,343 per tonne, which would rise to £31,605 at the High Range; for PM_{2.5} it is £152,694 per tonne rising to £469,611 at the High Range. In 2015, NO_x was priced at £28,788 per tonne.

³² X-Examination of Ms Banks.

One factor that can be considered is the provision of "...*infrastructure to promote modes of transport with a low impact on air quality (such as electric vehicle charging points)*". However, as it stands, the Travel Plan has little predicted effect, as the overall impact assessment of the Travel Plan is 5%³³. Moreover, there is no car club, a possible measure mentioned in the Air Quality Action Plan (AQAP).

- 6.46 The issue is not so much that the Air Quality Objectives are breached, although there are concerns still, but that additional pollution is being introduced. It is not an answer to the wider impacts simply to seek to spread it around. The evidence of the lpa's air quality witness is that he would not use major road works as mitigation as they move the emissions around and would lead to an overall increase, so it does not matter where it is going; redistribution is not a reduction³³.

The Effect on Heritage Assets.

- 6.47 The issue is narrow and relates largely to the effects of traffic and the Chestnut Street roundabout, that would cause harm to HAs in Borden and Chestnut Street contrary to Policies DM 32 and DM 33 and Framework paragraphs 193 to 196. The parties agree that S66 is engaged, and S72³⁴ can be engaged where the traffic harms have a direct impact within the CA (CD C6 and C7). The appellants³⁵ agree with the lpa's analysis of LBs and CAs. As they pass through the CAs characterised by narrow carriageways and awkward turns are sensitive routes. The difference between the parties lies in the highway conclusions that the heritage experts were asked to consider.
- 6.48 The lpa concludes that, the impact of increased traffic on Borden The Street CA would be Moderate, as would be the impact on LBs i.e. St Peter and Paul Grade 2* Church; and Street Farmhouse; Apple Tree Cottage and the Cottage; and Oak House (LPA15 paragraph 6.4.10). The adverse effect from increased traffic on the Harman's Corner CA would be Moderate, as would the impact be on the LBs at Bloumfield, Harman's Corner, 241 Borden Lane, 245 and 247 Harman's Lane (LPA15 paragraph 6.4.10). Although not featured in the putative RfR, the lpa's heritage witness expressed an opinion about the Moderate adverse effect from increased traffic on the Hearts Delight CA, and the LBs of Sharps Cottage and Filmer House; this is what is expected of an expert witness (LP15 paragraph 6.4.10). Moreover, the lpa's witness has been careful to distinguish and explain that there would not be an adverse impact i.e. on Borden Hall, there would be no traffic impact on Cryalls Farmhouse and Riddles Cottage, and only Minor impact on Thatched Cottage from increased traffic (LPA15 paragraph 6.4.11).
- 6.49 The lpa's witness has also considered the impact of the Chestnut Street roundabout and traffic. This is the one area where the appellants' analysis is on very weak ground and should be rejected i.e. that it would cause no harm

³³ X-Examination of Professor Peckham.

³⁴ Planning (Listed Buildings and Conservation Areas) Act 1990.

³⁵ X-Examination of Dr Miele.

to the Chestnut Street CA and the setting of the LBs (APP14 paragraph 4.70). Here, the impact from the roundabout and LR and their use would have a Moderate/Major impact on the Chestnut Street CA (LPA 15 paragraph 6.46). As for the LBs and their setting, there would be a Moderate impact from traffic and Moderate/Major impact from the roundabout and LR on Hooks Hole House (Grade 2), Olde Houses (Grade 2), Dumble Tudor Rose (Grade 2), and Olstede (Grade2*) (LPA15 paragraphs 6.45 & 6.46). A Policy MU 3 compliant scheme would not have these impacts.

- 6.50 In Framework terms, the harm amounts to "*less than substantial*" to be weighed in the planning balance, and in the overall balance, rather than the balance set out in Framework paragraph 196. The lpa accepts that this is a not a case where the separate balance that can apply to the impact on HAs is engaged (Framework paragraph 196). This simplifies matters, as everything now goes into the same balancing exercise. These heritage harms still attract greater weight, as, in terms of the statutory tests, the development would fail to preserve the settings of the named LBs (S66) and would neither preserve nor enhance the character or appearance of the CAs (S72).

Biodiversity and Climate Change.

- 6.51 Climate Change is an issue where the country is waking up to the urgency of the issue. What might have been acceptable and standard for new developments in 2017 is no longer so now. In August 2019, the lpa decided that the development would not be compatible with the Climate Change Declaration (CCD), including but not restricted to adverse impacts upon biodiversity within the site (CD B2). The wake-up call has been the Climate Change Emergency (CD D29). Swale is now one of over 260 local authorities that have done so, and the Government has also declared a Climate Change Emergency in May 2019.

Biodiversity

- 6.52 The lpa's expert witness has assessed and has identified a series of deficiencies in the available survey evidence (LPA12 paragraphs 3.1.17 & 3.1.18). The appellants' survey works fall short of the level required to provide a robust baseline on which to make a proper ecological assessment. The lack of accurate surveys is not just a matter of updating the evidence, as the appellant's planning condition suggests (Doc 12). The parties agree that all ecological surveys should be undertaken to a proportionate level following the guidance, prior to a planning application being submitted and should only be allowed to be done later under a planning condition in exceptional circumstances. The lpa considers that the submitted surveys have not followed government guidance for the species including bats and dormice, (both are European Protected Species), reptiles, and birds.
- 6.53 The justification for the areas of the site that were surveyed seem to ignore any areas of road/roundabout creation or any impacts that habitat creation or enhancements may have on protected species. The justification for not following the guidance in the case of bat surveys is inaccurate i.e. the reason

regarding none of the items on the trigger list being met was incorrect. Where new evidence has come to light about the dormouse records within proximity to the site, no reassessment has been undertaken on the likelihood of a European Protected Species being present on site.

- 6.54 As for Skylark mitigation, 2 fields which are over 10 ha would be lost, and the strategy uses sub-optimal replacement habitat i.e. near to woodland and below the recommended area, where there is no knowledge of the presence/absence or numbers in these mitigation areas (CD A43). Speculating whether they are or not present is not an appropriate basis for determining a planning application. Whilst KCC have advised that these issues can be addressed, they have confirmed that they have worked based on the surveys presented to them and not visiting the site.
- 6.55 The lpa is concerned as to whether appropriate mitigation/compensation measures would be put in place to avoid harm to biodiversity and deliver a net gain for biodiversity in line with Policies DM 29 and MU 3. Nor can it be confidently assessed that the populations of protected species would not be adversely impacted by the presence of development particularly the LR, contrary to Policy DM 28 and Framework paragraphs 150 and 175.
- 6.56 Decision makers are becoming more familiar with the concept of “*net gain*” as a policy requirement. Biodiversity net gain is required for this site as identified in the LP, both in terms of species and habitats. The ecological information does not provide an appropriate level of confidence that the proposals could deliver this on site (LPA12 paragraph 3.2.14).
- 6.57 The appellants accept that Policy MU 3 does require net gain to be shown. Unfortunately, the appellants seem to set the bar far lower than this, essentially limiting it to the mitigation hierarchy approach. The appellants still refer to net gain as not being mandatory, by reference to the encouragement of it in the Framework (APP9 paragraph 6.2.5). The appellants’ view of the Framework is that the current “*aim*” is to prevent significant harm and deliver no net loss and only net gains wherever possible (APP9 paragraph 6.2.9). The appellants do not explain why it is not possible on this site. The lpa submits that measurable Net Gain is clearly identified as a requirement in national and local planning policy. Simply saying that there will be some enhancement (as the appellants’ version of the suggested condition states) is not measurable or in accordance with the up-to-date guidance on net gain (Doc 12).
- 6.58 An interesting point emerged about what is a “gain”, as a 0% result would not be a gain. The appellants agree³⁶ that setting out a definition for Net Gain is sensible and that 10% (as recommended by the Government) was a reasonable figure. Indeed, this percentage is reflected in the wording of the Environment Bill, which has been carried over into the next session of Parliament and has already been given a Second Reading. Thus, whilst it is

³⁶ X-Examination of Mr Maughan.

only in draft form the Bill, shows the clear direction of travel. Off-site mitigation is always considered the less favourable option, and in this case especially so, as no land has been identified where this can be provided let alone secured, e.g. through a S106 Agreement.

- 6.59 Given the concerns that the baseline surveys do not follow guidance to show presence or absence of the species present on site, let alone any levels of population, the lpa fails to understand how they can be used as evidence to show a qualitative "*net gain in species*". This is clearly shown by the Skylark mitigation where a lack of knowledge regarding the baseline combined with a lack of understanding of the guidance has fallen short in presenting a mitigation plan that could clearly show a net increase in a species.
- 6.60 The lpa has doubts about the appellants' iterations of the DEFRA Metric. These include habitats to show a Net Gain that do not appear to reflect what is currently proposed for the site. If the Metric is to be used, you cannot pick and choose the inputs that have been carefully assessed. Although the Biodiversity Metric 2.0 is subtitled 'Beta Version', it states that it provides "*a significant advance in our ability to account for and measure biodiversity losses and gains. This new metric can be used in all terrestrial development and land management scenarios*". It is the most up to date guidance produced by the Government on how to calculate Biodiversity Net Gain.
- 6.61 With new information and adjustments provided by the appellants (APP12) the lpa acknowledges that this reflects a more accurate description of the habitats currently presented within the baseline ecology report (CD A12f). However, the creation of woodland as identified in Plan 3825/R3 (APP11 Appendix R3) does not seem to be reflected on the Habitat Creation page (APP12 Appendix R4 page 2). There are various areas of "*new woodland planting*" shown on Plan 3825/R3 (APP11 Appendix R3). However, under the Metric, the creation of woodland within the identified areas would give 12.29 Biodiversity Units rather than the 39.19 listed. It is also incorrect to try to use a short to medium term score. In the Habitat Enhancement, the old orchard has been given the wrong entries (APP12 Appendix R4 page 2).

Climate Change

- 6.62 The lpa's Climate Change Declaration (CCD) is a material planning consideration. The Climate Change challenge has become an emergency and has taken on increased urgency and adopted policies need to be considered in this context. Planning policies refer to climate change, and the emergency declaration underlines the urgency that this issue now needs. This is underlined by the Chief Executive of the Environment Agency who said, as Einstein said about an exam he set, "*The questions are the same. But this year the answers are different*".³⁷

³⁷ Speech by Sir James Bevan, Chief Executive of the Environment Agency, at Royal Holloway University, London, 24 October 2019, "The Climate Emergency: "... this year the answers are different."

- 6.63 The 2012 Framework recognised that “...*planning plays a key role in reducing greenhouse gas emissions, adapting to climate change and supporting the delivery of renewable and low carbon energy and looks to local planning authorities to pro-actively address this in policies and in determining planning applications.*” (CD C2 paragraph 7.6.1). The relevant LP footnote (7.23) refers to 2012 Framework paragraphs 93 and 94. As the 2012 Framework paragraph 93 said: “*Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure.*” This is not just some environmental aim – “... *This is central to the economic, social and environmental dimensions of sustainable development*”, which links back to the fundamentals of the purpose of the planning system to contribute to the achievement of sustainable development (2012 Framework paragraphs 6 and 7). The 2012 Framework paragraph 94 said that a lpa should adopt proactive strategies to mitigate and adapt to climate change, “*In line with the objectives and provisions of the Climate Change Act 2008.*” (footnote 16 to paragraph 94 and again in a footnote in the 2018 Framework). Chapter 14 paragraphs 148 and 150 of the 2019 Framework carries this forward and builds on it (LPA1). Furthermore, as the 2008 Climate Change Act has been amended to achieve net zero by 2050, then it is a fair conclusion that the requirement to mitigate and adapt to climate change has also been increased.
- 6.64 There is strong evidence of the scale of the problem for housing and non-residential development and the supporting evidence to the stalled Building Regulations consultations and Home Quality Mark (CD C23 & LPA1). The Committee on Climate Change has warned against permitting buildings subject only to the standards in place at the date a planning permission was granted, which are demonstrably not designed to meet the climate change challenges (CD C23 paragraph 11.1). The technology already exists to create homes that are low-carbon, climate resilient, better for health and the natural environment (CD C23 paragraph 1.4 page 40).
- 6.65 There is now a clear trajectory required – locally the CCD is to reach net zero by 2030, and nationally by 2050 across all sectors. The lpa has set out the steps across the 10-year life of the scheme that would be required in a suggested condition, which has been rejected by the appellants (LPA1). In the light of the evidence, the question is what the decision maker should do when presented with this strong evidence and the acknowledgement of the urgency as a material consideration.
- 6.66 The appellants acknowledge they have not gone further³⁸. Rather the appellants rely on evidence prepared in 2017 as contained in the Design and Access Statement (DAS) and the Sol Environment report (CDs A10 & A77). The ES is silent on the issue. The fact is that this scheme does no more than try to comply with the minimum standards set out in the past. The work

³⁸ X-Examination of Mr Burley.

done by Sol Environment was set out in a report dated September 2017 (CD A77); and with reference to Policy DM 19. It has not been updated since then, and as that Report confirms, *"It should be noted that this energy strategy has been prepared to ensure that the development meets the current building regulations only."* and that the *"detailed energy strategy has been prepared for Phase 1A of the development and the same measures have been applied to the remainder of the site covered by the outline planning application"*. (CD A77 page 1, Summary, & page 14).

- 6.67 The proposals merely meet the energy efficiency standards prevailing as of September 2017. No attempt has been made to see whether it is capable of meeting higher standards, now or in the future phases. The Low-Zero Carbon Technologies Feasibility Review rejects several options, including roof-mounted solar thermal panels, ground and air source heat pumps, the use of an energy centre with a biomass boiler, roof-mounted solar Photovoltaic panels, and micro-wind turbines (CD A77 section 2.4). Sole reliance is placed on fossil fuels, with *"high efficiency gas boilers with flue gas heat recovery"*.
- 6.68 The BREEAM pre-assessment for the non-residential elements shows an equal lack of any ambition or anticipation of better results in the future (CD A77). This assessment is out of date as it uses a 2014 version of what is Very Good. When it comes to the energy part of the assessment, it just passes, it scores 35% of available energy credits, when $\geq 45\%$ is needed just to get to Good (LPA1 paragraph 11.5)). Policy DM 19 (3) refers to minimums and at least an Excellent BREEAM rating can be achieved on the school building, with a specified minimum score in the energy section, and with an Outstanding rating being aspired for (LPA1 paragraph 4.6).
- 6.69 Essentially the appellants are awaiting a change to LP Policy and amended Building Regulations. The appellants acknowledge³⁹ that, requiring an improvement on the BRs standards is a widely used planning condition. It is as if S38(6) only said that decisions are to be determined in accordance with the development plan. However, the appellants have no answer to the material consideration acknowledged by them of the CCD. The CCD is a material consideration that indicates that the appeal should be determined otherwise than in accordance with the development plan on this point. Like the Sol Environment report, the focus of the lpa's evidence is on Policy DM 19, and the 2019 Framework Chapter 14 specifically paragraphs 148 and 150. That Policy needs to be seen in the context of LP policies including Policies ST1, CP3 and CP4 (LPA1 paragraph 6.1).
- 6.70 It is no answer to Policy DM 19.1(a) to say that this matter can be dealt with through the BRs. BRs lag behind climate change evidence. Whilst Policy DM 19 (1d) and Framework paragraph 150, seek to reduce greenhouse gas emissions, through location, orientation and design, the scheme does not address adaptability to change in the building design; the DAS contains very little on this (CD A10, pages 111, 120 & 129). The location and design of the

³⁹ X-Examination of Mr Burley.

scheme is car-reliant and car-dominant, and would impact negatively upon air quality, contrary to Policy DM 19 (1f). It is appropriate that a major new development on a greenfield site should be located, oriented and designed to take advantage of opportunities for decentralised, low and zero carbon energy, including passive solar design, and, connect to existing or planned decentralised heat and/or power schemes. This scheme does not do that contrary to Policy DM 19 (2) and Framework paragraphs 150(b) and 153(b); and fails to take the opportunity that Policy DM 20 encourages. What all this shows is that this development has not been planned to comply with Framework paragraphs 148 and 150, or to take account of the July 2019 amendment to the Climate Change Act 2008.

- 6.71 The evidence shows that there is a problem and the Planning regime cannot leave these problems to other regimes to deal with especially when those regimes have not kept pace with the requirements. The Ipa acknowledges that this will not be an easy matter for the SoS. However, the Ipa has suggested conditions that set out precise timings to reach net zero by 2030 (Doc 11). This proposal does not meet the standards now needed to mitigate and adapt to climate change, including the move to a carbon neutral economy. It is anticipated to take 10 years to build out this development and as such the SoS should not approve development that will not be fit for purpose by 2030 or even the Climate Change Act date of 2050.

Infrastructure Provision

- 6.72 There is no issue between the parties that this development must provide the necessary supporting infrastructure. The justification for the various obligations that have been discussed and agreed is set out in the CIL compliance statement (Doc 15). The remaining concerns identified in putative RfR 2(g)) have been dealt with through the S106 Agreement.

Loss of Agricultural Land

- 6.73 Over and above the land in the Policy MU 3 allocation, some 13.8ha of B&MV agricultural land within the application boundary would be lost. In addition, contrary to Policy DM 31 and Framework paragraph 170, some 2ha of Grade 2 B&MV agricultural land outside the application site in the north-eastern corner would be isolated and taken out of productive agriculture. These are adverse impacts to be assessed in the overall balance.

Design Issues

- 6.74 Apart from the impacts on the local countryside, and the wider sustainability points, the issue is about the effect to the LR (putative RfR 2(f)). This is a matter flagged up in the supporting text to Policy MU 3, that any development would need to avoid being planned as a local distributor road detracting from the character of the development by virtue of its design and predicted function to carry significant traffic flows (CD 2 paragraph 6.6.60 & LPA 18 paragraphs 4.79-4.87). It is also an issue addressed by the

unchallenged evidence of BRAD. This matter is contrary to good design, and Policies CP 4 and MU 3 and Framework paragraphs 110 and 127.

The Implications for Neighbours' Living Conditions

- 6.75 The lpa has identified some specific issues, relating to traffic and air quality, but the more general neighbours' issues do not form part of the lpa's case.

Benefits Associated with the Development

- 6.76 The lpa has always been aware of the benefits associated with this development. Clearly, there is disagreement when it comes to the benefits associated with the provision of the LR. However, that would normally be considered through the LP review process, where the Policy MU3 site would be one of several sites to be considered.
- 6.77 The most significant point of difference is that there is a valid comparison to be made. The benefits of the scheme are significantly "muted" by the fact that the LP provides scope to deliver the majority (some 80%) of the homes without recourse to the LR and without any harm generated by developing the land areas outside the Policy MU 3 allocation (LPA18 paragraph 3.17). Delivery of new housing is important, but it needs to be in the right place.

Overall Planning Balance

- 6.78 The appellants rely heavily on S38(6), but limit themselves to the development plan part, and not on material planning considerations that might indicate that a different balance needs to be drawn. The correct analysis is that some of the development is in accordance with the development plan, but there are important respects where it is not. The appellants are described as deciding to apply for planning permission and justify the departure from the development plan (APP20 paragraph 3.13). That has always been the case, even when the HoP was recommending "on balance" that the application could be approved (CD B1 Section 9 paragraphs 9.02, 9.03, 9.09 etc).
- 6.79 The putative RfR have been carefully drawn. Reasons 1 and 3 identify the problems with the available information; that on its own supports a refusal. Reason 2 identifies the planning balance:
- a) harm to the landscape arising from the development of land within the open countryside beyond the site allocation;
 - b) development of land within an ILCG;
 - c) the loss of B&MV agricultural land through development beyond the site allocation;
 - d) the failure to provide a policy-compliant level of affordable housing;

- e) failure to demonstrate that the site would provide an appropriate mix of housing to meet the housing needs of Swale;
- f) the use of a LR through the site, which would dominate and detract from the character and appearance of the development;
- g) the development would not be compatible with the Ipa's CCD, in terms of biodiversity and sustainable design and construction;
- h) the harm to heritage assets through the generation of significant vehicle movements.

6.80 The Ipa's position is supported by the objections made by BPC and BRAD, the unchallenged evidence of Councillors and objectors. There are several issues, which, when combined with the traffic and air quality issues, mean that permission should be refused, as, "*... the alleged benefits of the development, including the claimed highways benefits purported in the application, are significantly and demonstrably outweighed by the harm that would be caused if this development went ahead*".

7. The Case for Borden Parish Council

The material points are: -

Introduction

- 7.1 Borden Parish (BP) is a rural parish with a population of some 2,066 (1,063 dwellings) extending over some 465ha. The parish comprises Borden village and several dispersed hamlets including Chestnut Street. BP is rich in heritage with 4 CAs and a significant number of LBs. BP is predominantly arable and pasture farmland, interspersed with rural lanes. It has one primary school and church, several public houses, but no GP surgery.
- 7.2 BPC took an active interest in the planning application, commissioning reports on air quality, highway impacts and a planning critique. All 3 reports were supplied to the lpa who did not appear to engage with the fundamental issues raised. Whilst some of BPC's concerns have been addressed through the S106 Agreement, it remains opposed to the scheme. What is proposed is neither the right development, nor is it in the right place, nor is it at the right time for the long-term well-being of BP.

Reasons Supporting a Refusal

- 7.3 BPC supports the lpa's putative RfRs and advances 3 reasons why planning permission should be refused. Firstly, the development is contrary to the LP, a premise that the appellants appear to accept. Secondly, there are no material considerations sufficient to outweigh the S38 (6) presumption in favour of the Development Plan. Thirdly, there is an in-principle objection to the appellants submitting a radically different form of development within 3 months of the LP being adopted, rather than a Policy MU 3 compliant scheme.
- 7.4 The scheme is for a significant urban extension of some 675 dwellings (1,620 people) to be built over a 10-year period. The development would be facilitated by a LR connecting Borden Lane in the east to Chestnut Street some 1.8km to the west. On Chestnut Street, a major 4-arm roundabout would be constructed to absorb a traffic flow of some 1,424,015 additional annual trips generated by the scheme (APP23 & APP5 paragraph 5.26).
- 7.5 Traffic generated by the scheme together with traffic that would use the LR to avoid congestion on the A2, would join the A249 south, via a spur off the roundabout, by punching through hedges, north of the Tudor Rose Public House. There is the potential for traffic from south Sittingbourne to seek access the LR via Riddles Lane to avoid the town centre and the A2 (Doc 41). The proposed works to the congested Key Street roundabout closing the existing slip road to the A249 so that it all goes to the new roundabout onto a considerably fore-shortened feeder, is a significant safety concern (CDs 7, 90 & 91). BPC's concerns have not been put to rest by the appellants' traffic flow work. Indeed, the lpa's assessment has highlighted an error, which assumed a non-existent arm of the Key Street roundabout which significantly distorted the assumed traffic flows. The appellants response was that this was "*a presentational challenge to the diagram*". Moreover, the appellants

neither control nor own land between the red line extent of the site and the public highway at Chestnut Street (Doc 4). Neither of these matters inspire confidence in the thoroughness of the access arrangements.

Conflict with the Development Plan

- 7.6 As the planning system is plan-led, the first step is to assess the scheme against the basket of relevant LP policies to decide whether it is compliant. The second step is to consider all other material considerations, such as the Framework, to see how they are relevant to the issues.

Policy MU 3

- 7.7 The starting point is Policy MU 3, which allocates some 33.7ha of arable farmland for a major mixed-use expansion of Sittingbourne. Paragraphs 6.6.43–6.6.63 of the supporting text say that this sensitive site is subject to: (1) a Masterplan/development brief developed through stakeholder consultation; (2) the resolution of complex transport and access issues; and (3) protecting the ILCG between Sittingbourne and Borden so as to maintain the separation of each settlement.

- 7.8 The scheme differs fundamentally from Policy MU 3 through the:

- 1) inclusion of additional land at the north-western end of the appeal site to create the LR and Chestnut Street roundabout – thereby significantly, and detrimentally, encroaching into the ILCG designed to protect the Chestnut Street hamlet from encroachment by extending Sittingbourne southwards and westwards. For reasons including topography a Policy MU 3 compliant scheme would have no visual and landscape impact on Chestnut Street;
- 2) inclusion of extra land north-west of the allocation, the rectangular arable field for 80 additional dwellings plus perimeter planting;
- 3) inclusion of additional land along the southern boundary of the site between Wises Lane and School Lane;
- 4) inclusion of 3, full-sized rugby pitches, a clubhouse and car parking for the relocation of the rugby club;
- 5) construction of a roundabout at the eastern end of the site, to provide a junction between Borden Lane and the LR using up land designated as LGS, albeit a Policy MU 3 compliant scheme might require a similar arrangement;
- 6) a 19.7% increase in the number of dwellings from 564 to 675; and
- 7) a 40.9% increase in land take from 33.7ha to 47.5ha.

- 7.9 BRAD's urban design expert gave unchallenged evidence that the appellants have failed to undertake meaningful engagement with key stakeholders e.g. the Sittingbourne Society, BPC or residents to inform the design of the scheme as it evolved. The unchallenged evidence is that there was no Master

planning process in the sense contemplated by Policy MU 3, the most important and relevant LP policy. For the above reasons, the only possible conclusion when testing the scheme against Policy MU 3, is that it is plainly in conflict with it. This was the conclusion of the HoP and the appellants acknowledge this⁴⁰ (CD B1 page 91).

7.10 In addition, the scheme is in breach of:

- a. Policy DM 25 - The separation of settlements – Important Local Countryside Gaps. The LR, a major roundabout and residential development would radically encroach into the gap between Sittingbourne and Chestnut Street (APP17 Appendix 1 Figure 10.1A). As such the separation between the settlements would be unacceptably reduced;
- b. Policy DM 31 - Agricultural Land seeks to protect the B&MV agricultural land from development. Planning permission will not be granted for development on unallocated B&MV land unless there is no less valuable land for the proposed development. The scheme is in clear breach, the 80 houses proposed outside the Policy MU 3 allocation could and should, in policy terms, be built elsewhere, as should the LR. Again, this is the conclusion of the HoP;
- c. Policy CP 3 - Delivering a wide choice of high-quality homes. With a housing mix of some 50% 4 and 5-bedroom homes, the scheme conflicts with Criterion 5 which seeks a mix of housing types reflecting the findings of the current Strategic Housing Market Assessment or similar needs assessment. The proposed number of AH is deficient and not policy compliant. Moreover, whilst the S106 Agreement contains provisions for a review of viability, precisely how this would work in practice is unclear;
- d. Policy DM 33- Development affecting a Conservation Area. The Chestnut Street roundabout and western end of the LR would adversely affect the Chestnut Street CA. The 3-storey blocks proposed towards the centre of the site would be a similar height as and compete with the Grade 1 Listed St Peter and St Paul's Church in the heart of Borden.

Prematurity

7.11 The Design Review Panel had reservations about the limited design quality of the scheme, especially as most is in outline and in multiple ownerships. As Cerda Planning concluded, the appellants sought to "*retrofit the master plan*" without meaningful engagement with key stakeholders (Doc 40).

Sustainable urban extension or monolithic low-density urban sprawl?

7.12 The above description is a paraphrase of the consequence of a simplistic repetitive Masterplan drawn-up without adequate and meaningful community engagement. There is the wrong type of unit, the layout is poor and community facilities have not been thought through e.g. Sittingbourne Rugby

⁴⁰ X-Examination of Mr Burley.

Club relocated to the edge of Borden and encroaching beyond the “green buffer” of the allocated site. This scheme is radically different from a proposal that might comply with Policy MU 3. As the LPI noted, the so-called “*improvement*” i.e. the appeal scheme caused confusion and was not before her. Improvement is not part of assessing for soundness nor is it any other legal or policy test which a LP must surmount before adoption.

No material considerations

- 7.13 The purpose of the planning system is to contribute to achieving sustainable development and has 3 inter-dependent overarching objectives⁴¹: Economic; Social and Environmental. BPC accepts that the construction of houses and especially AH is an important consideration. So too are the economic consequences that may flow from approving this scheme, particularly jobs. Any mitigation to traffic congestion that is both safe, effective and not detrimental to the rural character of Borden Parish is also welcome. That said, even given the “tilted balance”, reflecting the importance which Government policy accords to the desirability of speeding-up the building of housing, they must be the right houses, in the right place, at the right time.
- 7.14 This scheme does not meet the above test. The benefits which the scheme would bring demonstrably fail to outweigh the serious harms it would cause over a 10-year construction phase following approval of reserved matters and discharge of any pre-commencement conditions. For over 10 years one part or other of the land would be a building site. Thus, on the second limb of the statutory test, the other material considerations, when weighed in the balance are not enough to displace the statutory presumption.

In-principle objection

- 7.15 The appellants could have brought forward a Policy MU 3 compliant scheme; they chose not to and neither did they challenge the adoption of the LP. Thus, the appellants’ contention, albeit it was not adopted by the appellants’ planning witness, that a scheme compliant with Policy MU 3 cannot be “delivered” seems wrong as a matter of principle (Doc 1 Proposition 1).
- 7.16 Having “ridden 2 horses” at the LP examination, the appropriate time when the merits of competing schemes may be considered in the round, it seems contrary to the integrity of good planning principles for the appellants to then want to dismount from the winner so as to be able to clamber aboard the non-allocated site which it then wants to be declared the winner.
- 7.17 The LPI concluded that allocating the Policy MU 3 site could lead to a suitable planning proposal coming forward within the LP period thus meeting the Ipa’s objectively assessed housing need. The appellants have, to some extent, jeopardised the Ipa’s ability to meet housing need, which they now seek to take advantage of the “tilted balance”. BPC are concerned that an undesirable precedent may be set if this appeal is allowed. In one sense the appeal

⁴¹ National Planning Policy Framework Section 2.

scheme is premature and prejudicial to the on-going LP review, when all competing sites may be considered, and their various advantages and disadvantages weighed in the round.

Conclusion

- 7.18 This scheme proposes a far more harmful development than a Policy MU3 compliant scheme because it would be considerably larger, use more B&MV agricultural land, reduce informal recreational and leisure activities currently available to residents who use the network of public footpaths and bridleway that criss-cross the open land and rural lanes. Further, what is proposed would be harmful to the hamlet of Chestnut Street.
- 7.19 S38(6) requires the appeal to be determined in accordance with the development plan unless material considerations indicate otherwise. S70(2) requires the decision-maker to have regard to: the provisions of the development plan so far as material to the application; any local finance considerations, so far as material to the application; and any other material consideration. There is a presumption in favour of the development plan policies applicable at the date of determination of this appeal. Further, S66 and S72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 must be considered.
- 7.20 The Framework is not part of the development plan; it is a material consideration. Framework paragraph 11(c) refers to approving development proposals that accord with an up-to-date development plan without delay (this scheme does not accord with the LP) or (d) where there are no relevant development plan policies, or the policies which are the most important for determining the application are out-of-date [footnote 7 includes where the lpa cannot show a 5-year supply of "deliverable sites" the so-called "tilted balance"] granting planning permission unless, the application for policies protected areas provides a clear reason for refusal (ii) any adverse impacts of doing so would "*significantly and demonstrably*" outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 7.21 First, despite the application of the "tilted balance", other of "*the most important*" development plan policies are not out of date and they point towards refusal. Second, "*significantly*" is a matter of planning judgment, depending upon the weight given to the adverse impacts and "*demonstrably*" simply means those adverse impacts can be demonstrated. For the above reasons, BPC invite the SoS to dismiss the appeal and refuse planning permission.

8. THE CASE FOR BORDEN RESIDENTS AGAINST (over) DEVELOPMENT

The material points are: -

Introduction

- 8.1 BRAD represents some 1,200 residents. Residents and BPC played an active role in the LP, particularly when, late in the process, land to the south-west of Sittingbourne was promoted for housing as a main modification.
- 8.2 BRAD supports and complements the lpa's case, addressing conflict with the LP, the treatment of the LR, the lack of AH and a housing mix that fails to address the needs of this community. The unchallenged evidence of BRAD's architect and urban designer addresses the overall urban design background, the quantum and manner of the intervention and issues arising and whether aspirations and objectives set out in the Masterplan Brief contained in the DAS have been fulfilled (CD A10 & Doc BRAD1).
- 8.3 This development requires significant road modifications and some 9.5km of new roads. This 6-fold increase is required to facilitate a suburban housing estate solely based on a private car dependent model. This model requires a 100% land-take and the total re-development of this rural site. The reliance on the private car places the scheme completely at odds with national policy to move toward sustainable non-car dependent housing growth.
- 8.4 BRAD questions how the scheme sits with the LP Core Policy objectives to promote the regeneration of Sittingbourne. Throughout the LP there are references to the desire to regenerate Sittingbourne and the contribution of new developments around the town toward meeting those objectives and to Local Growth Funding (LGF) granted to support the Central Sittingbourne regeneration proposals (CD C2 paragraphs 5.2.15, 5.2.24 & 5.2.28).
- 8.5 The scheme is the wrong answer to Sittingbourne's housing needs. There is nothing in national policy which says that the requirement to boost housing is to be done at the cost of other important planning principles. Quite the contrary, the Framework's Core Planning Principles, expect planning decisions to operate in the public interest to protect: the landscape, heritage and ecology: to give priority to pedestrians and cyclists; promote public transport; support the transition to a low carbon future and plan development or shape places in ways that contribute to the reduction in greenhouse gas emissions and support renewable and low carbon energy.
- 8.6 A scheme that conflicts with these Core Principles is not sustainable development and allowing it would undermine public confidence in the planning system. Like the wolf dressed in sheep's clothing, the appeal scheme is essentially a road scheme to relieve the A2 London Road and the A249. The scheme moves dirty car traffic from congested roads to the new community, transferring toxic vehicle emissions to residents who live and work there and children who play along existing village roads and lanes. Are BRAD and BPC the only ones to note the irony of building more houses, which

will bring more cars and more emissions just to fund the new road. This is unacceptable in planning terms and unnecessary.

- 8.7 The scheme fails to tackle local housing needs by building the wrong housing mix. The Parameter Plans address the issue through an overly simplistic and outdated mode of urban design where the car is dominant and fails to promote sustainable transport modes, exacerbating the conditions that resulted in the CCD (CD D29). Therefore, despite the public benefits which would flow from the development it must be refused. The appellants failed to challenge BRAD's expert evidence.

Principle of Development and Compliance with the Development Plan

- 8.8 BRAD adopts the lpa's case that this scheme conflicts with Policy MU 3 due to what is referred⁴² to as "*the additionality*" of the appeal scheme to the Policy MU 3 area. BRAD's unchallenged evidence is that the scheme fails to comply with Policy MU 3 because the LR would be a visually dominant feature. Due to its size, the LR "*drives the character of the development*" in conflict with Policy MU 3⁴³ and could not be mitigated by conditions.

- 8.9 BRAD supports the lpa's landscape evidence that the area around the site has a medium to high sensitivity to change, that the degree of harm is modest adverse and that the LR compromises the ILCG. The appellants have missed opportunities to integrate the development into the local context and the vast land take could be minimised by less detached and semi-detached suburban dwellings. In terms of putative RfR 2, given the urban design failures, this evidence increases the weight to be attached to the Modest Adverse harm to a Medium/High sensitivity site. The harm could be avoided through a Parameter Plan that reduces the land take and building footprint. BRAD urges the SoS to heed the submissions by residents and give significant weight to the irretrievable harm to the local landscape and the amenity of local footpaths. The quantum or degree of harm proposed is unnecessary.

- 8.10 LP paragraph 5.2.33 refers to the need for "*new development [to be] focused at the main urban areas, making best use of the existing or planned improvements to the transport network, looking to achieve a balance between new employment and housing provision and minimising the need to travel where possible. The development strategy is focused on promoting development at the most sustainable locations, or those which allow for greater use of sustainable modes of transport*". LP paragraphs 5.2.37 and 5.2.44 emphasise the need for new developments to integrate with objectives to create sustainable development to facilitate the regeneration of Sittingbourne.

- 8.11 Ultimately, whether these objectives have been met turns on the integration of developments such as the appeal scheme with Sittingbourne. BRAD's view is that the scheme fails to meet the objectives and criteria of Policy MU 3 and

⁴² Mr Rushe.

⁴³ X-Examination of Mr Rushe.

through a lack of permeability and integration with transport provision. The scheme misses opportunities to connect new residents to Sittingbourne.

- 8.12 The failure to produce a Masterplan in conjunction with relevant stakeholders before the application was submitted conflicts with Policy MU 3. BRAD is supported by the Design Review Panel (CD B3 page 135). The requirement for a Masterplan is recorded in the text of Policy MU3, which unambiguously states that: *"Development shall take place in accordance with a Masterplan/development brief (developed through stakeholder consultation)."* Criterion 6 clearly envisages multiple stages with, *"Provision of appropriate access to the site, with a Transport Assessment/design statement at the Masterplan/development brief and planning application stages"*. The appellants and the lpa adopt a contrary view. The lack of early consultation on a Masterplan was raised with the lpa and ignored. Indeed, the HoP commented that he disagreed that a Masterplan was needed to guide the development. Paragraph 6.6.46, the supporting text to Policy MU 3, explains why the lpa, in drafting its plan, expected a Masterplan to be consulted on and adopted before a planning application comes forward. This says: *"Given the different landowners involved and the landscape, phasing and infrastructure issues needing to be addressed, including the potentially complex transport issues (see below), preparation of a joint Masterplan/development brief for the site is required. At all stages use of the lpa's Design Panel will be required."*
- 8.13 Whatever the correct legal interpretation, it is no surprise that the residents do not support the scheme. Why should they, when the appellants failed to engage with them at an early stage. Whether the SoS agrees or not that the application is premature because there was no pre-application Masterplan, the result is community hostility and a genuine sense of being left out. Legally right or not, this was a missed opportunity to obtain local buy-in.
- 8.14 The scheme conflicts with Policy DM 19, particularly Criterion (1)(f) and the requirement that mixed-use developments are to be accessible by non-car modes of transport. The SoCG highlights that the lpa agrees with BRAD on this important point⁴⁴. Given the CCD, these policies go to the heart of regulating the principle of development (CD D29). The conflict with these policies alone means the scheme conflicts with the LP. The consequence is that Section 38(6) gives rise to a presumption against granting permission.

