

**RAPLEYS**

Proof of Evidence of  
Duncan Neil Parr BA DUPI Dip TP FRGS MRTPI Cgeog MEWI

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

**Planning Inspectorate Ref:  
APP/A2280/W/20/3259868**

**January 2021**

**Our Ref: DNP/18-01307**

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## 1 QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Duncan Neil Parr. I hold an Honours Degree of Bachelor of Arts (Geography) from the University of Staffordshire and Post Graduate Diplomas in Urban Planning Implementation and Town Planning from the University of Westminster. I am a Member of the Royal Town Planning Institute, a Fellow of the Royal Geographical Society, a Chartered Geographer, a Law Society registered witness and a Member of the Expert Witness Institute.
- 1.2 I am a Planning Partner of Rapleys LLP, my office being 33 Jermyn Street, St. James's, London, SW1Y 6DN. I have over 30 years of Planning Consultancy experience. I have advised a wide range of clients, including developers, landowners, commercial companies, local authorities and voluntary organisations.
- 1.3 I am providing evidence at this Inquiry as an independent professional. My proof of evidence for this appeal (APP/A2280/W/20/3259868) has been prepared in accordance with the Royal Town Planning Institute Code of Professional Conduct and reflects my objective opinion within the context of the circumstances of this case.
- 1.4 My evidence will focus on town planning matters with other witnesses being called to address other aspects of the case.

## 2 INTRODUCTION AND CONTEXT

- 2.1 Rapleys LLP are instructed by AC Goatham and Son (the Appellant) in respect of appeal reference: APP/A2280/W/20/3259868 regarding outline planning proposals for residential-led development at Land Off Pump Lane, Rainham Kent (Appeal Site).
- 2.2 The application was submitted to Medway Council (the Council) on 13 June 2019 and subsequently validated on 28 June 2019 with reference: MC/19/1566.
- 2.3 The proposals (the Appeal Proposals) comprise up to 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). The application was submitted in outline with all matters reserved other than access.
- 2.4 The Appeal Proposals were (and still are) brought forward against the background of an aged Local Plan where the "most important" policies are outdated, by virtue of both:
- A lack of a 5 year supply of deliverable housing sites within the local authority area, and
  - Delivery (based on Housing Delivery Test) being less than 75% of the housing requirement over the previous 3 years.
- 2.5 However, the planning application for the Appeal Proposals was refused by the Council on 12/06/2020 with 9 reasons for refusal which has since been narrowed through further submissions, there are 4 outstanding matters.
- 2.6 Additional background on the application is provided within the submitted Planning Statement, Section 6 of the Appellant's Statement of Case and Sections 2, 3 and 4 of the General Matters Statement of Common Ground (SoCG).
- 2.7 My evidence will address all relevant planning matters in respect of the Appeal Proposals with particular reference to the Council's delegated report, statement of case and reasons for refusal. I will also address any additional issues raised by third parties. I refer to other evidence provided on behalf of the Appellant within my proof.
- 2.8 Topic based SoCG's covering; Landscape, BMV Land, Heritage, Highways and General Matters have been prepared and submitted alongside evidence. The statements set out areas on which the principal parties have reached agreement, and matters that remain in dispute. A draft schedule of conditions and a S106 agreement will also form part of the matters agreed.

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2.9 In this context, the Appellant's evidence demonstrates that planning permission should be granted. The Appeal Proposal is in accordance with the Development Plan. Alternatively, even were this not the case, the Appeal Proposal should be approved in the light of the Council's housing land supply and 2019 HDT result and other very important material considerations, including the engagement of paragraph 11(d)(ii) of the NPPF - meaning that planning permission should only be refused where adverse impacts would significantly and demonstrably outweigh the benefits. No such adverse impacts would arise from the Appeal Proposal. Indeed, the Appeal Proposal will provide multiple, significant economic, social and environmental planning benefits which further support the case for granting planning permission.

2.10 The evidence within this proof of evidence is structured as follows:

- Section 3 - Appeal Site and Surroundings
- Section 4 - Appeal Proposals
- Section 5 - Background to The Appeal
- Section 6 - Planning Policy and Guidance
- Section 7 - The Council's Position/Assessment
- Section 8 - The Principle of Development
- Section 9 - Housing Land Supply
- Section 10 - The Reasons for Refusal
- Section 11 - Third Party Representations
- Section 12 - Planning Benefits of the Appeal Proposals
- Section 13 - The Planning Balance
- Section 14 - Conclusions

2.11 I conclude that the appeal should be allowed.

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### 3 APPEAL SITE AND SURROUNDINGS

3.1 The Appeal Site and surroundings are described in detail in Section 3 of the General Matters SoCG.

#### LOCATION AND SCALE

3.2 The Appeal Site is made up of two farms, Pump Farm (circa 23ha) and Bloors Farm (circa 25ha) which predominantly comprises Grade 2 (79%) agricultural land, with other areas being Grade 1 (17%) and Grade 3a (4%) agricultural land. The farms are separated by Pump Lane, which runs from north to south through the Appeal Site.

3.3 The majority of the Appeal Site is planted orchards, with limited landscaping in the form of hedges surrounding the Appeal Site and inside it, separating individual parts of the orchard.

3.4 Nevertheless, the Appeal Site is part developed and includes a number of farm buildings used for storage and other uses in connection with the commercial orchard which are approaching the end of their useful life.

3.5 The Appeal Site does not have open public access. However, there is one public right of way within it, a bridleway extending from Pump Lane in the West and crossing Bloors Farm in an easterly direction to Lower Bloor Lane.

3.6 The Appeal Site is bounded to the north-west by agricultural fields; to the north and north-east partly by houses and the B2004 Lower Rainham Road and beyond this, the Medway River Estuary; to the south by allotments and Lower Bloors Lane beyond which is Bloors Lane Community Woodland; and to the west by a railway line and residential development.

#### SURROUNDING CONTEXT

3.7 The surrounding area includes a mix of suburban residential development and agricultural land. To the south of the Appeal Site, on the other side of the rail line, is the urban area of Rainham. Further to the north separated by Lower Rainham Road, and set beyond agricultural land, Mariners Farm boatyard and Lower Rainham, is the Medway Estuary and Marshes SPA, RAMSAR and SSSI, a European Protected Site which lies approximately 250m to the north of the Appeal Site. This area is also a Country Park within flood zone 3.

3.8 There are two Conservation Areas located near to the Appeal Site: Lower Rainham Conservation Area (immediately north of Bloors Farm) and Twydall Conservation Area (west of Pump Farm).

3.9 There are heritage assets located in proximity to the Appeal Site:

- a) Chapel House;
- b) 497, 499 and 501 Lower Rainham Road (separate listings);
- c) The Old House;
- d) Bloors Place;
- e) York Farmhouse;
- f) Pump Farm House;
- g) A range of outbuildings including Cart Lodge and Granary West of Bloors Place; and
- h) Garden walls south and east of Bloors Place.

#### ACCESS

3.10 The Appeal Site straddles Pump Lane that runs north to south, between the B2004 Lower Rainham Road and Beechings Way, respectively. Additionally, the northern boundary of Pump Farm abuts Lower Rainham Road to the north.

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- 3.11 Rainham railway station is located approximately 2.5km south east of the Appeal Site, which is approximately a 30 minutes walk or 10 minutes cycle. The railway station lies on the principal south east rail route. Train services are available directly to and from main terminals at London and Dover, in addition to other locations.
  - 3.12 There are several bus stops located within the vicinity of the Appeal Site. The closest is located on Beechings Way, approximately 600m south of the centre of the Appeal Site. The second is located on Lower Rainham Road which runs along the Appeal Site frontage and is accessible approximately 600m north of the Appeal Site. Regular services (every 10 minutes) run to and from these stops routing through Lower Rainham and providing links to surrounding towns, such as Chatham Town Centre, key employment areas and the station
  - 3.13 Existing walking and cycling facilities within the immediate vicinity of the Appeal Site are limited, especially along Pump Lane which runs through the centre of the Appeal Site.
  - 3.14 Facilities south of the site in the urban area and the north along Lower Rainham Road are excellent.

