

**LAND OFF PUMP LANE
RAINHAM
KENT
ME8 7TJ**

**TOWN AND COUNTRY PLANNING ACT 1990
APPEAL REFERENCE: APP/A2280/W/20/3259868**

APPEAL BY A C GOATHAM & SONS

**PROOF OF EVIDENCE OF
PETER CANAVAN BA (HONS) MSC MRTPI**

**ON BEHALF OF
MEDWAY COUNCIL**

JANUARY 2021

Carter Jonas

CONTENTS	Page No
1.0 INTRODUCTION.....	1
Reasons for refusal no longer pursued by the Council.....	3
My Role.....	3
Professional Experience	4
Scope of My Evidence.....	4
Declaration	4
2.0 THE APPEAL SITE	6
3.0 PROPOSED DEVELOPMENT.....	7
4.0 MAIN ISSUES.....	8
5.0 PLANNING POLICY FRAMEWORK	9
The Development Plan	9
Medway Local Plan 2003	9
The National Planning Policy Framework.....	12
Planning Practice Guidance	16
6.0 MEDWAY COUNCIL'S CASE	18
Principle of development	18
Housing supply.....	19
Housing delivery Test	20
Efforts to Boost the Supply of Housing	22
The timing of delivering the appeal proposals.....	25
Emerging Local Plan	26
Effects on Heritage Assets	33
Landscape and Visual Effects	36
Local Highway Network impacts	40
The loss of Best and Most Versatile Agricultural Land.....	43
The most appropriate way to approach strategic scale development .	45
7.0 CONCLUSIONS AND PLANNING BALANCE	48
Adverse Impacts of Scheme	48
Alleged Benefits of the Scheme	49
Conflict with the Development Plan	51
Other Development Plan policies considered.....	52
National Policy.....	53
The Section 38(6) balance.....	53
Conclusion	54

ANNEX A: Maps of Four Development Scenarios. Medway Local Plan (Reg. 18).

1.0 INTRODUCTION

- 1.1 I am Peter Canavan. I have an honours degree in Geography and a master's degree in Town Planning. I am a member of the Royal Town Planning Institute. I am an Associate Partner at Carter Jonas LLP, in the Planning & Development team at the firm's office in Oxford, the address for which is Mayfield House, 256 Banbury Road, Oxford OX2 7DE.
- 1.2 This Proof of Evidence relates to an appeal by AC Goatham & Sons ("the Appellant") in respect of Land Off Pump Lane Rainham Kent ME8 7TJ.
- 1.3 I represent Medway Council ("the Council"), which is the Local Planning Authority in this case.
- 1.4 The application the subject of this appeal was submitted to the Council on 13 June 2019. It was given the application reference number MC/19/1566. The applicant was AC Goatham & Sons. The description of the application was as follows:

"Redevelopment of land off Pump Lane to include residential development comprising approximately 1,250 residential units, a local centre (with final uses to be determined at a later stage), a village green, a two form entry primary school, a 60 bed extra care facility, an 80 bed care home and associated access (vehicular, pedestrian, cycle).".

- 1.5 The application was refused by notice dated 12 June 2020. AC Goatham & Sons appealed the decision. The appeal was given the reference APP/A2280/W/20/3259868.
- 1.6 The Council's reasons for refusal were as follows:

1. *Insufficient information has been provided in relation to mitigation measures, and no agreement has been reached to secure such measures, which are necessary to ensure that there will be no adverse impact on the integrity of the Medway Estuary & Marshes SSSI, SPA and Ramsar site as a result of the additional recreational pressures caused by the proposal.*

In the absence of imperative reasons of overriding public interest, Regulations 63 and 70 of the Habitats Regulations require permission to be refused.

In addition, the lack of information and mechanism to secure the mitigation also results in non-compliance with policies S6 and BNE35 of the Local Plan and NPPF paragraphs 175 & 176.

2. *The proposed development would have a harmful impact on the local historic landscape, as well as the setting and significance of a number of designated heritage assets, including: listed buildings (York Farmhouse*

(Grade II); Pump Farmhouse (Grade II); Chapel House (Grade II); 497-501 Lower Rainham Road (Grade II); The Old House (Grade II); Bloors Place (Grade II*); a range of outbuildings including cart lodge and granary west of Bloors Place (Grade II); and, the garden walls to south and east of Bloors Place (Grade II)); and, two Conservation Areas (Lower Twydall; and, Lower Rainham).

Applying the great weight which has to be given to the conservation of the designated heritage assets (by virtue of NPPF paragraph 193 and Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990), the proposal is contrary to Local Plan policies BNE 12 and BNE18. In addition, as the public benefits of the scheme would not outweigh the harm to the designated heritage assets, the proposed development is also contrary to the NPPF paragraph 196.

3. *The proposed development would lead to significant long-term adverse landscape and visual effects to the local valued Gillingham Riverside Area of Local Landscape Importance (ALLI), which would not be outweighed by the economic and social benefits of the scheme, in conflict with Local Plan policy BNE34 and NPPF paragraph 170.*
4. *The applicant has failed to satisfy Highways England that the development will not materially affect the safety, reliability and / or operation of the Strategic Road Network (SRN). This is contrary the tests set out in department for Transport Circular 2/13 paragraphs 9 & 10 and the NPPF at paragraph 109.*
5. *The cumulative impact from the increased additional traffic cannot be accommodated on the highway in terms of overall network capacity without a severe impact. This is contrary to Local Plan policy T1 and the NPPF at paragraph 109.*
6. *The cumulative impact from the increased additional traffic from the development is unlikely to be able to create a safe highway environment. This is contrary to Local Plan policy T1 and the NPPF at paragraph 109.*
7. *No assessment nor technical details have been provided regarding the two new access points along Pump Lane to serve the proposed development, therefore it has not been possible to appropriately assess the adequacy of these access points. This is contrary to Policy T1 of the Medway Local Plan 2003 and paragraph 109 of the NPPF.*
8. *The proposed development would result in the irreversible loss of 'best and most versatile' (BMV) agricultural land, contrary to Local Plan policy BNE48 and the NPPF at paragraph 170 and footnote 53.*
9. *In the absence of a completed S106 legal agreement, the proposal fails to secure infrastructure necessary to meet the needs of the development. This is contrary to Local Plan policy S6 and the NPPF at paragraph 54.*

Reasons for refusal no longer pursued by the Council.

- 1.7 Subject to the Appellant providing an executed section 106 agreement which secures the mitigation required by Natural England which will avoid adverse impacts on the integrity of the Medway Estuary & Marshes SSSI, SPA and Ramsar, the Council will no longer pursue reason for refusal 1.
- 1.8 It is understood that the Appellant has been in discussion with Natural England and the Council has seen some of the outcomes of these discussions. Should it be agreed between the Appellant and Natural England that mitigation is acceptable and achievable, the Council would seek the inclusion of these matters – and relevant monetary amounts – in the conditions and S106 as appropriate.
- 1.9 Subject to the Appellant providing an executed section 106 agreement which secures the mitigation required by Highways England to ensure there will be no material adverse impact on the strategic highway network, the Council will no longer pursue reason for refusal 4.
- 1.10 Similarly to matters above, it is understood that the Appellant has been in discussion with Highways England and the Council has seen some of the outcomes of these discussions. Should it be agreed between the Appellant and Highways England that mitigation to effects on the M2 is acceptable and achievable, the Council would seek the inclusion of these matters – and relevant monetary amounts – in the conditions and S106 as appropriate.
- 1.11 Following the provision of further evidence with the appeal, and for the reasons explained in its Statement of Case, the Council will no longer pursue reason for refusal 6.
- 1.12 Following the provision of a detailed access drawing regarding the two new access points along Pump Lane to serve the proposed development with the appeal, the Council will no longer pursue reason for refusal 7.
- 1.13 Subject to the Appellant providing an executed section 106 agreement which secures the infrastructure (or financial contributions towards that infrastructure as appropriate) necessary to meet the needs of the development, the Council will no longer pursue reason for refusal 9.

My Role

- 1.14 I was approached by the Council in May 2020 to review the Cas Officer's report for planning application MC/19/1566, prior to a decision being made under delegated powers. I was asked to review the reasons for refusal and whether I would be comfortable to defend them at appeal because the Council expected that if its final decision was to refuse the application, it would be appealed.

- 1.15 Ultimately the application was refused, and the decision appealed.
- 1.16 Having reviewed the case, I came to the considered view that professionally, I was able to appear on behalf of the Council at this Inquiry and to give detailed planning evidence in support of its case. Having reached that view, my instructions were confirmed.

Professional Experience

- 1.17 I have worked as a Town Planner for over 12 years, during which time I have worked at three Local Authorities (Broadland, Hastings and South Oxfordshire) and I work currently as a consultant. I have been involved in a range of planning applications, appeals, development consent order examinations and Local Plan Examinations in Public.
- 1.18 I have acted for Medway Council twice before on appeals at Brompton Farm Road near Strood and Orchard Kennels to the south east of Rainham. In addition, I am acting currently for a diverse list of clients including the United Kingdom Atomic Energy Authority (UKAEA), the Science and Technology Facilities Council (STFC), English Heritage, Commercial Estates Group, Oxford Preservation Trust, the University of Oxford, Berkeley Strategic, Hallam Land, and Welbeck Estates.

Scope of My Evidence

- 1.19 In this proof of evidence, I comment on the location of the appeal site and provide an overview of the appeal scheme. Thereafter, I set out the main issues in the appeal before outlining the planning policy framework and any other material considerations. I then set out the Council's case. Finally, I will come to a considered judgement as to where the planning balance lies in this case before setting out my summary and conclusions.
- 1.20 This proof should be read alongside those of:
- Ms Kit Wedd, Heritage witness;
 - Mr Jon Etchells, Landscape witness;
 - Mr James Rand, Transport witness;
 - Mr Karl Jarvis, Transport modelling; and
 - Mr Richard Lloyd-Hughes, Agricultural land witness.
- 1.21 I defer detailed and technical matters of the above matters to the relevant witness.

Declaration

1.22 The evidence that I present at this Inquiry has been prepared and is given in accordance with the guidance of my professional institute. I confirm that the opinions are my true and professional opinions.

2.0 THE APPEAL SITE

- 2.1 The appeal site is made up of two farms, Pump Farm (approx. 23 ha) and Bloors Farm (approx. 25 ha) mainly cropped as orchards and including a number of farm buildings. . The whole site is approximately 51.5 hectares. The land comprises some 8.6 ha of Grade 1 land (excellent quality), 40.6 ha of Grade 2 (very good quality) land and 2.3 ha Grade 3a (good quality).
- 2.2 The site is north east of the urban area of Twydall, Gillingham and separated from it by the Gillingham to Sittingbourne railway line. The north-western boundary is agricultural fields, to the north-east are properties in Lower Rainham including Bloors Place and the oast houses, and to the south-east are allotments and Lower Bloors Lane.
- 2.3 Pump Lane crosses the centre of the site from north-east to south-west, and a public Bridleway runs across the south-western part from Pump Lane to Bloors Lane. The site extends for around 1.2km from Lower Twydall Lane in the west to Lower Bloors Lane in the east, and 0.7km from the railway line in the south to Lower Rainham Road in the north.
- 2.4 The site is outside the settlement boundary as shown on the Local Plan Proposals Map and is in the countryside. It is also within (and forms a significant part of) the Gillingham Riverside Area of Local Landscape Importance (ALLI). The ALLI is described in the Medway Local Plan as a '*Rural landscape of orchards and arable fields with country lanes.*' The site also adjoins the Lower Twydall (to the south west) and Lower Rainham (to the north) Conservation Areas.

3.0 PROPOSED DEVELOPMENT

3.1 The application, the subject of this appeal, was submitted in outline with some matters reserved (appearance, landscaping, layout, and scale) for:

...redevelopment of land off Pump Lane to include residential development comprising of approximately 1,250 residential units, a local centre, a village green, a two form entry primary school, a 60 bed extra care facility, an 80 bed care home and associated access (vehicular, pedestrian, cycle).

3.2 The proposal is for 1250 houses and it is also proposed to provide a village centre, a village green, a two form entry primary school and a care facility. These aspects are proposed to occupy the following areas:

- Village Centre – 0.639 ha (1.58 acres)
- Village Green – 1.125 ha (2.78 acres)
- Primary School – 2.603 ha (6.43 acres)
- Care Facility – 1.250 ha (3.9 acres)

3.3 The residential aspect of the site is proposed to occupy 32.118 hectares of the overall site.

3.4 The indicative layout plans show an area of retained orchards running along both sides of Pump Lane and around the existing housing development along Pump Lane as well as footpaths through the site being retained linking the development to Lower Bloors Lane.

4.0 MAIN ISSUES

- 4.1 Having regard to the reasons for refusal, the appellant's Grounds of Appeal and the Council's Statement of Case, the main issues for consideration at this appeal can be summarised as follows:
- i. Principle of development
 - ii. Housing supply
 - iii. Effects on Heritage Assets;
 - iv. Landscape and Visual Effects;
 - v. Local Highway Network impacts;
 - vi. The loss of Best and Most Versatile Agricultural Land, which currently operates as a commercial orchard; and
 - vii. The most appropriate way to approach strategic scale development.
- 4.2 I consider each of these matters in turn and in detail in the subsequent sections of this proof of evidence.

5.0 PLANNING POLICY FRAMEWORK

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004, read with section 70(2) of the Town and Country Planning Act 1990, requires planning applications and appeals to be determined in accordance with the policies of the Development Plan unless material considerations indicate otherwise.