Housing Mix

- 8.15 The appellants⁴⁵ concede that the scheme does not deliver the right mix of housing to meet local needs. BRAD estimates that some 85% of the scheme comprises 4/5-bed detached and semi-detached dwellings, when what is needed is smaller homes and starter houses. BRAD's view is supported by The Sittingbourne Society⁴⁶ who say: *"We challenge the number of 4/5-*

⁴⁴ SoCG paragraph 13.4.

⁴⁵ Mr Burley Proof of Evidence paragraphs 4.36-4.37.

⁴⁶ Mr Burrell Appendix 1.

bedroom properties that are being proposed. As over 50% of the properties in the detailed application are of this type there is little realistic consideration being paid to the housing needs of the people already living in the Borough. With identified local need representing approximately 50% of the total that the Local Plan provides for we would argue that a far higher percentage of the proposed housing should cater specifically for the identified local need. As this will mainly be starter homes and 2/3-bedroom properties – with the 4/5-bedroom properties largely meeting external need the number of 2/3-bedroom properties should certainly exceed that of the 4/5-bedroom properties and constitute a figure nearer 75% of the total as many of those smaller properties will also be attractive to those from outside the Borough.”

- 8.16 The appellants concede⁴⁷ that it is appropriate to give “some negative weight” to the failure to address the housing need. The appellants also concede⁴⁸ that to redress this problem at the reserved matters stage, the lpa would face a choice i.e. reduce the amount of AH to provide 1 and 2-bed units to meet market housing need. Casting the dilemma in those terms is fundamentally flawed and unnecessary. BRAD’s unchallenged evidence is that the housing mix problem is inherent in the Parameter Plans and the product of poor urban design and outdated suburban housing typologies. The failure to deliver the right housing to meet local needs through a suburban design approach need not be a Hobson’s Choice. In the planning balance, the failure to meet local housing needs through a poor and outdated design approach significantly reduces the weight to the benefit of housing.

Whether the Development Delivers Sustainable Non-Car Dependent Development

- 8.17 There is conflict with the objectives of Framework paragraphs 108 and 110 and conflict with the CCD objective to act locally to tackle the global problem of climate change. This scheme would increase vehicles emissions that have a harmful effect on people. The CCD is a material consideration that should be firmly in the SoS’s mind when exercising the planning balance. The CCD, “marks a change in priorities and values and the decisions now have to be taken with a clear expectation of benefitting future generations”⁴⁹.
- 8.18 Although the lpa concedes⁵⁰ that sustainability is no part of its case, BRAD asks that the SoS’s decision delivers on the lpa’s commitment to reduce greenhouse gases by giving significant negative weight to the lack of sustainability in terms of the design and the capacity of the scheme to change transport habits and to reduce the reliance on the private car. When taken together with the limited mode shift achieved through the Travel Plan, the scheme is a suburban dormitory estate totally or largely dependent on the private car for commuting and accessing services, goods and facilities⁵¹.

⁴⁷ Mr Burley Proof of Evidence paragraph 4.38.

⁴⁸ X-Examination of Mr Burley.

⁴⁹ Lpa Opening Statement.

⁵⁰ X-Examination of Mr Bamber.

⁵¹ X-Examination of Mr Burrell.

- 8.19 Whilst the transport evidence is complex, none of this evidence gives weight to the commitment to reduce greenhouse gases and carbon emissions by reducing use of the car. At best the appellants' evidence on the reduction of emissions from queuing traffic or, euphemistically put, moved away from areas of high car emissions is that there would still be emissions even if not exceedances beyond EU limits.
- 8.20 The Ipa highlighted⁵² the lack of evidence that modelled the traffic situation with and without the LR or assessment of a Policy MU 3 compliant scheme as a comparison. The Ipa countered⁵¹ the suggestion regarding betterment with the LR by repeating its concern, "*[It] comes back to this point: [the betterment] is not based on modelling of a MU 3 Policy compliant scheme.*"
- 8.21 Whilst the LR "may" reduce car queuing at the Key Street Roundabout, but at what cost to the community? A key issue for the SoS is whether it is necessary to deal with Sittingbourne's traffic problem by building the LR. The Leader of the Council says that the LR would create a greater adverse impact than a benefit to relieving Sittingbourne's existing traffic problems. The issue of A249 traffic needs to be seen in light of the CCD. Building another major road is an inappropriate response to heavy car usage, existing traffic problems and the congestion on the A249 and is contrary to the CCD. Whilst something needs to be done, it is not more road capacity.
- 8.22 The Ipa's evidence⁵¹ is that, "*the Ipa can achieve significant improvements without the LR.*" If that is right, then there is a rational basis for saying that given the significant disbenefits of the LR that this scheme is not Policy MU 3 compliant given that it would create a piece of major road infrastructure that would dominate the new development.
- 8.23 Responding to the CCD, the Government confirmed that, "*delivering a net zero target must be a joint endeavour encompassing all parts of society including local authorities, and I welcome Swale Borough Council's commitment to meeting this challenge, and the action they are taking at a local level to reduce emissions.*" The annex to this response records: "*In determining both applications and any subsequent appeals the passing of a climate emergency motion would be a material consideration.*" (Doc 29).
- 8.24 Cars emit carbon, a greenhouse gas and a major contributing factor to climate change. Despite the appellant's unsubstantiated attempt⁵³ to suggest that attitudes toward the car are changing, BRAD's unchallenged evidence is that the scheme builds in reliance on the car in many layers. This would be through including house typologies that favour commuters and the dominance of roads, driveways and garage forecourts in the putative layout⁵⁴. The intent to continue this design strategy is borne out in Chapter 7 of the DAS for the Phase 1a housing which states "*The full element of this*

⁵² Evidence-in-Chief, Mr Bamber.

⁵³ X-Examination of Mr Burley.

⁵⁴ Mr Burrell Proof of Evidence paragraphs 5.2, 5.3, & 5.4.

application is in accordance with the masterplan submitted for the outline element of the hybrid application.” (CD A10 page 117).

- 8.25 The appellants accept that here there would be higher than average trip generation rates, fundamentally due to the lack of sustainable transport modes to serve the town and outlying villages. Swale’s 2019 Air Quality Action Plan identifies the need to assess local transport needs to address a lack of focus on public transport, including priority bus measures to make sustainable transport more attractive (Doc 24). The report records frustration by local bus providers who consider that Swale is going backwards in promoting bus travel, noting its track record as “*less than impressive*”. Moreover, the bus providers point to counterproductive investment in a large town centre car park as part of the Spirit of Sittingbourne regeneration proposals, which only encourages greater car use. Against this backdrop the Travel Plan provides very meagre provision to tackle car usage and by implication carbon emissions and climate change. These are repeated across several documents and summarised in the SoCG (Doc 67 paragraph 7).
- 8.26 The above is a completely different scenario from a recent appeal decision, where there was a high level of public transport contribution proposed. (CD E7). Originally, BRAD was led to believe that in terms of public transport serving the development that the appellants were relying on a modest diversion of one existing bus service, the 333, through the housing estate along Wises Lane and along the LR to and from Chestnut Street⁵⁵. The 333 service has a maximum frequency of one per hour until early evening Monday to Saturday with 3 services on Sundays. In transport terms⁵⁶ this service would constitute a “*less frequent route*”. In the appeal scheme referred to above, the service was twice an hour and the S106 records in excess of £700,000 to support bus services. However, here the appellants confirmed⁵⁷ that there is no certainty of any bus diversion through the development and no S106 contribution to underwrite a local bus service.
- 8.27 The Travel Plan refers to modest cycle improvements and the closure of 2 routes to cars to promote safe walking and cycling. However, these improvements do not address BRAD’s submission that the environment being planned is so car dominant to be hostile to pedestrians and cyclists. This urban design flaw negates the benefit of the site’s proximity to Sittingbourne and the improvements at the edges.
- 8.28 The appellants conceded⁵⁸ that even with a 10% reduction in car usage resulting from the Travel Plan, at least 60% of the new households would commute for employment by car. However, the appellant’s air quality expert, noted that the Travel Plan, was at best, likely to reduce reliance on the car by only 5%. The appellants acknowledged⁵⁹ it did not consider the need to

⁵⁵ Core Doc A22 C&A Consulting Engineers TN 13-041 July 2018.

⁵⁶ Chartered Institution of Highways and Transportation (CIHT) Buses in Urban Developments January 2018.

⁵⁷ XX Burley PM 10/12/19.

⁵⁸ X-Examination of Mr Wilde.

⁵⁹ X-Examination of Mr Wilde & Mr Burley.

respond to the sustainability issues raised by BPC and BRAD (BRAD2 paragraph 4.10). Although the appellants say that the site is in a sustainable location, the scheme fails to accord with Framework paragraph 110, i.e. to exploit opportunities provided by its location for a mode shift away from reliance on the private car. On its own, a sustainable location is not enough to reduce private car usage.

- 8.29 Regarding pedestrian access, except for the secondary school, few local facilities along the A2 London Road are within reasonable walking distance (less than 800m) of the site (CD D2). As such there is unlikely to be any significant movement on foot between the site and facilities located outside of the site. Higher order retail/service facilities in the centre of Sittingbourne and most employment opportunities are over 2km from the site and not readily accessible on foot. The railway station is some 2.5km from the site and not within convenient walking distance for most potential residents. Local bus services provide access to the railway station but are either inaccessible on foot or low in frequency making it very unlikely that buses would provide convenient access to and from the railway station.
- 8.30 BRAD's evidence highlights the failure of the Parameter Plans, to promote an attractive community focal centre where people could be encouraged to walk to. Other than a modest convenience shop and an undefined commercial space, the proposed new facilities are inadequate. BRAD's unchallenged evidence is that the design appears to be predicated on there being less need for local services because they are being accessed elsewhere by car, which means even the proposed facilities could become unviable. This is not just about changing car habits, it goes deeper and leads to "*a loss of opportunity for everyday informal association because of the diminished public realm*" which makes for a less pleasant community to live in (BRAD2 paragraph 7.4).
- 8.31 For existing and proposed residents, the single most beneficial piece of infrastructure is a doctors' surgery or health centre. Health provision formed part of the original application, but that has been axed. Whatever the explanation for the Clinical Commissioning Group's decision, without a local facility, residents of the scheme would be forced to use their cars for trips to already seriously overcrowded surgeries.
- 8.32 With the CCD and the objectives of Framework paragraphs 108 and 110, the lpa should have revisited the RfRs and identified that the scheme's reliance on the private car was unacceptable. However, that failure does not mean that here sustainability is not a material issue. The appellants could have come forward with a scheme that had enough commercial and retail provision to create a self-sustaining local community to end the need for private car journeys. This is what is expected of large, sustainable urban extensions.
- Does the appeal scheme address air quality issues by moving traffic to the appeal site?*
- 8.33 In April 2019, an Air Quality Action Plan (AQAP) was adopted to meet the duty to tackle air quality (Doc 24). This commits the Council to a more, "*holistic AQMAP which will combine local AQMA actions and measures, plus*

provide a wider strategic approach to improving air quality across the borough." Section 5.1 of the AQAP contains strategic measures including *"encourage alternative modes to car use to reduce congestion and pollution."* Moreover, Public Health England confirms, *"there are no thresholds of effect identified for NO₂ and particulate matter and therefore health benefits and can be expected from improving air quality even below concentrations stipulated by the EU and UK standards."* (Doc 24 page 38). Turning this around, the introduction of large number of cars daily and especially at peak periods brings emissions, which increases risks associated with NO₂ and particulate matter for which there is no known safe level. The Ipa's evidence confirms that harmful air emissions are being moved around through the anticipated use of the LR by drivers who now sit in traffic on the A249 or seek to avoid congestion at the Key Street Roundabout. Thus, it should come as no surprise that BRAD's members, who live in the area where the LR runs through existing neighbourhoods, are outraged by proposals to move Sittingbourne's air polluting traffic to their streets.

- 8.34 As a material consideration, "moving emissions around" is not a credible approach to tackling Sittingbourne's air quality problems. A recent Court of Appeal case carries one important clear message (CD E6). This is that, in air quality terms, development must wash its dirty laundry and it must demonstrate what reduction this makes. The evidence on air quality fails to demonstrate a net reduction and leaves Borden residents bearing the brunt of measures to reduce car emissions on the A2 London Road and the A249.
- 8.35 The SoS has sought clarification from the appellants on sensitive receptors who could be impacted by the traffic on the LR (Doc 35). The appellants confirmed that no modelling or projections of air quality near the LR had been undertaken because, *"there are no sensitive receptors nearby."* Cyclists and people walking along a road, especially children and the elderly, are sensitive receptors. As such, common sense dictates that a LR designed with pedestrian and cycle routes alongside it puts people of any age near an uncalculated air quality risk. The appellants are wrong to exclude the risk of air quality harm to those who would rely on the LR.

Other Matters

Rat running

- 8.36 Rat-running is a major concern of residents who fear it would continue and be exacerbated by the growth in car-dependent housing on the site. Whilst there is no expert quantification or modelling, the residents' evidence is that rat running is a significant problem due to problems on the strategic road network. This scheme would put significant traffic on rural roads and there is every risk the problem would continue and worsen for residents.

Green energy features of the scheme

- 8.37 There are no robust energy efficiency measures included within the scheme to reduce reliance on carbon (fossil fuels) for heating and electricity so as to mitigate climate change. BRAD supports Suggested Condition 11 and is

dismayed by the appellant's rejection of it and the decision not to include enhanced energy savings measures (Docs 11 & 12). Other than energy efficient domestic boilers, no innovative measure to reduce the domestic use of fossil fuels is planned. The SoS should give negative weight in the planning balance to a housing scheme that fails to reduce reliance on fossil fuels for heating.

Skylarks

- 8.38 The appellants estimate that 7 pairs of skylarks on the site would relocate to a nearby field. However, this field is already a foraging field for an unknown population of skylarks. This conflict may have an adverse effect on the future of these birds.

Conclusion

- 8.39 Had the appellants put forward a more robust urban design approach, the development could have resulted in less harm arising from air quality impacts, landscape harm, less traffic and overall better place-making that would meet the housing needs of this community. The scheme before the SoS conflicts with Policy MU 3 resulting in a car-dominant housing estate and conflicts with a key provision of Policy DM 19 on climate change. The development would move traffic around and fails to address the objective of reducing car use. The public benefits of the additional housing do not outweigh the disbenefits, and the SoS should dismiss this appeal.

9. REPRESENTATIONS

The material points are: -

Representations at the time of application

- 9.1 Section 5 of the HoP's report on the application lists that 968 objections were received of which 600 were based on a standard template objection (CD B1 paragraph 5.03). The report identifies that 746 representations were received in support of the application (CD B1 paragraph 5.04). Again, the report notes that most responses used standard templates (Folders - Third Party Representations).

Written responses following Notification of the Appeal (Doc 66)

- 9.2 *Ms Bateman.* Recent housing developments in Sittingbourne have had adverse effects through increased congestion and air pollution, increased pressure on primary care facilities, increasing house prices and a lack of availability of AH. The development would exacerbate these issues
- 9.3 *Mrs Spicer.* The scheme would be contrary both to the LP and the Framework. The objective of the LP allocation is to give the various HAs an opportunity to address the necessary road improvements. Allowing the development would result in a significant loss of B&MV agricultural land and put unnecessary strain on the M2 Junction 5 and the Key Street Roundabout.
- 9.4 *Mr Fulton.* The layout of the proposed rugby pitches does not show an appreciation of the true amount of space needed to avoid nuisance. The ability of the site to be adequately supplied with water and drained is queried.
- 9.5 *Mr Williamson.* Traffic generated would exacerbate existing congestion.
- 9.6 *Ms Williamson.* There is an existing lack of infrastructure for existing developments. The scheme would increase pressure on existing facilities, result in the loss of agricultural land and exacerbate congestion.
- 9.7 *BPC* set out concerns that are reflected in its case presented to the inquiry.
- 9.8 *BRAD* submits an electronic petition containing 2,397 electronic signatures against the development.
- 9.9 *KCC* submitted information to support the requests for S106 contribution.

Representations made at the Inquiry

- 9.10 *Mr Down, Sittingbourne Rugby Football Club (Doc 17).* The club has some 300 members of which some 200 are juniors and teams that cater for all age groups. The club shares sporting and social facilities at Gore Court with 2 other clubs (hockey and cricket). As a result of its popularity, the rugby club has grown too large for Gore Court and there is competition for space and conflicts arise i.e. rugby is not conducive with maintaining a cricket square.
- 9.11 Relocation to a purpose-built community facility would allow the club to realise its ambitions for wider community involvement and sporting growth.

Junior rugby is popular, and the club organises well attended events with local schools. A base close to the primary school would allow the club to build on this engagement. If the club can transfer to the site the intention is to engage with the wider community, marginalised individuals e.g. older people, people with learning disabilities and other local interest groups.

- 9.12 *Cllr. Truelove, Council Leader & Homewood Ward.* (Doc 18). Land to the south-west of Sittingbourne was included in the LP to protect the surrounding countryside from pre-emptive grabbing of unallocated land (Policy MU 3). Allowing the appellants' scheme has grave implications for the LP and would pre-empt a review of the LP. That a Policy MU 3 compliant scheme is undeliverable has only been raised since the LP inquiry. It is underhand of the appellants to argue for the allocation of the site at the LP inquiry and then in a planning application argue against it. The decision to refuse the application was not as a result of a political change in the constitution of the Council rather it was an awareness of the flaws in the appellants' proposal.
- 9.13 The appellants' justification for development outside the allocated site rests on benefits associated with the LR as an alternative to the A2. However, to achieve that benefit, significant amounts of traffic must be directed along routes through the Homewood Ward that are already congested and serve a secondary school and 3 primary schools. Congestion would be exacerbated and the LR would cause more harm than it could mitigate.
- 9.14 *Cllr Hampshire, Borden & Grove Park Ward* (Doc 19). This application is controversial and a divisive local issue. The appellants actions have shown a total disregard for the community and its concerns. Given this background the lpa acted appropriately in seeking to refuse the application. The key concern with this development is its likely traffic impacts. The A249 where it meets the M2 at Junction 5 is regularly congested. Whilst it is an imperative that this junction is upgraded, the upgrade should not be a precursor for growth but a solution to existing problems of unacceptable congestion. No development should be permitted until Junction 5 is upgraded.
- 9.15 The suggestion that the LR Road would carry HGV traffic is contradictory, given width restrictions in the wider area and pressure to increase their spread. Improvements to the Key Street Roundabout through HIF are uncertain and there is no firm commitment to the A249 slip road from the new roundabout. Similarly, the appellants' proposals for the Wises Lane/A2 junction are like proposals that previously KCC failed to support.
- 9.16 Borden School cannot expand, and the new primary school would not be delivered in the first phase. Thus, children from the development would have to travel to school by car on narrow and unsuitable roads. There are existing bus routes on the A2, and it is unlikely that a bus operator would run a parallel service through the development and some residents would lose out.
- 9.17 The lack of a 5-year HLS should not be the overriding factor in allowing a poorly planned development that has little consideration for its effects on the community.

Cllr Bonney, Cabinet Member for Property & Economy, West Downs Ward (Doc 20). West Downs is a rural ward with several villages affected by rat running when there are problems on the A249/M2 Junction 5. There is no certainty over the proposed M2 junction 5 improvements and as such the development would exacerbate this problem by creating a new rat running route for cars and HGVs.

- 9.18 Existing primary healthcare facilities are under-resourced and under significant pressure. Emergency and non-emergency appointment can take weeks to obtain. The average GP in Swale has 3,000 patients, which is twice the national average. An increase in patients through the new development would only make this worse.
- 9.19 The development would increase pressure on existing primary and secondary school places. Pupils already travel out of the area to access education facilities, particularly for secondary education. The new primary school would do little to help, given that it would not be provided until well into the development programme. Infrastructure should be in place before residents move in and start making demands on services.
- 9.20 The ILCG is important for the landscape setting of the town and rural villages particularly given the backdrop of the AONB. The loss of the fields and hedgerows would have a significant adverse effect.
- 9.21 The development is flawed and there is no Masterplan. Any benefits do not outweigh the harm.
- 9.22 *Cllr Baldock, Deputy Leader, Cabinet Member for Planning, Borden & Grove Park Ward (Doc 21).* This application has caused widespread concern, as the appellants are seeking to avoid the plan-led process. The Policy MU 3 site was added to the LP plan late in the process. There is concern that this site was retrofitted to accommodate a decision that the then Council had already taken. Policy MU 3 has specific requirements regarding the preparation of a Masterplan in consultation with all stakeholders. However, there has been no attempt to discuss a Masterplan with residents or BPC. It is inconceivable that the policy requirement does not include the local community.
- 9.23 The existing LP is struggling, and requires review, particularly given the limitations of the Strategic Road Network. The lpa is undertaking such a review to deliver housing and is working on innovative approaches to address the housing need. The site should be assessed as part of the LP Review and not through the appeal process.

Cllr Valentine, Cabinet Member for Environment, Broughton & Courtenay Ward (Doc 22). The Council has declared a Climate Change Emergency, and this is a material consideration in planning decisions (Doc 29). National legislation has the target of the UK becoming carbon neutral by 2050. Swale's motion is that it should be carbon neutral or near that by 2042. To achieve this requires an 81% reduction in carbon emissions by 2030. Since this application was submitted regulations and standards have changed and further changes are proposed. Development should not be permitted that

clearly would not be fit for purpose. Retrofitting is not the answer. The appellants could and should engage with the Ipa to address the implications of Climate Change. Other developers have done so and are an example of good practice.

- 9.24 *Cllr. Palmer, Cabinet Member for Communities, Hartlip, Newington & Upchurch Ward & Newington Parish Council (Doc 23)*. The level of traffic on and the canyon-like nature of Keycol Hill results in existing unacceptable levels of air pollution and designation of this area as a AQMA is being sought. Given the Pond Farm development and subsequent court case, the appellants' case omits mention of mitigation for the effects of the significant amount of traffic that would use Keycol Hill (CD E6).

Representations made at the Evening Session in Borden Parish Hall

- 9.25 *Mr Johnson*. Acknowledging the need for development, there is concern over the environmental impact of the significant number of houses and likely traffic generation. Whilst the scheme proposes tree planting to offset the visual impact, this mitigation needs to happen before houses are built.
- 9.26 *Mr. Browning*. The scheme would result in the loss of a substantial area of Grade 1 agricultural land, which, in an uncertain world, could have an adverse impact on food security. The south-east has a high population and the M2 and A249 is heavily trafficked resulting in poor air quality. Considering our moral responsibility to secure a clean environment for future generations, the scheme would significantly increase traffic exacerbating existing problems. Prospective developers recently advertised the site for 4 & 5-bed luxury homes. However, that is not what this area needs and by serving mostly commuters would not contribute to the regeneration of Sittingbourne. These large homes would be unaffordable for young locals who should be given the opportunity to live and work locally.
- 9.27 *Mr Emery*. The type of properties proposed are not affordable. Air pollution is a significant local concern and its existing effects can be seen on local flora. Local individuals are adapting their homes to reduce their carbon emissions. Despite this, the appellants say that the various options for reducing carbon emissions are not viable.
- 9.28 *Mrs Smith (Doc 61)*. The benefits and necessity of farming for food on high quality agricultural fields and protecting natural habitats at a time of crisis for wildlife is obvious. The argument that imposing a housing development can benefit biodiversity ignores the fact that this is an environment that has evolved to become a balance of arable fields, a hunting ground for barn owls and red kites, a foraging ground for other wildlife and a green space for nature which benefits us all. Unless the real value of land is understood rather than a means for developers to make more profit rather than using brownfield sites then we are lost now and in the future.
- 9.29 Increased human activity in terms of light, noise and air pollution would have a significant detrimental effect on all wildlife, particularly the diversity of species in the adjacent Borden Nature Reserve. There are 2 major active

badger setts and other subsidiary setts by the site, which is part of their foraging area. Interfering with foraging routes would force the badgers elsewhere resulting in damage to gardens and rugby pitches and cause road accidents. The proposal for Skylark plots, to mitigate for the loss of breeding grounds, is a nonsense. The suggested conditions would only be for 5 years. New habitats introduced should be in perpetuity and experts demand at least 10 years for these plots. The loss of any mature trees and hedgerows is unacceptable. Newly planted trees are not adequate ecosystems for bats and insects, nor adequate carbon absorbers until they mature.

- 9.30 *Mr Jemmett* (Doc 49). Sitting between rural Borden and urban Sittingbourne the design and layout of the development does not consider the nature of the area. The housing layout comprises non-descript blocks and 3-storey flats (as tall as Borden Church) served by small twisting service roads all looking the same. The view from public open space on the edge of Borden (Playstool Park), would be ruined by a concrete jungle.
- 9.31 The LR taking diverted traffic and traffic from the development would affect air quality and introduce noise pollution. The Chestnut Street roundabout would be affected by queuing traffic. The Borden Lane roundabout would be in semi-rural area and traffic heading to the A2 would have to navigate narrow local roads. Wises Lane, Borden Lane and Cryalls Lane are narrow lanes and not designed to carry additional traffic. A concern is that the services in these lanes will be too shallow and ground compression from the volume and weight of the traffic would damage these services.
- 9.32 Key roads are congested, and you can taste the pollution. Locally, there has been a spike in cancers, heart disease and dementia resulting in deaths and ongoing health issues, which may be due to pollution levels. Adding traffic lights at the Wises Lane/London Road junction would result in traffic queuing, creating more air and noise pollution.
- 9.33 Grove Park Avenue is the lowest point in Borden and at times of heavy rain prone to flooding. To address this fourteen 3m diameter soakaways are located on the green space at the A2 junction. The fear is that the development and the junction changes would disable this protection.
- 9.34 The LP housing area is being increased by 40% without consultation and the concern is what would happen next i.e. the countryside gap disappears, and Borden is absorbed into Sittingbourne. The houses would be unaffordable to the residents resulting in more commuting traffic. It is the wrong development in the wrong place and for the wrong people.
- 9.35 *Mrs Butler* (Doc 50). This development would only exacerbate the healthcare crisis in Swale. At a ratio of one GP to 3,000 patients, Swale has the worst GP/Patient ratio in the country. The London Road surgery has one doctor with 8,000 patients, 2.5 times the local average. The Meads and Chestnut practices are not accepting new patients and London Road cannot be extended. All have very limited parking causing overspill on to local roads. Currently, appointments are only available a month in advance and emergency appointments are the luck of the draw. Appointments at the local

- cottage hospital, are being restricted because of too many patients and not enough Consultants. Patients now travel to Rainham. Air quality is poor and affects residents' health, putting strain on a struggling local health service.
- 9.36 Originally, the application included a medical centre, so that people could walk to a GP. However, when the CCG confirmed that it was not viable this facility was removed. The S106 will not resolve the capacity issues. Whilst there is a small contribution (£86,000) for Phase 1a, there is no contribution identified for the successive phases. The appellants need to provide a health centre funded for 5 years. Other than the primary school there are no essential community facilities. Encouraging more people into the area without providing the necessary infrastructure is grossly irresponsible and demonstrates a lack of regard for residents.
- 9.37 *Mr Broughton* (Doc 51). Rising levels of air pollution and its effect on climate change are a concern. The development, given its car-based approach, would exacerbate an already deteriorating situation by adding to existing unacceptable levels of pollution. Any development that is car-dependent increases these risks and must be avoided. Reports demonstrate the huge and under-appreciated, costs of poor air quality in terms of public health,
- 9.38 Kings College London found that living within 50m of a busy road can produce increasing risk of lung cancer by 10% and can stunt lung growth in children by up to 14%. Health and environmental organisations are calling for the legal levels of particulate pollution to be lowered to World Health Organisation (WHO) levels. WHO levels are significantly lower than those that have been recorded on roads around the site. Research suggests that reducing air pollution can significantly lower the number of cases of lung cancer and that living near a busy road can trigger bronchitis in children with asthma.
- 9.39 A UCL study has linked glaucoma, which can cause blindness, with raised levels of air pollution. Those living in areas with higher amounts of particulate matter were at least 6 -times more likely to develop glaucoma than those in the least polluted areas. Harvard University research found that even a small rise in PM2.5 over a 2-day period was linked to an increase in the numbers of older people being taken to hospital with heart failure. Research also found that diseases such as septicaemia, Parkinson's and urinary tract infections were associated with poor air quality.
- 9.40 The pressure on secondary school places means that too many local children travel to schools at unacceptable distances from their homes. This is now a national problem, with estimates that some 134,000 children could miss out on a secondary school place by 2023/24. Despite being at overcapacity, Westlands School, the only secondary school in this end of Sittingbourne, has had to take a large increase in Y7 pupils. The school has built extra classrooms on space previously allocated for school buses. These buses have been displaced onto busy local roads, causing more congestion. A scheme of this size would exacerbate this problem.
- 9.41 *Mr Wallace* (Doc 52) reiterated the problems of congestion on the A2, A249 and Keycol Hill and the resultant high levels of air pollution that in some

- places exceed EU limits. Similarly, he highlighted the unacceptably high patient to GP ratio. Exacerbating these problems particularly on high quality agricultural land is unacceptable.
- 9.42 *Mr Cope* (Doc 53). This scheme would destroy a significant area of Grade 1 agricultural land. The contribution of crops to carbon capture would be lost, and the carbon generated by the development would not be absorbed. The loss of food production would result in greater imports adding to an already high carbon footprint. The next generation of farmers should be encouraged to take on best practice to help save the planet and feed the world.
- 9.43 The LR and traffic generated by the development would add to the high levels of congestion on local roads. The proposed A249 slip road would be too short to allow vehicles to reach dual carriageway speed increasing congestion and accidents. The design of the mini roundabouts and new traffic lights would add to delays, congestion and pollution.
- 9.44 It is not clear if the effect of nearby strategic high voltage overhead and underground cables on the scale and layout of the development or the impact on the operation of the electric sub-station on Chestnut Street has been assessed or appreciated.
- 9.45 This is the wrong plan in the wrong place, especially when there are so many properties in the country that are un-occupied. These should be brought in to service before anymore are contemplated.
- 9.46 *Mr Aspin* (Doc 62). Reiterated the points made by others relating to rat running, air pollution and inadequate infrastructure. That said Borden residents are not opposed to sensible and relevant development. It is recognised that additional housing particularly AH is needed. However, residents are utterly frustrated at the absence of sensible engagement by the appellants on what could have been an acceptable urban extension. However, the scheme provides nothing for Borden that could make it acceptable. Residents feel misled. The proposed health centre has disappeared and the provision for the rugby club is a ruse to offset the high level of local objection. The development does not reflect local needs, it would be intrusive and irresponsible.
- 9.47 *Mrs Davidson* reiterated concerns about inadequate infrastructure and traffic congestion. Whilst there is a need for more houses this scheme fails to meet the aspiration of younger residents who need affordable homes.
- 9.48 *Mr Hicks* reiterated previous submissions about inadequate infrastructure and a failure to address local housing needs. The site is near an old landfill site operated prior to many regulations and there should be concern over the potential impact on new residents.
- 9.49 *Mrs Aspin* (Doc 60). Local objection to this scheme has nothing to do with nimbyism. There is a need for more housing, but it must be in the right place, at the right time and meet local needs. This scheme fails on all these counts and the new Council should be allowed the chance to address not only

the housing crisis but also health care, air quality and many other issues to improve the lives and economy of Swale. At the LP inquiry, the appellants fought residents to have a site that was rejected twice by the Ipa allocated. However, a few months after adoption, the appellants submitted a larger planning application. It is not surprising that residents are wary.

- 9.50 In addition to the many individual objections, 5 Parish Councils have objected, and 2,500 people have signed a petition opposing the scheme. Concerns relate to existing severe levels of traffic congestion, the inadequacy of the traffic mitigation measures to address these problems, the impacts of rat-running, inadequate healthcare provision, increased air pollution, loss of wildlife and the loss of village identity are key issues raised.
- 9.51 *Mr Sutton* expressed the view that the existing facilities for the Rugby Club at Gore Park were adequate and if additional pitches are required, they might be found at local schools. Moreover, if the Rugby Club left Gore Park it might jeopardise the future of the Hockey and Cricket Clubs that share the facility. The local footpaths through the development site are well used by horse riders, cyclists, walkers and runners who enjoy the open space. All these would be lost or adversely affected by the development.
- 9.52 *Mr Palmer* (Doc 54) reiterated concerns raised by others about inadequate healthcare provision, increases in air pollution, the adverse traffic impacts of the LR and the type of traffic it would carry, the presence of potentially contaminated land, inadequate and misleading public consultation, the poor design of the development, the failure of the housing mix to meet local needs particularly affordable housing and absence of a need for the rugby pitches.
- 9.53 *J Maws* reiterated concerns relating to inadequate social care, primary care and education facilities that are unable to meet existing need let alone the demands that new residents would place on these facilities.
- 9.54 *Mr Dighton* (Doc 56) reiterates concerns regarding impacts on biodiversity, air quality, congestion, access to healthcare, the loss of good quality agricultural land and a failure to meet local housing needs. The impact of the development on dwindling water supplies does not appear to be addressed.
- 9.55 *Mr Christopher* (Doc 57) reiterated concerns about the impact of the Rugby Club leaving Gore Court with no community benefit arising from the move, the increased pressure on inadequate healthcare facilities, increases in air pollution and traffic congestion, an adverse impact on landscape character and biodiversity and the precedent for more development in the countryside.
- 9.56 *Mrs Whitehead* (Doc 58) reiterated the adverse impact of losing agricultural land, the failure of the development to address local housing needs particularly affordable housing and smaller accommodation for the elderly and increases in air pollution and traffic congestion.
- 9.57 *Mrs Hooper* (Doc 59) reiterated concerns about the impact of the proposed LR and roundabouts on traffic congestion and pedestrian safety.

10. Conditions & S106 Agreement

Conditions

- 10.1 Document 11 lists the lpa's Suggested Conditions (SC) and reasons discussed at the inquiry. The appellants have submitted a revised list with suggested changes and deletions along with a brief explanation for both (Doc 12). Some of the Suggested Conditions are Pre-Commencement Conditions (SPCC).
- 10.2 **SC1** sets the time limit for the implementation of Phase 1a, the full application. **SC2** requires the submission of a Phasing Plan for the development before the first submission of reserved matters applications. **SCs 3, 4, 5 and 6** relates to the time limits for the submission of reserved matters and subsequent implementation. The appellants suggest a text change to **SC5** to clarify that it refers to the first phase. **SCs7 and 8** list the approved plans for Phase 1a and the various Parameter Plans to guide the remaining development. **SC9** requires that no more than 180 dwellings are occupied until the community facility/rugby clubhouse and associated pitches are available for use.
- 10.3 **SPCC10** is a pre-commencement condition that requires the submission and approval of a timetable for connections to the public sewerage system. This is to ensure that development is aligned with any necessary improvements to the drainage infrastructure. The appellants suggest amendments to aid clarity and given the reason for the condition that it is unnecessary for the lpa to approve the timetable.
- 10.4 **SC11** relates to Phase 1a and seeks to mitigate climate change impacts by achieving at least a 50% reduction in dwelling emission rates and carbon emissions compared to the Building Regulations 2013 (as amended). This is to accord with the principles of Policy DM 19 and the CCD given the 10-year build-out programme, that the next LP would seek higher standards that are required under Building Regulations and the conundrum of how in 2019 to deal with standards set in 2016/17. **SPCC12** is a similar condition relating to the outline application and sought for the same reasons. **SC12** requires dwellings approved between 2020 and 2023 to achieve reductions in carbon emissions of at least 50%; dwellings approved between 2023 and 2027 to achieve carbon emission reductions of at least 75% and for dwellings approved after 2028 to achieve zero carbon emissions compared to the Building Regulations 2013 (as amended). The appellants object to these conditions as there is no existing or emerging LP policy base for them and as such **SCs 11 and 12** are neither precise nor reasonable.
- 10.5 **SC13** requires details to be submitted and approved to ensure that development minimises the use of water. In the interests of energy efficiency and sustainable development and to accord with the principles of Policy DM 19 and the CCD, **SC14** requires the non-residential buildings to achieve the BREEAM Excellent or equivalent standard. The appellants have no objection in principle to this condition. However, the lpa originally sought

- compliance with the BREEAM Very Good rating and there is no LP or emerging LP policy that justifies the change. As such the condition is unreasonable.
- 10.6 Given the undulating nature of the site and levels are fundamental to the development, **SPCC15** is a pre-commencement condition requiring the submission of details of existing and proposed site levels and finished floor levels. **SC16** requires the submission of details of telecommunications and internet connections to all dwellings. In the interests of security and crime prevention, **SC17** requires that for Phase 1a details of the provision of ground floor windows on side elevations of dwellings with parking plots and the provision of CCTV cameras and their connection to existing CCTV control. The appellants indicate that the part of the condition relating to windows can be achieved within the existing design. However, they consider that that part of the condition relating to cameras is neither necessary to make the development safe nor is it precise. **SC18** requires the details of Phase 1a finishing materials to be submitted for approval. **SC19** removes permitted development rights to erect walls, gates fences etc in advance of a dwelling.
- 10.7 In the interests of residential amenity, and highway safety, **SPCC20** is a pre-commencement condition requiring the submission of a Construction Management Plan. Similarly, **SC21** restricts construction work hours. The appellants suggest a clarification limiting the hours of construction restricting only those activities to those that would be audible at the site boundary. The lpa considers that, given such disturbances would be intermittent, the condition would be difficult to enforce. In the interests of highway safety, **SC22** requires that no dwelling is occupied until the highway works on Wises Lane have been completed.
- 10.8 **SC23** requires that no dwelling is occupied until an agreement has been entered with the highway authority relating to that part of the LR between Wises Lane and Chestnut Street including identifying landscape screening and securing these in perpetuity. The reason for the condition is to secure the use of HE land for the delivery of the roundabout and landscaping. The appellants consider the condition unreasonable given that, it relies on third party cooperation and that a Policy MU 3 scheme could have up to 564 dwellings without the link. The appellants identified that a previous suggested condition contained a reference to enable 160 dwellings to be constructed prior to the agreement.
- 10.9 **SC24** requires that the LR is not opened or that more than 160 dwellings are occupied until the M2 Junction 5 improvement works have been completed. This is to prevent an unacceptable increase of traffic on the network, to avoid the use of Chestnut Street as an alternative to the A249 and to mitigate the impact of rat running and traffic impact on the Chestnut Street CA. The appellants submit that the condition is unnecessary as the lpa have not claimed there would be any highways link/junction capacity issue or provided evidence on the adverse impact on the CA. To ensure delivery, **SC 25** requires that no more than 160 dwellings are occupied until the LR between Wises Lane and Chestnut Street is constructed to an adoptable standard and available for use. The appellants consider that the trigger should be 200 as

previously suggested by KCC and there is no evidence to support a reduction to 160 and as such the condition is unreasonable.