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## 4 APPEAL PROPOSALS

- 4.1 The Application sought: Outline planning permission, with some matters reserved for future approval (namely appearance, landscaping, layout and scale), for redevelopment of land off Pump Lane to include residential development comprising up to 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).

### SCALE AND FORM OF THE DEVELOPMENT

- 4.2 The proposed masterplan scheme is residentially-led, albeit with a range of uses (community, recreational, educational and commercial) to support a new village settlement. The core of the new development is a village green surrounded by development parcels. The village green will be surrounded to the east and south east with new residential development, and to the north by a new local centre. A landscaped green buffer is proposed around the perimeter of the development plots and along the loop road to allow the development to blend within the natural landscape setting.
- 4.3 Access is proposed via a loop road with 'off shoot' roads that will serve the village centre and residential areas.
- 4.4 In terms of proposed building heights, the majority of the buildings across the Appeal Site will be two storeys with a 9m ridge height. Occasional two and a half storey or three storey elements would create individual 'feature' buildings at appropriate locations within the development. The village centre buildings will have a ridge height of up to 11m, and a maximum of two storeys above commercial uses at ground level and residential above. The school will be single storey, with a ridge height of up to 7m. This is detailed on the submitted building heights parameters plan.

### PROPOSED HOUSING

- 4.5 The housing proposed will comprise a mix of dwelling types and sizes together with extra care and sheltered accommodation. The residential accommodation will be provided as houses in a mix of 2, 3 and 4 bedrooms, including 8 self-build plots. These will be arranged in combinations of terraces, semi-detached and detached houses. The flats proposed are those located within the local centre.
- 4.6 The mix is indicative, to be fixed at the appropriate Reserved Matters stage. However, an indicative mix and layout of the Appeal Site has been shown within the submitted planning statement, in confirmation of the deliverability of the Appeal Site and of the achievability of the proposed quantum of housing.
- 4.7 The proposed 60 bed extra care facility and the 80 bed care home further supports the mix of housing.

### LANDSCAPE AND OPEN SPACE

- 4.8 Landscaping and public open space are proposed, including the village green and strategic landscape buffer zone around the Appeal Site, in addition to landscaping between individual development plots. A series of designated dog walking routes of varying distances are also proposed through the Appeal Site.

### MOVEMENT STRATEGY

- 4.9 The vehicle access and movement infrastructure within the Appeal Site is centred around the creation of a loop road. This will pass the primary school, loop across Pump Lane and return, allowing existing residents continued north-south access. Off shoot roads from the main loop road will serve the village centre and residential areas. The development will also accommodate a network of pedestrian and cycle routes to facilitate sustainable forms of movement.

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- 4.10 Vehicular connections are provided by the proposed vehicle access from Lower Rainham Road and from Beechings Way and onto Pump Lane (south). Public transport access to the Appeal Site will be via the two main vehicular access points, to the north and south of the Appeal Site.
- 4.11 Pedestrian accesses are proposed via a series of footpath links to the Appeal Site, including from Lower Rainham Road (north), Lower Bloors Lane (east), and Lower Twydall Lane to the (west).

#### LOCAL CENTRE

- 4.12 The proposed local centre will comprise a strategic community hub containing a 2-form entry (2FE) primary school and up to 1000 sq. m. of commercial and community space with final uses to be subsequently determined. Residential use will also form part of the local centre, with flats above commercial uses.
- 4.13 The hub (including the primary school) will be readily accessible on foot or cycle from the whole of the development, as well as the existing housing area located to the south of the Appeal Site.



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## 5 BACKGROUND TO THE APPEAL

- 5.1 The application was submitted and received, following detailed pre-application engagement, on 13 June 2019 and validated on 28 June 2019 with reference number MC/19/1566.
- 5.2 Throughout the determination process the Applicant and their consultancy team sought to work with officers and consultees to resolve any queries or concerns. Multiple meetings were held at the Council offices to discuss the application and resolve any matters. As is clear from the meetings notes at Appendix 1, information was extremely slow in forthcoming and often Rapleys (planning consultant) and DTA (highways consultant) were chasing for an unacceptable amount of time for feedback. Further, when comments were received, they were often inadequate and obstructive.
- 5.3 Following validation and during the determination process, additional supporting/replacement documents were formally submitted in response to feedback received from the Council and its consultants. This included multiple rebuttal letters/emails submitted by the project team addressing Transport, Heritage, Landscape, Ecology, Loss of Agricultural Land, Flooding and Drainage, Archaeology and Air Quality matters. A chronology of submissions is provided at Appendix 2, which includes an updated Environmental Statement, which was submitted on 1 April 2020.
- 5.4 As a general observation, it is considered that officers did not given the application adequate consideration during the application process. The appellant, and their project team, needed to refer officers/consultees to various and clear sections of the submission that had not been reviewed or adequately considered, and to 'chase' consultation responses, frequently months following submission. Often when responses were eventually passed onto the project team and uploaded on the application website, they were weeks or months aged.
- 5.5 The application was refused by the Council under delegated powers on 12 June 2020.

### FURTHER CONSULTATION

- 5.6 The Appellant submitted further documentation relating to transportation and access matters. This documentation in addition to the Environmental Statement update 22 September 2020, Appeal Statement 22 September 2020 with appendices (including transport statement dated 21 September 2020) and accompanying plans has been subject to public consultation.
- 5.7 As detailed in appendix 3 on 24 December 2020 a notification letter was set to 7820 residential properties in the immediate locality. The letter explained how the above documentation could be viewed (online at <https://www.pumplane.org/>) and also explained the process for making representations.
- 5.8 All representations received have been logged and forwarded to the Council and Inspector.

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## 6 PLANNING POLICY AND GUIDANCE

- 6.1 I set out the statutory Development Plan and relevant components of the National Planning Policy Framework (NPPF), the Planning Practice Guidance (PPG) and the emerging Local Plan.
- 6.2 The General Matters SoCG sets out relevant policies which are agreed between the principal parties.
- 6.3 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the decision-maker to determine the planning application/appeal in accordance with the Development Plan, unless material planning considerations indicate otherwise.
- 6.4 The relevant Development Plan policies consist of ‘saved’ policies from the Medway Local Plan 2003.
- 6.5 Policies S6, BNE12, BNE18, BNE25, BNE34, BNE35, BNE38, T1 and T2 have been cited in support of the original reasons for refusal given by the LPA.
- 6.6 National planning policy and national planning guidance are additional, important material considerations for the purposes of applying section 38(6).

### THE DEVELOPMENT PLAN

- 6.7 The Development Plan comprises a suite of ‘saved’ policies from the Medway Local Plan (2003), Kent Minerals Local Plan (1993), Kent Minerals Local Plan (1997) and Kent Waste Local Plan (1998). For the purposes of this appeal, only saved policies within the Medway Local Plan (2003) are considered relevant to this appeal.
- 6.8 The Local Plan is the strategic component of the Development Plan, including the vision, community objectives, spatial strategy and district-wide housing requirement for the Plan period 1996 - 2006. It is therefore important to recognise in the context of this Appeal the conditions under which the Local Plan was adopted when assessing the weight to be assigned to policies within the Development Plan.
- 6.9 The Medway Local Plan was adopted in 2003, before the introduction of the NPPF and the PPG. The revised NPPF was published in February 2019.
- 6.10 Additionally, and in the context of Paragraph 11 of the NPPF, there has been a chronic failure of the Development Plan in the delivery of housing land, and as such, in the context of the determination of this appeal, all of the “most important” policies relevant to that determination should be treated as out of date.
- 6.11 Policies contained within the Local Plan relevant to the Appeal Proposals are:

Policies cited within reasons for refusal:

- a) Policy S6 (Planning Obligations)
- b) Policy BNE12 (Conservation Area)
- c) Policy BNE18 (Setting of Listed Building)
- d) Policy BNE25 (Development in Countryside)
- e) Policy BNE34 (Areas of Local Landscape Importance)
- f) Policy BNE35 (International and National Nature Conservation sites)
- g) Policy BNE48 (Agricultural Land)
- h) Policy T1 (Impact of Development)

Other policies relevant:

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- i) Policy S1 (Development Strategy))
  - j) Policy BNE1 (General Development)
  - k) Policy BNE2 (Amenity)
  - l) Policy BNE21 (Archaeological Sites)
  - m) Policy BNE24 (Air Quality)
  - n) Policy BNE36 (Strategic and Local Nature Conservation Sites)
  - o) Policy BNE37 (Wildlife Habitats)
  - p) Policy BN38 (Wildlife Corridors)
  - q) Policy BNE39 (Protected Species)
  - r) Policy H1 (New Residential Development)
  - s) Policy H3 (Affordable Housing)
  - t) Policy H10 (Housing Mix)
  - u) Policy L4 (Open Space for Residential Development)
  - v) Policy CF2 (New Community Facilities)
  - w) Policy T2 (Access to the Highway)
  - x) Policy T3 (Provision for Pedestrians)
  - y) Policy T4 (Cycle Facilities)

6.12 It should be noted, however, that although the decision notice refers to policy BNE48, this was not saved by the Secretary of State, as confirmed within their direction dated 21 September 2007.

