



## Appeal Decision

Inquiry held from 11 to 14 January 2022

Accompanied site visit made on 18 January 2022

**by David Cliff BA Hons MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 23 February 2022**

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### **Appeal Ref: APP/Z2260/W/21/3280446**

### **Land on the northwest and southeast sides of Shottendane Road, Margate, Kent CT9 4NF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Gladman Developments Ltd against the decision of Thanet District Council.
  - The application Ref OL/TH/20/0847, dated 1 July 2020, was refused by notice dated 22 July 2021.
  - The development proposed is 'outline planning application for up to 450 residential dwellings (including market and affordable housing), structural planting and landscaping, formal and informal public open space and children's play area, sustainable urban drainage, with vehicular access points, including associated ancillary works and operations from Hartsdown Road, Shottendane Road and Manston Road. All matters reserved with the exception of site access'.
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### **Decision**

1. The appeal is allowed and planning permission is granted for up to 450 residential dwellings (including market and affordable housing), structural planting and landscaping, formal and informal public open space and children's play area, with vehicular access points including associated ancillary works and operations from Hartsdown Road, Shottendane Road and Manston Road at land on the northwest and southeast sides of Shottendane Road, Margate, CT9 4NF in accordance with the terms of the application Ref OL/TH/20/0847, dated 1 July 2020, and subject to the conditions set out in the attached schedule.

### **Application For Costs**

2. An application for costs has been made by the appellant against Thanet District Council. This application is the subject of a separate decision.

### **Preliminary Matters**

3. The application was made in outline with only details of access to be considered at this stage. Matters of appearance, landscaping, layout and scale are reserved for future consideration. The application was supported by an Illustrative Masterplan, a Parameter Plan CSA/4430/122 Rev C, Development Framework Plan CSA/4430/104 Rev M and Landscape Strategy Plan CSA/44301/118 Rev I, all of which I have taken into consideration in my decision in terms of showing how a detailed scheme could be progressed. These plans are, however, for illustrative purposes only and I have treated them as such.

4. The Salmestone Ward Residents Association (SWRA) participated in the Inquiry as a Rule 6 party and made representations throughout, including opening and closing submissions. Mr Martin Aust submitted a Proof of Evidence and was scheduled to appear and give evidence on viability, but it was confirmed, shortly before the Inquiry, that he would not be participating in it.
5. A draft S106 agreement and separate S106 unilateral undertaking was submitted at the Inquiry. The unilateral undertaking includes provision regarding affordable housing with all other obligations included in the S106 agreement. I allowed a period after the Inquiry for signed versions to be submitted and these have now been provided. The versions available at the Inquiry were in the final agreed form.
6. The Council have confirmed that subject to the completion of the S106 agreement, its previous objection with regard to the second reason for refusal concerning mitigating the impacts on local infrastructure and making the development acceptable in all other respects (other than the matter of affordable housing) would be overcome.
7. Similarly, the Council has confirmed that the completion of the S106 agreement would overcome its third reason for refusal regarding the effect upon the Thames Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar site. However, as the competent authority, it remains necessary for me to consider the effects in accordance with the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
8. Whilst not an issue of contention between the main parties, I have also included the effect upon designated heritage assets as a main issue, given my statutory duty in this regard and the relevant issues raised on this matter.
9. The appeal was accompanied by an Environmental Statement as required by Regulation 5(1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The Planning Inspectorate's Environmental Impact Assessment Advisor wrote to the appellant on 8 November 2021 requesting (1) a copy of the Extended Phase 1 Habitat Survey, (2) an explanation of any likely significant effects on barn owls and (3) an explanation of any likely significant effects on breeding birds. The appellant subsequently provided this information which was considered at the Inquiry. In making my decision I have taken full account of the submitted EIA (including the aforementioned submissions) and all other environmental information, including comments and representations made by statutory consultees and members of the public.
10. Following the Inquiry I gave the main parties an opportunity to make any further written submissions on (1) the newly published 2021 Housing Delivery Test Results and (2) the newly published updated Standing Advice for local authorities on protected species and development. I have taken into account the relevant submissions in my decision.
11. In addition to the main issues below, the SWRA and other interested parties made representations on several other matters. I go on to consider these later in my decision under 'Other Matters'.

### **Main Issues**

12. The main issues are:

- i) Whether the proposal makes acceptable provision for affordable housing, taking account of viability;
- ii) The effect on the integrity of the Thames Coast and Sandwich Bay SPA and Ramsar site; and
- iii) The effect upon the setting and significance of designated heritage assets in the vicinity of the site, with particular regard to the effect on nearby listed buildings.

## **Reasons**

### *Background*

13. The site is a Strategic Housing Allocation in the Thanet District Council Local Plan Adopted July 2020 ('the Local Plan'). Policy SP21 allocates up to 300 dwellings on the part of the site to the north of Shottendane Road and up to 250 dwellings at land south of Shottendane Road.

### *Affordable housing and viability*

14. The proposed provision of 15% affordable housing would be below the requirement of 30% set out in Policy SP23 of the Local Plan. The policy states that this requirement will only be reduced if it would demonstrably make the proposed development unviable.
15. A viability assessment was carried out as part of the site's inclusion in the Local Plan as a Strategic Housing Allocation. However, this pre-dated the 2019 National Planning Policy Framework ('the Framework') that placed an emphasis on detailed site specific viability assessments of allocations. The assessment carried out would necessarily have been a relatively high level assessment without the detailed information, and resulting implications for cost, that has subsequently emerged in preparation, including the Environmental Impact Assessment, for the planning application. The viability of the proposal itself was also considered by the Council's independent consultants during its consideration of the application and found to be acceptable by them.
16. The Council's statement of case noted that its appointed viability consultants, the Dixon Searle Partnership (DSP), found the submitted approach to assessing viability to be appropriate, including values, costs and the outputs which resulted from the assumptions provided. However, in the light of the evidence from Mr Hestor for the Council on buildings costs, I consider that the 15 year sample used for the Kent based building costs, involving a range of 257 schemes, is likely to provide a more robust and reliable figure than a five year sample consisting of only 15 schemes. The Kent based costs would still provide for evidence of reasonable local market conditions. The use of the Thanet rate would also result in the likelihood of a situation where, despite building cost inflation, the costs would be assessed at a lower rate than previously was the case during the determination of the application. I therefore find the use of the Kent based building costs to be reasonable.
17. The developers profit of 17.5% used in the appellant's assessment falls midway between the 15% to 20% range in the Planning Practice Guidance (PPG). The Thanet Local Plan and CIL Viability Assessment assumed a 20% developer's profit margin with further testing provided at 17.5%, but not any lower. The profit level is lower than the 20% developer's profit used and agreed for the

viability assessment at the nearby Salmerstone Grange development. There is no justification from any professional surveyor in this case that indicates a lower profit should be used for this case. Indeed, DSP in appendix B of the Council's proof of evidence, noted that its own review (for the Council) at the application stage concluded that a profit assumption of 17.5% GDV was considered suitable in this case. I consider that a developer's profit figure of 17.5% is reasonable in this case.