- 10.10 In the interests of appearance and highway safety, **SC26** requires full design details of the Chestnut Street roundabout to be submitted for approval and not more than 160 dwellings occupied until open for public use. The appellants say that in the absence of a justification for the 160-dwelling figure, the trigger should be 200 dwellings for consistency. Similarly, **SC27** requires no more than 421 dwellings are occupied until the full length of the LR and the roundabout at Borden Lane are available for public use. The appellant suggests amending this to refer to that part of the LR between Wises Lane and Borden Lane. In the interests of highway safety, **SC28** requires that no more than 100 dwellings are occupied until the appellants have entered into an agreement with KCC to deliver the signalisation of the Wises Lane/A2 junction, that the works are completed within 18 months of being served notice to commence by KCC provided that the notice is not served before the occupation of the 150th dwelling and no later than the 500th dwelling.
- 10.11 In the interests of highway safety, **SPCC29** is a pre-commencement condition requiring a scheme to be submitted to maintain existing road connections during construction and until the LR is available for use. In the interests of highway safety, **SC30** requires that phases to the south of Westlands School include provision for school bus laybys no more than 160m from the school boundary. The appellants suggest amendments to refer to laybys being of commensurate capacity to the existing facility and the substitution of 200m to allow flexibility. In the interests of pedestrian safety, **SC31** requires that no more than 80 dwellings are occupied until off-site highway works to Borden Lane and Wises Lane south and improvements to the A2/Adelaide Drive pedestrian crossing are completed.
- 10.12 In the interests of highway safety and mitigate the impacts of additional traffic, **SC32** requires that no more than 421 dwellings to be occupied until off-site works to Borden Lane, Homewood Avenue and Adelaide Drive are complete. To mitigate the impact of additional traffic on the A249, **SC33** requires that no more than 150 dwellings are occupied until off-site highway improvements to the Key Street roundabout are complete. To promote sustainable transport measures, **SC34** requires that no development within any phase shall be occupied or first used until Travel Plans have been agreed and implemented. To ensure the adequate provision of parking, **SC35** requires that reserved matters applications include details of proposed vehicle parking. To ensure delivery, **SC36** requires that vehicle parking spaces provided as part of Phase 1A are retained for use. In the interests of sustainability, **SC37** requires that reserved matters applications include details of covered secure cycle parking. To ensure delivery in a satisfactory manner, **SCs 38** and **39** requires the submission of various construction details relating to the development of estates are submitted and approved and provided before occupation. To ensure acceptable delivery, **SCs 40** and **SC41** requires that details of the LR including landscaping within Phase 1a and subsequent phases are submitted for approval.

- 10.13 To mitigate visual impacts and to ensure a strong landscape framework, **SPCC42** is a pre-commencement condition that requires details of advance soft landscaping to be submitted and approved. The appellants acknowledge that advance planting is fundamental to mitigate the landscape and visual impact of the development. However, the appellants suggest the addition of a timetable for the works and that the advance planting is implemented at the earliest opportunity. The appellants are concerned that the proximity of the advance planting to the LR at its western end could result in damage during construction. By including "*at the earliest opportunity*" would provide flexibility to avoid damage. The appellant suggests that the nature of the planting should be expanded to include species that would encourage wildlife and biodiversity. To ensure retention and maintenance, **SC43** provides for the replacement of any of the advance landscaping lost during the first 10 years of the development. In the interests of appearance, **SC44** requires that the sports pitches are grass and there is no illumination.
- 10.14 To avoid damage and in the interests of appearance, **SPCC45** is a pre-commencement condition requiring the submission of details of existing trees and hedges, details of trees and hedges to be removed and measures to protect trees and hedges to be retained. To encourage wildlife and biodiversity, **SC46** requires the submission of details of hard and soft landscaping for Phase 1a and a programme of implementation. The appellants suggest the addition of a reference to species that would encourage wildlife and biodiversity. To provide for approval, **SC47** requires the Phase 1a landscaping to be carried out prior to first occupation or in accordance with an agreed programme. To ensure retention and maintenance, **SC48** provides for the replacement of any of the Phase 1a landscaping lost during the first 5 years of the development.
- 10.15 To mitigate flood risk and protect water quality, requires details and operation of the sustainable urban drainage system and to ensure delivery and to protect existing infrastructure, **SPCCs 49** and **50** requires that no development is commenced until details of the diversion or protection of public sewers and a sustainable surface water drainage strategy have been submitted for approval. **SCs 51** and **SC52** requires details of a verification report to be submitted. To avoid contamination, **SC53** provides that unless otherwise agreed there would be no infiltration of surface water into the ground.
- 10.16 To avoid water pollution, **SPCC54** is a pre-commencement condition that requires a contaminated land assessment and remedial strategy to be submitted for approval. To ensure contaminated land is adequately dealt with **SCs 55** and **56** provide for the implementation and verification of the remediation strategy works. **SC57** seeks to control piling to avoid a risk to groundwater. In the interests of safety and amenity, **SPCC58** is a pre-commencement condition requiring the submission of a scheme relating to gas penetration.
- 10.17 In order to inform protection and mitigation measures during construction, **SPCC59** is a pre-commencement condition requiring updated baseline

surveys relating to breeding birds, bats, reptiles and dormice to be submitted for approval. In order to inform protection and mitigation measures during construction, **SPCC60** is a pre-commencement condition requiring the submission of an updated badger survey for approval. To ensure mitigation and protect wildlife, **SPCC61** requires the submission of an updated skylark mitigation strategy. To protect ecological features, **SPCC62** requires the submission of a Construction Ecological Management Plan for approval. To ensure the development delivers net gain, **SPCC63** requires the submission of details for the achievement of a measurable net biodiversity gain of at least 10% above the baseline value of the site using the DEFRA 2.0 Metric. The appellants object to this condition given that the DEFRA Metric is at beta testing stage and subject to further consultation regarding limitations and inconsistencies. The appellants submit that ecological enhancements can be secured through other conditions relating to the detailed landscaping and Local Ecological Management Plans. In the interests of biodiversity, **SC64** provides for the submission and approval of a Local Ecological Management Plan. To enhance opportunities for walking and cycling, **SCs 65** and **66** relate to upgrading and surfacing of PRow across the site.

- 10.18 To protect the setting of a LB, **SC67** requires that the landscaping in the development phase adjacent to the listed Cryalls Farmhouse to include open space and landscaping to the south and west of the farmhouse. TO ensure appropriate assessment, **SC68** requires the submission of archaeological field evaluations before the submission of reserved matters applications for any phase. To provide adequate protection and mitigation, **SPCC69** is a pre-commencement condition requiring no development to take place following the completion of archaeological evaluation until the implementation of any archaeological safeguarding and recording measures have been agreed. To ensure results are properly assessed, **SC70** requires that following the completion of archaeological works, a Post-Excavation Evaluation Report shall be submitted and approved. Given the high quality of soil on the site, **SCPC71** is a pre-commencement condition that requires the submission of a soil management strategy to be submitted and agreed.
- 10.19 To ensure that air quality impacts are mitigated, **SPCC72** is a pre-commencement condition requiring the submission of an air quality mitigation scheme to be submitted for approval. The scheme is to include calculations of predicted emission levels generated by the development, a damage cost value using the DEFRA Air quality damage cost guidance January 2019, a costed scheme of on-site mitigation and a timetable for implementation of the agreed mitigation measures. The appellants object to the condition on the basis that much of the work has already been done and suggest an alternative pre-commencement condition requiring the submission of a scheme of air quality mitigation to provide a costed scheme of mitigation to be not less than the equivalent value of the calculated damage cost value. This would follow the recommendations of the Kent and Medway Air Quality Partnership Air Quality Planning Guidance and accord with Policy DM 6.
- 10.20 To encourage the use of electric vehicles, **SC73** requires the provision of electric vehicle charging points to all dwellings with parking in the curtilage,

provision at a minimum of 10% of all other residential parking spaces and at a level of 10% of all non-residential car parking spaces. To reduce emissions, **SC74** requires that no dwellings are fitted with a gas boiler other than a low emission boiler to a minimum standard of <40mgNO_xkWh and no dwelling in Phase 1a is to be occupied until details of gas boilers have been submitted and approved.

S106 Agreement (Doc 14)

10.21 The Agreement is concluded between the site owners, KCC and the Council relating to financial contributions and other matters. The financial contributions relate to specific contributions for Phase 1a and tariffs based on dwelling units for the outline application. Financial contributions would be made to either the Council or KCC.

10.22 Financial Contributions - Schedule 2.

- a. £9,602 for Phase 1a and £101⁶⁰ per dwelling and £945 per every 5 flats for the provision of refuse bins;
- b. £40,000 for the management and maintenance of the Borden Nature Reserve to mitigate the impact of increased use;
- c. £86,292 for Phase 1a and £360 per person, for the improvement of NHS primary healthcare facilities;
- d. £50,807 for artificial grass hockey pitches at the Old Bordenians and Gore Court Hockey Club and £5,000 for cricket nets at Gore Court;
- e. £42,000 for the provision and maintenance of adult fitness equipment at the Playstool Recreation Ground in Borden;
- f. £7,500 towards the maintenance of woodland area adjacent to the Playstool Recreation Ground;
- g. £20,000 for the monitoring and administration of the S106 Agreement;
- h. not to occupy the development until the completion of the Gore Court Car Park Works;
- i. £4,834 for Phase 1a and £60 per dwelling towards the shell and core construction of the new Sittingbourne Hub and/or a provision of community facilities within a 3km radius of the site;
- j. £18,160 for Phase 1a and £227 per dwelling towards the shell and core construction of the new Sittingbourne Hub Library and/or provision of support existing library provision within community facilities within a 3km radius of the site;

⁶⁰ Figures are rounded to the nearest £.

- k. £4,268 for Phase 1a and £53 per dwelling, for the shell and core construction of the new Sittingbourne Hub and/or other adapted facilities and resources for older people with learning disabilities and people with mental health issues in the area reasonably accessible by occupiers of the development;
- l. £328,789 for Phase 1a and £4,535 per house and £1,134 per flat for the first phase of a new 2FE primary school within the development;
- m. £339,809 for Phase 1a and £4,687 per dwelling and £1,172 per flat towards the construction of the new secondary School off Quinton Road;
- n. £1,932 per house and £483 per flat for the acquisition of land for the purchase of land for the secondary school;
- o. £27,410 towards PRow improvements, £10,000 for the extension of footpath ZR120 to Maylam Gardens, £26,400 to provide an extension to footpath ZR121 and new pedestrian footpath between the site and Borden;
- p. £3,006 for Phase 1a and £37 per dwelling towards the provision of facilities at the New House Youth Centre

Affordable Housing – Schedule 3.

- 10.23 The provision of 12% of the dwellings (81) as AH of which 90% would be affordable rented and 10% shared ownership The AH transferred to a Registered Provider and be permanently available to persons nominated by the Council. For Phase 1a, 11 affordable rented dwellings comprising 2, 2-bed houses, 6, 2-bed flats and 3, 1-bed flats. For the remainder of the development the AHs to be provided in accordance with a scheme agreed with the Council. Prior to the occupation of 60% of the open market dwellings in each phase the AH would be completed.

Viability – Schedule 3A.

- 10.24 An Affordable Housing Viability Review no later than the occupation of the 400th dwelling. The objective is to ensure that if a surplus is achieved additional AHs would be provided up to a total maximum provision of 92.

On-Site Public Open Space – Schedule 4.

- 10.25 Provides for the provision, laying out and management arrangements for some 16.7ha of public open space to include play areas, landscaped areas and areas for woodland, nature conservation and biodiversity enhancement.

Local Employment & Apprenticeships – Schedule 5.

- 10.26 Reasonable endeavours to secure the employment at least 20% local labour and to offer at least 12 apprenticeships during the construction period.

Highways - Schedule 6.

10.27 Provides for;

- a. £1,345,140 for the delivery of a scheme to improve the capacity of the Key Street/A249 junction (Doc 14 Appendix 7). The contribution would be paid in 3 instalments of £200,000 prior to occupation of the development, £572,570 prior to the occupation of the 150th dwelling and £572,570 prior to the occupation of the 300th dwelling;
- b. KCC would deliver the signalisation works to the Key Street Roundabout prior to the occupation of the 150th dwelling (Doc 14 Appendix 8);
- c. The owners and KCC covenant to use reasonable endeavours to coordinate the programmes for delivery of the Chestnut Street Connection Works and the southbound slip road onto the A249 provided that the Chestnut Street Connection Works are completed prior to the 150th dwelling (Doc 14 Appendices 6 & 9);
- d. No more than 300 dwellings are to be occupied in the event that KCC has secured HIF Funding for full implementation of a capacity improvement scheme for the Key Street/A249 junction indicatively shown on drawing 13-042-045 D (CD A90); or (2) no more than 200 dwellings are to be occupied until the owners have paid the Southbound On-Slip Contribution (£885,158) to KCC and in the event such payment is made the 300 dwellings shall cease to take effect provided that if prior to expenditure of the Southbound On-Slip Contribution KCC secures full or partial funding from the HIF Funding then KCC shall refund the Southbound On-Slip Contribution a sum equivalent to the amount of HIF Funding secured up to the value of the Southbound On-Slip Contribution;
- e. £275,000 or any other reasonable sum as agreed with HE for works to the M2 Stockbury Roundabout prior to the occupation of the 150th dwelling (Doc 14 Appendix 10);
- f. Prior to the commencement of Phase 2, pay £30,000 towards the provision of walking and cycling links on Cryalls Lane and Riddles Lane (Policy MU3 paragraph 6d);
- g. Submit for approval a Framework Travel Plan and before the occupation of the 400th dwelling pay £5,000 towards KCC's costs of monitoring and implementing the provisions of the Travel Plan;
- h. No dwelling shall be occupied until the first residents have been offered a Travel Plan Incentive of a £100 cycle voucher or a monthly rail ticket to equivalent of £153 or a 3-month Arriva Travel Ticket for south east ticket zone or a 5-month "Swale Zone" bus ticket;

Retail/Commercial – Schedule 7.

- 10.28 Not more than 80 dwellings shall be occupied until a reserved matters application for the construction of the commercial units has been submitted. Not more than 200 dwellings shall be occupied until all the necessary services up to the boundary of the commercial units' land has been provided. Prior to the occupation of no more than 200 dwellings submit a marketing strategy for approval; the agreed scheme to be implemented and completed.

Education Land – Schedule 8.

- 10.29 Prior to the occupation of the 150th dwelling or 36 months from the commencement of Phase 1a transfer to KCC, 2.5ha of land for the provision of a primary school (Doc 14 Appendices 11 & 12).

Special Protection Area Mitigation – Schedule 9.

- 10.30 £19,644 for Phase 1a and £245 per dwelling in line with the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy July 2014 towards strategic mitigation measures to avoid adverse effects on The Thames Estuary and Marshes Special Protection Area and Ramsar Site, the Medway Estuary and Marshes Special Protection Area and Ramsar Site and The Swale Special Protection Area and Ramsar Site.

Sports Club/Community Facility & Sports Pitches – Schedule 10.

- 10.31 Prior to the Occupation of the 180th dwelling provide the Sports Club and Community Building and sports pitches. Prior to the use of the sports/community building enter into the Community Uses Agreement and establish a Management Committee to ensure that the sports club and community building are available for wider community use i.e. community uses independent from the sports use. The Management Committee would include a Council Officer and Borough and a Borden Parish Councillors.

11. Inspector's Conclusions and Recommendation

The numbers in [] brackets refer to earlier paragraphs in this report or relevant documents.

Matter A – *The effect on the safety and free flow of traffic on the surrounding highway network.*

- 11.1 Policy DM 6 seeks to ensure that development does not have an unacceptable effect on the capacity or safety of the highway network. Wises Lane from the built-up boundary of Sittingbourne to Borden, Pond Farm Road and Oad Street are identified as rural lanes. Policy MU 3, criterion 6 requires the provision of appropriate access and off-site highway improvements. Framework paragraph 109 says that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 11.2 The application is supported by a TA and, following queries by KCC and HE, a TAA [CDs A11, A12(b) & A20]. KCC particularly wanted to understand potential solutions for the Key Street Roundabout and an illustration of the current and future operation of that junction when considered in the wider network context [CD A20]. KCC provided a modelling brief, the objective of which was to demonstrate the effective working of the Key Street junction at full LP delivery in 2031 [APP26 Appendix JW12]. As agreed with the HA the appellants ran a micro-simulation (VISSIM) model.
- 11.3 HE, the highway authority for the Strategic Road Network (SRN), reviewed the TA and TAA and undertook its own analysis of the traffic model. HE advised that the highway improvements, including agreed works at the M2 Junction 5 (Stockbury Roundabout), would be sufficient to mitigate the additional traffic generated by the development on the SRN [CD A40 pages 213-220]. The nature of HE's response does not suggest that it had concerns about the use of the VISSIM model.
- 11.4 Following the running of the VISSIM Model and receipt of the TAA, KCC advised that, "*The evidence presented is considered clear and robust.*" and subject to the deliverability of the mitigation proposed for Chestnut Street and the Key Street roundabout that the appeal scheme offers greater benefits to highway capacity at the Key Street junction. KCC recommended approval subject to conditions and S106 contributions [CD A40 pages 117-124]. The HoP advised that the scheme would result in more traffic using some local roads but with mitigation the highway impacts would be acceptable [CD B1 paragraph 8.164]. Neither HE nor KCC has changed its position on the acceptability of the appeal scheme in terms of its impact on either the SRN or the local highway network.
- 11.5 Notwithstanding the consultation responses by KCC and HE, without a comprehensive report providing information on, assumptions made, parameters, inflows, junction details and saturation flows the lpa said it could not properly interrogate the model and verify the results [6.34-6.37].

- 11.6 The appellants produced a Sensitivity Test Modelling Report which sought to address concerns relating to trip generation/distribution and queuing on the A249 Off-Slip [APP25 Appendix JW8]. This testing acknowledges that the lpa's alternative assumptions would give rise to increases in traffic volumes and acknowledged the error in the traffic distribution on one of the arms on the Key Street roundabout [7.5]. However, the mitigation package would be sufficiently effective to respond to the additional demand and the reassigned flows [5.17]. The lpa accepts that the appellants' work shows that the network would operate well and could accommodate development traffic without any significant worsening of, and indeed with betterment in relation to queue lengths or delays [5.18]. This concession was made with the caveat that the lpa had been unable to verify whether the VISSIM model is robust.
- 11.7 KCC wrote the model brief and was the subject of several meetings with the appellants' transport consultants and HE to determine the appropriate software and inputs for both the base and future years. Both KCC and HE came to robust assessments of the results i.e. that subject to mitigation the proposal would be acceptable in highway terms [CD A40 page 117]. It is open to the lpa to challenge these results and conclusions. However, that challenge must be based on a positive assessment of the modelling. Notwithstanding that KCC and HE had full access to the model and its inputs, the lpa did not ask for that information. Moreover, whilst VISSIM modelling is a standard and widely used technique in transport assessments, the lpa's highways expert acknowledged that he did not have the capacity to run the model [5.18 & 5.19].
- 11.8 Representations by residents, BPC and BRAD submit that the scheme would exacerbate rat-running, particularly before the M2 Junction 5 improvements are implemented. Local observations are not to be dismissed lightly and these concerns form a key element of the lpa's case. However, other than asserting that rat-running takes place, there is no objective evidence as to its scale, or how much would be generated by a Policy MU 3 compliant scheme or how much would be caused by the appeal scheme [5.22].
- 11.9 The lpa accepts that the M2 J5 improvements are likely to come forward and these improvements would have a positive impact on rat-running and its concerns could be dealt with by way of a planning condition if required [SC24 & LPA3 paragraphs 8.2 & 8.3]. Moreover, the lpa has previously acknowledged that a scheme that included a LR from Borden Lane to Chestnut Street was a means to reducing the attractiveness of the rat running alternative to the A249 via the rural area [APP21 paragraph 31]. The weight of the evidence demonstrates that this development would have a positive impact on the potential for rat running.
- 11.10 BPC submits that the closure of the slip road from the Key Street roundabout onto the southbound A249 and its replacement with a shorter, 85m, southbound slip road off the Chestnut Street roundabout would be insufficient to allow vehicles to reach a safe merging speed [7.5]. The closure and replacement of the slip road is part of the HIF scheme to be delivered by KCC and the new access onto the A249 has been developed in conjunction with

HE. I understand the redesign of the slip road complies with Design Manual for Roads and Bridges and HE does not raise any concern. Given that the HA and HE wish to see this scheme implemented, the fact that the appellants do not own the necessary land is not an impediment to the scheme. I have no reason to conclude that providing access to the A249 off the Chestnut Street roundabout would unacceptably affect safety on the A249.

- 11.11 The lpa accepts that the appellants' work shows that the network would operate well and could accommodate development traffic without a significant worsening of traffic conditions [5.18]. Regarding the Framework paragraph 109 test, the lpa accepted that it provides no evidence that, either the scheme's residual cumulative impacts would be severe, or its highway safety impacts would be unacceptable [5.23]. Considering these concessions and given the conclusions of HE and KCC, I consider that, subject to the implementation of mitigation measures, the appeal scheme would not have an unacceptable impact on highway safety or the free flow of traffic on the local or strategic road network contrary to Policy DM 6.

Matter B - *The effect on the character and appearance of the development and the surrounding area.*

- 11.12 Policy DM 24 seeks to protect and enhance the value, character, amenity and tranquillity of the Borough's various designated and non-designated landscapes; the appeal site has no landscape designation. Non-Designated Landscapes will be protected and enhanced, and development will be granted subject to the minimisation and mitigation of adverse landscape impacts. Where significant adverse effects remain, development will be permitted when the social and/or economic benefits significantly and demonstrably outweigh the harm to the landscape character/value of the land.

- 11.13 Open land to the north-west of the Policy MU 3 allocation up to the A249, to the west up to School Lane and south and south-east around the built-up edge of Borden lies within an ILCG [APP17 Appendix E & LPA10 Appendix D]. Policy DM 25 indicates that unless allocated in the LP, development that would undermine the purposes of the ILCG will not be permitted. The ILCG purposes are to maintain the separate identities and character of settlements, safeguard the open and undeveloped character of areas and prevent encroachment by built development or changes to the rural character.

- 11.14 Policy DM 14 seeks to ensure that development conserves and enhances the natural environment, is sympathetic and appropriate to the location and provides an integrated landscape strategy. The south-eastern corner of the site is a Local Green Space (LGS). Policy DM 18 indicates that development would not be permitted other than for the carrying out of an engineering or other operation if it maintains the openness and character of the LGS.

- 11.15 Framework paragraph 170 says that decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

- 11.16 The appeal site falls within 2 landscape character areas (LCA) identified in the Swale Landscape Character and Biodiversity Appraisal [CD C8]. The allocated site is wholly within the Tunstall Farmlands LCA where the relevant key characteristics are, a gently rising dip slope, fragmentation of hedgerows along lanes and internal field boundaries lost through field enlargement, narrow winding lanes, a strong defined urban edge with the M2 motorway and pylons detracting from the rural tranquillity. Landscape condition is identified as moderate and sensitivity is identified as high. Guidelines for this LCA aim to conserve and restore the distinctive features.
- 11.17 The appeal site outside the allocated area, extends north-westwards up to Chestnut Street, to include houses, part of the LR and the Chestnut Street roundabout. This area is located within the Borden Mixed Farmlands LCA. The boundary between these LCAs comprises a dense mature deciduous hedgerow with hedgerow trees [LPA 10 Appendix B Photos 1 & 23]. The relevant key characteristics are a rolling topography, enclosed rural landscape and urbanised ribbon development along the western boundary. Landscape condition and sensitivity are identified as moderate. Guidelines for this LCA aim to encourage the conservation of existing traditional features and the creation of elements to strengthen the character of the area.
- 11.18 Although these LCAs cover large areas, the above characteristics are all reflected in the appeal site. The lpa and appellants agree that overall landscape value of the area is moderate and landscape sensitivity is moderate to high.
- 11.19 The lpa's concern largely relates to that part of the development in the open countryside beyond the Policy MU 3 allocation [5.38 & 6.16]. Leaving aside for the moment the land to the north-west of the allocated site and concentrating on other differences between the allocated site and the appeal proposal there are 3 areas of change. To the west of Wises Lane, the southern boundary of the appeal site is pushed marginally further south than the boundary of the allocated site [CD A4]. However, this area would be densely planted in line with the Policy MU 3 Concept Plan [CD C2 page 178]. The open space between the southern boundary and housing areas would contain a sports pitch and the primary school. To the east of Wises Lane, the southern boundary would be pushed out, to broadly line up with the proposed boundary to the north of Wises Lane. Here, it is proposed to locate the Rugby Club/Community Building and sports pitches replacing the primary school shown on the Concept Plan. Again, the southern boundary would be densely planted. In terms of landscape and visual impact, particularly when viewed from public vantages point in and around Borden, the difference between the scheme and a Policy MU 3 compliant scheme in terms of landscape and visual impact would not be material.
- 11.20 At the eastern, Borden Lane, end of the site, the southern boundary of the appeal site would be pushed substantially further to the south than the allocated site. That area is shown on the Concept Plan as LGS. Whilst most of the area would, as now, be retained as LGS, the shifting of the boundary would accommodate a roundabout junction with Borden Lane. This junction

would involve the removal of 4, mature lime trees within the footpath. Whilst the lpa suggest that the localised effect would be moderate/substantial adverse, I consider that with careful landscape treatment of the area to the south and north of the proposed roundabout the residual predicted effect would be materially less. The junction requirement for a Policy MU 3 compliant scheme has not been determined [Doc 39]. In these circumstances, I consider the lpa's conclusion that the landscape impact of such a junction would be negligible should be treated with caution. In terms of Policy DM 18, the provision of the roundabout would, in my view, constitute an engineering operation, which given its approximate position would have no material impact on the openness and character of the LGS.

- 11.21 Returning to the north-western land outside the allocated site, the development would involve housing in the field immediately to the north-west of the mature dense hedgerow that forms the boundary of the allocated site. Here, whilst the LR would punch through the hedgerow, the loss of hedgerow would be limited, and the intention is to retain and strengthen the remaining hedgerows. The LR would continue westwards towards Chestnut Street punching through 2 further hedgerows, where the loss of hedgerow would be minimal and to Chestnut Street where a substantial deep bank of deciduous tree planting would be removed [APP17 Appendix 8 Photos 18-25A]. The north-western boundary of the additional housing area, the LR and the roundabout would be screened by tree/shrub belts of varying depth. The intention is that a substantial part of the proposed screen planting would, where possible, be introduced in advance of construction [5.44]. The advance planting of the scheme is covered by a suggested condition.
- 11.22 In assessing the impact on landscape character of the land to the north-west, there are existing features with varying levels of influence that detract from the rural character/appearance of the area. Those with the greatest level of adverse influence are the large agricultural buildings and external storage areas to the north of School Lane near the junction with Chestnut Street, the pylons and electricity lines to the electricity sub-station to the north of the appeal site and the traffic noise from the A249. The electricity sub-station has, because of dense screen planting, only a limited degree of adverse influence on landscape character.
- 11.23 In assessing visual impact, it is appropriate to categorise all the receptors, i.e. pedestrians and residents as highly sensitive with drivers having medium or low sensitivity depending on the nature of the road. i.e. low on main routes such as Chestnut Street and medium on the minor roads such as School Lane [6.24]. This would ensure that the visual impact of the development would not be under-assessed. Moreover, as the development would extend over a large area and the north-western end of the site is visually separate from the eastern end, it is in landscape and visual impact terms appropriate to deal with this area separately.
- 11.24 Taking the scale of the works envisaged at the north-western end and notwithstanding the influence of the agricultural buildings, the landscape impact of the residential development and the LR in Year 1 would be

substantial adverse. However, by Year 15 given the scale of the proposed planting and strengthening of existing hedgerows, the landscape change for the residential part of this area would reduce to slight adverse to negligible and the LR part would be moderate adverse largely through the impact of the topography and the Chestnut Street roundabout.

- 11.25 In terms of visual impact, for residential receptors to the north, the impact would be moderate adverse in Year 1 decreasing to slight adverse/negligible in Year 15 when the proposed planting matured and reinforces the existing boundary planting. For pedestrian, residents and drivers on Chestnut Street, the visual impact of the LR and the roundabout, would, notwithstanding the advance screening and the influence of the substantial agricultural buildings, given the scale of the works and the significant loss of semi-mature planting along Chestnut Street, be substantial adverse in Year 1 reducing to moderate/slight adverse in Year 15 when the proposed planting and replacement planting matures.
- 11.26 On School Lane, the roadside planting varies with lengths of dense mature hedgerows, that obscure views towards the site and hedgerows with gaps where views of the site are fleeting. In these, albeit limited views, the visual impact of the proposed housing in Year 1 would be moderate adverse reducing to slight adverse/negligible by Year 15 as the proposed landscaping matures. As above, the visual impact of LR and roundabout in Year 1 would be substantial adverse reducing to moderate/slight adverse when the proposed planting and replacement planting starts to mature.
- 11.27 The appeal site is crossed by several public footpaths. ZR 118 would cross the LR in the area to the north-west of the proposed housing. For the most part this footpath would retain its rural character except where it would cross the LR. At this point users would experience a moderate adverse visual effect, which could be mitigated by careful landscape treatment of the approaches to the crossing. ZR117 would cross the site through the westernmost housing/open space area and then south-east towards Borden. Whilst some of the effect could be mitigated by careful landscape treatment, for a material part of its length, the rural aspect of the current walk would be lost resulting in a substantial adverse effect.
- 11.28 ZR119 would run westwards from Wises Lane through the public open space area between the primary school and a sports pitch linking with ZR117 and 118. Careful landscape treatment of the primary school and the public open space would mitigate the loss of the current rural aspect and on balance, the impact would be moderate adverse. ZR120 runs along the northern boundary of the site next to the existing wooded area at Maylam Gardens and then strikes out southwards and would run through the housing area to link with Wises Lane. As with ZR117, whilst some of the effect could be mitigated by careful landscape treatment, for a material part of its length, the rural aspect of the current walk would be lost resulting in a substantial adverse impact. ZR122 would run north to south through the open space area at the eastern end of the site. Other than where this route would cross the LR,

where users would experience a moderate adverse effect, the path would retain its rural character.

- 11.29 The overarching objective the ILCG is to retain the individual character and setting of settlements. All of the appeal scheme outside the allocated site falls within the ILCG. To the extent that the policy also performs a landscape function i.e. safeguard the open and undeveloped character of the area, I have considered that above. On its southern boundary, the additional landscaped areas and the extended area for the rugby club given that it is not built development would not represent encroachment. Similarly, use of the ILCG in this area of the scheme would not result in the merging of the settlements and Borden and Sittingbourne would still have their separate characters and identity.
- 11.30 The inclusion of land to the north-west of the allocated site would reduce the gap between Sittingbourne and Chestnut Street. The gap between the eastern edge of Chestnut Street and the residential development would at its nearest be some 390m as opposed to some 570m for development on the allocated site [LPA10 Appendix D]. The Chestnut Street roundabout would be some 90m from the first property on Chestnut Street (Tudor Rose Public House) and the LR would be some 275m from the nearest property on School Lane [LPA 10 Appendix D]. Whilst the effect of this loss of separation would be mitigated by the proposed landscaping, existing planting, the topography of the intervening area and the scale of the agricultural buildings, the ICLG in this area would be eroded and there would be conflict with Policy DM 25 [5.40].
- 11.31 The lpa express concern that the LR through its design and the traffic it is intended to carry would dominate and detract from the character and appearance of the development. That said, Policy MU 3 (6a) appears to envisage some form of LR between Borden Lane and Wises Lane, which, in my view, would need to be in the form of a distributor road. Roads of the nature and scale of the proposed LR are not unusual in developments of this scale. In my experience the highway requirements in terms of width and alignment can be married successfully with careful landscape design to ensure that it would complement the appearance of the development.
- 11.32 Drawing all the above together, the appeal scheme would overall have a significant landscape and visual effect albeit a significant are of the appeal site is already allocated for development. Those effects would mostly be experienced at the north-western end of the development. Whilst the effects would reduce over time, particularly through the proposed extensive landscaping proposals, they would not disappear, and the degree of harm would be at the moderate adverse level and would be significant. In terms of the ILCG, whilst the appeal scheme would not result in the merging of settlements, the extent of the separation between Sittingbourne and Chestnut Street would be significantly eroded through a permanent loss of open land within the gap.

- 11.33 The proposal would conflict with Policies DM 14, 24 and DM 25. There would be no adverse effect on the character or appearance of the LGS as such there would be no conflict with Policy DM 18.

Matter C – *The implications for the supply of B&MV agricultural land.*

- 11.34 Policy DM 31 says that development on B&MV agricultural land will not be permitted unless; 1. the site is allocated for development in the LP; 2. there is no alternative site on land lower than Grade 3a or that the use of lower quality land would conflict with the objective of achieving sustainable development, and 3. the development would not adversely affect the viability of the remainder of the holding or lead to cumulative and significant losses of high quality land. Framework paragraph 170b says that decisions should recognise the economic benefits of B&MV agricultural land.
- 11.35 All the agricultural land within the allocated site and the appeal site is B&MV agricultural land (Grades 1, 2 and 3a) [APP2 4.6 & 4.7]. However, as some 70% of the appeal site is allocated for development, the principle of this loss has been established [CD B1 paragraphs 8.05 & 8.247]. Development outside the allocation would result in the loss of some 13.8ha of Grade 2 land. As this area is not allocated in the LP, there is conflict with criterion 1 of Policy DM 31. The additional land represents about 1% of the current farm holding and its benefit to agriculture is estimated at some £13,400 per annum [APP2 paragraph 5.26]. Having regard to the scale of the reduction, this would not affect the viability of the remaining holding [APP2 paragraphs 5.13 & 5.15].
- 11.36 The appellants estimate that the additional land lost would increase the cumulative loss of B&MV land within the LP area by some 4%. Given that some 48% of the agricultural land in Swale is high quality land, that is not, on its own, significant. The lpa also refer to the "*isolation or sterilisation*" of an area of land outside the site boundary (south-east of the electricity sub-station) and collectively there would be an accumulated loss of high-quality land [LPA1 paragraph 4.65].
- 11.37 The evidence is that this orphaned parcel would be used by the agricultural holding to meet requirements under the Basic Payment Scheme and the future Environmental Land Management Scheme for greening and wildlife habitats [APP2 paragraph 5.14]. As such, it would not be permanently lost to agricultural production. In any event, the lpa does not apply the full test set out in Policy DM 31 criterion 3, which refers to "*...accumulated and significant losses...*" Significance is not addressed by the lpa and on the evidence before me the loss of the additional land from agriculture would not be cumulatively significant. For the above reasons the use of the additional land would not conflict with Criterion 2 and 3 of Policy DM 31. Conflict with criterion 1 of Policy DM 31 is to be weighed in the planning balance.

