# **Land at Pump Lane, Lower Rainham, Kent**

## APPEAL REF: APP/A2280/W/20/3259868

## 12/02/2021

# **SIMPLIFIED STATEMENT OF COMMON GROUND RELATING TO POLICY MATTERS**

Key – Y = Yes | N = No/No weight | F = Full weight | M = Moderate weight | L = Limited weight

It is common ground between the parties that the Council is unable to demonstrate a five year supply of housing land, so in this regard the policies can be considered out of date, however, when considering the weight to be given to policies, consideration must be given, amongst other matters, to (i) conformity with the National Planning Policy Framework (“The Framework”), and (ii) whether “matters have moved on, on the ground”

| Issues and Matters of Dispute  | Position of the Council  | Position of the Appellant  | Comments  | Reserved for Inspector’s Use  |
| --- | --- | --- | --- | --- |
| Medway Local Plan (2003) | Up to date DP Policy | Most important DP Policy  | Weight  |  | Up to date DP policy  | Most important DP policy  | Weight  |  |  |  |
| Policies cited in the reasons for refusal  |
| Policy S6 (Planning Obligations) | Y | N | F | The need for, and role of, planning obligations is set out in the Framework in paragraphs 54-57, and this policy reflects that general direction.  | Y | Y | F | The Policy is consistent with National Policy and meets the relevant tests in regards to obligations. Policy is up to date, important and carries full weight  |  |  |
| Policy BNE12 (Conservation Area)  | Y | Y | F | Conserving and enhancing Conservation Areas is a principle set out in the Framework at Chapter 16, and this is reflected in Policy BNE12. It also reflects the legislative position – section 72 of Planning (Listed Buildings and Conservation Areas) Act 1990 | Y | Y | F | The Policy is consistent with the approach of national policy. Policy is in date, important and should carry full weight. |  |  |
| Policy BNE18 (Setting of Listed Building) | Y | Y | F | Conserving and enhancing Listed Buildings is a principle set out in the Framework at Chapter 16, and this is reflected in this policy. It also reflects the legislative position – section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 | N | Y | L | The Policy is not consistent with the NPPF as there is a strict restriction on development where it would ‘adversely affect the setting of a listed building’. The NPPF is drafted such that any harm must be weighed against the benefits of the proposal. The policy is therefore considered out of date and limited weight should be afforded to it. |  |  |
| Policy BNE25 (Development in Countryside) | Elements  | N | M | This policy seeks to prevent development in the countryside, it is in effect a policy of blanket restraint on new housing outside the built-up area. This element of the policy is not up to date or consistent with the aims of the Framework. However, the requirement in BNE25(i) to *“maintain, and wherever possible enhance…the character amenity and functioning of the countryside”* - which is the relevant element of the policy engaged in this case – is consistent with national policy*,* including the “environmental objective” set out at paragraph 8(c) of the Framework. | N | Y | N | The Policy restricts housing delivery and is contrary to the NPPF in seeking the delivery of a sufficient supply of homes. The policy is out of date and should carry no weight in the case |  |  |
| Policy BNE34 (Areas of Local Landscape Importance) | Y | Y | F | BNE34 is a policy which protects specific areas for their local landscape value. As such, it is consistent with the aims of the Framework at paragraph 170, to contribute to and enhance the natural and local environment, including valued landscapes. Moreover, Mr Etchells explains in his evidence at paragraphs 3.4.22 and 23 the functions of the Gillingham Riverside ALLI and how these have not changed significantly since 2003 is set out in his 4.3.3 | N | Y | L | The policy restricts the delivery of sustainable housing development and the designated areas protected by Policy BNE34 are based on out of date evidence. The policy is therefore considered to be out of date and therefore should carry limited weight (as a maximum). |  |  |
| Policy BNE35 (International and National Nature Conservation sites) | Y | Y | F | Policy BNE35 reflects the provisions of the Framework at paragraphs 175 &176.  | Y | Y | F | The Policy is consistent with the NPPF and as such is considered in date and should be given full weight |  |  |
| Policy BNE48 (Agricultural Land) | N | N | L | Not a saved policy after 2007.  | N | Y | N | The policy is not part of the Development Plan. The policy also restricts housing delivery and as such, is not consistent with the NPPF. It is therefore considered out of date and should carry no weight. |  |  |