The Development Plan

- 5.2 The relevant Development Plan for these purposes comprises ‘saved’ policies in the Medway Local Plan 2003 (“the Local Plan”). The Saving Direction was issued on 27th September 2007 by the then Secretary of State for Communities and Local Government. The policies that do not fall under the Saving Direction have been deleted.
- 5.3 The weight to be attributed to policies in the ‘saved’ Local Plan is determined according to their consistency with the National Planning Policy Framework 2019 (“the Framework”) as outlined in paragraph 213, the greater the degree of consistency, the greater the weight. This exercise is also relevant where there is not a five years’ supply of housing land, and/or the Housing Delivery Test is below 75%.

Medway Local Plan 2003

- 5.4 The policies of the Local Plan on which the Council relies are considered to be consistent with the Framework, and up to date in that sense. The most important policies for determining this appeal are, BNE12, BNE14, BNE18, BNE34 and T1 (and this is assuming that mitigation can be provided which overcomes objections based on BNE35). However, the policies where the Council places reliance are:
- 5.5 **S1: Development Strategy:** Which seeks to prioritise and direct development towards “*re-investment in the urban fabric... [including] the redevelopment and recycling of under-used and derelict land within the urban area, with a focus on the Medway riverside areas and Chatham, Gillingham, Strood, Rochester and Rainham town centres.*” The policy also seeks the protection of “*areas of international, national or other strategic importance for nature conservation and landscape.*”
- 5.6 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, and specifically paragraph 11. This policy is therefore up to date.
- 5.7 **S6: Planning obligations:** Which sets out how the Council will apply “*conditions on planning permissions or seek to enter into a legal agreement with developers to provide for new physical infrastructure, social, recreational and community facilities (including education facilities) and environmental*

mitigation or compensation measures where mitigation is impossible or inadequate on its own, where the need for these arises directly from the development concerned.”

- 5.8 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. Therefore, this policy is up to date.
- 5.9 **BNE12: Conservation Areas:** States that “*special attention will be paid to the preservation and enhancement of the character and appearance of Conservation Areas, as defined on the proposals map.*”
- 5.10 Conserving and enhancing Conservation Areas is a principle set out in the Framework at Chapter 16, and this is directly reflected in Policy BNE12. Therefore, this policy is up to date.
- 5.11 **BNE14: Development in Conservation Areas:** Explains that “*development within Conservation Areas, or affecting their setting, should achieve a high quality of design which will preserve or enhance the area’s historic or architectural character or appearance.*”
- 5.12 Conserving and enhancing Conservation Areas is a principle set out in the Framework at Chapter 16, and this is directly reflected in Policy BNE14. Therefore, this policy is up to date.
- 5.13 **BNE18: Setting of listed buildings:** Which explains that development “*which would adversely affect the setting of a listed building will not be permitted.*”
- 5.14 Conserving and enhancing Listed Buildings is a principle set out in the Framework at Chapter 16, and this is directly reflected in Policy BNE18. Therefore, this policy is up to date.
- 5.15 **BNE25: Development in the Countryside:** Which seeks to protect the open countryside from inappropriate development only allowing limited development that is accessible to public transport, is reuse or infilling, or requires a countryside location and that “*maintains, and wherever possible enhances, the character, amenity and functioning of the countryside, including the river environment of the Medway and Thames.*”
- 5.16 Policy BNE25 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.

- 5.17 **BNE34: Areas of Local Landscape Importance:** Only permits development if “*(i) it does not materially harm the landscape character and function of the area; or (ii) the economic and social benefits are so important that they outweigh the local priority to conserve the area’s landscape.*” Specifically regarding Areas of Local Landscape Importance (ALLI), the policy requires that proposed development is “*sited, designed and landscaped to minimise harm to the area’s landscape character and function.*”
- 5.18 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. Therefore, this policy is up to date.
- 5.19 **BNE35: International and national conservation sites:** Sets out that: “International and National Nature Conservation Sites, as defined on the proposals map, will be given long term protection”
- 5.20 Policy BNE35 directly reflects the provisions of the Framework at paragraphs 175 &176. Therefore, this policy is up to date.
- 5.21 **BNE47: Rural Lanes:** Explains that “*development served by, and/or affecting, the important rural lanes defined on the proposals map will only be permitted where there is no adverse effect upon the value of the lane in terms of its landscape, amenity, nature conservation, historic or archaeological importance.*” The policy also goes on to explain where mitigation might be acceptable if “*alterations to the carriageway definition or boundaries of rural lanes is necessary, the use of natural, locally distinctive materials such as grass banks, stone setts and hedging will be required. The use of urbanising features such as raised concrete kerbstones, fencing and walls should be avoided unless these are absolutely essential for structural or safety reasons.*”
- 5.22 Policy 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. Therefore, this policy is up to date.
- 5.23 **T1: Impact of development:** sets out how: “*In assessing the highways impact of development, proposals will be permitted provided that: (i) the highway network has adequate capacity to cater for the traffic which will be generated by the development, taking into account alternative modes to the private car, and (ii) the development will not significantly add to the risk of road traffic accidents, and (iii) the development will not generate significant H.G.V. movements on residential roads, and (iv) the development will not result in traffic movements at unsociable hours in residential roads that would be likely to cause loss of residential amenity.*

- 5.24 Policy 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 directly reflects the requirements set out in the Framework at paragraphs 108-111. Therefore, this policy is up to date.
- 5.25 **T2: Access to the highway:** Explains how: "*proposals which involve the formation of a new access, or an intensification in the use of an existing access, will only be permitted where: (i) the access is not detrimental to the safety of vehicle occupants, cyclists and pedestrians; or (ii) can, alternatively, be improved to a standard acceptable to the council as Highway Authority.*
- 5.26 Policy T2 sets out the general expectation ensuring safe access and egress to and from a development site. This directly reflects the requirements set out in the Framework at paragraphs 108-111. Therefore, this policy is up to date.

The National Planning Policy Framework

- 5.27 The National Planning Policy Framework ("the Framework") is a material consideration in the determination of planning appeals. The policies in the Framework that are relevant to consideration of the appeals are discussed in detail in subsequent sections of this proof.
- 5.28 Paragraph 8 in the Framework states that:
- "Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):*
- a) *an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*
 - b) *a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and*
 - c) *an environmental objective – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources*

prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.”

- 5.29 Paragraph 11 requires that Local Plans and planning decisions should apply a presumption in favour of sustainable development. With particular reference to decision taking, where development accords with the development plan approval should be without delay (para 11(c)). Where it does not, and where and 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 NPPF that protect areas or assets of importance provide a clear reason for refusal or (ii) or any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits (para 11(d)).
- 5.30 There are two important footnotes to paragraph 11 in the Framework. The first is footnote 6 which lists the policies which are capable of providing a clear reason for refusing development proposals, including: habitats sites and designated heritage assets. The second, is footnote 7 which explains that where a local authority cannot demonstrate a five-year supply of housing land or where they have not met the housing delivery test for the last three years; plans and policies can be considered to be out-of-date
- 5.31 Paragraph 15 reinforces the primacy of development plans and states that the planning system should be “genuinely plan-led”.
- 5.32 Paragraph 91 outlines that planning decisions:
- “should aim to achieve healthy, inclusive and safe places which: a) promote social interaction...; b) are safe and accessible...; and, c) enable and support healthy lifestyles...”*
- 5.33 Also, of relevance to this proposal is paragraph 98, which requires:
- “Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.”*
- 5.34 Regarding highways matters, the Framework states at paragraph 109 that:
- “Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”*
- 5.35 The Framework, at paragraph 170, also sets out how planning policies and decisions should contribute to and enhance the natural and local environment. This with particular attention drawn to criteria a); b); and, d):

“a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);

b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;

d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;”

5.36 Footnote 53 of the Framework also considers agricultural land, and it states:

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.

5.37 Paragraphs 175 (criteria a and d) and 176 of the Framework explain that:

[175.] When determining planning applications, local planning authorities should apply the following principles:

a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused...

d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

[176] The following should be given the same protection as habitats sites:

a) potential Special Protection Areas and possible Special Areas of Conservation;

b) listed or proposed Ramsar sites; and

c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.”

- 5.38 Paragraphs 193-197 (along with footnote 63), of the Framework, outline how potential impacts of proposals on heritage assets should be considered, and this is as follows:

[193.] *When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.*

...

[195.] *Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:*

- a) *the nature of the heritage asset prevents all reasonable uses of the site; and*
- b) *no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and*
- c) *conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and*
- d) *the harm or loss is outweighed by the benefit of bringing the site back into use.*

[196.] *Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.*

[197] *The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.*

[Footnote 63] *Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to*

scheduled monuments, should be considered subject to the policies for designated heritage assets.

Planning Practice Guidance

- 5.39 Planning Practice Guidance (PPG) is also a material consideration in planning decisions. PPG of most relevance e of this case is:
- 5.40 Paragraph 001: Reference ID: 8-001-20190721 guides how to take account of the quality of agricultural land. It sets out that Agricultural Land Classification assesses the quality of farmland to enable informed choices to be made about its future use within the planning system. It explains that there are five grades of agricultural land, with Grade 3 subdivided into 3a and 3b. The best and most versatile land is defined as Grades 1, 2 and 3a. Planning policies and decisions should take account of the economic and other benefits of the best and most versatile agricultural land.
- 5.41 Paragraph: 025: Reference ID: 8-025-20190721 sets out how biodiversity net gain can be calculated. this is by using a metric is a pragmatic way to calculate the impact of a development and the net gain that can be achieved. The biodiversity metric can be used to demonstrate whether or not biodiversity net gain will be achieved. It enables calculation of losses and gains by assessing habitat:
- distinctiveness: whether the type of habitat is of high, medium or low value to wildlife.
 - condition: whether the habitat is a good example of its type.
 - extent: the area that the habitat occupies.
- 5.42 Paragraph 02: Reference ID: 8-026-20190721 provides guidance for assessing the baseline biodiversity net gain. This explains that the existing biodiversity value of a development site will need to be assessed at the point that planning permission is applied for. It may also be relevant to consider whether any deliberate harm to this biodiversity value has taken place in the recent past, and if so whether there are grounds for this to be discounted in assessing the underlying value of the site (and so whether a proposal would achieve a genuine gain).
- 5.43 Paragraph 013: Reference ID: 18a-013-20190723 provides further guidance on what comprises the setting of a heritage asset. The PPG notes that views play an important part of an assets setting, but that other factors affect how an asset is experienced, including noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. The PPG also makes it clear that the contribution that setting makes to the significance of a heritage asset does not depend on there being public rights or an ability to access or experience that setting.

5.44 Paragraph 020: Reference ID: 18a-020-20190723 provides some guidance for what might be considered to be a public benefit (when weighed against the harms to heritage assets). This is explained as benefits that may follow from many developments and could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework (paragraph 8). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits, for example, works to a listed private dwelling which secure its future as a designated heritage asset could be a public benefit. Examples of heritage benefits may include:

- sustaining or enhancing the significance of a heritage asset and the contribution of its setting
- reducing or removing risks to a heritage asset
- securing the optimum viable use of a heritage asset in support of its long term conservation

5.45 The policies of the development plan listed above are cited in the Council's reasons for refusal and are, in my view, all relevant to consideration of the appeal proposal. In addition, I have identified that Policies BNE14 and BNE47 should be considered. The former includes further detail related to BNE12 and the latter is a policy that has become relevant since the appellants submission of plans showing access from Pump Lane. These policies (and the guidance in the Framework) are discussed in more detail below.

6.0 MEDWAY COUNCIL'S CASE

Principle of development

- 6.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan for the area comprises the Medway Local Plan 2003 (the Local Plan).
- 6.2 The proposed scheme falls outside the urban boundary and is in the countryside (Policy BNE25), and within an Area of Local Landscape Importance (ALLI) (Policy BNE34). In normal circumstances the proposal would, in principle, be unacceptable. It would be deemed contrary to the strategic direction of the Medway Local Plan 2003 as directed by Policy S1. This policy directs development to brownfield sites and is amplified by policy BNE25 that restricts development in the countryside.
- 6.3 However, the Council cannot demonstrate "*a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement*" as required by paragraph 73 of the Framework.
- 6.4 Notwithstanding this, the site lies outside of the urban boundary and so policy BNE25 applies, but as is noted in the Case Officer's report the Council has been challenged at appeal and by the Secretary of State for its rigid use of this policy. Therefore, an assessment of the conformity of this policy with the Framework must be considered. The Framework states at paragraph 170 (b) that:

"Planning policies and decisions should contribute to and enhance the natural and local environment by.... recognising the intrinsic character and beauty of the countryside"

- 6.5 I agree with the Council Officer's view that BNE25 can be used as a definition of the separation between the urban and rural areas or the "countryside" as described in the Framework, and the policy's stated aim is to protect the countryside for its own sake, and this is fully consistent with paragraph 170 of the Framework. Moreover, the principle of the policy, to direct development to where it can be served by public transport, is also in conformity with the Framework. However, policy BNE25 can only carry moderate weight in the consideration of this application, given the lack of housing land supply.
- 6.6 Moreover, in support of this position appeal decisions in 2018 and 2020 have found that BNE25 should be given moderate weight (by the Inspector and Secretary of State, at Cliffe Woods: APP/A2280/W/17/3175461 in November 2018 [CD4.9] at paragraph 23 and some weight by the Inspector for Orchard Kennels: APP/A2280/W/19/3240339 in June 2020 [CD4.3] at paragraph 23.)

