



## Appeal Decision

Inquiry held on 13-16 December 2022 and 16 January 2023

Site visits made on 12 December 2022 (unaccompanied) and 2 February 2023 (accompanied)

**by Rachael Pipkin BA (Hons) MPhil MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10<sup>th</sup> March 2023**

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**Appeal Ref: APP/U2235/W/22/3305441**

**Land at Firwood Lodge and Jays View, Ashford Road, Harrietsham ME17 1BL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr John Smith of Gleeson Land against the decision of Maidstone Borough Council.
  - The application Ref 22/501002/OUT, dated 7 March 2022, was refused by notice dated 8 June 2022.
  - The development proposed is outline planning application (with all matters reserved except for access) for the demolition of existing residential properties and other buildings and erection of up to 109 residential dwellings including affordable housing with the provision of vehicular, cycle and pedestrian access onto Ashford Road (A20) alongside public open spaces, sustainable urban drainage systems, landscaping, infrastructure and earthworks.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The original application was made in outline with only access to be determined at this stage. All other matters were reserved for future determination. I have had regard to the existing and proposed site plans and the indicative layout of the proposed development as shown in these drawings, but have regarded all elements of these drawings as indicative apart from the details of the access.
3. As part of its appeal submissions, the appellant submitted an alternative scheme, reducing the maximum quantum of development from up to 109 dwellings to up to 86 dwellings and restricting development of a field in the south-east of the site. This amendment to the scheme sought to address the landscape and visual impact of the proposal.
4. The *Procedural Guide – Planning Appeals – England* makes clear that if an applicant thinks that amending their application proposals will overcome the local authority's reasons for refusal they should normally make a fresh planning application. Furthermore, the appeal process should not be used to evolve a scheme and it is important that what is considered is essentially the same as that on which the local planning authority took their decision and on which the views of interested people were sought.

5. I have had regard to the 'Wheatcroft' principles including whether amendments would materially alter the nature of the application and whether anyone who should have been consulted on the changed development would be deprived of that opportunity. I have come to the conclusion that they would. This is because the technical assessments supporting the application and upon which the benefits of the scheme have been derived, are based on a scheme delivering up to 109 dwellings across the entire site. I have therefore proceeded to base my decision on the proposals before the Council when it made its decision.
6. Planning permission was refused for five reasons. The Council's fifth reason for refusal was on highway safety grounds. Since then, additional information was submitted and Kent County Council (KCC), as the local highway authority, has confirmed that its highway concerns have been addressed. The Council has confirmed that it no longer contests the scheme on this ground.
7. Reason for refusal 4 referred to harm arising from the potential visual impacts of acoustic screening. Clarification was provided by the appellant and the Council has now agreed that, subject to the principles of additional acoustic work, as set out in the appellant's statement of case being implemented, this element of reason for refusal 4 is no longer relevant.
8. During the course of the appeal, a planning obligation under section 106 of the Town and Country Planning Act 1990 (as amended), dated 24 January 2023, was submitted. This dealt with the provision of affordable housing, first homes and financial contributions to public open space.
9. The Council is in the process of reviewing the Maidstone Borough Local Plan 2017 (the LP). Before the Inquiry closed, the Examining Inspector for the Maidstone Local Plan Review (the LPR) published his initial assessment and interim conclusions<sup>1</sup>. As these findings would be directly relevant to the appeal, I allowed written submissions from both parties. I closed the Inquiry in writing on 20 February 2023.
10. I have taken into account that the emerging policies within the LPR are subject to change. Having said that, the Examining Inspector, in his Stage 1 findings, confirmed that the Council's use of the housing need figure of 1,157 dwellings per annum (dpa) was soundly based. He has also found that, whilst individual components of the strategy are subject to soundness issues, the spatial strategy itself is sound as comprising an appropriate strategy. In light of caselaw and the provisions of paragraph 219 of the National Planning Policy Framework (the Framework) I am able to give these more weight. I return to these matters in my reasoning below.

## **Main Issues**

11. The main issues are:
  - whether the appeal site is a suitable location for the proposed development, having regard to the spatial strategy;
  - the effect of the proposed development on the character and appearance of the surrounding area; and

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<sup>1</sup> INQ14 Maidstone Local Plan Review letter, dated 11 January 2023

- whether there are any other material considerations, including the housing land supply situation and benefits of the proposal, which would indicate that the proposal should be determined otherwise than in accordance with the terms of the development plan.

## **Reasons**

### ***Suitable location***

12. Policy SS1 of the LP deals with the spatial strategy for the borough. It sets out the spatial distribution of development within the borough, identifying the 'rural service centres', which includes the village of Harrietsham, as the secondary focus for housing development with the emphasis on maintaining and enhancing their role and the provision of services to meet the needs of the local community. Outside defined settlements, the policy gives protection to the rural character of the borough avoiding coalescence between settlements. The supporting text of the policy recognises that it is important that rural service centres are allowed to continue to serve their local area by retaining vital services thereby reducing the need to travel.
13. The appeal site is an area of land on the southern side of Ashford Road. It comprises the properties and curtilages of two residential dwellings, Firwood Lodge and Jays View, and various buildings and land used for agriculture and equestrian purposes. The site lies some 130m beyond the defined western settlement boundary edge of Harrietsham. As it lies outside the defined settlement boundary, it is located within the countryside for planning policy purposes.
14. Policy SP17 of the LP deals with development within the countryside. It states that development proposals within the countryside will not be permitted unless they accord with other policies in the plan and they will not result in harm to the character and appearance of the area. It also states that proposals should not have a significant adverse impact on the setting of the Kent Downs Area of Outstanding Natural Beauty (the AONB) and that development in the countryside will retain the separation of individual settlements. I return to matters in relation to character and appearance and the AONB in my assessment of the next main issue, below.
15. Chapter 8 of the LP sets out a number of development management policies in the countryside. This covers a range of uses and types of development, but notably does not include general housing as this is not a use identified as appropriate within the countryside. This is not disputed by the appellant who acknowledged it is not a 'countryside' use that relevant policies would support. The proposal therefore conflicts with the spatial strategy.
16. Policy SP5 of the LP explains that new housing and employment development within the settlements will be focused on allocated sites or broad locations in the local plan, or when it is a minor development such as infilling or the redevelopment of previously developed land that is of a scale appropriate to the size of the village. As this policy relates to development within the settlement boundary it is not applicable to the appeal proposal. Nevertheless, as I shall come onto later in my decision, it relates to the settlement boundary and is considered one of the most important policies in determining the application.

17. As part of the appellant's closing submissions, I have been referred to a recent Court of Appeal judgment *The King (oao Thurston Parish Council) v Mid Suffolk District Council*<sup>2</sup> where it was found that the word 'focused' in the interpretation of a policy relating to settlement boundaries in Thurston village did not mean that there can never be any development of a general kind outside a settlement boundary.
18. I recognise there are differences between the circumstances of this judgment and the appeal scheme, notably that they relate to different local areas, a different policy and context as well as relating to a neighbourhood plan rather than a strategic policy. Nevertheless, I find that there are some similarities to the circumstances here in terms of seeking to focus development within settlement boundaries and therefore the application of policy.
19. I appreciate that there will be circumstances where development outside of the settlement boundary may be appropriate but it seems to me that both Policies SP17 and DM5, which I come onto next, allow for this in any event. However, I also accept that the settlement boundary is drawn up to define the area most suitable for growth and development in order to provide a balanced approach to protection of the environment. This has been established through the local plan process. This balanced approach to development should not be undermined unless there are good reasons to do so.
20. Policy DM5 of the Local Plan deals with development on brownfield land. The first part of the policy relates to development in defined settlements, including rural service centres, and would not therefore apply to the appeal site.
21. Part two of the policy sets out that exceptionally, the residential redevelopment of brownfield sites in the countryside which are not residential gardens will be permitted subject to the site not being of high environmental value and the density of new housing reflecting the character and appearance of the locality. It also requires that the redevelopment results in a significant environmental improvement and the site is, or can reasonably be made, accessible by sustainable modes to Maidstone urban area, a rural service centre or larger village.
22. The supporting text of the policy recognises that a number of brownfield sites are located in the countryside and outside of settlement boundaries where countryside restraint policies apply. It explains that the key considerations for exceptionally allowing residential development are harm to the character and appearance of an area, the impact of proposals on the landscape and environment; and what sustainable travel modes are available or could reasonably be provided. Specifically, paragraph 6.38 of the explanatory text to the policy states that 'residential gardens in urban and rural areas are excluded from the definition of a brownfield site'.
23. The site has not been identified as being of high environmental value. Whilst the density of new housing would ultimately be established through the submission of reserved matters, the indicative layout provides an indication of the density of development across the site. I come onto matters in respect of character and appearance in my next main issue, where I have concluded that harm would arise.