6.13 The “most important” policies for determining the appeal (for the purposes of applying NPPF paragraph 11(d)) are those cited in support of the Council’s reasons for refusal.

#### General Development

6.14 Policy BNE1 General Principles of Built Development: supports development which is appropriate in relation to the character, appearance and functioning of the built and natural environment by inter alia:

- (i) being satisfactory in terms of use, scale, mass, proportion, details, materials, layout and siting; and
- (ii) respecting the scale, appearance and location of buildings, spaces and the visual amenity of the surrounding area; and
- (iii) where appropriate, providing well structured, practical and attractive areas of open space.

#### Development in the Countryside

6.15 Strategic Policy S1 Development Strategy: Priorities re-investment in the urban fabric and redevelopment of land within the urban area.

*“In recognition of their particular quality and character, long-term protection will be afforded to:*

- (i) areas of international, national or other strategic importance for nature conservation and landscape; and*
  - (ii) the historic built environment, including the Historic Dockyard, associated sites and fortifications.*
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*Outward peripheral expansion onto fresh land, particularly to the north and east of Gillingham, will be severely restricted. The open heartland of Medway at Capstone and Darland will be given long-term protection from significant development”.*

- 6.16 Policy BNE25 Development in the Countryside: Supports such development 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”.*

- 6.17 Policy BNE34 Areas of Local Landscape Importance: supports development within the areas of Local Landscape Importance defined on the Proposals Map 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”.*

- 6.18 Policy BNE48 Agricultural Land: Development that would cause a loss of the best and most versatile agricultural land (grades 1, 2 and 3a) will not be permitted except when exceptionally justified in cases such as a demonstrated overriding need for development, or where there is a lack of suitable PDL

#### Heritage and Archaeology

- 6.19 Policy BNE12 Conservation Areas: Special attention will be paid to the preservation and enhancement of the character and appearance of Conservation Areas.
- 6.20 Policy BNE14 Development within Conservation Areas: 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.
- 6.21 Policy BNE18 Setting of Listed Buildings: Supports development that would not adversely affect the setting of a listed building.
- 6.22 Policy BNE21 Archaeological Sites: requires archaeological field evaluation to be carried out by an approved archaeological body before any decision on the planning application is made.

#### Air Quality

- 6.23 Policy BNE24 Air Quality: Development will be permitted where there are no unacceptable effects on the health, amenity or natural environment of the surrounding area taking account the cumulative effect of other proposed or existing sources of air pollution in the vicinity.

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## Nature and Conservation

- 6.24 Policy BNE35 International and National Nature Conservation Sites: Gives long term protection to:
- (i) classified and potential Special Protection Areas (SPAs);
  - (ii) listed and proposed Ramsar sites;
  - (iii) National Nature Reserves;
  - (iv) Sites of Special Scientific Interest.

Development that would materially harm, directly or indirectly, the scientific or wildlife interest of these sites will not be permitted unless the development is connected with, or necessary to, the management of the site's wildlife interest.

- 6.25 Policy BNE36 Strategic and Local Nature Conservation Sites: Gives long term protection to:
- (i) Sites of Nature Conservation Interest;
  - (ii) Designated and proposed Local Nature Reserves.

Development that would materially harm, directly or indirectly, the scientific or wildlife interest of these sites will not be permitted unless the development is connected with, or necessary to, the management of the site's wildlife interest.

- 6.26 Policy BNE37 Wildlife Habitat: Development that would cause a loss, directly or indirectly, of important wildlife habitats or features not protected by policies BNE35 and BNE36 will not be permitted, unless:
- (i) there is an overriding need for the development that outweighs the importance of these wildlife resources; and
  - (ii) no reasonable alternative site is (or is likely to be) available if ancient woodland, intertidal habitats and calcareous (chalk) grassland would not be lost; and
  - (iii) the development is designed to minimise the loss involved; and
  - (iv) appropriate compensatory measures are provided.”

- 6.27 Policy BNE38 Wildlife Corridors and Stepping Stones: Supports development that wherever practical, make provision for wildlife habitats, as part of a network of wildlife corridors or “stepping stones”.

- 6.28 Policy BNE39 Protected Species: Seeks conditions and/or obligations sought, to ensure that protected species and/or their habitats are safeguarded and maintained.

- 6.29 Policy CF2 New Community Facilities: Permits facilities where:
- (i) the size and scale of development being appropriate to the site; and
  - (ii) the development having no detrimental impact on the countryside, residential amenity, landscape or ecology; and
  - (iii) accessibility to the local population by a variety of means of transport, including public transport, cycling and walking.

## Transport

- 6.30 Policy T1 Impact of Development: Supports developments 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”.

- 6.31 Policy T2 Access to the Highway: Requires that proposals which involve the formation of a new 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.
- 6.32 Policy T3 Provision for Pedestrians: Requires developments to provide attractive and safe pedestrian access.
- 6.33 Policy T3 Cycle Facilities: Requires the provision for cycle facilities related to the site.

#### Development Plan approach to housing

- 6.34 The Local Plan at 5.2.22 considers the Local Plan requirement for housing and outlines, *‘the policy, therefore, is to boost housing provision well above trend requirements, whilst respecting the physical and environmental capacity of the area.’* It is however clear that Medway have failed severely to promote enough housing, let alone seeking to better it over and above minimum requirements. Historic housing figures were fully addressed within the housing report submitted as part of the application (CD XX), which concluded, *‘the rate of delivery since 1991 appears to have fallen below the requirement consistently’*. I comment further and in more detail on historic delivery in my evidence below.
- 6.35 In regards to planning for enough homes, it is clear that Medway have failed entirely to meet their housing strategy objectives outlined at 5.4.1 of the Local Plan (2003). There has been a failure to meet criterion I: *‘to make sufficient provision for housing to meet the requirements set out in the structure plan’*. Previous approaches within Medway have clearly not worked, and there is a pressing and immediate need now for a very significant boost to the supply of much needed housing, including affordable housing.
- 6.36 The Local Plan noted at 5.4.8 the need to identify greenfield sites outside the urban area to assist in meeting the housing requirements. However, this has not taken place and, as outlined above, supply has fallen significantly behind requirement consistently.
- 6.37 In addition to overall housing supply, the Local Plan noted the pressing need for affordable units at 5.5.5: *‘there are significant numbers of people who need homes but cannot afford to buy’*. However, as demonstrated within the Housing Report prepared by Rapleys (CD 5.12) Medway’s affordability issues are increasing and the annual supply has fallen significantly below that which is required.
- 6.38 It is clear that Medway’s housing approach within the adopted Local Plan has chronically failed, and is chronically failing. It has now reached a severe stage and requires immediate resolution. I discuss in more detail, over subsequent chapters, housing supply and its implications for this appeal.