- 6.7 Considering policy BNE34, this only permits development if it does not harm the landscape character and function of an area; or the economic and social benefits outweigh the local priority to conserve the area's landscape. Specifically, regarding ALLI, the policy requires that proposed development is:

"sited, designed and landscaped to minimise harm to the area's landscape character and function."

- 6.8 In this instance too, I agree with the Council Officer's assessment that BNE34 also accords with the NPPF at paragraph 170 where it states (with my emphasis):

Planning policies and decisions should contribute to and enhance the natural and local environment by:

a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan)

- 6.9 BNE34 therefore, can carry full weight in the consideration of this application. The principle is to protect and enhance landscape areas identified through local plans for their "value" or importance. This is a position support by the Inspector for Orchard Kennels (APP/A2280/W/19/3240339) in June 2020 who concluded that BNE34 should be given full weight [**CD4.3**] at paragraph 29.

- 6.10 It should be noted that BNE34 also provides a 'balancing exercise,' whereby should a proposal demonstrate that its economic and social benefits outweigh the value of an ALLI then it might be permitted, this too accords with national policy. However, this is not the case here, and the benefits do not outweigh the harms, as is considered later in this evidence.

Housing supply

- 6.11 Turning to the supply of homes in Medway. The Council cannot demonstrate "*a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement*" as required by paragraph 73 of the Framework.
- 6.12 In understanding by how much there is an undersupply of housing, first the local housing need for Medway must be calculated using the standard method as required by the Framework at paragraph 60. This is reported in the Annual Monitoring Report [**CD 3.8**] on page 34 as 1,662 dwellings per year.
- 6.13 Using this need figure, and applying it to the latest supply figures published in the Council's December 2020 AMR (page 69) shows the following:

Requirement	
Annual Requirement	1,662
5 Year Requirement (1st April 2020 - 31 March 2025)	8,310
TOTAL Requirement (with 20% Buffer):	9,972
Supply	
Large sites	5,906
Small sites	341
Windfall Allowance (yrs 3-5)	603
TOTAL supply:	6,040
Years supply	3.03
Surplus/Deficit	- 3932

- 6.14 It must be noted at this point that this calculation has not been made for this evidence and there is no further evidence submitted beyond the AMR. This is the parties have agreed that the five-year housing land supply range is between 2.51 years (the Appellant's figure) and 3.35 years (the Council's figure from the application Case Officer report). The reason that my figure is lower than that quoted in the Case Officer's report is because the inputs to the Standard Methodology have been updated in the intervening period, and now the requirement is very marginally higher.
- 6.15 In any event, I considered the scale of the shortfall to be significant. The 20% buffer has been added because the Housing Delivery Test result is less than 75%, but as the next section shows this is not the only measure to consider.

Housing delivery Test

- 6.16 The Housing Delivery Test (HDT) is published in a table containing every LPA in the country. Medway's performance in the HDT results published in January 2021 is as follows:

Number of homes required			Total number of homes required	Number of homes delivered			Total number of homes delivered	Housing Delivery Test: 2020 measurement	Housing Delivery Test: 2020 consequence
2017-18	2018-19	2019-20		2017-18	2018-19	2019-20			
1,334	1,672	1,550	4,556	669	647	1,181	2,498	55%	Presumption

- 6.17 Having a result of 55% means that the provisions of the Framework at footnote 7 and Paragraph 215 are triggered (relating to paragraph 11, and the presumption in favour of sustainable development):

For the purpose of footnote 7 in this Framework, delivery of housing which was substantially below the housing requirement means where the Housing Delivery Test results published in: c) November 2020 and in subsequent years indicate that delivery was below 75% of housing required over the previous three years.

- 6.18 It should be noted however, that the 2019 result was 46%, so whilst this result has a greater consequence for decision making, given paragraph 215 of the Framework, there is a clear sign of improvements in housing provision.

- 6.19 Further analysis of the data in the AMR shows also evidence of an upward trend in delivery. It is quoted on page 34 that:

In 2019/20 1,130 units were completed, which was the highest number of homes delivered in a year in Medway since it became a Unitary Authority in 1998.

- 6.20 This quote is backed by the following supporting evidence (net number of houses built since 1998 is 15,223). Breakdown by year below:

1998/99	698
1999/00	719
2000/01	603
2001/02	603
2002/03	676
2003/04	733
2004/05	646
2005/06	562
2006/07	591
2007/08	761
2008/09	914

2009/10	972
2010/11	657
2011/12	809
2012/13	565
2013/14	579
2014/15	483
2015/16	553
2016/17	642
2017/18	680
2018/19	647
2019/20	1130

- 6.21 Further positive trends can be seen in these statistics:

Number of units under construction

Year	No of units under construction as at 31 March (net)
2015	857
2016	760
2017	805
2018	1202
2019	1486
2020	1629

Number of units completed

	Year 2018/19	Year 2019/20
Completions	647	1130
Requirement	1683	1662
Surplus/Deficit	-1036	-532

Efforts to Boost the Supply of Housing

- 6.22 The Council recognises that there is a need to significantly boost the supply of housing given its housing land supply position, and in accordance with the provisions of the Framework. It is taking a number of positive steps with this in mind in advance of the adoption of a new Local Plan.
- 6.23 As reported in the AMR at 'Delivering Development' (from page 19) the council has prepared a Housing Delivery Test Action Plan (HDTAP) which considers the main barriers to the delivery of more houses within Medway and was in response to the Housing Delivery Test (HDT) results. Moreover, the delivery of housing is considered in detail and the role that the Council is taking in promoting sustainable development in Medway. This includes reference to:
- Major urban regeneration
 - Consents on suitable greenfield sites
 - Increase diversity in housing market with a greater range of site types and scales with a wider range of developers. This also demonstrates the range of housebuilders investing in Medway.
 - Working constructively with the development sector. Medway Council has been a leading partner in the development of the Kent Planning Protocol, and the Head of Planning and Chair of Planning Committee have met individually with major developers to discuss opportunities to speed up the delivery of sites
 - Various other pro-active roles the of council in bringing sites forward for development (e.g. PPA, increased planning resources and joint masterplannig)
 - Identifying and addressing delays in build out of schemes.
- 6.24 There has also been increasing interest in development sites on the Hoo Peninsula in recent years. Much land is being promoted through the Local Plan, but a limited number of planning applications have also been approved in and around Hoo St Werburgh. Delivery has already started on some of these sites with a total of 142 units being delivered in 2019/20 on the land south of Stoke Road site, Street Farm Stoke Road site and the former Sports Ground at Bells Lane. Permission for a further 21 units in Hoo on the land at Hillcrest was also granted this year. Further development in this area will be subject to the new Local Plan and the delivery of major infrastructure investments, I return to this matter later in this evidence.

6.25 The Council has sought to apply the presumption in favour of sustainable development by granting planning permission for sites outside of current development boundaries, where these amount to sustainable development, in advance of the adoption of the new Local Plan. In this regard, the following permissions have been granted by the Council for development on unallocated sustainable sites in advance of the Local Plan in order to assist in meeting housing need and 5-year housing land supply:

1. MC/16/2051 Outline Planning Permission granted on 24/02/17 for 300 houses at Otterham Quay Lane, Rainham (Persimmon). MC/18/2328 Reserved Matters for 300 homes approved 23/11/18, various conditions discharged through 2019 and 2020.
2. MC/16/2837 Outline planning permission granted for 127 Dwellings at Stoke Road, Hoo on 13/12/17. MC/18/0702 Reserved Matters for 127 dwellings approved 9/7/18, various conditions discharged through 2019 and 2020.
3. MC/16/4229 Reserved matters permission granted for 131 dwellings at Peninsula Way, Chattenden on 30/08/17 (Abbey Homes) – site commenced.
4. MC/16/4268 Outline Planning Permission granted for up to 130 dwellings at Commissioners Road Quarry on 18/07/17. Work has commenced in preparation for development.
5. MC/17/1250 Reserved matters permission granted for 200 dwellings at Chatham Quayside on 30/08/17 - site commenced.
6. MC/17/1392 Reserved matters permission granted for redevelopment of Kitchener Barracks for 302 dwellings on 29/08/17 (Latis Homes) – site commenced.
7. MC/17/1820 Reserved matters permission resolved to be approved subject to S106 for 90 dwellings at Bakers Field, Rainham on 27/09/17 (McCulloch Homes) – site commenced.
8. MC/17/1884 Detailed planning permission resolved to be approved subject to S106 for 232 dwellings at Bells Lane Hoo on 27/09/17 (Bellway) – site commenced.
9. MC/17/1918 Reserved matters permission granted for 199 apartments at Chatham Waters on 27/09/17. MC/18/0997 Reserved Matters for 193 dwellings and A1/D1 uses approved 5/10/18 – development completed.
10. MC/17/2767 Detailed planning permission resolved to be approved subject to S106 for 131 dwellings at Chatham Golf Centre Street End Road Chatham on 10/10/2018 – site commenced.

11. MC/18/0092 Detailed planning permission resolved to be approved subject to conditions for 35 flats at Unit 1-2 New Cut Industrial Centre on 21/05/2019.
 12. MC/18/0705 Reserved Matters for 44 executive houses at Darland Farm, Capstone approved 24/10/18 – site commenced.
 13. MC/18/1795 Reserved Matters for 50 dwellings at Street Farm, Hoo approved 27/9/18 – site commenced.
 14. MC/18/2406 Detailed planning permission resolved to be approved subject to conditions for 115 apartments at Car park, Whiffens Avenue on 14/02/2019. Various conditions discharged through 2020, and further being considered in 2021.
 15. MC/18/2448 Detailed planning permission resolved to be approved subject to conditions for 24 apartments at 21 Jeffery Street Gillingham on 30/04/2019.
 16. MC/18/2553 Detailed planning permission resolved to be approved subject to conditions for 20 units at White Road Community Centre on 25/10/2019. Various conditions discharged through 2019 and 2020.
 17. MC/18/3160 Outline planning permission granted for 64 units at Bennetts Orchard, Rainham on 29/11/2019.
 18. MC/19/0038 Detailed planning permission resolved to be approved subject to conditions for 331 dwellings Bardell Terrace on 05/12/2019
 19. MC/19/0797 Detailed planning permission resolved to be approved subject to conditions for 54 retirement apartments at 4,6,20,22 High Street Rainham on 13/11/2019.
 20. MC/19/3328 Detailed planning permission resolved to be approved subject to conditions for 21 units at Hillcrest, Ratcliffe Highway on 19/08/2020. Various conditions discharged through 2020.
- 6.26 Moreover, since 1 April 2020 consent has been granted for large scale development (5+ units) for sites as follows:
1. MC/19/2709 Conversion and extension of former St Barts hospital to provide 155 homes. Resolution to approve 29 April 2020
 2. MC/18/1796 Outline application for 202 dwellings, Woolleys Orchard (Rainham). Resolution to approve 29 April 2020

3. MC/19/3275 Berengrave Nursey application for additional 18 dwellings taking site total to 139 dwellings (approval for 121 dwellings under MC/17/1391). Approved 29 April 2020 Site commenced
 4. MC/19/2532 Land at the Maltings Rainham 29 dwellings approved 29 April 2020 (extension to Redrow development off Mierscourt Road)
 5. MC/19/0888 Stoke Road Business Centre Hoo – Reserved matters application 200 dwellings (O/A MC/17/4424). Approved 26 June 2019
 6. MC/19/0287 Town Road Cliffe Woods. O/A for 225 dwellings. Resolution to approve 16 September 2020
 7. MC/18/2961 Town Road Cliffe Woods – 92 dwellings, plus nursery and B1 office block. Site commenced
 8. MC/19/2898 Land west of station road Rainham O/A 76 dwellings resolution to approve 16 September 2020
 9. MC/18/1871 Land at Port Victoria Road Isle of Grain, 6 dwellings approved 24 June 2020
 10. MC/19/3106 Site adjacent to Eastcourt, Green 14 Houses approved 4 March 2020
 11. MC/19/3107 Site adjacent to Woodchurch Crescent, 9 houses approved 4 March 2020
 12. MC/19/1736 Land at Whitehouse Farm Stoke Road Hoo. RM application (O/A MC/18/0247) 65 dwellings. Approved 4 March 2020 Jones Homes confirmed start on site in Spring 2021
- 6.27 These figures do not include any small site windfalls which would also increase the supply.

The timing of delivering the appeal proposals.

- 6.28 The Council accepts that the undersupply of housing is a significant issue, and it is therefore a main issue in this case. It is also, therefore, reasonable to consider when new houses might be completed on the site, the subject of this appeal.
- 6.29 It should be noted that it is at a significant scale. This is not to discount the contribution it could make to housing supply, but it is relevant to when it would be delivered. This is important for two reasons: First; whether it would deliver significantly, or at all, to the 5-year period in question (i.e. by 31 March 2025); and second, whether it is likely to be delivered significantly in advance of any allocations in the emerging Local Plan.