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<sup>2</sup> INQ13 and *The King (oao Thurston parish Council) v Mid Suffolk District Council* [2022] EWCA Civ 1417

24. The appellant has argued that the exclusion of residential gardens in rural areas from this definition does not accord with the glossary definition set out within the Framework which explicitly states that previously-developed land, or brownfield land, excludes land in built-up areas such as residential gardens. Thus, the appellant suggests the policy is inconsistent with the Framework.
25. The Framework definition remains silent on gardens within rural areas. Notwithstanding these differences, the approach in Policy DM5 in respect of residential gardens was found to be sound by the local plan Examining Inspector<sup>3</sup> in 2017 based on local circumstances. Although that pre-dated the 2021 Framework, the Framework in force at the time from 2012 included the same definition. I also find this to be a reasonable approach as the policy is not redefining brownfield land but the supporting text is qualifying what might be considered to be a brownfield site. In this regard, I do not find it to be inconsistent with the Framework.
26. The extent to which the appeal site comprises brownfield land is around 10% of the total area, when gardens are excluded. Even if gardens within rural areas should be considered to be a brownfield site, then it is agreed that the area of land would amount to around 30% of the appeal site. In either scenario, a significant portion of the site would be greenfield.
27. In terms of meeting the requirements of Policy DM5, the appellant has suggested that the proposal would deliver environmental improvements, leading to a biodiversity net gain of 27% in habitats and 46% in hedgerow habitats. Whilst this may be a factor in favour of the proposal, environmental improvement is a much broader matter than ecological improvements. In this regard, it is noted that both parties are in agreement that there would be landscape harm, although the extent of that harm remains in dispute. I am therefore unable to conclude that there overall would be a significant environmental improvement of the site.
28. The final part to Policy DM5 relates to what sustainable transport modes are available or could be reasonably be provided. This consideration also forms part of the appellant's argument that due to the proximity of the site to the settlement boundary the appeal site would be a sustainable location, which is promoted irrespective of any brownfield land claims. However, sustainability has three dimensions, social, economic and environmental. I shall come on to consider these in more detail later in my decision. Nonetheless, in the context of the suitability of the location, I turn to whether or not the appeal site is an accessible location thereby reducing the need to travel, or whether it could be reasonably made so by the provision of sustainable transport modes.
29. Harrietsham provides a number of key services and facilities, including a few shops and a primary school. There is also a medical centre but I was told by interested parties that this had been closed with no indication as to when or if it would be reopened. There is also a railway station providing services to Canterbury and London. A bus service runs along the A20, with bus stops around 400m east and west of the closest points of the appeal site. The village of Lenham, also a rural service centre, is located some 900m to the east of the closest point of the appeal site.

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<sup>3</sup> CD 8.1 at [340] on PDF 67

30. It has been agreed between the highway authority, KCC, and the appellant that the appeal site is within reasonable walking distance of services and facilities within Harrietsham and that the route would not raise highway safety concerns. These distances are set out within the Agreed Statement on Transport Matters<sup>4</sup>.
31. There is conflicting evidence in respect of what would amount to a 'walkable distance'. The Agreed Statement sets out that a distance of up to 1.6km is a reasonable walking distance. Research by WYG into 'How far do people walk?'<sup>5</sup> using National Travel Survey data identified that people will walk 800m to a bus stop, about double that to a railway station and nearly 2km for other services. This was based on the 85<sup>th</sup> percentile of people not an average. Alternative guidance, notably Manual for Streets (MfS), identifies that a 'walkable neighbourhood' is characterised by having a range of facilities within 800m which residents may access comfortably by foot. This is not however an upper limit.
32. Only one service and facility is within 800m of the appeal site and therefore a 'comfortable walking distance' based on MfS, that being a wood fired pizza shop at 800m. A BP garage and convenience store lies beyond this at 850m. Moreover, given that these distances are measured from the site entrance, the actual distance between the proposed houses and these facilities is likely to be longer, noticeably so for those at the southern end of the site. I nevertheless accept that, based on the evidence submitted, services and facilities are within a walkable distance.
33. Physical distance is not the only means to encourage people out of their car, the quality of the route is an important factor. I both observed and I heard from interested parties that the A20 is a busy road, with evidence of regular use by HGVs, particularly if there are any disruptions to the nearby M20 motorway. In these circumstances, walking would be unlikely to be an attractive option for many, particularly those with young children or the elderly. For this reason, whilst I accept that some people may walk or cycle to services, I am not persuaded that this would apply to the majority of occupants.
34. A package of measures is proposed to promote sustainable travel including separate pedestrian and cycle site access, an extension to the shared footway/cycleway on the southern side of the A20 as well as two pedestrian refuge island crossings on the A20, either side of the access. Coupled with this are measures to reduce the need to travel, including the promotion of home delivery services and broadband as well as facilities to support travel by means other than the private car including cycle parking and a Residential Travel information pack.
35. I accept that the provision of a 3m wide footpath and dedicated cycle lane may encourage some additional walking and cycling. I also recognise that some of the proposed interventions may result in a few less trips by car. However, overall, for the reasons I have already stated, the provision of all these additional measures does not lead me to a different conclusion on the accessibility of the site.

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<sup>4</sup> CD1/6

<sup>5</sup> CD8/9

36. Given my findings, it follows that I find conflict with the requirement under Policy DM5 that the site is or can reasonably be made accessible by sustainable modes to Maidstone urban area, a rural service centre or larger village. Thus, the requirements of Policy DM5 are not met. Furthermore, the accessibility of the site does not justify the location of the proposed development outside the settlement boundary.
37. The settlement boundary for Harrietsham was extended further east towards the appeal site through the LP to include an allocated housing site. This has now been developed with 49 dwellings at Bluebell Walk. A further two sites have been developed, South of Ashford Road for 113 homes and Church Road (80 homes).
38. The LPR proposes the allocation of two sites for residential development, land<sup>6</sup> to the west and land<sup>7</sup> to the north-east of the appeal site. The LPR proposes to extend the settlement boundary further east to incorporate these two sites. If these proposed allocations were to be adopted through the LPR, the appeal site would be contiguous with the new settlement boundary. Whilst this does appear to represent an eastward extension of the settlement boundary, I am mindful that those sites represent the extent to which the settlement boundary is considered by the Council to be suitable to extend along the A20. Thus, whilst I accept that the appeal site adjoins this, it has neither been, nor is it proposed to be, allocated for such development.
39. Policy SP6 which specifically relates to Harrietsham sets out that key services will be retained and supported and explains that in addition to minor development and redevelopment of appropriate sites in accordance with Policy SP5, approximately 242 new dwellings will be delivered on three allocated sites. These have been delivered. A further 140 new dwellings are proposed through the draft allocations in the LPR. The appeal proposal, in seeking to deliver up to 109 dwellings, would almost double that amount. For an unallocated site, outside of the settlement boundary, this would be a disproportionate amount of development to this settlement which would not align with either the existing or emerging spatial strategy.
40. There is good evidence that the current spatial strategy set out within the LP is working with housing delivery, in the 5 years since the adoption of the plan, having exceeded the local plan requirement. I discuss this in more detail later in my decision.
41. The LPR is evolving that strategy through the introduction of additional tiers within the settlement hierarchy above Harrietsham, namely the Garden Villages and Strategic Development locations. Whilst I recognise that these two components amongst other matters will be subject to further examination through the plan-making process, the spatial strategy for securing a sustainable pattern of development has been found sound by the Examining Inspector. This includes the relegated position of the rural service centres within the new settlement hierarchy. This adds to my view that the proposed development is at odds with both the Council's existing and emerging strategy for growth.

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<sup>6</sup> Maidstone Local Plan Review Site LPRSA101

<sup>7</sup> Maidstone Local Plan Review Site LPRSA071

42. I therefore find that the appeal site is not a suitable location for the proposed development, having regard to the spatial strategy. It therefore conflicts with Policies SS1, SP17 and DM5 of the Local Plan as referred to above.