#### NATIONAL PLANNING POLICY FRAMEWORK

- 6.39 The NPPF includes the presumption in favour of sustainable development. The presumption in favour of sustainable development applies with regard to the determination of this appeal.
- 6.40 NPPF paragraph 11 confirms that development proposals that accord with an up-to-date development plan should be approved without delay.
- 6.41 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:

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- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
    - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework, taken as a whole.
  - 6.42 In regards to housing applications, policies are deemed to be ‘out of date’ for the purposes of paragraph 11 where the LPA is unable to demonstrate a five years supply of deliverable housing sites or, where the HDT indicates that the delivery of housing has been substantially below (less than 75%) the housing requirement over the previous three years.
  - 6.43 The Local Planning Authority suggests that its five-year housing land supply figure is 3.27 years (APP/A2280/W/19/3240339). In the Appellant’s Housing report, submitted as part of the application, it was concluded that the Council could demonstrate 2.51 years.
  - 6.44 The LPA discloses a House Delivery Test (HDT) 2019 outcome of 46%, meaning a shortfall of 2,350 units over the three-year period (2016/17 - 2018/19).
  - 6.45 The Council apparently accepts that the “most important” policies for determining the application are deemed “out of date” for the purposes of paragraph 11(d) of NPPF 2019.
  - 6.46 In regards to paragraph 11(d)(i), footnote 6, on the Council’s own case, the only policies in the NPPF that protect areas or assets of particular importance which could provide a clear reason for refusing the development proposed are heritage assets.
  - 6.47 If, as is the case, this suggested clear reason is not established, given that most important policies for determining the appeal are out-of-date, in accordance with the NPPF para 11(d)(ii), planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against NPPF policies taken as a whole.
  - 6.48 Yet, even if this suggested clear reason is established (which is not considered to be the case), nonetheless, planning permission should still be granted on the basis of overall conformity with the development plan, or alternatively, on the basis that material considerations outweigh conflict with the development plan (if such conflict is found).
  - 6.49 Sections of the NPPF which are referred to within the Council’s reasons for refusal are paragraphs 109, 170, 175-176 and 193-196 (and footnotes 53 and 63) of the NPPF. These have been cited in support of the reasons for refusal.
  - 6.50 Sections relevant to the appeal but which do not form part of the reasons for refusal:
    - Sustainability objectives and their implementation: paragraphs 8, 9 and 10
    - Presumption in favour of sustainable development: paragraph 11
    - Delivering a sufficient supply of homes:
      - Paragraph 60
      - Paragraph 61
      - Paragraph 72
      - Paragraph 73
    - Building a strong, competitive economy: paragraph 83
    - Promoting Healthy Communities:
      - Paragraph 91
      - Paragraph 92
      - Paragraph 94
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- Paragraph 96
    - Paragraph 98
  - Promoting Sustainable Transport:
    - Paragraph 102
    - Paragraph 108
    - Paragraph 110
  - Annex 1: Implementation:
    - Paragraph 214
    - Paragraph 215



## PLANNING PRACTICE GUIDANCE (PPG)

### Decision making

- 6.51 The guidance states that the local planning authority may depart from the Development Plan policy if material considerations indicate that the plan should not be followed.

### Biodiversity

- 6.52 The PPG relating to the Natural Environment details the commitment in the NPPF that planning should recognise the intrinsic character and beauty of the countryside. In relation to biodiversity, any policy and decision-making should be seeking to increase biodiversity as part of wider Government and NPPF commitments. The guidance provides advice on how biodiversity should be taken into account in planning applications and mitigation in schemes that reduce biodiversity.
- 6.53 The PPG notes some instances where air quality is relevant to planning application considerations; these include European designated wildlife sites (Reference ID: 32-005-20140306).

### Design

- 6.54 The PPG contains various guidance paragraphs on design matters. It identifies that good quality design is an integral part of sustainable development (Reference ID:26-001-20140306). The PPG notes that development should seek to promote character in townscape and landscape by responding to and reinforcing locally distinctive patterns of development. It goes on to state that the opportunity for high quality hard and soft landscape design that helps to successfully integrate development into the wider environment, should be carefully considered from the outset (Reference ID:26-007-20140306).
- 6.55 The guidance also states that:
- Planning should promote a network of greenspaces and public places that are attractive, accessible, safe and uncluttered and work effectively for all users. A system of open and green spaces that respect natural features and are easily accessible can be a valuable local resource and helps create successful places. The benefit of greenspaces will be enhanced if they are integrated into a wider green network of walkways, cycleways, open spaces and natural and river corridors (Reference ID: 26-009-20140306).*
- Planning should promote an inclusive environment that can be accessed and used by everyone (Reference ID:26-011-20140306).*
- Planning should promote cohesive and vibrant neighbourhoods. The vitality of neighbourhoods is enhanced by creating variety, choice and a mix of uses to attract people to live, work and play in the same area. The guidance goes on to state that neighbourhoods should also cater for a range of demographic groups, especially families and older people (Reference ID:26-014-20140306).*
- 6.56 The guidance notes that a good mix of uses and tenures is important to making a place economically and socially successful, ensuring the community has easy access to facilities such as shops, schools, clinics, workplaces, parks and play areas (Reference ID:26-017-20140306).
- 6.57 The guidance states that the ability to move safely, conveniently and efficiently to and within a place will have a great influence on how successful it is (Reference ID:26-022- 201400306).

6.58 It notes that a well-designed place is successful and valued (Reference ID: 26-015- 20140306), exhibiting qualities that:

- Are functional
- Support mixed uses and tenures
- Include successful public spaces
- Are adaptable and resilient
- Have a distinctive character
- Are attractive
- Encourage ease of movement

6.59 The PPG considers the design issues for different types of development, noting that:

*Well designed housing should be functional, attractive and sustainable. It should also be adaptable. Affordable housing should be not distinguishable from the market housing and consideration should be given to the servicing of dwellings such as storage of bins and bicycles (Reference ID: 26-040-20140306).*

*Successful streets are where traffic and other activities have been integrated successfully, and where buildings and spaces, and the needs of people, not just of their vehicles, shape the area. Public transport, and in particular interchanges, should be designed as an integral part of the street layout. To encourage people to walk, the quality of the walking experience is important.*

#### Health and Wellbeing

6.60 The PPG provides advice on health and wellbeing and recognises the history between planning and health. The built and natural environments are major determinants of health and wellbeing and are supported by the three dimensions to sustainable development.

6.61 Development proposals should support strong, vibrant and healthy communities and help create healthy living environments which should include making physical activity easy to do and create places and spaces to meet to support community engagement and social capital (Reference ID:53-002-20140306).

#### Open Space and Recreation

6.62 The PPG states that open space should be taken into account in planning for new development. It notes that open space can provide health and recreation benefits to people living and working nearby, have an ecological value and contribute to green infrastructure, as well as being an important part of the landscape and the setting of built development, and an important component in achievement of sustainable development.

6.63 Public rights of way form an important component of sustainable transport links and should be protected or enhanced.

#### Housing Need

6.64 Housing need is an unconstrained assessment of the number of homes needed in an area. Assessing housing need is the first step in the process of deciding how many homes need to be planned for. It should be undertaken separately from assessing land availability,

establishing a housing requirement figure and preparing policies to address this such as site allocations (Reference ID:2a-001-20190220).

- 6.65 The NPPF expects strategic policy-making authorities to follow the standard method in this guidance for assessing local housing need.
- 6.66 The standard method uses a formula to identify the minimum number of homes expected to be planned for, in a way which addresses projected household growth and historic undersupply.
- 6.67 The standard method set out below identifies a minimum annual housing need figure. It does not produce a housing requirement figure (Reference ID: 2a-002-20190220).
- 6.68 The Government is rightly committed to ensuring that more homes are built and supports ambitious authorities who want to plan for growth, and to purposely provide for appropriate mechanisms for enabling delivery through planning policy. The standard method for assessing local housing need provides a minimum starting point in determining the number of homes needed in an area. It does not attempt to predict the impact that future government policies, changing economic circumstances or other factors might have on demographic behaviour. Therefore, there will be circumstances where it is appropriate to consider whether actual housing need is higher than the standard method indicates (Reference 2a-010-20190220).
- 6.69 The need to provide housing for older people is critical as the proportion of older people in the population is increasing. The NPPF defines older people for planning purposes, and recognises their diverse needs. They range from active people who are approaching retirement to the very frail elderly. The health and lifestyles of older people will differ greatly, as will their housing needs (ID:2a-017-20190220)

#### NON-NATIONAL GUIDANCE

- 6.70 Other relevant guidance is outlined within the general matters statement of common ground and includes:
- Medway Guide to Developer Contributions and Obligations (2018)
  - Medway Housing Design Standards (interim) - (November 2011)
  - Medway Landscape Character Assessment (2011)
  - The Kent Design Guide (2010)
  - Kent County Council Local Transport Plan (KCC LTP4)

#### EMERGING LOCAL PLAN

- 6.71 The Emerging Medway Local Plan is currently at a very early stage of preparation and may only attract very limited weight.
- 6.72 It has progressed through an Issues and Options stage in 2016, a Development Options stage in 2017, and a Development Strategy stage earlier in 2018. The Regulation 19 stage was scheduled for summer 2020 however, at the time of writing, the draft plan has not been issued for consultation.
- 6.73 In regards to prematurity, the grant of planning permission for the Appeal Proposals will in no way undermine the plan-making process. Firstly, the emerging local plan is still within its early stages, with regulation 19 consultation still yet to commence. Important evidence base documents remain to be published.

