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## Appeal Decision

Inquiry Held on 9-12 April 2019

Site visit made on 12 April 2019

**by Zoe Raygen Dip URP MRTPI**

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

**Decision date: 13<sup>th</sup> June 2019**

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**Appeal Ref: APP/A2280/W/18/3214163**

**No 178 and Land to the North of Brompton Farm Road, Strood, Rochester ME2 3RE**

- 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 Brookworth Homes Ltd against the decision of The Medway Council.
  - The application Ref MC/17/2956, dated 23 August 2017, was refused by notice dated 19 April 2018.
  - The development proposed is demolition of existing dwelling and residential development of up to 122 dwellings with associated parking, garaging and landscaping. Formation of new access road. Creation of public open space and landscape and biodiversity enhancements to Stonehorse Lane.
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. I conducted an accompanied site visit on the 12 April 2019, and a number of unaccompanied site visits at various times during the Inquiry, both to the appeal site and the Hoo Peninsula in general, including High Halstow, Hoo St Werburgh, Cliffe Woods, and Allhallows.
3. The application was made in outline form with all matters reserved for future consideration except for access. It was confirmed at the Inquiry that plan ref 14073/C201 showing a housing layout is to be treated as illustrative only. However, a parameters plan ref 14073/C202A is one of the plans to be considered as part of the appeal. This broadly identifies structural landscaping, spread and height of development and open/play space. I have determined the appeal on that basis.
4. The Statement of Common Ground (SOCG) submitted prior to the Inquiry confirms that there is agreement that the Council is unable to demonstrate a five year housing land supply. A separate Housing Statement of Common Ground (HSOCG) deals with the detail of that five year housing land supply and was the subject of a round table discussion at the Inquiry to which I return below.

5. There is also no dispute between the parties that the appeal site is outside of the settlement boundary and is inappropriate development within the Green Belt. I concur with these views.
6. At my request written submissions were made by both parties regarding the effect of the development on the Medway Estuary and Marshes and Thames Estuary and Marshes Special Protection Areas (SPAs). This matter is not in dispute between the parties and having reviewed the submitted information I see no reason to reach a different conclusion. Had the proposal been otherwise acceptable I would have undertaken an Appropriate Assessment.
7. A Unilateral Undertaking (UU) under S106 of the Town and Country Planning Act 1990, as amended was tabled at the Inquiry. However, following discussion, with agreement, a revised UU was submitted after the Inquiry, taking into account relevant comments from the Council's Greenspace Development officer regarding the proposed contribution towards open space. The UU, which is a material consideration, includes obligations relating to financial contributions towards the Strategic Access Management and Monitoring Strategy (£223.58/dwelling), Great Lines Heritage Park (£124.94 per dwelling), Monitoring Officer Costs (£5,700), NHS Health Care facilities (£191 per dwelling), nursery provision (£81,619.20), open space (£287,039.34), primary education provision (£204,422.20), secondary education (£205,592.40), sixth form education (£55,614) and waste and recycling (£155.44 per dwelling). Prior to the hearing the Council had submitted a Planning Obligations and Community Infrastructure Levy (CIL) Compliance Statement, which was supplemented during the Inquiry. I have had regard to the both documents in my consideration of the appeal. While the UU is a material consideration, the obligations, other than that in relation to affordable housing, which I address below, would only reflect mitigation and be neutral in any planning balance, and in light of my overall findings, I have not considered them further.

## **Main Issues**

8. Within the above context the main issues are:
  - the effect on the openness of the Green Belt and whether the proposal would conflict with the purposes of the Green Belt;
  - the effect of the proposal on the character and appearance of the area with particular regard to its location within the Dillywood Lane Area of Local Landscape Importance;
  - The effect of the proposal on best and most versatile agricultural land; and,
  - whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

## **Reasons**

### *Openness and Purposes of the Green Belt*

9. Policy BNE30 of the Local Plan regarding the Metropolitan Green Belt was adopted prior to the National Planning Policy Framework (the Framework). However, paragraph 213 of the Framework states that existing policies should

not be considered out of date simply because they were adopted prior to the Framework. Due weight should be given to them, according to their degree of consistency with the Framework.

10. Policy BNE30 reflects most of the restrictions on inappropriate development set out in the Framework. It does not though refer to point (f) of paragraph 145 of the Framework which states that limited affordable housing for local community needs under policies set out in the development plan should be an exception to the consideration of new buildings as inappropriate in the Green Belt. Indeed, there is no means within the Local Plan to achieve any affordable housing in the Green Belt. However, both parties agree that the appeal proposal would not, in any case, constitute limited affordable housing.
11. Policy BNE30 also refers to openness and the purposes of including land in the Green Belt, which is in broad accordance with the Framework. While therefore the Policy is not strictly in accordance with the requirements of the Framework, I give any conflict with it considerable weight in my decision.
12. Paragraph 133 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The Court of Appeal<sup>1</sup> has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect. The part of the appeal site which is within the Green Belt is currently a large undeveloped field containing an orchard. From this baseline the provision of 122 dwellings, some up to three storeys in height, covering about 70% of the site would be significantly harmful to both the spatial and visual openness of the Green Belt. I saw on my site visit that the houses would be visible from the Public Right Of Way (PROW) to the west, roads to the north, properties to the south and from Brompton Farm Road where there would be views through the proposed access.
13. In a Court of Appeal Judgement<sup>2</sup> it was confirmed that "the absence of other harmful visual effects does not equate to an absence of visual harm to the openness of the Green Belt. To my mind therefore, the fact that the proposed housing would be seen within the context of existing housing does not diminish the visual impact on openness. There would be significant built development where there is currently none, irrespective of the surrounding housing and whether it is in the Green Belt or not. This would be significantly harmful both visually and spatially.
14. Given the lack of development on the site, and the amount and extent of the proposal then it would encroach into the countryside. Furthermore, as it would extend the built up area of Strood into the countryside there would be clear conflict with the purpose of the Green Belt to check the unrestricted sprawl of large built up areas.
15. The A289 is a major dual carriageway, to the north of the appeal site. I understand that the Green Belt was designated prior to the building of the A289. Nevertheless, the road is within a cutting and is at a considerably lower level than the appeal site. While traffic can be heard when standing in the

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<sup>1</sup> *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466

<sup>2</sup> *Samuel Smith Old Brewery (Tadcaster) & Oxton Farm v North Yorkshire CC & Darrington Quarries Ltd* [2018] EWCA Civ 489

appeal site, it is not visible until standing very close to its northern boundary. Similarly, I saw from various vantage points to the north that while it is possible to see traffic using the road, the road itself has very limited visibility. As a result, the green fields do not appear particularly severed by the A289, as suggested by the appellant. Furthermore, I am not persuaded that it undermines the functioning of the appeal site in preventing the sprawl of development. I therefore am of the view that the findings of the Gravesham Green Belt Study 2018 (GGBS), that the A289 has significantly encroached into the Green Belt, cannot be transferred to this site, but that the Medway Green Belt Review 2018 (MGBR) is more applicable.