| Policy T1 (Impact of Development)  | Y | Y | F | T1 sets out the general expectation for managing the impacts of development on the transport network and provides the policy context for making judgements and decisions about levels of impact. This reflects the requirements set out in the Framework at paragraphs 108-111.  | Y | Y | F | The policy is consistent with NPPF. The policy is therefore considered up to date and should carry full weight. |  |  |
| Policy T2 (Access to the highway) | Y | N | F | T2 sets out the general expectation ensuring safe access and egress to and from a development site. This reflects the requirements set out in the Framework at paragraphs 108-111.  | Y | Y | F | The policy is consistent with NPPF. The policy is therefore considered up to date and should carry full weight. |  |  |
| Other policies considered  |
| Policy S1 (Development Strategy) | Y | N | F | Policy S1 articulates the most sustainable locations for development and directs development to these places. This is in conformity with the general provisions of the Framework.  | N | Y | L | The Policy constrains housing delivery and is therefore out of date. The policy is most important and should carry limited weight (as a maximum).  |  |  |
| Policy BNE1 (General Development)  | Y | N | F | Policy BNE1 promotes development which is appropriate in relation to the character, appearance and functioning of the built and natural environment. This follows the principles set out in Chapter 12 of the Framework.  | Y | N | F | The policy theme is consistent with the NPPF and is a standard development management consideration. While not a ‘most important policy’, the decision maker doesn’t need to reduce it’s weight. |  |  |
| Policy BNE2 (Amenity) | Y | N | F | This policy identifies that development should secure the amenities of its future occupants, and protect those amenities enjoyed by nearby and adjacent properties. This reflects the requirements of the Framework at paragraphs 127 & 171. | Y | N  | F | The policy theme is consistent with the NPPF and is a standard development management consideration. While not a ‘most important policy’, the decision maker doesn’t need to reduce it’s weight. |  |  |
| BNE14 (Development in Conservation Areas) | Y | Y | F | Conserving and enhancing Listed Buildings is a principle set out in the Framework at Chapter 16, and this is reflected in Policy BNE18.  | Y | Y | F | The Policy theme is consistent with the NPPF and while not most important, should carry full weight.  |  |  |
| Policy BNE21 (Archaeological Sites)  | Y | N | F | BNE21 states that unless certain criteria are met, including field investigations, development affecting potentially important archaeological sites will not be permitted. This reflects the requirements of the Framework at paragraph 189.  | Y | N | F | The policy theme is consistent with the NPPF and is a standard development management consideration. While not a ‘most important policy’, the decision maker doesn’t need to reduce it’s weight. |  |  |
| Policy BNE24 (Air Quality) | Y | N | F | BNE24 states that development likely to result in airborne emissions should provide a full and detailed assessment of the likely impact of these emissions. Development will not be permitted when it is considered that unacceptable effects will be imposed. This is consistent with the Framework at paragraph 181.  | Y | N  | F | The policy theme is consistent with the NPPF and while not a most important policy in determining this appeal, full weight should be given to the policy. |  |  |
| Policy BNE36 (Strategic and Local Nature Conservation Sites) | Y | N | F | This policy seeks to protect locally designated SNCI and LWS. The policy respects the hierarchy of biodiversity sites in the Framework of para. 174 and allows for the sequential approach of para. 175.  | Y | N | F | The policy theme is consistent with the NPPF and while not a most important policy in determining this appeal, full weight should be given to the policy.  |  |  |
| Policy BNE37 (Wildlife Habitats)  | Y | N | F | This policy allows for the protection of, and mitigation in the event of unavoidable loss, wildlife and biodiversity assets identified through the development management process. This reflects the provisions of the Framework at paras. 174 & 175.  | Y | N | F | The policy theme is consistent with the NPPF and while not a most important policy in determining this appeal, full weight should be given to the policy. |  |  |
| Policy BN38 (Wildlife Corridors)  | Y | N | F | BNE38 seeks that development should, wherever practical, make provision for wildlife habitats, as part of a network of wildlife corridors or stepping stones. This reflects the provisions of the Framework at paras. 174 & 175.  | Y | N | F | The policy theme is consistent with the NPPF and while not a most important policy in determining this appeal, full weight should be given to the policy. |  |  |