18. The housing mix used in the appellant's viability assessment does not amount to a policy compliant scheme. However, it has sought to maximise the value of the development and the appellant's evidence demonstrates that a policy compliant mix would lead to a less viable scheme. The mixes suggested in evidence by the Council have been shown to be less valuable than the mix used in the viability assessments submitted with the application and have been shown not to result in the provision of an increased amount of affordable housing.
19. The Council has provided what are high level assessments as alternatives to the appellant's approach including, based on policy compliant mixes using, firstly the 2016 Strategic Housing Market Assessment (SHMA), and secondly the 2021 Local Housing Needs Assessment position. The latter is currently subject to consultation and therefore carrying less weight at the current time. Even were the updated building costs figure to be used, the 2016 version would provide for significant deficit and the 2021 version would provide for approximately four additional affordable units (amounting to an additional 1% affordable housing). However, I have given less weight to this in comparison to the appellant's assessments given my conclusion on building costs. I have also given little weight to the further testing using a 15% profit margin given my earlier conclusion on this.
20. The appellant's further updated assessments based on what are broadly compliant 2016 and 2021 housing mix positions, adds weight to my conclusion that these approaches would not increase the amount of affordable housing able to be provided by the scheme.
21. The actual housing mix for the proposed development can be considered as a reserved matter based on the relevant SHMA at that time, but I am satisfied that the appellant's appraisal is based on seeking to achieve the most viable scheme that can deliver the highest level of affordable housing.
22. Whilst the appellant would not be the developer in this instance, it is necessary for viability assessments to be carried out on an 'applicant blind' basis. The Benchmark Land Value has been previously agreed between the appellant and the Council and is the same as that used in the strategic sites assessment. Both the Planning Practice Guidance and the Royal Institute of Chartered Surveyors Guidance (July 2021) indicate that appraisals should use the benchmark land value (BLV) as the basis to consider viability. In order to test viability it is necessary to consider whether the residual land value exceeds the BLV. I have therefore given minimal weight to the Council's argument that the deficit derived from the appellant's June 2021 appraisal can be used as a basis to consider further appraisals.
23. It is argued that a scheme of over 450 dwellings would be able to support a higher provision of affordable housing. This proposal is for up to 450 dwellings and is based on what appears to be a reasonably robust appraisal of how many

- dwelling the site is able to provide, taking account of the specific constraints of its development, including an archaeological exclusion zone, site drainage/flooding considerations, the distributor link road (including a safeguarded area for a future new road), landscaping and open space).
24. The site allocation in Policy SP21 is for up to a total of 550 dwellings and therefore the proposed development of 450 dwellings falls considerably short of the maximum figure. However the use of the words 'up to' indicate that it is not necessary to provide for the maximum number in order to accord with this part of the policy. As set out above, the appellant's evidence reasonably sets out why it would only be able to provide for 450 dwellings following the detailed studies and assessments it has carried out.
  25. Furthermore, the amount of open space to be provided is greater than the minimum of 4.4 hectares set out in the policy. Again, as this is a 'minimum' it is reasonable for a greater amount to be provided to achieve a suitably well designed and quality development including, appropriate mitigation for matters such as archaeology and biodiversity.
  26. Even should there be some scope to allow a greater use of 2.5 and 3 storey dwellings, this would not necessarily increase the overall number of dwelling units being proposed, the viability evidence indicates that the provision of more storeys would not lead to a proportionate increase in the viability of the site. I am also conscious in this regard that the parameter plan has resulted from an exercise that has sought to maximise the use of the site whilst providing for good quality of design that is suitable for the particular context of this site on the edge of the urban area and adjacent to generally open countryside. Whilst a developer could also seek to increase floor areas over and above the Council's requirements, this would not result in a proportionate increase in value and would also be likely to serve to reduce the overall number of units provided, which could have further implications for the viability of the site. The appellant's evidence also demonstrates that increasing the unit sizes would reduce rather than improve viability.
  27. The supporting text<sup>1</sup> to the Local Plan Strategic Housing Site Allocations states that proposals will be expected to consider, and where possible, accommodate, notional maximum dwelling capabilities together with all other relevant policy requirements within a lower level of greenfield land take. However, given the relevant site constraints applicable in this case, it would appear that taking a lesser land take would lead to a yet lower number of houses being proposed. Therefore, in the circumstances of the Council's current housing land supply position, this would not be of any benefit in this case.
  28. An outline planning permission establishes the acceptability in principle of a proposed development scheme, along with any relevant detailed matters. Whilst only in outline the assessment of the scheme has considered an illustrative masterplan and parameter plan which takes account of the relevant constraints. It is appropriate for the matter of viability to be considered at this stage rather than being left for consideration at the detailed matters stage. The Council also considered viability as part of the recent outline planning permission it granted at Salmerstone Grange. There is no justification put forward in any policy or guidance for diverting from this approach in the consideration of this case.

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<sup>1</sup> Paragraph 3.18

29. The planning obligations include a viability review mechanism. Any further provision arising would be in the form of financial contributions rather than actual housing within the scheme and so would not be of the same degree of benefit as actual on-site provision. However, as the appellant has demonstrated that the scheme cannot viably provide for more than 15%, the review mechanism does not alter my overall conclusions. It is reasonable, for this scheme, for the review mechanism to provide for financial, rather than further on-site provision, given the additional risk that would otherwise accrue for the developer. As provided, the review mechanism provides an opportunity for any surplus to be shared between the local authority and the developer, providing an appropriate incentive for the developer to maximise sales values.
30. The written evidence for the SWRA, including the Pathfinder Development Consultancy (PDC) viability submissions was not able to be cross-examined at the Inquiry due to the SWRA's withdrawal of Mr Aust. However, whilst he asserts that the assumptions in his appraisal are regularly agreed elsewhere, there is minimal evidence or assessment to support the assumptions or that they have been agreed elsewhere. This includes matters relating to market/sales values, land acquisition costs, sales and marketing and garage cost. I have therefore given only limited weight to the written submission and PDC viability submission.
31. In conclusion on this main issue, I consider that the appellant's assessment of viability is satisfactorily robust. Taking account of my findings above, including on build costs and profit margin, there is no clear and conclusive basis for finding that more affordable housing could be viably provided than the 15% proposed. I therefore find that the provision of 15% affordable housing is acceptable in this case and would accord with the affordable housing aims of Policy SP23 of the Local Plan and the Framework.
32. Whilst being substantially less than 30%, given that it is the most that can viably be provided, the provision for affordable housing proposed in this case would still make an important contribution towards meeting the identified need within the district and contribute positively to the creation of a balanced and mixed community. Subject to matters of detail through reserved matters and conditions it would also accord with the objectives of Strategic Priority 3 of the Local Plan.

#### *Thames Coast and Sandwich Bay SPA*

33. The northern edge of the site is located approximately 0.75km from the Thanet Coast and Sandwich Bay SPA and Ramsar site. Regulation 63 of the Habitats Regulation requires the decision maker, as the competent authority, to consider whether the proposed development would have likely significant effects on any European protected sites.
34. The site is used by a large number of migratory birds and supports populations of over-wintering birds of European importance including turnstone, European golden plover and little tern. The Ramsar site is designated as supporting fifteen British Red Data book wetland invertebrates and as supporting species occurring at levels of international importance. The European Site Objectives for the SPA are to ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive by maintaining and/or restoring its qualifying features.



The impact of recreational activities inside the SPA and Ramsar has been identified as one the main negative contributors upon it.

35. The proposed development, comprising up to 450 dwellings, located within the 7.2km Zone of Influence, along with further new housing expected to come forward in the area, has the potential to increase recreational pressure, including dog walking, on the SPA and Ramsar habitats. This would contribute to the disturbance of the protected habitats, including the key bird species, contrary to the relevant conservation objectives of the European sites. The proposal therefore has the potential to result, in the absence of mitigation, in likely significant effects on the SPA and Ramsar. An appropriate assessment is consequently required.
36. It was considered possible that the on-site habitats may act as functionally linked land to the SPA for the golden plover. However, this species was not recorded through the appellant's wintering bird surveys either within the appeal site or on adjacent land. Also, previous survey work including that carried out as part of the Local Plan Habitats Regulation Assessment did not indicate that the site or surrounding land were key foraging areas for golden plover and none were recorded on site. Although this species may be found in other central Thanet farmland locations, the absence from this site and its surrounds as shown in the evidence means that the proposed development is unlikely to add to any cumulative effect. Therefore, I am satisfied that the site and surrounding areas do not form functionally linked land of supporting value for SPA species. Therefore, notwithstanding my other findings, no likely significant effects are predicted from the development as a result of loss of arable land within the appeal site or the potential disturbance of adjacent land.
37. The Council has published a Strategic Access Management and Monitoring (SAMM) Plan (April 2016). This sets out an agreed strategy to mitigate the potential in-combination impacts of new housing development in the vicinity of the SPA arising from the Thanet District Local Plan to 2031. It includes a SAMM tariff, to be secured by a S106 agreement, that should be applied to new housing developments within the Zone of Influence. The tariff was revised in 2017 in the light of the Council's new housing requirement and is inextricably linked to the housing requirement in the district for the plan period.
38. The contributions made through the tariff are to fund the employment of wardens, provide for increased signage and interpretation, co-ordination of educational activities, wardens and volunteers and monitoring/surveys. Continued monitoring and surveys of the designated areas are incorporated into the plan which will inform future management prescriptions, depending on the effectiveness of the SAMMs payments.
39. As the competent authority I have consulted Natural England (NE) as the appropriate nature conservation body. NE has confirmed that the relevant European Sites and qualifying features have been appropriately identified and that it is satisfied that the avoidance and mitigation measures are appropriate to avoid an adverse effect.
40. The masterplan for the proposed development demonstrates an area of accessible public open space which would provide alternative natural greenspace close to incoming residents that would encourage recreational activity away from the SPA and Ramsar site, including for the exercise of dogs could be provided at reserved matters stage. The site is also adjacent to a

network of public rights of way providing access to the wider countryside for recreation away from the designated site.

