

LAND AT PUMP LANE, RAINHAM

OPENING STATEMENT ON BEHALF OF
MEDWAY COUNCIL

1. That there is a significant need for housing in Medway is not in dispute. It is a factor that the Council had at the forefront of its mind when considering this application¹, as it does in relation to all applications for residential-led development.
2. But the degree of housing need in Medway cannot obscure the significant and demonstrable harms that this proposal would cause. Those harms are multifaceted and irreversible.
3. The “*essentially rural*”² character of a locally designated landscape – one which is acknowledged by all parties to be a ‘valued landscape’³ - would be irrevocably and significantly harmed. Its visual amenity considerably diminished. Its function as a green buffer -separating the urban areas of Twydall and Rainham from the Medway estuary – lost forever.
4. The character of Pump Lane, which is specifically protected by the development plan as an important rural lane, would be eradicated. The narrow, rural lane - which , when exiting from under the railway underpass to the south of the site, immediately signifies having left behind the urban area and having entered into the countryside - would be transformed into a busy road running through a new residential area.
5. Over 50 hectares of agricultural land would vanish. And not any agricultural land. All of the land to be lost is classified as Best and Most Versatile agricultural land (and all bar 2 hectares in Grades I or II): so classified precisely because it is land of a quality on which a wide range of agricultural and horticultural crops can be grown. Its current agricultural use – as a highly productive commercial apple orchard – is the modern

¹ See Officer’s Report, pp64-65, paras 4.222-4.228

²[CD3.4] MLCA, p69

³ Within the meaning of NPPF, para 170

manifestation of use which has been ongoing in the North Kent Fruit Belt since the 18th Century.

6. The significance of designated heritage assets would be harmed by the wholesale replacement of their historical farmland setting with residential development. As Historic England (“HE”) have rightly recognised: *“Building across large swathes of land which form the agricultural and rural setting to both conservation areas and listed buildings within them would have an impact on the significance these designated assets derive from their setting.”*⁴
7. And due to the significant scale of the proposal the harm would not simply be focused on one or two designated heritage assets. Instead, this single development would cause harm to a constellation of such assets, including eight listed buildings, and two separate conservation areas. HE was right to conclude that this harm cannot be described as minor.⁵ And as a matter of law, the harm to the significance of these designated heritage assets – which is acknowledged by all parties – is a consideration which must be given “considerable importance and weight”: *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council & Ors* [2014] EWCA Civ 137.
8. Allied to this would be the harm caused to non-designated heritage assets, most notably the historic landscape itself, in which the site plays a critical role. The proposal would, in one fell swoop, eradicate the historic sequence of river, wharfage and estuarine land (to the north of the site); farmland and related development (of which the site forms an important part); and suburbia (to the south of the site, and beyond the physical and psychological barrier of the railway line).
9. Last, but not least, the residual cumulative impacts on the road network would be severe.
10. Parts of the local road network are already heavily congested, with a number of key arterial routes operating at, or over, capacity even in a “without development” scenario. This is most notable in respect of subnetwork 2 (to the south-west, west and south of the site – including the A2, A289, and the Yokosuka Way/Lower Rainham Road roundabout) and subnetwork 3 (the A2 to the south of the site). Applying

⁴ HE Letter 1 August 2019; Wedd, Appendix 5

⁵ *Ibid.*

national policy⁶, this alone would be a reason for refusing the development unless the development were to provide mitigation to overcome the severity of the existing situation.⁷

11. It does not.
12. To the contrary, even accounting for the highway mitigation proposed, the proposed development would significantly exacerbate the situation within these subnetworks, with a considerable worsening in the operation of a large number of junctions and substantial increases in travel times for a number of routes. In addition, it would also significantly reduce capacity within subnetwork 7 (the road network in the immediate vicinity of the site – including Lower Rainham Road).
13. Any one of these harms, and the consequential breaches of development plan and national policies, would be capable of justifying refusing permission for the proposal. Take together they demonstrate, unequivocally, that this is the wrong development, in the wrong place, at the wrong time to meet Medway’s acknowledged housing need.⁸
14. Nor should the Inspector, or Secretary of State, assume that this proposal, and the wide range of significant harms it would bring, is the necessary corollary of meeting Medway’s housing needs. It is not.
15. The Council is facing up to the challenge of meeting its housing needs. And it is doing so, in a sustainable, plan-led manner.
16. In the development management context this has meant granting a large number of permissions for sustainable residential development on unallocated sites outside of current development boundaries.⁹ This has included granting permissions for sites within the Gillingham Riverside ALLI – albeit crucially only where the development in question would neither radically alter the character, nor undermine the functioning, of the valued landscape.