***Character and appearance***

43. The appeal site comprises two detached dwellings, their gardens and areas of fields and paddocks. The site is undulating, with higher ground to the south where there are fields and paddocks. The two dwellings occupy a plateau area towards the middle of the site and the ground then slopes down towards the A20 in the north, with areas of paddocks occupying much of the land between the houses and the road. The southern boundary of the site abuts the wooded boundary with the railway line, whilst the western, northern and part of the eastern boundaries are vegetated to varying degrees, with hedgerows and trees. The south-eastern boundary at the top of the site is significantly open, separated from the adjacent field by a modest fence.
44. The A20 is an urbanising feature within the area, relatively wide, with traffic islands, substantial areas of hatching and busy with traffic. It links the two settlements of Harrietsham and Lenham. A small number of properties or their entrances including the appeal properties, can be seen travelling between the two settlements but built development is not a prominent feature from the road. Notwithstanding the appearance of the road and some limited evidence of domestic fences and hedging, it is extensively lined with vegetation and mature trees, beyond which fields and open land can be glimpsed including the paddocks that form part of the appeal site. This gives this area between the two settlements a semi-rural character.
45. Away from the road, the character becomes considerably more rural, with fields and paddocks and an increased sense of tranquillity. This is certainly the case towards the southern parts of the site. On the opposite side of the A20, the land rises up to the north providing views, predominantly from the higher part of the appeal site towards the rural landscape of the AONB. Given these views and the proximity of the site to the AONB, it therefore lies within its setting.
46. The Council did not refuse permission on the basis of any harm to the setting of the AONB although this was extensively discussed at the Inquiry. Given these discussions and the proximity of the site to the AONB I have considered the impacts.
47. The site also lies within the Harrietsham to Lenham Vale Landscape Character Area (the LCA) as defined in the Maidstone Landscape Character Assessment<sup>8</sup> (the MLCA). This identifies key characteristics of the LCA. The extent to which the site shares these characteristics was a matter of some discussion at the Inquiry. Specifically, the appellant disagrees that the site comprises a mosaic of mixed farmland divided by non-rectilinear hedgerow boundaries; that it does not lie to the north of Harrietsham where there are small field patterns and equestrian grazing; and that trees on the appeal site comprise an area of woodland as recognised in the MLCA. The parties also disputed the magnitude of the impact on the LCA and where it would be experienced from.

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<sup>8</sup> CD9/6



48. The appeal site is located towards the centre of the LCA. The western boundary of the site is separated from the adjacent field by an irregular, non-rectilinear hedgerow boundary and the fields within the site are a mix of shapes and small in size. This is recognisable as the characteristic mosaic fields. Whilst I accept that within the area to south of the railway line, also within the LCA, non-rectilinear hedgerow boundary features are more common, it does not reduce the contribution that the appeal site makes to this particular landscape characteristic.
49. The appeal site contains a number of trees which contribute to its verdant character. Within the grounds of Firwood, there is a block of more dense tree cover which was recorded in the appellant's Ecological Appraisal<sup>9</sup> as 'priority habitat deciduous woodland', comprising mature Beech, Scot's Pine, Hawthorn and Yew. It does not therefore comprise of broadleaf nor sweet chestnut coppice woodland, described within the MLCA. Nevertheless, it is an area of mixed woodland, and the MLCA recognises the contribution of mixed woodland to the area, notably referring to the contribution of an area of mixed woodland at Kiln Wood. I find that this area of woodland, albeit small in scale, would be mixed native woodland and it makes a positive contribution to that overall character of the LCA.
50. The MLCA refers to the small field pattern and equestrian grazing north of Harrietsham. Due to its location to the east of the settlement, geographically the site cannot meet this part of the definition. Notwithstanding this, the small field pattern of the appeal site including areas of paddock, to my mind, contributes to local character, irrespective of whether or not it technically meets the geographic location defined in the LCA.
51. From my observations, the housing is scattered and unobtrusive in the landscape and the railway line, whilst bisecting the area, is not visually prominent being largely hidden behind vegetation on its boundaries. The landscape is therefore reasonably intact. Similarly, I find that the site itself displays characteristics of the LCA that are also reasonably intact. Additionally, there are a number of individual trees and an avenue of trees to the existing driveways which appear to be in good condition. Overall, the condition of the site appears to be reasonable in terms of its landscape contribution.
52. Generally, I find that the appeal site contributes to the features of the LCA defined within the MLCA, notably the mosaic like field pattern and blocks of woodland. These are distinctive features between Harrietsham and Lenham. Whilst I recognise that they are not widely visible from public viewpoints, they contribute positively to the landscape character of the area.
53. The proposal, in developing the site with up to 109 dwellings would inevitably change the character of the site. It would result in the loss of the existing field pattern. Whilst the existing non-rectilinear western hedgerow boundary would be retained, with the draft allocation of the adjacent field to the west for housing development, this would no longer provide a boundary between fields but would simply divide two residential developments. The loss of the mosaic field pattern would be contrary to the actions identified within the MLCA which seeks the conservation of the mosaic field pattern and hedgerow boundaries.

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<sup>9</sup> CD2/13

54. The area of woodland on the site would be retained but instead of forming part of a semi-rural landscape, it would lie within a suburban context being surrounded by residential development. Its contribution to the LCA would be significantly reduced.
55. Along the south-eastern boundary of the site, away from the road, the proposed development would starkly extend into the rural landscape. As I shall come onto, this would not be widely visible from public viewpoints. However, it would fundamentally alter the tranquil and rural character of this part of the site and its surroundings, to the detriment of the quality of the area.
56. The change in the semi-rural character of the site would be apparent from the A20. It would be visible through the new, wider site entrance where the presence of a significant amount of urbanising development including the new road and dwellings would be apparent. It would also be visible in filtered views through the boundary vegetation, more so in winter months when trees are not in leaf. Additionally, I observed that the carriageway is higher than the lowest part of the site and that boundary vegetation grows within a ditch, thereby reducing its overall effectiveness in screening the development from the road. The change in character would therefore be evident.
57. I recognise that the required visibility splays should be achievable across the existing verge outside the appeal site with a limited reduction in boundary vegetation. However, the standard of access to serve this size of development would be visually more prominent than the two existing and unobtrusive entrances that currently serve both properties.
58. Although the site frontage is limited to a relatively short section of the road, with the introduction of the footpath, streetlighting, additional traffic management measures including a potential reduction in speed limit, increased vehicle and pedestrian movements, the semi-rural character of this stretch of road between Harrietsham and Lenham would be significantly compromised. This would be a permanent change, not just confined to the early years of the development.
59. The proposal would not help to maintain the gap between the two settlements. This would be significantly and permanently reduced, both through this proposal and in combination with developments coming forward on allocated sites, including those proposed through the LPR as well as a large site allocated in the Lenham Neighbourhood Plan (LNP)<sup>10</sup> on the edge of Lenham. The Council has estimated that the existing gap between the settlements would close by approximately 25%, this has not been disputed.
60. This would be contrary to policy and the advice set out in both the MLCA and the Maidstone Landscape Capacity Study<sup>11</sup> (the LCS). It would also be contrary to the advice that further development along the A20 should be resisted and would fail to conserve the mosaic field pattern between Lenham and Harrietsham.
61. The Council's landscape witness highlighted a number of shortcomings with the Landscape and Visual Appraisal<sup>12</sup> (the LVA) submitted with the original

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<sup>10</sup> Lenham Site 5

<sup>11</sup> CD9/5

<sup>12</sup> CD2/9

application in that it failed to follow the guidelines for assessment as set out in the Guidelines for Landscape and Visual Impact Assessment – Third Edition<sup>13</sup>. This included that the LVA was unduly narrow, failed to fully take into account the landscape characteristics and downplayed the role of the AONB in its assessment.

62. Whilst this position is noted, I also recognise that these matters were not raised at the application stage but only when the Council's proof of evidence was submitted. In any event, I am satisfied that matters in respect of the assessment of the site were adequately covered through the testing of evidence at the Inquiry.
63. Much was made about the accuracy of the photographs and the viewpoints presented during the Inquiry. Consequently, I undertook an accompanied site visit of each of those viewpoints, including the disputed view from the south-east as well as the alternative viewpoints put forward by the Council's landscape witness, and I have been able to reach my own conclusions as to the effects of the proposal when seen from those viewpoints.
64. Due to the undulating topography of the site and surrounding landscape and extensive areas of intervening vegetation, I observed that the site is not visually prominent within longer distance views, neither from the south nor from within the AONB to the north. There would be some change, predominantly in that rooftops of the proposed development would be glimpsed in some views. This would give a sense of more development within the landscape and would cause some erosion of the rural landscape. A modest degree of harm would arise from this. However, the closing of the gap between the two settlements would not be apparent in these distance views as the two settlements are not clearly visible at the same time.
65. Specifically in terms of the effect upon the AONB, there would be some erosion of the rural character within its setting. However, this would not be prominent and overall, it would not lead to unacceptable adverse impacts on either the setting of or the AONB itself.
66. I observed the 'Welcome to Harrietsham' sign on the A20 to the east of the appeal site, which I was told is a highways sign erected by KCC. This is some distance outside the settlement. The sign does not align with any prominent built development that would suggest the settlement begins at that point. It therefore does not alter my findings as to the character or the extent of the settlement area.
67. For these reasons, I conclude that the proposed development would cause significant harm to the character and appearance of the area. It would therefore conflict with Policies SP17, DM1 and DM30 of the LP which together seek to protect the character and appearance of the countryside, retain the separation of individual settlements and respond positively to local character taking into account Character Area Assessments.