41. Schedule 5 of the completed S106 agreement secures the payment of the SAMMs contribution to the Council prior to the occupation of any of the residential units. Schedule 7 of the agreement requires the Council to only use the sum received for the purpose for which it has been paid as specified in the deed. The Council's SAMP Plan and associated Thanet Coast SAMMS Business Plan 2020 to 2025 provide a framework for the implementation of the required mitigation measures. The SAMP Plan will be reviewed if monitoring and surveys reveal issues which are not being addressed by the mitigation package. The mitigation package will be delivered by the Thanet Coast Project.
42. I am satisfied that the proposed development, either alone or in combination with other plans or projects, would not adversely affect the integrity of the SPA and Ramsar site subject to the proposed mitigation. It would also accord with Policy SP29 of the Local Plan that requires all proposals for new residential development to comply with the SAMMS Plan in order to mitigate against the in-combination effects of new development, through the pathway of recreational pressure on the Thanet Coast SPA and Ramsar site.

#### *Effect on designated heritage assets*

43. There is common ground between the main parties on the effects upon the settings and significance of the several designated heritage assets located in the vicinity of the site, including that less than substantial harm would result upon the significance of certain listed buildings. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the setting of a listed building.

#### *Shottendane Farmhouse*

44. The Grade II listed Shottendane Farmhouse is an 18<sup>th</sup> century two storey brick farmhouse located approximately 50m from the northern part of the site. Historically, part of the appeal site was within the same ownership and occupancy as the farmhouse. Views to the farmhouse from the site are obstructed by intervening trees and buildings. The building's principal significance derives from the architectural and historic interest of its built form. The existing adjacent agricultural land also makes a contribution to its significance as a listed farmhouse, although this is limited given the loss of historic field pattern, other uses over time and the fact that only the far northern extent of the site appears to have been in the same ownership and occupancy. The proposal would alter the area to the west and south of the farmhouse from agricultural land to built form and open space, resulting in limited and less than substantial harm to the setting and significance of this listed building.

#### *St John's Cemetery*

45. St John's Cemetery is located adjacent to the eastern boundary of the site on the opposite side of Manston Road. The Cemetery was established in the 19<sup>th</sup> century at a time when existing cemeteries in more central locations adjacent to historic churches were full and considered unsanitary. The Grade II listed gates, gate piers and section of curved wall gain most of their significance from their historic and architectural interest as an example of a late Victorian



cemetery entrance. The cemetery itself forms the key setting for these structures with the adjacent agricultural land on the opposite side of the road making only a modest contribution to their significance. The other listed buildings and structures are contained within the cemetery itself. Views within the cemetery are focused inwards, with views out generally screened by trees. Therefore the agricultural land of the appeal site does not contribute to their significance.

46. The Parameters Plan shows open space, along with the proposed highway arrangements, to be adjacent to Manston Road with the built residential development set further into the site, creating a general open buffer on this eastern side of the site that could be provided at reserved matters stage. This replacement of the existing agricultural land would result in modest and less than substantial harm to the setting and significance of the listed gates, gate piers and section of curved wall.

#### Railway Convalescent Home (now Shottendane Nursing Home)

47. This Grade II listed building, approximately 160m east of the site, was designed by H Thackeray Turner. Though the most part of the building is well screened by trees, its chimneys are visible from the northern part of the site. Its significance principally derives from its architectural interest and its historic interest as an early 19<sup>th</sup> century purpose built care home. Its well contained grounds also contribute to its significance and form the setting of the building. The agricultural land of the site does not make any direct contribution to the significance of the listed building or its associated Grade II listed gates and wall. The limited views to the agricultural land that are likely to be possible in winter make at most a minimal contribution to its setting as attractive agricultural/rural views. The proposed development would alter the limited views from the care home, looking beyond the adjacent cricket ground. The effect on its overall setting and significance would however be negligible, but nevertheless, amount to less than substantial harm for the purposes of paragraph 202 of the Framework.

#### Other designated heritage assets

48. The Grade I listed Parish Church of St John the Baptist is located approximately 800m from the northeast boundary of the site. It is a medieval parish church. Given the considerable distance from the site, intervening development, and the retention of the line of sight of its spire from Shottendane Road, there would be no harm to its setting and therefore significance as a result of the development.
49. There are also several other listed buildings at Salmestone Grange and below ground remains of the medieval monastic grange which is a designated Scheduled Monument, along with existing Grade II\* listed buildings. These are located approximately 300m northeast of the site and, taking account of existing built form including existing residential development, there is no intervisibility or key historic relationship between the site and these assets. Therefore there would be no harm to the setting and significance of them.
50. Given the lack of discernible visibility to both the Margate and Margate Seafront Conservation Areas, other than the views of the spire of the Church of St John described above, no harm would result to the setting and significance of these designated areas. Similarly, because of the good separation distance,

intervening development and the lack of intervisibility to other listed buildings in the area, no harm results upon the significance of such other heritage assets, the development being outside of the setting of each.

#### Summary

51. Where harm to a designated heritage asset has been identified above, it would be 'less than substantial' in the terms of paragraph 202 of the Framework and at the lower end of the spectrum in each case. and at the lower end of the spectrum in each case. Nevertheless, irrespective of whether any harm to a designated heritage asset amounts to less than substantial harm, great weight should be given to the asset's conservation in accordance with paragraph 199 of the Framework. Where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this must be weighed against the public benefits of the proposal. I address this balance later in the decision.

#### Other Matters

##### *Other biodiversity matters*

52. Though the Council has not raised objection on other biodiversity grounds, the SWRA and other local residents made representations, particularly with regard to the effect on breeding birds and bats.
53. Breeding Bird surveys were carried out by the appellant in April and June of 2020 with the findings reported in a Breeding Birds Survey Report and updated chapter of the Environmental Statement (ES) in December 2021. The resulting assessment finds that, though they have been found to be present in very low numbers, there would be an adverse effect on farmland bird species of corn bunting and grey partridge at the local level, and skylark at the site level as a result of farmland habitat loss and species displacement.
54. The appellant's mitigation includes the creation of a Bird Mitigation Area of 1.08 ha within the site incorporating wildflower grassland, a 200m long beetle bank to provide a foraging resource, a programme of vegetation clearance outside of the bird nesting season, the planting of new trees and hedgerows along with further mitigation and enhancement measures. A Landscape and Ecological Management Plan would be required by condition for the approval of the Council, including measures for the establishment and management of newly created and retained habitats.
55. The Bird Mitigation Area would be located adjacent to existing farmland serving to create linkages outside of the site. Whilst it will inevitably also be close to proposed dwellings, suitable management measures are capable of being secured by condition including appropriate fencing and maintenance in order to prevent significant disturbance of the area for birds. There is also no evidence to suggest that the proximity to the road would significantly reduce its value as a mitigation area. Although the provision of this area does not appear to have been considered off-site, there is no particular policy requirement for this and Policy SP30 of the Local Plan supports the creation of wildlife habitats where appropriate, by including opportunities for increasing biodiversity in the design of new development.
56. The appellant's biodiversity net gain report indicates that there will be measurable net gains of 7.45% in habitat units and 54.21% in hedgerow units.