- 6.30 There is a very real prospect that delivery on this site is not going to be very quick. The scheme is at outline and, as far as I am aware, no housebuilder is engaged. Litchfields Start to Finish (2nd ed.; **CD 3.20**) suggests for sites between 1,000-1,499 units that Outline consent to first dwelling is 2.5-3.2 years, which increases to 4 years if one does not consider pre-2008 recession rates.
- 6.31 The Litchfield's report also suggests that sites which need to be sold on will be at the top end of these timeframes.
- 6.32 Regarding the timing and quantum of development on site, Kent County Council's archaeological team – as recorded in the Case Officer's report - has also raised detailed concerns about the potential for below ground heritage interest and potential interest which must be carefully considered. This is in accordance with Local Plan policy BNE21, and the Framework at paragraph 194 (and footnote 63), which seek to protect important archaeological remains in situ, and to avoid or minimise damage to these deposits. However, where damage is unavoidable, appropriate archaeological investigation will be required in advance of development. This investigation will need to be completed, which will delay delivery and it could feasibly impact the overall capacity for development on the site.
- 6.33 If this scheme is granted on appeal – the decision will be later this year at the earliest, so the best case is that houses are first delivered in 2024 and most likely 2025 or 2026. This would suggest very few if any homes will be built in the current five year supply period.
- 6.34 A site of this scale is, according to Litchfileds, likely to deliver at an average of 107 dwellings per year. This would lead to a build out timeframe of between 11 and 12 years.

Emerging Local Plan

Regulation 18 Plan (2018)

- 6.35 The emerging Medway Local Plan sets out the strategy for sustainable development as well as allocating sites and establishing planning policies and guidance for the plan period of 2019-2037. The "Local Plan Development Strategy" (Regulation 18) consultation opened in March 2018 and closed on 25th June.
- 6.36 The Development Strategy provided "Four Development Scenarios" these scenarios were¹:

Scenario 1: Meeting Objectively Assessed Need

The 2015 North Kent Strategic Housing and Economic Needs Assessment identified an objectively assessed need for housing of 29,463 homes over the plan period. This figure is used as the basis for this development scenario.

The strategy seeks to firstly direct growth to brownfield urban sites, to realise the potential of regeneration. This includes identified waterfront

¹ [CD1.2] and https://www.medway.gov.uk/downloads/file/2092/development_strategy

regeneration sites, together with ‘opportunity areas’ in and around town centres with the potential for redevelopment. Not all of the land in the ‘opportunity areas’ is currently available, and therefore these sites have not been included in the identified land supply. However, there is potential for such sites to contribute to the ‘windfall’ land supply.

Total new homes: 29,950

Scenario 2: Investment in Infrastructure to unlock growth

Work in assessing development potential across Medway has identified that land on the Hoo Peninsula could form an important part of the area’s growth strategy. A rural town centred on Hoo St Werburgh is included in all of the development scenarios set out in this consultation document. As outlined in Scenario 1, this proposed rural town could deliver new and improved services and infrastructure, providing for its residents and the wider Hoo peninsula.

The scale and scope of potential growth requires significant investments in infrastructure to increase the capacity of transport networks, utilities and wider services to meet the needs of the area’s growing population. The timely and effective delivery of infrastructure is critical to achieving the sustainable development of the rural town. Developers will be required to contribute to the funding of key infrastructure. The planning and phasing of delivery of the proposed strategic development allocation is informed by critical stages of infrastructure upgrades.

Total new homes: 31,033

Scenario 3: Meeting Government’s proposed calculation of Local Housing Need

The annual housing need of 1665 homes has been projected from 2016 to the end of the plan period in 2035, which calculates a need for 37,143 homes.

The council has considered how it could plan to deliver this scale of growth over the plan period. This level of housing need is incredibly challenging, and would require a radical change in how development is delivered. In assessing the options to deliver this level of growth, issues of infrastructure and environmental capacity were identified.

The vision and strategic objectives for Medway’s growth are based on ambitions for sustainable development. These inform a strategy that seeks to realise the further opportunities of regeneration, and direct development to sustainable locations in the wider borough, that respect the environment and can be supported by infrastructure.

A major objective of the Local Plan is to strengthen the local economy, lifting rates of productivity, providing the basis for more quality jobs. The Strategic Housing and Employment Needs Assessment considered the relationship between housing and employment, to define appropriate levels of land supply, to ensure balanced and sustainable development. The ‘Standard Method’ solely considers housing need, and guidance has not yet been provided on the relationship to employment land needs. The council recognises the risk of loss of commercial land to residential uses in seeking to significantly boost the supply of housing to levels identified by the government’s methodology. This could

exacerbate rates of out commuting and unsustainable development, if jobs growth does not keep pace with the rising housing supply.

Total new homes 35,961

Scenario 4: Consideration of development within Lodge Hill SSSI

Previous stages of consultation on the emerging Medway Local Plan made reference to the possible use of land at Lodge Hill for a new settlement on the Hoo Peninsula. This involved development of former military land designated as a Site of Special Scientific Interest. The potential inclusion of the site as part of Medway's development strategy was subject to the outcome of a Public Inquiry into an outline planning application for the proposed development of a strategic mixed use site, providing for up to 5,000 homes.

In September 2017, the outline planning application for proposed development at Lodge Hill was withdrawn and the Public Inquiry cancelled. Land at Lodge Hill has transferred from the military ownership of the Defence Infrastructure Organisation to the national regeneration agency, Homes England. Homes England has carried out new survey and evaluation work to provide a detailed understanding of the site. It is using this information to assess the impact of potential development on the environmental interests of the site. The agency is preparing a new development proposal for land at Lodge Hill, based on this analysis of the site. The new proposal is significantly reduced in scale from the withdrawn outline planning application, reflecting a new strategy for nature conservation on the site. However the scheme does involve elements of development on land designated as a SSSI.

Homes England is seeking to achieve a new approach that secures the environmental interests of the site in perpetuity, addresses concerns of site safety resulting from unexploded ordnance and is underpinned by resources realised through development values in other parts of the site. In considering new proposals for the site, Homes England is working with Natural England in compiling its evidence base and assessing its emerging approach to the management and development of land at Lodge Hill.

Total new homes 30,569

- 6.37 None of the scenarios involved development of the appeal site, or indeed any strategic level development in the area of the appeal site or the Gillingham Riverside ALLI². Maps of each scenario can be seen at **ANNEX A** of this evidence
- 6.38 The Regulation 18 plan reflected the plans evidence base, objectively assessed housing need and, the Standard Method for calculating Local Housing Need (at the time) ranging from 29,500 homes to 37,000 homes.
- 6.39 None of the four scenarios was likely to sustainably meet the Standard Methodology as calculated at the time (albeit scenario 3 came close), however, the Standard Methodology assessed now suggests a total need of 28,254 new homes (17-years x 1,662).

² [CD1.2] and https://www.medway.gov.uk/downloads/download/289/development_strategy

6.40 28,254 new homes it is below the OAN calculated in the 2015 North Kent Strategic Housing and Economic Needs Assessment and significantly lower than the Standard Methodology figure of 37,143 represented by scenario 3 (which was not met). However, the new Standard Methodology need would now be met in each of the four scenarios considered in the Regulation 18 plan. Therefore, the housing need for Medway is capable of being addressed in a number of ways (and there are sufficient sites to do so) without this site, the subject of this appeal.

Steps taken since Regulation 18 Plan: HIF funding and focus on Hoo Peninsula

6.41 In November 2019 it was confirmed that the Council was successful in an ambitious bid to secure £170m for infrastructure improvements through the Housing Infrastructure Fund (HIF), to enable delivery of the Local Plan. HIF was a highly competitive process where Government considered bids that would deliver significant housing numbers with the necessary infrastructure. Medway Council was amongst a large number of applications where only 32 were successful.

6.42 The Medway “New Routes to Good Growth” HIF project – as outlined in the January 2021 consultation [CD1.4] – will deliver:

Road Investment

- *A289 Road; these will be from the Four Elms Roundabout, through the Sans Pareil Roundabout and completing at Anthony’s Way Roundabout. The improvements will include additional lanes to widen the roads in this area, as well as improvements to the roundabouts including new slip roads off the roundabouts to improve traffic flow and reduce traffic queueing at the roundabouts.*
- *Improvements are also proposed for Four Elms Hill. The current slip roads that lead onto and off Four Elms Hill are to be extended to improve access to and from the Hoo Peninsula, and improve traffic flows in this area, which should also reduce the impact on the current Air Quality Management Area (AQMA).*
- *A new road is proposed to link the A228 from the Main Road roundabout to the A289. This will mean that traffic wishing to access the M2 from the Hoo Peninsula, or traffic returning from the M2/A2 will not have to travel via Four Elms Hill or the Four Elms Roundabout, reducing traffic in this area. This new road will require various improvements and widening to local roads and roundabouts as well as a new slip road/bridge to access the A289.*
- *Various local road and roundabout improvements have also been identified for Main Road Roundabout, Bells Lane Roundabout and Ropers Lane Roundabout as well as the new signalised access road from the Ratcliffe Highway for the new train station at Sharnal Street*

Rail Investment

- *Railway works will reinstate a passenger service on the Grain branch line and create a new station south of Sharnal Street. This will improve connectivity and help to support sustainable growth on the peninsula by providing a reliable link to London and an interchange option at Gravesend to link to locations across Medway.*
- *A range of new level crossing points, and train passing points*

- *The new station at Sharnal Street will include:*
 - New signalised access off the Ratcliffe Highway
 - New access road to the station
 - Drop off area
 - New High Quality Public Space
 - New Modular Station and Platform
 - New Car Parking.

Strategic Environmental Management Scheme (SEMS)

SEMS is an innovative vision to capture aspirations for landscape, biodiversity, access and long-term management and engagement. This consultation starts the process of defining a local vision that reflects the interests of current communities and path users. The vision will also be informed by the Hoo Development Framework Masterplan and the Hoo and the High Halstow Neighbourhood Plans.

- 6.43 The successful HIF bid by unlocking road, rail and green infrastructure projects will facilitate strategic growth on the Hoo Peninsula.
- 6.44 A rural town based around Hoo is likely to provide an important component of Medway's development strategy. As part of the HIF agreement and part of the Local Plan the Council is working on a Hoo Development Framework. This is a master plan for Hoo, which will set out development areas and quantum for Hoo.
- 6.45 This work is being facilitated by a consortium made up of Homes England, Wimpey, Gladman (acting for Brice Trust and another landowner on two sites), Redrow, the Council (as land owner), Dean Lewis acting on behalf of Brice Trust for 1 parcel of land and the Church Commissioners. All of whom have signed up to a collaboration agreement in support of the HIF bid. This means that they have confirmed their intention to deliver the growth to support the HIF bid if carried forward in the Local Plan.
- 6.46 They are working with the LPA on the formation of the Development Framework which will come forward with the Reg 19 Local Plan in early Summer. It is likely that a number of O/A will then be submitted in line with the Framework.
- 6.47 In Spring 2020, the Council consulted on 'Planning for Growth on the Hoo Peninsula'. This was a high-level document setting out key principles that could guide strategic development in this area. The consultation considered:
- Potential to grow area by 12,000 homes over 20 years
 - The acknowledgement of high housing need. Recognition of regeneration of urban waterfronts and town centres, but also recognise need for new settlements or significant extensions
 - Potential for development on Hoo
 - Information about on how HIF will be spent
 - Opportunities and constraints

- Overall vision for Hoo which combines four key principles (including an overall framework at pg. 20)
- Next Steps – indicating that consultation responses will feed into Reg 19/submission version of local plan

6.48 The consultation programme was impacted by the measures brought in to address the spread of Covid. Planned events had to be cancelled, but consultation continued online for an extended period. Subsequently the Council has held meetings remotely with a number of stakeholders to progress work. This further work will involve the preparation of a development framework. This will include a masterplan to support a strategic growth allocation in the draft plan, key principles for sustainable development, development phasing and infrastructure delivery.

6.49 This month (January 2021) the Council has published a HIF consultation proposal³. This sets out the infrastructure and environmental management proposals for spending the HIF.

6.50 The key points of this consultation:

- The £170m is for funding infrastructure to unlock housing on the Hoo peninsula.
- It has been earmarked for three things: (i) new roads; (ii) new railway station and passenger service and (iii) environmental mitigation and enhancements
- It will enable 10,600 homes to come forward
- Infrastructure improvements in place by 2024 (Timetable at p10)
- Highway improvements (figure 2)
- Railway line (figures 16&17)
- SEMS proposals (pg 49-50)

6.51 The reduced housing number quoted in the later consultation document is explained by noting that delivery runs to 2043 (i.e. beyond the Local Plan period to 3037). However, the housing figures also include other development in the rural area but not linked to HIF such as, at Cliffe Woods.

6.52 It is also made clear in the consultation document (at page 6) that the Council continues to work on the Local Plan and the HIF, and indeed that consultation on the infrastructure, does not pre-determine the plan-making process.