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<sup>13</sup> CD9/1

## **Other considerations**

### *Planning Policy Context*

68. Paragraph 11 d) of the Framework sets out that for decision taking where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless: i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
69. In accordance with the approach established through case law<sup>14</sup>, a consideration of which policies are the most important must be made and an assessment about whether these are out-of-date. It is for the decision-maker to consider whether the 'basket' of most important policies as a whole is out-of-date or not for the purposes of the decision, a matter which I return to in my conclusions below.
70. The LP sets out the planning strategies and policies for the borough for the period 2017-2031. A number of policies are relevant to the application. However, those most important relate to the spatial strategy, the protection of the countryside, the use of previously developed land and landscape impacts. I therefore conclude that Policies SS1, SP5, SP17, DM1, DM5 and DM30 of the LP are most important. With the exception of Policy SP5, this accords with the agreed position of both parties as set out in the Planning Statement of Common Ground<sup>15</sup>. Notwithstanding this position, I note that the appellant's planning witness, in his proof of evidence<sup>16</sup>, has also indicated that Policy SP5 which relates to settlement boundaries is also a most important policy. I concur with this view as this relates to where development should occur.
71. Paragraph 219 of the Framework sets out that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them according to their degree of consistency with the Framework. Such an approach has been established through case law<sup>17</sup> where it has been held that there are a number of reasons why a policy may be considered out-of-date including that they have been overtaken by things that have happened since they were adopted, either on the ground or in some change of national policy or for some other reason.
72. Of the most important policies, the appellant has argued that Policies SS1, SP5, SP17 and DM5 are all out-of-date. I addressed my findings in respect of the consistency of Policy DM5 earlier on my decision; on the basis of that, it follows that I do not consider this policy to be out-of-date.
73. I have also discussed Policies SS1, SP5 and SP17 under the first main issue. The appellant asserts that these policies are each out-of-date as they are

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<sup>14</sup> CD4/6 Wavendon Properties Ltd vs SSCLG and Milton Keynes Council [2019] EWHC 1524 (Admin)

<sup>15</sup> CD1/7

<sup>16</sup> CD1/10

<sup>17</sup> Bloor Homes Ltd v SSCLG [2014] EWHC 745 (Admin) and Gladman Developments v SS & Central Bedfordshire Council [2019] EWHC 127 (Admin)

- based on an out-of-date housing requirement and settlement boundaries that reflect that requirement, thus preventing the Council from being able to achieve an adequate housing supply. In support of this position, it argues that the assessment of housing need has been superseded by the introduction of the standard method.
74. The existing settlement boundaries are based on the LP housing requirement figure of 883 dwellings per annum (dpa). I accept that this number needs to be increased in accordance with the standard method. I also recognise that case law<sup>18</sup> has confirmed that the weight to be given to restrictive policies could be reduced where settlement boundaries were drawn up on the basis of out-of-date housing requirements.
75. Notwithstanding this, the evidence suggests that despite these settlement boundaries, the current spatial strategy is working as it has delivered a much higher level of housing than the adopted LP figure over the last 5 years. This does not suggest to me development has been constrained by these settlement boundaries. I therefore do not find these policies, either in respect of settlement boundaries or the protection of the countryside are out-of-date.
76. Policy LPR1 of the Local Plan deals with the review of the local plan. It states that the Council will undertake a first review of the local plan and identifies matters which may need to be addressed. This includes a review of housing needs and the identification of additional housing land to maintain supply towards the end of the plan period and, if required as a result, consideration of whether the spatial strategy needs to be amended to accommodate such development. It states that the target adoption date for the review of the local plan is April 2021.
77. The purpose of Policy LPR1 is to secure early review of the LP to address issues in relation to housing delivery towards the end of the plan period to 2031. It was not considered to impact on strategy in the first 5 years of the LP. I appreciate that the first 5 years of the plan have now completed. However, the LPR is well underway. It has been submitted for examination following consultation under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012. Stage 1 hearings have been completed and the Examining Inspector has issued his initial assessment regarding the over-arching soundness of the submitted spatial strategy.
78. The LPR will address the uplift in housing requirements necessitated by the adoption of the standard method through the allocation of housing sites. The Examining Inspector has recommended that a stepped trajectory for housing supply be applied, whereby a lower housing target be applied in the first 5 years on adoption of the plan to, amongst other things, factor in early over-delivery in 2021/22 and to regulate the significant step change in the housing requirement figure.
79. The appellant considers that the failure of the Council to undertake an expedited review of the LP in accordance with Policy LPR1 would have resulted in an assessment of how increased housing needs could be accommodated and, if necessary, amended settlement boundaries to address this. Given the over-delivery that has occurred and the Examining Inspector's findings, there is no evidence to show that the failure to complete the review by the target

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<sup>18</sup> CD4/4 Suffolk Coastal District Council v Hopkins Development Ltd [2017] UKSC 37

date set out in Policy LPR1 has or will lead to any failure or material slowdown in the delivery of housing. Therefore, it does not lead me to reach a different conclusion in respect of whether the spatial strategy, and specifically Policies SS1, SP5 and SP17, are out-of-date.

80. The Council has indicated that the LPR will be adopted in 2023. This has been challenged by the appellant in its further closing submissions<sup>19</sup>. It has asserted that on the basis of the Stage 1 findings, substantial work will be required in relation to some of the strategic sites in advance of the Stage 2 examination hearings inevitably leading to delay. The appellant's observations in this regard are not unfounded. However, even if the LPR is adopted in 2024, the Council is now working to a higher housing requirement in accordance with the Examining Inspector's findings and the overall strategy has been found sound. On this basis, I see no significant impediment to the Council continuing to deliver in the coming years arising from a delay to the adoption of the LPR.
81. In conclusion, I have found that none of the most important policies in the determination of the application are out-of-date, therefore the basket of policies is not out-of-date. The provisions of Policy LPR1 do not lead me to a different conclusion on this matter. I therefore conclude that the policy position is not a factor that would trigger the provisions of paragraph 11 d) of the Framework in this appeal.

#### *Five Year Housing Land Supply*

82. The parties dispute whether or not the Council can demonstrate a 5 year supply of deliverable housing sites. This is for the period 1 April 2022 to 31 March 2027. On the LP becoming five years old, the Council published a Five Year Housing Land Supply Addendum Statement in November 2022<sup>20</sup>. This updated its 5 year housing land supply position statement at 1 April 2022 issued in September 2022<sup>21</sup>.
83. The dispute relates to the annual requirement figure, the calculation of the 5 year housing land supply (5YHLS) and if this should take into account past oversupply and a non-implementation rate, and if so, what that rate should be. In addition, the deliverability of certain sites included within the Council's 5 year trajectory are disputed. I deal with each of these matters in turn.

#### Annual requirement

84. The Council's starting point for calculating the 5 year supply is a figure of 1,157 dpa. This figure has been calculated using the standard method in accordance with paragraph 74 of the Framework and footnote 39. There is no disagreement on the methodology used but the inputs into that in terms of the affordability ratio are a matter of dispute.
85. The Planning Practice Guidance (the PPG)<sup>22</sup> sets out how the standard method can be used to calculate a minimum annual local housing need figure. Step 2 of that calculation sets out that the average annual projected household growth figure, calculated under Step 1, should be adjusted based on the