57. With regard to bats, the appellant's survey work has been comprehensive and in accordance with relevant guidance. A Bat Survey Report was provided in December 2021 as part of the ES. Five species of foraging/commuting bats were recorded, predominantly the common pipistrelle. Whilst there may be potential for their presence given local recordings, there were no recordings of Brown long-eared bats at the site using the transect or static monitoring surveys undertaken. Therefore, I am satisfied that their presence in any significant numbers on the site is unlikely.
58. Existing landscape features adjacent to Shottendane Road would need to be removed. The presence of streetlights is likely to be a factor in the number of recordings in this area and the vast majority of recorded bat passes in this area were of the common pipistrelle. Taking account of proposed new planting, including tree planting to create new foraging features, no overall significant effects on foraging/commuting bats are likely to result.
59. Existing trees within the site are reported by the appellant as having a low to moderate roosting potential. Appropriate mitigation measures are proposed, and would be secured through conditions, to protect trees that have potential roost features, create new buffer planting and sensitive lighting. With such measures in place there would be no significant effects. In terms of buildings near to the site that may have roost potential, they are not so close to be likely to be directly impacted by the development and, in the case of the old farm buildings to the southwest of the site, would be buffered by new native planting as shown on the Landscape Strategy.
60. Although the submission of some information has been late in the appeal process, the Council and interested parties have had the opportunity and time to consider this. The Council has agreed a Statement of Common Ground with the appellant after considering the additional information and raises no objections. The absence of any further detailed comment from Kent County Council does not alter the overall conclusions I have reached.
61. Overall, despite the site and local level effects on breeding birds, these would be offset by the proposed ecological mitigation and enhancement measures that can be secured by condition. The proposal would therefore accord with the biodiversity protection and enhancement aims of Local Plan Policy SP30.

#### *Flooding and drainage*

62. The site is located within Flood Zone 1 and is therefore at low risk of fluvial flooding. The parameter plan, to be secured by condition, restricts any proposed residential units from being located within the areas at risk of pluvial flooding, with these areas being proposed for open space. The proposed strategy for surface water drainage would utilise an infiltration system with controlled flows into the aquifer. This would lead to reduced surface water flows in comparison with the current situation where water is able to flow into Tivoli Brook.
63. The details of the surface water drainage would be subject to a condition requiring approval of a scheme, including management and maintenance measures, along with a verification report to ensure the system operates as approved. The measures proposed and the betterment that would be secured for surface water would mean that even the re-occurrence of more severe flooding events as in 1973 and 2001 would not result in significant flood risk for

the new development or any worsening of existing flood risk in areas around the site. The proposed drainage arrangements have the support of the County Council as the Lead Local Flood Authority. Furthermore, from the evidence it can reasonably be expected that other proposed residential developments in the area have satisfactorily dealt with their specific surface water drainage implications making it unlikely that any significant cumulative adverse effects would result. Taking account of the above, there is no basis for a contribution to be made to the Local Lead Flood Authority relating to the ownership and maintenance of the Tivoli Brook as suggested by the SWRA.

64. A condition would also secure approval of foul water drainage which would be separate to surface water drainage, with Southern Water having a statutory obligation<sup>2</sup> for the disposal and off-site treatment of sewerage. This would include any network improvements or reinforcements that might be required in liaison with the developer. A provisional drainage strategy for the proposal has been identified including suitable points of connection to the public sewerage network.
65. I am therefore satisfied that no harm would result in relation to flooding and drainage and that the proposals would satisfactorily accord with the flood and drainage related aims of Policies CC01 and CC02 of the Local Plan.

*Other considerations*

66. Approximately half the area of the appeal site comprises the best and most versatile agricultural land (Grade 3b). Local Plan Policy E16 seeks to generally protect such land but provides an exception for sites such as this that are allocated for development by the plan. Whilst the Framework recognises the economic and other benefits of such agricultural land, these are outweighed in this case by the social and economic benefits that would accrue from the proposed housing.
67. As a site allocated in the local plan for residential development of up to 550 dwellings, matters relating to the impact on local infrastructure such as the level of health provision, was considered at that stage as part of the Council's overall strategic development approach. The Kent and Medway Commissioning Group's Primary Care Team have been consulted on the proposals and have sought appropriate contributions to local health care provision based on an expected increase of 1080 new patient registrations that could result from the development. The necessary contributions through the S106 agreement in accordance with Policy SP41 of the Local Plan would be utilised for either extending the existing Limes Medical Practice or for a new general practice. Although my attention has been drawn to an overall shortage of general practitioners, that is a matter outside of the control of the appellant, and I am satisfied that the proposal would accord with the approach in the development plan.
68. Although the closest bus stop is approximately 850m from the site, it is common ground between the appellant and the Council that bus services will improve through the Thanet Transport Strategy. The site is also within reasonable walking distance of Margate railway station and other local facilities. Furthermore, based on the illustrative master plan, new walking and cycling

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<sup>2</sup> Section 94 of the Water Industry Act 1991

links could be incorporated at reserved matters stage. No harm arises as a result of the accessibility of the site.

69. As existing agricultural land, the proposed development would inevitably change the overall appearance and character of the site. However, the site is located at the edge of the existing urban area. Despite some likely loss of trees and other vegetation, based on the illustrative plans, I am satisfied that adequate landscaping, including new tree planting, could be secured at the reserved matters stage and that the majority of boundary landscape features are capable of being retained. No ancient or veteran trees have been identified. The illustrative plans also demonstrate how open areas would be capable of being provided, including at some locations adjacent to the edge of the site, which would help to assimilate the proposal with the more rural surrounds. Following the establishment of planting, the general long term residual visual effects are likely to be minor, other than moderate adverse effects on views from the footpaths closest to the site. The long term residual adverse effects on landscape character would therefore be moderate. In the context of Local Plan Policy SP26, I am satisfied that it has been satisfactorily demonstrated that the landscaping impacts are capable of being minimised and mitigated as far as possible and that the new housing on this strategic site would be essential for the social well-being of the area.
70. In terms of light, the location of the site is adjacent to the existing urban area where there is existing street and domestic lighting. There is also existing floodlighting at sports pitches in the vicinity. Details of the proposed lighting would be subject to future approval. The illustrative material also demonstrates that the layout of the site, incorporating open space and new planting, would be capable of mitigating any impacts. Therefore, taking account of the existing context of the site and subject to reserved matters, I am satisfied that the detailed design proposals including additional lighting would be capable of preventing any significant adverse visual or amenity effects.

#### *Planning obligations*

71. A signed and dated S106 agreement and separate unilateral undertaking have been completed. A Community Infrastructure Compliance Statement has been provided by the Council. There are no outstanding issues between the Council and the appellant on any S106 matters (other than the amount of affordable housing) and Kent County Council has also confirmed its agreement.
72. The provision of open space and play areas, along with associated management provisions, are necessary to promote wellbeing and a healthy community along with ecological mitigation. The SAMM contribution is necessary as set out previously in relation to the Habitats Regulations and Policy SP29 of the Local Plan. The health centre contribution is necessary given the estimated generation of approximately 1080 new patient registrations from the development. The County Council contributions for education, social care, footpaths, libraries, youth services and waste are all necessary given the level of existing provision, including existing shortfalls and the increased pressure and demand upon such services and amenities that would result from the development.
73. The highway works and contributions are necessary to accord with the Council's site specific strategic allocation policy (SP21) and to mitigate the impact the proposed development would have on the surrounding highway



network. The works include the provision of a distributor link road between Shottendane Road and Manston Road, including new roundabouts and a new junction with Hartsdown Road. Such measures are a key part of Thanet's Strategic Highway requirements.

74. The provision of 15% affordable housing has been demonstrated to be the maximum the scheme can viably provide. It is necessary to meet identified needs and would accord with Policy SP23 of the Local Plan. Given my findings on viability there is no need for me to consider any alternative proportion of affordable housing.
75. The obligations would also accord with Policies SP21, SP23, SP41, SP42 and SP47 of the Local Plan which seek to ensure that development mitigates adverse impacts and makes provision to ensure delivery of relevant and sufficient community and utility infrastructure to support new development.
76. From the evidence before me, I am satisfied that the above obligations are necessary to make the development acceptable, are directly related to the development and are fairly and reasonably related in scale and kind to the development. Therefore, they would accord with the three tests set out in paragraph 57 of the Framework and Regulation 122 of the Community Infrastructure Regulations 2010.
77. I have taken the submitted planning obligations into account in arriving at my decision and have given significant weight to them.