Matter D – *Whether the development would meet the housing needs of the area including the provision of affordable housing.*

- 11.38 The DAS sets out an indicative dwelling mix of 6.4% 1/2-bed flats; 7% 2-bed; 33.5% 3-bed; 51.9% 4-bed and 1.3% 5-bed dwellings [CD A10 page 93]. The dwelling mix for Phase 1a (full application) is 11 (14%) 1/2- bed, 25 (31%) 3-bed and 44 (55%) 4-bed dwellings.
- 11.39 The overarching objective of Policy CP 3 is to deliver a wide choice of high-quality homes. Criterion 4 requires development to provide AH in accordance with Policy DM 8. Criterion 5 requires development to achieve a mix of housing types reflecting the SHMA [CD 20]. LP paragraph 4.2.26 highlights the largest growth in demand would come from single-person and lone parent households and that new owner-occupied accommodation should be 2/3-bedroom dwellings and new private rented housing should be 3/4-bedrooms. Policy MU 3 criterion 9 seeks the provision of a mix of housing in line with Policy CP 3. Framework paragraph 61 indicates that within the context of significantly boosting the supply of homes, the type and tenure of housing need should be reflected in planning policies.
- 11.40 Under the quality and purpose of housing, the LP identified main issues and purposes and objectives of housing projects by postcode area [CD C2 page 95 Table 5.3.1]. The appeal site spans 2 postcode areas, the land north of Cryalls Lane and a substantial area west of Wises Lane is within postal area ME10 – town of Sittingbourne and the remainder of the site is within ME 9 – rural parts of Sittingbourne. The ME10 area, is identified as having the opportunity to provide a mix of quality housing types and sizes, prices are affordable and there is a reasonable level of demand from a range of consumers. The area south of the A2 is seen as more prosperous/desirable with generally higher house prices. In this area, the objectives are extending or rebalancing the housing stock, market offer and appeal with design playing a leading role to achieve this. Within more prosperous areas, the objective is to not change an area’s housing offer with design playing a role in enhancing existing characteristics. Within the ME9 area, the aspiration is to develop good quality family housing to maintain the area’s housing offer with design playing a role in enhancing existing characteristics.

Market Housing

- 11.41 Concern about dwelling mix is a recurring thread in representations made by BPC, Brad and interested persons both at the time of the application and for the inquiry [7.10, 8.15 & 16, 9.26, 9.46, 9.47, 9.49, 9.52, 9.54 & 9.56]. The dwelling mix is driven by the results of a viability appraisal that shows a mix favouring larger dwellings is necessary to pay for the on and off-site infrastructure. A scheme with a greater number of smaller units would not be viable [CD A21]. The viability appraisal has been independently assessed and the results were not challenged at the time of the application and are not challenged now (CD A42). Most of the application is in outline and whilst the overall dwelling mix would be subject to further consideration at the reserved matters stages the appellants qualified this, saying that a mix that favoured

1/2-bed market homes could potentially affect the overall amount of AH provided [8.16].

- 11.42 The appellants accept that the proposed dwelling mix departs from Policies CP 3 and MU 3 and in the planning balance this would attract negative weight. In determining the weight to be attached to this departure, the factors to be borne in mind are that Policy CP 3 is a Borough-wide policy and the area specific purposes and objectives of housing projects are contained at LP Table 5.3.1.

Affordable Housing

- 11.43 The LP identifies, "... a considerable unmet need for affordable housing..." and that position has not changed since the plan was adopted [CD C2 paragraph 7.3.3]. Policy DM 8 requires, where appropriate, urban extensions to Sittingbourne to provide 10% AH and in rural areas 40%. The development proposes up to 675 dwellings of which 80 would be outside the allocated site and in the rural area. The full policy requirement for AH would be 92. Further to a Viability Appraisal, which the lpa does not dispute, the appellants propose 81 (12%) for the whole scheme of which 11 would be included in Phase 1a comprising 3, 1-bed flats, 6, 2-bed flats and 2, 2-bed houses. Consistent with Policy DM 8, the tenure split would be 90% affordable/social rent and 10% intermediate product. [10.23]. The S106 Agreement provides for an Affordable Housing Viability Review no later than the occupation of the 400th dwelling. This is to ensure that if the development achieves a surplus, additional AH would be provided up to a maximum of 92.
- 11.44 A housing scheme for the allocated site, based on the minimum 564 dwellings referred to, would be required to provide 56 affordable homes. Thus, overall, whilst the appeal scheme would not provide a level of AH consistent with a strict application of Policy DM 8, it would provide 25 more than would be achieved on the allocated site, with the potential for additional AH up to a Policy DM 8 policy compliant level. The proposed provision of AH would conflict with Policy DM 8.

Matter E – *The Effect on Heritage Assets*

- 11.45 The location of LBs and CAs within the vicinity of the appeal scheme are shown at CD A17. The detailed boundaries of the 4 CAs, Chestnut Street, The Street, Harman' Corner and Hearts Delight are shown at LPA16 Appendix C. Other than the effect of the Chestnut Street roundabout and the LR approach to it on significant key features of the Chestnut Street CA, its setting and the setting of LBs within it, the lpa identified that its objections relate to the harmful effect of traffic/rat running on HAs in Borden, Chestnut Street, Harman's Corner and Hearts Delight [6.47-6.48].
- 11.46 S66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker to have special regard to the desirability of preserving a LB or its setting. S72 (1) requires that in respect of any building or other land in a CA, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

- 11.47 Policy DM 32 indicates that development affecting a LB or its setting and any features of special architectural or historic interest will be permitted provided that these features are preserved. The supporting text to Policy DM 33 notes that the character of CAs can be fragile, and their distinctive quality and character can be damaged by, amongst other things, increased traffic. Policy DM 33 seeks to ensure that development affecting the setting of a CA will preserve or enhance features that contribute positively to its special character or appearance.
- 11.48 Framework paragraphs 193 indicates that when considering the impact on the significance of a designated HA, great weight should be given to the assets conservation. Paragraph 194 highlights that any harm to the significance of a designated HA from development within its setting requires clear and convincing justification. Paragraph 196 indicates that where development would lead to less than substantial harm to the significance of a designated HA, that harm should be weighed against the public benefits of a proposal. This balancing exercise is important given the lpa's acknowledgement that, the tilted balance is engaged save potentially for matters relating to HAs [6.10]. Framework paragraph 11 (di) indicates that the tilted balance would be disengaged if Framework policies that protect assets of importance, i.e. designated HAs, provide a clear reason for refusing a development.
- 11.49 The appellants acknowledge that, "*traffic movements across the historic environment is capable of constitute a setting or indirect impact and b) is capable of causing harm as a consequence of greater visual activity, undermining, for example, the contemplation and enjoyment of an asset or introducing intrusive environmental noise.*" [APP15 paragraph 5.3]. The appellants accept that the effect of traffic on a designated HA engages the duty under S66(1). However, in relation to CAs, the appellants submit it is a matter dealt with by policy and that the statutory test applied by S72(1) is not engaged [5.55]. I agree that the potential impact of traffic on a CA is a matter for policy, i.e. the application of Policy DM 33 and Framework paragraphs 190 and 194 and it does not engage S72 (1) in that it does not relate to any building or other land in a CA.
- 11.50 Historic England's good practice guidance on The Setting of Heritage Assets indicates that in assessing effects on the significance or ability to appreciate a HA, the wider effects of a development must be considered which can include traffic [CD C7]. However, for such an assessment to be reliable, it relies on the actual magnitude of change. However, in the heritage and highways evidence, the highest the lpa's evidence goes is to assert that the development is, "*...likely to lead to a significant increase in rat-running through the Chestnut Street, Borden and Hearts Delight conservation areas...*". This is a qualitative measure of magnitude not the quantitative measure necessary to undertake an assessment of the impact of traffic flows on HAs. Moreover, the lpa's evidence advises that concerns about rat running are likely to be confined to the situation before the opening of the M2 Junction 5 improvements [LPA16 Appendix B paragraph 68].

- 11.51 A submission made earlier by the lpa, sums up, in my view, a fundamental issue with its heritage case. The submission was that, "*Significance is the product of both sensitivity and magnitude and if either or both are lacking/unreliable then significance is also unreliable...*" [1.13]. Here, if the degree of harm is substituted for significance, the significance of an HA is substituted for sensitivity and magnitude is the number of vehicle movements, then attempting to apply this formula exposes a fundamental and significant weakness in the lpa's case. Without a quantitative measure of the magnitude of traffic, the degree of harm asserted by the lpa is unreliable and should be treated with caution.

The Street CA and associated Listed Buildings

- 11.52 The CA Appraisal highlights 2 of the several LBs in the village as significant characteristics of the CA. These are the Church of St Peter and Paul (Grade 1) and Borden Hall (Grade 2*) [CD A17 LB1 & LB2]. The Church is a 12th century flint church that retains a significant amount of its original fabric and form. Borden Hall is a 15th century medieval house with 17th century additions and includes a Grade 2 listed dovecote in the grounds. These buildings have high historic and architectural significance. The setting of the Church is formed by the elevated churchyard retained by a flint wall, group value with Borden Hall and the historic street pattern at the centre of Borden. The setting of Borden Hall, which is set back from Wises Lane, is formed by its associated courtyard buildings, its grounds to the north, east and west, the Church and the open land to the north.
- 11.53 Also, within the CA, the lpa identifies harm to a group of 3 Grade 2 LBs, Oak House, Street Farmhouse, and Apple Tree Cottage and The Cottage [CD A17 LBs 7, 8 & 9]. Oak House is an 18th century house constructed in chequered brick with a plain tile roof. The architectural and historic significance of this building relates to its distinctive appearance and its early links to the development of Borden. The setting of Oak House is formed by its position on Wises Lane and rear garden. Street Farmhouse forms part of a row of 16th century buildings with historic associations with Leeds Priory with some surviving original fabric. The buildings are timber framed with exposed plaster infill and partly clad in flint and red brick from the 17th and 19th centuries. Apple Tree Cottage and The Cottage are a pair of 17th century timber framed cottages with red brick infill. The significance of these buildings is architectural and historic, given their former use as the Parish Workhouse. Their setting is formed by their rear gardens, their position fronting on to the narrow and winding Pond Farm Road and their relationship with the Churchyard wall.
- 11.54 Outside the CA, on the north-eastern edge of Borden, is Thatch Cottage (Grade 2), a 17th century timber framed building with a thatch roof which has architectural and historic significance. However, its historic significance as an outlier to the village core has been largely lost through modern infill development. The setting of this building is formed by a well screened garden, the relationship to Wises Lane, a narrow rural lane, and open fields to the north.

- 11.55 The CA Appraisal summarise the key elements of the CA's significance as, "...*traditional village scene: an historic church, an old 'manor house' surrounded by large mature trees, picturesque timber-framed buildings and other cottages grouped along the village street, a public house and a village greenspace.*" (CA Appraisal, CD C10 paragraph 21). The lpa identifies the most significant aspects of the CA's setting as open agricultural fields bordering the CA, the narrow and enclosed lanes approaching the village and views northwards.
- 11.56 The lpa concludes that increased traffic movements would have a moderate⁶¹ adverse effect, at the lower end of the scale of less than substantial harm, on the CA, its setting, the setting of the Church and the group of Grade 2 LBs comprising Oak House, Street Farmhouse, and Apple Tree Cottage and The Cottage and a minor adverse effect on the setting and significance of Thatch Cottage [LPA16 Appendix B paragraph 74; 5.59]. The lpa concludes that Borden Hall would not be affected by the traffic impacts it alleges. The lpa's matrix of effect categorises a Moderate Effect as changes to some of the key significant features of HA and considerable change to the significant components of its setting and a Minor Effect as slight changes to the key significant features of a HA and slight change to the significant components of its setting [LPA16 Appendix B page 10].
- 11.57 Based on a scenario that the M2 Junction 5 improvements are not complete, the HoP's report provides insight into potential traffic levels [CD B1 8.203-207]. The forecast for the Street CA in the AM peak is a net reduction; 420 vehicles or 7 vehicles per minute (VPM) with development as opposed to 433 vehicles, 7.23 VPM without the development. Given that traffic reduces, it is contradictory to suggest that there would be adverse changes to some of the key significant features of these HAs and considerable change to the significant components of their setting. In terms of impacts from traffic, the effect would be neutral.
- 11.58 The open land to the north contributes to the setting of the CA and Borden Hall. There are publicly accessible vantage points, particularly the Recreation Ground, where the development would be seen from. In addition, there would be views obtained from within the grounds of Borden Hall. From these mostly elevated locations, the new built-up settlement edge of Sittingbourne would be visible, albeit it would be heavy filtered by the landscaping on its southern boundary and materially no closer than the allocated site. Given the degree of separation and the scale of proposed boundary screening context, the development would not affect the setting and significance of either the CA or Borden Hall.

Harman's CA and associated Listed Buildings

- 11.59 The CA appraisal identifies that the buildings at Harman's Corner provide physical evidence of wealthy past times, that the enclave of historic properties is an important indicator of Borden's long history and a pleasing

⁶¹ This is taken from LPA16 Appendix B – Heritage Assessment rather than Ms Rouse's Proof-of-Evidence where she uses Medium.

contrast with the suburban character of surrounding development. The most significant aspects of the setting of the CA are the surviving open land on the eastern side, Bannister Hill, a narrow country lane to the south and The Street. The lpa identify 4 Grade 2 LBs, (Bloumfield, Harman's Corner, 241 Borden Lane, and 245/247 Borden Lane) that would be affected.

11.60 Bloumfield is an 18th century timber framed house. Harman's Corner is a 17th century timber framed house, clad with white painted weatherboard. It has architectural significance as a surviving 17th century example of Kentish vernacular. 241 Borden Lane is a 19th century house built in yellow brick with a slate roof. The historic significance all 3 LBs is their relationship to the development of Harman's Corner. 245/247 Borden Lane is an example of a 15th Century Wealden Hall with surviving original fabric. It has architectural significance as a surviving 15th century example of Kentish vernacular and historic significance as the earliest surviving development at Harman's Corner. The significance of their settings relates to the narrow fenced/hedged front gardens abutting a narrow pavement, their position at the junction of Borden Lane, Bannister Hill and The Street, their rear gardens and the relationship between the historic buildings.

11.61 The lpa concludes that increased traffic movements would have a moderate⁶² adverse effect, at the lower end of the less than substantial scale, on the CA, its setting and the settings of Bloumfield, Harman's Corner, 241 Borden Lane, and 245/247 Borden Lane. The forecast impact of traffic on Harman's Corner CA in the AM peak is a net reduction; 307 vehicles or 5 VPM with development as opposed to 347 vehicles, 6VPM without the development [CD B1 8.203-207]. With a traffic reduction, it is contradictory to suggest that there would be changes to some of the key significant features of these HAs and considerable change to the significant components of their setting. In terms of traffic, the effect would be neutral. Given the substantial separation, comprising mostly modern housing on both sides of Borden Lane, between the appeal site and the Harman's Corner CA, the proposed development would not affect the setting and significance of either the CA or any of its LBs.

Hearts Delight CA and associated Listed Buildings

11.62 The CA appraisal identifies that the key features here are the relationship of the buildings with the landscape and the use of locally derived materials such as timber, flint and clay suggesting a close affinity with the landscape. The lpa identifies the most significant aspects of the setting of the CA as, large arable fields relieved by sparse hedgerows and the narrow, tranquil and rural Hearts Delight Road to the north and south. The lpa identifies 2 Grade 2 LBs (Sharps House and Filmer House) that would be affected.

11.63 Sharps House is a 17th century timber frame property with thatched roof has architectural and historic significance as a surviving example of 17th century Kentish vernacular style and as part of the early development of the hamlet.

⁶² This is taken from LPA16 Appendix B – Heritage Assessment rather than Ms Rouse's Proof-of-Evidence where she uses Medium.

Filmer House is a 15th century timber framed house with 16th and 17th century components. Its architectural and historic significance is as a surviving example of how houses developed between the 15th and 17th centuries as part of the early development of the hamlet. The setting of these buildings consists primarily of the rural landscape to the east and west of Hearts Delight Road. The LBs make a positive contribution for their group value, given their proximity, the similarity of materials, and that they date from a similar period and represent the historical development of the area.

- 11.64 The Ipa concludes that increased traffic movements would have a moderate adverse⁶³ effect, at the lower end of the less than substantial scale, on the CA, its setting and the settings of Sharps House and Filmer House. The HoP's report does not contain an assessment of the Hearts Delight CA or forecast the level of traffic movements. However, given that access to Hearts Delight is through Harman's Corner, it is reasonable to conclude that there would be reductions in traffic. Therefore, it is contradictory to suggest that there would be changes to some of the key significant features of these HAs and considerable change to the significant components of their setting. In terms of traffic impacts, the effect would be neutral. Given the substantial separation between the appeal site and the Hearts Delight CA, the development would not affect the setting and significance of either the CA or the LBs.

Chestnut Street CA and associated Listed Buildings

- 11.65 A significant feature of the Chestnut Street CA is the group of LBs. These are 4 medieval timber framed houses on the southern side of Chestnut Street between 220 and 240m to the west of the appeal site. They are the Hook's Hole - Grade 2*, Olde - Grade 2, Tudor Rose/Dumbles Cottage - Grade 2, and Oldestede - Grade 2*.
- 11.66 Hook's Hole is a Wealden hall house dating from the 15th century with an exposed timber frame and hipped roof of high historical and architectural significance with a large proportion of surviving original fabric. Olde House and Tudor Rose/Dumbles Cottage are 16th century timber-framed houses. They have architectural and historic significance as surviving timber-framed 16th century houses representing the earliest development in the hamlet of Chestnut Street. Oldestede, is a 15th century exposed timber framed house with 17th century additions of high historical and architectural interest as a large 17th century property with surviving original fabric.
- 11.67 The immediate setting of the LBs is formed by their separate plots, gardens and driveways which face directly on to Chestnut Street. The houses are set back and slightly below the level of the road. Whilst shrubs/trees and in the case of Hook's Hole a substantial boundary hedge, screen them from view, the character and architectural details of these buildings, and their relationship, is appreciated from the pavement on the north side of the road.

⁶³ This is taken from LPA16 Appendix B – Heritage Assessment rather than Ms Rouse's Proof-of-Evidence where she uses Medium.

The immediate setting of Hook's Hole also includes the surviving historic farm buildings with which it is associated.

- 11.68 The wider setting of the LBs varies significantly. There is a relationship to Chestnut Street with their frontages facing towards the road to make a visual impression, opposite the later 18th and 19th century cottages. Chestnut Street was a country road rather than a lane, and the construction of the A249 has restored this character. The wider setting of Oldestede includes land to the south and west. The wider setting of Tudor Rose/Dumbles Cottage and Olde includes open land to the south. Given the positions of Oldestede, Tudor Rose/Dumbles and Olde, the distance to the appeal site and intervening landscaping features the appeal site does not, in my view, contribute to the setting or significance of these 3 properties.
- 11.69 Located on the corner of Chestnut Street and School Lane, the wider setting of Hook's Hole is formed by School Lane to the east, the paddock facing Chestnut Street which runs up to the electricity substation, the large modern agricultural buildings and open land to the south. Given the position, scale and visual impact of the large agricultural buildings, the open land beyond to the south-east and that part of the appeal site beyond does not contribute to the setting or significance of Hook's Hole. However, the paddock to east of School Lane does play an incidental element in its significance and a limited contribution to its setting.
- 11.70 The setting of the CA comprises Chestnut Street to the west and east. Westwards there are open views to the south and of modern infilling on the north side of the road. To the east, the 19th century settlement plan continues as far as the Tudor Rose Public House. Beyond the road is bounded by trees screening the A249 on the northern side and to the south the open paddock and a dense group of trees as far as the electricity sub-station.
- 11.71 The setting on the eastern side is formed by School Lane, a narrow country lane rising-up the valley side, defined by roadside hedgerows. On the north-eastern side are the large modern agricultural buildings surrounded by the paddock, and a field to the south that has a rural appearance. The setting on the northern side is formed by the A249, which severs Chestnut Street from part of its rural hinterland. The CA appraisal identifies that *"the road is in a cutting at this point so that visually the traffic is hidden and rather less intrusive than would otherwise be the case."*
- 11.72 The Ipa concludes that increased traffic movements would have a moderate adverse⁶⁴ effect, at the lower end of the less than substantial scale of harm, on the CA, its setting and the settings of Hook's Hole, Olde, Tudor Rose/Dumbles Cottage, and Oldestede. The forecast impact of traffic on the Chestnut Street CA in the AM peak is 520 vehicles or 9 VPM with development as opposed to 347 vehicles, 6 VPM without the development [CD B1 8.203-207]. At the times of my visits (when there was free flowing

⁶⁴ This is taken from LPA16 Appendix B – Heritage Assessment rather than her Proof-of-Evidence where she uses Medium.

traffic on the A249) Chestnut Street through the CA was a busy road such that it could not be regarded as a tranquil area. Whilst the change in traffic levels with the development, would be material, given the degree of screening that already exists and the setback of the LBs from the road, the change in traffic volume would not materially affect the ability to appreciate their architectural or historic significance. Accordingly, in this context, I consider there would be a negligible impact on the CA its setting and the settings of Hooks Hole, Olde, Tudor Rose/Dumbles Cottage, and Oldestede. On the lpa's scale of effects this equates to a "very minor change" [LPA16 Appendix B paragraph 6].

- 11.73 Regarding the LR and the Chestnut Street roundabout, the lpa says that this would be within 90m of the edge of the CA [LPA15 paragraph 6.4.6.]. This in my view, is a significant under estimation of the proposed separation. The plan produced by the lpa at LPA10 Appendix D indicates that the gap from the Tudor Rose Public House to the roundabout would be about 90m. However, the CA boundary plan shows the eastern boundary running along the eastern edge of School Lane and northwards beyond Chestnut Street [LPA 16 Appendix C]. I estimate that the separation to the roundabout would be around double the lpa's figure, which would have a material impact on the magnitude of effect.
- 11.74 The roundabout and LR would be a significant engineering operation resulting in the removal of most of the existing dense deciduous planting on the southern side of Chestnut Street. The planting that would be lost would be replaced by a wider belt of landscaping to screen the roundabout. Currently from the area of the proposed roundabout, looking westwards, the buildings on the edge of the CA are barely visible through a combination of the alignment of the road and the dense planting on its southern side. Even when this area of planting is removed, and before it matures, views of the buildings, particularly, the LBs would be filtered by a combination of the alignment of the road, a mature tree with a substantial canopy located at the western end of the paddock and tall, dense hedge planting on the roadside boundaries of Hook's Hole.
- 11.75 Views eastwards from the CA would change, with the main impact restricted to views from the area around the junction of Chestnut Street and School Lane. The impact would largely be on the amount of open land that can currently be appreciated in the paddock at its eastern end next to Chestnut Street. That said existing views of this area are already filtered by the substantial mature tree and affected by the substantial modern agricultural building in the foreground. Given the degree of separation, the reduction in the degree and appreciation of openness of the agricultural field to the south-east of the agricultural buildings would be negligible.
- 11.76 Overall, using the lpa's matrix of effect, in relation to traffic generation, there would be very minor changes and for the LR/roundabout there would be slight changes to the key significant features of the HAs and slight change to the significant components of their settings. The matrix of effect would identify this a minor/negligible effect [APP16 Appendix B paragraph 6].

Other Listed Buildings

- 11.77 The Ipa acknowledges that the narrow lanes and their character are not significant components of the setting of Cryalls Farmhouse (Grade 2) and Riddles House/Riddles Cottage (Grade 2) and as such neither building would be affected by traffic. [APP15 paragraph 7.61].
- 11.78 Cryalls Farmhouse, dating from the 18th century has architectural significance as a Georgian Farmhouse and although there is no longer any functional relationship to the agricultural land to the north-west its historical significance is through its relationship to the agricultural development of the area. The setting of Cryalls Farmhouse comprises its own substantial and enclosed plot, modern suburban development to the north and east and scrubland/LGS to the south. The main views of the farmhouse are restricted to glimpsed views from Cryalls Lane to the front and rear. The Masterplan shows Cryalls Lane to the rear being retained with open/space landscaping between the lane and proposed housing. To the south, a dense landscaped buffer would be retained between the densely planted curtilage of the house and the proposed LR. Given the above factors and the existing enclosed setting of the farmhouse, the appellants' assessment of a less than substantial impact at the lower end of the spectrum is overly cautious. I consider there would be no effect from the proposed development on the setting of Cryalls Farmhouse or its architectural/historic significance.
- 11.79 Riddles House/Riddles Cottage, located on the junction of Borden Lane and Riddles Lane, has architectural and historic significance as a 16th century building with some 17th century additions. The setting of this building is the 2 roads, the agricultural land to the north-east and south and the wooded scrubland/LGS to the north-west. The introduction of the roundabout onto Borden Lane to the north-east would be a material change to the character of its setting. This would result in less than substantial harm to the setting of Riddles Farmhouse.

Conclusion on the Effect on Heritage Assets

- 11.80 There would be no effect on, The Street, Harman's Corner or Hearts Delight CAs, their settings and associated LBs and no effect on the setting or significance of Cryalls Farmhouse. There would be less than substantial harm at the lowest end of that category to the Chestnut Street CA, its setting and associated LBs and less than substantial harm, again at the lowest end of the scale to Riddles House/Riddles Cottage. This would result in conflict with Policies DM 32 and 33.

Matter F – *The Implications for Biodiversity and Climate Change*

Climate Change

- 11.81 Policy ST 1 seeks to meet the challenge of climate change through the promotion of sustainable design and construction, the expansion of renewable energy, the efficient use of natural resources and the management of emissions. Policies CP 2 seeks to promote sustainable transport through the

location of new development in accordance with LP allocations which minimise the need to travel and facilitate sustainable transport. Policy CP 3 seeks to achieve sustainable and high-quality design. Policy CP 4 seeks to ensure that development makes efficient and prudent use of natural resources including sensitively utilising landscape features, landform, biodiversity and climate change to maximise energy conservation and amenity. Other than a reference back to Policy CP 4 in relation to a strong landscape framework, Policy MU 3 does not refer to climate change.

11.82 Policy DM 19 requires development proposals to include measures to address and adapt to climate change in accordance with national planning policy and guidance, and where appropriate incorporate:

- 1a - use of materials and construction techniques which increase energy efficiency and thermal performance and reduce carbon emissions over the long term;
- 1b - promotion of waste reduction, re-use, recycling and composting, where appropriate during both construction and the life of the development;
- 1d - design buildings which would be adaptable to change and reuse over the long term and include features which enable energy efficient ways of living e.g. adequate drying space, cycle storage, home working and good daylighting;
- 2 - be located, orientated and designed to take advantage of opportunities for decentralised low and zero carbon energy, including passive solar design and, connect to existing and planned decentralised heat and/or power schemes;
- 3 - all new non-residential buildings will aim to reach a BREEAM "Good" standard or equivalent as a minimum. All new non-residential buildings over 1,000sq. m GFA should achieve the BREEAM "Very Good" standard or equivalent.

11.83 Although the lpa's climate change witness⁶⁵ referred to Policy DM 20, this, as worded, relates to the development of renewable and low carbon energy developments and is not, in my view, relevant in this case. This approach is consistent with the approach adopted by the lpa's planning witness⁶⁶.

11.84 Framework paragraphs 149 and 150 say that plans should take a proactive approach to mitigating and adapting to climate change and reduce emissions. The Climate Change Act 2008 as amended in 2019, set a legally binding target to achieve zero greenhouse gas emissions across the UK economy [Doc 29]. Any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards. Framework paragraph 153 indicates that new developments should be expected to take

⁶⁵ X-Examination of Mr Chant-Hall.

⁶⁶ X-Examination of Mr Rushe.

account of landform, layout, orientation massing and landscaping to minimise energy consumption.

- 11.85 PPG on Climate Change reiterates that addressing climate change is one of the Framework's core land-use principles that should underpin plan and decision making. In taking planning decisions attention should be paid to integrating adaptation and mitigation approaches including maximising summer cooling through avoiding solar gain, district heating networks and multifunctioning green infrastructure. PPG identifies that a lpa can set performance standards for new housing that are higher than Building Regulations (BRs), but only up to the equivalent of Level 4 of the Code for Sustainable Homes and no restriction on energy performance standards above BRs for non-housing developments.
- 11.86 In June 2019, the Council adopted a CCD which includes, engagement with businesses, organisations and residents to make the Borough carbon neutral by 2030, to undertake actions including spatial and transport planning to make fewer journeys necessary, and to improve the energy efficiency of new homes and buildings [CD D29]. In a response, the Minister of State for Business, Energy and Clean Growth, wrote that the Government welcomed the Council's commitment to meeting the climate change challenge [Doc 29].
- 11.87 The Minister's letter includes an Annex which identifies some of the actions the Government was taking to combat climate change. The annex identified;
- that in determining planning appeals, whilst the passing of a climate emergency motion would be a material consideration, reiterated that planning law required applications to be determined in accordance with the development plan unless material considerations indicate otherwise;
 - consultation on stronger BRs to pave the way for the Future Homes Standard. The 2020 changes aim to cut carbon emissions by almost a third and a proposal that new homes built to the Future Homes Standard from 2025 should have carbon dioxide emissions 75-80% lower than those built to current building standards;
 - whilst lpa's can set standards that exceed the requirements in the BRs, this is to be amended so that a lpa cannot set standards that go beyond the new BR minimum. The ability to set minimum renewable requirements would not be affected.
- 11.88 The appellants' Sustainability and Energy Statement acknowledges that the scheme has been designed to meet current BRs standards and achieve a reduction in carbon dioxide emissions compared to BRs Part L [CD A77]. The estimated reduction in carbon dioxide emissions would be 2% for Phase 1a and 2% for the Masterplan site. [CD A77 page 17]. The BREEAM 2014 tool shows that with an overall score of 58.7%, the primary school would achieve a BREAM Performance Rating of Very Good. To achieve a Very Good rating a building requires a score of between 55 and 69.

- 11.89 In terms of Policy DM 19 and the relevant criteria, it appears to me that in meeting and bettering the current BRs standards, albeit by only 2%, the appellants have satisfied criterion 1a. Compliance with criterion 1b could be met by imposing relevant planning conditions in relating to the construction and operational phases. Criterion 1d refers to designs that will be adaptable to change over the long term and include energy efficient ways of living with several examples. In terms of these examples i.e. drying space, cycle storage, home working and good daylighting, whilst there is criticism, particularly from BRAD about the use of outdated suburban design themes and queries over adaptability, the Phase 1a scheme would comply with criterion 1d and the remainder of the scheme would be the subject of reserved matters applications.
- 11.90 In terms of criterion 2 it appears to me that the buildings in Phase 1a have been designed and orientated to take account of passive solar energy i.e. solar gain. Currently, no low/zero carbon energy schemes or decentralised heat and/or power schemes exist or are being planned that this development could take advantage of. Other opportunities for low/zero carbon sources of heat/energy, are considered in the Sustainability and Energy Statement and discounted on the basis that either they are not appropriate, or attention would be focussed on improvements to the building fabric performance. Albeit at the lower end of the range, the primary school would achieve the BREEAM "Very Good" rating and as such would meet Criterion 3. Whilst the lpa may seek the building to achieve higher scores, this part of the development meets what the policy requires.
- 11.91 In terms of other Policy DM 19 criteria, particularly 1d (a mixed-use development which is accessible by non-car modes) the criticism is that it is located and designed to be car reliant. The bulk of the site falls within the allocated site, which the LPI found was an appropriate and sustainable location for residential development. The supporting text to the allocation recognises that the site is located close to a good range of services and public transport choices [CD C2 paragraph 6.6.51]. The Masterplan provides for commercial facilities to serve the development and whilst the proposal no longer includes a GP surgery that is as a result of the requirements of the CCG and not a downgrading of the proposed facilities by the appellants [8.31].
- 11.92 The design of the scheme provides for pedestrian and cycle access utilising, upgrading and expanding the existing PROW. The onsite highway design and offsite highway improvements provide the opportunity for public transport to access the area. The fact that the S106 Agreement does not provide, as some schemes in other lpas have done, for contributions to dedicated or redirected bus services is not something to be laid at the door of the appellants [8.26]. As far as I am aware, they were never asked, and I understand it is not an approach that this HA adopts. The S106 does provide for the submission of a Travel Plan, which the HA considers acceptable, to encourage a modal shift in transport terms. All these matters are the subject of a comprehensive suite of planning conditions.

- 11.93 I have considerable sympathy with the thrust of submissions that the appellants have done the bare minimum and have not pushed the design process beyond the standard estate layout [8.30]. However, taken in the round, the development meets the energy efficiency standards required by current BRs and would be compliant with Policy DM 19. As far as the appellants are concerned that is where the matter ends.
- 11.94 The above, highlights the conundrum regarding climate change [6.70]. On one hand, whilst it is recognised that BRs and local/national policy lag behind current thinking, S38(6) of the Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise [Doc 29]. However, on the other hand, there is increasing acknowledgment and recognition at local, national and international level that Climate Change is an emergency and the need to act is urgent [6.62-6.64].
- 11.95 The lpa's case is essentially predicated on the idea that all local and national policy and guidance needs updating and that the decision maker should not apply the current set of standards. The appellants highlight the difficulty for the decision maker in adopting that approach, that there is a plan-led system where it is not possible or desirable to dip into the "Black Box" and predict what policies might apply and then apply them.
- 11.96 Whilst I have some sympathy with that argument, the climate change emergency is a material consideration and the need for action increases daily. The commitment is to carbon neutrality locally by 2030 and nationally by 2050 and the promotion of stronger BRs to pave the way for the Future Homes Standard. The BRs changes aim to cut carbon emissions by almost a third and new homes from 2025 should have carbon dioxide emissions 75-80% lower than those built to current standards. This points to a clear direction of travel and the significant weight to be attached to tackling climate change as a material consideration.
- 11.97 The planning regime has a role to play and cannot leave climate change to other regimes to deal with particularly when those regimes have not kept pace with the requirement to take urgent and material action. In this context the appellants estimated reduction in carbon dioxide of 2% for Phase 1a and 2% for the Masterplan site when seen in the context of the problem and the direction of travel bears no comparison [CD A77 page 17 & Doc 29 Annex]. In this context, the lpa's SC 11 and SPCC12 are a reasonable and necessary response to the scale and urgency of the climate change emergency [10.4 & Annex B]. The appellants do not accept either condition particularly SPCC12 as a pre-commencement [10.4]. These conditions require a 4-stage approach to reducing carbon emissions. SC11 requires that dwellings in Phase 1a would be constructed to achieve at least a 50% reduction in the Dwelling Emission Rate compared to the target fabric energy efficiency rates required by Part L1A of the BRs and a reduction in carbon emissions of at least 50% compared to the target emission rate as required under Part L of the BRs 2013.

11.98 SPCC12 requires that:

- any dwelling within a reserved matters phase approved between 2020 and 2023 (inclusive), would need to show a reduction in carbon emissions of at least 50% compared to the target emission rate as required under Part L of the BRs 2013;
- any dwelling within a reserved matters phase approved between 2024 and 2027, would need to show a reduction in carbon emissions of at least 75% compared to the target emission rate as required under Part L of the BRs 2013; and
- any dwelling within a reserved matters phase approved in or after 2028, would need to show a reduction in carbon emissions of 100% (Zero Carbon) compared to the target emission rate as required under Part L of the BRs 2013.

11.99 Drawing the above together, whilst on-balance the proposal would not conflict with Policy DM 19, the scale and urgency of the climate change emergency is such that it would constitute a material consideration of significant weight to support the imposition of conditions to mitigate the impact of the development.

Biodiversity

11.100 Policy DM 28 seeks to ensure that development will conserve, enhance and extend biodiversity, minimise any adverse impacts and compensate where impacts cannot be mitigated and where possible provide for net gains in biodiversity. Policy DM 29 seeks to ensure the protection, enhancement and management of hedges. Policy MU 3, criterion 1, refers to a net gain in biodiversity as part of an integrated landscape and ecological strategy.

11.101 Framework paragraph 170 indicates that decisions should contribute to and enhance the natural environment by, amongst other things, minimising impacts on and providing net gains for biodiversity. Framework paragraph 175d, encourages opportunities for biodiversity improvements in and around developments, especially where this can secure measurable net gains for biodiversity.

11.102 The LP does not refer to measurable net gain, therefore whether there is compliance with the policy is a matter of professional judgement. Whilst the Framework refers to "*...measurable net gains...*" it does not define that measure or how it should be measured. PPG, whilst indicating that several metrics to measure and monitor aspects of wider environmental net gain are under development⁶⁷, it does not specify a figure. Thus, whether there is compliance with national policy is the subject of professional judgement.

11.103 The 2019-2020 Environment Bill refers to the biodiversity gain objective and indicates that this would be met if the biodiversity value attributable to the

⁶⁷ Natural Environment PPG Paragraph 028 Reference ID: 8-028-20190721.

development exceeds the pre-development biodiversity value of the onsite habitat by at least the relevant percentage, which currently is set at 10% [Doc 45]. Notwithstanding the lpa's submission, as I understand it the Bill has only recently passed its first reading and a date for a second reading has yet to be set [6.57]. Thus, whilst the Bill points to the direction of travel, it has a considerable way to go before receiving Royal Assent and being enacted.

11.104 The lpa take issue with the appellants' ecological survey work suggesting it is an inadequate basis for reaching a "*...proper ecological assessment...*". An example of this is an absence of surveys in relation to the Dormouse, a matter I will return to later. Guidance on the scale and nature of relevant survey work is found in 3 areas, ODPM Circular 06/2005⁶⁸, PPG⁶⁹ and professional guidance produced by the Chartered Institute of Ecology and Environmental Management⁷⁰. The thrust of Circular advice and PPG is that surveys for protected species should not be required unless there is a reasonable likelihood of the species being present and affected by the development and assessments should be proportionate. Professional guidance indicates that an ecological impact assessment can be undertaken without detailed survey information for a given ecological feature, where the outcomes of the survey can be reasonably predicted, or would make no material difference to the assessment of likely significant effects, and appropriate mitigation can be designed and secured on the basis of the information available. [5.73 & 5.74].