6.53 However, what the continued progress around the HIF projects, and the supporting consultations do is underscore:

³[CD1.2] https://www.medway.gov.uk/downloads/file/5586/hif_consultation_proposals_january_2021

- (a) that the Council is taking significant steps to meet its needs, including housing needs. It is not an authority shying away from its responsibilities;
- (b) that those steps involve long term planning, and an integrated approach (e.g. the delivery of strategic infrastructure, and environmental enhancements needed to unlock strategic development);
- (c) the Council's vision has been vindicated, at least to the extent of the award of the HIF bid; and
- (d) there is a clear vision for how the housing needed in Medway will be provided (and it does not include strategic development in the area of the appeal site)

Next stage: Regulation 19 Plan

- 6.54 The latest Local Development Scheme (LDS) sets out the following programme for the emerging Local Plan:

Stage	Date
<i>Regulation 18 – Issues and Options consultation</i>	<i>Jan-Feb 2016</i>
<i>Regulation 18 – Development Options consultation</i>	<i>Jan-May 2017</i>
<i>Regulation 18 – Development Strategy consultation</i>	<i>March-June 2018</i>
<i>Regulation 19 – Publication of draft plan</i>	<i>Spring 2021</i>
<i>Submission of plan for Examination</i>	<i>December 2021</i>
<i>Adoption (determined on outcome of Examination)</i>	<i>December 2022</i>

- 6.55 The Framework sets out at paragraph 48 that weight may be afforded to relevant policies in emerging plans according to the stage of preparation of the emerging plan, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies in the emerging plan to policies in the Framework.
- 6.56 The Regulation 19 emerging Local Plan has not yet been published, and therefore, has not been the subject of examination. Applying the criteria in paragraph 48 of the Framework, the policies of the emerging plan can only be afforded limited weight.
- 6.57 However, it is a material consideration of some significance that the Council is grappling with the significant housing need in its area. In particular, as described above, the Council is taking pro-active steps to ensure the housing need is met in full over the plan period to 2037: by adopting a strategic, integrated, plan-led approach to meeting housing needs, in a manner that will bring with it the necessary infrastructure to support that level of growth sustainably.
- 6.58 The courts have often recognised that the weight to be given to "out-of date" policies (particularly when out of date by reason of a lack of 5 year supply) will vary according to the circumstances, one of which include the action being

taken by the local planning authority to meet its needs (see, for example, paragraphs 51 & 52 of [CD4.11] *Oxton Farm v Harrogate Borough Council v D Noble Limited* [2020] EWCA Civ 805. And paragraph 47 of [CD4.12] Lindblom LJ in *Secretary of State for Communities and Local Government v Hopkins Homes Ltd* [2016] EWCA Civ 168: “*the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy—such as the protection of a “green wedge” or of a gap between settlements.*”)

- 6.59 The steps taken by the Council are significant in regard to meeting need in a sustainable way.

Effects on Heritage Assets

- 6.60 The Council’s second reason for refusal states that:

“The proposed development would have a harmful impact on the local historic landscape, as well as the setting and significance of a number of designated heritage assets...”

- 6.61 The assets in question are listed by the Council in the decision notice, as the following:

Listed buildings:

- York Farmhouse (Grade II);
- Pump Farmhouse (Grade II);
- Chapel House (Grade II);
- 497-501 Lower Rainham Road (Grade II);
- The Old House (Grade II);
- Bloors Place (Grade II*);
- a range of outbuildings including cart lodge and granary west of Bloors Place (Grade II); and,
- the garden walls to south and east of Bloors Place (Grade II)

Conservation Areas:

- Lower Twydall; and,
- Lower Rainham

Non-designated asset:

- The historic landscape

- 6.62 The Case Officers report for the application, the Council’s Statement of Case, and Ms Wedd, in her evidence, identify an additional heritage asset which would be affected by the proposals, and this is the:
- Bloor Oasts

- 6.63 As is noted in the Case Officers report for the application, the Framework explains, at paragraph 184, that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.
- 6.64 Listed Buildings and Conservation Areas are designated heritage assets, in respect of paragraph 193 which says:

"When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance."

- 6.65 The setting of heritage assets is also a key element in considering the impacts of a proposals. The setting of a heritage asset is defined in the Framework as "*The surroundings in which a heritage asset is experienced*". Planning Practice Guidance (Reference ID: 18a-013-20140306) provides further guidance on what comprises the setting of a heritage asset. The PPG notes that views play an important part of an assets setting, but that other factors affect how an asset is experienced, including noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. The PPG also makes it clear that the contribution that setting makes to the significance of a heritage asset does not depend on there being public rights or an ability to access or experience that setting.

- 6.66 Local Plan policy BNE12 states that:

"Special attention will be paid to the preservation and enhancement of the character and appearance of Conservation Areas"

- 6.67 Likewise, Local Plan policy BNE14 states that:

"Development within Conservation Areas, or affecting their setting, should achieve a high quality of design which will preserve or enhance the area's historic or architectural character or appearance..."

(iii) the scale, height, mass, roofscape, materials, detailing, fenestration, plot width and depth, and visual appearance of new development should be sympathetic with existing buildings and their settings; and

(iv) trees, hedgerows and open spaces should be retained and protected; and

(v) hard and soft landscape elements and traditional materials which enhance the area should be utilised."

6.68 Local Plan policy BNE18 also outlines that:

“Development which would adversely affect the setting of a listed building will not be permitted.”

- 6.69 Ms Wedd concludes in her evidence that the proposed development would have an impact on the heritage significance of a constellation of designated and non-designated heritage assets through changes to their setting. The Site is the major part of the setting, and also a non-designated heritage asset in its own right.
- 6.70 Ms Wedd's assessment is that the impact of the proposed development would cause less than substantial harm to the significance of all the heritage assets individually (the precise extent of harm varying between the assets). It would also cause less than substantial harm to the historic landscape at the upper end of that range.
- 6.71 Taken cumulatively the harm to the designated heritage assets would be less than substantial, in the middle of that range. However, the cumulative impact in relation to all the heritage assets, designated and non-designated considered together, whilst still “less than substantial”, would be at the upper end of that range.
- 6.72 Ms Wedd's assessment accords with Historic England's advice to the Council, and with the Case Officer's report for the planning application, the subject of this appeal.
- 6.73 It should be noted that Historic England is the government's expert advisor on England's heritage and it has a statutory role in the planning system; their views carry *“great weight”* in planning decisions unless there are cogent reasons to depart from them.
- 6.74 Considering Ms Wedd's conclusions, the proposals, the subject of this appeal, have the potential to affect a range of designated and non-designated heritage assets. Conservation Areas and listed buildings are amongst the list of 'designated heritage assets' described at paragraph 194 of the Framework and the local historic landscape, is a non-designated heritage asset.
- 6.75 Less than substantial harms are identified both individually, and cumulatively, to these heritage assets.
- 6.76 Paragraph 194 of the Framework goes on to require clear and convincing justification for any harm or loss of significance to a heritage asset. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be), as per paragraph 193.

- 6.77 Paragraph 195 of the Framework outlines that in situations where substantial harm to a heritage asset is identified, a scheme should be refused, unless specific criteria are met. The Framework does not suggest that a finding of this level of harm is the only level of effect that should lead to a refusal.
- 6.78 Where less than substantial harm to designated heritage assets is identified (as both Ms Wedd and Ms Stoten for the developer do – the difference is one of degree) consideration must turn to paragraph 196 of the Framework which requires that less than substantial harm to designated heritage assets:
- “...should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”*
- 6.79 I also note that footnote 6 of the Framework, disengages the tilted balance of paragraph 11 where designated heritage assets are specifically protected. That is, if the public benefits of the proposal do not outweigh the harm to the designated heritage assets, then the ‘tilted balance’ is not engaged.
- 6.80 I consider the claimed benefits of the proposals, the subject of this appeal, later in this proof of evidence and, for the reasons set out there, these do not outweigh the harms identified by Ms Wedd. In such circumstances the ‘tilted balance’ of the Framework at paragraph 11 is not engaged.
- 6.81 Considering the harm to the non-designated heritage value of the local historic landscape, the loss of substantial areas of orchard to built development will significantly harm it. The balance of this harm – as directed by paragraph 197 of the Framework – will be returned to at the conclusion of this evidence.
- 6.82 Turning to the development plan, Ms Wedd’s conclusions identify that the proposals would result in harm to the Conservation Areas and a range of listed buildings. This is in clear contravention of Local Plan policies BNE12, BNE14 and BNE18.
- 6.83 Accordingly, my considered view is that the nature of the proposals and their harms to the historic environment weigh heavily against the grant of permission.

Landscape and Visual Effects

- 6.84 The Council’s third reason for refusal states that:

“The proposed development would lead to significant long-term adverse landscape and visual effects to the local valued Gillingham Riverside Area of Local Landscape Importance (ALLI), which would not be outweighed by the economic and social benefits of the scheme...”

6.85 The site is outside the settlement boundary and is in the countryside. The site and surrounding area to the east and west (and also a narrow strip to the north) lie in the Gillingham Riverside ALI. The Framework states at paragraph 170 (with my emphasis):

Planning policies and decisions should contribute to and enhance the natural and local environment by:

- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);
- b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland

6.86 Local Plan 2003 policy S1 directs development towards the most sustainable locations and policy BNE25 set outs that:

Development in the countryside will only be permitted if:

- (i) it maintains, and wherever possible enhances, the character, amenity and functioning of the countryside, including the river environment of the Medway and Thames, it offers a realistic chance of access by a range of transport modes; and is either;
- (ii) on a site allocated for that use; or
- (iii) development essentially demanding a countryside location (such as agriculture, forestry, outdoor or informal recreation); or
- (iv) a re-use or adaptation of an existing building that is, and would continue to be, in keeping with its surroundings in accordance with Policy BNE27; or
- (v) a re-use or redevelopment of the existing built-up area of a redundant institutional complex or other developed land in lawful use; or
- (vi) a rebuilding of, or modest extension or annex to, a dwelling; or
- (vii) a public or institutional use for which the countryside location is justified and which does not result in volumes of traffic that would damage rural amenity.

The countryside is defined as that land outside the urban and rural settlement boundaries defined on the proposals map.

- 6.1 Local Plan 2003 policy BNE34 also explains that:

Within the Areas of Local Landscape Importance defined on the Proposals Map, development will only be permitted if:

(i) it does not materially harm the landscape character and function of the area; or

(ii) the economic and social benefits are so important that they outweigh the local priority to conserve the area's landscape.

Development within an Area of Local Landscape importance should be sited, designed and landscaped to minimise harm to the area's landscape character and function.

- 6.87 I set out at the beginning of my section 6 above, how BNE34, and to a lesser degree BNE25, align with the Framework at paragraph 170 and that both have been found to carry weight at appeal.
- 6.88 I also note that it is common ground that the ALLI, including the site, is a valued landscape, with the result that national policy is for it to be protected and enhanced.
- 6.89 Both Mr Hughes (landscape witness for the Appellant) and Mr Etchells landscape witness (landscape witness for the Council) agree that there would be adverse landscape and visual impacts caused by the proposal. Therefore, on any case, the proposal is contrary to policy in paragraph 170(a) of the Framework concerning valued landscapes, BNE25(i), and means that BNE34(i) is not fulfilled.
- 6.90 The difference between the landscape witnesses concerns the degree of harm which would be caused.
- 6.91 Mr Etchells' conclusion is that the proposal would have high adverse effects on the character of the site itself, and on average moderate to high adverse landscape effects for the local area around it (at year 1).
- 6.92 Mr Etchells accepts that the area effected around the site is relatively tightly drawn, due to the lack of any longer distance views to it, but within that area (which is in itself extensive) the effects would be widespread and high level, and the character of the local landscape would change completely.

- 6.93 In addition, Mr Etchells considers that the proposals would cause significant harm to the functioning of the ALLI.
- 6.94 Mr Etchells' further considers the long-term effects of the proposals and concludes that the adverse effects would be expected to decrease slowly with time, as the proposed planting begins to mature. However, they would never disappear completely, and some long term adverse effects (declining to generally moderate to high adverse for the site itself, where the loss of the orchard fields would be a permanent adverse effect, and moderate adverse for the landscape around the site after 10 to 15 years) would be likely to persist, as a result of the significant extension of the urban area to the north, the loss of the orchards which make up the majority of the site, the continuing visibility of the development (especially in the winter) from the surrounding area and the general loss of a significant area of countryside within the ALLI.
- 6.95 Finally, Mr Etchells' also concludes that there would also be some significant adverse visual effects, mainly for users of the bridleway which passes through the site, for residential properties adjoining the site whose presently attractive rural views would be closed down and replaced by views of new houses and other buildings, and for users of Pump Lane.
- 6.96 Turning to the policy implications as a result of these conclusions.
- 6.97 First, the valued landscape would not be protected or enhanced, and nor does the proposal properly recognise the intrinsic character and beauty of the countryside. It therefore is contrary to paragraph 170(a) and (b) of the Framework.
- 6.98 Second, there would be a clear conflict with Policy BNE25 (Development in the Countryside), as the development would neither maintain nor enhance the character, amenity and functioning of the countryside.
- 6.99 Third, there would be a clear conflict with Policy BNE34(i) (Areas of Local Landscape Importance), as the proposals would materially harm local landscape character and function of the designated ALLI.
- 6.100 In relation to Policy BNE34(ii) I consider the claimed benefits of the proposals, including the economic and social benefits, later in this proof of evidence. For the reasons I give there, I do not consider that these outweigh the harms identified by Mr Etchells.
- 6.101 Accordingly, my considered view is that the nature of the proposals and their harms to a valued landscape and visual amenity weigh heavily against the grant of permission.

Local Highway Network impacts

6.102 The Council's fifth reason for refusal states that:

"The cumulative impact from the increased additional traffic cannot be accommodated on the highway in terms of overall network capacity without a severe impact..."

6.103 The proposals, the subject of this appeal, are significant in scale. A development of up to 1250 new homes and associated services and facilities will generate high. The character of the surrounding highway network is inconsistent with the character and type of roads required to support a scheme of the scale and nature of the appeal proposals. The cumulative impact of the appeal proposal would result in unacceptable transport impact on these roads.

6.104 At paragraph 108 of the Framework, it states:

"it should be ensured that... any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree."

6.105 Also, at paragraph 109 of the Framework it states that:

"Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."