#### *Benefits*

78. It is common ground between the Council and the appellant that the Council is not currently able to demonstrate a five year supply of deliverable housing sites, with the agreed range in housing supply being between 4.23 and 4.34 years.
79. The 2021 Housing Delivery Test (HDT) results state that housing delivery was 78% of the identified target (over a three year period). Whilst this shows an improvement from the 2020 HDT figure of 54%, it still represents an under provision and results in the need for the continued application of a 20% buffer and for the Council to publish an updated action plan. The new HDT results do not alter the agreed housing land supply figures of between 4.23 and 4.34 years and, despite the upward trend in delivery, the shortfall is still a notable one with the housing needs of the district not being met. The provision of up to 450 dwellings would make a very considerable contribution towards meeting the shortfall. Furthermore, as set out earlier, it has been satisfactorily demonstrated that 450 dwellings is the most the site can reasonably accommodate following the EIA assessment and the site specific constraints applicable in this instance. It is also relevant that the local plan provides for some leeway in housing figures for allocated sites to deliver less than the total number of dwellings allocated.
80. Furthermore, the provision of up to 68 of the proposed 450 homes to be affordable dwellings, would make an important contribution towards meeting the need for affordable accommodation in the district. Whilst less than 30% is being proposed, this has been satisfactorily demonstrated as being the most that can viably be provided. There is no alternative scheme that would provide for a greater amount of market and/or affordable housing. I have therefore



given very significant weight to the benefits arising from the provision of market and affordable housing.

81. The delivery of the new highway infrastructure including link road would bring important benefits for users of the wider highway network beyond the site as part of the Thanet Transport Strategy. This benefit carries considerable weight. Economic benefits of significant weight would result from construction including employment, financial receipts to the local authority from the new homes bonus and Council tax, and the local economic activity generated by the new inhabitants of the site. The proposed open space including play area would provide moderate social benefits including health and wellbeing, including for those residents living locally. There would also be some limited ecological benefits likely to arise from the proposed biodiversity enhancements including the commitment to Biodiversity Net Gain. The proposed surface water drainage strategy is also likely to provide some modest benefits for surface water flood risk.

### **The Planning Balance**

82. Taking account of the Council's housing land supply position, there is a particular need to make full use of allocated sites such as the appeal site. Also, given the pressing need for affordable housing, the maximisation of such provision is important. Nevertheless, the particular constraints of the site have meant that it has not been possible in this case to achieve the maximum number of houses (550) allocated by Policy SP21. Furthermore, Policy SP23 is clear that the requirement for 30% affordable housing may be reduced if meeting this amount would demonstrably make the proposed development unviable. This has been satisfactorily demonstrated in this case and 15% affordable housing found to be appropriate.
83. I have found that less than substantial harm would result upon designated heritage assets due to the effects upon their setting as set out above. Such harm being at the lower end of the 'less than substantial' spectrum. Whilst I have given this considerable importance and weight, in each case and when considered cumulatively this harm would be outweighed by the very considerable public benefits set out above, most notably the social benefits arising from the contribution of up to 450 dwellings, making a very significant contribution to the supply of housing in the district, of which 15% (up to 68) would be affordable. I am therefore satisfied that there would be clear and convincing justification for the harm that would result to the significance of designated heritage assets. The proposal therefore accords with both the heritage provisions of the Framework and Local Plan Policy HE03.
84. Taking account of my earlier considerations, I am satisfied that the proposal would accord with Policy SP21 of the Local Plan (the strategic housing allocation). The final type and size of dwellings can be considered against Policy SP22 at a later stage when the detailed matters are submitted. Despite some limited adverse effects in respect of landscape and visual harm, I consider that the development would accord with the development plan when considered as a whole.
85. The Council and appellant disagree on the interpretation of paragraph 11 of the Framework. In my view, the fact that the most important development plan policies are 'out-of-date' due to the current housing supply position, means that the development plan cannot be considered to be 'up-to-date'.

86. Applying the tilted balance, limited adverse impacts would arise in terms of the effect upon landscape character and visual impacts. Less than substantial harm would result upon the significance of designated heritage assets to which I have given considerable and important weight, although this harm would be outweighed and clearly justified by the public benefits of the scheme. I also recognise the loss of agricultural land, notwithstanding that the strategic policy allocation which removes the local plan policy conflict in this regard. The benefits are set out above include the very significant weight given to the provision of housing, including affordable housing, the considerable benefits of the transport infrastructure improvements and the significant economic benefits. Incorporating 68 affordable units, and with a range of other market housing types to be secured by the condition, the scheme would be capable of providing for the creation of a balanced and mixed community. Overall, the adverse effects would be significantly and demonstrably outweighed by the very significant benefits of the proposed development. The proposal would therefore amount to sustainable development as sought by the Framework.

### **Conditions**

87. I have considered the conditions agreed between the appellant and the Council following discussion at the inquiry and bearing in mind the tests in paragraph 56 of the Framework. Other than as described below, I have made some amendments to the wording of the suggested conditions for precision and clarity, but without changing the substance of any particular condition. Several of the conditions are pre-commencement conditions. I consider there to be clear justification for these as the early approval of the respective matters and carrying out of the particular actions required are necessary prior to commencement in order to prevent the possibility of adverse environmental, amenity or highway related effects that otherwise might occur.
88. In the case of conditions requiring certain details to be provided with subsequent reserved matters applications, I have omitted wording requiring the development to be carried out in accordance with the approved details as this would be more appropriately provided for at the reserved matters approval stage.
89. Conditions 1, 2 and 3 set out the reserved matters requiring approval, the timescales for relevant submissions and for the commencement of development. Condition 4 is required to provide certainty on what has been approved. A restriction on total housing numbers is not necessary as this is clear from the description of development. Condition 5 on phasing is necessary in order that the development is carried out in an appropriate way, including the provision of infrastructure and as assessed in the Environmental Statement. The details required by condition 6 are necessary in order to ensure an appropriate mix of dwellings to meet local needs.
90. Condition 7 on landscaping details is required to provide a suitable standard of landscaping design and amenity throughout the scheme. Compliance with the Parameter Plan and an approved Masterplan through condition 8 is necessary to provide for an acceptable overall form and scale of development minimising effects upon the environment and surroundings of the site and, including condition 9 requiring a Design Code, to promote good quality design and place making. I have amalgamated the suggested Parameter Plan and Masterplan conditions into one condition for precision and clarity. The Open Space

Specification required by condition 10 is required to promote amenity, health and wellbeing as well as encouraging recreation away from the Thanet Coast and Sandwich Bay SPA.

91. Conditions 11, 12 and 13 are necessary in order to safeguard and promote the archaeological interest of the site. Conditions 14, 15 and 16 are required to ensure the implementation of suitable surface water drainage provision and prevent localised flooding. Foul water drainage provision is secured by condition 17. Conditions 18 and 19 are necessary to deal with any risk of contamination. Condition 20 is required in order to minimise the effects of construction on the local residents and highway users.
92. Conditions 21, 22, 23, 25, 27 and 34 are necessary in order to ensure that the proposed highway and road works are carried out in a satisfactory manner and to safeguard highway safety and the free flow of traffic. Conditions 24 and 26 are required to promote cycling and walking, including links to surrounding routes. Condition 28 is necessary to promote electric car use in the interests of air quality. Condition 29 is also necessary in the interest of promoting air quality. I have merged the suggested two conditions into one in this respect for precision. Condition 30 is necessary in order to safeguard and promote biodiversity and ecology including the creation of the bird mitigation area. I have merged the separately suggested compliance condition with this for precision. Conditions 31 and 36 are also necessary to safeguard ecological interest and to safeguard local amenity from light pollution. Condition 31 includes a maintenance requirement to ensure the lighting is retained as approved.
93. Condition 32 is necessary in order to promote secure design and to seek to reduce the risk of crime within the development. Condition 34 promotes superfast broadband in order to contribute to the creation of a high quality residential environment. Condition 35 is necessary to promote sustainable methods of transport. Conditions 37 and 38 are necessary to promote energy and water use efficiency. Condition 39 is necessary in order to provide for a high quality of residential accommodation.
94. A separate condition requiring a landscape management plan prior to commencement is not necessary as this would be a reserved matter and is covered in any case by condition 7. A separate condition requiring the demonstration of safe emergency access is not necessary as this can be assessed by the local planning authority pursuant to other imposed conditions relating to access and layout. A condition requiring details and samples of external materials is not necessary as this would be closely related to 'appearance' which is a reserved matter. A condition preventing development on the safeguarded land is unnecessary as this is covered by the separate condition requiring compliance with the Parameter Plan. A separate condition relating to footpath TM41 is also unnecessary as the relevant matters are covered separately by condition 24 on footpath links.