11.105 KCC's Ecological Advice Service, a source of independent professional advice for lpas, reviewed the ecological information and following requests for further information and clarification reassessed the evidence concluding that the, "*...submitted ecological information...provides a good understanding of the ecological interest of the site...*" and that with the imposition of relevant conditions, "*...the ecological impact associated with the proposed development can be mitigated...*" [CD A40]. Nothing has changed [5.70].

11.106 In relation to roosting bats, badgers, overwintering birds and amphibians, the lpa confirmed that it took no objection [5.71]. Dormouse and reptiles were scoped out of the survey on the basis that habitats were sub-optimal and were likely either not present or unlikely to be affected. Such an approach is consistent with both national and professional advice [5.72 & 5.73] and the weight of evidence particularly in relation to the suitability of the site as a habitat or foraging area for the Dormouse and the precautionary approach adopted as evidenced in the ES [CD A11 paragraphs 11.131-11.168; APP11 paragraphs 2.4-2.6]. In addition, the appellants have agreed a suite of conditions 58 to 62 that provide for the updating of baseline surveys for breeding birds, bats, reptiles and Dormouse, the provision of a Construction

⁶⁸ Biodiversity and Geological Conservation.

⁶⁹ Natural Environment PPG Paragraph 018 Reference ID: 8-018-20190721.

⁷⁰ Guidelines for Preliminary Ecological Appraisal.

Ecological Management Plan and a Landscape and Ecological Management Plan. These are comprehensive and would provide substantial mitigation.

- 11.107 An issue has been taken with the potential impact on Skylarks and the appropriateness of the mitigation [6.53 & 54; 8.38]. The appellants have submitted a mitigation strategy that provides for the creation of Skylark plots on land adjacent to the appeal site and is a matter that can be dealt with by a condition [APP11 paragraphs 3.1-3.5 & Appendix R3; 5.82]. Whilst the proposed replacement area is sub-optimal, it is recognised that it is not always possible to provide replacement on a 1 to 1 basis and that the provision of Skylark plots does have beneficial impact [5.81]. KCC's assessment of the proposed mitigation concluded that it is acceptable and on balance I have no reason to disagree.
- 11.108 Net gain, albeit there is no measure of what that is, is LP and national policy. To demonstrate net gain, the appellants have used the beta version of the DEFRA Biodiversity Metric 2.0, whose use comes with strong caveats [5.83]. The first run of the metric shows an enhancement of some 15.9% [APP10 Appendix 6 Table A3]. When sensitivity tested to address concerns raised by the lpa, the Metric returns an enhancement of some 12.9% [APP12 paragraph 2.2 & Appendix R4]. In my view, these differences show some of the issues raised about the reliability of the beta version and reiterate that the metric and its outputs need to be interpreted alongside ecological expertise and common sense [CD C32 paragraph 2.22 & 5.83]. The lpa's own quantitative assessment returns a 20% net loss of biodiversity [LPA12 paragraph 3.2.10]. Unfortunately, the lpa has not shown how that result has been reached and it must be treated with considerable caution [5.85].
- 11.109 Notwithstanding the issues surrounding the use of the Metric, the appellants' running of the model does return a net gain consistent with the level suggested in the emerging Environment Bill. However, as the caveats indicate, the output should be interpreted alongside professional judgement and common sense. The appeal scheme provides for a comprehensive landscaping scheme that is not only designed to mitigate the landscape and visual impacts of the development but would, through the comprehensive suite of planning conditions relating to biodiversity, provide material biodiversity enhancement. Moreover, the significant contributions that future residents would make through the landscaping of their gardens to biodiversity should not be ignored. It is widely recognised that domestic gardens can have a significant beneficial impact on enhancing biodiversity. Drawing all the above together, I consider that the proposed scheme would lead to a material increase in biodiversity.

Special Protection Areas

- 11.110 Although not functionally linked to the Medway Estuary and Marshes, The Swale Special Protection Area (SPA) and Ramsar Site and the Thames Estuary and Marshes SPA and Ramsar Site, the appeal site is located within the 6km zone of influence of these areas. These wetland sites are classified

for their waders and waterfowl, which are rare or vulnerable and as areas that form a critically important network for birds on migration.

- 11.111 Research indicates that additional dwellings are likely to result in additional recreational activity, causing disturbance to protected bird species on the SPAs and Ramsar Sites. Thus, development proposals including the appeal site within the 6km zone of influence could lead to increased recreational pressure and in combination could have a likely significant impact on the integrity of the SPAs and Ramsar Sites. Natural England indicate that without appropriate mitigation the scheme would have an adverse effect on the integrity of the SPAs, Ramsar Site and SSSI [CD A40 page 28].
- 11.112 The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) sets out a strategy to resolve disturbance issues to wintering birds on the North Kent Marshes, focusing on the European Protected Sites and Ramsar Sites and their internationally important bird interest features. The suite of strategic mitigation measures is delivered through the Bird Wise project, a partnership of local authorities and conservation organisations in North Kent, to ensure that development, considered in-combination, does not have an adverse effect on the integrity of the European sites [CD D45]. A per-dwelling tariff has been calculated using the total cost of delivering the mitigation measures in-perpetuity and the planned number of additional dwellings expected to be built in North Kent. Natural England has worked with the north Kent Ipas to support them in preparing the SAMMS and the underpinning evidence base. Natural England agree that the mitigation measures to ensure additional impacts from recreational disturbance to the SPAs and Ramsar Sites are ecologically sound.
- 11.113 The appellants' reports include a wintering birds survey, which shows, given its distance from the SPA, the relative abundance of suitable grassland and arable fields closer to the SPA, and the physical separation which disconnects the SPAs and the site, that the appeal site does not support such species. The appellants refer to the open space measures proposed as part of the development and recreational areas closer proximity the SPAs. On this basis, the appellants conclude that adverse impacts on the SPA would be unlikely. Notwithstanding this, the appellants have agreed to make financial payments under SAMMS through a S106 agreement [10.30].
- 11.114 Based on the submitted evidence and the financial contributions being secured to the North Kent SAMMS, I conclude that suitable mitigation can be provided. Accordingly, the appeal scheme would not have an adverse effect on the integrity of the Medway Estuary and Marshes Special Protection Area and Ramsar Site, The Swale Special Protection Area and Ramsar Site and, Thames Estuary and Marshes Special Protection Area and Ramsar Site.

Conclusion on Biodiversity

- 11.115 The scheme would not have an adverse effect on biodiversity and on the balance of probabilities would result in a biodiversity net gain. The development would not conflict with the objectives of Policy DM 28 and Policy MU 3 and national policy.

Matter G – *The Implications for Community Facilities and Infrastructure*

- 11.116 Although not referred to in the putative RfR, Policy CP 6 indicates that development proposals will be expected to deliver timely infrastructure, safeguard existing community services and facilities, and provide for utility provisions including digital infrastructure. Putative RfR 2g refers to the failure of the S106 Agreement to sufficiently mitigate off-site impacts of the development on the surrounding areas including impacts on local amenities such as Borden Parish Hall, the adult fitness equipment in the Playstool Recreation Ground in Borden and the adjacent woodland. In addition, the contributions to the improvements to facilities at Old Bordenians and Gore Court provide for benefit to the wider community [10.22]
- 11.117 Regarding community facilities specifically referred to in the putative RfR, the S106 Agreement provides £40,000 for the management and maintenance of the Borden Nature Reserve, £42,000 for the provision and maintenance of adult fitness equipment and £7,500 towards the maintenance of woodland at the Playstool Recreation Ground [10.22b, e & f]. These matters addressed concerns raised by BPC regarding planning obligations [Doc 16].
- 11.118 Borden Parish Hall is a well-used facility and there is little scope to provide additional facilities. However, the S106 Agreement makes provision for financial contributions to the provision of community facilities off-site at the Sittingbourne Hub, the New House Youth Centre and community facilities at the on-site Sports Club and Community Building [10.22i, j, k & p & 10.31]. The Agreement provides for the establishment of a Management Committee for the Sports Club and Community Building, which would include a Council officer and Councillors from the Borough and Borden Parish Councils. The purpose of the Management Committee is to ensure that the building would be available for wider community uses independent of the sports use. The Ipa confirmed that the concerns identified in putative RfR 2g were dealt with through the S106 Agreement.
- 11.119 SCs 10, 49 and 50 relate to the connections to, protection of and, where necessary, diversions to the public sewerage system [10.3 & 10.15]. SC16 provides for the installation of telecommunications infrastructure and high-speed fibre optic connections to all buildings within the development [10.6].
- 11.120 Existing pressures on healthcare facilities, particularly primary care, and the deletion of a medical facility included in an early iteration of the planning application are significant concerns of residents [8.31 & Section 9]. Although acknowledging the pressure on existing GP facilities the CCG does not want a medical facility to be provided on the site. Rather the CCG seeks a financial contribution of £360 per resident towards expanding existing facilities within the vicinity of the development [CD A40 page 110]. The S106 Agreement provides a contribution of £86,292 for Phase 1a and thereafter a contribution of £360 per person [10.22c]. Given the CCGs position on this issue, the absence of a health facility in this application should not weigh against it.
- 11.121 Having regard to the above, the appeal scheme makes acceptable provision for community infrastructure and there would be no conflict with Policy CP 6.

Matter H – Air Quality

- 11.122 Policy DM 6 (2d) indicates that when assessing the impacts on the highway network, development proposals will integrate air quality management and environmental quality into the location and design of and access to development and demonstrate that proposals do not worsen air quality to an unacceptable degree taking into account cumulative impact likely on Air Quality Management Areas. Framework paragraph 181 indicates that decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants considering the presence of AQMAs and Clean Air Zones. Opportunities to improve air quality or mitigate impacts should be identified such as traffic and travel management, green infrastructure provision and enhancement.
- 11.123 The Government published an Air Quality Strategy in 2007 which sets out measures to improve and protect air quality and how the obligations contained in EU Directives are to be met [CD D9]. The AQS sets standards and objectives for the main air pollutants of which NO₂, PM₁₀ and PM_{2.5} are relevant to this case. The Air Quality Standards Regulations 2010 and the EU Directive 2008/50/EC set legally binding limits for NO₂, PM₁₀ and PM_{2.5}. The annual limits for NO₂ are 40_{ug,m³}, for PM₁₀ the limit is 50_{ug,m³} and for PM_{2.5} the limit is 25_{ug,m³} [APP6 Appendix A].
- 11.124 Air Quality Planning Guidance (Mitigation Option A) 2015 was published by the Kent and Medway Air Quality Partnership [CD D10]. The guidance uses a method for assessing the air quality impacts of a development which includes the quantification of impacts, calculation of damage costs, and the identification of mitigation measures to be implemented to negate the impact of development on air quality. Table 1 provides a classification magnitude of impact on air quality ranging from Imperceptible to Very High and Table 2 sets out the planning requirements and outcomes by magnitude [CD A11 page 10 and 11]. The guidance also contains recommendations for appropriate mitigation measures. Swale has produced an Air Quality Action Plan (2018 – 2022) outlining the actions to be taken to improve air quality. [Doc 24]. Relevant actions include, development control, promoting travel alternatives and transport planning and infrastructure.
- 11.125 New development will impact on air quality and finding the allocated site sound the impacts on air quality were considered and that the need to protect air quality had been balanced appropriately with the overall benefits of the strategy [5.25]. The modelling of air quality impacts undertaken by the appellants accords with current best practice and guidelines. This conclusion is supported by independent consultants commissioned by the Ipa and the Council's own technical officer [CD A34 & CD B1 paragraphs 8.230/231]. On this basis, I consider the predicted outcomes are a sound basis for determining the impact on local air quality.
- 11.126 A key area of concern is the potential impact on receptors on the A2 at Keycol Hill to the north-west of the Key Street roundabout where several residential receptor points are assessed [APP5 Table 1 & Figure 1 Points 16,

17, 24, 25 & 26]. Here, without development, the predicted Annual Mean NO₂ concentrations are close to but do not exceed the statutory limit of 40_{ug/m³}. For these receptor points, the impact of the development at the opening year would make no meaningful difference in predicted levels, such that the development would not materially change the existing situation [APP5 Table 8]. Elsewhere for NO₂ levels, a Medium Adverse effect i.e. more than 1% difference between the objective and predicted level impacts are predicted for 4 receptor points (11, 12, 13 & 14) on Wises Lane, a receptor on Chestnut Street (23) and a receptor on Borden Lane (1). All other receptor locations would show beneficial reductions in NO₂ levels. For PM₁₀ levels only one receptor (13) on Wises Lane would show a Medium Adverse effect, the remainder would experience Low/Imperceptible changes [APP5 Table 9]. For PM_{2.5} levels only one receptor (13) on Wises Lane would show a Medium Adverse effect with the remainder experiencing Low/Imperceptible change [APP5 Table 10].

11.127 Given some receptors would experience Medium Adverse or Low/Imperceptible effects, the Kent and Medway Air Quality Guidance identifies the planning requirement as mitigation to include reducing exposure through various measures, emissions reduction technologies and/or development redesign and the minimum mitigation for the development scheme [CD D10 Table 2]. The standard mitigation for all residential developments requires that all gas-fired boilers are to meet a minimum standard of less than 40mgNO_x/kWh and the provision of 1 electric vehicle charging point per dwelling with dedicated car parking or 1 charging point per 10 spaces of unallocated parking. The emissions mitigation statement should show the mitigation proposed to be equivalent to the value of the emissions calculation and to provide for the minimisation of dust emissions from construction.

11.128 The changes in the Damage Cost calculations from the ES, through the updated ES to the appellant's evidence to the inquiry rather than demonstrating inconsistency reflect changes in the estimated number of annual trips generated by the development, the impact that this has on the annual NO_x and PM₁₀ levels and material changes in the Damage Cost estimates published by DEFRA. For example, in 2015 NO_x⁷¹ was priced at £18,182⁷² per tonne as opposed to £8,343 per tonne in 2019. Based on the evidence before me, I consider the appellants' use of the Central Damage Cost figure to be reasonable resulting in a robust Damage Cost calculation [APP5 paragraph 5.28].

11.129 During the construction phases of the development best practice measures and a planning condition requiring a Construction Management Plan would mitigate air quality impacts during construction [APP6 Appendix H]. In terms of appropriate mitigation, the provision of the LR and off-site highway

⁷¹ Transport - Urban Small.

⁷² Inspector's Note, the figure of £28,788 per tonne quoted by the lpa at 6.43 refers to the 2015 Central figure for Transport Urban Medium.

improvements at the Key Street and the Stockbury roundabouts, would result in beneficial impacts at most of the key receptors [APP5 paragraphs 5.29 to 5.38]. In line with the Kent and Medway Air Quality Guidance, the development would include the provision of electric vehicle charging points and gas boilers to meet the minimum standard of less than 40 mgNO₂/kWh. The provision of a Travel Plan would include mechanisms to discourage high emission vehicle use and encourage the uptake of low emission technologies, information on alternative sustainable travel options, the provision of travel incentives, providing cycle parking. The Travel Plan is estimated at achieving at least a 5% shift. Providing and improving cycle links and the green infrastructure would contribute to absorbing pollutants.

- 11.130 Post mitigation, whilst there would be no material changes in the key areas at Key Street and Wises Lane, there would be no worsening of air quality and in most locations there would be a beneficial effect and overall predicted concentrations would be well below i.e. less than 75% of the relevant objective levels. Whilst I agree that the introduction of low emission gas boilers would not directly impact on mitigating air pollution from vehicles, it does form part of the local air quality management strategy and is therefore reasonable to include this within the mitigation. Similarly, whilst the green infrastructure is largely included within the scheme for landscape and visual impact reasons, and its impact on air quality would not be immediate it is not unreasonable to include these. In any event even if these elements are removed from the costs of mitigation, the remainder would still far exceed the estimated Damage Cost based on the DEFRA model. Similarly, if the appellants had used the DEFRA High Damage Cost figures, the value of the mitigation measures would still exceed the estimated Damage Costs [5.30].
- 11.131 The lpa sums its concerns up as an acknowledgement that air quality objectives would not be breached but that additional pollution is being introduced [6.46]. However, that is a position that has already been accepted by the LP allocation. Inevitably, new development will impact on air quality. However, it appears to me that the approach being adopted both by the lpa and BRAD points ultimately to a no-development scenario, which given the need for new dwellings is an unrealistic argument. This development with the LR and direct access onto the A249 would result in reductions in traffic on the existing A2 and the Key Street roundabout with consequent decreases in congestion and improvements in air quality through reduced vehicle emissions. Whilst the development would involve changes in air quality at the appeal site through vehicle and dwelling emissions where no houses currently exist and traffic levels are lower, with the direct mitigation measures and conditions to reduce dwelling emissions it is reasonable to conclude that air quality levels would be well below the objective limits [8.33 & 8.34]. Thus, whilst the effects of the development could, simplistically, be described as redistribution, the objective of Policy DM 6 (2d) that “...proposals do not worsen air quality to an unacceptable degree...”.

Matter I - *The implications for neighbours' living Conditions*

11.132 Whilst the lpa has identified some potential issues relating to traffic and air quality impacts and are dealt with above, the more general neighbours' issues do not form part of its case [6.75]. The concerns about this aspect of the development arise from residents' representations made at the time of the application and relate to the impact on residents in Dental Close and Wises Lane in terms of a loss of privacy, light and outlook largely from the Phase 1a and proposed dwellings to the east including on the land to the east outside the allocated site.

11.133 Phase 1a is wholly within the allocated site. Whilst most existing dwellings would lose their outlook over the agricultural field, the LP Development Concepts Plan shows that the principle of built development to the rear of houses on Dental Close and on the southern side of Wises Lane along with a point of primary vehicular access is acceptable [CD C2 page 178]. The layout plan for Phase 1a shows adequate separation between the proposed dwellings on Phase 1a and the existing dwellings such that there would be no loss of privacy or light [CD A74]. The remainder of the land to the east and south of Dental Close forms part of the outline application. As part of a reserved matters application, the lpa could ensure adequate separation to avoid adverse effects on existing residents.

11.134 For the above reasons, there would be no adverse effect on the living conditions of adjoining residents.

Matter J - *the supply of land for housing and the implications for the application of planning policy.*

11.135 Framework paragraph 59 sets out the objective of significantly boosting the supply of homes. The Framework requires lpas to identify a 5-year supply of deliverable sites including an appropriate buffer. The HLS position is a matter that was not discussed at the inquiry but rather was dealt with by way of Position Statements (Docs 47 & 48). The lpa accepts that by virtue of the Framework's HDT and the associated 20% buffer that the HLS stands at some 4.6-years [6.10 & Doc 47]. The appellants submit that given slippage in the delivery of some sites the HLS position has not improved and may have deteriorated since the 2017/18 Statement of Housing Land supply was prepared. What is agreed is that the absence of a 5-year HLS engages the Framework paragraph 11(d) "tilted balance" save potentially for issues relating to heritage, Framework Footnote 6.

11.136 There is still disagreement in the way that balance is to be applied. The appellants say that the delivery of a substantial number of market and affordable homes attracts substantial weight [5.89]. The lpa say that the weight to be attached to the relevant development plan policies is tempered by the steps the lpa is taking to address the deficit. The lpa has published a Housing Delivery Test Action Plan featuring: a review of the LP with consultation in early 2020 including progressing 4 new communities or strategic sites that would collectively provide for some 20,000 new homes and infrastructure with a view to adopting the plan in 2023; a SHLA update;

working with partners to secure funding for road improvements; continuing to monitor the HLS and to continue to make use of Planning Performance Agreements to ensure the timely decision making [CD C19].

Matter k – *Benefits associated with the development.*

- 11.137 Whether or not the allocated site is deliverable, I consider that in carrying out the planning balance it is necessary to adopt a position where the full benefits of the proposed development are weighed against all the harms and not, as the lpa appears to have done, weigh the net benefits of the additional development against the gross harms [5.92] .
- 11.138 The development would result in economic benefits [CD A46]. Here, the use of Gross Value Added⁷³ is, in my experience, an accepted tool to show the potential economic benefits of a scheme.
- 11.139 During the 10-year construction phase an average of 140 jobs per month would be created with a GVA of some £59m. In the construction supply chain, some 98 indirect jobs would be supported with a GVA of some £46m. The total GVA for the development would be in the region of some £105m.
- 11.140 The proposed retail/commercial facilities could support a total of some 24 full-time equivalent jobs, the primary school a total of 33 jobs. The relocation of the rugby club would result in the relocation of some part-time staff from Gore Court. However, the more intensive use of the new building by both the rugby club and the wider community uses proposed would have the potential for both full and part-time employment.
- 11.141 Future residents could generate economic growth of some £31m GVA and some £13.4m of commercial expenditure. Even accepting the lpa's submission that a true reflection of the GVA attributed to economically active residents would be some 50% of the appellants estimate, the contribution would be a material sum [LPA18 paragraphs 6.19-6.24]. A New Homes Bonus of some £4.8m would be provided and £64,500 per annum in business rates. Based on the property bands used, the likely contribution of council tax payments is disputed. However, there would be a material contribution to the local economy [CD A46 paragraph 3.16 & LPA18 paragraphs 6.15-6.18].
- 11.142 Whilst the construction period would generate short to medium term economic benefits and allowing for the caveats raised by the lpa, I consider the total economic benefits of the development would have a positive effect on the local economy and attracts **substantial weight**.
- 11.143 The scheme would deliver a significant amount of market and affordable housing of up to 675 dwellings of which 81 would be affordable homes. Whilst criterion 5 of Policy CP5 requires development to achieve a mix of house types consistent with the SHMA, this is a Borough wide policy and should not be applied rigidly to every site. Moreover, the policy needs to be

⁷³ Measure of the value of goods and services produced in an area, industry or sector of an economy

read in the context of the quality and purposes of housing identified in the LP. For the area of the appeal site, which appears to be generally identified as, “a *more prosperous area*”, the objective is not to change an area’s housing offer [CD C2 Table 5.3.1]. Moreover, whilst the Ipa may have to make choices, the bulk of the scheme is in outline, and given the extended period over which the development would take place there is the opportunity to assess the housing mix against identified need [8.16]. That said, notwithstanding, the possible tension within Policy CP 3, the appellants acknowledge that the housing mix as proposed attracts some negative weight [8.16].

- 11.144 There is an acknowledged need for affordable homes and the numbers proposed (81), would be below that required using the ratios set by Policy DM 8. However, the S106 Agreement provides for an Affordable Housing Viability Review to identify whether the development achieves a surplus, which would trigger a requirement to provide additional affordable homes up to the Policy maximum of 92. Part of the viability exercise related to the cost of off-site highway works particularly to the Key Street roundabout and the link to the A249. Since then the HIF scheme relating to these works has been approved, which could in theory release funds. Clearly the viability exercise would have to be redone at the appropriate trigger point provided for by the conditions, but there appears to be a strong likelihood that additional affordable housing could be provided to reflect LP requirements.
- 11.145 Recognising that Policy CP 3 is a Borough-wide policy, the potential tensions, within it and given the considerable unmet need for affordable housing, I consider the contribution of the scheme in relation to the provision of housing attracts **significant weight**.
- 11.146 The creation of a link between Borden Lane and Chestnut Street with access onto the southbound A249 has been identified to provide benefits [Appendix PB4 paragraphs 29-31; 5.14 & 5.22-5.23]. Following a sustainability assessment, the benefits were identified as providing more significant improvements to the Key Street/A249 and the Key Street roundabout, the LR would assist in mitigating current conditions on the A2 east of Key Street and would reduce the attractiveness of rat-running alternative to the A249 through the rural area. Mitigating congestion on the A2 and the provision of an alternative route would contribute to improving air quality along this key route into and out of Sittingbourne [CD A40 page 172]. I consider these positive benefits attract **substantial weight**.
- 11.147 The provision of facilities for Sittingbourne Rugby Football Club provides for positive social benefits. The club share facilities with hockey and cricket clubs. The playing pitches for the Rugby Club are divorced from the shared clubhouse and their use involves a significant walk for both players and spectators. The remoteness of the pitches means that junior rugby coaching takes place on the grassed area to the front of the clubhouse. This area is also used as a cricket square and outfield. Given the nature of these sports, I have no doubt that this dual use results in conflict between the clubs and affects the ability of both to develop. The dedicated facilities at the appeal

site would allow the rugby club to flourish and provide a greater contribution to the community. I consider these positive benefits attract **substantial weight**.

11.148 Taking all the economic and social benefits together, I conclude that the public benefits of the appeal proposal should be accorded **substantial weight** in the overall planning balance.

The Planning Balance and Conclusions

11.149 Given the agreed absence of a 5-year HLS, the Framework paragraph 11 tilted balance applies unless the policies in the Framework regarding the protection of HAs provide a clear a reason for refusing the development (Footnote 6).

11.150 There would be no effect on, The Street, Harman's Corner or Hearts Delight CAs, their settings and associated LBs and no effect on the setting or significance of Cryalls Farmhouse. There would be less than substantial harm at the lowest end of that category to the Chestnut Street CA, its setting and associated LBs and less than substantial harm, again at the lowest end of that category to Riddles House/Riddles Cottage and conflict with Policies DM 32 and 33.

11.151 Framework paragraph 196 says that where a development proposal would lead to less than substantial harm to the significance of a designated HA, that harm should be weighed against the public benefits of the proposal. Having regard to the substantial weight attaching to the public benefits of this proposal, I conclude they outweigh the finding of less than substantial harm. Accordingly, the Framework paragraph 11 tilted balance is not disengaged in this case. That said, Framework paragraph 193 advises that when considering the impact of a proposal on the significance of a designated HA, great weight should be attached to the asset's conservation irrespective of the level of harm. Accordingly, in the planning balance, the finding of less than substantial harm to the designated HAs is conflict with Policies DM 32 and 33 attracts **substantial negative weight**.

11.152 Subject to the implementation of mitigation measures that are the subject of planning conditions and the S106 Agreement I conclude that this proposal would not have an unacceptable effect on the safety and free of traffic on the local or strategic highway network. As such the proposal would not conflict with Policy DM 6, DM 26, criterion 6 of Policy MU 3 and Framework paragraph 109. In the planning balance, this matter is neutral.

11.153 The appeal scheme would result in moderate adverse landscape and visual effects. Those effects would be experienced at the north-western end of the development. Whilst the appeal scheme would not result in the merging of the settlements, the extent of the separation between Sittingbourne and Chestnut Street would be significantly reduced through a permanent loss of open land within the ILCG. The impact of the LR through the housing development is a matter that could be controlled through conditions and the approval of reserved matters. I conclude that the provision of a LR would not

unacceptably affect the character and appearance of the development or have an unacceptable impact on the LGS.

- 11.154 The moderate adverse landscape and visual effects of the proposal would conflict with Policies DM 14, 24 and DM 25. Notwithstanding that in this case the tilted balance would apply, I consider given the objectives of these policies, I accord them significant weight. As such in the planning balance the conflict with Policies DM 14, 24 and DM 25 attract **significant negative weight**.
- 11.155 The proposal involves B&MV agricultural land that is not allocated in the LP for development there would be some conflict with Policy DM 31. That said, I conclude that the proposal would not adversely affect the viability of the remaining holding or that it would result in the accumulated and significant loss of B&MV agricultural land. In these circumstances I conclude the proposal would not conflict with Policy DM 31. In the planning balance, this matter is neutral.
- 11.156 The proposal would conflict with Policy CP 5 relating to delivering a wide choice of homes and Policy DM 8 relating to the provision of affordable homes.
- 11.157 The proposal would not have an adverse impact on biodiversity and demonstrates a net gain. As such I conclude that the proposal would not conflict with Policies DM 28, DM 29 and criterion 1 of Policy MU 3. In the planning balance, this matter is neutral.
- 11.158 The proposal provides for acceptable levels of community facilities and infrastructure and would not conflict with Policy CP 6. The proposal would not have an adverse effect on neighbours' living conditions. In the planning balance, these matters are neutral.
- 11.159 The proposal would not result in a worsening of air quality and with the implementation of the LR, off-site highway improvements and the damage mitigation measures, which involve electric vehicle charging points, Travel Plan measures and low emission boilers would result in an overall improvement in air quality. These measures would be significantly reinforced by the imposition of SC 11 and SPCC 12 [10.4]. As such the proposal would not conflict with Policy DM 6 2(d). In the planning balance, this matter is neutral.
- 11.160 The appeal site includes land that is already allocated in the LP as a sustainable location for residential development. With the implementation of the off-site highway works, the Travel Plan and the improvement of existing pedestrian links, I consider the proposed development would be sustainable. The design and layout of Phase 1a is acceptable and the remaining development would be controlled through the reserved matters applications and conditions. In this context I conclude that the proposal would not conflict with Policies ST1 and Policies CP2, 3 and 4. In the planning balance, these matters are neutral.

11.161 BPC, BRAD and residents all express concern that the failure to produce a Masterplan in conjunction with relevant stakeholders before the application was submitted conflicts with Policy MU 3. Criterion 6 of the policy and the supporting text at paragraph 6.6.46, indicate that a Masterplan/development brief is required. However, what the policy, particularly criterion 6, is not specific on are timings or that a Masterplan should be adopted prior to the submission of an application. In this case, consistent with the Ipa's normal procedures and the Framework, the application was the subject of pre-application consultation with the local community and various named consultees [CD A44, CD B1 paragraph 8.13]. I have considerable sympathy with the obvious frustration of residents who display a strong desire to be deeply involved in the future of their area and have been alienated. The appellants have missed a significant opportunity to harness the skill and enthusiasm of these residents. However, the submission of a Masterplan/development brief with the outline application is not in breach of Policy MU 3.

11.162 Taking into account the conflict with Policies CP 5 and DM 8 and the substantial negative weight I attach to the conflict with Policies DM 32 and 33 and the significant negative weight to the conflict with Policies DM 14, 24 , 25, I consider that the substantial weight that attaches to the economic benefits of the proposal, the substantial benefits that would flow from the provision of a LR, the substantial benefits flowing from the relocation of the Rugby Club and the significant benefits arising from the provision of market and affordable housing significantly and demonstrably outweigh the conflict with the development plan and the Framework when taken as a whole. Accordingly, on balance I conclude that the appeal should be allowed.

Conditions and S106 Agreement

11.163 SCs 1 to 9, SPCC10, SC13, 15, 16, 17, 18, 19, SPCC20, SC21, 22, 23, 28, SPCC29, SC31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, SPCC45, SC46, 47, 48, 49, 50, 51, 52, 53, SPCC54, SCs 55, 56, 57, SPCCs 58, 59, 60, 61 , 62, SCs 64, 65, 66, 67, 68, 69, 70, 71, 73 & 74 should be imposed for the reasons specified [Section 10]. Where necessary and appropriate, I have amended the conditions in the interests of precision and enforceability.

11.164 S 11 and SPCC12 relate to seeking reductions in carbon emissions. The appellants object to the imposition of these conditions. The reasonableness and necessity for these conditions is discussed at paragraphs 11.92-11.95 above and should be imposed for those reasons. SC14 seeks for the primary school a BREEAM Excellent Performance Rating, and whilst the appellants have no objection in principle, in the absence of a Policy justification to underpin this change, it is considered unreasonable. Whilst Policy DM 19 seeks the Very Good rating as a minimum, having regard to the discussion and conclusion in the section on climate change above, I consider a requirement to achieve a BREEAM Excellent Performance Rating is reasonable and necessary. These conditions are Condition 11, 12 and 14 in Annex B.

- 11.165 Given the limited effect of traffic on the Chestnut CA, I consider that SC24 is unnecessary. SCs25 and 26 set a trigger point for when that part of the LR between Wises Lane and Chestnut Street is available for traffic and the roundabout is open for use. Based on an assessment of the TA and TAA, the HA set the trigger point at 200 dwellings and has not altered that view. The lpa has requested that the trigger is set at 160 dwellings, however, the highways evidence does not, in my view, support a reduction. SC26 relates to that part of the LR between Wises Lane and Borden Lane and is modified in the interest of clarity. SC30 relates to the re-provision of the bus layby that serves Westlands School. Given that the layby would be within that part of the site covered by the outline application, the suggested amendment by the appellants is reasonable to allow flexibility as part of the design process.
- 11.166 SPCC42 is a pre-commencement condition relating to the timing and implementation of the advance planting. The appellants do not object to the principle of this condition. Rather an amendment is suggested to provide for implementation at the earliest opportunity to avoid potential damage to the planting during construction. Provision of advance planting is a key element of the landscape and visual impact mitigation and a condition is necessary. However, I consider the appellant's suggestion would render the condition vague. Submitting a timetable for implementation with the advance landscaping scheme, would, in my view, allow for the necessary flexibility to avoid damage but would also provide certainty in terms of implementation. The revised condition is at Annex B Condition 41.
- 11.167 SPCC63 relates to the submissions of details to show the achievement of a biodiversity net gain of 10% using the DEFRA 2.0 Metric. The evidence submitted by the appellants and the suite of conditions agreed would, in my view, ensure that net biodiversity gains would be achieved. In these circumstances and in the absence of a minimum statutory figure or a minimum level within local or national planning policy, I consider the condition to be unnecessary.
- 11.168 SCPC72 includes the repetition of work that the appellants have carried for the inquiry to predict emissions levels and to calculate the Damage Cost Value. In this context, the appellant's suggested amendment requiring the submission of a scheme identifying mitigation measures in line with local guidance is considered reasonable and necessary.
- 11.169 The contents of the S106 Agreement accord with the requirements of CIL Regulation 122 and Framework guidance. I have taken the contents into account when coming to my conclusion.

Recommendations

- 11.170 That the appeal is allowed, and planning permission granted subject to the conditions contained in Annex B.
- 11.171 Condition 12 is pre-commencement condition that the appellants object to [10.4 & 11.164]. Condition 41 is a pre-commencement condition that the appellants do not object to in principle subject to an amendment [10.13 &

11.166]. I consider the revised wording, which differs from the appellants' suggestion, for Condition 41 achieves the lpa's and appellant's objective for this condition.

11.172 In the event that the Secretary of State agrees with my recommendation and wishes to include Conditions 12 and 41, as set out in Annex B, the appellants will need to give their written approval to the wording of those conditions, in accordance with the provisions of The Town and Country Planning (Pre-commencement Conditions) Regulations 2018 SI 2018 No. 566. I have already given my reasons why I consider those conditions, as worded, should be included.

George Baird

Inspector

ANNEX A

PUTATIVE REASONS FOR REFUSAL

1. That the Transport Assessment submitted with the application fails to adequately address the highways impacts arising from the development, in particular a lack of clarity regarding key elements of the traffic proposals, flaws in the modelling work, lack of consideration of rat running and the impact on the wider local road network, inadequate environmental assessment work, and the failure to provide adequate and appropriate mitigation. As such, the application fails to demonstrate that the scheme would not cause unacceptable highway impacts, contrary to policies DM6, DM26 and MU3 of Bearing Fruits 2031: The Swale Borough Local Plan, and paragraphs 108 and 109 of the National Planning Policy Framework.
2. That notwithstanding reason 1, the alleged benefits of the development, including the claimed highways benefits purported in the application, are significantly and demonstrably outweighed by the harm that would be caused if this development went ahead, which includes:
 - a) Harm to the Landscape arising from the development of land within the open countryside beyond the site allocation, contrary to Policy DM24 of Bearing Fruits 2031: The Swale Borough Local Plan, the Swale Landscape Character and Biodiversity Appraisal SPD 2011 and paragraph 170 of the National Planning Policy Framework;
 - b) Development of land within an Important Local Countryside Gap, contrary to Policy DM25 of Bearing Fruits 2031: The Swale Borough Local Plan;
 - c) The loss of Best and Most Versatile agricultural land through development beyond the site allocation, including the likely isolation / sterilisation of such land outside the application site to the east of the Electricity Distribution Site on Chestnut Street, contrary to Policy DM31 of Bearing Fruits 2031: The Swale Borough Local Plan and paragraph 170 of the National Planning Policy Framework;
 - d) The failure to provide a Policy-compliant level of affordable housing, contrary to Policy DM8 of Bearing Fruits 2031: The Swale Borough Local Plan, and paragraph 62 of the National Planning Policy Framework;
 - e) Failure to demonstrate that the site would provide an appropriate mix of housing to meet the housing needs for Swale, including a failure to demonstrate that the development would provide housing to meet the needs of specific groups, contrary to Policy CP3 of Bearing Fruits 2031: The Swale Borough Local Plan and paragraph 61 of the National Planning Policy Framework;
 - f) The use of a Local Distributor spine road through the site which, by virtue of its design and predicted function to carry significant traffic flows (above and beyond those generated by the development) would dominate and detract

from the character and appearance of the development, rather than complement it, in a way that reflects good design, contrary to Policies CP4 and MU3 of Bearing Fruits 2031: The Swale Borough Local Plan, and paragraphs 110 and 127 of the National Planning Policy Framework;

- g) Failure of the proposed S106 agreement to sufficiently mitigate the off-site impacts of the development on the surrounding area, including impacts on local amenities, such as Borden Parish Hall, the adult play equipment in the Playstool, and the Woodland Area in Borden, contrary to paragraphs 54 and 56 of the National Planning Policy Framework;
 - h) The development would not be compatible with the Lpa's Climate Change Emergency declaration, including but not restricted to adverse impacts upon biodiversity within the site contrary to Policy DM28 of Bearing Fruits 2031: The Swale Borough Local Plan; and paragraphs 150 and 175 of the National Planning Policy Framework.
 - i) The harm to heritage assets through the generation of significant vehicle movements that would arise from the proposal (including the diversion of local traffic above and beyond movements generated by the new development itself) , and including impacts arising from rat-running through the surrounding area, in particular in Borden and Chestnut Street, contrary to Policies DM32 and DM33 of Bearing Fruits 2031: The Swale Borough Local Plan, and paragraphs 193-196 of the National Planning Policy Framework.
3. That the Air Quality modelling submitted with the application is inadequate, the negative impact of existing air quality exceeds guidelines for health, and the additional negative impact of the proposed development underestimates the likely true impact on health. This would be contrary to Policy DM6 of Bearing Fruits 2031: The Swale Borough Local Plan, and paragraph 181 of the National Planning Policy Framework.