- 6.74 Criteria ‘a’ and ‘b’ of paragraph 49 of the NPPF do not apply. No objection is taken by the Council on grounds of prematurity.
- 6.75 Compounding the clear delay to the emerging local plan process, significant concerns arise in connection with Medway’s proposed housing solution in response to what have proven to be clear, historic plan failure to deliver a sufficient level of housing.
- 6.76 In April/May 2020 Medway consulted on the ‘Planning for growth’ consultation document, which was a high-level vision document which outlined the possibility of 12,000 new homes being providing on the Hoo Peninsula.
- 6.77 Following review of the consultation document, development on the Hoo Peninsula is clearly dependent on very significant infrastructure delivery and upgrading, which is primarily proposed to be funded by HIF. There must be serious doubt regarding the ability of the Council to use HIF money awarded within the timescale necessary. Further, if any one of the significant infrastructure projects, which were apparently once projected for completion by 2024, were not to come forward, then the level of development would also be severely impacted. The projected timeline for delivery is completely without evidence base and appears to be completely unrealistic.
- 6.78 Since the consultation document in spring 2020, there has not been any further public update from Medway on their HIF projects. It is understood that Medway remain in discussions with the Government regarding project management, budgets and legals. There remains no indication of EIA screening and scoping or planning applications being prepared or submitted for these significant infrastructure projects. As such, there is a continued absence of any detailed proposals in respect of the proposed infrastructure projects. From the scant information available, timescales have already significantly slipped in relation to project delivery. At a Cabinet meeting in August 2020, Medway confirmed that the Strategic Transport Assessment, a key aspect of the Local Plan evidence base would be delayed to December 2020 as discussions with Highways England have been ‘complex and lengthy’ and because of this, the regulation 19 consultation would also be delayed further. It is strongly evident that either no or very little reliance can be placed on any significant level of housing coming forward on the Hoo peninsula within even the medium term.
- 6.79 Moreover, following recent government clarification on the methodology for calculating housing numbers, it remains the case that the Council must delivery 28,300 homes between 2020 - 2031 (1662 per year).

#### OTHER RELEVANT GUIDANCE

- 6.80 Other relevant guidance which informs the determination of the appeal includes:
- a) Kent County Council Local Transport Plan 2016 - 2031 (KCC LTP4)
  - b) Medway Landscape Character Assessment (2011)
  - c) Medway Guide to Developer Contributions and Obligations (2018)
  - d) Air Quality Planning Guidance (2016)
  - e) Strategic Assessment Management and Mitigation Medway Council Interim Policy Statement (November

2015).

- f) Medway Housing Design Standards (interim) (November 2011)

### POLICY SUMMARY

- 6.81 Having regard to the provisions of paragraph 11(c) and (d) of the NPPF, it is necessary to establish whether the policies in the Development Plan which are most important for determining the application can be considered up-to-date.
- 6.82 In this regard, I firstly consider that policies included within the reasons for refusal would be the ‘most important’ (in the context of paragraph 11 of the NPPF) in the determination of this planning appeal. On this basis, I have addressed the weight to be attached to these policies below:
- 6.83 Policy BNE12 is consistent with the approach of national policy. This policy is up-to-date and should carry full weight.
- 6.84 Policy BNE18 (Setting of Listed Buildings) is inconsistent with the NPPF in providing for a strict restriction on development where it would ‘adversely affect the setting of a listed building’. Whilst the NPPF seeks to protect listed buildings, the policy is drafted in terms as to mean that any harm must be weighed against the public benefits of the proposal. The policy is out of date. It should attract only limited weight.
- 6.85 Policy BNE25 (Development in Countryside) permits only development in the countryside in given circumstances. This restricts housing delivery and is contrary to the NPPF in seeking the delivery of a sufficient supply of homes. As such, and considering Medway’s poor five year housing land supply and HDT results, the policy is out of date and should therefore in my view carry no weight in the case. This view is supported by the planning policy officer’s response dated 15/07/2019 (see appendix 5), which considered that the weight to be attached to this policy in assessing development sites in the countryside is modest, if any weight. The very limited weight to be given to this policy is similarly supported in past appeal decisions for development at:
- Land at Gibraltar Farm (APP/A2280/W/16/3143600) (paragraphs 11 and 46- 50) - CD4.1;
  - Land at Station Road (APP/A2280/W/15/3002877) (paragraphs 13 and 14) - CD4.2;
  - Land to the North of Brompton Farm Road (APP/A2280/W/18/3214163) (paragraphs 56 and 105) - CD4.3.
- 6.86 Policy BNE34 (Areas of Local Landscape Importance) restricts the delivery of sustainable housing development and the designated areas protected by Policy BNE34 are based on outdated evidence. The policy is considered to be out of date and therefore should carry limited weight. In the Gibraltar Farm appeal the Inspector gave Policy BNE34 limited weight. In an appeal relating to Land at Station Road (APP/A2280/W/15/3002877 and Ref MC/14/0285), the Inspector found that the weight to be afforded to policy BNE34 must be reduced in consequence of the inconsistency found with paragraph 113 of the then NPPF 2012 (paragraph 170 of the NPPF 2019).
- 6.87 Policy BNE35 (International and National Nature Conservation sites) - The Policy is consistent with the NPPF and as such is considered up-to-date and should be given full weight in the determination of this appeal.

- 6.88 Policy BNE48 (Agricultural Land) - The policy has not been saved and as such is not part of the Development Plan. That being said, the policy restricts housing delivery and as such, is not consistent with the NPPF. I consider this policy out of date and would carry no weight even if it had been saved.
- 6.89 Policy T1 (Impact of Development) is consistent with NPPF which seeks to appropriately assess and protect highways capacity and safety. The policy is considered up-to-date and should carry full weight.
- 6.90 Policy S6 (Planning Obligations) is consistent with national policy and guidance and is therefore considered up-to-date and should carry full weight.