| Policy BNE39 (Protected Species) | Y | N | F | This policy states that development will not be permitted if statutorily protected species and/or their habitat will be harmed. Conditions will be attached, and/or obligations sought, to ensure that protected species and/or their habitats are safeguarded and maintained. This reflects the provisions of the Framework at paras. 174 & 175.  | Y | N | F | The policy theme is consistent with the NPPF and while not a most important policy in determining this appeal, full weight should be given to the policy. |  |  |
| BNE47 (Rural Lanes) | Y | N | F | BNE47 identifies specific elements of landscape character and value. This is an amplification of Local Plan policies BNE12, BNE14 and BNE34. This policy is consistent with the general provisions of the Framework at paragraph 170 and chapter 16.  | Y | N | F | The policy theme is consistent with the NPPF and while not a most important policy in determining this appeal, full weight should be given to the policy. |  |  |
| Policy H1 (New Residential Development) | N | N | L | H1 sets out the housing requirement for a timeframe which has passed. The Standard Methodology derived target has superseded this policy.  | N | N | N | The policy is out of date as it constrains housing development and was adopted using out of date evidence. No weight should be given to the policy  |  |  |
| Policy H3 (Affordable Housing) | Elements  | N | M | H3 sets out that where a need has been identified, affordable housing will be sought as a proportion of residential developments of a substantial scale. Various criteria are then set out to guide delivery, including the suitability of the site and the economics of provision. This reflects the requirements of the Framework at paras. 61-63. However, the policy lacks tenure/ product specifics, and the site specifics listed in the policy are no longer relevant.  | N | N | N | The policy is out of date as it constrains housing development and was adopted using out of date evidence. No weight should be given to the policy |  |  |
| Policy H10 (Housing Mix) | Y | N | F | Policy H10 seeks, on sites larger than one hectare, where residential development is acceptable in principal, the provision of a range and mix of house types and sizes will be sought. This is to meet the needs of the whole community and reflects the provisions of the Framework at paras. 61, 122 & 127.  | N | N | N | The policy is out of date as it constrains housing development and was adopted using out of date evidence. No weight should be given to the policy |  |  |
| Policy L4 (Open Space for Residential Development) | Y | N | F | L4 requires that where there is a proven deficiency, residential development proposals shall make open space provision, within an agreed timescale. This conforms to the Framework at para. 92.  | Y | N | F | The policy theme is consistent with the NPPF and while not a most important policy in determining this appeal. Full weight should be given to the policy. | This is a mitigation for development at scale. For 100+ people this is equivalent to 1.7 hectares per 1,000 |  |
| Policy CF2 (New Community Facilities) | Y | N | F | CF2 sets out that new community facilities will be permitted subject to: (i) the size and scale of development being appropriate to the site; and 286 (ii) the development having no detrimental impact on the countryside, residential amenity, landscape or ecology; and (iii) accessibility to the local population by a variety of means of transport, including public transport, cycling and walking. This conforms to the Framework at para. 92. | Y | N  | F | The policy theme is consistent with the NPPF and while not a most important policy in determining this appeal, full weight should be given to the policy. | This policy is relevant where the proposal is a windfall and has created the need to provide new facilities.  |  |
| Policy T3 (Provision for Pedestrians)  | Y | N | F | This policy requires development proposals to provide attractive and safe pedestrian access. In all cases, they should maintain or improve pedestrian routes related to the site. This conforms to the Framework at paras. 91 & 92. | Y | N  | F | The policy theme is consistent with the NPPF and while not a most important policy in determining this appeal, full weight should be given to the policy. | This is a development management policy to make a scheme acceptable in planning terms.  |  |
| Policy T4 (Cycle Facilities)  | Y | N | F | This policy sets out the Council’s strategy for cycle network provision and identifies the need to include cycle facilities in scheme which would be a major trip attractor. In general development the policy outline that secure cycle parking and associated facilities will be sought in accordance with the council’s adopted cycle parking standards. This conforms to the Framework at paras. 91 & 92.  | Y | N | F | The policy theme is consistent with the NPPF and while not a most important policy in determining this appeal, full weight should be given to the policy. | This is a development management policy to make a scheme acceptable in planning terms |  |