ANNEX B – SUGGESTED CONDITIONS

1. The detailed element (referred to subsequently as Phase 1A and as shown on drawing 1733.10.A4) of the development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which the permission is granted.
2. Before the first submission of reserved matters, a phasing plan for delivery of the development, including the associated highways infrastructure, open space, landscaped buffers and sports/community facilities, shall be submitted to and approved in writing by the local planning authority. The development shall then be implemented strictly in accordance with the approved phasing scheme, unless otherwise agreed in writing by the local planning authority.
3. Details relating to the layout, scale and appearance of the proposed building(s) ("reserved matters") within a relevant phase (other than Phase 1A), and the landscaping of the site within that phase, shall be submitted to and approved in writing by the local planning authority before any development within that phase is commenced.
4. The first application for approval of reserved matters referred to in Condition 3 above must be made not later than the expiration of 3 years beginning with the date of this permission; and the last application for approval of reserved matters referred to in Condition 3 above must be made not later than the expiration of 10 years beginning with the date of this permission.
5. The first phase of the development for which outline permission is hereby granted must be begun not later than the expiration of 2 years from the date of approval of the first of the reserved matters to be approved.
6. Each subsequent application for reserved matters approval for any phase of the development shall be commenced within 2 years of the date of the approval for each reserved matter for that approved phase.
7. The detailed element (phase 1A) of the development shall be carried out in accordance with the following approved plans: 2574-313 Rev G, 1733 P230.01.B, 1733.P231.01 A, 1733.P341.02.A, 1733.P341.03, 1733.P341.01.C, 1733.K3.01, 1733.K2.01 A, 1733.H485.01 Rev C, 1733.H470.01A, 1733.H469.01 Rev B, 1733.H455.01, 1733.H455-5E, 1733.H433.01 Rev B, 1733.H431.01 Rev B, 1733.H421.01 Rev B, 1733.H417.01D, 1733.H406.01, 1733.H385.01, 1733.G.02 Rev A, 1733.G.01 Rev A, 1733.BS.01, 1733.B.03, 1733.B.01 Rev A, 1733.9B.01 Rev B, 1733.10 A4, 1733.09 Rev D, 1733.03A, 1733.01 Rev A4, 14657C Landscape Proposals sheets 1 of 4, 2 of 4, 3 of 4 and 4 of 4.
8. The reserved matters details submitted pursuant to condition 2 shall accord with the Masterplan Parameter Plans, Building Heights Parameter Plan 2574-304 Rev P; Land Use Parameter Plan 2574-300 Rev N; Density Parameter Plan 2574-303 Rev P; Route Infrastructure Parameter Plan 2574-302 Rev S; David Williams

Landscape Consultancy Indicative Landscape Strategy Plan (Addendum LVIA Figure 10.8, Drawing No L8 Revision E (For the avoidance of doubt this replaced the Landscape and Ecology Masterplan previously submitted)).

9. No more than 180 dwellings shall be occupied until the community facility/rugby clubhouse and associated pitches have been completed and made available for use.
10. No development, other than as required by Condition 22, in any phase shall commence until details of an indicative timetable for the connection of that phase or part of that phase to the public sewerage system has been submitted to local planning authority. No dwelling in any phase shall be occupied unless in accordance with the approved timetable.
11. The dwellings hereby approved in Phase 1A shall be constructed to achieve the following sustainability measures: at least a 50% reduction in Dwelling Emission Rate compared to the target fabric energy efficiency rates as required under Part L1A of the Building Regulations 2013 (as Amended); a reduction in carbon emissions of at least 50% compared to the target emission rate as required under Part L of the Building Regulation. Prior to the construction of any dwelling within Phase 1A, details of the measures to be undertaken to secure compliance with this condition shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
12. Prior to the construction of any dwelling in a subsequent phase (other than Phase 1A), a scheme of sustainable design and construction measures for the dwellings within that phase shall be submitted to and approved in writing by the local planning authority. This shall demonstrate: (a) a reduction in carbon emissions of at least 50% compared to the target emission rate as required under Part L of the Building Regulations 2013 (as amended) for any dwelling within a reserved matters phase approved between the years 2020 and 2023 (inclusive); b) a reduction in carbon emissions of at least 75% compared to the target emission rate as required under Part L of the Building Regulations 2013 (as amended) for any dwelling within a reserved matters phase approved between the years 2024 and 2027 (inclusive) and (c) a reduction in carbon emissions of 100% (Zero Carbon) compared to the target emission rate as required under Part L of the Building Regulations 2013 (as amended) for any dwelling within a reserved matters phase approved in or after the year 2028. The development in each phase shall be carried out in accordance with the approved details.
13. The residential development hereby permitted shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and no residential unit(s) shall be occupied until details of the measures used to achieve the rate for that unit(s) have been submitted to and approved in writing by the local planning authority.

14. The non-residential buildings shall be constructed to a minimum of BREEAM new construction "Excellent" Standard or an equivalent standard, and prior to the first use of the building the relevant certification shall be submitted to the local planning authority for each individual non-residential building confirming that the required standard has been achieved.
15. No development (other than as required under condition 22) shall take place in any phase (including Phase 1A) until details of the existing site levels, proposed site levels (including any levels changes to areas to be used as open space, landscaped buffer areas and highways), and proposed finished floor levels for buildings in that phase have been submitted to and approved in writing by the local planning authority and the development shall be completed strictly in accordance with the approved levels.
16. No development beyond the construction of foundations shall take place within a relevant phase (including Phase 1A) until details have been submitted to and approved in writing by the local planning authority for the installation of fixed telecommunication infrastructure and High Speed Fibre Optic (minimal internal speed of 100mb) connections to multi point destinations and all buildings including residential, commercial and community within that phase. The ducting details shall provide sufficient capacity, including duct sizing to cater for all future phases of the development. The infrastructure shall be laid out in accordance with the approved details and at the same time as other services during the construction process.
17. Notwithstanding the Phase 1A detailed drawings no development beyond the construction of foundations within phase 1A shall take place until the following measures to minimise the risk of crime have been submitted to and approved in writing by the local planning authority revised plans providing ground floor windows on the side elevations of dwellings with on-plot parking spaces. The development shall be carried out in accordance with the approved details.
18. No development beyond the construction of foundations shall take place within Phase 1A until written details and samples of the materials to be used in the construction of the external surfaces of the building(s) hereby permitted have been submitted to and approved in writing by the local planning authority. This shall include a sample panel to demonstrate the appearance of the feature brickwork proposed on the buildings.
19. Details of any means of enclosure to be erected between any dwelling and road frontages within Phase 1A shall be submitted to and approved in writing by the local planning authority and erected prior to the occupation of that dwelling within Phase 1A. Notwithstanding the provisions of Class A, Part 2, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) no gates, fences, walls or other means of enclosure shall be erected or provided in advance of any dwelling fronting on a highway, other than those specifically shown on the approved plans.

20. No development in any phase (including Phase 1A) shall take place, including any works of demolition, until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The approved CMP shall be implemented and adhered to throughout the entire construction period. The CMP shall provide details of:
- measures to manage HGV movements to deter use of the Strategic Road Network during peak hours (0800-0900 and 1700-1800 hours);
 - measures to ensure that loose loads arriving / departing from the site are sheeted;
 - the means of access for vehicles during construction and the routing of construction and delivery vehicles to and from the site, including temporary traffic management and signage;
 - parking and turning areas for construction and delivery vehicles and site personnel;
 - loading and unloading of plant, materials and waste;
 - storage of plant and materials used in constructing the development;
 - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - wheel washing facilities and measures to deal with mud or spills on the highway;
 - measures to control the emission of dust and dirt during construction;
 - a scheme for recycling/disposing of waste resulting from demolition and construction works.
21. No construction work audible at the site boundary (for the avoidance of doubt to include piling) in connection with the development (including Phase 1A) shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: Monday to Friday 0730–1900 hours, Saturdays 0730–1300 hours unless in association with an emergency or with the prior written approval of the local planning authority.
22. No dwelling within Phase 1A shall be occupied until the highway works north of No 35 Wises Lane, as shown on the Wises Lane – Site Access drawing 13-042-038C (or as otherwise agreed) have been completed.
23. No dwelling shall be occupied until a binding agreement has been entered into with the Highway Authorities relating to the part of the highway connection between Wises Lane and Chestnut Street that crosses Highways England land. The agreement shall include and identify areas of land for associated screening landscaping consistent with the David Williams Landscape Consultancy Indicative Landscape Strategy Plan (Addendum LVIA Figure 10.8, Drawing No L8 Revision E). The agreement shall secure the areas for landscaping in perpetuity (such landscaping to be subject to condition 26).
24. No more than 160 dwellings shall be occupied until the length of the internal spine road between Wises Lane and Chestnut Street has been constructed to an adoptable standard and made available for public use.

25. Full details of the design of the roundabout to be installed on Chestnut Street, (as currently shown on drawing 13-042-045D), and associated screening landscaping (which shall include details of species, size, density of planting, and an implementation and long-term maintenance schedule) shall be submitted to and approved in writing by the local planning authority. No more than 160 dwellings shall be occupied until the roundabout as approved is constructed to an adoptable standard and open for public use.
26. No more than 421 dwellings shall be occupied within the development until the spine road between Wises Lane and Borden Lane and the roundabout connection to Borden Lane has been constructed to an adoptable standard and made available for public use.
27. No more than 100 dwellings shall be occupied until a Section 278 Agreement has been entered into with the Highway Authority for delivery of a detailed scheme for signalisation at the junction of Wises Lane and the A2 London Road. All associated works shall be completed within 18 months of being served notice to commence by the Highway Authority provided always that such notice is not served prior to the occupation of the 150th dwelling and not later than the occupation of the 500th dwelling.
28. No development (other than required under condition 22) shall be commenced until a scheme to demonstrate the retention and phasing of road connections during the construction process has been submitted to and approved in writing by the local planning authority. The scheme shall be designed to ensure the retention of a link between Wises Lane and Borden Lane, via Cryalls Lane (and connecting roads beyond the site) throughout the duration of the development, until the proposed spine road between Wises Lane and Borden Lane has been constructed to an adoptable standard and made available for public use.
29. The layout of the reserved matters for those phases to the south of the boundary with Westlands School shall include the provision of bus layby facilities (of commensurate capacity to the existing layby on the A2) on the spine road to provide pick up and drop off facilities, such layby facilities to be sited a maximum distance of 200 metres from the boundary with Westlands School.
30. No more than 80 dwellings shall be occupied within the development until the following off-site highways works have been completed: works to Borden Lane, as shown on drawing 13-042-071 Rev A; works to Wises Lane (south) as shown on drawing 13-042-044 REV E and improvements for pedestrian crossing at the A2/Adelaide Drive junction as shown on drawing 13-042-073.
31. No more than 421 units shall be occupied until the off-site highways works to Homewood Avenue/Borden Lane/Adelaide Drive, as shown on drawing 13-042-80 REV A have been completed.
32. No more than 150 dwellings shall be occupied until off site highway improvements to the A249 Junction with the A2 Keycol Hill/Key Street (known locally as the Key Street Roundabout) have been completed and opened to

public traffic in accordance with C&A Drawing No. 13-042-081 Rev A (Proposed Key Street Roundabout Interim Scheme) or such other scheme of works substantially to the same effect, as may be approved in writing by the local planning authority.

33. No development within any phase (including Phase 1A) shall be occupied or first used until detailed travel plans for that phase, to be based upon the principles as set out in the Framework Travel Plan, have been submitted to and approved in writing by the local planning authority. The Travel Plans shall be implemented in accordance with the approved details.
34. Any reserved matters application(s) relating to layout including residential or commercial buildings, shall include details of all types of vehicle parking proposed. Prior to the occupation of any dwelling/building within that reserved matters parcel, the parking areas relating to that dwelling/building shall be completed in accordance with the approved details and retained for their intended purpose thereafter.
35. For the purposes of the detailed (Phase 1A) scheme, the area shown on the approved plans as car parking space shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown (other than the erection of a private garage or garages) or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.
36. Any reserved matters application(s) relating to layout that include residential or non-residential buildings, shall be accompanied by details of facilities for the covered secure parking of bicycles for use in connection with those buildings. Prior to the occupation of any dwelling/building the cycle parking facilities for that dwelling/building shall have been provided in accordance with the approved details and they shall be retained thereafter for their intended purpose.
37. The proposed estate road, footways, footpaths, verges, street tree planting, junctions, street lighting (to include measures to limit light spill and use of lighting to minimise impacts upon wildlife), sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking and street furniture, as appropriate, shall be constructed and laid out in each phase (including Phase 1A) in accordance with details to be submitted and approved by the local planning authority in writing before their construction begins in that phase and in accordance with a schedule of house completion and an implementation programme for the agreed works, also to be submitted to the local planning authority for approval in writing.
38. Prior to the occupation of any dwelling or other building, the following works between the dwelling or building and the adopted highway shall be provided; i)

- Footways and/or footpaths, with the exception of the wearing course;
- ii) carriageways, with the exception of the wearing course but including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any).
39. No development beyond the construction of foundations shall take place in Phase 1A until full design details for the internal spine road within that phase, to include details of roadside tree planting and verge details, surface materials, and details of chicanes, crossing points and build out margins and which shall include provision of a formal crossing facility to be either a Zebra or Toucan crossing, have been submitted to and approved in writing by the local planning authority. The crossing facility shall be installed prior to first opening of the spine road within Phase 1A.
40. No development beyond the construction of foundations shall take place in any phase until detailed drawings of the internal spine road within that phase, to include details of tree planting and verge details, surface materials, and details of chicanes, crossing points (including controlled crossing points) and build out margins 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.
41. No development (other than as required under condition 22) shall take place until a detailed scheme of and a timetable for the implementation of advance soft landscaping has been submitted to and approved in writing by the local planning authority. This shall incorporate:
- the areas proposed for advance planting, as shown on the Indicative Landscape Strategy Plan by David Williams Landscape Consultancy and referred to as Figure 10.8, drawing L8 Revision E, and a legal mechanism has been secured for the long-term use and retention of this land for landscaping;
 - the soft landscaping scheme shall include proposed trees, shrubs and other features, planting schedules of plants (which shall include native species and of a type that will encourage wildlife and biodiversity), noting species, plant sizes and numbers where appropriate, measures to prevent tree vandalism, and measures to protect the advance planting from construction on the remainder of the site for the duration of such works;
 - details of the advance planting for the access road and proposed junction with Chestnut Street, shown as AA-BB on the Indicative Landscape Strategy Plan, shall take into account and indicate relevant working and operational constraints, changes in landform, measures to mitigate impacts upon the Borden Chestnut Street Conservation Area and associated Listed Buildings, and engineering requirements associated with the proposed road and roundabout. Development shall be carried out in accordance with the approved details.

42. Upon completion of the advance landscaping works, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within ten years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the local planning authority, and within the next planting season.
43. The sports pitches hereby permitted shall be grass pitches only and shall not be illuminated.
44. No development (other than as required under condition 22) in any phase (including Phase 1A) shall take place until full details of all existing trees and/or hedges in that phase, details of any trees or hedges proposed for removal, and measures to protect any trees or hedges shown to be retained, have been submitted to and approved in writing by the local planning authority. Such details shall include:
 1. a plan showing the location of and allocating a reference number to each existing tree and hedge on the site to be retained and indicating the crown spread of each tree, and extent of any hedge, and identifying those trees and hedges to be removed;
 2. details of the size, species, diameter, approximate height and an assessment of the general state of health and stability of each retained tree and hedge;
 3. details of any proposed arboricultural works required to any retained tree or hedge;
 4. details of any alterations in ground levels and of the position of any excavation or other engineering works within the crown spread of any retained tree;
 5. details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree or hedge from damage before or during the course of development.

The development shall be carried out in accordance with the approved details and the approved protection measures shall be installed in full prior to the commencement of any development and retained for the duration of construction works. No works, access, or storage within the protected areas shall take place, unless specifically approved in writing by the local planning authority. In this condition "retained tree or hedge" means any existing tree or hedge which is to be retained in accordance with the drawing referred to in (a) above.

45. Notwithstanding the submitted plans, no development beyond the construction of foundations shall take place within Phase 1A until full details of both hard and soft landscape works proposed within the curtilage of any dwelling or flat have been submitted to and approved in writing by the local planning authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

46. The hard and soft landscape works within Phase 1A shall be carried out in accordance with the approved details under condition 46. The works shall be carried out prior to the occupation of any dwelling within Phase 1A or in accordance with the programme agreed in writing with the local planning authority.
47. Upon completion of the approved landscaping scheme within Phase 1A, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the local planning authority, and within whatever planting season is agreed.
48. No development (other than as required under condition 22) in any phase (including Phase 1A) shall commence until details of measures to protect/divert public sewers within that phase have been submitted to and approved in writing by the local planning authority.
49. No development (other than as required under condition 22) shall commence in any phase until a detailed sustainable surface water drainage scheme for each phase (including Phase 1A), compliant with the complete drainage strategy as approved (Flood Risk Assessment and Addendum to Flood Risk Assessment dated May 2018), has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme 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 within the curtilage of the site without increase to flood risk on or off-site. The drainage scheme shall also demonstrate that silt and pollutants resulting from the site use and construction can be adequately managed to ensure there is no pollution risk to receiving waters. The drainage scheme shall be implemented in accordance with the approved details prior to first occupation of each phase of the development (or within an agreed implementation schedule).
50. No building hereby permitted in any phase (including Phase 1A) shall be occupied until an operation and maintenance manual for the proposed sustainable drainage scheme is submitted to (and approved in writing) by the local planning authority. The manual at a minimum shall include the following details:
 1. A description of the drainage system and its key components;
 2. A general arrangement plan with the location of drainage measures and critical features clearly marked;
 3. An approximate timetable for the implementation of the drainage system;
 4. Details of the future maintenance requirements of each drainage or SuDS component, and the frequency of such inspections and maintenance activities;
 5. Details of who will undertake inspections and maintenance activities, including the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

The drainage scheme as approved shall subsequently be constructed and maintained in accordance with these details.

51. No building in any phase (including Phase 1A) of the development hereby permitted shall be occupied until a Verification Report pertaining to the surface water drainage system for that phase or part of that phase, carried out by a suitably qualified professional, which demonstrates the suitable modelled operation of the drainage system such that flood risk is appropriately managed, has been submitted to and approved in writing by the local planning authority. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; and topographical survey of 'as constructed' features.
52. No infiltration of surface water drainage into the ground is permitted other than with the written consent of the local planning authority. The development shall be carried out in accordance with the approved details.
53. No development (other than as required under condition 22) within any phase (including Phase 1A) approved by this permission shall be commenced prior to a contaminated land assessment (and associated remediation strategy if relevant) for that phase, being submitted to and approved in writing by the local planning authority, comprising:
 - i. a desk study and conceptual model, based on the historical uses of the site and proposed end-uses, and professional opinion as to whether further investigative works are required;
 - ii. a site investigation strategy, based on the results of the desk study, shall be approved by the local planning authority prior to any intrusive investigations commencing on site;
 - iii. An investigation, including relevant soil, soil gas, surface and groundwater sampling, carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology;
 - iv. a site investigation report detailing all investigative works and sampling on site, together with the results of analyses, risk assessment to any receptors and a proposed remediation strategy which shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment, including any controlled waters;
 - v. a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (iii) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved.

54. Before any part or agreed phase of the development is occupied, all remediation works identified in the contaminated land assessment and approved by the local planning authority shall be carried out in full (or in phases as agreed in writing by the local planning authority) on site under a quality assured scheme to demonstrate compliance with the proposed methodology and best practice guidance. If, during the works, contamination is encountered which has not previously been identified, then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the local planning authority. The remediation strategy shall be implemented as approved.
55. Prior to any part of the permitted development being occupied a verification report for that phase demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.
56. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.
57. No development (other than as required under condition 22) in any phase (including Phase 1A) shall be commenced until a scheme of gas protection measures necessary for that phase, to protect the development from gas concentrations arising from the adjacent former landfill site (now Borden Nature Reserve), has been submitted to and approved in writing by the local planning authority. Such measures shall be based upon further monitoring and assessment of gas concentrations, the details of which shall be submitted with the scheme. The development shall be carried out in accordance with the approved details.
58. No development shall take place (including any ground works, site or vegetation clearance) until an ecological report containing the following updated baseline surveys has been submitted to and approved in writing by the local planning authority:
 1. Breeding bird survey. A breeding bird survey following Government standing advice and the method set out in the Baseline Ecological Appraisal, for all the areas of site not originally surveyed;
 2. Breeding bird survey. A breeding bird survey following Government standing advice and the method set out in the Baseline Ecological Appraisal for all proposed skylark mitigation area(s);

3. Bat activity survey. A bat activity survey should be undertaken following Government standing advice and the method for 'low suitability sites' set out in the Bat Surveys for Professional Ecologists (Collins, 2016);
 4. Reptile survey. A reptile 'presence' survey should be undertaken following Government standing advice and the method set out in Froglife Advice Sheet 10: Reptile Survey (Froglife, 1999);
 5. Dormouse survey. A dormouse survey should be undertaken following Government standing advice and the method set out in The Dormouse Conservation handbook (English Nature, 2006).
59. No development shall take place in any phase (including Phase 1A) (including any ground works, site or vegetation clearance) until an updated Badger survey for that phase has been undertaken (within 6 months prior to commencement of development of that phase) and a report submitted to and approved in writing by the local planning authority.
60. No development (other than as required under condition 22) shall take place (including any ground works, site or vegetation clearance) until a revised skylark mitigation strategy has been submitted to and approved in writing by the local planning authority and a legal agreement has been secured to deliver any off-site mitigation required. This mitigation strategy should be informed by appropriate update baseline surveys and in line with the guidance set out by the RSPB and under Countryside Stewardship's option AB4 for Skylark plots. The mitigation strategy must include but not necessarily be limited to:
1. the location of the mitigation site(s);
 2. the method of creation within the mitigation site(s);
 3. the management methods (for 10 years) for the mitigation site(s);
 4. a mechanism to secure the mitigation for the 10-year period.

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

61. No development shall take place (including any ground works, site or vegetation clearance) until a site-wide Construction Ecological Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP should describe measures that should be adopted to safeguard retained on-site and off-site ecological features and to mitigate any adverse effects on habitats and species during site preparation, demolition and construction works. The CEMP shall be designed and used to inform and guide the development of the scheme on the ground, and raise awareness of ecological constraints during construction works, in order to protect and enhance the existing ecology of the Site. It should include detailed measures across all phases including timing and methods of works and relevant mapping and set out any requirements for update surveys during the construction period. It should set out the details of the person responsible for the implementation of the CEMP, sign off procedures, and include the appointment of an Ecological Clerk of Works. The measures shall be consistent with all ecological mitigation required during construction set out within the Environmental Impact Assessment.

62. Within 6 months of the commencement of development of any phase (including Phase 1A), a detailed Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the local planning authority for that phase. The detailed LEMP shall be updated at each phase to incorporate and review approved management plans for earlier phases, and upon development of the last phase shall provide a single detailed LEMP for the entire development. This shall be carried out by experienced ecologists, and shall contain, but not necessarily be limited to, the following information for that phase:

1. A review of existing specific species surveys undertaken;
2. Description and evaluation of features to be managed;
3. Ecological trends and constraints on site that might influence management;
4. Location and details of habitats to be created and managed to mitigate and enhance biodiversity;
5. Aims and objectives of management;
6. Appropriate management options for achieving aims and objectives;
7. Prescriptions for management actions, together with a plan of management compartments;
8. Map showing the management compartments for any mitigation or enhancement areas;
9. Preparation of a work schedule to implement the LEMP in each phase, (including an annual work plan capable of being rolled forward over a thirty-year period);
10. Details of the body or organisation responsible for implementation of the plan;
11. Ongoing monitoring and remedial measures.

The detailed LEMP shall set out (where the results from monitoring show that conservation aims and objectives of the LEMPs are not being met) how contingencies and/or remedial action will be identified, agreed and implemented for that phase so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The development in each phase shall be carried out in accordance with the approved details.

63. Public Footpath ZR119 shall be upgraded to a width of no less than 3 metres and surfaced in accordance with a scheme to be submitted to and approved in writing by the local planning authority. No occupation of any dwelling within a phase containing the public footpath shall take place until the length of Public Footpath ZR119 within the site has been dedicated as a Public Bridleway, (through the provision of the Highways Act 1980 (s25 or s26)), and the upgrading has taken place in accordance with the approved details.
64. No dwellings or buildings shall be occupied in any phase (including Phase 1A) until a scheme for the surfacing of all Public Rights of Way (PROWs) within that phase has been submitted to and approved in writing by the local planning authority, and such approved works have been completed. All PROWs must be of a width of no less than 2.5 metres.

65. The layout and landscaping of the reserved matters for the phase of development (as approved under condition 2) adjacent to Cryalls Farmhouse, shall incorporate an area of open space and landscaping to the south and west of Cryalls Farmhouse, such area to be no less in size than as shown on the illustrative masterplan drawing 2574-401 Rev J.
66. Before the submission of reserved matters for any phase (excluding Phase 1A), the applicant (or their agents or successors in title) shall secure and have reported a programme of archaeological field evaluation works for that phase, in accordance with a specification and written timetable which has been submitted to and approved by the local planning authority.
67. Following completion of archaeological evaluation works for the site (or parts of the site that have been agreed with the local planning authority, no development shall take place in any phase (including Phase 1A) until the applicant or their agents or successors in title, has secured the implementation of any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording for that phase in accordance with a specification and timetable which has been submitted to and approved by the local planning authority.
68. Within 6 months of the completion of archaeological works on any part of the site, for that part of the site a Post-Excavation Assessment Report shall be submitted to and approved in writing by the local planning authority. The Post-Excavation Assessment Report shall be in accordance with Kent County Council's requirements and include: a description and assessment of the results of all archaeological investigations that have been undertaken in that part (or parts) of the development; an Updated Project Design outlining measures to analyse and publish the findings of the archaeological investigations, together with an implementation strategy and timetable for the same; a scheme detailing the arrangements for providing and maintaining an archaeological site archive and its deposition following completion. The measures outlined in the Post-Excavation Assessment Report shall be implemented in full and in accordance with the agreed timings.
69. Before development commences (other than as required under condition 22), a soil management strategy for the site shall be submitted to and approved in writing by the local planning authority. The Strategy shall be undertaken by an appropriately experienced soil specialist and shall provide details for soil handling (including when soils are dry enough to be handled), soil storage, measures to retain and safeguard soil resources on the site. The strategy shall be designed to accord with in the Defra advice – "Construction Code of Practice for the Sustainable Use of Soils on Construction Sites (including accompanying Toolbox Talks)". The development shall be carried out in accordance with the approved details.
70. No development (other than as required under condition 22) shall be commenced until further details of the scheme of air quality mitigation has been

submitted to and approved in writing by the Local Planning Authority. The scheme shall provide:

- i. a costed scheme of mitigation measures, to be not less than the equivalent value of the calculated damage cost value. This should follow the recommendations within the Kent & Medway Air Quality Partnership Air Quality Planning Guidance; and
- ii. a timetable for implementation of the proposed mitigation.

Development shall be carried out in accordance with the approved scheme.

71. No dwelling in any phase (including phase 1A) shall be occupied until a scheme for electric vehicle charging within that phase has been submitted to and approved in writing by the local planning authority, and such scheme shall include as a minimum:
- (a) active electric vehicle charging points to all dwellings with parking facilities within their curtilage;
 - (b) active electric vehicle charging points to be provided to a minimum of 10% of all other residential parking spaces within that Phase;
 - (c) active electric vehicle charging points to be provided to a minimum of 10% of all non-residential parking spaces within any phase.

No dwelling/building shall be occupied/used until the electric vehicle charging point for that dwelling or building has been installed (whether for an individual property or a communal point).

72. No gas boilers shall be fitted in the dwellings hereby permitted other than a low emission boiler of a minimum standard of <40mgNO_x/kWh. No dwellings in any phase (including Phase 1A) shall be occupied until details of the boilers to be installed in that phase have been submitted to and approved in writing by the local planning authority, and the development shall be carried out in accordance with such details.

ANNEX C – APPEARANCES & DOCUMENTS

APPEARANCES

FOR THE APPELLANT

Zack Simons of Counsel instructed by Montagu Evans LLP.

He called:

Alastair Field BA (Hons), MSc, PIEMA, MBIAC, MI Soil Sci.
Director, Reading Agricultural Consultants Ltd.

Alison Banks MSc, BSc (Hons), MIAQM.
Air Quality Team Leader, Entran.

Daniel Maughan BSc (Hons), MCIEEM.
Associate Ecologist at Aspect Ecology.

Dr Chris Miele MRTPI, IHBC.
Partner (Historic Environment), Montagu Evans LLP.

David Williams BA (Hons), Dip (Hons) LA, MLI.
Principal and Owner of David Williams Landscape Consultancy Limited.

Paul Burley BA (Hons), MPhil, MRTPI.
Partner (Town Planning), Montagu Evans LLP.

John Wilde BEng (Hons) MCIHT.
Director of C&A Consulting Engineers Ltd.

Conditions & S106 Session

Gemma Penny.
ASB Law.

FOR THE LOCAL PLANNING AUTHORITY

William Upton QC, instructed by Cheryl Parks, Mid Kent Legal Services

He called:

Greg Chant-Hall BSc (Hons), CEnv, MCIQB, FIEMA, FRSA, MCIWM, ACIBSE.
Chief Operating Officer, Carbon Free Group CIC.

Bruce Bamber BSc, MA, MSc, CMILT, MCIHT.
Director, Railton TPC Ltd.

Professor Stephen Peckham.
Professor of Health Policy and Director of the University of Kent's Centre for Health Service Studies; Professor of Health Policy at the London School of Hygiene and Tropical Medicine.

Jon Etchells MA, BPhil, CMLI.
Director, Jon Etchells Consulting Limited.

Peter Newbold, CEcol, MCIEEM, MEnvSci.
Principal Ecologist, BSG Ecology Ltd.

Emma Rouse, MCIfA, MA, BA (Hons).
Principal, Wyvern Heritage and Landscape Consultancy.

Kieran Rushe, BA (Hons) Geog, DipTP, MRTPI.
Planning Director, Peter Brett Associates (part of Stantec).

Conditions & S106 Session

C Parks.
Mid Kent Legal Services.

Andrew Byrne.
Senior Planning Officer, Swale Borough Lpa.

Colin Finch.
Principal Transport & Development Planner, Kent County Lpa Highways.

FOR BORDEN PARISH COUNCIL

Clive Moys of Counsel, instructed by Ms Julie Miller CiLCA, Parish Clerk.

He called:

Clive Sims
Vice Chairman, Borden Parish Council.

Conditions & S106 Session

Jeremy Bolas
Chairman Borden Parish Council.

FOR BORDEN RESIDENTS AGAINST (over) DEVELOPMENT

Lisa Foster, Richard Buxton Solicitors.

She called:

John Burrell MA, AA, Dip RIBA, MSAI, FRSA.
Principal, Burrell Foley Fischer Architects and Urban Designers.

INTERESTED PERSONS

Mr Downs	Sittingbourne Rugby Union Football Club.
Cllr Truelove	Homewood Ward, Leader and Cabinet Member for Finance.
Cllr Hampshire	Borden and Grove Park Ward.
Cllr Baldock	Borden and Grove Park Ward, Deputy Leader and Cabinet Member for Planning.
Cllr Valentine	Boughton and Courtenay Ward, Cabinet Member for Environment.
Cllr Bonney	West Downs Ward, Cabinet Member for Economy & Property.
Cllr Palmer	Hartlip, Newington and Upchurch Ward, Cabinet Member for Community.
Mr Johnson	Resident.

Mr Browning	Resident.
Mr J Emery	Resident.
Mr B Jemmett	Resident.
Ms Butler	Resident.
Mr G Broughton	Resident.
Mr P Aspin	Resident.
Mr Wallace	Resident.
Mr Cope	Resident.
Mrs J Davidson	Resident.
Mr K B Hicks	Resident.
Mrs G Aspin	Resident.
Mr J Sutton	Resident.
Mr S Palmer	Resident.

DOCUMENTS

1. Appellants' Opening Submissions.
2. Appellants' Closing Submissions.
3. Appellants' application for an award of costs & Response.
4. LPA's Opening Submissions.
5. LPA's Closing Submissions.
6. LPA's response to the application for costs.
7. Borden Parish Council Opening Submissions.
8. Borden Parish Council Closing Submissions.
9. Borden Residents Against (over) Development Opening Submissions.
10. Borden Residents Against (over) Development Closing Submissions.
11. LPA list of suggested conditions and reasons.
12. Appellants' list of suggested conditions and reasons.
13. Appellants' agreement to pre-commencement conditions.
14. Completed S106 Agreement.
15. LPA CIL Compliance Schedule.
16. Planning Obligations requested by Borden Parish Council.
17. Statement by Mr Down Sittingbourne Rugby Union Football Club.
18. Statement by Cllr Truelove.
19. Statement by Cllr. Hampshire.
20. Statement by Cllr Bonney.
21. Statement by Cllr Baldock.
22. Statement by Cllr. Valentine.
23. Statement by Cllr Palmer.
24. Swale Borough Council Air Quality Action Plan (2018-2022).
25. Agreed Note on Air Quality Assessment.
26. Court of Appeal – Zipporah Lisle-Mainwaring & Niall Carroll and Secretary of State for Communities & Local Government & Niall Carroll [2017] EWCA Civ 1315.
27. Planning Court - James Hall & Company and City of Bradford Metropolitan District Lpa and Co-operative Group Limited, Dalehead Properties Limited [2019] EWHC 2899 (Admin).
28. Extract from the Planning (Listed Buildings & Conservation Areas) Act 1990.
29. Copy of a letter dated 29 October 2019 from Rt Hon Kwasi Kwarteng MP, Minister of State for Business, Energy and Clean Growth to Cllr Truelove.
30. Extract from M2 J5 Improvements, Highways England Statement of Case, October 2019.
31. Appellants' Note on Highways England J5 Statement of Case.

32. LPA response to Appellants' Note on Highways England J5 Statement of Case.
33. Appellants' response to LPA response on Highways England J5 Statement of Case.
34. Guidelines for the Environmental Assessment of Road Traffic 1993, Institute of Environmental Assessment.
35. Copy of letter dated 10 October 2019 from The Planning Inspectorate to the appellants re Regulation 25 of the EIA 2017 Regulations request.
36. Copy of Letter dated 1 November 2019 from Entran to the Planning Inspectorate re Regulation 25 of the EIA 2017 Regulations request.
37. Copies of Emails from C Finch, Kent County Council to A Byrne, Swale Borough Council re proposed Borden Lane junction, 17 & 18 October 2019.
38. List of application plans showing Means of Access.
39. No document – see Doc 37.
40. Copy of representations by Cerda on behalf of Borden Parish Council 28 January 2019.
41. Plan produced by Borden Parish Council showing potential route from south of Sittingbourne to Chestnut Street via the Link Road.
42. Extract of Land Registry Plan, Highways England Land ownership on Chestnut Street.
43. Plan submitted by BRAD showing separation distance to Borden Village.
44. Copy of Appeal Decision APP/X1545/W/19/3230267.
45. Extract from draft Environment Bill.
46. LPA Statement on Housing Land Supply Position.
47. Appellant's Housing Land Supply Position Statement.
48. *Blewett v Derbyshire County Council* [2003] EWHC 2775 (Admin).
49. Statement by Mr B Jemmett.
50. Statement by Ms Butler.
51. Statement by Mr G Broughton.
52. Statement by Mr Wallace.
53. Statement by Mr Cope.
54. Statement by Mr S Palmer.
55. Statement by J Maw.
56. Statement by E Dighton.
57. Statement by Mr D Christopher.
58. Statement by Mrs M Whitehead.
59. Statement by Mrs G Hooper.
60. Statement by Mrs G Aspin.
61. Statement by V Smith.
62. Statement by Mr P Aspin.
63. Representation by Kent Fire & Rescue Service dated 22/11/19.
64. Comments by Mr T Heyworth.
65. Comments by Mrs J Exley.
66. Bundle of responses following the letter of notification.
67. Statement of Common Ground.

FOR THE APPELLANTS

Mr Field - Agricultural Land

- | | | |
|------|---|----------------------------|
| APP1 | - | Summary Proof of Evidence. |
| APP2 | - | Proof of Evidence. |
| APP3 | - | Appendices. |

Ms Banks – Air Quality

- APP4 - Summary Proof of Evidence.
- APP5 - Proof of Evidence.
- APP6 - Appendices.
- APP7 - Rebuttal Proof of Evidence.

Mr Maughan – Ecology

- APP8 - Summary Proof of Evidence
- APP9 - Proof of Evidence,
- APP10 - Appendices.
- APP11 - First Rebuttal Proof of Evidence
- APP12 - Second Rebuttal Proof of Evidence.

Dr Miele – Heritage

- APP13 - Summary Proof of Evidence.
- APP14 - Proof of Evidence.

Mr Williams – Landscape & Visual Impact

- APP15 - Summary Proof of Evidence.
- APP16 - Proof of Appendices.
- APP17 - Appendices.
- APP18 - Rebuttal Proof of Evidence.