16. The appeal site is situated in land parcel 2 within the Medway Green Belt Review 2018 (MGBR). Although it states that the land parcel should be viewed integrally with land parcel 1, the findings for both parcels are that the contribution to the purposes of the Green Belt are significant. Furthermore, it states that the urbanising influence of the A289 is mitigated by the cutting and planted edge, confirming my view of the road.
17. While the MGBR does not provide an assessment of the appeal site itself, it is part of a wider parcel that has been found to make a significant contribution to the purposes of the Green Belt. As a result, there are no proposals to significantly amend the boundary of the Green Belt within Medway Council. Furthermore, the appellant has not disputed the methodology of the MGBR.
18. Both the MGBR and the GGBS find that the land including the appeal site and the land around it, which is largely contained by the A289, make a contribution to the purposes of the Green Belt regarding sprawl and encroachment. The MGBR finds it makes a significant contribution. The lower finding in the GGBS seems in part be predicated by the view that the A289 would provide an alternative stronger strategic boundary.
19. I note the that paragraph 139 (f) of the Framework states that when defining Green Belt boundaries, plans should define boundaries clearly, using physical features that are readily recognisable and likely to be permanent. However, this relates to the definition of Green Belt boundaries in plans, it is not for me as part of a S78 appeal to amend boundaries of a Green Belt.
20. In addition, there is nothing before me to suggest that field boundaries and the curtilages of dwellinghouses are not appropriate boundaries as seen elsewhere in the Green Belt. Moreover, given my findings regarding the A289 I am satisfied that it does not effectively sever the Green Belt to the extent to reduce the effective functioning of the land to the south, including the appeal site as part of the Green Belt.
21. Therefore, I am of the view that the conflict with the purposes of the Green Belt to check the unrestricted sprawl of large built up areas and to assist in the safeguarding the countryside from encroachment would be significant. While there would be some open space and planting on the appeal site this would not, given the size and extent of the area of the proposed built development, effectively mitigate the conflict with the purposes of the Green Belt.
22. A further purpose of the Green Belt is to prevent neighbouring towns from merging into one another. In this instance, I am of the view that the most relevant towns would be Strood and Gravesend. Reference was made to Higham, an inset village, between the two much larger settlements. However,

the precise wording of purpose within the Framework relates to towns. Furthermore, the wording within Policy BNE30 requires accordance with the purposes of including land in the Green Belt.

23. The part of the Green Belt between Strood and Gravesend is one of the narrowest parts of the Green Belt overall. The development of the site would bring that part of Strood closer to Gravesend, and therefore there would be some conflict with the purpose of preventing merging of the towns. However, this is not the narrowest point between the settlements<sup>3</sup> and therefore there would still be a significant distance between them, and the towns would not merge as a result of the proposals. Indeed, the MGBR considers that land parcel 2 only makes a moderate contribution to the purpose. Therefore, harm in this respect is limited.
24. It is agreed between the parties that there would be no harm caused by the proposal in terms of the purpose of the Green Belt in preserving the setting and special character of historic towns.
25. The purpose of the Green Belt to assist in urban regeneration by encouraging the recycling of derelict and other urban land applies to all parts of the Green Belt. I have seen no substantive evidence to suggest that this proposal would cause significant harm in this respect and therefore any conflict with this purpose would be limited.
26. For the reasons above, I conclude that the proposal is contrary to Policy BNE30 of the Local Plan. I attach substantial weight to this conflict due to the harm arising to the Green Belt, by virtue of the development's inappropriateness, its significant harmful effect on openness and two of its purposes.
27. The appellant suggests that if the only real basis that the appeal scheme is inappropriate development is that it is not limited affordable housing then the harm by reason of inappropriateness is tempered by the fact that the appeal proposal is for 100% affordable housing. However, the development is inappropriate development, and while there is no definition of limited within the Framework, to my mind 122 houses is significantly above what could be considered limited, even in the context of the large settlement of Strood. Furthermore, I have found significant other harm caused by the development to the Green Belt.

#### *Character and appearance*

28. The appeal site is subject to a number of different Landscape Character Assessments from a National through to Local Level<sup>4</sup>. At the Inquiry it was agreed, at a round table discussion, that there are some consistent themes between the classifications which are characteristic of the local and wider area within which the appeal site is located. These are, gently undulating landscape, diverse area of farmlands and orchards/horticulture, strong urban influence of large settlements and main roads and a mix of shelter belts and some hedgerows.

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<sup>3</sup> With reference to Figure 2 within the GGBS

<sup>4</sup> Natural England's National Character Area (NCA):113 'North Kent Plain', Landscape Assessment of Kent 2004 – Hoo Peninsula character area  
Medway Landscape Character Assessment 2011 – Cliffe Woods Farmland

29. The appeal site itself, displays many of these characteristics. Located on the edge of Strood it consists of a field, which is undulating, currently mostly operating as an intensive orchard with rows of trees. To the south is a row of houses fronting Brompton Farm Road. To the east is Stonehorse Lane, which is truncated by the A289 at its northern end. Although surfaced, it is mostly used as a pedestrian walkway and is enclosed by the poplar shelter belt to the appeal site on the west and houses on the east. To the west of the site are further fields in agricultural use, separated by a hedge. A Public Right of Way (PROW) runs to the west of the site.
30. The Medway Landscape Character Assessment 2011 shows the site being within the southern part of the Cliffe Woods Farmland character area where the condition is described as being moderate with an intact degree of visual unity and a moderate degree of sensitivity. The stated actions are to conserve and create landscape character. The appeal site displays many of the characteristics of this character area and I would concur that it has a moderate degree of sensitivity.