## **Conclusion**

95. For the reasons given above, I conclude that the appeal should be allowed.

*David Cliff*

INSPECTOR

### **Schedule of Conditions**

1. Details of the appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Any application for the approval of the reserved matters for the first phase of the development shall be made to the local planning authority before the expiration of three years from the date of this permission. Any application for approval of the reserved matters for any remaining phases shall be made to the local planning authority before the expiration of five years from the date of the permission.
3. Each phase of the development shall be begun within two years of the date of approval of the final reserved matters to be approved for that phase.
4. The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan CSA/4430/120 Rev B, SK09 Rev E, SK10 Rev A and SK11.
5. Prior to or at the same time as the submission of the first phase of the reserved matters application required under condition 1, details of the phasing of the development, broadly in accordance with the indicative Phasing Plan 2019-057-201 Rev A, 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.
6. The reserved matters submitted in accordance with Condition 1 shall include details of the distribution of market and affordable dwellings, along with an overall schedule of dwelling sizes (by number of bedrooms and floorspace).
7. The details of landscaping required by Condition 1 shall include the landscape design and specification of hard and soft landscape works (including boundary treatments) within each phase, including details surveys of all trees, shrubs and hedges in that phase, giving details of all trees having a trunk diameter of 75mm or more to include species type, spread of crown, height, diameter of trunk and condition assessment, details of existing trees, shrubs and hedges to be retained and details of new trees, shrubs, hedges and grassed areas to be planted, together with details of the species and method of planting to be adopted, details of walls, fences, other means of enclosure proposed. Such details shall be accompanied by a Landscape Management Plan and Open Space Specification for that phase.
8. Prior to the submission of any reserved matters, a Masterplan shall be submitted to and approved in writing by the local planning authority. The Masterplan shall demonstrate how the development would apply the principles established in the Parameter Plan CSA/4430/122 Rev C, the Development Framework Plan CSA/4430/104/Rev M and the Landscape Strategy Plan CSA/44301/118 Rev I. The reserved matters submissions shall thereafter be in accordance with the approved Masterplan and the Parameter Plan CSA/4430/122 Rev C.

9. Before the submission of any reserved matters a Design Code shall be submitted to and approved in writing by the local planning authority. The Design Code shall develop the vision, design concept and principles established in the Design and Access Statement, describe how the principles and parameters shall be implemented and shall address issues including public realm, use of external materials, approach to parking provision, community safety, recycling and servicing and external lighting the details of which are required to be submitted under other conditions. All reserved matters and detailed submissions shall thereafter be in accordance with the approved Design Code.
10. Prior to the commencement of each phase, or part thereof, an Open Space Specification for the phase shall be submitted to and approved in writing by the Local Planning Authority, to accord with principles shown in plan no. CSA/4430/118 Rev I. The Open Space Specification shall:
- Identify the location and extent of the main areas of formal and informal open space to be provided which shall accord with the details submitted under condition 1;
  - Outline local play space to be provided, providing also a detailed specification of any equipped play areas;
  - Detail how the relevant areas of public open space and play areas are to be laid out, paved, planted or equipped; and
  - Identify and demonstrate the "Trim Trail" proposed through plan CSA/4430/118 Rev I to encourage dog-walking within the site.

The landscaped areas, open space and play space in any phase shall be laid out and implemented in accordance with approved details and shall be permanently retained thereafter and used for and made available for public amenity and play space purposes only.

11. No development shall take place until fencing has been erected around the area identified as an Archaeological Exclusion Zone on Parameter Plan no. CSA/4430/122 Rev C, in accordance with details which shall have previously been submitted to and approved in writing by the local planning authority. The temporary fencing shall be retained for the duration of the construction works in that phase, or part thereof. No works shall take place within the Exclusion Zone unless approved in writing by the local planning authority.
12. No development shall take place until an Archaeological Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved Scheme.
13. Prior to the occupation of any dwelling in each respective phase, a scheme of archaeological interpretation that includes information boards in public open space areas in that phase of the development shall be submitted to and approved in writing by the local planning authority. The scheme should include the location for information boards, their content and timetable for their erection. The interpretation boards shall be erected and thereafter retained in accordance with the approved scheme.

14. No development shall take place on each respective phase of development until a detailed surface water drainage scheme, to manage surface water run-off from the development (for up to and including the climate change adjusted 100 year storm event) for that phase has been submitted to and approved in writing by the local planning authority. The scheme shall be based on Section 6 of the submitted Flood Risk Assessment (Enzygo, May 2020) and shall also include:

- The phasing and timetable for the implementation of the surface water drainage scheme; and
- Appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The scheme shall be constructed in accordance with the approved details and timetable and shall be managed/maintained in accordance with the approved maintenance and management details for the lifetime of the development.

15. Any infiltration of surface water drainage into the ground shall have first been approved in writing by the local planning authority. Where infiltration is to be used to manage the surface water from the development hereby permitted, it shall only be within those parts of the site where information has been submitted to demonstrate to the Local Planning Authority's approval that there is no resultant unacceptable risk to controlled waters and/or ground stability. The development shall be carried out in accordance with the approved details.

16. No dwelling shall be occupied until a Verification Report pertaining to the relevant surface water drainage system(s), has been submitted to and approved in writing by the local planning authority. This Report shall demonstrate the suitably modelled operation of the drainage system such that flood risk is appropriately managed.

17. No development shall commence until a scheme for the disposal of foul water discharge from the development and a timetable for its implementation have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme and details and permanently retained thereafter.

18. No development shall commence until a site characterisation and remediation scheme in respect of contamination has been submitted to and approved in writing by the local planning authority and the remediation scheme has been implemented in accordance with the approved details. The site characterisation, remediation scheme and implementation of the approved remediation scheme shall be carried out in accordance with the following criteria:

(a) Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, shall be completed in accordance with a scheme to assess the nature and extent of any contamination on the



site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the local planning authority. The site characterisation report shall be conducted in accordance with British Standards and current DEFRA and Environment Agency best practice. The investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the local planning authority, and shall include:

- A survey of the extent, scale and nature of contamination;
- An assessment of the potential risks to human health, property, adjoining land, groundwaters and surface waters, ecological system;
- An appraisal of remedial options and a recommendation of the preferred options

(b) Submission of remediation scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared and shall be submitted to and approved in writing by the local planning authority, if required by part (a) of the condition. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works and site management procedures. The scheme shall ensure that the site cannot be considered as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(c) Implementation of Approved Remediation Scheme

The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of the development other than that required to carry out remediation. The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Local Planning Authority.

19. Any contamination that is found during the course of construction of the development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the relevant part of the development is resumed or continued.
20. No development shall take place on any phase until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include:
  - hours of construction working;
  - routing of construction and delivery vehicles to/from site;
  - parking and turning areas for construction and delivery vehicles and site personnel;
  - timing of deliveries;

- measures to control noise affecting nearby residents;
- temporary traffic management/signage;
- any temporary access arrangements to the site for construction purposes;
- wheel cleaning/chassis cleaning facilities;
- dust control measures;
- lighting control measures;
- water quality protection measures;
- precautionary measures to protect Badgers (as per section 7.5.39 of submitted Environmental Statement) and other ecological protection measures including those related to nesting birds;
- maintenance of vehicular access to Margate Cemetery, Crematorium and Waste & Recycling centre throughout construction;
- pollution incident control and
- site contact details in case of complaints.

The construction works shall thereafter be carried out in accordance with the approved CEMP.