Mr Burley – Planning

- APP19 - Summary Proof of Evidence.
- APP20 - Proof of Evidence.
- APP21 - Appendices.

Mr Wilde – Highways

- APP22 - Summary Proof of Evidence.
- APP23 - Proof of Evidence.
- APP24 - Appendices.
- APP25 - Rebuttal Proof of Evidence.
- APP26 - Rebuttal Appendices.

FOR THE LOCAL PLANNING AUTHORITY

Mr Chant-Hall – Climate Change

- LPA1 - Proof of Evidence & Appendices.

Mr Bamber – Highways

- LPA2 - Summary Proof of Evidence.
- LPA3 - Proof of Evidence.
- LPA4 - Appendices.

Professor Peckham – Air Quality

- LPA5 - Summary Proof of Evidence.
- LPA6 - Proof of Evidence & Appendices.
- LPA7 - Rebuttal Proof of Evidence.

Mr Etchells – Landscape & Visual Impact

- LPA8 - Summary Proof of Evidence.
- LPA9 - Proof of Evidence.
- LPA10 - Appendices.

Mr Newbold – Ecology

- LPA11 - Summary Proof of Evidence.
- LPA12 - Proof of Evidence.
- LPA13 - Rebuttal Proof of Evidence & Appendices.

Ms Rouse – Heritage

- LPA14 - Summary Proof of Evidence.
- LPA15 - Proof of Evidence.
- LPA16 - Appendices.

Mr Rushe – Planning

- LPA17 - Summary Proof of Evidence.
- LPA18 - Proof of Evidence.

FOR BORDEN PARISH COUNCIL

Mr Sims

- BPC1 - Summary Proof of Evidence.
- BPC2 - Proof of Evidence.

FOR BORDEN RESIDENTS AGAINST (over) DEVELOPMENT

Mr Burrell – Urban Design

- BRAD1 - Summary Proof of Evidence.
- BRAD2 - Proof of Evidence & Appendices.

CORE DOCUMENTS

Series A – Planning History and The Appeal Scheme

Application Documents

- A01 Site Location Plan (Rev G).
- A02 EIA Screening Opinion dated 13 July 2016, 16/504966.
- A03 EIA Scoping Opinion dated 14 July 2016, 16/504977.
- A04 Masterplan (ref: 2574-401 J).
- A05 Parameter Plan: Land Use (ref: 2574-300 N).

A06	Parameter Plan: Landscape and Ecology Strategy (ref: 2574-301 P).
A07	Parameter Plan: Route Infrastructure (ref: 2574-302 S).
A08	Parameter Plan: Density (ref: 2574-303 P).
A09	Parameter Plan: Building Heights (ref: 2574-304 P).
A10	Design and Access Statement (dated June 2018).
A11	Environmental Statement Volume 1 – Main Text (September 2017).
A12	Environmental Statement Volume 2 – Appendices (September 2017).
A12(a)	Appendix 5 The Proposed Development.
A12(b)	Appendix 7 Transport and Access.
A12(c)	Appendix 8 Air Quality.
A12(d)	Appendix 9 Noise and Vibration.
A12(e)	Appendix 10 Landscape and Visual Amenity.
A12(f)	Appendix 11 Ecology and Nature Conservation.
A12(g)	Appendix 12 Water Quality, Hydrology and Flood Risk.
A12(h)	Appendix 13 Soils, Geology and Contaminated Land.
A12(i)	Appendix 14 Archaeology.
A12(j)	Appendix 15 Built Heritage.
A13	Agricultural Land Classification and Soil Resources Statement (Sept 2017).
A14	Arboricultural Impact Assessment (September 2017).
A15	Environmental Statement Addendum: Updated Air Quality Chapter (May 2018).
A16	Environmental Statement Addendum: Built Heritage (May 2018).
A17	Environmental Statement Addendum: Built Heritage Map (May 2018).
A18	Environmental Statement Addendum: LVIA (June 2018).
A19	Environmental Statement Addendum: Ecology Chapter Updated Badger Survey Results (June 2018).
A20	Transport Assessment Addendum (May 2018).
A21	Viability Report (2 July 2018).
A22	Technical Note 6 – Outstanding Transport Matters (July 2018).
A23	Framework Travel Plan (July 2018).
A24	Applicant’s Response to Highways England dated 2 August 2018.
A25	Cryalls Lane Proposed Access Junction Drawing (13-042-46 D) July 2017.
A26	Wises Lane (South) Proposed Access Junction (13-042-47 D) July 2017.
A27	Chestnut Street Roundabout Access Initial Scheme (13-042-074) July 2018.
A28	Borden Lane Access Compact Roundabout Access (13-042-40 C) July 2017.
A29	Wises Lane – Site Access (13-042-38 C) April 2017.
A30	Maylem Garden Access (13-042-044 E) June 2017.
A31	Review of Borden Parish Council Air Quality Assessment 29 August 2018.
A32	Air Quality Assessment Summary dated 2 October 2018.
A33	Environmental Statement Addendum Summary 17 October 2018.
A34	Phlorum Air Quality Evidence Review October 2018.
A35	Environmental Statement Addendum December 2018.
A36	Arboricultural Technical Note (Addendum to Submitted Arboricultural Impact Assessment) December 2018.
A37	MUX1/MUX1a Comparative Traffic Analysis (January 2017).
A38	Design Review Panel Comments 18 July 2017.
A39	Street Scenes B 1733.SS.01.
A43	Proposed Skylark Mitigation Plan (3825/SM1) August 2018.
A44	Statement of Community Involvement September 2017.
A45	Planning Statement (October 2017).
A46	Economic Benefits Statement (September 2017).
A47	1733.P230.01 B P230 Elevations and Floor Plans.
A48	1733.P341.01 C P341 D Elevations and Floor Plans.
A49	1733.P341.02 A P341 Plot 13 Elevations and Floor Plans.
A50	1733.P341.03 P341 Plot 24 Elevations and Floor Plans.

A51	1733.P341.01 C P341 D Elevations and Floor Plans.
A52	1733.K3.01 K3 Elevations and Floor Plans.
A53	1733.K2.01 A K2 Plans and Elevations.
A54	1733.H485.01 C H485 Elevations and Floor Plans.
A55	1733.H470.01 A H70 Elevations and Floor Plans.
A56	1733.H469.01 B H469 Elevations and Floor Plans.
A57	1733.H455.01 H455 Elevations and Floor Plans.
A58	1733.H455-5 E Roof Layout.
A59	1733.H433.01 B H433 Elevations and Floor Plans.
A60	1733.H431.01 B H431 Elevations and Floor Plans.
A61	1733.H421.01 B H421 Plans and Elevations.
A62	1733.H417.01 D H417 Plans and Elevations.
A63	1733.406.01 H406 Plans and Elevations.
A64	1733.H385.-1 H385 Plans and Elevations.
A65	1733.G.02 A Car Ports Various Sizes.
A66	1733.G.01 A Double Garages.
A67	1733.BS.01 Bin Store.
A68	1733.B.03 1.8m Close Boarded Fencing.
A69	1733.B.01 A 1.8m Brick Wall.
A70	1733.9B.01 B 9B Apartment Plans and Elevations.
A71	1733.10 Planning Layout A4.
A72	1733.09 D Parking Provision.
A73	1733.03 A Materials and Boundary Treatments
A74	1733.01 A4 Planning Layout – Coloured.
A75	14657C Phase 1A Landscape Proposals (sheets 1-4).
A76	ES Vol 3 Non-Technical Appendices (September 2017).
A77	Sustainability and Energy Statement (September 2017).
A78	Mineral Resource Assessment (August 2017).
A79	Covering Letter (Dated 30 October 2017).
A80	Application Form and Certificates.
A81	Health Impact Assessment
A82	EIA Scoping Opinion dated 20 October 2016, 16/506680.
A83	Retail Uses Technical Note May 2018.
A84	ES Addendum Information Explanation Note 7 June 2018.
A85	Local Network Plan September 2018.
A86	Geophysical Survey Report (September 2018).
A87	Written Scheme of Archaeological Trial Trench Evaluation (August 2018).
A88	Written Scheme of Investigation Geophysical Survey (August 2018).
A89	Statement on Agricultural Land November 2018.
A90	Chestnut Street/Key Street Proposals (13-042-045 Rev D).
A91	Key Street Roundabout Proposals (13-042-081 Rev A).
A92	Wises Lane A2 Signalisation (13-042-009 Rev D).
A93	Adelaide Drive/Homewood Avenue / Borden Lane (13-042-080 Rev A).

Consultation Responses

A40	Planning Application Consultation Responses Bundle.
A41	Huskinson Brown Consultation Response dated 4 January 2019.
A42	Pathfinder Economic Viability Analysis for SBC dated 17 July 2018.

Series B – Committee Reports, Minutes and SBC Reasons for Refusal

B01	30 January 2019 Planning Committee Report.
B02	30 January 2019 Planning Committee Minutes.

- B03 29 August Extraordinary Planning Committee Report.
- B04 29 August Extraordinary Planning Committee Minutes.
- B05 Letter from Swale Borough Council dated 6 September 2019.
- B06 20 June 2019 Planning Committee Report.
- B07 20 June 2019 Planning Committee Minutes

Series C – Planning Policy and Legislation

- C01 S66 & 72 of The Planning (Listed Buildings and Conservation Areas) Act 1990.
- C02 Adopted Local Plan ('Bearing Fruits') 2017 – Written Statement.
- C03 Adopted Local Plan ('Bearing Fruits') 2017 – Policies Map Extract (1 page).
- C04 National Planning Policy Framework (2019).
- C05 NPPG Extracts (various dates).
- C06 Managing Significance in Decision-Taking in the Historic Environment - Historic Environment Good Practice Advice in Planning 2 (March 2015).
- C07 The Setting of Heritage Assets – Historic Environment Good Practice Advice in Planning Note 3 (Second Edition) (December 2017).
- C08 Extract of Swale Landscape Character and Biodiversity Appraisal 2011.
- C09 The Chestnut Street Borden Conservation Area Appraisal 1999.
- C10 The Street, Borden Conservation Area Appraisal 1999.
- C11 Harman's Corner Borden Conservation Area Appraisal 1999.
- C12 Hearts Delight Conservation Area Appraisal 1999.
- C13 Design Council Building for Life 12 (2015).
- C14 Extract of Swale Urban Extension Landscape Capacity Study June 2010.
- C15 Statement of Housing Land Supply 2017/18 (February 2019).
- C16 Kent Design Guide 2006.
- C17 Kent Design Guide Review: Interim Guidance Note 3.
- C18 The Town and Country Planning (Development Management Procedure) (England) Order 2015 Extract.
- C19 Swale Borough Council Housing Delivery Test Action Plan August 2019.
- C20 Swale Strategic Housing Land Availability Assessment 2014-15.
- C21 Planning and Energy Act 2008.
- C22 The Climate Change Act 2008.
- C23 UK Committee on Climate Change, UK Housing: Fit for the Future? 2019.
- C24 Technical Manual SD5078: BREEAM UK New Construction 2018.
- C25 Home Quality Mark ONE Technical Manual, England Scotland and Wales 2019.
- C26 2008 Local Plan Proposals Map (superseded).
- C27 Kent and Medway Minerals and Waste Local Plan 2016.
- C28 Kent and Medway Minerals and Waste Local Plan Proposals Map 2016.
- C29 National Design Guide 2019.
- C30 Swale Borough Council Open Spaces and Play Area Strategy 2018-2022.
- C31 Swale Borough Council Air Quality Action Plan (2018-2022) April 2019.
- C32 The Biodiversity Metric 2.0 User Guide 2019.

Series D – Other Documents

- D01 Email from Paul Burley to Inspector re SBC's Statement of Case.
- D02 LPA Response to D01.
- D03 Railton Report on behalf of Borden Parish Council.
- D04 Landscape Institute Advice Note 01/11 Photography and Photomontage in Landscape and Visual Impact Assessment.
- D05 Swale Local Plan EiP – SBC/PS/123a.
- D06 Inspectors report into SBC Local Plan dated 20 June 2017.

- D07 Land-Use Planning and Development Control: Planning for Air Quality (January 2017) Extract pages 21, 25-30.
- D08 DEFRA Local Air Quality Management & Technical Guidance (TG16) (Feb 2018).
- D09 Defra, DOE, SE, WA. Air Quality Strategy for England, Scotland, Wales and Northern Ireland (2007).
- D10 Kent & Medway Air Quality Partnership. Air Quality Planning Guidance (December 2015) Extract pages 6-15 and 18.
- D11 Extract of Ministry of Agriculture, Fisheries and Food (1988), Agricultural Land Classification of England and Wales, Revised guidelines and criteria for grading the quality of agricultural land.
- D12 Technical Information Note TIN049 Agricultural Land Classification: protecting the best and most versatile agricultural land.
- D13 MAGIC website extract for SW Sittingbourne.
- D14 Extract of Department for Environment, Food and Rural Affairs (2009), Construction Code of Practice for the Sustainable Use of Soils on Construction Sites.
- D15 ODPM Circ 06/2005. Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System – August 2005.
- D16 Extract of Natural Environment and Rural Communities Act 2006.
- D17 Extract of BS 42020:2013 Biodiversity: Code of practice for planning and development, August 2013.
- D18 Paul Burley email dated 28 November 2018.
- D19 Housing Land Supply Position Statement.
- D20 DEFRA Air Quality Damage Cost Guidance (January 2019).
- D21 D Laxen and B Marnier (2003) Analysis of the relationship between 1-hour and annual mean nitrogen dioxide at UK roadside and kerbside sites.
- D22 The Air Quality (England) Regulations 2000 – SI 2000 No. 928.
- D23 Institute of Air Quality Management (2014) Guidance on the assessment of dust from demolition and construction (Version 1.1) Extract (pages 11-28).
- D24 Landscape Capacity Assessment and Landscape Visual Impact Assessment (2016).
- D25 DWLC Rebuttal to D26.
- D26 Swale Landscape Sensitivity Assessment (May 2019).
- D27 Highways England M2 Junction 5 improvement scheme: Have your say, Consultation Leaflet Wednesday 6 September to Tuesday 17 October 2017.
- D28 Conservation Area Appraisal, Designation and Management Historic England Advice Note 1 (Second Edition) 2019.
- D29 SBC Climate and Ecological Emergency Declaration 26 June 2019.
- D30 Collins, J. (ed.) (2016). Bat Surveys for Professional Ecologists: Good Practice Guidelines (3rd edn) Extract. The Bat Conservation Trust, London.
- D31 Bright, P.W, Morris, P.A. and Mitchell-Jones, T. (2006). The Dormouse Conservation Handbook Second Edition Extract. English Nature, Peterborough.
- D32 HM Government (2018). A Green Future: Our 25 Year Plan to Improve the Environment Extract.
- D33 The Conservation of Habitats and Species Regulations 2017 (as amended) Extract
- D34 The Wildlife & Countryside Act 1981 (as amended) Extract.
- D35 CHSS Air Quality Report for Borden Parish Council 20 June 2018.
- D36 CHSS response to Entran review of Borden Parish Council Air Quality Assessment 17 October 2018.
- D37 CHSS response to Phlorum Air Quality Evidence Review (undated).
- D38 SBC Technical Note on Air Quality and Transportation Matters 30.9.19.
- D39 SBC Clarification Letter on Ecology Matters dated 4 October 2019.
- D40 Statements of Heritage Significance: Historic England Advice Note 12 Historic England Advice Note 12 Published October 2019.
- D41 Tree Preservation Order TP-77-6.

- D42 Tree Preservation Order TP-65-1.
- D43 SBC Clarification Note on Climate Change Matters dated 16 October 2019.
- D44 Paul Burley email to PINS dated 16 October 2019.
- D45 Bird Wise North Kent Mitigation Strategy January 2018.
- D46 Proposed Skylark Mitigation, Boundary Features November 2019 (3825/R3).
- D47 ECIA Guidelines September 2019 Extract.
- D48 Environment Agency Flood Map South West Sittingbourne.

Series E – Relevant Case Law and Appeal Decisions

- E01 Barnwell v East Northamptonshire District Council [2014] EWCA Civ 137.
- E02 Jones v Mordue [2015] EWCA Civ 1243; [2016] 1 WLR 2682.
- E03 R (Williams) v Powys County Council [2017] EWCA Civ 427.
- E04 Hallam Land Management v SSCLG [2018] EWCA Civ 1808.
- E05 Wavendon Properties Limited and Secretary of State of Housing Communities and Local Government and Milton Keyes [2019] EWHC 1524 (Admin).
- E06 Gladman Developments v SSCLG, Swale Borough Council, and CPRE Kent [2019] EWCA Civ 1543.
- E07 Appeal decision APP/P0119/W/17/3189592 – Land South of Gloucester Road, Thornbury dated 14 May 2019.



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.



Ministry of Housing,
Communities &
Local Government

29 April 2021

Mr Paul Burley
Montagu Evans LLP
5 Bolton Street
London
W1J 8BA

Our Ref: APP/V2255/W/19/3233606

Dear Sir

**LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 and 320
APPEAL BY QUINN ESTATES LIMITED AND MULBERRY ESTATES
(SITTINGBOURNE) LIMITED
AT LAND AT SOUTH-WEST SITTINGBOURNE/WISES LANE, SITTINGBOURNE
APPLICATION REF: 17/505711/HYBRID**

APPLICATION FOR A FULL AWARD OF COSTS

1. I am directed by the Secretary of State to refer to the enclosed letter notifying you of his intention to agree with the Inspector's recommendation on the above named appeal.
2. This letter deals with Quinn Estates Limited and Mulberry Estates (Sittingbourne) Limited application for a full award of costs against Swale Borough Council. The application as submitted and the response of the Council are recorded in the Inspector's Costs Report (CR), a copy of which is enclosed.
3. In planning inquiries, the parties are normally expected to meet their own expenses, and costs are awarded only on grounds of unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process. The application for costs has been considered in the light of the Planning Practice Guidance, the Inspector's Costs Report, the parties' submissions on costs, the inquiry papers and all the relevant circumstances.
4. The Inspector's conclusions and recommendation with respect to the application are stated at paragraphs CR83-104. The Inspector recommended that a partial

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award of costs is justified on the basis that the Local Planning Authority (LPA) acted unreasonably by failing to provide clear and precise putative reasons for refusal (in relation to RfR 2 (f), (h) and (i)) and through delay in producing those reasons and engaging with the appellants to agree matters of common ground in a timely manner. The Inspector concluded that the LPA's unreasonable behaviour resulted in the appellants incurring unnecessary expense.

5. Having considered all the available evidence, and having particular regard to the Planning Practice Guidance, the Secretary of State agrees with the Inspector's conclusions in his report and accepts his recommendations. Accordingly, he has decided that a partial award of costs, as specified by the Inspector at paragraph CR103 is warranted on grounds of unreasonable behaviour on the part of Swale Borough Council.
6. Accordingly, the Secretary of State, in exercise of his powers under section 250(5) of the Local Government Act 1972 and sections 78 and 320 of the Town and Country Planning Act 1990, HEREBY ORDERS that the Council shall pay to the developer its partial costs of the inquiry proceedings, limited solely to the unnecessary or wasted expense incurred in respect of the Council's failure to substantiate putative RfR 2 (f), (h) and (i), such costs to be taxed in default of agreement as to the amount thereof.
7. You are invited to submit to Council details of those costs, with a view to reaching agreement on the amount. Guidance on how the amount is to be settled where the parties cannot agree on a sum is at paragraph 44 of the Planning Practice Guidance on appeals, at <http://tinyurl.com/ja46o7n>

Right to challenge the decision

8. This decision on your application for an award of costs can be challenged under section 288 of the Town and Country Planning Act 1990 if permission of the High Court is granted. The procedure to follow is identical to that for challenging the substantive decision on this case and any such application must be made within six weeks from the day after the date of the Costs decision.
9. A copy of this letter has been sent to Swale Borough Council.

Yours faithfully,

Philip Barber

Authorised by the Secretary of State to sign in that behalf



Costs Report to the Secretary of State for Housing, Communities and Local Government

by S R G Baird BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Date: 20 February 2020

TOWN AND COUNTRY PLANNING ACT 1990

&

THE LOCAL GOVERNMENT ACT 1972

APPLICATION FOR AN AWARD OF COSTS BY

QUINN ESTATES LIMITED AND MULBERRY ESTATES (SITTINGBOURNE) LIMITED

AGAINST

SWALE BOROUGH COUNCIL

Inquiry Held on 26 November 2019

Land at south-west Sittingbourne/Wises Lane, Sittingbourne

File Ref: APP/V2255/W/19/3233606

File Ref: APP/V2255/W/19/3233606
Land at south-west Sittingbourne/Wises Lane, Sittingbourne

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Quinn Estates Limited and Mulberry Estates (Sittingbourne) Limited for a full award of costs against Swale Borough Council.
- The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for:

outline planning permission for up to 595 dwellings including affordable housing; a 2-form entry primary school with associated outdoor space and vehicle parking; local facilities comprising a Class A1 retail store of up to 480 sq. m GIA and up to 560 sq. m GIA of "flexible use" floorspace that can be used for one or more of the following uses – A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes), D1 (non-residential institutions); a rugby clubhouse/community building up to 375 sq. m GIA, 3 standard RFU sports pitches and associated vehicle parking; a link road between Borden Lane and Chestnut Street/A249; allotments: and formal and informal open space incorporating SUDS, new planting/landscaping and ecological enhancement works; and

full planning permission for the erection of 80 dwellings including affordable housing, open space, associated access roads vehicle parking, associated services, infrastructure, landscaping and associated SUDS.

Summary of Recommendation: The application for a full award of costs be granted in part.

Preliminary Matters

1. I have prepared a separate report with a recommendation on the appellants' appeal. The application for a full award of costs was submitted by the appellants on 11 December 2019. The inquiry was adjourned to permit the local planning authority (lpa) to respond in writing. The lpa's response was received on 19 December 2019 and the appellants' final response was received on 23 December 2019. The inquiry was closed in writing on 23 December 2019. Copies of the appellants' application and the lpa's response are referred to in the documents list attached to my report (Docs 3 & 6).

The Appellants' Application

The material points are:

2. The application was validated in November 2017 and during the lpa's consideration of the application and in response to queries from the statutory consultees, the appellants provided a series of clarifications. To assess matters and inform a decision, the lpa paid for technical expertise to review several of the technical assessments. These included independent reviews of the appellants' landscape and visual assessment work, and air quality assessments (CDs A41 & A34). The lpa engaged Kent County Council's (KCC) Ecological Advice Service to advise on ecological matters. Separately, KCC as highways authority (HA) and a statutory consultee provided extensive information to the lpa. Against this background, it is a general theme of the lpa's defence that,

without any attempt to explain or justify the reversal in its position, all that advice has now been cast aside.

3. By January 2019, all technical matters were resolved to the satisfaction of the Head of Planning (HoP) and his report recommended that planning permission should be granted (CD B1). In reaching this decision, the HoP and its statutory consultees expressly dismissed the representations made on behalf of Borden Parish Council (BPC) by Railton on highways and by Professor Peckham on air quality. This was referred to in the January 2019 Committee Report (CDs D3 & D35). The lpa has since adopted these positions as its own despite them conflicting with the views of its own expert consultees and the HoP. Again, there has been no attempt to explain or justify this radical change of position.
4. At the January 2019 meeting, Members resolved to grant consent subject to the completion of a S106 Agreement, with the Agreement returned to Members for a final decision (CD B2). Following local elections in May 2019, the make-up of Planning Committee changed. As the application had remained unchanged since the January meeting, it was this political agenda that resulted in the change of the lpa's position. A CIL compliant S106 Agreement was presented to Members in June 2019. The Committee Minutes show that the Members, despite there being no new material considerations to take account of, determined that the entire application should return to them for deliberation (CD B6 & B7). Following this decision, the appellants submitted their appeal against non-determination in July 2019. At an Extraordinary Planning Committee Meeting in August 2019, Members determined that if the appeal had not been made the application would have been refused (CDs B3 & B4).

Unreasonable Conduct – Procedural

5. The lpa failed to co-operate with the appellants in a positive manner. Despite a legal requirement for reasons for refusal to be clear and precise, the putative reasons for refusal (RfR) dated 6 September 2019 were vague and generalised. It was simply impossible for the appellants to know either from the putative RfRs, or from the lpa's Statement of Case (SoC) which simply repeated the RfRs, what points the lpa was likely to be taking in its evidence.
6. The appellants submitted a list of clarification points to the Planning Inspectorate (PINS) on 20 September 2019 (Doc 3 Appendix 7). The aim of the appellants' queries was to provide focussed evidence and to proceed with evidence as soon as possible before exchange of evidence was due on 29 October 2019. The request for clarification was repeated during the Case Management Conference on 24 September 2019.
7. The lpa provided clarification on transport and air quality matters on 30 September 2019 (CD D2). The appellants wrote to PINS on 3 October 2019 to request clarification on the outstanding heritage, ecology and climate change issues (Doc 3 Appendix 8). At this point, the appellants highlighted that proofs had been drafted without the benefit of clarifications being agreed on all matters, that the clarification response did not cover heritage, ecology or climate change issues, or the identity of the lpa's witnesses. The appellants advised that the lack of co-operation would be picked up in a subsequent application for cost (Doc 3 Appendix 8). The lpa issued a clarification on

matters relating to ecology, heritage and climate change on 4 October 2019 so the appellants' team understood, or at least, thought it had understood, the lpa's case for the first time only a couple of weeks before proofs were to be exchanged (Doc 3 Appendix 9). That is unreasonable behaviour, made worse because the lpa's evidence does not conform to these clarifications.

Delay in providing information or other failure to adhere to deadline

8. The lpa's failure to provide clarifications of the putative RfR in good time meant that the appellants needed to draft evidence without any direction regarding the matters in dispute. At the time of exchange on 29 October 2019, the lpa did not provide summary proofs of evidence on air quality or landscape matters despite each proof being substantially above the 1,500-word limitation set out within the Planning Appeals (England) Procedural Guide (August 2019) (Doc 3 Appendix 10). The summaries were only provided on 5 and 9 November. This meant that the appellant's witness team were unable to draw upon a summary of the respective proofs, which were substantial and required a trawl through the evidence to understand the points of the case.
9. Further, the lpa provided a list of further documents that it intended to refer to in respect of the climate change putative RfR on 16 October 2019, which was less than 2 weeks before submission of evidence. In response to this the appellants highlighted that the lpa's evolving position on climate change and other matters was unreasonable as it was providing extra justification for a putative RfR that was not included in its SoC (Doc 3 Appendix 11).

Not agreeing a Statement of Common Ground in a timely manner or not agreeing factual matters common to witnesses of both principal parties

10. To expedite the Statement of Common Ground (SoCG), the appellants prepared topic-based chapters that were sent to individual witnesses for agreement. The appellants received late and/or insufficient responses from the lpa's witness team which meant that a basic, and substantially incomplete, SoCG was submitted to PINS at the beginning of the inquiry. The lack of engagement from the lpa and its witness team meant that the appellants' team was forced to prepare significant additional evidence than would have been necessary were the material differences with the lpa identified before the inquiry. The lpa's reference to timings for submissions in this inquiry being a "Rosewell" case are irrelevant, the timelines were more than adequate to allow the lpa to define the putative RfR and instruct witnesses.

Failing to provide precise putative RfR, delaying the appellants' progress in preparing evidence through the need for multiple clarifications

11. The lack of clarity regarding the RfR and delays in received clarifications from the lpa to narrow the focus of evidence is dealt with above. The lack of engagement by the lpa and its witness team resulted in unnecessary additional work being generated by the appellants. For example, it was not clear from the putative RfRs: (i) what "key elements" of the traffic proposals are said to "lack clarity" or why, or what "flaws" in the modelling work are relied on; (ii) what impacts on biodiversity were of concern; (iii) what heritage assets were of concern and why; or (iv) what concerns there were on the air quality modelling.

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12. None of those deficiencies were cured by the lpa's SoC, which simply repeated but did not elaborate on the putative RfRs. Nor were they cured by the late "clarifications". In every case, the lpa's witnesses provided evidence that went beyond the scope of those clarifications. For example, the heritage witness gave evidence on the Heart's Delight Conservation Area (CA); the ecology witness gave evidence on a range of species (bats, dormice, amphibians etc.); the highways witness built his whole case on challenges to the VISSIM modelling and the climate change witness referred to a range of planning policies which are, not referenced anywhere in the RfR, SoC or clarifications.
 13. This has led to a need for significant rebuttal evidence and wasted inquiry time. The appellants had to prepare rebuttal evidence on matters of ecology (twice), air quality, transport and landscape, in response to the assertions made in the lpa's evidence that were not identified in the putative RfR or SoC. Indeed, in general, the appellants have been required to extend the scope of its evidence to deal with matters which, it turned out, were not in dispute, because of the vagaries of the lpa's case, and because of the absence of engagement on an SoCG until after submission of evidence.
 14. The above shows a lpa attempting to broaden the scope of the already-broad putative RfR by broadening its case very late in the day. That is unreasonable and has resulted in the appellants incurring additional costs. The lpa's response provides no answer to this key point.

Unreasonable Conduct – Substantive

RfR1

15. The lpa's highways witness accepted there was no evidence from the lpa to suggest that the appeal scheme's cumulative residual impact would be severe or that its impacts on highways safety would be unacceptable (Framework paragraph 109). That means there is, even on the lpa's case, no basis to dismiss the appeal on highways grounds and the putative RfR has not been substantiated. The failure to provide evidence to substantiate the reason is unreasonable and wasted substantial inquiry time and preparation time by the appellants. The lpa's concerns on rat-running could, it turned out, be dealt with by condition. Thus, including rat-running points in the highways evidence is unreasonable.
16. The lpa's highways witness failed to provide any evidence on the key premise of the lpa's case, i.e. that the appeal scheme is said to be worse in highways terms than a Policy MU3 compliant scheme. The highways witness acknowledged that evidence would have been "helpful". In fact, his failure to produce it was a glaring omission which meant that there was no evidential foundation to support most elements of the lpa's case.

RfR2(a)

17. The lpa's approach is predicated on the assumption that a Policy MU 3 compliant scheme is deliverable (LPA18 paragraph 4.53). The lpa has provided no evidence to support that, and what evidence there is suggests the opposite. The lpa submitted evidence to the Local Plan inquiry indicating that the

appellants' alternative scheme, MUX1a (equivalent to the appeal scheme), is a better scheme. However, it omitted that key fact from its planning evidence. The failure to provide evidence to substantiate the putative RfR is unreasonable and has wasted substantial inquiry time. It also failed to follow well-established case law i.e. the principle that alternative schemes are irrelevant other than in exceptional circumstances where they are likely to come about (Doc 26).

RfR2(d)

18. The lpa's planning witness accepted that the putative RfR was predicated on the assumed delivery of the allocated site i.e. without the LR. There is no evidence to support that proposition from the highways witness or any witnesses. Failing to provide evidence to support a RfR is unreasonable conduct.

RfR2(e)

19. The lpa's planning witness accepted that points about housing mix and tenure could be addressed "*later*", i.e. through reserved matters applications (LPA19 paragraph 4.76). The attempt to justify a refusal based on matters that can be dealt with by condition is unreasonable.

RfR2(f)

20. The approach of the lpa's planning witness to this putative RfR relies on the assumption that a Policy MU 3 compliant scheme could come forward acceptably without the LR (LPA18 paragraphs 4.80 & 4.84). Again, there is no evidence to support that proposition from the highways witness or any witness. Failing to provide evidence to support a putative RfR is unreasonable conduct.

RfR2(h)

21. This putative RfR is vague and ambiguous, it resulted in the lpa's ecology witness substantially expanding the scope of his evidence in the proof, far beyond the lpa's original "clarifications". In any event, the RfR depends on the net gain argument which the lpa accepts can be acceptably resolved by planning condition. As such, it should never have been a reason for refusal. The lpa's climate change witness's request that the appeal be determined against future planning guidance was nonsensical, and not grounded in any relevant planning policy or law. The witness seeks the Secretary of State (SoS) to apply a series of policies and statutes which simply do not apply to this case. This approach is unreasonable.

RfR2(i)

22. The heritage putative RfR was, totally unevidenced. There was no evidence on the scale of vehicle movements which had been assessed. That made it impossible for the lpa's heritage witness to quantify the level of any heritage effect, despite this being the basis of her complaint about the scheme. In the proof, the witness relied on new heritage assets not referred to in the putative RfR, SoC or "clarifications". The putative RfR is predicated on "*significant*" vehicle movements - assertion without evidence. Neither heritage or highways

witnesses, nor anyone else for the lpa, has evidenced what "*significant*" means, or why it causes harm in heritage terms.

RfR3

23. The lpa's air quality witness did not even consider a comparison between a Policy MU 3 scheme and the appeal scheme. Nor was there an attempt to express his conclusions with reference to what he accepted is the relevant planning guidance [CD D10]. That constitutes a failure to produce evidence to substantiate the reason, and that is unreasonable behaviour. To suggest that the witness was unable to give evidence on the "*extent of the impact*" on air quality or how that impact fell to be assessed under relevant guidance is untenable. If that was the case, then the lpa should not have called him to give evidence.

Conclusions

24. The lpa's case is littered with vague, generalised and inaccurate assertions about the scheme's impacts which are unsupported by objective analysis. The appellants do not accept the lpa's response that "*there is more than one way to assess*" effects i.e. they can be assessed without any attempt at quantification. Many of the concerns are unclear from any of the putative RfRs, the lpa's SoC, or from the "clarifications" and are capable of being dealt with by condition if required.
25. The appellants have wasted an enormous amount of time responding to points which have been withdrawn, and rebutting points which were not set out in the putative RfRs. Inquiry time has also been wasted because in the end, most of the issues in dispute were narrow, and many could be resolved by planning condition. In the end, albeit the lpa accepted this was a "tilted balance" case under Framework paragraph 11(d)(ii), it failed to provide any evidence which seeks to address that balance properly, i.e. by weighing any benefits against any harms. Overall, the time spent, and the time and effort devoted to the topics in writing the evidence, was unnecessary and unhelpful for a scheme which had a positive recommendation for approval, and which the Planning Committee in January 2019 resolved to approve.
26. The undeliverability of the allocated site did not emerge from the appellants' rebuttal evidence on highway matters, it came from the HoP's report.
27. For the above reasons, the SoS is requested to require the lpa to pay the appellants' full costs associated with the appeal.

Response by the Local Planning Authority

The material points are:

28. The putative RfR have been substantiated, and the lpa has acted reasonably throughout, particularly when judged in the context of an appeal against non-determination under the Rosewell Review procedures.

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29. Costs do not "*follow the event*", costs will only be awarded where a party has behaved unreasonably, and importantly that this has directly caused another party to incur unnecessary or wasted expense in the appeal process. The decision maker may disagree with the submissions being made but can still accept that those submissions are reasonable to make. It is also important to take account of the resources and time available to deal with the preparation of an appeal on a complex matter such as this. To give some indication of scale, there were over 2000 documents related to the matter on the Council's website when the appeal was submitted.

The Background to the application and appeal

30. The appellants have glossed over the history leading up to the making of its appeal. Despite being submitted in November 2017, the application was not ready for presentation to Members until January 2019. There have been several necessary amendments, and further consultation on the additional information that was submitted. The Masterplan and other drawings were replaced. The version of the illustrative Masterplan submitted with the appeal in July 2019 was revision D and the final one at the inquiry was revision J.
31. The Environmental Statement (ES) had to be supplemented on several occasions. The ES was submitted in September 2017 (CDs A11 & 12). Addendums to the ES were submitted in May and June 2018 (CDs A14 to A20). Following the substantial criticisms made of it, the Addendum Landscape and Visual Impact Assessment is a complete replacement. The Transport Assessment Addendum (TAA) also relied upon new work, using the bespoke model, which superseded the work in the TA (CD A20). The ES Addendum Summary October 2018 set out the assessments and findings of the ES addendum information in relation to air quality, ecology, landscape, archaeology and transport assessments (CD A33). A further ES Addendum was submitted in December 2018 (CD A35). As this development is an Environmental Impact Assessment development, each of these revisions needed proper public consultation. The appellants also agreed to extend the period for determination, which reflects the reasonable approach that both parties were taking in the circumstances.
32. Although not part of the specific costs' submissions, there is a sour note where it refers to a "*political agenda*" resulting in a change of position, which was not pursued at the inquiry. There is no substance in this point. It would be a perverse basis for any award of costs to be made on the basis that the decision lies with elected Members and not with the officers.
33. The view of the lpa is that expressed by the Planning Committee, up until that point anything else is simply the view of the officers. The Planning Committee reached its conclusions on all the matters before it, the application, the responses from the statutory consultees, including the Parish Councils, local objections and supporting representations. It is clear from the HoP's report that the recommendation to approve was a balanced one, and that several harmful impacts arising from the scheme had been identified, as well as its benefits. The Members were entitled to consider whether the weight to be given to the benefits and harmful impacts arising from the scheme should be applied in a different way to that of the HoP. That is how the planning system works.