#### *Valued Landscape*

31. Paragraph 170a of the Framework states that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes...(in a manner commensurate with their statutory status or identified quality in the development plan). In the Council's view the designation of the area within which the appeal sits as an Area of Local Landscape Importance (ALLI) means that it is a valued landscape as envisaged under paragraph 170a.
32. The appellant instead considers the value of the landscape against the factors defined at Box 5.1 of GLVIA3, concluding that it does not demonstrate any physical attributes, characteristics or value that makes it any more valuable than general countryside as in the approach of a relevant High Court Judgement<sup>5</sup>.
33. However, I note that Box 5.1 of GLVIA3 refers specifically to landscapes which are not designated. Furthermore, the Stroud judgement was made prior to the revised wording of the National Planning Policy Framework in both 2018 and 2019.
34. The introduction to the ALLIs within the Medway Local Plan 2003 states that there are several areas of landscape that enhance local amenity and environmental quality, providing an attractive setting to the urban area and surrounding villages and therefore have been designated as ALLI. It goes on to say that these ALLIs are significant not only for their landscape importance, but also for other important functions. The Dillywood Lane ALLI within which the appeal site is located is described as a gently undulating, visually diverse area of orchards and mixed farmland, which extends from the north west edge of Strood and Wainscott to the borough boundary. Its function is fourfold, namely it creates an attractive, rural setting to the Medway Towns Northern Relief Road, contributing to the positive image of the borough; connects to the South East of Higham Upshire ALLI in Gravesham; constitutes an established rural

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<sup>5</sup> *Stroud District Council v Secretary of State for Communities and Local Government v Gladman Developments Limited* [2015] EWHC 488 (Admin) (referred to as the Stroud judgement)



landscape in close proximity to a large urban area and helps to maintain the separate identity of Higham.

35. Box 5.1 of the GLVIA sets out a number of factors that can be considered when assessing landscape value. I accept that these do not include function. However, this is a designated site of Local Landscape Importance within an adopted local plan. The Framework states that plans should distinguish between the hierarchy of international, national and locally designated sites. The ALLI designation is at the lower end of that landscape designation hierarchy. While the plan is old, I heard no evidence to suggest that the landscape has changed materially since that time. Furthermore, the development plan identifies the relevant characteristics of this particular ALLI and part ii of Policy BNE34 allows for a balancing exercise. Therefore, there is some broad accordance with the requirements of the Framework.
36. I understand that the concept of local landscape designations is no longer being used within the neighbouring Gravesham emerging local plan and indeed the South East of Higham Upshire ALLI in Gravesham to which this ALLI is connected has been extinguished therefore, the identified function of linking with the ALLI in Gravesham is of little relevance here.
37. However, it seems to me that from the above, and my observations on site, the other identified functions do still hold good and the ALLI has some value in providing an attractive rural setting to the A289 and Strood together with maintaining the separate identity of Higham, given the proximity of Strood to the settlement. Furthermore, The Council advises it is likely to carry forward some form of designation of areas for their strategic landscape importance through Policy NE4 of the Development Strategy Regulation 18 report, March 2018. However, this policy is at a very early stage of preparation and therefore I give it very limited weight in my consideration.
38. Nonetheless, I find that the ALLI still fulfils most of the functions of this landscape designation and, in combination with the contribution it makes to the landscape character of the area, means it is a valued landscape.
39. In finding that the site comprises part of a valued landscape I have endorsed the professional judgments of the Council's landscape witness. I acknowledge that this goes against the opinion of the appellants' professional witness. All of the assessments are largely based on qualitative judgments. In coming to my conclusions, I have had the benefit of expert opinions focussed on an analysis of the site and its surroundings, as well as several site visits.
40. With regard to the specific functions of the ALLI, I saw that the A289 is largely not visible both from the site itself and from longer distance views from the north. Here the undeveloped nature of the site forms part of the attractive rural setting of Strood which is a large urban area, rather than the A289. Its development with a substantial number of dwellings would erode that rural setting.
41. A further function of the ALLI is to help maintain the separate identity of Higham. There is no intervisibility between Strood in the vicinity of the appeal site and Higham. Given the distance between the two settlements I am not persuaded that the proposal would materially harm the separate identity of the two settlements.

*Landscape character*

42. Part i) of Policy BNE34 of the Local Plan states that development will only be permitted if it does not materially harm the landscape character and function of the area.
43. The scheme would result in the construction of a large housing development of up to 122 dwellings that would extend Strood to the north and west into the open countryside. This would cause a significant change to the appearance of the appeal site, through the change of use and would result in the direct loss of open countryside that makes a pleasant contribution to the setting of the northern part of Strood. The orchard would be replaced with a substantial level of built development and associated infrastructure. Furthermore, the undulating topography would be altered to accommodate the various aspects of the built development. Moreover, the hedgerow to the south of the orchard would be removed. Therefore, I am of the view that the proposal would have a moderate to high adverse effect on the landscape character of the site itself, albeit this would be a localised view.
44. There is a level of agreement between the Council and the appellant that the appeal site does not have wide visibility within the surrounding area, and I saw this to be the case at my site visit. Views from the south and east would be limited by the existing built development. Views from the north and west would be more apparent.
45. However, the appeal site is on the edge of the settlement and would be generally viewed against a backdrop of existing housing. I saw that the existing housing at the edge of Strood, when viewed from the roads to the north and the PROW to the west, is clearly visible. Although views are tempered by planting in gardens and filtered by existing hedgerows around and within the appeal site, the built form is apparent from the public footpaths and roads approaching Strood.
46. The parameters plan allows for about 30% of the site to be open space. Development would be set behind a woodland on the western boundary, with open space to the south which would soften the appearance of the estate within the countryside creating a similar edge to the built development as currently exists.
47. There is little between the parties on this issue with the Council finding slight to moderate adverse landscape impacts and the appellant a slight magnitude of effect which would be of moderate-minor significance overall. As a result of my observations above, I would concur that in the first instance the adverse impacts are likely to be moderate to minor. While effects would reduce over time as the planting matures, the built development would still be visible in the landscape, particularly in the winter, replacing the existing orchard and therefore would continue to have a minor adverse effect in the wider landscape.