## 7 THE PRINCIPLE OF DEVELOPMENT

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to determine planning applications in accordance with the Development Plan unless material planning considerations indicate otherwise.
- 7.2 The Government makes clear that the purpose of the plan-led system is to 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. The National Planning Policy Framework (NPPF) advises that the provisions and policies of the NPPF must be taken into account in preparing the Development Plan and are material considerations in the taking of planning decisions. At the heart of the Framework is a presumption in favour of sustainable development.
- 7.3 The NPPF states that policies in local plans should be reviewed at least once every five years to assess whether they need updating, and then should be updated as necessary. Reviews should be completed no later than five years from the adoption of a plan and should consider changing circumstances affecting the area. In providing guidance on what constitutes a 'sound' plan paragraph 35 states that Plans should be 'Justified' - providing a strategy which, as a minimum, seeks to meet the area's objectively assessed housing needs; and also 'Effective' - being able to deliver the components of the Plan strategy during the allotted period. Only by being both justified and effective, in addition to being prepared positively and being consistent with up-to-date national policy, can a plan legitimately discharge the requirement set by the Act and explained by the Framework, for planning to be 'genuinely plan-led'.
- 7.4 The development plan for Medway, the Medway Plan 2003, was adopted in May 2003 and contains policies and strategic objectives applying to the period 1996-2006. Policies within the Plan were saved via a 2007 Direction pending their replacement. The letter from the SoS outlined: *'the exercise of extending saved policies is not an opportunity to delay DPD preparation.'* and *'Policies have been extended in the expectation that they will be replaced promptly and by fewer policies in DPDs.'*
- 7.5 Thirteen years on from that Direction the Planning Authority is yet to adopt a replacement Local Plan containing an up-to-date development strategy to address current sustainable development requirements, not least the delivery of housing to meet local needs.
- 7.6 It is self-evident from the above that the development strategy and defining objectives of the adopted development plan are out-of-date for the purposes of the determination of this appeal. The plan period to which they relate has long since passed. The policy framework within which the adopted plan was prepared, provided by the County Structure Plan and Regional planning Guidance has also long-since been replaced.
- 7.7 It is also the case that policies most important in the determination of this Appeal are out of date because the Local Planning Authority is unable to demonstrate a five-year supply of housing land. There are additionally instances of policies which are inconsistent with the policies set out within the NPPF.
- 7.8 In consequence, paragraph 11(d) of the NPPF is engaged (see para 4.19 of Officer Report). In such cases paragraph 11(d) states that planning permission should be granted unless, either:
- i. the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 7.9 Criterion (i) is subject to footnote 6, which defines what the areas or assets of particular importance are. Relevant to this appeal are:
- a) Habitats sites and/or sites designated as SSSI (including those identified at para.176);  
and
  - b) Designated heritage assets;
- 7.10 In evaluating the merits of the proposals, the Local Planning Authority determined that impacts arising in respect of criteria (a) and (b), in respect of paragraph 11 d (i) of the NPPF, justified refusing the application. Notwithstanding this, the Officer's report concluded that 'cumulative harm' arising from the development would significantly and demonstrably outweigh any benefits, such that planning permission should not be granted were the tilted balance to be engaged.
- 7.11 I do not agree with this assessment and will demonstrate through my evidence below, and with reference to the evidence of Mr Goodwin and Ms Stoten that the alleged impacts arising from the proposals in respect of (a) and (b) above do not provide any (necessary) '*clear reason(s) for refusing the development*' as required by 11 d (i), when an appropriate impact-benefits analysis is undertaken.



## 8 HOUSING LAND SUPPLY AND DELIVERY

- 8.1 The lives of a huge number of people in all areas of the country are negatively impacted by an inability to access homes suitable to meet their housing needs. National policy in recent years has placed an emphasis upon increasing housing supply, improving affordability and widening housing choice.
- 8.2 The Government’s 2020 White Paper “*Planning for the Future*” confirms that adopted Local Plans, where they are in place, provide for 187,000 homes per year across England and remarks that this is not just significantly below governments ambition for 300,000 new homes annually, but also lower than the number of homes delivered last year (over 241,000).
- 8.3 Further, in support of the Government objective to significantly boost the supply of housing the NPPF requires local planning authorities to identify and update annually a supply of specific, deliverable sites sufficient to provide a minimum of five years’ worth of housing against their adopted housing requirement, or against local housing need where such policies are more than five years old. A five-year supply should be supplemented by a buffer of 5%, unless there has been significant under delivery of housing over the previous three years against the housing delivery test, in which case a 20% buffer should be applied.
- 8.4 It is common ground that the Council is required to assess its housing land supply obligations using the local housing need figure generated by application of the standard methodology because the adopted housing requirement is more than five years old. Under such circumstances it is important to acknowledge that local housing need assessed using the standard methodology identifies only a minimum number of homes that the Government expects should be planned for annually; it does not establish an annual housing requirement for a local authority area as this can be established only through the plan-making process.
- 8.5 It is necessary when considering the weight to be attached to the housing land supply position within Medway to recognise that the five-year supply figure is by any measure an absolute minimum figure to be achieved in the context of the Government’s ambition to significantly boost the supply of new homes. In this context demonstrating a five-year supply of housing land is not confirmation of success, it is merely the entry point for evaluating the extent to which a local planning authority is properly discharging its function. Failure to provide a schedule of specific, deliverable housing sites to meet this obligation represents a consideration of significant weight when assessing planning applications for residential development.
- 8.6 The Council does not provide an assessment its of five-year housing land supply position within the latest available Annual Monitoring Report (December 2020). The report notes that the latest housing completions data for the monitoring year shows 1,130 completions against an annual minimum housing need figure (not a ‘requirement’) of 1,662 dwellings. Instead it provides data relating to allocations, small sites, and windfall assumptions, which it transposes into an assumed trajectory of supply over the ensuing five-year period. This provides the housing trajectory set out below:

Table 1:

Year	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24
Dwellings	647*	1,130	1,306	2,168	2,307	2,154

\*completions

8.7 There is no adequate assessment of deliverability applied to the trajectory, which renders the figures academic and of limited value when assessing the extent to which the local planning authority is addressing its chronic housing supply problems. The NPPF confirms, to be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. Sites within Section 8 ‘Residential pipeline’ include sites earmarked within the December 2019 SLAA and there is no evidence or justification that a planning application is being prepared or possibly that one will be brought forward in time to contribute any housing let alone some sites contributing 200+ units in the next 5 years. Of the 3,558 earmarked within this pipeline in the next 5 years, only 29 units are currently at application stage. The remainder are historic allocations or sites earmarked with the SLAA 2019.

8.8 The above uncertainty regarding the deliverability of sites included within Medway’s five year assessment was outlined within the housing report submitted as part of the application, at the end of section 8 Rapleys concluded that when deliverability was properly considered, the supply falls from 2.51 to 1.78 years.

8.9 Additionally, it is also telling to refer to the record of actual housing delivery drawn from a previous year’s monitoring report (December 2018), reproduced below:

**Table 2:**

Year	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
<b>Completions</b>	565	579	483	553	642	680

8.10 The completions data shows that for the eight monitoring years for which data is provided above (2012/13-2019/20) the authority delivered an average of 660 dwellings per annum over this period. This average completion figure is somewhat off the outdated Local Plan (2003) target of 866dpa and substantially behind the current requirement of 1,662dpa.

8.11 Medway’s historic shortfall over the last five years is also illustrated when looking back to what was anticipated at the start of this period. Within the December 2015 AMR Medway forecasted 5,587 dwellings would be provided between 2015/16 - 2019/20. When in reality, 3,652 dwellings were built thus representing a shortfall of 1,935 over the past 5 year period.

8.12 Similarly, previous appeal decisions illustrate a similar story;

- June 2017 - Council agreed a range 2.21 - 2.79 years - Ref: APP/A2280/W/16/3143600 Gibraltar Farm
- June 2019 - council 3.08 years / Appellant 2.26 years - Ref: APP/A2280/W/18/3214163 Land to the North of Brompton Farm Road
- July 2020 - agreed at 3.27 (albeit the Appellant did not undertake their own analysis) - Ref: APP/A2280/W/19/3240339 - Land at Orchard Kennels

8.13 Circumstances have not changed materially with regard to the local planning policy framework. There is still not an up-to-date local plan and there is no immediate prospect of one being adopted. Consequently, it is difficult to assign any credibility to the proposed housing trajectory. Indeed, if the local planning authority was confident in the data it would presumably have assessed the deliverability of the sites included within the trajectory and articulated the position clearly in respect of five-year housing land supply.