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<sup>19</sup> INQ18

<sup>20</sup> CD7/7 and CD7/8

<sup>21</sup> CD7/4

<sup>22</sup> Paragraph: 004 Reference ID: 2a-004-20201216

- affordability of the area. It goes on to explain that the most recent median workplace-based affordability ratios, published by the Office for National Statistics, at a local authority level should be used.
86. The Council has used the 2020 affordability ratios, not those for 2021 as advocated by the appellant. The LPR was submitted for examination on 31 March 2022. On 23 March 2022, 8 days before submission of the LPR for examination, new affordability ratios were published.
  87. It is not disputed that in applying the 2021 affordability ratios, the housing requirement would be 1,194 dpa. Indeed, this point is acknowledged by the Council's strategic planning manager who explained to the LPR examination that there would be an anomalous situation arising from these two sets of figures, with the 1,194 figure being used in annual updates to the housing land supply position for the three year housing delivery tests and 5YHLS.
  88. The Council asserts that to adopt this number for the LPR would have required the Council to have to delay the LPR. It has also argued that this maintains consistency between the calculation of supply within the LPR and ensures that the plan-making and decision-taking figures are aligned.
  89. The Examining Inspector, in his Stage 1 findings, confirmed that the Council's use of the housing need figure of 1,157 dpa was soundly based. Notably, he found that, given the timing of the updated affordability ratio, imposing a requirement to update the figure of 1,157 dpa on the basis of the 2022 affordability ratios would be unreasonable.
  90. Paragraph 74 of the Framework is clear that the consideration of 5YHLS is against their housing requirement set out in adopted strategic policies or against local housing need, calculated using the standard method set out in national planning guidance. The Examining Inspector confirmed that no adjustments are required to the local housing need figure, but that the overall housing requirement would need to be expressed as a minimum.
  91. I appreciate that there are differences between plan-making and decision-taking. However, to apply a different approach to that being promoted through the LPR and already accepted by the Examining Inspector would result in a situation where the LPR housing figure is out-of-date before it has been adopted. The LPR is setting the requirement for the plan period, therefore to deviate from this at this early stage would create an unsatisfactory degree of uncertainty.
  92. Moreover, the advice within the PPG<sup>23</sup> is that local housing need calculated using the standard method may be relied upon for a period of 2 years from the time that a plan is submitted for examination. Notwithstanding this being predominantly a plan-making criterion, the LPR was submitted on 31 March 2022 and given the Examining Inspector's confirmation as to the figure, it would be reasonable to apply the advice as set out in the PPG in the peculiar circumstances of this case. It would therefore be reasonable for the Council to rely upon this figure for a period of 2 years since the plan submission.
  93. This is consistent with the Council's approach in the appeal before me. I consider that consistency between the LPR and the number to be used in decision-taking would be appropriate and to adopt the alternative 1,194 dpa

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<sup>23</sup> Paragraph: 008 Reference ID: 2a-008-20190220

would be unreasonable given this. I therefore conclude that for the purposes of this appeal an annual housing figure of 1,157 dpa should be used.

94. Based on my conclusions above, the Council's 5 year housing requirement, including a 5% buffer, is 6,074 dwellings.

#### Oversupply

95. The Council has not included oversupply in its primary housing land supply calculation because it does not consider this necessary in order to demonstrate a 5YHLS. It does however provide calculations in relation to this to demonstrate that its housing land supply is both robust and that there is capacity in the supply, in the event that the supply of deliverable sites is not agreed.
96. Neither the Framework nor the PPG currently provide advice on oversupply in the calculation of housing land supply. However, the recently published NPPF Prospectus<sup>24</sup> has recognised this and that the current system has the potential to penalise those local planning authorities that overdeliver their housing requirements early in the plan period. It sets out the Government's proposal to amend national policy and guidance to enable a local planning authority to include historic oversupply in its 5YHLS calculations. Caselaw<sup>25</sup> has also established that whether or not to include oversupply within the 5 year calculation is a matter of planning judgment.
97. Since the LP was adopted, 6,717 dwellings have been delivered against the LP requirement for the period 2017-2022 of 4,415 dwellings. This amounts to an over delivery of 2,302 dwellings, equivalent to around 460 dpa.
98. In 2021/22 housing delivery was 1,627 dwellings, 470 homes in excess of the housing requirement of 1,157 dpa. The Examining Inspector recognised this and confirmed that this over-supply should be positively factored into the housing trajectory, thereby lowering the housing target for the first five years from 1 April 2022. This would play through as a lower housing target for years 1-5 on adoption (2022-2027) of the LPR.
99. This approach would be appropriate in terms of plan making as the base date of the LPR, 1 April 2021, aligns with the period related to the over delivery discussed by the Examining Inspector. However, there is no reason why, in the context of this appeal, that over-delivery cannot be either used to adjust the overall requirement against which the supply should be assessed or, at the least, weighed against any shortfall.
100. The appellant argued that affordability ratios take into account oversupply therefore to count oversupply against the housing requirement would be double-counting. However, there is no indication of this within the PPG, although it does expressly state that it takes into account under delivery. Moreover, the affordability ratio is calculated by dividing house prices by gross annual workplace-based earnings<sup>26</sup>. It does not measure housing delivery and is influenced by factors unrelated to this, such as wage changes, or a change

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<sup>24</sup> DLUHC Open consultation Levelling-up and Regeneration Bill: reforms to national planning policy, published 22 December 2022

<sup>25</sup> CD4/3 – Tewkesbury Borough Council v SSHCLG [2021] EWHC 2782 (Admin), PTSR 340

<sup>26</sup> INQ7



in house prices affected by some other change locally, an example being the delivery of infrastructure.

101. Furthermore, even if affordability ratios take into account oversupply, there is a time lag between housing delivery information, data on sales prices and the calculation of the affordability ratio. This suggests that the latest affordability ratio could not have taken into account the oversupply in the last year, in this case 2021/22, when there were some 744 dwellings above the adopted LP requirement of 883 dpa. For these reasons, I do not consider that taking into account oversupply would amount to any double-counting.
102. It has been argued that any oversupply should be applied to the entire plan period, that is from 2011/12 to 2021/22. This would reduce the oversupply to 1,009 dwellings, equivalent to 202 dpa. However, the housing requirement figure in the LP takes account of housing delivery between 2011 and when the LP was adopted. It is therefore reasonable to calculate the oversupply against the years since adoption of the plan, that is the past 5 years, as advocated by the Council.
103. On this basis, I conclude that 2,302 units is the oversupply figure. It would be reasonable to factor this figure into any calculation of the 5YHLS.

#### Non-implementation rate

104. The effect of a non-implementation rate is to reduce the overall housing land supply to reflect a position where certain developments do not get implemented. There is no policy or guidance setting out a requirement to apply a non-implementation rate in the calculation of a 5YHLS. The Council nevertheless does so in order to ensure its calculations are robust. The LP sets this rate at 5%.
105. The Council considers that, in the context of what makes a site deliverable and relevant caselaw<sup>27</sup>, which I discuss in more detail below, a non-implementation rate artificially reduces the assessment of deliverability. The argument being made that simply because a planning permission lapses does not mean that it was not deliverable. On this basis, it has argued in its closing statement<sup>28</sup> that a non-implementation rate should not be applied.
106. Whilst this position is noted, there is also evidence to demonstrate that non-implementation has occurred. Data collected from the past 14 years shows that an average of 1.9% of planning permissions have expired and this figure was put forward by the Council in its submissions as an appropriate non-implementation rate. Notwithstanding the Council's position in closing, it did concede on cross-examination that a non-implementation rate should be applied.
107. Bearing in mind the purpose of the 5YHLS, as set out in the PPG<sup>29</sup>, which is to provide an indication of whether there are sufficient sites available to meet the housing requirement, the inclusion of a non-implementation rate adds robustness to this assessment. The Council, as a matter of good practice has and continues to advocate such an approach, as demonstrated by its inclusion of a non-implementation rate as part of the LPR. I therefore consider that the

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<sup>27</sup> CD4/5 – St Modwen Developments Ltd v SSCLG [2017] EWCA Civ 1643

<sup>28</sup> INQ12

<sup>29</sup> Paragraph: 003 Reference ID: 68-003-20190722

application of a non-implementation rate would be appropriate in these circumstances.

108. The Council has argued that the rate should be 1.9% to reflect actual non-implementation rates. This matter has also been considered by the LPR Examining Inspector. He concluded that the evidence exists for the Council to soundly apply a 3% non-implementation rate based on local monitoring rather than the more cautious 5% that has been used, although he accepted evidence supported a 2% (rounded up from 1.9%) non-implementation rate.
109. There is firm evidence to support the rate of 1.9% advocated by the Council in the context of this appeal, which is broadly in line with the findings of the Examining Inspector. Therefore, I consider a rate of 1.9% would be appropriate.