*Visual impact*

48. There was some discussion regarding the use of a number of telegraph poles on the appeal site as markers for the height of the proposed development. Although there was some disagreement regarding the height of the telegraph poles and their relationship to two storey development, it is evident that the



parameters plan includes for development of a maximum ridge height of 13 metres high. Therefore, whether 8.5 or 10 metres high, some elements of the scheme may, in any case, be higher than the telegraph poles.

49. The highest level of visual effects is likely to be experienced by the users of the PROW to the west of the appeal site. The Council consider these adverse impacts to be between moderate and high, whereas the appellant considers them to be moderate or major-moderate. When walking the footpath from north to south the first part is fairly enclosed by existing trees and views are limited towards the site. However, when emerging from the trees, this changes and views are available to the wider surrounding open countryside.
50. I saw that the existing houses are visible. As the southern end of the footpath is reached views recede, and the extent of the housing that is visible also changes as the footpath undulates across the field.
51. Generally, therefore, the proposed housing would be closer to the users of the footpath. Notwithstanding the proposed woodland belt, the height and extent of the housing, and, in particular, the three-storey housing would be particularly prominent, given the predominance of two-storey housing that I saw in the vicinity of the appeal site; this would give rise to a high adverse effect on parts of the footpath. However, the extent of the planting on the western boundary, would, over time, ensure that this effect would reduce as the planting matures. It was agreed at the Inquiry that planting is likely to be predominantly deciduous in nature. In winter therefore, when the trees lose their leaf the screening effects would not be as effective as in the summer. This together with, the extent and height of development proposed, would still mean that there would be a limited adverse effect for users of the PROW in the long term.
52. Residents to the south of the appeal site would experience a significant change in outlook to that currently experienced over the orchard. However, the properties have lengthy gardens and the area of public open space would be sited closest to the boundaries with the properties. Therefore, any adverse impact would be reduced over time.
53. I saw that views from roads to the north would be available and the site would clearly be seen in some viewpoints. I accept that the proposed development would in all likelihood be easier to see in long distance views than the current field and trees. However, the houses would be seen against the backdrop of the existing settlement. Furthermore, these views must be considered in the context of the users of the roads and, in my opinion, the experience of the drivers would not be materially altered by the development.
54. The tree planting to the west would be in the form of a wide belt of about 20 metres. I have seen or heard no substantive evidence to suggest that such a width of planting could not accommodate the proposed footpath as suggested by the Council.

#### *Conclusions on Character and Appearance*

55. There would be harm to landscape character through the loss of part of the land of the character type identified. However, the visual effects would be largely localised, and mostly reduced by the proposed mitigation measures over time. Therefore, there would be some limited harm to the character and

appearance of the area contrary to requirement of Policy BNE25 of the Local Plan. This states that development in the countryside will only be permitted if it maintains, and wherever possible enhances the character, amenity and functioning of the countryside.

56. Both the Gibraltar Farm and Cliffe Woods appeal decisions<sup>6</sup> address the weight to be given to Policy BNE25, with the decision maker in each giving the policy differing weight. For the purposes of this appeal, although Policy BNE25 seeks to protect the countryside, it does so in a manner that does not reflect the hierarchical approach of the Framework. Given the agreed position on housing land supply, it is also apparent that its strict application is restricting housing growth. Therefore, I give conflict with this Policy limited weight in my decision.
57. For all of the reasons given, I am satisfied that this site comprises part of a valued landscape and its development would fail to protect and enhance the landscape contrary to the objectives set out in the Framework and the requirements of criteria i) of Policy BNE34, albeit that the harm I have identified would be limited.
58. The second criterion of Policy BNE34 of the Local Plan states that development will only be permitted within an ALLI if the economic and social benefits are so important that they outweigh the local priority to conserve the area's landscape. It is therefore necessary to reach a view on the social and economic benefits of the proposal before reaching a conclusion as to whether the proposal conflicts with the further requirements of this Policy; I address this in my conclusions below.

#### *Best and Most Versatile Agricultural Land (BMVAL)*

59. The Framework identifies the best and most versatile agricultural land as land in Grades 1, 2 and 3a of the Agricultural Land Classification. There is agreement within the SOCG that the appeal site comprises Grade 2 agricultural land and the proposal would result in its loss. Both parties agreed that although not determinative, the loss of the BMVAL is a material consideration which needs to be weighed in the planning balance.
60. Policy BNE48 of the Local Plan states that development on BMVAL will only be permitted exceptionally where criteria are met. This is not entirely consistent with the requirement of the Framework in footnote 53 which states that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.
61. The appellant draws my attention to both the Cliffe Woods and the Gibraltar Farm appeal decisions where the Secretary of State found that the loss of BMVAL carried limited weight. However, the appeal sites in both cases were only partially made up of BMVAL and that was of grade 3a rather than Grade 2 as is the case here.
62. I appreciate that there is no definition of significant, in this context, within the Framework. However, the appeal site is about 4.37 ha in size and contains a productive orchard on the site which it was confirmed at the Inquiry would be lost due to the proposal.

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<sup>6</sup> Gibraltar farm appeal decision APP/A2280/W/16/3143600  
Cliffe Woods appeal decision APP/A2280/W/17/3175461

63. Nevertheless, given the amount of land classified as Grade 2 on the appeal site then the harm caused by its loss would be limited. This is reinforced by the extent of BMVAL within the district<sup>7</sup>, including Grade 2 land, and the acknowledged likelihood that house building would need to be accommodated on greenfield land to address the extent of the housing shortfall.
64. While therefore, there is some conflict with Policy BNE48 and the Framework with regard to the loss of BMVAL, there would be limited resultant harm.