- 8.14 I provided a thorough assessment of the position in respect of housing land supply in Medway in May 2019 (Our Ref: HJOA/18-01307 CD). This concluded that the land supply position at the time the planning application was submitted was between 1.78 and 2.51 years. This assessment has at no point been challenged by the Council.
- 8.15 The Council has published two Housing Delivery Test Action Plans (HDTAP), the necessity for each arising as a consequence of the Council's failure to achieve the delivery threshold of 95% of the annual local housing need figure.
- a. The first HDTAP was prepared against a Housing Delivery Test (HDT) result published in February 2019 of 47% against the minimum defined level of housing need. The second HDT (2020) showed that in spite of preparing the first action plan performance had further declined to a level of 46% against the minimum requirement. The poor results require the Council to apply a buffer of 20% to any five-year housing land supply calculation because the level of delivery is below 85%.
  - b. Reference to the Government's published data for all local authority returns against the HDT show that of the 325 authorities for whom results were published there were only eight that performed worse than Medway, with six of those authorities being subject to an automatic presumption in favour of sustainable development (those falling below the 45% threshold). What is clear from these results is that Medway Council's housing delivery performance over the last two assessment periods when the HDT has applied, is shown to be chronically poor, and places it in the bottom 3% of 325 local authorities assessed against their housing delivery obligations. It will also be appreciated that the performance is measured against an absolute minimum figure, rather than an adopted Local Plan housing requirement, which strongly suggests that radical resolution is urgently necessary.
  - c. In the absence of a five year housing land supply calculation provided by the Council within the latest AMR, or any other dedicated publication, I refer to the Officer's report on the application which recognises that the Council is unable to demonstrate a five year supply (paragraph 4.15 - 4.19). There is a calculation of the assumed supply based on data taken from the 2019 monitoring report, which suggests there is a supply of 3.35 years against the annual requirement, with the addition of a 20% buffer as required by the HDT results. However, there is no analysis of deliverability having regard to the appropriate tests, which places the figure in question, and there is a further recognition in the report that the figure has not been calculated specifically for the purposes of assessing the merits of the application. Notwithstanding this, the report accepts (as a minimum) that the scale of the shortfall is 'significant'.
  - d. The most recent appeal decision addressing the housing land supply position within Medway was issued on 30 July 2020. At the appeal the Council stated that it was able to show a five-year land supply of only 3.27 years, a position that was not disputed by the appellant.
  - e. My evidence to this Appeal is that the size of the Council's housing land supply shortfall is very substantial. The Council accepts that it is significant. The likelihood is that the Council is able to show a supply falling somewhere between 1.78 years and 2.51 years, which demonstrates that it is chronically

failing to provide the bare minimum level of housing required and is one of the worst performing authorities in the country in this regard.

#### HOUSING DELIVERY TEST ACTION PLAN

- 8.16 The Council has prepared two Action Plans as a consequence of the HDT results, the latest of which was published in August 2020. It is a long, descriptive document that provides much explanatory context, but little in the way of radical active steps to address the chronic housing supply shortfall, above and beyond those that would otherwise be expected from a local planning authority.
- 8.17 The Key Action that is proposed is the preparation of the Local Plan, which is the obvious and principal action, but is a basic necessity for any plan-led system of development management. The Council also makes repeated reference to the securing of HIF funding to support transport infrastructure improvements on the Hoo Peninsula, which will potentially unlock development opportunities in this part of the Council area. However, the funding itself does not guarantee housing delivery, or expedite measures that will address the long-established housing shortfall. Further, any solution associated with the HIF bid is reliant on the adoption of a new Local Plan.
- 8.18 The Officer's report asserts also (paragraph 4.26 - 4.27) that positive steps are being taken through the approval of unallocated sites and green field sites that have helped to boost housing supply. However, these sites have not resolved the chronic shortfall, and in fact form part of the claimed supply that extends only to support the 3.27-year figure that Council proffered at the Orchard Kennels appeal referred to above.
- 8.19 In recommending refusal of the application, the Officer advised that the emerging Local Plan would follow a timetable that would see the draft Local Plan being examined in January 2021 and adopted in December 2021. The report recognises that there are unresolved objections to the Local Plan, and evidently since this report the Local Plan has not been submitted to the Secretary of State, let alone a date for examination fixed. As a consequence, at this stage only very limited weight may be assigned to the Local Plan in decision-making terms.
- 8.20 Since the report was compiled the Council has updated its Local Development Scheme (August 2020), which now advises that the programme for preparation of the Local Plan has been delayed, compared to that which had been assumed at the time the application was assessed. The Regulation 19 pre-submission consultation is now not scheduled to take place until spring 2021, with submission of the Plan for examination not expected until December 2021, and thereafter adoption in December 2022. As confirmed above within section 7, at the Cabinet meeting in August 2020, Medway confirmed that the Strategic Transport Assessment would be delayed to December 2020 and because of this, the regulation 19 consultation would also be delayed further. These dates therefore should be treated with a degree of scepticism given the Council's record on bringing forward a new Local Plan to replace the current version, which was adopted in 2003 and continues to have force only as a result of a 2007 saving direction.

#### HOUSING SUPPLY AND DELIVERY SUMMARY

- 8.21 There is no dispute between the parties at this Appeal regarding the Council's failure to demonstrate a five-year supply of housing land. The shortfall is chronic and substantial and despite preparation of Action Plans to address the extremely poor delivery of housing within Medway there has been only limited uplifted in performance and even that is well below the annual requirement.

8.22 Following recent government clarification on the methodology for calculating housing numbers it remains the case that the Council must delivery 28,300 homes between 2020 - 2031 (1662 per year).

#### **AFFORDABLE HOUSING**

8.23 The provision of affordable housing as a material consideration in the determination of planning applications is of central importance within national policy and guidance and its importance is only increasing. The recent NPPF (2020) at para 64 sets a minimum 10% target for all major developments albeit, this is often surpassed by Local Plan targets.

8.24 National policy is clear that to determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment and, within this context housing needs of different groups should be assessed and reflected in policy.

8.25 It is therefore explicit within national planning policy that local authorities should seek to meet the full objectively assessed affordable housing need in addition to the need for market housing and this should be reflected within the annual update of a five year supply of 'deliverable sites'.

8.26 The provision of affordable housing can prove a compelling material consideration is confirmed within numerous appeal decisions and it is clear that, where there is demonstrated to be an increasing and acute need for it, it remains the position that the provision of affordable housing is considered to be a significant benefit in favour of development proposals.

8.27 Affordable Housing need and supply within Medway was addressed within chapters 10 - 14 of the Report on Housing submitted as part of the application (CD 5.12). In short, based on calculations of affordable housing need within Medway, it is clear that there is pressing need to radically increase the rate of delivery within the area. Against the number of affordable units completed over the period 2012-2017, the number of households added to waiting lists represents 637% of the rate of delivery.

8.28 The submitted housing report (CD 5.12) calculated a gross backlog need for over 5000 affordable homes across (2012 - 2017), the delivery of additional affordable housing on sites such as the Appeal Site is therefore crucial in assisting the Council with addressing the housing needs of the most vulnerable households in the area as quickly as possible.

8.29 Given the constraints to affordable housing delivery in Medway, unless the supply of affordable housing is increased significantly in the next 5 years the Council will make little headway on reducing the backlog of current affordable housing need despite the NPPF focus on significantly boosting market and affordable housing supply and tackling persistent, chronic undersupply.

8.30 The Appeal Site is capable of meeting the Council's current target of 25% affordable housing on major schemes. When this is calculated against the five-year average of affordable housing (181dpa), the deliverability of 312 affordable homes on the Appeal Site clearly achieves very high significance.

8.31 My evidence now turns to consider the individual reasons for refusal offered by the Council, where these fall within my remit.

## 9 THE REASONS FOR REFUSAL

### IMPACT ON SPECIAL PROJECTED AREAS (REASON 1)

- 9.1 The Council's first reason for refusal relates to the potential impact of the proposals on the Medway Estuary and Marshes SSSI/SPA/Ramsar site:

*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 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 mitigation also results in non-compliance with policies S6 and BNE35 of the Local Plan and NPPF paragraphs 175 and 176.*

- 9.2 The Council does not allege any conflict with the provisions of paragraph 177 of the NPPF within its reason for refusal and therefore does not consider that the presumption in favour of sustainable development is dis-applied as a consequence of the potential for a significant effect on the Medway Estuary & Marshes (MEM) habitats site to occur. The allegations of harm are raised with regard to the provisions of paragraph 175, which apply the following principles to decision-making:

- 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.*
- b) *Development on land within or outside a SSSI, and which is likely to have an adverse impact on it (individually, or in combination), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the network of SSSI.*
- c) *Development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland/ancient or veteran trees) should be refused, unless there are wholly exceptional reasons, and a suitable compensation strategy exists; and*
- 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 net gains for biodiversity.*

- 9.3 A detailed statement addressing this issue has been prepared by Tim Goodwin and is contained in my appendix 5. As explained in paragraph 2.2 of the document, it has been produced to ensure the Competent Authority has all the necessary information before them to conduct their duties in assessing the application in line with The Conservation of Habitats and Species Regulation 2017. The statement is a comprehensive and technical document, and I don't seek to repeat it here. I highlight key points below.