#### Deliverability

110. The final consideration of the 5YHLS relates to the deliverability of sites. The Framework sets out within its glossary that to be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years. It goes on to give examples under a) and b) of the categories of sites which are capable of meeting that definition. Under a) this includes all sites with detailed planning permission; and under b) those sites which have outline planning permission for major development and whether there is clear evidence that housing completions will begin on site within 5 years.
111. The parties dispute whether certain sites meet the definition of deliverability. None of the sites are disputed on grounds of availability, suitability or achievability. The dispute centres on whether there is a realistic prospect that housing will be delivered. In respect of this, I am mindful of the judgment in the *St Modwen Developments Ltd v SSCLG* case<sup>30</sup> which recognised that deliverability and delivery are not the same thing. Thus, whilst a particular site may be capable of being delivered within five years does not necessarily mean that it will be. There are various reasons for this which are beyond the control of the local planning authority. The judgment goes on to confirm that a site may be included in the 5 year supply if the likelihood of housing being delivered on them within the five-year period is no greater than a realistic prospect.
112. Following examination of both parties' evidence, a revised set of figures in relation to housing land supply was submitted to the Inquiry in HLS Update Note<sup>31</sup> and this is the starting point for my assessment.
113. The Council sets out in the HLS Update Note that it has a total supply of 6,283. However, the figure when adding up the different categories of site contributing to delivery is actually 6,244 dwellings. This lower figure takes into account that the Council agreed that 39 dwellings should be removed from the trajectory in respect of the Pested Bars site. I have therefore proceeded to base my assessment on this correct figure. Thus, the Council's position must be that it has a supply of 6,244 dwellings, the appellant considers the Council has 4,507.

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<sup>30</sup> CD4/5

<sup>31</sup> INQ8

*Sites with detailed planning permissions (full or reserved matters)*

114. The appellant has disputed that two sites, Land west of Church Road which has full planning permission, and Land at Farleigh Hill, which has all reserved matters approved, will be delivered within the 5 year period. The appellant's primary argument in respect of these two sites is that the delivery rate is too high. This is based on research by Lichfields into build-out rates<sup>32</sup> that indicates average delivery rates of 47dpa for sites in excess of 50 dwellings. The appellant considers that 142 dwellings and 72 dwellings respectively should be removed from the trajectory to reflect a slower speed of delivery.
115. In both these cases, the schemes are being delivered by major housebuilders, with both schemes incorporating some flatted development, 100 units in the case of the Church Road scheme and 63 for Farleigh Road. It is accepted that flatted development has a quicker build out rate than houses.
116. In terms of the test of deliverability, the Framework definition states that all sites with detailed planning permission should be considered deliverable unless there is clear evidence that homes will not be delivered. Whilst the appellant's opinion on build rates is noted, these are experienced housebuilders who have set out the delivery trajectory and the schemes include flatted development. I have not been provided with clear evidence that the scheme would not be delivered as indicated, I therefore conclude the disputed 142 dwellings and 72 dwellings respectively should be kept in the trajectory.

*Major sites with outline consent*

117. Land south of Sutton Road is categorised as a major site with outline consent. It was approved on 18 April 2018, subject to reserved matters which split the site into 6 phases. Phases 1 and 3 have reserved matters approval and delivery of these is not disputed. Reserved matters applications for the remaining four phases, 2, 4, 5 and 6, are anticipated to be approved in January or February 2023. The developer is a major housebuilder and there is a planning performance agreement (PPA) in respect of the remaining phases. The housebuilder has also provided a trajectory, based on an average build out rate of around 45dpa, and confirmed in writing that delivery is expected to be at this rate.
118. The appellant considers that years 1 and 2 of that trajectory for phases 2, 4, 5 and 6 should be removed from the trajectory thereby reducing its contribution to 5YHLS by 91 dwellings. I accept the Council's position that with a PPA in place and major housebuilders, delivery on the site is likely. However, reserved matters were outstanding towards the end of year 1 of the trajectory. To my mind, this makes it unlikely, in the absence of any firm evidence to the contrary, that delivery at the rate identified in year 1 will occur. I therefore remove 45 dwellings from the trajectory.

*Allocation (Maidstone Local Plan 2017) Sites*

119. The appellant disputes that 40 dwellings allocated in year 5 of the trajectory in relation to the LP allocated site at Land to the rear of Kent Police Training School should be included. This is on the basis that there have been no reserved matters and a new outline application has been submitted which is

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<sup>32</sup> CD8/13

pending approval subject to a section 106 Planning Obligation. The appellant has agreed that there is progress but considers there have been multiple extensions of time which makes delivery in accordance with the trajectory unlikely.

120. From the submissions, the reasons for delay are somewhat unclear, particularly given the s106 obligations do not appear unduly complex. However, delivery is allocated to year 5 of the trajectory, it seems to me that this is feasible, particularly when considered against the Council's phasing methodology which indicates that delivery would come forward in year 4 for allocated sites with outline permission awaiting a section 106 Planning Obligation as is the case here. I therefore conclude that the 40 dwellings should remain in the trajectory.

Allocation (Lenham Neighbourhood Plan) Sites

121. Land west of Old Ham Lane and north of the Railway is a site allocated in the LNP (No 5). It has been granted planning permission subject to completion of a section 106 Planning Obligation which remains outstanding with the reasons relating to nitrate neutrality which have now been resolved and KCC Highways. The trajectory identifies delivery of 80 dwellings in the final 2 years. It seems to me that with one outstanding issue on the section 106 Planning Obligation and a full planning permission pending, this site is likely to deliver within the period. The build rate is also not unduly ambitious. I consider these 80 dwellings should be kept in the trajectory.

Draft Allocation (LPR) Sites

122. The remaining disputed sites are proposed for allocation in the LPR. The majority of these sites were not included in the Council's initial Housing Land Supply from the 1 April 2022 published in September 2022, but were added into the Housing Land Supply Addendum following the LP becoming 5 years old.
123. The PPG<sup>33</sup> explains that as well as sites which are considered to be deliverable in principle, there are sites which would require further evidence to be considered deliverable. Relevant here are those which have outline planning permission for major development and those which are allocated in a development plan.
124. The draft allocations are not currently allocated in a development plan. Nevertheless, I consider that where there is evidence to demonstrate deliverability it would be reasonable to include them. The PPG sets out what that evidence of deliverability may include. This includes firm progress being made towards the submission of an application, for example through a written agreement between the local planning authority and the site developer(s) confirming delivery intentions, anticipated start dates and build-out rates; firm progress with site assessment work; and clear relevant information about site viability, ownership constraints or infrastructure provision.
125. The appellant has argued as a general point that these sites may be deleted or modified through the LPR examination process, which is supported by their own evidence to the examination. On this basis, the appellant considers they

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<sup>33</sup> Paragraph: 007 Reference ID: 68-007-20190722

can only be included where there is strong intent to develop and clear evidence of delivery.

126. In support of its position, the appellant has referred to an appeal decision<sup>34</sup> at Little Sparrows, Sonning Common and the Inspector's findings that to amount to 'clear evidence', it should be cogent as opposed to simply mere assertions. This requires more than just being informed by landowners, agents or developers that sites will come forward and that a realistic assessment of factors concerning the delivery have been considered. Specifically, the Inspector concluded that securing an email or completed pro-forma does not in itself constitute 'clear evidence'.
127. Nevertheless, it was accepted in cross-examination by the appellant's planning witness, that a less formal exchange of emails or completed proforma could be capable of amounting to such evidence and that a precise application date is not required to demonstrate deliverability, depending on the nature of the evidence. Thus, a key factor in assessing the deliverability of the sites where such information has been provided is whether it includes a realistic assessment of factors concerning the delivery.
128. The Council has provided details on the components that contribute towards the Council's 5YHLS at 1 April 2022<sup>35</sup>. The 5YHLS methodology sets out a phasing methodology, based on historic delivery evidence, to provide the baseline methodology for estimating delivery rates on large sites. The Council, in its submissions, has explained that this is not applied where direct feedback is received from developers. Whilst this approach is noted, it would be dependent upon the nature of that feedback and the extent to which it meets the evidence of deliverability set out within the PPG.
129. In carrying out my own assessment of these sites, I am mindful that the Examining Inspector has set out his findings, concluding that the Council has, to date, soundly profiled much of its deliverable and developable supply, including evidence of constructive and appropriate engagement with site promoters and developers. In the context of the above, I deal with each site in turn.

- (i) Land east of Lodge Road – It is agreed that there is intent to develop the site which is a draft allocation for 78 housing units with employment land. Issues around employment land uses resulted in withdrawal of an earlier application which proposed 94 dwellings. The Council initially included 94 dwellings within its trajectory but reduced this following cross-examination to 78 dwellings.

The developer has reconfirmed delivery and indicated that it intends to resubmit. The absence of a date for resubmission does not mean there is no realistic prospect of the site coming forward within the 5 years, although it is likely delivery would be pushed back from years 2 and 3 in the trajectory. Therefore, 78 dwellings should be kept in the trajectory.