*Other considerations*

65. The appellant alleges that the Council is unable to meet its obligations to provide an up to date development plan, to identify a sufficient supply of deliverable housing land and to secure affordable housing to meet its local needs and have no plans or intentions to resolve the issues.
66. There is agreement between the parties that the Council is unable to demonstrate a five year housing land supply. It was confirmed at the Inquiry that the housing supply figures had been calculated using the affordability ratio for 2017. Just before the Inquiry the 2018 affordability ratios were published. Following discussion between the parties it is agreed in the HSOCG that the 2017 affordability ratios would be relied on. There is very limited difference between the 2017 and 2018 figures, and therefore, in this instance, I am content to proceed on that basis.
67. Within the HSOCG the Council considers it can demonstrate a 3.08 year supply, whereas the appellants consider it only has a 2.26 year supply. I note the reasons behind the difference between the two figures. Furthermore, I note the position of the authority in relation to housing requirement and performance of other authorities in the Kent and the south east. However, both figures represent a significant shortfall in the five year housing land supply.
68. The question is what is being done to rectify the situation regarding housing land supply<sup>8</sup>. The Council accept that in order to meet the shortfall, development will need to be accepted on greenfield land, and I was presented with a list of 14 large scale planning applications which have either been granted planning permission or have received a resolution to grant planning permission subject to the signing of a S106 agreement since January 2018. The Council confirmed that the list was not exhaustive and was not submitted to change the five year housing land position, but to demonstrate the efforts made by the Council to boost delivery.
69. The Council does not have an up to date development plan with regard to housing Policy. Housing figures are based on now defunct regional guidance and have little correlation with the current requirement figure.
70. The latest Regulation 18 submission of the emerging Local Plan<sup>9</sup> dated March 2018 contains four scenarios for housing growth, all of which include a rural town centred on Hoo St Werburgh. In the appellant's view, for a variety of reasons, this is unlikely to come forward and the Council will need to revisit

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<sup>7</sup> Appendix 06 Proof of Evidence Mr Canavan

<sup>8</sup> *Hallam Land Management v SSCLG & Eastleigh Borough Council* [2018] EWCA Civ 1808

<sup>9</sup> Future Medway Development Strategy Consultation March 2018 (FMDS)

proposals in a previous Regulation 18 document<sup>10</sup> to release land within the Green Belt to facilitate suburban expansion.

71. In particular, the appellant pointed to a recent reduction in the number of homes likely to be proposed on land at Lodge Hill due to restrictions associated with the Site of Special Scientific Interest. Furthermore, a large part of the proposed growth strategy relates to the establishment of a rural town within the Hoo Peninsula. Growth within that area of the District is reliant on significant investment in infrastructure, with the Council confirming that the current highway network giving access to the Peninsula would be at capacity following the development of about 2000 houses. About 940 homes are already committed and therefore, only a further 1060 houses could receive planning permission in the area before the road infrastructure would be at capacity which is less than one year's housing supply requirement. Furthermore, I appreciate that a number of the developments recently granted planning permission are on the Hoo Peninsula.
72. The Council is currently part of a consortium comprising a number of housing developers and Homes England that has submitted a bid for up to £170 million to the Housing Infrastructure Fund (HIF) following successful completion of the Expression of Interest stage of the bid process. This is an ambitious and complex project but, if successful, this would enable investment in the road and rail infrastructure to allow the provision of about 12,100 new homes in the District by 2043<sup>11</sup>.
73. I accept that such investment would take time to put in place and the need for housing exists now. However, it seems to me that considerable effort is being put in to addressing the housing supply situation. Both in the granting of planning permission on greenfield sites and through the preparation and submission of a comprehensive bid for funding which, if successful, would give substantial economic and social benefits. The fact that the Council is not working alone but in a consortium including Homes England is encouraging. Moreover, the proactive efforts of the Council in seeking to expedite problems in consultation with developers and landowners and in securing monies from the HIF to facilitate regeneration and the provision of infrastructure, deserves a chance to bear fruit. To that end, the Council is aligning the preparation of the emerging Local Plan with the outcome of the HIF bid which is expected in the summer, such that the draft plan would be published in the summer of this year and submitted for examination in December 2019<sup>12</sup> with adoption likely in 2020.
74. I accept that there is no guarantee that the bid will be successful. Nevertheless, even if the bid is unsuccessful and previous scenarios would need to be revisited, there is no certainty that land within the Green Belt would need to be released. I note that Scenario 2 of the LPES states that release of Green Belt land to the west of Strood, where the appeal site is located, is also included in order to consider whether such a significant policy change may be necessary or justified. Moreover, the annotation to the scenario shows employment led mixed use development rather than just housing. Given recent appeal decisions and the efforts of the Council in granting planning

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<sup>10</sup> Medway Council Local Plan 2012-2035 Executive Summary January 2017 (LPES)

<sup>11</sup> Housing Infrastructure Fund Bid – New Routes to Good Growth Medway Council report to Cabinet 5 February 2019

<sup>12</sup> Medway Local Development Scheme 2019 - 2022 December 2018

- permissions, I accept it is highly likely that greenfield land would need to be released to enable housing growth. However, this does not necessarily mean that that Green Belt land would need to be released to meet demand, particularly as it only constitutes about 5% of the land in the District.
75. Even if it was accepted that Green Belt land would need to be released for development, I note that other parcels of land within the MGBR performed more poorly in contributing to the purposes of the Green Belt than the area within which the appeal site is located. Therefore, I accept that such parcels of land are more likely to be considered for release than that within which the appeal site is located.
76. I have been referred to two appeal decisions which have been allowed for housing within the Green Belt. However, within both there is some acknowledgement that housing development would need to be accommodated within the Green Belt or is proposed to be located within the Green Belt<sup>13</sup>. This is not the case here. While there is general acceptance that housing development is likely to occur on greenfield sites, that is not the same as Green Belt land, which has protection over and above greenfield land. Therefore, I do not consider the circumstances regarding these two appeal decisions to be sufficiently comparable to the appeal before me now, in order to reach a similar decision.
77. Bearing all the above in mind, I attach significant weight to the benefit of the additional housing this appeal would bring, as agreed in the SOCG. The Framework seeks to significantly boost the supply of housing. A scheme of up to 122 houses, which could be delivered straight away in an accessible location where there is an agreed shortfall would go a considerable way to achieving that aim.
78. I have had regard to the Written Ministerial Statements of 1 July 2013 and 17 December 2015 (WMS) which state that unmet demand for housing “is unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances”. While these WMS predate the revised Framework, the Council advise that following a written question to Parliament in 2018 it was confirmed by the Housing Minister that they are still a potential material consideration. I am aware that this policy wording is no longer part of the Planning Policy Guidance. Nevertheless, the WMS still have weight in decisions.
79. The WMS do not say that housing need can never amount to very special circumstances and I would concur with the Inspector in the West Malling appeal decision that that wording would not preclude that an unmet demand for housing may still be weighed against the harm to the Green Belt, whether on its own or in combination with other factors, however, given the wording of the WMS I would expect there to be significant other considerations to be counted in the balance.
80. There is no dispute between the parties that the site is in an accessible location. I had the opportunity to visit housing sites in the Hoo Peninsula. The evidence of Mr Williams shows that given the relatively small rural nature of the settlements to which they are appended, there are less services and