⁶ NPPF, para 109

⁷ See Land at Kidnappers Lane, Leckhampton & the summary of Mr Justice Holgate’s refusal to grant permission to proceed with a judicial review challenge of the decision (Rand, Appendix C, pp51-53)

⁸ Cf. NPPF, para 8(a) which requires “*sufficient land of the right types is available in the right places and at the right time...*”

⁹ See Canavan, para 6.25

17. Notwithstanding the inevitable lag between grants of permissions and the provision of actual houses of the ground, the Council's positive approach to these applications has garnered real results: the number of dwellings completed in 2019/20 (1,130) was the highest ever number of residential completions since Medway became a Unitary Authority in 1998. And the number of units under construction last year was even higher (1,629).
18. However, this proposal is categorically different to those for which planning permission has been granted. Those granted planning permission were considered by the Council to constitute sustainable development, having nothing like the wide-ranging and substantial harms this proposal would bring.
19. Moreover, none of those proposals approached the scale of this proposal. The construction of 1250 homes, up to 1000sqm of commercial space, a primary school, an extra-care facility and a care home on a site of over 50 hectares in size can only be described as a strategic-scale proposal. It is of such a scale that it would ordinarily be promoted as part of the plan-led process – where it could be assessed against alternative options for strategic sites and, *if appropriate*, be taken forward as part of a plan-led, integrated approach to the future development of the area.
20. This leads us to the second – and most fundamental way – in which the Council is facing up to the challenge of meeting its housing needs: through its emerging Local Plan.
21. In 2018 the Council consulted on a Regulation 18 Plan which promoted “Four Development Scenarios” each of which would provide *in excess* of the entire housing need required in Medway until 2037. None of the scenarios included any contribution from the Appeal Site, which had been assessed by the Council to be unsuitable in its Strategic Land Availability Assessment (SLAA). This alone exposes as a fallacy the proposition that, despite the considerable harms it will bring, this proposal is needed if Medway is to meet its housing needs.
22. The Council will later this year publish its Regulation 19 Plan and submit it to the Secretary of State for examination. It is through the plan-led process that the Council will meet its housing needs in full. The emerging plan was provided a significant boost – and the Council's vision for future development of its area was vindicated – when in

November 2019 the Government announced an award of £170m through the Housing Infrastructure Fund (HIF) for infrastructure improvements to enable delivery of the Local Plan. Significantly, the HIF bid was predicated on – and the £170m is ringfenced for – road, rail and green infrastructure projects which will facilitate strategic growth on the Hoo Peninsula, including the delivery of up to 12,000 homes.

23. The Government objective of significantly boosting the supply of housing is an important part of national planning policy. But as the inspector in the *Gladman* case - whose decision was upheld first by the High Court, and very recently, by the Court of Appeal - remarked: “it is not the be all and end all”.¹⁰ It is one, amongst a number of objectives, which includes; protecting and enhancing valued landscapes¹¹; recognising the benefits of BMV agricultural land, and directing development to areas of poorer quality¹²; giving ‘great weight’ to the significance of designated heritage assets¹³; and avoiding development where the residual cumulative impacts on the road network would be severe.¹⁴

24. The significant harm that would be caused to each of these objectives, and the consequential breaches of related development plan policy, demonstrate that this proposal should be refused: it is inimical to the achievement of sustainable development.

25. For all these reasons, which will be more fully addressed in the Council’s evidence and articulated in its closing submissions, the appeal should be dismissed.

ROBERT WILLIAMS

Cornerstone Barristers

15th February 2021

¹⁰ **CD4.15** *Gladman Developments Limited v Secretary of State for Housing Communities and Local Government* [2021] EWCA Civ 104 (para 17 of Judgment)

¹¹ NPPF, Para 170(a)

¹² NPPF, Para 170(b) and fn55

¹³ NPPF, para 193. Reflecting the statutory presumption against development which harms the significance of designated heritage assets found in s.66 & s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

¹⁴ NPPF, para 109