- (ii) Keilen Manor – 47 dwellings are proposed within the 5 year period, to be delivered in years 3 and 4. No application has been submitted. However, there is an email from the site developer, a local

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<sup>34</sup> CD4/8 – APP/Q3115/W/20/3265861

<sup>35</sup> CD7/6

housebuilder, who has set out its intention to gain permission in 2023 and for completions to begin in 2024. The delivery rate is modest, at 24 dwellings and 23 dwellings in years 3 and 4 of the trajectory. Therefore even if there was some slippage, there is a reasonable prospect that these homes will be delivered in the 5 year period. Thus, 47 dwellings should be kept within the trajectory.

- (iii) Haven Farm – This site is identified as delivering 52 units, split across years 4 and 5. A pending hybrid application was submitted in October 2022 with 104 homes submitted in 'full'. There is a PPA in place in respect of around 110 dwellings which the Council explained is to determine the application on adoption of the LPR. On this basis, the Council has included 52 dwellings in the trajectory for years 4 and 5.

The appellant disputes the speed of delivery on the basis of the phasing methodology that estimates delivery coming forward for 'full' applications pending decision to be in year 4 of the trajectory. Since this application was submitted in October 2022, some months after the baseline, it should be considered from the next year. The PPA was signed on 13 April 2022 and therefore very shortly after the base date. It demonstrates firm progress and a commitment to develop which supports coming to a different conclusion on timings as set out within the phasing methodology. It is therefore reasonable to include this within the 5 year supply as indicated by the Council.

- (iv) Land south of the A20 – The site is included in the LPR with identified capacity for 53 units, to be delivered in years 3 and 4 of the 5 year period. Planning permission has recently been refused<sup>36</sup> for 58 homes in August 2022. The applicant is preparing a resubmission and/or to appeal which the appellant agrees demonstrates a strong intention to develop. However, the appellant disputes the speed of delivery and considers 25 homes should be removed.

The reason for refusal was on layout and design rather than in principle. The applicant is a local housebuilder and has confirmed the site's deliverability in the plan period. Taken together, these factors provide an indication of firm progress and I have no reason to find there is not a reasonable prospect that the site will deliver the 53 dwellings included in the trajectory although possibly a year later. They should therefore be retained.

- (v) Home Farm – The Council considers 50 units will be delivered on this site, split across years 4 and 5. An application on this site was withdrawn. There is no firm evidence of a further submission although the Council referred to an email received during the Inquiry indicating intent to submit. The developer has confirmed that the site is available for development immediately and confirmed the trajectory indicating permission in 2024 and completions from 2026. However, in the absence of clear evidence of a further submission, completions may not commence as early as the Council suggests. I therefore find there is insufficient evidence to include this site within the trajectory and 50 units should be removed.

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<sup>36</sup> Council Ref: 21/506821/FULL

- (vi) Maidstone East and Maidstone Sorting Office – The draft allocation identifies the site to deliver a mix of uses, including a minimum of 500 homes, retail and business floorspace and other town centre uses plus a commuter car park for Maidstone East railway station. 221 units are included in the trajectory, 102 in year 4 and 119 in year 5. No planning application has been submitted but there is an application in early stages. The site is under the control of the Council and Network Rail, with the proposals for development relating to the Council owned land. The appellant agrees that there is a strong intent to develop as the site is being promoted by the Council but disputes that it will come forward as quickly as stated given the complexities of the site.

There is no firm evidence as to when an application will be submitted. Furthermore, the site is complex and in dual ownership, and whilst the trajectory relates to the Council owned part of the site, despite willingness of the Council, I do not have firm evidence that delivery will commence and progress at the pace indicated in the trajectory. Moreover, the Itemised HLS at 1 April 2022<sup>37</sup> indicated delivery on site only in 2026/27, therefore year 5 and for 49 dwellings. The November 2022 5YHLS Addendum<sup>38</sup> indicates delivery in year 4 of 102 dwellings and year 5 of 119 dwellings. There is no evidence to substantiate this altered position.

I therefore conclude that delivery is likely to be in year 5. The Lichfield's 'Start to Finish'<sup>39</sup> research indicates a build out rate on average of 73 dpa on sites delivering between 500 and 999 homes. I recognise that flatted development may deliver quicker and this scheme may deliver flats. However, I have no firm evidence as to how much quicker. Therefore, I consider that the site delivery should reflect the average rate of 73 dpa. As such, I consider 148 dwellings should be removed from the trajectory.

- (vii) Maidstone Riverside – Together with surrounding land, this site has been subject to opportunity guidance published by the Council in 2019/20 which sets out how the area could accommodate around 650 units. 210 units are included within the trajectory. In connection with this, an environmental screening application for a mixed-use redevelopment scheme including 446 units has been submitted in September 2022. The Maidstone Riverside site is subject to an outline planning application for 75 homes, submitted in September 2022. In combination the Council considers these sites could provide up to 521 units.

The appellant has argued that since the application was received after the 1 April 2022 base date, it should only be considered for the next monitoring year. The PPG does allow for sites for which there has been no application submitted, in that it makes provision for supporting evidence to include 'firm evidence being made towards the submission of an application'. Thus, submission after the base date would not rule this site out from inclusion, in my view.

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<sup>37</sup> CD7/5

<sup>38</sup> CD7/8

<sup>39</sup> CD8/13

I accept that there is intent to develop demonstrated by these applications. I was also told there was a PPA in place for another part of the site but I do not have information about this. However, I have not been provided with the firm evidence that confirms delivery intentions, timescales and build-out rates. Applying the Council's phasing methodology in the context of the date of the application would suggest that delivery would occur in year 6. I am therefore unable to conclude that this has a reasonable prospect of delivery within the 5 year period.

- (viii) Forstal Lane – This site has been proposed by the Council for inclusion in the LPR as a main modification and a swap for another draft allocation. No applications have been submitted. The site promoter has confirmed that the site remains deliverable within the plan period. The Council has included 63 dwellings in the trajectory with permission expected to be gained in 2023. The delivery rate is based on 21 dpa from year 3. However, in the absence of any application or evidence of one, nor any written agreement confirming delivery, the deliverability of this site is not demonstrated. 63 units should therefore be removed from the trajectory.
- (ix) Eyhorne Street – This draft allocation proposes 9 units which the Council considers should all be included. No applications have been submitted and other than an email from the developer, indicating a reasonable best guess of development occurring within the 5 year period there is no firm evidence to support this. The 9 units should therefore be excluded.
- (x) Kenward Road – The draft allocation proposes 100 units on this site. This is the figure the Council considers would be delivered within the 5 year period. There has been pre-application advice in late 2022 including a Member briefing. Three technical studies of the site have been completed. These factors demonstrate a strong intention to deliver. The site promoter proposes a scheme for 125 dwellings based on technical evidence and the intention appears to be to submit on this basis. There is no certainty that this would be supported which could lead to some delay.

The developer has confirmed the trajectory and based on outline permission being granted in 2023, completions starting in 2025. The build out rate is modest, 25 units in year 3, followed by 50 in each of the remaining two years of the 5 year period. This indicates to me a reasonable prospect that these houses will be delivered during the period. However, as it is unknown whether 125 units would be acceptable, only 100 units, as originally included within the 5 years supply, should be retained within the trajectory.

- (xi) Ware Street – The trajectory includes 80 units to be delivered within years 3 and 4. There has been direct contact with the site promoter who has confirmed that the developer, described as a significant housebuilder in the local and wider south east area, is keen to submit an application with plans for further pre-application engagement. The expected phasing and delivery trajectory on site has been confirmed. There has been some delay in that the proposed pre-application advice was not sought in Autumn 2022 as indicated, therefore development



may occur later. The Council had already adjusted delivery to reflect this and there is further scope for it to start to deliver later. There is a reasonable prospect that this site will deliver the 80 homes within the 5 year period. These dwellings should therefore be retained within the trajectory.