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<sup>13</sup> Paragraph 51 of APP/P3040/W/17/3185493 (the Ruddington appeal decision) and paragraph 45 of APP/H2265/W/18/3202040 (the West Malling appeal decision)



facilities in these settlements within walking distance of the housing sites. In addition, public transport facilities are less regular, and it therefore takes longer to reach services in Strood and Rochester than it would do from the appeal site. This was my experience at my site visits.

81. Indeed, the Secretary of State in the Cliffe Woods decision decided that the proposed development of 225 houses did not limit the need to travel or offer a genuine choice of transport modes and therefore considered the development to be in conflict with the Framework's policy on promoting sustainable transport. However, I am advised that the Council has resolved to grant planning permission on a different site at Cliffe Woods for 92 dwellings, an office and a nursery and an associated package to improve public transport and pedestrian facilities. In addition, the Inspector in the Hoo St Werburgh appeal decision<sup>14</sup> considered the settlement as a whole to be sustainable. However, he states at paragraph 16 that the "verdict of "sustainable location" does not automatically or readily transfer from the village to the site. He found the appeal site not to be in an accessible location.
82. Paragraph 103 of the Framework states that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering genuine choice of transport modes. To my mind therefore the appeal sites and subsequent planning permission granted by the Council at Cliffe Woods demonstrates that the accessibility of the site depends on its location with reference to existing and proposed services and facilities and availability of a choice of transport methods. The fact that future residents of the appeal site would have access to a wider range of services and public transport makes this site policy compliant but does not mean it attracts positive weight. Indeed, although this is agreed as an accessible location, the majority of the services and facilities are 15-20 minutes' walk away and the railway station 25 minutes<sup>15</sup>, both outside the distance which the IHT considers to be most conducive to walking<sup>16</sup>. Therefore, while to my mind the site is in an accessible location and in this respect, complies with the requirement in Policy BNE25 to offer a realistic chance of access by a range of transport modes, it is neutral in any balancing exercise.
83. The appeal site incorporates Stonehorse Lane with the intention of maintaining public access over it and to create an ecological zone through new planting. Furthermore, a new community woodland would be provided along the western boundary of the site.
84. However, I saw at my site visit that Stonehorse Lane is already well planted, with a strong line of trees along its western boundary. While landscaping is a reserved matter requiring details to be submitted for approval by the Council in the first instance, there is nothing to suggest what the level of enhancement would be. It is likely that the planting of a significant tree belt on the western edge of the appeal site would bring some ecological benefits. However, a large number of trees would be felled, only a small number of which have been assessed as having to be removed irrespective of the development<sup>17</sup>. Furthermore, all of the orchard trees would be removed. While it is not a traditional orchard and is presented in rows of trees as an intensive activity it is

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<sup>14</sup> APP/A2280/W/15/3132141

<sup>15</sup> Mr Giles Appendix SG1 to proof of evidence

<sup>16</sup> Chartered Institute of Highways and Transportation Planning for Walking 2015

<sup>17</sup> Arboricultural Assessment Report 2 August 2017 and plan ref 15224-BT4



likely to have some ecological benefit. Therefore, notwithstanding the reference made by Kent County Council to enhancement recommendations, while there would be some planting and associated enhancements, I am not persuaded, on the basis of the evidence before me, that there would be net benefits to biodiversity as required by paragraph 170 (d) of the Framework.

85. A new area of open space and a play space would be provided on the development. However, the provision of open space is a requirement of Policy L4 of the Local Plan, and it would primarily be for the future residents of the scheme. Therefore, I give limited weight to the provision of a new children's play space in respect of its potential use by existing residents.
86. When the planning application which is the subject of this appeal was originally submitted to the Council for consideration it was done so on the basis of the provision of 25% affordable housing. The day before the consideration of the planning application at the planning committee on 11 April 2018 the appellant wrote to the Council advising that they wished to amend the application proposal such that it would provide for a minimum of 50% of the dwellings to be affordable housing. The letter went on to say that as the discussions with the Housing Associations were ongoing it was certainly likely that the scheme would be delivered as a 100% affordable scheme<sup>18</sup>.
87. The Committee minute records that the offer of 50% affordable housing was considered at the Planning Committee and the application refused on that basis. The appellant now formally proposes that the scheme be considered as 100% affordable.
88. Both parties agree in the SOCG that there is unmet need for affordable housing in Medway. It is also agreed that the North Kent Strategic Housing and Economic Needs Assessment Strategic Housing Market Assessment 2015 (SHMA) includes an affordable requirement of 18,592 dwellings over the projection period (2012-2037), giving a requirement for 744 dwellings annually.
89. The PPG states that the total affordable housing need can then be considered in the context of its likely delivery as a proportion of mixed market and affordable housing developments, taking into account the probable percentage of affordable housing to be delivered by eligible market housing led developments. An increase in the total housing figures included in the plan may need to be considered where it could help deliver the required number of affordable homes<sup>19</sup>.
90. The supporting text to Policy H3 of the Local Plan identifies a minimum target of 25% for the provision of affordable housing. It is clear therefore that at this level of provision based on either the OAN figure of 1281 contained in the SHMA, or the latest agreed annual requirement of 1672 in the HSOCG, the figure of 744 affordable dwellings is unrealistic. It is perhaps unsurprising therefore that the Council has delivered only 20% of that need over the past five years. Furthermore, comparisons with other authorities in Kent based on housing need are not helpful as I am not aware on what basis other authorities affordable housing need figure has been reached and whether it is achievable. Moreover, the HSOCG confirms that the Council has, in the last five years

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<sup>18</sup> Appendix 13 Mr Escott Proof of Evidence

<sup>19</sup> Paragraph: 024 Reference ID: 2a-024-20190220

averaged 148 affordable dwellings per annum, which is 25% of all housing completions, and therefore delivering Policy expectations.