21. No development shall take place on any phase until a Highways Work Phasing Plan, outlining the implementation of highways works detailed in condition 22, has been submitted to and approved in writing by the Local Planning Authority. The Highways Work Plan should include details of the mitigation proposed in that phase (or part thereof) including the new link road through the site plus its associated access points and footways, how these will be completed and made operational. The works shall be carried out in accordance with the agreed phasing plan including the timings for the provision of each respective element of infrastructure.
22. No development shall take place in any respective phase, until details of the proposed highways works have been submitted to and approved in writing by the Local Planning Authority. These details shall include:
  - Local distributor standard link road;
  - Roundabout Junction on Manston Road;
  - Roundabout Junction on Shottendane Road; and
  - Right turn lane Priority Junction on Hartsdown Road.

All submitted details shall accord with the geometrical layout as those submitted in the plans numbered plans no. SK09 Rev E, SK10 Rev A and SK11.

These works shall be implemented and operational in accordance with the approved details and timings within the Highways Work Phasing Plan in condition 21.

23. Details submitted pursuant to condition 1, insofar as they relate to each phase of development, shall include the final route, specification, geometry and waiting restrictions of the link road through the site within the area of deviation shown on the Parameter Plan. The link road and associated footway/cycleways should be provided to an acceptable local distributor standard in accordance with the most up to date revision of the Kent Design Guide and include details of the pedestrian crossing provision and bus stop infrastructure where appropriate.

24. Details pursuant to condition 1 above shall include the provision of means and routes of access for pedestrians and cyclists within each phase of the development to and from the surrounding footway (including designated footpath TM14) and cycleway network.
25. Details submitted pursuant to condition 1 in respect of each phase of the development, shall include the proposed roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking, turning areas and street furniture and bus stops/borders to be laid out and constructed.
26. Details pursuant to condition 1, insofar as they relate to each phase of development, shall include the provision of secure covered cycle parking facilities, in accordance with local planning authority standards. Such facilities as approved shall be made available for use prior to the occupation of the unit for which they are provided to meet relevant parking and layout standards, and thereafter shall be retained for their approved purpose.
27. Prior to first occupation of each respective dwelling, the following works between a dwelling and the adopted highway shall be carried out in accordance with the following details to be submitted pursuant to condition 1: (a) Footways and/or footpaths, with the exception of the wearing course; (b) Carriageways, with the exception of the wearing course but including any turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any).
28. Details pursuant to condition 1, shall include details of the number, type and location of electric vehicle charging points (EVCP) on the basis of 1 Electric Vehicle Charging point per residential property with dedicated parking and 1 in 10 of all non-allocated parking.
29. Prior to the first submission of any reserved matters application, an Emissions Mitigation Assessment in accordance with Thanet District Council's Air Quality Technical Planning Guidance 2016 shall be submitted to and approved in writing by the local planning authority. The Emissions Mitigation Assessment shall include a damage cost assessment that uses the DEFRA emissions factor toolkit and details of mitigation and any air quality improvements to be included in the development which will reduce the emissions from the development during construction and when in operation. The development shall be carried out in accordance with the approved details.
30. Prior to the submission of the first reserved matters application under condition 1, an Ecological Design Strategy, addressing ecological enhancement and mitigation across the whole site as outlined in Section 7 of the submitted Environmental Statement shall be submitted to and approved in writing by the Local Planning Authority. The Ecological Design Strategy shall include the following:
  - a) Purpose and conservation objectives for the proposed works;
  - b) Review of site potential and constraints;

- c) Detailed design(s) and/or working method(s) to achieve stated objectives;
- d) Extent and location/area of proposed works on appropriate scale maps and plans (including the bird mitigation area);
- e) Type and source of materials to be used where appropriate, e.g. native species of local provenance;
- f) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- g) Persons responsible for implementing the works; and
- h) Details of initial aftercare and long term maintenance and management.
- i) Details of provision of calcareous grassland on site as outlined in 7.8.3 of the applicant's Environmental Statement; and
- j) Details of how Biodiversity Net Gain will be achieved.

Details pursuant to condition 1 shall demonstrate compliance and alignment with the agreed Ecological Design Strategy. It shall be implemented as part of the development in accordance with the approved details and all features shall be retained in that manner thereafter.

- 31. Prior to the commencement of each phase, or part thereof, a detailed outdoor lighting scheme shall be submitted to, and approved in writing by, the local planning authority. The scheme shall include details of the type of lights, the orientation/angle of the luminaries, the spacing and height of lighting columns, the extent/levels of illumination over the site and on adjacent land and measures to contain light within the curtilage of the site. The development shall be implemented, and thereafter maintained, in accordance with the approved scheme.
- 32. Details pursuant to condition 1, insofar as they relate to each phase of development, shall demonstrate how the proposed layout meets Secure by Design principles.
- 33. All dwellings hereby permitted shall be provided with the ability for connection to Superfast Fibre Optic Broadband fibre to the premises, where there is adequate capacity to do so.
- 34. Prior to the commencement of any highways works, a Parking Restriction Strategy detailing the extent of the proposed Traffic Regulation Order for double yellow lines on Hartsdown Road and the internal link road infrastructure, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved strategy.
- 35. Prior to the occupation of any dwelling hereby approved, a final Travel Plan, to substantively accord with the Framework Travel Plan June 2020 by Icenl Projects and a programme for implementation shall be submitted to and approved in writing by the local planning authority. The approved Travel Plan shall thereafter be implemented in accordance with the programme.
- 36. Prior to the occupation of any dwelling within each phase, a copy of a Homeowner/Occupier Information Pack, setting out measures to encourage considerate pet ownership, minimising light spill and not cause excessive

and extended noise, information on how residents can minimise their impact on the surrounding wildlife, such as breeding birds, and providing information on the European designated sites in the locality and their significance, shall be submitted to and approved in writing by the Local Planning Authority. The approved Homeowner/Occupier Information Pack shall be provided to occupiers of each new dwelling at the point of occupation.

37. The residential dwellings hereby permitted shall not be occupied until the relevant requirements of the level of energy performance equivalent to ENE Level 4 of the Code for Sustainable Homes have been met and the details of compliance provided to the local planning authority.
38. No dwelling shall be occupied until the Building Regulations optional requirement (paragraph 2(b) of Part G2, regulation 36) to limit water usage to 110 litres per person per day has been complied with.
39. The details to be submitted in pursuant of condition 1 shall show all units in compliance with the Nationally Described Space Standards and as accessible and adaptable accommodation in accordance with Policy QD05 of the Thanet Local Plan.

**End of conditions**

## **APPEARANCES**

### FOR THE APPELLANT:

Guy Williams of Counsel                      Instructed by Chis Ball (Gladman Developments Ltd)

He called:

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MURP MSc MRTPI

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BA (Hons) MSc MRICS

Other contributors including during roundtable discussions:

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Mathew Travis BSc (Hons)                      Director at Enzygo Ltd  
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Rosemary Meara MA (Hons)                      Associate at CSA Environmental  
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Rachel Goddard                                Solicitor at Gladman Developments Ltd

### FOR THE LOCAL PLANNING AUTHORITY:

William Upton QC                              Instructed by Estelle Culligan (Director of Law and  
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He called:

Vic Hestor MRTPI                                Chartered Town Planner

Other contributors including during roundtable discussions:

Iain Livingstone                                Planning Applications Manager

### FOR THE SALMESTONE WARD RESIDENTS ASSOCIATION:

Mr Dickman                                      Salmestone Ward Residents Association

Mr Hand    Planning consultant

### INTERESTED PARTIES:

Cllr Pauline Farrance                              Member of Thanet District Council  
BSc (Hons) Cert Ed PG Dip (ADDS)

Cllr Reece Pugh                                      Member of Thanet District Council

Cllr Kerry-Boyd                                      Member of Thanet District Council



Sir Roger Gale	Member of Parliament for North Thanet
Jackeline Brown	Westgate and Garlinge Action Group
Sonia Stewart	Westgate and Garlinge Action Group
David Morrish	Chair of Thanet District Branch of the Campaign for the Protection of Rural England
Timothy J Knibb	Local resident
Sarah Bowers	Local resident