6.106 Local Plan Policy T1: Impact of development, sets out how:

"In assessing the highways impact of development, proposals will be permitted provided that:

the highway network has adequate capacity to cater for the traffic which will be generated by the development, taking into account alternative modes to the private car..."

6.107 Mr Rand, in his evidence, has made a detailed assessment of the appellant's Transport Assessments. He has also assessed the differences and relative performance of the two types of traffic model in contention in this case. In support of this, Mr Jarvis has provided a proof of evidence which explains the function of the Councils preferred AIMSUN model.

6.108 Mr Rand further considers how one should approach understanding what constitutes a "severe impact" in highways terms. He notes that there is no definition of severe impact in the Framework. Mr Rand points to an appeal

decision – also cited in the Case Officers report – ([CD4.7] APP/D3315/W/16/3157862) which states that it is not additional congestion itself that could constitute a severe impact, but the consequences of that congestion. It is therefore necessary to consider the impact of the proposed development on the local road network on this basis.

- 6.109 Furthermore, Mr Rand explains how Appeal decision APP/B1605/W/14/3001717 outlines (**CD4.8** at paragraph 223) that the determination of the impact of a scheme must consider the:

“cumulative effect of all expected development … rather than the individual contribution of each development in turn,”

- 6.110 This is the case even if the individual contribution is marginal. The appeal decision outlined that proposals should be dismissed if they increase demand for use of a link or junction that is already over-capacity, taking account of any mitigation⁴. The inspector concluded (at paragraph 238) that:

“taking account of [mitigation] measures… the residual cumulative effects of development proposed would increase demand for use of sections of the highway network which are already operating at over-capacity levels, contributing to a severe impact…,”

- 6.111 The Secretary of State expressly agreed with this (para. 14). The High Court subsequently refused the appellants permission to proceed with a challenge against this decision, the judge noting that a development could “wash its own face” in terms of highway impact, but the residual cumulative impacts could still be severe if the road network was already over capacity. A summary of the High Court decision is appended to Mr Rand’s proof of evidence.

- 6.112 Mr Rand concludes, that when using the AIMSUN model, the assessment shows that the development would result in substantial additional travel time across the modelled network in 2028. The additional development traffic results in a significant worsening of the operation of a large number of junctions, despite the mitigation works proposed by the appellant, taking 6 junctions over capacity based on average delay values.

- 6.113 Mr Rand also identifies that the impact at these junctions is further evidenced by the change in travel time for various routes on the road network. He therefore considers that the development results in a **severe** impact on the operation of 6 individual junctions:

- A289 Pier Road / Maritime Way Roundabout
- A289 Pier Road / Gillingham Gate Road West
- A2 / Woodlands Road / Rotary Gardens

⁴ Paragraphs 226-227

- A2 Bowaters Roundabout
- A289 Ito Way / A2 Sovereign Boulevard Roundabout
- A2 / Otterham Quay Lane / Meresborough Road

6.114 Mr Rand also, importantly, notes that his conclusion is drawn from an assessment based on the results of the modelling scenario which is most favourable to the applicant where:

- It uses the appellant's trip rates, lower than those in the strategic model
- It is based on the configuration of the model around the development area requested by the appellants
- The year of assessment is 2028, rather than 2037 and therefore contains less committed developments

6.115 For completeness, the Council also undertook additional modelling assessments for a future year of 2037, in line with the end of the emerging local plan period. In the reference case, the network performs worse in 2037 than 2028, due to traffic growth associated with committed developments that are forecast to be complete in the intervening years. As a result, the subnetworks perform worse in the scenarios that include the development traffic in 2037 than the equivalent scenarios in 2028.

6.116 Mr Rand also explains how the use of a strategic model, such as the Medway AIMSUN, to model the impact of the appeal scheme on the road network offers significant benefits, allowing the performance of links to be assessed, inter-relationships between junctions to be considered and sophisticated distribution of vehicle trips in response to real time network performance. The appellant's methodology using individual junction models does not account for any of these aspects. Furthermore, the geographical scope of the appellants modelling in and of itself is insufficient as the council's modelling identifies further areas that the appellants have not considered. All the appellants models that have been submitted do not appear to have been through a process of baseline validation against recorded data, and it is therefore impossible to determine how accurate the future forecasts of junction operation are. Even then, the appellant's models show that the development results in impacts at 2 individual junctions that I consider severe, exacerbated by impacts at additional junctions that contribute to a cumulative severe impact on the network.

6.117 Critically, Mr Rand points out that on the basis of the appellant's submissions, the appellant has failed to provide a full and accurate assessment of the impact of the proposals on the road network, and thus the relevant policy tests cannot be applied. Even if the issues with the appellant's model submissions were not a consideration, the appellant's modelling demonstrates the scheme would have a severe residual cumulative impact on the operation of the road network.

- 6.118 Moreover, the results of the Council's fully calibrated and validated modelling assessment demonstrate that there is insufficient capacity to accommodate the traffic arising from the appeal scheme and that it would have a severe residual cumulative impact on the operation of the road network.
- 6.119 My conclusion based in the above, is that the proposals are contrary to the Development Plan and specifically Local Plan policy T1. Moreover, the proposals are contrary to the Framework at paragraphs 108 and 109.
- 6.120 Indeed, considering paragraph 109 of the Framework specifically, I consider that there are grounds sufficient here to dismiss the appeal on transport grounds without consideration to other harms or effects. The evidence of Mr Rand clearly demonstrates that "*the residual cumulative impacts on the road network would be severe.*" I note that paragraph 109 is one of only a handful of policies within the Framework which direct that permission to be refused.
- 6.121 However, it should also be recognised that findings of adverse residual traffic impacts at less than severe remain a material consideration and would weigh in the balance against the consenting of development. This view has been expressed in the Court of Appeal at *Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government* ([2014] EWCA Civ 1386) [CD4.13] paragraph 32.

The loss of Best and Most Versatile Agricultural Land

- 6.122 The Council's eighth reason for refusal states that:

The proposed development would result in the irreversible loss of 'best and most versatile' (BMV) agricultural land, contrary to Local Plan policy BNE48 and the NPPF at paragraph 170 and footnote 53.

- 6.123 The Council accepts that Local Plan policy BNE48 which seeks to avoid the loss of BMV is not a saved policy and as such is mistakenly cited in the decision notice.
- 6.124 However, paragraph 170 of the Framework states that Planning policies and decisions should contribute to and enhance the natural and local environment by (inter alia) "*recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland*" (with my emphasis).

- 6.125 Footnote 53 adds:

"Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality".

6.126 The Appellant is large-scale local fruit grower, and packer of their own fruit, and other farmers' fruit, with their operational base at Hoo St Werburgh, where at Flanders Farm they have constructed a large fruit processing and storage facility with associated parking and hardstanding etc, initially permitted in outline in 2011. It is their case that the orchards are no longer a viable part of their business.

6.127 However, Mr Lloyd-Hughes concludes in his evidence that:

- The orchards [at Pump Lane] continue to be intensively and productively farmed and have been the subject of significant investment in replanting by the Appellant.
- The Andersons Midlands report is largely generalised in nature and does not include any specific data on the costs incurred, and returns gained, from these orchards.
- The Appellant has provided no financial data to support Andersons Midlands broad assumptions of non-viability.
- The Appellant has not demonstrated that the use of the appeal site as a commercial orchard unit is unviable.

6.128 Mr Lloyd-Hughes also, importantly, explains that the Appellant has determined that the land concerned has inherent agricultural potential to continue growing high value fruit crops and that "*the Development will have a direct, permanent, substantial adverse effect on BMV agricultural land which would be significant*", they somewhat paradoxically appear also to be arguing the opposite, in asserting the non-viability of the land as part of their Statement of Case.

6.129 As is detailed above, all the surveyed land, which is part of the scheme, the subject of this appeal, is "best and most versatile" (BMV) land. And regardless of its viable use as an orchard by the Appellant alter the status of the land concerned as BMV.

6.130 As it is reasonable to conclude that the permanent loss of this relatively large area of BMV land would be "significant", consideration then must be given (as it was in the Case Officer's report for the application) to whether the development has been demonstrated to be "necessary", and whether there are other sites of lower quality that should be developed in preference.

6.131 The necessity of the development is something which I consider above in my sections regarding the principle of the development and housing supply. Whilst there could be significant benefit in helping to meet housing needs, this is tempered by the time it would take for the proposals to deliver, and moreover is outweighed by the loss of BMV, harms to heritage assets and a valued

landscape and impacts on the local highway network. I will also return to this matter in my conclusions.

- 6.132 Turning to the consideration of alternative locations, Mr Lloyd-Hughes considers this in his evidence, where he draws the conclusion that the appellants have not provided a convincing argument that this exercise has been undertaken, and nor was it through the application stage.
- 6.133 Mr Lloyd-Hughes notes that the Appellant claimed through the planning application, that the general area was limited in terms of alternative lower quality land suitable for development. He pointed out, at that time, that this was based on generalised mapping, too small scale to make conclusions as to individual sites. Moreover, there were detailed Agricultural Land Classification studies that had been undertaken locally, which showed various areas of land with lower quality than the applicant site. There could and should have been a more sophisticated sequential approach taken, to considering alternative sites.
- 6.134 The Council by comparison, undertakes, through its Strategic Land Availability Assessment (SLAA), an exercise where the potential effects on BMV (and other constraints) are considered and these are balanced against opportunities. This reflects the provisions of footnote 53 of the Framework.
- 6.135 The appellant has failed to convincingly demonstrate that the orchards are unviable or could be viable in a different agricultural use. The proposed scheme would result in the loss of significant amounts of best and most versatile agricultural land and whilst the need for housing in the area will require agricultural land to be used, the appellant has not demonstrated that poorer quality agricultural land could not be utilised to address that need. Therefore, the proposals, the subject of this appeal, are contrary to the Framework at paragraph 170 and footnote 53.
- 6.136 In summary, it is not considered that this BMV land has been shown to have such limited economic value, now or in the future, that its permanent loss should not amount to a significant consideration as part of the decision based on the overall Planning balance, which I return to later in this evidence.

The most appropriate way to approach strategic scale development

- 6.137 The Council does not say that this is a case where it would be appropriate to refuse the appeal on grounds of prematurity (in the sense set out at paragraph 49 of the Framework).
- 6.138 Nonetheless, it is undeniably the case that the appeal proposal constitutes a strategic-scale development. Indeed, as a residential-led mixed-use development of up to 1250 homes, it is well above the threshold ordinarily used for identifying strategic sites. It is, therefore, in my view a material consideration

that developments of this scale would be better considered through the development plan process, where alternatives can be tested (not least through the SEA/SA assessments), and the proposal's impact on the overall strategic strategy, including provision of infrastructure, can be examined.

- 6.139 The Framework, at paragraph 15, explains that:

"The planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings."

- 6.140 The Local Plan will be supported by the key piece of evidence; the Strategic Land Availability Assessment (SLAA). The SLAA demonstrates that there is a good supply of suitable locations for development. The total of 29,244 is about 1,000 dwellings above the Standard Methodology derived target of 28,254.
- 6.141 The next step, or course, is to apply a reasonable spatial strategy to the SLAA findings to produce a robust and sound plan against which future planning decisions can be made. The table below is taken from page four of the SLAA report and shows the potential supply can meet the short term (5 year) need for new homes, as well as the need across the plan period (it should be noted that this does not include sites 750 and 1061, which form this application area which were assessed as unsuitable*):

Housing	Phasing				TOTAL
	Years 1-5	Years 6-10	Years 11-15	Years 16+	
	2019 - 2024	2024 - 2029	2029 - 2034	2034 +	
New Suitable, available and achievable SLAA sites	3643	8331	5857	1440	19271
Large permitted sites from 2019 AMR	5793	1789	0	205	7787
Small permitted sites from 2019 AMR	281	1	0	4	286
Windfalls from AMR		950	950	0	1900
TOTAL PHASING	10287	11071	6807	1649	29244

**Both sites were found to be unsuitable for the following reasons: access to services, landscape and impact on agricultural land. Whilst the SLAA does not grant planning permission and influence it in any way it does highlight potential issues.*

- 6.142 Where I consider the emerging Local Plan at paragraphs 6.35 – 6.40 above I explain that site in the area around Pump Lane are not part of any of the reasonable development strategies considered.
- 6.143 Moreover, a development of this scale will have a complex mitigation and compensation package beyond the narrow consideration of a single site, as is demonstrated (for example) by the residual cumulative transport impacts in this case.

7.0 CONCLUSIONS AND PLANNING BALANCE

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Action 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2 It is accepted that the Council does not have a five-year supply of deliverable land for new homes, and the shortfall is significant. The housing situation means that paragraph 11(d) of the Framework is 'triggered'. It also means that significant weight must be given to the supply of housing in this case, a matter to which I return below.
- 7.3 The fact that the most important policies for determining the application (which the parties are agreed include all policies referred to in the reason for refusal) are deemed to be 'out-of-date' by reason of the lack of a five-year supply does not mean that all the policies should be set aside. Above at my paragraph 5.4 I have made an assessment of the relevant policies with the Framework to judge both their relative weight. Below I assess the weight that can be applied to the identified conflict.
- 7.4 The proposals do not comply with the Framework at paragraphs 109, 170, 175-176 and 193-196 (and footnote 53). The multiple breaches of national policy should be given significant weight.
- 7.5 Moreover, the proposed development would be in conflict with Policies S1, BNE12, BNE14, BNE18, BNE25, BNE34, BNE47 and T1 of the Local Plan. The proposal is, undoubtedly, in breach of the development plan. Quite apart from the 'actual' harm which arises from the adverse impacts of the scheme considered below, permitting the appeal would also cause harm to the public interest in the plan-led system. This is set out at paragraph 6 of Sales LJ in *Gladman Developments Ltd v Daventry District Council & Anor [2016] EWCA Civ 1146* [CD4.10] where it states:

"It is not in the public interest that planning control should be the product of an unstructured free-for-all based on piecemeal consideration of individual applications for planning permission."