91. My attention is drawn to a High Court Judgment<sup>20</sup> which suggests that the Framework makes clear that these needs (gross unmet need for affordable housing) should be addressed in determining the Full Objectively Assessed Need (FOAN), but neither the Framework or the PPG suggest that they have to be met in full when determining the FOAN. Although this Judgement was made at the time of the previous Framework, Mr Butterworth accepted that this remains the case under the new Framework.
92. Instead the Council has set itself what it considers to be an achievable target of 204 affordable dwellings per year within its draft Medway Council Housing Strategy 2018-2022. This has been assessed by carrying out a Strategic Housing Economic Needs Assessment which is used alongside a database of planned housing developments, as a basis to predict the amount of affordable housing achievable in the Medway area.
93. As was stated in the High Court Judgement, the vast majority of the delivery of affordable housing will occur as a proportion of open-market schemes and is therefore dependent for its delivery upon market housing being delivered. Even so the Council has only delivered 73% of that target over the past year. While the general trend in delivery has been downwards over the last few years,<sup>21</sup> I do acknowledge that the Council is expected to deliver 250 affordable units in 2018/19 and therefore exceed the target. Nevertheless, whether using affordable housing need or the Council's own target, there is still a large shortfall in affordable housing delivery which the Council accepts.
94. In terms of delivery of the affordable housing, in a letter dated 26 February 2019, Hyde Housing Group confirm that it recently entered into a strategic partnership agreement with Homes England to deliver about 1600 affordable homes within the south east of England by March 2024. It identifies the appeal site as a key site to meet that target by delivering 122 affordable homes with 60% of the units for shared ownership and 40% for social rent. This is almost the opposite to the tenure split that is required in the SHMA, but nevertheless is supported by the Council's housing officer. Given the overall undersupply of affordable housing then I see no reason to disagree with this approach.
95. In addition, there would be a mix of housing tenure here, including shared ownership and social rented accommodation. Furthermore, a mix of the size of houses has been agreed across the site ranging from one bedroom flats to four bedroom houses<sup>22</sup>. Therefore, I am satisfied that the proposal would not conflict with the requirements of paragraph 62 and 91 of the Framework regarding the delivery of mixed and balanced communities.
96. In response to my request, the appellant has submitted a note on viability which states that the offer from Hyde Homes was the subject of a financial appraisal by Brookworth Homes and considered to be financially viable. I have seen or heard no evidence to suggest otherwise. A Grampian condition has been agreed between the parties to secure an affordable housing scheme. It was explained at the Inquiry that this was considered the most appropriate

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<sup>20</sup> *Kings Lynn and West Norfolk v Secretary of State for Communities and Local Government* [2015] EWHC 2464

<sup>21</sup> Figure 7.1 Mr Butterworth's Proof of Evidence

<sup>22</sup> Letter to the Hyde Group dated 27 February 2019 from Medway Council

option to allow myself flexibility over the percentage of affordable housing to be provided should the appeal be allowed, given that I had raised concerns regarding whether the appeal scheme should be considered as 100% or 50% affordable housing at this stage.

97. The Council confirmed that the condition would be discharged, not by way of a legal agreement, but by some form of agreed scheme. While the condition is agreed between the Council and the appellant, I note that there has been no agreement of heads of terms or principal terms need to ensure that the test of necessity is met and in the interests of transparency as advised by the PPG.
98. However, in my view, in order for affordable housing to be provided effectively, arrangements must be made to transfer it to an affordable housing provider, to ensure that appropriate occupancy criteria are defined and enforced, and to ensure that it remains affordable to first and subsequent occupiers. The legal certainty provided by a planning obligation, (either a section 106 agreement or unilateral undertaking) makes it the best means of ensuring that these arrangements are effective. While there is a requirement in the UU to abide by the Inspectors Decision Letter in relation to the provision of Affordable Housing on the Site this would not, in my view, adequately secure the above matters.
99. I have had regard to the advice in the Planning Practice Guidance on this<sup>23</sup>. It confirms that ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency. It goes on to state that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk.
100. I am not convinced that the development is complex or strategically important or that its delivery would otherwise be at serious risk. I have had regard to the appeal decisions submitted by the appellant where both Inspectors applied conditions to secure affordable housing<sup>24</sup>. While I accept the need for consistency on appeal decisions, I am not aware of the individual circumstances of these appeals or the evidence before the Inspectors at the time regarding the affordable housing delivery. Furthermore, it appears that neither decision placed reliance on the affordable housing as a very special circumstance as neither scheme is in the Green Belt.
101. I accept that paragraph 145 (f) gives a unique exception to a particular group or tenure of housing within the Green Belt. This could, as the appellant suggests, be indicative of the importance the Government places on meeting affordable needs. However, this appeal does not concern limited affordable housing. Furthermore, if I accept the appellant's argument regarding the importance placed on affordable housing by the Government then it is imperative that it is secured as such and delivered on site in an appropriate manner. Therefore, I do not accept that a higher level of affordable housing can be secured by a condition in this case. While the delivery of affordable

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<sup>23</sup> PPG ID: 21a-010-20140306

<sup>24</sup> APP/G5180/W/17/3174961, APP/G5180/W/17/3179001 & APP/C3810/W/17/3178817

housing would be a benefit of the scheme, given the overall shortfall, I cannot be sure that it would be delivered at either 50% or 100%. Therefore, in that context, I give it only moderate weight.