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34. No final decision was made at the January 2019 meeting. The Planning Committee in August 2019 disagreed about where the planning balance should be struck. The Members also responded to concerns about the level of information that had been provided, and the recent declaration of a climate change emergency. The Members' decision was a reasonable response to the contentious proposal before them. It is the Members who are asked to make these decisions and to be locally accountable for them.
 35. It is important to bear in mind, that the inquiry process following the Rosewell Review has concertinaed the process and brought several deadlines forward. When it comes to judging the reasonableness of the lpa's actions, and what it can be reasonably expected to do, this needs to be seen in the context of an appeal against non-determination. By its very nature, the lpa is not starting from a defined position. The appeal was made before the views of the Members were known. The delay was not due to a lack of co-operation and officers could not "second guess" what the Members would decide.
 36. The lpa was not able to agree what the common ground was on the significant considerations until it had taken the matter back to the decision-making committee. Quite simply, it was starting from a position where it did not know what, if any, of the matters would be in dispute. Once notified of the appeal, the lpa arranged an Extraordinary Planning Committee meeting at the earliest opportunity.
 37. Following the decision that the matter would have been refused, some further delay was inevitable. The lpa needed to ensure that it had substantial evidence in support of the putative RfR if they were going to be pursued at the appeal. The lpa needed time to seek relevant expert witnesses who were prepared to act. The witnesses confirmed, that they only agreed to accept the lpa's instructions having satisfied themselves that they could support the reasons relevant to their area. As the Inspector will recall, it had not been possible to instruct some of those witnesses by the time of the CMC. The lpa could not therefore provide much more detail on the specific topics until the expert witnesses had been able to comment on them. It would be unreasonable to expect a party to provide details it was actively seeking but did not yet have.

Unreasonable conduct – Procedural

Lack of co-operation

38. The substance of this complaint is that the appellants asked for clarification. The putative RfR are clear and precise. There are 3 main reasons, and 2 of them were about a lack of adequate information. The other is about the overall planning balance, and it sought to itemise the harms that needed to be considered. Each reason for refusal refers to the headline points and policies. The appellants sought further clarification, and this was given when it was available.
39. The climate change topic is a fast-moving area, and the list of documents was amended at the earliest opportunity. In the event, the appellants spent no time in their own evidence on this. Rather, they simply take the point of principle,

that the Acts and considerations were not relevant to planning. This is a point they made as early as 16 October 2019, in an email.

40. The CMC was a moment to take stock, and a sensible timetable for further action was set by the Inspector. Despite what is said at paragraph 8 above, the appellants were told during the CMC that the lpa did not yet have a full quota of witnesses, and also that it needed to report the heritage, climate change and ecology matters back to the Members at their next meeting, 3 October 2019. These points were then clarified to the appellants on 4 October, in accordance with the agreement at the CMC. The appellants' sending of a further email on 3 October was not relevant to this. The further points were set out in a written Technical Note on Air Quality and Highways, as was suggested at the CMC (CD D38). Not all those points were answered, as the highways and air quality witnesses explained in their evidence at the inquiry.
41. The preparation of the evidence was able to proceed to the timetable, and the inquiry was able to proceed as scheduled. The provision for rebuttal evidence also assisted. The appellants try to rely upon the late identification by the lpa of its witnesses as part of its case relating to a lack of co-operation. This is an unfair criticism in the circumstances of this appeal. The lpa was not able to approach potential witnesses until the putative RfRs had been provided by the Members. The lpa then had to find such witnesses to appear for it within a very compressed timescale. Several witnesses approached were unable to offer their services, due to the short timescales leading to the inquiry because of the new procedures following the Rosewell Review. This added delay to the process of appointing witnesses, but it would be wrong to suggest that this amounted to unreasonable behaviour by the lpa.

Delay in providing summaries

42. The sole issue is that the summaries for the air quality and landscape matters were not provided separately. It is common in a proof of evidence to provide a "Conclusions and Summary" section, and the separate summaries from the lpa's highways and air quality witnesses simply draw on that. The appellants would have been able to understand the case it had to meet from the proofs. The allegation that some costs were wasted is rejected.
43. It is in the nature of the SoC that further documents can be added to the list. The intention behind the additions was to assist in the preparation of the proofs of evidence and to avoid the need for any late adjournment. The fact that no additional time was spent on this by the appellants is demonstrated by the simple dismissal of the lpa's case by the appellants' planning witness in his proof and oral evidence. The same point had been made by email and in the SoCG. No new documents were referred to by the witnesses in their proofs.
44. As for the Core Documents list, it was sensible to treat this as a work in progress. A certain tolerance had to be shown to enable this to happen. For instance, the lpa's planning witness had to update the references in his proof as the earlier numbering was changed by the appellants. The inquiry was provided with a full set.

Not agreeing the Statement of Common Ground

45. The appellants criticise the way in which the SoCG was agreed. Whilst it is not accepted that the delays that occurred were unreasonable in the circumstances. The work that has been done has meant that this document is far more extensive than would normally be the case, and it has proved to be useful in shortening the time that has needed to be spent at the inquiry. Such delays as there have been have not caused any unnecessary expense.
46. At its start, the inquiry had a series of proofs of evidence and some rebuttal evidence. These did not seek to repeat areas where matters are not in dispute. Indeed, there is little in the proofs of evidence that is unnecessary, and the parties have proceeded on a sensible basis in producing the main evidence. There is no evidence to support the appellants' assertion that they had to produce "*significant additional evidence*" in any proof (14).
47. The history of the SoCG shows that additional work was required, especially once it was decided to try to produce one between the witnesses on each topic. The first draft SoCG submitted by the appellants was substantially incomplete. The appellants advised in August that they were preparing a second draft. This came some 6 weeks later and was still substantially incomplete. This is the version that arrived just before the CMC, at which point it was agreed that topic-based proofs would be included. These topic areas were drafted by the appellant and there was substantial discussion. The timeline shows that the highways and landscape sections were still under discussion late in the process and had not been seen by the lpa as late as 7 November 2019. The drafts also included assertions about the evidence that the lpa's witnesses could not agree.
48. The timeline of work on the SoCG was:
- | | |
|----------------|--|
| 19 July - | first Draft SoCG was submitted by the appellants with appeal bundle, the lpa's stance on the appeal had not yet been determined; |
| 02 August - | first draft quickly superseded. Appellants advise that the SoCG needs further work and would be submitted in the next 2 weeks; |
| 17 September - | lpa's SoC submitted in line with agreed deadline; |
| 19 September - | revised SoCG was received from the appellants, some 6 weeks after the email of 2 August; |
| 24 September - | the CMC call was held, where the need for a topic-based SoCG was agreed; |
| 24 September - | a supplementary section for SoCG on Affordable Housing was received from the appellants; |
| 25 September - | the appellants requested clarification of the putative RfR; |
| 30 September - | as agreed at the CMC, the lpa circulated the Technical Note on Transport and Air Quality matters; |

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- 4 October – the appellants provide a Housing Land Supply Position Statement. Lpa provide further clarity on heritage, climate change and ecology reasons;
- 7 October - appellants chasing response re SoCG;
- 8 October – lpa advise appellants with details of the witnesses to date for discussions to start on topic-based sections of SoCG; appellants seek comments on S106 and SoCG. Appellants advise that the topic-based sections on Ecology and Heritage would be submitted within a week;
- 11 October – lpa submits response to appellants’ Housing Land Supply position;
- 16 October - lpa submits further list of documents re climate change; appellants complaining about lpa’s 16 October list; lpa confirms details of climate change witness and confirmation that climate change SoCG sent to him;
- 17 October – lpa confirms it does not intend to call a viability witness;
- 18 October – appellants send first draft ecology SoCG; lpa sends confirmation of remaining witnesses;
- 29 October - all proofs submitted in accordance with agreed deadline;
- 1 November – lpa sends tracked changes to main SoCG; lpa provides response to SoCG sections on ecology, transport, heritage and air quality;
- 4 November – climate change section of SoCG supplied; appellants decline lpa’s invitation to meet to discuss draft S106 obligations;
- 7 November – appellants circulate revised version of SoCG; appellants advise that SoCG sections on highways and landscape not yet ready to submit to lpa;
- 8 November – lpa submits CIL compliance schedule to appellants.
- 12 November – lpa asks for appellants’ position on additional obligations sought; appellants respond saying that a conference call on S106 may be suitable way forward;
- 12 November – lpa submits draft list of planning conditions (further to those in committee report);
- 14 November – appellants confirm to PINS that SoCG largely agreed;
- 12/22 November – series of emails between lpa and appellants picking up points on SoCG;

21 November – appellants and SBC agree final drafting of landscape SoCG.

Failing to provide precise putative reasons for refusal

49. As the SoC highlights, the appellants should have been aware of the highways case it had to meet. The appellants would also have been aware of the Railton report since it has been available since October 2018. It was the appellants' choice to remain silent on it.
50. The appellants adopt the absurd position that if there is one additional item added by an expert witness, then the whole of their evidence is unreasonable. This ignores the professional obligations on expert witnesses to give their true opinion, and to set out the basis for their opinions and what they have and have not considered. The lpa's heritage witness added evidence on the likely effect on Heart's Delight CA, as a matter of her judgment, and the appellant' expert was able to deal with that point in oral evidence.
51. The lpa's ecology witness reviewed the evidence about the alleged enhancement and gave his own evidence on the range of species that had been surveyed and the adequacy of that work (e.g. birds, bats, dormice, amphibians etc.). Both the ecology witnesses knew and explained that Biodiversity net gain is about an assessment of the combination of habitats and species that are likely to be affected.
52. The lpa's highways witness has been trying to understand the traffic modelling from the beginning and explained his concerns in his earlier report for BPC and in his proof of evidence. The appellants knew that there were challenges to the model (VISSIM or otherwise) which would need to be explained by them. The way that the lpa's witness has chosen to explain it (and not explain it) has been the subject of detailed evidence. The list in the lpa's SoC includes the reference to the Railton Transport and Highways Review dated October 2018 submitted as a response to the planning application on behalf of BPC and posted on the Council's website on 23 October 2019. The first time that the appellants engaged with the criticisms made by this work was in their proof of evidence. Although the modelling results are presented as if they were "sensitivity tests", they are the first time that points about the higher level of impacts have been assessed. It was reasonable for the appellants to be required to do so. Furthermore, as the lpa's highways witness stated, whilst he could accept that the results suggested that his concerns could be met, the issue remained that the modelling itself is a "black box" to the public and to those who seek to understand it.
53. The lpa's climate change witness concentrates in his evidence on the way in which Policy DM 19 should be addressed, as did the Sol Environment report relied upon by the appellants (CD A77). The other policy references in his proof are there as the LP is to be read as a whole. No inquiry time was wasted on this as the appellants did not engage with the points in their evidence.
54. The way in which the inquiry progressed does not support the assertion that the appellants have "...been required to extend the scope of its evidence to deal with matters which, it turned out, were not in dispute". There was a failure in the application to address many areas, highways, air quality and ecology, that

needed to be addressed in evidence. It was reasonable for the lpa to include this in their putative RfR.

55. It was sensible for provision to be made as part of the inquiry timetable for possible rebuttal proofs, and they were produced for different reasons for each topic. It was reasonable for them to be produced and contrary to the appellants' assertion they did save inquiry time.
56. The appellants' first rebuttal on ecology was needed as the survey work was old, and clearly patchy, and biodiversity net gain requires a review of the species as well as the habitats affected. The appellants' second rebuttal reworked the DEFRA Metric in the light of reasonable criticisms made by the lpa. The lpa accepted the late production of this second rebuttal as a sensible measure that saved inquiry time and that the lpa had adequate time during the inquiry to review it.
57. As for air quality, both main witnesses had to produce new evidence in the light of the new monitoring data that had been collected. As the SoCG recorded including the earlier versions, the lpa had to reserve its position on air quality as the appellants had updated the air quality assessment in its proof of evidence. As the inquiry heard, the appellants did not rely upon the earlier work. Due to a change in circumstances, this new work used the real-world data that had been collected. Both main parties acted as reasonably as they could in such circumstances.
58. On highways, the main issue was about the lack of information that had been provided and the appellants' highways rebuttal only partially answered the queries about the use of VISSIM and the assumptions that had been made. This was part of the ongoing debate about the lack of adequate information, on which the experts disagreed and on which discussions were held, very late in the day, given that the lpa's expert had set out his points back in October 2018. As the lpa made clear, the appellants have still failed to resolve those concerns, and the lpa has done what it could to narrow the issues between the experts. Sometimes, there will always be reasonable differences, and this is one of those instances where the experts did not see eye to eye despite discussions.
59. On landscape, the rebuttal dealt with one very short point about to the possibility of a 'T' junction connecting the allocated site to Borden Lane rather than the possible roundabout. This took very little inquiry time to deal with and could have been dealt with orally. The necessary evidence was already before the inquiry. It was a point of detail and not a point that would be expected to be in a SoC.

Unreasonable conduct – substantive

60. The appellants say that they have taken each putative RfR in turn. However, there are several that have not been addressed and for which no award of costs is sought. The lpa's witnesses gave their professional opinion, as confirmed by their expert declaration. Whilst their conclusions may not be accepted by the SoS, it was reasonable to reach a different view on the evidence.

The relevance of Policy MU 3

61. The appellants are wrong in their criticism of the reliance by the lpa on the Policy MU 3 allocation as a comparison; this is a clear example of a reasonable difference of opinion between the parties. The lpa's case is a reasonable one. As there is a deliverable allocation in the LP, it is a baseline as the starting point. It is an allocation in a recently adopted LP and tested through a LP inquiry. To have ignored this would be undermining the plan-led system. It is then a proper approach to assess the additional elements to that and the advantages and disadvantages of developing additional land. Those additions would need separate assessment on their own terms as was accepted by the appellants' witnesses.
62. The appellants' assertion that the Policy MU3 allocation was undeliverable was an opportunistic one, that emerged from the appellants' highways rebuttal proof. That assertion did not form part of the planning case as set out in the Planning Statement, the SoC and the appellants' planning evidence and took on an unexpected and perverse significance (Doc 5 paragraphs 11 to 17). Despite saying that the allocation is undeliverable, the appellants still seek to rely on the fact that there is an allocation to assert that there is an "*in principle*" support in planning terms for their development. Policy MU 3 was not in the original submission draft LP for several reasons, including its status as part of the existing Important Local Countryside Gap (ILCG). The allocation in the LP was only made "on balance", and as a choice between several competing sites, each of which was the subject of sustainability appraisal. If it was not deliverable in highway terms, it would not have been allocated.

Other issues

63. No criticism is made of some of the putative RfR. RfR 2(b) refers to development of land within an ILCG. As such landscape and planning evidence was required. RfR2 (c) refers to the loss of B&MV agricultural land. Regardless of what conclusion is reached on this application for costs, the cost of this proof of evidence and attendance cannot be part of any wasted costs against the lpa. At the CMC it was made clear that this was a planning issue, and there was no need for an agricultural witness. Calling an agricultural witness was the appellants' choice. It was therefore appropriate for the lpa to ask a few questions for clarification. Indeed, on the agricultural land point, the witness's own evidence picked up omissions in earlier survey work, regarding the quality of the land at the north-western end of the appeal site.
64. RfR2 (g) refers to the failure of the proposed S106 agreement to provide adequate mitigation. No criticism is made of the work done on this ground, which has required an alteration to the Agreement that the appellants had not previously accepted. The work done on this cannot be part of any wasted costs.
65. RfR1 relates to highways where the appellants try to make the argument that there was no basis to dismiss the appeal on highways grounds. This is a dismal failure to read what the putative RfR says on transport. Most of the reason relates to the lack of information about the highways impact. The lpa is in the position where there is an absence of the relevant information, and as such has

had to present a negative case i.e. that the application fails to demonstrate that the scheme would not cause unacceptable highway impacts.

66. The ES work remains inadequate and the lpa's criticisms were reasonable, were explained in detail in the lpa's highways evidence, and are shared, certainly at the Reg 25 stage, by those advising the SoS. Rather than do the work requested, the appellants declined to provide the further information (Doc 36).
67. The way in which the lpa's officers and the statutory consultees responded to the representations made on behalf of BPC by Railton on highways and Professor Peckham on air quality has been covered in evidence. The appellants refer to the lpa "*expressly*" dismissing the "*representations*" made by Railton and by Professor Peckham. This reflects the appellants' continuing confusion over the HoP's report to the Committee. That report does not represent the view of the lpa, but rather the professional assessment of the HoP which he reports to the Committee for a decision. Much of the information requested in the October 2018 Railton Report was only provided in the appellants' proof of evidence, and not before. The criticism remains that the model is a "black box", and there are some demonstrable errors.
68. The allegation that rat-running could be dealt with by condition is an odd one, as the proposed condition is not accepted by the appellants. The lpa relied upon the evidence of its highway's expert. This was based on his experience, the available traffic evidence, where the appellants had only looked at Chestnut Street (southbound), and no assessment anywhere of northbound flows, local objectors' evidence and journey times. The appellants may criticise him for not putting numbers on it, but that is not a ground for saying that he has acted unreasonably. There is more than one way to assess the adverse effects. The lpa's highways witness did address the fundamental difference between the Policy MU 3 allocation and the appeal scheme in terms of the highway layout.
69. RfR2 (a) is harm to the landscape arising from the development of land within the open countryside beyond the allocated site. This is an odd basis indeed for the appellants to suggest that the landscape evidence was advanced on the basis that the allocated site is deliverable and "*that failure to provide evidence to substantiate the RfR was unreasonable and has wasted very substantial inquiry time*". The adverse visual and landscape impacts of development in this area have always been controversial. Given that it would be a larger, affect a larger area, and take up more of the existing open gap between the settlements it would have been necessary to assess the landscape and visual impacts of the appellant's scheme.
70. It is also suggested that the lpa "*failed to follow well-established case law (i.e. the principle that alternative schemes are irrelevant other than in exceptional circumstances where they are likely to come about.*". The reference made it is to *Lisle Mainwaring v Carroll* [2017] EWCA Civ 1315; [2018] J.P.L. 194 (Doc 26). This is a point addressed in the planning evidence and submissions (Doc 5 paragraphs 11 to 17). The submission made by the appellants that the Policy MU 3 allocation is not a material consideration is wrong in law. It would be unreasonable to ignore the baseline, as set in the recently adopted LP. There is indeed no "one size fits all" rule about the relevance of alternative schemes, see paragraph 19 of the judgment, citing Sullivan LJ in *Langley Park School* for

Girls Governing Body. This appeal scheme does cause harm. There is an alternative scheme, set out in the allocation, which avoids some of the harm and reduces other harm. Therefore, as a matter of fact and degree, the Policy MU 3 allocation is a material consideration or, as this is in the context of a costs application, it is reasonable to reach that conclusion.

71. What the appellants say about RfR2 (d) and affordable housing is a bad point. The lpa's position is that providing the LR has led to the reduced provision of affordable housing was justified and explained by the lpa's planning witness. It does not rely on a comparison with the level of provision that might be made on a detailed scheme that met the terms of the Policy MU 3 allocation. The appeal scheme fails to deliver the full quantum of affordable housing required under Policy DM 8, and the appellants' justification for this is based upon the additional costs of the LR to Chestnut Street. There is a simple difference between the lpa and appellants. The appellants take the position that there are wider highways benefits to the appeal scheme that outweigh a series of harmful impacts, including delivery of the full quota of affordable housing. The lpa's position is that any such benefits do not outweigh these adverse impacts, including the failure to provide the full quota of affordable housing. It is a matter of fact that the scheme does not deliver the level of affordable housing as required in Table 7.3.1 of Policy DM 8. It is part of the planning balance.
72. The putative RfR was clearly limited, and the supporting evidence was provided in the planning evidence. It was confirmed at the CMC that no viability witness was likely to be required and on 17 October, the lpa advised the appellants that a viability witness would not be called. The lpa acted reasonably and no costs were wasted on this point in any event.

RfR2 (e) - an appropriate mix of housing

73. It is not understood why it is said that it is unreasonable to rely on this point. The housing mix is a major local issue, and this development does not provide an appropriate mix of housing. The appellants in the planning evidence accept it is a negative point in the planning balance (APP20 paragraph 4.38). It is also incorrect to say that this can just be varied as required at reserved matters stage. Phase 1A is set, and the appellants' viability evidence, says that later phases would not be viable if a greater number of smaller units were included (APP20 paragraph 4.35). There is a reasonable expectation that this weighting of the mix towards larger units would continue to be relied upon by a developer under reserved matters applications. It would be wrong to simply dismiss this as a point to be dealt with under reserved matters, and it is reasonable for the lpa to make this criticism as part of this appeal.

RfR2(f) - the effect of the LR on the character and appearance of the development.

74. It is not unreasonable to criticise the adverse effect on the urban design of this large housing development of a local distributor road. It is a point made in the evidence by BRAD, and in the lpa's planning evidence. It is a point that is also clearly stated in Policy MU 3. This part of the application for costs essentially refers back to the alleged unreasonableness of relying on the ability of the

allocated site to come forward. It is not unreasonable to rely on that as a material planning consideration in this case.

RfR 2 (h) - adverse impacts upon biodiversity within the site

75. The appellants' criticisms are misconceived. The general concerns remained, and the lpa provided such clarifications as it was able. The lpa's witness acted reasonably in reviewing the survey evidence available and applying his professional judgment to it. In any event, it would have been necessary to check if the 2016/17 surveys were complete and/or needed updating. The appellants' ecologist did not treat net gain as a requirement, but only as a preference and the evidence reflected that. However, the appellants' planning witness accepted that net gain is required on this site. Unfortunately, the appellants' planning witness was not present when the ecologist gave evidence, and it appears that he was not told what was said.
76. Once it is accepted that net gain is required, then it was essential to review the biodiversity evidence to demonstrate that there would be a net benefit. As the appellants' ecologist accepted, that requires one to look at the effect on the protected species as well as on the habitats. The lpa's ecologist was asked to give his professional view, and he reviewed the work that had been done and has informed the inquiry accordingly i.e. from the inadequate Skylark mitigation.
77. Net gain was not a matter that was simply to be dealt with by condition. The appellants' ecologist did not accept it as a policy requirement. Furthermore, the appellants do not accept the condition that would use the Metric, or one that has a requirement to ensure that the gain is measurable. It remains disputed within the evidence whether a 10% net gain can be achieved within the site itself. It was a topic on which evidence had to be called and tested. It was reasonable for the lpa to do so.

RfR2 (h) - adverse impacts upon climate change considerations.

78. The appellants mischaracterise what the lpa's climate witness has said. The witness has given evidence to describe the problem, to point out what the current policies fail to address, and then deal with how the appeal should deal with this as a material consideration. It is the appellants who have taken an unreasonable stance, in limiting themselves to considering issues of policy alone. The appellants' comments on the SoCG from 8 October onwards also confirmed that their position was that the legislation relating to climate change is not relevant to planning. The appellants assert that the Climate Change Act 2008 "*does not include any development control criteria and, therefore, is not relevant in this case.*" The lpa submits that it is a material planning consideration, and that new development should not be approved that is not fit for purpose (Doc 5 paragraphs 101-114). Whilst the appellants' approach is very blinkered, the lpa's case was clear, reasonable and substantiated.

RfR2 (i) - harm to heritage assets

79. The appellants' assertion that the opinion of the lpa's heritage expert is not reasonable is a poor point. The lpa's expert has given detailed evidence to substantiate this part of the putative RfR. Both the lpa's and appellants' experts were in broad agreement on the analysis of the possible impacts on heritage interests. The appellants' expert agreed there would be impacts from the LR and the Chestnut Street roundabout that would necessitate the use of screening and a buffer. The evidence submitted with the scheme forecasts a significant increase in vehicle movements on Chestnut Street, which passes through the Chestnut Street Conservation Area and Listed Buildings (LB). The only substantial point of difference between the witnesses is about the other conclusions that can be drawn from the highways evidence. Yet this is not a numbers game. The extent to which the likely impact on heritage assets is "significant" is a matter of judgment. Heritage evidence cannot be reduced to a score sheet. Indeed, that is not what the appellants' witness does; he exercised judgment. It was reasonable for the lpa to rely upon the evidence of its expert in the same way.

RfR3 - air quality modelling submitted with the application is inadequate

80. The evidence from the lpa's expert was substantial, and addressed 3 main points – the bad modelling, the likely increase in pollution and its redistribution rather than its reduction and poor mitigation. Whilst it may be possible to disagree with his conclusions, he has given detailed and specific evidence. The extent of the impact, and its assessment under the PPG, was for others to assess, once the impact on air quality could be agreed. However, it was not possible for the lpa's witness to get to that stage. This is a topic where a large amount of the previous work was overtaken by new data and evidence by the time of the inquiry. The appellants' witness did not rely upon the older modelling work that had been submitted as part of the ES and the ES Addendum, which the lpa's witness had criticised. New modelling work was set out in the proof of evidence some 4 weeks before the inquiry, and to which it was reasonable for the lpa to produce a rebuttal.
81. It was also reasonable for the Members to take BPC's evidence into account, and to consider that the applicants had not properly addressed it. Whilst the consultees had criticised BPC's report, the lpa's witness had provided detailed rebuttals to that, the most relevant are appended to the proof. These are: the "Air Quality Report for BPC" June 2018 by the University of Kent, submitted as a response to the planning application and posted on the Council's website July 2019; the response to "Review of Borden Parish Council Air Quality Assessment" October 2018 by the University of Kent, submitted as a response to the planning application on behalf of BPC, posted on October 2019; the Response to "Air Quality Evidence Review" submitted January 2019 by the University of Kent, submitted as a response to the planning application on behalf of BPC, posted on 07/01/19); the Response to the HoP's report January 2019 by the University of Kent, submitted as a response to the planning application on behalf of BPC, posted January 2019; and the diagram of "Comparison of developer 2025 predictions (V1.3) with Swale Borough Council measurements for NO²" submitted June 2019 by the University of Kent, on behalf of BPC, posted June 2019.

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82. For the above reasons, the SoS should refuse the appellant's application for costs.

CONCLUSIONS

83. Planning Practice Guidance 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. The aims of the costs regime is encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case and encourage Ipas to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case and not to add to development costs through avoidable delay.
84. The appellant's history of the application, the Ipa's consideration of it, the reference to a possible political reason for the change in approach, and the Ipa's response on these matters are part of the background context and do not form part of the appellant's application for costs and have not featured in my consideration of the merits of the application.
85. Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires that where planning permission is refused, the Ipa must state clearly and precisely the full reasons for the refusal, specifying all policies and proposals in the development plan that are relevant to the decision. The purpose of a RfR is to tell applicants how their proposal has fallen short and what elements must be addressed either to make it acceptable in a revised application or what evidence would need to be submitted in appeal.
86. The putative RfR relating to highways, heritage, air quality and climate change and biodiversity fall considerably short of the requirement to be clear and precise. Rather, they are, vague and generalised. Indeed, the Ipa's response notes that, "*Each reason for refusal refers to the headline points and policies.*" [38]. The vague and generalised nature of the reasons required the appellants to seek clarification from the Ipa on more than one occasion of what some of the putative reasons meant. The notes of the CMC indicate that when asked for clarification of several of the reasons, the Ipa indicated that a meeting of the Planning Committee was scheduled for 3 October where officers were requesting clarification from the Members on the nature of the concerns relating to biodiversity, climate change and heritage. Given that the officers would have been present at the June and August Planning Committee meetings, this action does not suggest that they themselves fully understood the putative reasons on these matters.
87. In relation to putative RfR1, the appellants' email of 20 September 2019 listed 8 substantial areas that needed clarification, demonstrating the highly generalised and vague nature of the reason. In relation to air quality, the appellants' request for clarification covers 3 substantial matters. Putative RfR 2 (i) on heritage matters did not, other than a general reference to Borden and Chestnut Street (albeit qualified by the words "*in particular*") refer to any other assets. Had the appellants relied solely on this reason, and not sought clarification, it

would have come as a surprise when they received the lpa's proof to find that 5 additional assets were raised. Moreover, the lpa's proof included one asset that was not referred to in the clarifications provided following the October Committee meeting i.e. impact on the Hearts Delight Conservation Area, albeit that addition did not result in material additional work by the appellants. Moreover, the proof of evidence of the lpa's heritage witness contained the following, "...it is implied on the reason for refusal but not explicitly stated...". When asked whether the reason was precise, the witness responded that it was "not precise". These matters reinforce my conclusion that the lpa failed to provide putative RfR that were clear and precise.

88. Linked to the above point is that at the date evidence was submitted, the lpa did not supply summary proofs of evidence for the landscape and air quality witnesses [8]. The landscape summary proof, apart from the first 2 paragraphs, which detail the witness's qualifications and sets out the professional declaration, is the same as the conclusions in the proof of evidence. As to the air quality proof, the first 19 paragraphs largely relate to describing the background, the site, the putative RfR, national policy and legislation, all of which the appellants' expert would be familiar with. The remainder of the proof is brief, albeit paragraphs 27, 28 and 29 have multiple subparagraphs and there are 2 paragraphs numbered 29. Whilst the lpa failed to adhere to the deadline, the appellants' experts were not required to "*trawl through the evidence to understand the points of the case*" and as such I consider no unnecessary expense was incurred.
89. Notwithstanding my conclusion on the issue of summary proofs, I consider the lpa acted unreasonably in failing to provide clear and precise putative RfR and that the appellants incurred unnecessary costs in seeking to obtain clarification.
90. As to the SoCG, an agreed statement is essential to ensure that the evidence considered at the inquiry focuses on the material differences between the appellant and the lpa. The SoCG is to provide a commonly understood basis for the appellant and the lpa and to provide context to inform the SoC and the subsequent production of proofs of evidence. Whilst implementation of recommendations of The Independent Review has resulted in tighter timetabling of inquiries, there is as far as I am aware of no relaxations when the inquiry relates to a case for non-determination and inquiries continue to be arranged in accordance with the provisions of the relevant Inquiries Procedure Rules.
91. The June Planning Committee did not determine the application rather a decision was deferred for the application to be considered at an Extraordinary Planning Committee Meeting. The appellants appealed against non-determination on 19 July and submitted a draft SoCG. The parties were notified on 6 August of the date of the inquiry and that it would be timetabled as a Rosewell case. These letters indicated that the lpa must submit a completed agreed SoCG by 10 September 2019.
92. The Extraordinary Planning Committee did not meet until 29 August to determine what action it would have taken. The resolution was that the application would have been refused and drafting of the putative RfR was delegated to the HoP. The full putative RfR were issued on 6 September. This timeline and the fact that the lpa had no witnesses in place to agree common

ground on the matters at issue meant that it was unable to meet its responsibility to submit an agreed SoCG by the deadline of 10 September.

93. Whilst the failure of the lpa to meet this deadline is a potential ground for an award of costs, that is not the crux of the matter and, in itself, did not lead to unnecessary costs being incurred. The issue is that the putative RfR were, vague and generalised and by the CMC on 24 September the lpa still did not have a full complement of witnesses. The requested clarifications of the reasons were not complete until 4 October, and it was not until 18 October that details of the remaining witnesses were confirmed. All this must be seen against the backdrop of a deadline to submit evidence by 29 October.
94. I have some sympathy for the officers who were coordinating the lpa's responses [37]. However, the timetabling of an inquiry following the recommendations of The Independent Review requires all parties to change behaviours. Although the evidence was submitted in time to meet the deadline and the inquiry opened as scheduled, this was against the backdrop of the delay in producing putative RfR and delivering a witness team for the appellants to engage with. This meant that, as evidenced by the narrowing of issues during evidence and the appellants submitting rebuttal proofs additional work was required by the appellants. Accordingly, I consider the lpa acted unreasonably, which resulted in the appellants incurring unnecessary expense.
95. The appellants had demonstrated to the highway authority (HA) and Highways England, the strategic highway authority, through the running of a micro-simulation model, the parameters of which had been agreed with the HA, that with the implementation of off-site highway works, the scheme would not have an unacceptable effect on either the local or strategic highway network. Putative RfR1 presents a negative slant in that there was a lack of information, that the modelling work was flawed, and the mitigation proposed all failed to demonstrate that the scheme would not cause unacceptable impacts on the highway network. I accept it is entirely legitimate for the lpa's highways expert to have, based on his professional experience and local knowledge, doubts, which I would characterise as an informed "hunch". However, for that to translate into a RfR and substantiated it has to be supported by technical evidence.
96. The lpa acknowledged that it did not produce evidence that the scheme's cumulative residual impact would be severe or that its impacts on highway safety would be unacceptable i.e. the Framework paragraph 109 test. Moreover, in relation to rat running, the lpa's concerns on potential impact was not supported by objective evidence, rather it was assertion. Assessing impact, its magnitude and the significance of the effect requires professional judgement. However, to be able to make the judgement that traffic would have a significant effect requires, in the first instance, objective evidence. Otherwise, conclusions would be no more than an educated guess. Drawing this together, I consider the lpa acted unreasonably in failing to produce evidence to substantiate the first putative RfR.
97. The failure to substantiate the highways case has significant implications for the lpa's heritage putative RfR. The heritage reason and the judgement as to the extent of the harm relied on a reference to significant vehicle movements and

rat running. However, within the highways and the heritage evidence there was no objective basis to judge whether the movements would be significant and conclude on the magnitude of heritage harm. This is especially so when the conclusions are based on a sliding scale i.e. negligible, minor, moderate major and extreme [LPA16 Appendix B page 10]. On this basis, I consider the lpa failed to substantiate the heritage RfR (2i). The lpa also acted unreasonably by introducing in its evidence at the inquiry an allegation of harm to the Hearts Delight Conservation Area and Listed Buildings. There had been no reference to this asset either in the putative RfR, the SoC or the clarifications on heritage harm. Whilst the evidence was fresh and introduced at a late stage, it was not substantial, and I am not convinced that this addition resulted in the appellants incurring additional expense.

98. A substantial part of the appellants' application for costs refers to the lpa's cases being predicated on the deliverability of the Policy MU 3 allocation. The allocation is in a recently adopted plan and it is not unreasonable for the lpa to use this as the baseline and a material consideration. In coming to my conclusion on the merits of the application, I used, where appropriate, the allocation as a baseline and a material consideration. RfR2 and its constituent parts seek to balance of the benefits of the scheme against potential harms. In this context, I consider that RfR2 (a), (b), (d) and (e) were reasonable positions for the lpa to adopt, given that part of the site would be located within the countryside outside the settlement boundary determined by the LP and within an ILCG. In relation to affordable housing, part of the site is located within the rural area where, under Policy DM 8, a different requirement for affordable housing sought exists. Regarding RfR2 (e), the appellants acknowledged that the proposed housing mix was a departure from the current Strategic Housing Market Assessment in that the mix is skewed to larger dwellings to pay for infrastructure. Given the LP plan policies and requirements, these putative RfRs are reasonable judgements for the lpa to make and the lpa was able to substantiate those reasons with evidence. In relation to the lpa's concerns regarding the loss of agricultural land, it was for the appellants to decide how to respond to the putative RfR and their choice was to call an expert witness.
99. Putative RfR2 (h) refers to climate change and biodiversity. The LP contains a relevant policy, Policy DM 19 and in June 2019 the Council declared a Climate Change Emergency with an objective to make the Borough carbon neutral by 2030. The declaration of a climate emergency and its objectives are a material consideration [Doc 29]. In this context, seeking to test the proposal against this material consideration is not unreasonable and the lpa was able to substantiate its concerns with evidence.
100. Regard biodiversity, the putative RfR2 (h) is generalised and vague and the evidence submitted by the lpa expanded beyond the lpa's clarifications. An example of this is shown by the lpa's reference to the Dormouse. There is no indication within the lpa's evidence of KCC's Ecological Advice Services advice to the lpa that the appellants' evidence provided a good understanding of the ecological interest of the site and that the ecological impact associated with this development could be mitigated. This is a key baseline and material consideration that the lpa omitted from its evidence. The reference to the appellants' ecologist not accepting that net gain is a policy requirement does not detract from the fact that the appellants' evidence does seek to show that, in

line with Policies DM 28 and MU 3, a net gain and in the case of Framework paragraph 175d a measurable net gain could be achieved. It was reasonable for the lpa to challenge that conclusion, however, in doing so it failed to substantiate its quantitative assessment that there would be a biodiversity loss of some 20%. Accordingly, I consider the lpa acted unreasonably and the appellants incurred additional expense.

101. Putative RfR2 (f) concentrates on impacts on the development and the key words are “*through the site*” and “*the development*”. The lpa’s evidence highlights that the landscape, heritage and ecology evidence confirm harm in the context of this reason. However, the ecology evidence makes no reference to the LR in terms of the effect on the character and appearance of the development. The heritage evidence refers to the LR and roundabout onto Chestnut Street in the context of harm to the Chestnut Street Conservation Area and Listed Buildings, not the character and appearance of the development. The landscape evidence deals with putative RfR 1(a) and (b) and makes no reference to RfR 2 (f). The only apparent reference to the actual words of this putative RfR relates to the LR facilitating through traffic. However, there was no attempt to quantify this or consider what effect that part of the LR through Phase 1A would have and whether the proposed landscape treatment of its margins would provide mitigation or that in subsequent phases any recognition that the reserved matters applications could deal with the effect of the LR. Accordingly, I consider the lpa did not substantiate putative RfR2 (f).
102. The evidence on the air quality impacts of the development is complicated and was subject of significant change during the life of the application and the appeal. Whilst I did not agree with the lpa, it raised legitimate concerns in this area and, whilst its evidence may have flaws, the lpa substantiated those concerns. Accordingly, I consider the lpa did not act unreasonably in relation putative RfR 3.

Conclusions

103. For the above reasons, I consider the lpa acted unreasonably by failing to provide clear and precise putative RfR and through delay in producing those reasons and engaging with the appellants to agree matters of common ground in a timely manner. The lpa failed to substantiate putative RfR 2 (f), (h) and (i). I consider the lpa’s unreasonable behaviour resulted in the appellants incurring unnecessary expense. Accordingly, a partial award of costs is justified.

Recommendation

104. I recommend that the application for a full award of costs be granted in part.

George Baird

Inspector



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.