### **DOCUMENTS SUBMITTED AT THE INQUIRY**

1. Correction to Appendix B of Mr Hestor's proof of evidence
2. Appellant's Opening Statement
3. Council's Opening Statement
4. SWRA's Opening Statement
5. Supplementary Position Statement from CPRE Kent
6. Statement of Common Ground between the Appellant and the Council on Affordable Housing/Viability
7. Written submission from Cllr Candy Gregory
8. Council's Annual Monitoring Report 2020
9. Letters from Natural England dated 10 January 2022
10. List of suggested conditions agreed by the Appellant and the Council
11. Unsigned S106 Agreement
12. Unsigned Unilateral Undertaking
13. Appellant's Planning Obligation Summary
14. Email from Kent County Council (dated 13 January 2022) confirming its agreement to the S106 Agreement
15. Council's Closing Submissions
16. SWRA's Closing Submissions
17. Appellant's Closing Submissions

### **DOCUMENTS SUBMITTED FOLLOWING THE INQUIRY**

1. Appellant's application for costs
2. Council's response to costs application
3. Appellant's comments on Council's costs response
4. Council's submission on 2021 Housing Delivery Test Results
5. Appellant's submission on 2021 Housing Delivery Test Results
6. SWRA's submission on the updated Standing Advice on protected species and development
7. Appellant's submission on the updated Standing Advice



## Costs Decision

Inquiry held from 11 to 14 January 2022

Accompanied site visit made on 18 January 2022

**by David Cliff BA MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 23 February 2022**

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### **Costs application in relation to Appeal Ref: APP/Z2260/W/21/3280446 Land on the northwest and southeast sides of Shottendane Road, Margate, Kent, CT9 4NF**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Gladman Developments Ltd for a full award of costs against Thanet District Council.
  - The inquiry was in connection with an appeal against the refusal of planning permission for 'outline planning application for up to 450 residential dwellings (including market and affordable housing), structural planting and landscaping, formal and informal public open space and children's play area, sustainable urban drainage, with vehicular access points, including associated ancillary works and operations from Hartsdown Road, Shottendane Road and Manston Road. All matters reserved with the exception of access'.
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### **Decision**

1. The application for an award of costs is refused.

### **Procedural matters**

2. Due to time constraints at the Inquiry and following agreement by the parties, the appellant's application for costs, the Council's response to the application and the appellant's response were all provided in writing in accordance with an agreed timetable.

### **Reasons**

3. Planning Practice Guidance (PPG) states that irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs unreasonable expense in the appeal process.

*Accordance with the development plan, national policy and other material considerations*

4. The PPG includes an example of unreasonable behaviour as preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and other any other material considerations. My interpretation of this guidance is that it infers a combination of three matters require consideration, not just accordance with the development plan. This is relevant to the matter of the interpretation of

paragraph 11 of the National Planning Policy Framework which I return to below.

5. The Council's first reason for refusal relates to the provision of affordable housing. This reason does not make reference to a particular development plan policy, rather it refers to Strategic Priority 3 of the Thanet Local Plan and the objectives of the National Planning Policy Framework. The second reason for refusal, on the matter of a legal agreement to secure delivery of the necessary planning obligations, includes reference conflict with Local Plan Policy SP23 covering affordable housing. There is some lack of clarity here, but the Council's case as subsequently set out in its evidence seeks to argue that the scheme could provide for a greater provision of affordable housing, this being a matter requiring consideration by Policy SP23.
6. As referred to in my appeal decision, there was a disagreement between the parties on the correct interpretation of paragraph 11 of the Framework. The Council's argument leads to a situation where 'the tilted balance' would be engaged as the lack of a five year housing land supply means the policies which are most important for determining the application are out-of-date. The proposal, notwithstanding other representations, could not therefore be considered as according with an up-to-date development plan in the context of paragraph 11 (c) of the Framework.
7. In the context of paragraph 11 of the Framework, whilst in this case the appeal outcome would be the same no matter which of the two routes is followed, taking account of the acute need for affordable housing along with other harm, there is sufficient scope for the Council to have acted as it did in refusing the application without this amounting to unreasonable behaviour on this ground.

*Failure to substantiate the reason for refusal*

8. Although the issue of viability is not specifically raised in any of the reasons for refusal, the Council subsequently provides its views, and associated evidence, on the acceptability of the viability assessment information provided by the appellant in its Statement of Case and Mr Hestor's Proof of Evidence.
9. As a result of the evidence provided by the Council during the appeal stage, and presumably discussions between the parties, the appellant provided (including in Mr Couldrey's rebuttal evidence) further assessment of alternative scenarios based on what might be policy compliant mixes, but it appears that this was the first time this was provided. It was not done as part its application submissions up to the Council's determination.
10. In its evidence, the Council has raised concern regarding the assumptions used in the appellant's financial viability appraisal (FVA), specifically that it was not based on policy compliant housing mix and sizes. Whilst the evidence has led me to the conclusion that a more viable result would not be achieved by changing the assumptions on this basis, it does not appear to be unreasonable for this to be raised as a matter of concern by the Council. As the Council states, its appointed viability consultants did not consider the matters of mix, tenure, size and types, rather they focused on the costs and values inputs.
11. With regard to build costs, the Council in its Statement of Case made clear that it does not challenge the viability outputs set out in the submitted FVA. The Council's approach to building costs only emerged in Mr Hester's Proof of

Evidence. There is some inconsistency in approach here. Although this is not to say that the Council's point on building costs was not in terms of its merits an unreasonable point to raise given the arguments put forward to support it. Whilst such arguments for the Council were not advanced at the Inquiry by a professional surveyor, that is not to say that the justification provided by Mr Hester in his evidence should not carry some weight.

12. The conclusions in my decision on matters such as building costs and developer profit have meant that I have given more weight to the appellant's evidence. However, the different assumptions led to a situation where it was reasonable for the Inquiry to explore in order that I could come to a reasoned overall conclusion on the affordable housing issue.
13. It was open for the Council to provide its own detailed viability assessment. Whilst it did not do so, the Council did provide evidence which required consideration in my decision, including certain assumptions within it and on the weight to be given to the appellant's FVA. As outlined above, the need to consider policy compliance mixes and sizes is a reasonable one, no matter why this exercise led. Whilst matters concerning build costs and developers profit were not raised by the Council's appointed consultants, the Council is not obliged to follow such advice. There is sufficient weight to the Council's arguments for these to need consideration during the Inquiry and to consider the appropriateness of the appellant's affordable housing proposal for this strategically important site, particularly taking account of the clear need for affordable housing in the district.
14. Therefore, I do not consider that the Council has failed to substantiate its reasons for refusal.

*Vague assertions*

15. Following the Council's Statement of Case (SoC) the appellant requested that the Council provide details of the scenarios it wished for the appellant for consider in its evidence, including the assumptions and inputs it suggests should be addressed. The SoC did, however, state that the appellant's FVA does not test or take into account alternative assumptions around the number, mix of sizes, tenures and types of homes that could be provided. Further, it states that it does not test the Council's preferred policy mix of sizes and types of homes. This would seem to provide some basis for alternative scenarios to be provided by the appellant in response, particularly as it appears at that stage that there was no indication whether or not such scenarios would be capable of providing for more affordable housing. In spite of the results of subsequent assessment work, there appears to have been uncertainty on this matter at the earlier stage.
16. The Council has sought, albeit with rather limited evidence, to show that the scheme could be optimised to provide more affordable housing. Given its uncertainty regarding the mix and sizes considered in the appellant's FVA and despite the limited evidence, its position and evidence on these matters does not amount to a vague assertion.
17. In spite of previous disagreements on paragraph 11 of the Framework, the appellant's Costs Reply notes<sup>1</sup> that this is a case where it is established that the

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<sup>1</sup> Paragraph 11

tilted balance is engaged. The matters of consideration arising are matters of planning judgement and, taking account of the importance of affordable housing in both local and national policy considerations along with its concerns regarding the FVA, the Council's position on this does not amount to situation where it has acted unreasonably.

*Other considerations*

18. When the Council framed its reason refusal, it is not clear at that stage what evidence it had to support its position on affordable housing, a point that has been agreed by Mr Hester. However, my conclusions on costs have taken account of all the evidence that has been provided as part of the Inquiry.
19. Whilst the appellant draws attention to advice from Council officers to Members that refusal would lead to a high risk of being overturned at appeal with costs awarded against the Council, it remains necessary to consider the substance and facts of both cases regarding costs following the giving of evidence. The reasons set out above set out my considerations.

**Conclusion**

20. I conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. An award of costs is therefore not justified.

*David Cliff*

INSPECTOR