- 7.6 Additionally, the proposals are at significant scale and would be better considered through the development plan process where constraints and opportunities can be fully considered, and alternatives assessed. This is an additional material consideration which weighs against the proposals

Adverse Impacts of Scheme

- 7.7 As this proof has demonstrated, the proposals have the potential to adversely impact heritage assets, a valued landscape and visual amenity; highways; and the availability of best and most versatile agricultural land.
- 7.8 Contrary to the appellant's assertions the proposal would cause harms of **significant weight** as follows:
- Cumulatively to a range of designated heritage assets, and the non-designated heritage landscape

- to the landscape and visual amenity of an ALLI
 - severe impact on highway capacity
- 7.9 Moreover, the proposals will result in loss of best and most versatile (BMV) agricultural land which will also carry **moderate weight**. This weight is only limited from significant because a degree of BMV land will be needed to meet needs across Medway, but this will be balanced through a comprehensive comparison and balancing exercise. This will avoid necessarily using land of this quality and amount. And certainly not BMV in active agricultural use, as the appeal site currently is.

Alleged Benefits of the Scheme

- 7.10 I accept that development will bring with it some benefits which are economic and social. Benefits of the scheme were considered by the Case Officer in the report for the application, and my view broadly aligns with the conclusions there. The appellant has set out proposed benefits in the Statement of Case and these are summarised as follows:

Proposed Economic Benefits

- Job creation including construction jobs (and apprenticeships), and the employment created by the infrastructure on site together with indirect job creation (may support up to 3,875 jobs);
 - Increased revenue streams including Council Tax payments and the New Homes Bonus (NHB).
 - Financial contributions from s106 contributions
 - Increased residential expenditures
- 7.11 However, these are benefits of any development proposal and the emerging local plan will provide significantly greater opportunity to each benefit. Moreover, Council Tax payments and NHB are not material considerations in planning decisions and the section 106 payments (which are as yet not secured) would be required to make the development acceptable in planning terms so to frame them as an economic benefit is not accurate.

- 7.12 The site is currently a working orchard so presumably the site is currently in an employment use – albeit low density – that would be lost.
- 7.13 Therefore, only **limited weight** can be afforded to this argument in favour of the proposals.

Proposed social benefits

- Delivery of up to 1250 new residential dwellings including up to 310 affordable units

- The provision of a 60 bed extra care facility and an 80 bed care home, and a two form primary school;
- The creation of a village centre with the facilities commensurate with a scheme of this size providing an accessible and inclusive settlement; and
- Provision of landscaping and a mix of formal and informal open space providing space for both recreation and improved ecology and biodiversity that support health and social wellbeing.

7.14 The undersupply of housing in the district is significant as set out in this evidence. The delivery of new homes and the delivery of policy compliant levels of Affordable Housing can be considered to be a **significant benefit**. However, as I have examined through this evidence, the weight of this benefit is tempered, at least to some degree by the fact that:

- (i) the site unlikely to contribute significantly, if at all, to 5 year shortfall in current period; and
- (ii) the Council is grappling with housing need.

7.15 In addition, regarding Affordable Housing specifically the delivery in Medway over the last five years is shown in the table below:

2015/16	2016/17	2017/18	2018/19	2019/20
172	91	132	181	333

7.16 The allocation of development sites through the emerging Local Plan will seek to increase the delivery of housing and Affordable Housing. Whilst the delivery of additional Affordable Housing on the site, the subject of this application, would provide some benefit the needs will be properly considered through the emerging plan making process.

7.17 This need for affordable housing is provided for via current policy H3 of the Local Plan 2003, which sets out in its supporting text (at paragraph 5.5.12) that the council has set a minimum target of 25% for the provision of affordable housing. Across the five years reported above, the AMR shows that Affordable Housing comprises 27%; 13.5%; 19%, 26% and 27% of total completions for each year respectively.

7.18 Regarding the primary school and “village facilities,” these are primarily provided to support those people living on the new development so their wider social benefit is questionable and is only necessary so that the development ‘consumes its own smoke.’ It is also noted that the applicant describes the development as an “accessible and inclusive settlement” as though it will stand apart from Tywdall. The presence of the railway line between the existing settlement and the development site will be a physical barrier in community cohesion.

- 7.19 The provision of landscaping and open spaces too, are only necessary to make the development acceptable in planning terms and mitigate adverse impacts that have been identified in this evidence. Therefore, these benefits are somewhat reduced. Moreover, if the development is not consented the landscape will remain valued and unimpacted and there is a Public Right of Way across part of the site which constitutes a recreational resource.
- 7.20 Nevertheless, the housing supply position dictates that **significant weight** can be afforded to this argument in favour of the application.

Environmental Benefits

- The loss of a commercial orchard which requires the spraying of crops meaning it does not itself attract biodiversity;
 - The retention and improvements to the existing habitat with additional hedgerows that provide the most biodiversity on site; and
 - Mitigation measures and provision of s106 contributions including tariff in respect of impacts to the North Kent Marshes, and other measures agreed through reserved matters.
- 7.21 I note here that the first benefit listed is that there is not a disbenefit. I also note at this point that there is no assessment of net biodiversity gain supporting the proposal. In light of the provisions of national policy which set out how net gains in biodiversity can and should be evidenced (Framework at paragraph 170 (d) and the supporting PPG at Reference ID: 8-025-20190721 and Reference ID: 8-026-20190721), the assertion that there would be ecological benefits cannot be given any weight.
- 7.22 The remaining benefits are only necessary if the development is permitted, to mitigate and make it acceptable in planning terms and therefore, the degree of genuine benefit is minimal at best.
- 7.23 Therefore, only **little, if any, weight** can be afforded to this argument in favour of the application.

Conflict with the Development Plan

- 7.24 This exercise is undertaken in the Case Officer's report for the planning application, and I am in broad agreement with the conclusions drawn, but for completeness I shall set out my views below.
- 7.25 As I have described throughout this proof of evidence, the proposed development the subject of this appeal would conflict with the development plan, when considered as a whole, and specifically Local Plan policies:

- S1: Development Strategy. The site is not allocated and is in the open countryside, however the housing land supply is limited. This breach affords **limited** weight.
- BNE12: Conservation Areas. The proposal has the potential to cause harm to the significant and setting of two Conservation Areas. This breach affords **significant** weight.
- BNE14: Development in Conservation Areas. The proposal by the virtue of its scale and likely massing will have a cumulative effect that will harm the setting of two Conservation Areas. This breach affords **significant** weight.
- BNE18: Setting of listed buildings. The proposal has the potential to cause harm to the significant and setting of several listed buildings. This breach affords **significant** weight.
- BNE25: Development in the countryside. The proposed scheme falls outside the urban boundary and in the countryside, where the Council resists development of this scale on principle. The policy is also aimed at protecting the countryside against harm, in general, and this does afford it weight, and especially as the site is in an ALLI this is considered further under policy BNE34. However, the scale of housing supply shortfall means that this breach affords **limited** weight.
- BNE34: Areas of Local Landscape Importance. The site is in Gillingham Riverside ALLI and is likely to result in significant adverse landscape and visual effects. These effects would outweigh the limited economic benefits explored above, and whilst the need for new homes is high, this is not sufficient to outweigh the local priority to conserve the area's valued landscape. This breach affords **significant** weight.
- BNE47: Rural Lanes. Pump Lane is a designated important rural lane and the proposals involve its partial realignment, two new staggered junctions, an increase in traffic flows and a consequential complete change in character of this presently narrow, rural lane creating clear adverse effects. This breach affords **significant** weight.
- T1: Impact of development. There is likely to be severe impacts to the local road junctions and networks, as well as unacceptable impacts in terms of highway safety. This breach affords **significant** weight.

Other Development Plan policies considered.

7.26 In the intervening period between the appeal being lodged and the inquiry being held, some matters have moved forward in this case. These are explained in my paragraphs 1.7 – 1.11. For completeness then, I consider the other policies cited in the decision notice below:

- S6: Planning obligations. Subject to the Appellant providing an executed section 106 agreement which secures the infrastructure (or financial

contributions towards that infrastructure as appropriate) necessary to meet the needs of the development there would be no breach here.

- BNE35: International and national conservation sites. As noted above, subject to the Appellant providing an executed section 106 agreement which secures the mitigation required by Natural England which will avoid adverse impacts on the integrity of the Medway Estuary & Marshes SSSI, SPA and Ramsar, there would be no breach here.
- T2: Access to the highway. Following the provision of a detailed access drawing regarding the two new access points along Pump Lane to serve the proposed development with the appeal there would be no breach here.

National Policy

- 7.27 Whilst it is accepted that the Council does not have a five-year supply of deliverable land for new homes, the Council is actively seeking to rectify the situation. Nevertheless, it is accepted that paragraph 11(d) of the Framework is ‘triggered’.
- 7.28 Assuming that the Appellant’s secure the mitigation required by Natural England to ensure that there will be no adverse impact on the integrity of habitats sites, the only relevant ‘footnote 6’ policy is that relating to designated heritage assets, specifically paragraph 196.
- 7.29 I consider that the significant harms to designated heritage assets – as outlined in this evidence and which must be given great weight (both as a matter of policy and a matter of law – see the Heritage SoCG, para 2.4) – are not outweighed by the public benefits proposed by the applicant, which are in part, accepted. In such circumstances the ‘tilted balance’ of the Framework at paragraph 11 is not engaged.
- 7.30 Even if this is wrong and the tilted balance were to apply, the cumulative harms identified through this evidence (to the historic environment; the landscape and visual amenity of a valued landscape; the residual cumulative impact on the local highway network; and significant loss of BMV), coupled with the significant breaches of local policy and non-conformity with national policy would “significantly and demonstrably” outweigh the benefits of the scheme.
- 7.31 Thus, the proposal does not benefit from the presumption in favour of sustainable development.

The Section 38(6) balance

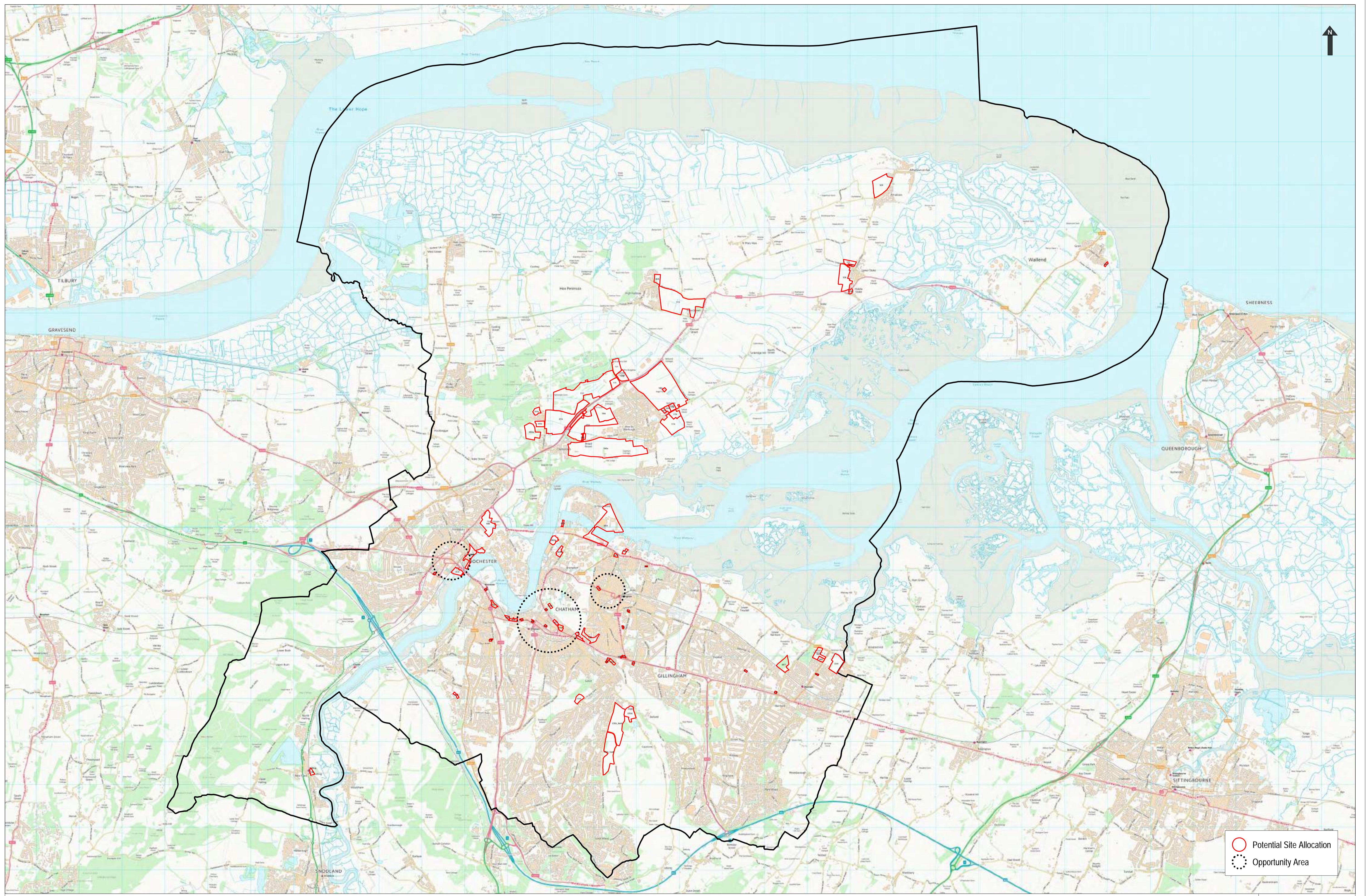
- 7.32 Therefore, taking account of conflict with local plan policies and the potential for adverse impacts to the following:
- Effects on Heritage Assets (both designated and non-designated);
 - Landscape and Visual Effects;
 - Local Highway Network impacts; and,

- The loss of Best and Most Versatile Agricultural Land, which currently operates as a commercial orchard
- 7.33 These adverse impacts are matters which collectively hold very considerable weight and it is not considered that the benefits of the scheme, taken individually or cumulatively, come close to outweighing the harms such that they justify the grant of permission. It follows that material considerations do not justify the grant of permission for a development which is in breach of the development plan

Conclusion

- 7.34 Having regard to the foregoing, my considered view is that the balance in this case lies squarely with a decision to dismiss this appeal.