102. There would be some economic benefits of the scheme which would be in the form of construction jobs, but these would be short term only. In the longer term, new households would introduce expenditure into the local economy and there would be additional benefits from further council tax income and a new homes bonus. However, no schemes upon which the bonus would be spent have been identified. In accordance with advice in the PPG<sup>25</sup> it would not be appropriate to make a decision based on the potential for the development to raise money for the Council in the absence of evidence to demonstrate how that money would be used to make this particular development acceptable in planning terms. Moreover, the economic benefits of the proposal would be generic and would arise with any housing development. Furthermore, the existing orchard on the farm must have some economic value. This has not been quantified and the proposal would lead to its loss. Consequently, I can only attach minimal weight to the economic benefits in my decision.
103. The appellant asserts that the appeal site would have its own strong defensible boundaries, and as at the Ruddington appeal decision, that this would be a benefit. However, the A289 does not, in my view, affect the functioning of the parcel of land within which the appeal site is located within the appeal site.

## **Conclusion**

104. I have found that the proposal is contrary to criterion i) of Policy BNE34 of the Local Plan albeit that the harm caused would be limited. However, given that I have found that there would be significant social benefits of the proposal then together with the minimal economic benefits they would outweigh the local priority to conserve the area's landscape. Therefore, there would be no conflict with the Policy.
105. I have found that the proposal would cause limited harm to landscape character and visual impact and therefore would be in conflict with Policy BNE25. While I have found that Policy BNE25 only attracts limited weight, the proposal would cause some harm to a valued landscape, and therefore I give this harm limited weight in my decision.
106. The proposal would be in conflict with the requirements of Policy BNE48 and the Framework with regard to the loss of BMVAL and I have given this limited weight.
107. The proposal would be inappropriate development in the Green Belt and would be significantly harmful to its openness, contrary to the Framework and Policy BNE30. There would also be significant harm to the purposes of the Green Belt in terms of the unrestricted sprawl of large built up areas and assisting in safeguarding the countryside from encroachment. There would be limited harm in the prevention of neighbouring towns merging into one another. In accordance with the Framework I give these harms substantial weight.

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<sup>25</sup> ID 21b-011-20140612

108. Therefore, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
109. Even were I to have concluded that through the imposition of a condition, the scheme could deliver a higher proportion of affordable housing, and consequently have attracted significant weight in its favour, this would still, together with the other considerations, not clearly outweigh the substantial harm I have identified to the Green Belt and other harms. Consequently, the very special circumstances necessary to justify the development would still not exist.
110. Although the proposal accords with many of the current development plan policies, it would be in conflict with the development plan taken as a whole given the conflict with the policies regarding the protection of the Green Belt and development in the countryside. However, the lack of a five year housing land supply means that the policies most important for the determination of the appeal are out of date. Nevertheless, in accordance with paragraph 11d)1) I have found that the application of Policies in the Framework that protect the Green Belt provide a clear reason for refusing the development proposed. There are no material considerations in this case that indicate a decision other than in accordance with the development plan and the Framework.
111. In light of the above, and having considered all other matters, the appeal is dismissed.

*Zoe Raygen*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY

Mr R Williams of Counsel

Instructed by Laura Caiels,  
Principal Lawyer, Medway  
Council

He called

Mr Canavan

Associate, Carter Jonas, on  
behalf of Medway Council

Mr J Etchells

Director, Jon Etchells  
Consulting Limited

### FOR THE APPELLANT

Mr J Clay of Counsel

Instructed by Mr J Escott  
Robinson Escott Planning LLP

He called

Mr PG Russell-Vick

Director, Enplan

Mr SJ Butterworth

Senior Director, Lichfields

Mr S Giles

Director, Motion Consultants  
Limited

Mr J Escott

Senior Partner, Robinson Escott  
Planning

### INTERESTED PERSONS

Mr Morgan

Local Resident

Mrs Masey

Local Resident

Mrs Morgan

Local Resident



## DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Habitat Regulation Assessment and Screening Matrix and Appropriate Assessment Statement from the Council
- 2 Letter from Natural England dated 28 January 2019
- 3 Council's submission on Monitoring Officer's Costs
- 4 Copy of *The Queen on the application of Save Britain's Heritage v SSCLG & Westminster City Council & Great Western Developments Limited* [2018]EWCA Civ 2137
- 5 Copy of *Borough Council of Kings Lynn and West Norfolk v SSCLG & Elm Park Holdings* [2015]EWHC 2464 (Admin)
- 6 Plan ref 14073/C202A annotated showing power lines
- 7 Appeal decision APP/P3040/W/17/3185493
- 8 Appeal decisions APP/G1580/W/17/3174961 & APP/G1580/W/17/3179001
- 9 Appeal decision APP/C3810/W/17/3178817
- 10 Medway Council Cabinet Report, Housing Infrastructure Fund Bid – New Routes to Good Growth 5 February 2019
- 11 Large scale planning permissions granted by Planning Committee since January 2018
- 12 Copy of *Hallam Land Management v SSCLG & Eastleigh Borough Council* [2018] EWCA Civ 1808
- 13 Lichfields Research: South East LPAs – Local Plan Requirement and Standard Method (2018-2028, 2014 household projections and 2017 (April 2018) Affordability Ratio
- 14 Email dated 5 April 2019 from Senior Planning manager Bellway Homes to Medway Council regarding Nightingale Rise Completions Rate
- 15 Response to Planning Inspector's queries re CIL Compliance/S106 contributions
- 16 Deliverability and submissions on Woolpit Principle by Medway Council
- 17 Email regrading viewpoints for site visit
- 18 Appellant's response to Medway Council's written submission on deliverability and the Woolpit Principle
- 19 Copy of *CABI and Cala Management Ltd v South Oxfordshire DC* [2017] P.A.D 43
- 20 Response to Planning Inspectors queries re CIL 11/04/2019 including Internal Memorandum from Greenspace Development to Planning dated 5 October 2017 and Medway Council Guide to Developer Contributions
- 21 Opening submissions on the behalf of the appellant
- 22 Opening statement on behalf of Medway Council

23 Closing statement on behalf of Medway Council

24 Closing submissions on behalf of the appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY

A Agreed list of conditions received 23 April 2019

B Signed Unilateral Undertaking dated 17 April 2019