- (xii) Abbey Gate Farm – This site has been identified for 45 units to be delivered in year 5. The only evidence of delivery is an email from the site promoter confirming expected phasing and delivery. That simply reconfirmed the delivery trajectory assumptions put to the LPR. It provides no indication of any progress towards submission of an application. This suggests an intention to develop which in accordance with the phasing methodology would see delivery commencing in year 6. There is no evidence of firm progress towards the submission of an application or written agreement about delivery. These 45 units should therefore be excluded from the supply.
- (xiii) Copper Lane & Albion Road – A total of 113 units are proposed to be delivered from this site in the 5 year period, roughly evenly split over years 3, 4 and 5. A pre-application meeting was held with the Council in June 2022 and the promoter reconfirmed the trajectory in July 2022. This indicates permission in 2023 and completions beginning in 2025. A major housebuilder has been identified as an interested developer. There is evidence of intent to deliver the site and some evidence of progress to suggest that an application is forthcoming. Given this, permission may be more realistic in 2024. On this basis, the trajectory should be pushed back. I therefore remove 38 dwellings from the supply.
- (xiv) EIS Oxford Road – 20 units are identified in the trajectory for this site which is owned by KCC. This is a brownfield site within an urban area. The capacity of the site has been questioned, with the site promoter considering a higher number of units and viability around that. There has been no pre-application engagement and no evidence has been submitted to indicate firm progress towards an application being submitted. In view of this, and the discussions around site capacity and viability, there is insufficient evidence to confirm that the 20 units would be delivered within the 5 year period. They should therefore be removed from the trajectory.
- (xv) Moat Road – This site is identified as providing 110 units, delivering over years 3 to 5 at a rate of 30, 55 and 25. The site promoter confirmed the trajectory in July 2022 and pre-application advice was provided on the site in August 2022. The Council has advised that community engagement has started. However, there is no application as yet although I accept actions to date indicate progress towards this. The trajectory is based on permission in 2023 and commencement and some completions in 2024 which may be a little ambitious. Thus, whilst I consider there is a realistic prospect of the site being delivered in the period, a later start date for delivery in year 4 would be more appropriate given progress in making an application. Consequently 25 units should be removed from the trajectory.

- (xvi) Campfield Farm – 30 units are listed for this site, evenly split as delivering over years 3 and 4. The site promoter has emailed confirming agreement to the suggested trajectory. However, there is no evidence of firm progress towards the submission of an application or a written agreement about delivery. 30 units should therefore be removed from the trajectory.
- (xvii) Police HQ Land, Sutton Road – This site has 45 units to be delivered in year 5. There is currently an outline application pending decision for part of the site and an expectation that site promoters will come forward with an application for the wider site. There has been no direct feedback from the developers but in the absence of this, the assumed delivery rate therefore accords with the phasing method. Although the application for the wider site is expected and the two may run in tandem, the current application is nonetheless evidence of firm progress. The 45 units should therefore be retained.
- (xviii) Springfield Tower – The trajectory shows 115 units being delivered in year 4. The Council recently purchased the site with the intention of redeveloping it for affordable housing. There is an email setting out the Council’s intentions to submit an application in early 2023 and commence building about a year later. No application has been submitted and the appellant has highlighted an earlier scheme on the site having been refused on grounds relating to heritage assets, amenity, scale and siting. Whilst no application has been made, the Council has indicated a strong intention to develop the site, which has been reported in the press and identified as a corporate priority.

On this basis, the delivery rate should be in accordance with the phasing methodology, which would be for year 5 where there is strong intent. The quantum of development is high but the proposal is for flatted development and the amount is reasonable. The 115 units should be retained in the trajectory.

The Council has indicated that the quantum of development should be increased to 150 units as set out in the draft allocation. It revised its trajectory to reflect that higher figure in its updated HLS Calculations during the Inquiry. However, there is no indication from the developer that this is the quantum they are planning to deliver. I therefore remove the additional 35 units from the trajectory.

130. On the basis of my assessment above and the evidence submitted, I remove 718 dwellings from the supply of deliverable housing sites.

#### Conclusions on 5YHLS

131. Drawing together my findings on these matters. The Council’s housing land supply position of 6,244 units is reduced to 5,526 units. With a non-implementation rate of 1.9% applied, this would further reduce the supply by 105 units. The Council can therefore demonstrate a supply of 5,421 units and a deficit of 653 dwellings against the housing requirement of 6,074 dwellings. This equates to 4.46 years supply.
132. As I have already found, in the circumstances of this appeal, it is reasonable to take into account that the Council has overdelivered in the previous 5

years. This figure amounts 2,302 units which should be taken off the housing requirement figure. This would reduce the 5 year requirement to 3,772 units. This would amount to a 1,649 dwelling surplus, and an overall figure equating to a 7.19 years supply.

133. Even if I am wrong and the oversupply figures should be applied across the whole plan period as advocated by the appellant, there would still be a surplus of 356 units and an equivalent housing land supply of 5.35 years. In both scenarios, the Council can meet the requirement.
134. I am therefore able to conclude that the Council can demonstrate a 5YHLS and thus paragraph 11 d) of the Framework is not engaged on this basis.

#### Benefits

135. The proposal would contribute to the local economy, providing both direct and indirect construction jobs. The increased population would also contribute to the local economy through expenditure in local shops and on local services. These carry moderate weight in favour of the scheme.
136. The provision of 109 new dwellings would help to support strong, vibrant and healthy communities. The proposed delivery of 44 affordable dwellings, including First Homes, against a cumulative shortfall of 449 affordable homes since 2013 would help to meet a known need for this type of housing within the local area. The appellant considers 83 dwellings could be delivered in the current 5 year period. This would contribute to the Government's aim to significantly boost the supply of housing. Together, the benefits arising from the delivery of housing, including affordable housing, attract significant weight.
137. In other respects, the scheme would deliver a combination of formal and informal open spaces, circa 2.13 hectares of public open space plus the submitted section 106 Planning Obligation would secure a contribution towards the provision, improvement, refurbishment and maintenance of existing areas of allotments, sports facilities or open space within 1 mile of the development. All of this would be within walking distance of the proposed development. However, these benefits are intended to serve the needs of the development and they contribute limited weight in favour of the proposal.
138. The scheme would also provide some ecological enhancement of the site, including a biodiversity net gain and other environmental benefits in the form of energy and carbon reduction. These benefits carry modest weight.
139. I have already discussed the accessibility of the location and have found that some occupants may not require the use of a private car to access services but the majority would be likely to. The accessibility and proposed improvements therefore carry modest weight.

#### **Planning Balance and Conclusion**

140. I have found that the Council can demonstrate a 5YHLS and that the basket of policies most important for the determination of the application are not out-of-date. Therefore, the presumption in favour of sustainable development as set out under paragraph 11 d) of the Framework does not apply.

141. The scheme would deliver a number of social, economic and environmental benefits as well as a boost to housing supply. Cumulatively, the benefits of the scheme carry moderate weight.
142. However, my finding is that the proposal conflicts with the spatial strategy for the area and that the significant harm to the character and appearance of the area would be in conflict with development plan policies. This would not be outweighed by the benefits of the scheme. My conclusion is therefore that the scheme conflicts with the development plan as a whole.
143. The proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be dismissed.

*Rachael Pipkin*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Mark Henderson He called	Counsel for the Local Planning Authority
Ms Jaquelin Clay BSc MSc CMLI FAE	Of JFA Environmental Planning
Mr Jeremy Butterworth BSc (Hons) MA MRTPI	Of J Butterworth Planning Limited
Ms Marion Geary	Principal Planning Officer, took part in round table session on conditions and planning obligations

### FOR THE APPELLANT:

Mr John Litton KC He called	Counsel for the Appellant
Mr Tim Wall BA MSc MCIHT CMILT	Of i-Transport
Mr Ben Connolley BSc (Hons) PG Dip LA CMLI	Of The Environmental Dimension Partnership Ltd (EDP)
Mr Joshua Mellor BSc (Hons) MSc MRTPI	Of Barton Willmore now Stantec

### INTERESTED PARTIES:

Mr Paul McCreery MRTPI	Lenham Parish Council
Mr Eddie Powell	Chair, Harrietsham Parish Council
Ms Glenda Dean	Vice-Chair, Harrietsham Parish Council
Cllr Janetta Samms	Harrietsham and Lenham Ward Councillor
Ms Alison Davis	Local resident
Mr Christopher Roots	Local resident

## **INQUIRY DOCUMENTS**

INQ1	Provisional TPO
INQ2	Appellant's Opening
INQ3	Council's Opening
INQ4	Henny Shotter (CPRE) email and attachment
INQ5	Speed Survey information
INQ6	Emails between JC and BC re: Alternative Viewpoint 3
INQ7	Email from Eliot Mortimer, Barton Willmore now Stantec, dated 14 December 2022 – Maidstone Affordability Ratios
INQ8	Housing Land Supply Update Note, 19 December 2022
INQ9	Draft conditions, updated version, 09 January 2023
INQ10	Site Boundary Plan (Drawing No. BM-M-07D)
INQ11	Proposed Access Arrangement Plan (Drawing No. ITB15696-GA-001 Rev E)
INQ12	Council's Closing Submissions
INQ13	Appellant's Closing Submissions
INQ14	Maidstone Local Plan Review letter, dated 11 January 2023
INQ15	Certified copy of Completed S106 Agreement dated 24 January 2023
INQ16	Further submissions on behalf of Maidstone Borough Council dated 25 January 2023
INQ17	Appellant's note following Local Plan Review Inspector's Letter dated 25 January 2023
INQ18	Appellant's Further Closing Submissions dated 29 January 2023