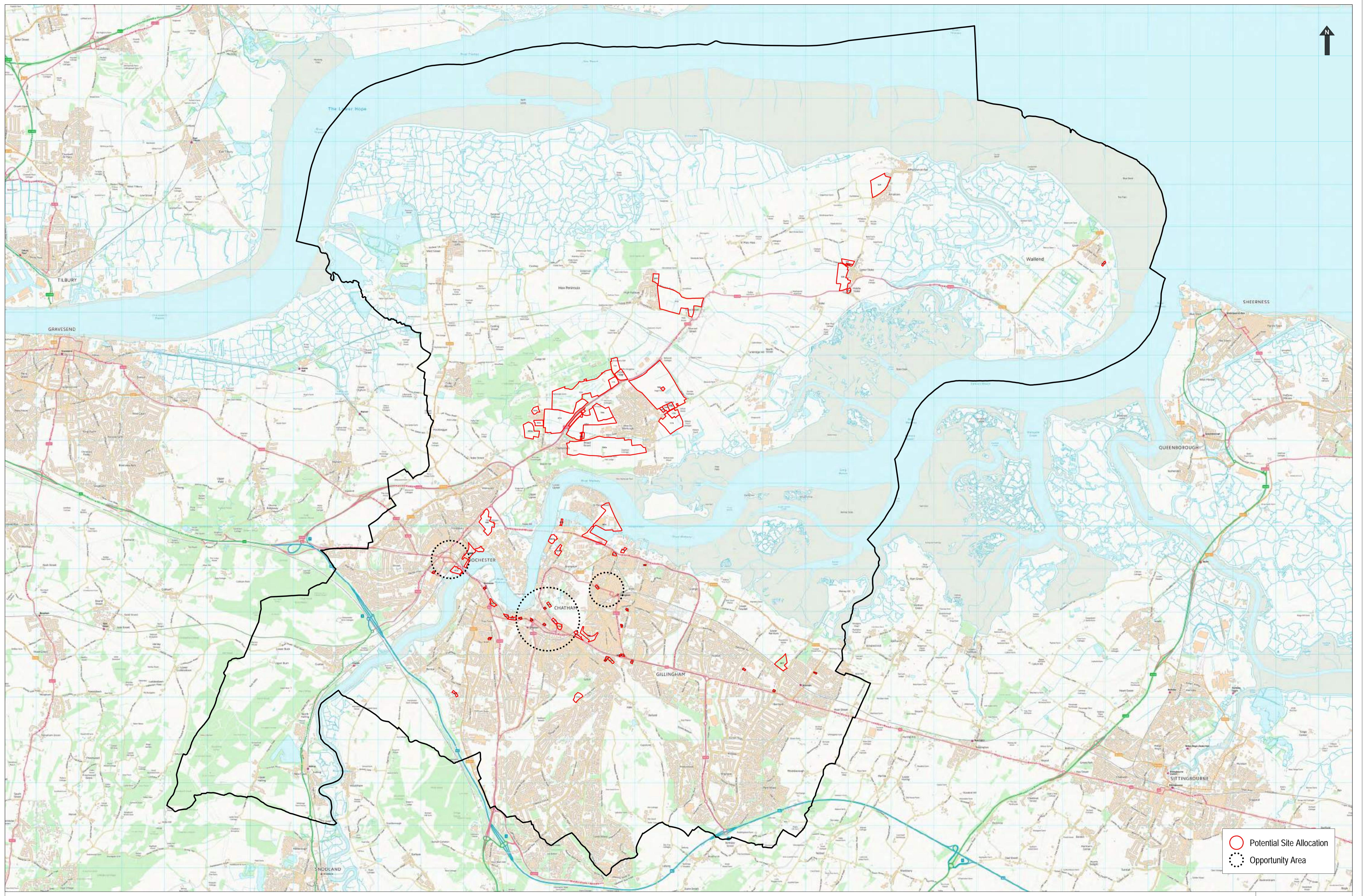
ANNEX A: Maps of Four Development Scenarios. Medway Local Plan (Reg. 18).



Scenario 1 - Meeting Objectively Assessed Need

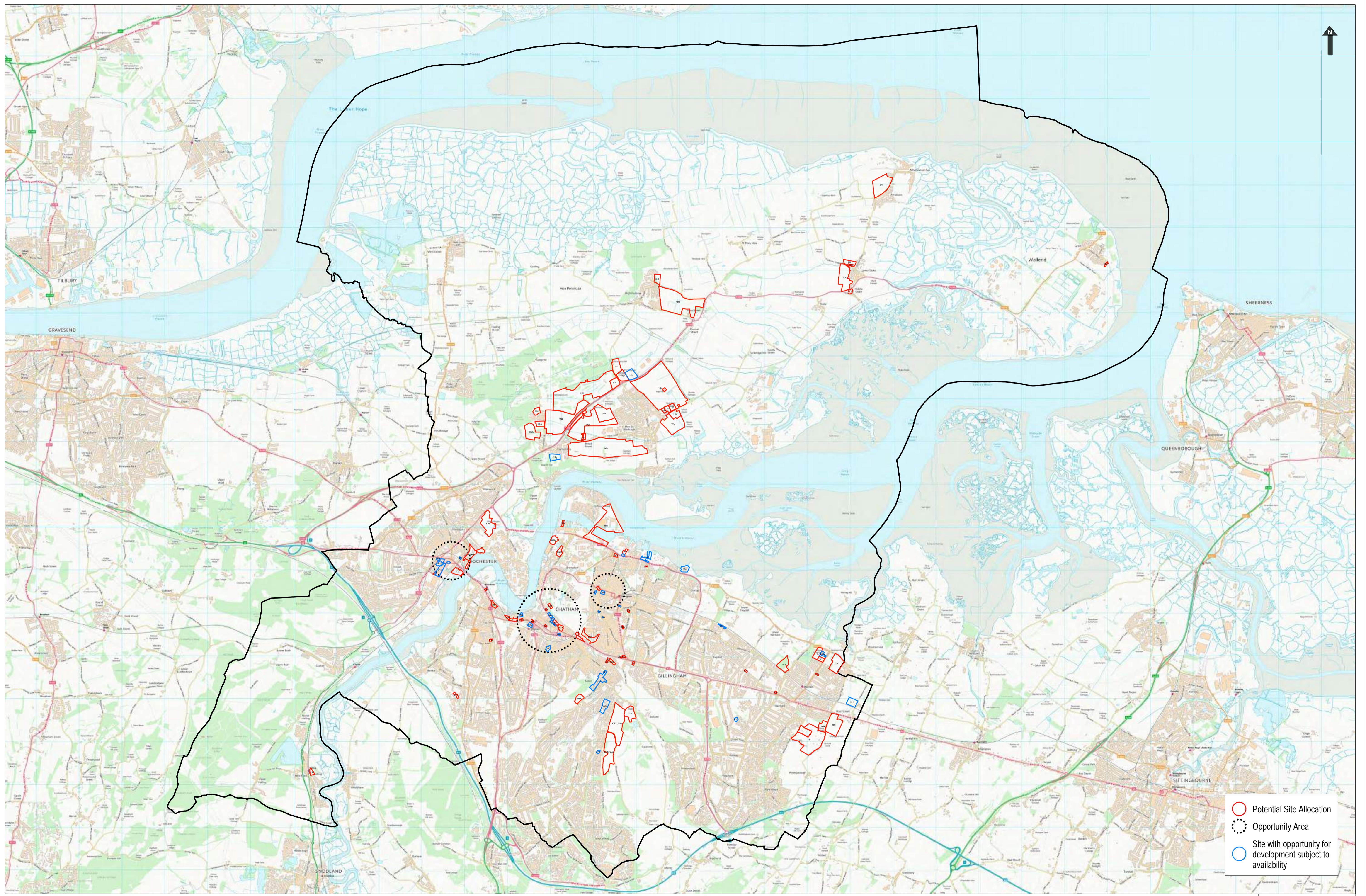
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Scenario 2 - Investment in Infrastructure to Unlock Growth

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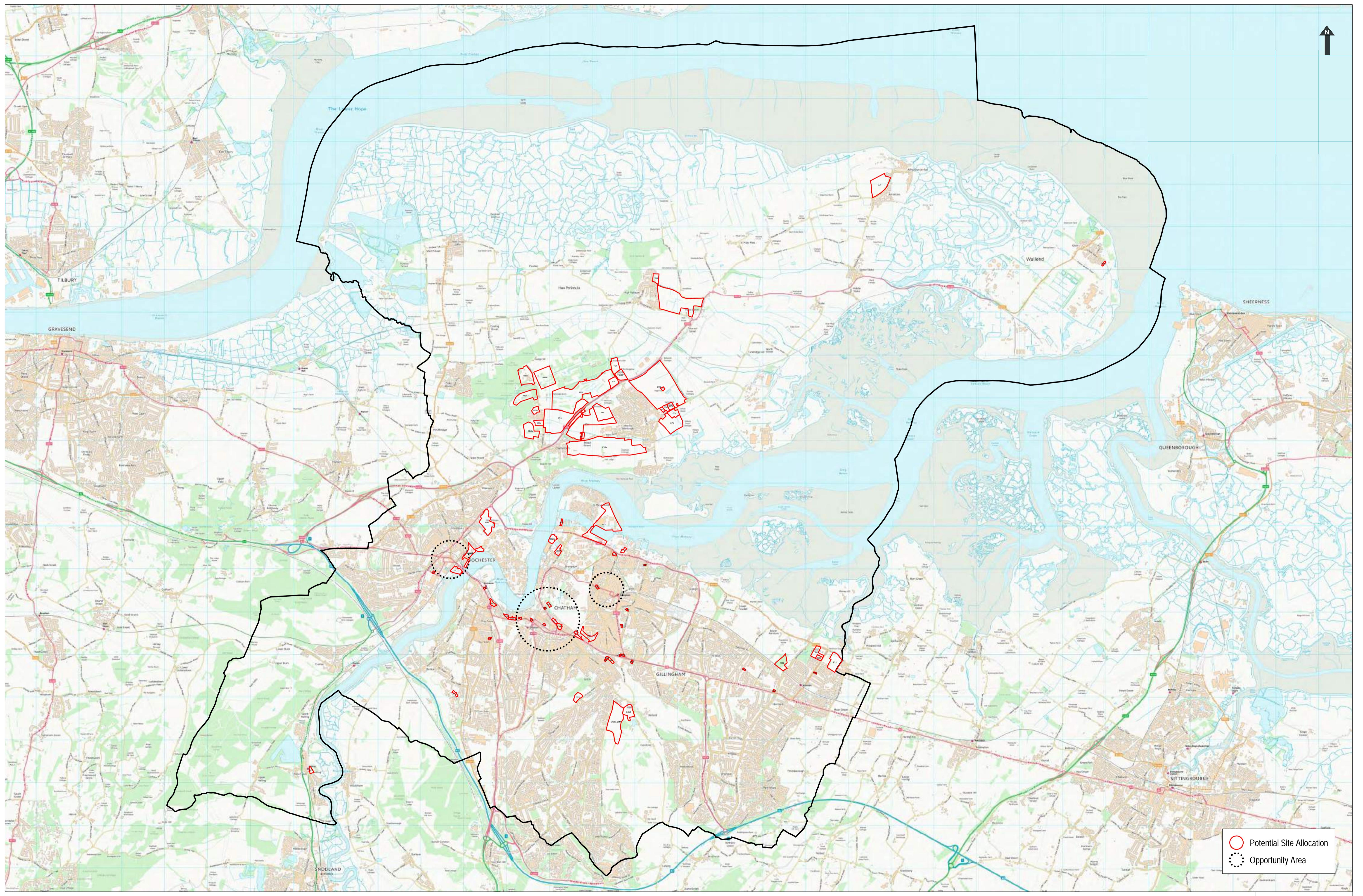


Scenario 3 - Meeting Government's Proposed Calculation of Local Housing Need

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Scenario 4 - Consideration of Development within Lodge Hill SSSI

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