- 9.4 Natural England initially raised concerns regarding the management/disposal of surface water run-off from the development and the potential for harm to the MEM habitats site as a consequence of contaminated run-off entering the River Medway. However, the provision of

further information in February 2020 relating to this issue allowed Natural England to confirm that the proposed drainage strategy (outlined in the SUDS Addendum) would avoid any requirement for surface water discharge from the new development to either surface water drains or watercourses which lead into the River Medway. Consequently, they were satisfied that there would be no direct hydrological link between the proposed development and the MEM habitats site and therefore no direct harm would arise either by way of development taking place within, or adjacent to the MEM habitats site. No requirement for a mitigation strategy arises in this regard. See Tim Goodwin document Para 5.3 -7/9.

- 9.5 With regard to indirect impacts that may cause harm to the integrity of the habitats site Natural England raised concerns relating to the potential for increased recreational pressure to arise, on the grounds of the scale of the development and its proximity to the Estuary. This is not an unusual circumstance within Medway given the extent of the designation that affects the district. The consistent position of Natural England is that bespoke mitigation measures in combination with financial contributions towards the Strategic Access Management and Monitoring Strategy (implemented by BirdWise North Kent) are required to ensure that developments do not result in adverse impacts on the integrity of the European site.
- 9.6 As a result of ongoing discussions with Natural England a mitigation strategy has been agreed which will include the provision of areas of high quality, semi-natural greenspace within easy walking distance of the proposed dwellings to encourage future residents to use this space regularly in preference to the coastal sites close by; and the provision of wardens whose role would be focussed on raising awareness and encouraging positive recreational behaviours that avoid disturbance of the designated sites most likely to be visited by residents. An enhanced contribution to North Kent SAMMS has also been agreed. See para 5.5 of Tim Goodwin document
- 9.7 The terms of the mitigation strategy will be secured through the provisions of a S106 agreement that will be presented to the Inquiry. Having agreed the mitigation strategy and the terms for its implementation any objections arising with regard to criteria (a) and (b) of paragraph 175 of the NPPF will be withdrawn. There are no allegations of harm arising under criterion (c) and the development offers potential for biodiversity enhancements to be incorporated into the detailed design of the landscape framework for the site, as proposed under criterion (d).
- 9.8 As such, and considering there is no harm, footnote 6a within criterion i of NPPF 11d does not apply and as such, there is no clear reason for refusing the development on this basis.
- 9.9 By securing an effective mitigation strategy to address potential indirect impacts arising from the development the Appeal proposals would avoid any harm to the habitats site and therefore no assessment of overriding public interest needs to be carried out. The proposals are therefore supported by Local Policy BNE35 and the NPPF chapter 12.
- 9.10 Taking into account all 3 elements outlined in para 9.6 above no significant effects are likely to arise and one can be certain beyond reasonable scientific doubt that the Appeal proposals are not likely to lead to a significant affect upon the integrity of International/ European designated sites as a result of an increase in recreational pressure either alone or in combination.

#### HERITAGE (REASON 2)

- 9.11 The second reason for refusal concerns the impact on designated and non-designated heritage assets:

*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 - GII*
- *Pump Farmhouse - GII*
- *Chapel House - GII*
- *497-501 Rainham Road - GII*
- *The Old House - GII*
- *Bloors Place - GII\**
- *Outbuildings including cart lodge and granary west of Bloors Place - GII*
- *Garden walls (south and east) Bloors Place - GII*

*Conservations areas:*

- *Lower Twydall*
- *Lower Rainham*

*And*

- *The Local Historic Landscape*

*Applying great weight to the conservation of designated heritage assets (NPPF 193 and S.66(1) of LBCA Act 1990), the proposal is contrary to Local Plan policies BNE12 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 NPPF paragraph 196).*

9.12 As outlined within Ms Stoten's evidence, the Council's case has now expanded as to assert that the following are individual heritage assets, and further, that these may be affected:

- Oasts south of Bloors Farm
- N-S landscape character sequence (river-suburban residential)
- Historic routes (Pump Lane and bridleway)
- Intangible qualities of setting (tranquillity, historic relationship between places, seasonal activity and night-time darkness)

9.13 The allegations of harm raised under the second reason for refusal all concern the potential for harm to occur within the setting of designated assets; there is no claim of harm arising as a consequence of any direct impact on the designated heritage assets themselves.

9.14 To address the reason for refusal in respect of heritage matters, Ms Stoten has undertaken an assessment of factors that contribute to the significance of the identified designated heritage assets within the vicinity of the Appeal Site and the extent to which the Appeal Proposals would affect their settings. Her evidence considers whether the proposed development of the Appeal Site would exert any effect on the significance of the assets in question.

9.15 Ms Stoten concludes that there will be no direct physical impact on any designated heritage asset as a result of the Appeal Proposals. As a consequence, any potential negative effects



on heritage significance would arise only as a result of changes occurring within the setting of the heritage assets, and only then where the setting of the heritage asset contributes to the significance of the asset. In reaching these conclusions Ms Stoten highlights that the setting of a heritage asset is not an asset in itself; its importance lies only insofar as it makes a contribution to the significance of a heritage asset and that this contribution may be positive, negative or neutral.

9.16 Having regard to the relevant Historic England Guidance, and in conformity with the NPPF and PPG, Ms Stoten concludes that the Appeal Proposals would result in the following impacts:

**Table 3:**

Designated Heritage Asset	Category	Impact	Scale of Impact
York Farmhouse	G II	No harm	NA
Pump Farmhouse	G II	Less than substantial	Low
Chapel House	G II	Less than substantial	Low
497-501 Rainham Road	G II	No harm	NA
The Old House	G II	No harm	NA
Bloors Place	G II*	Less than substantial	Very low
Outbuildings west of Bloors Place including - cart lodge and granary	G II	No harm	NA
Garden walls (south and east) Bloors Place	G II	No harm	NA
Lower Twydall	CA	Less than substantial	Very low
Lower Rainham	CA	Less than substantial	Very Low
Bloor Oats	NDHA*	Very minor harm	Very Low
Historic Landscape	Not considered to be a heritage asset.	The development of the landscape has been considered as part of the evaluation of setting of assets.	

\*Non-designated heritage asset

9.17 I am fully cognisant of the statutory obligation set out within section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires decision-makers to have special regard to the desirability of preserving the setting of a listed building in considering whether to grant planning permission, and to the ruling in the Barnwell decision, which requires considerable importance and weight to be given to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise. These duties are clarified

further by the Forge Field ruling<sup>1</sup>, which notes that there is a strong presumption against granting planning permission for any development which would fail to preserve the setting of a listed building, or the character and appearance of a conservation area. I approach my assessment of the second reason for refusal and the subsequent balancing exercise from this starting point, recognising that in circumstances where less than substantial harm arises to the setting of a listed building at the low end of the scale this still requires the strong presumption against granting planning permission to be applied when assessing the planning balance exercise. I am also mindful of the requirement set out at paragraph 193 of the NPPF that requires the weight to be assigned to increase having regard to the importance of the asset under consideration.

9.18 With regard to the foregoing Ms Stoten’s evidence concludes that there would be less than substantial harm at the low end of the scale to the setting of Pump Farmhouse and Chapel House, both listed at Grade II; and less than substantial harm at the low and very low end of the scale to the setting of the Lower Twydall and Lower Rainham conservation areas. In addition, there would be less than substantial harm at the very low end of the scale to the setting of Bloors Place, which is listed at Grade II\*. I assign great weight to these considerations in undertaking the balancing exercise.

9.19 Having established the starting position with regard to the impact of the Appeal proposals on designated heritage assets I acknowledge the provisions of the Framework, set out at paragraph 196, which direct that in cases where less than substantial harm arises that harm must be weighed against the public benefits that would arise from implementation of the development proposed. For planning permission to be granted the benefits arising from the development must outweigh the strong presumption against development that would cause harm to the significance of the heritage asset(s) in question.

9.20 I am mindful, also of the provisions of paragraph 11d(i), footnote 6 in the context of this appeal, which require an evaluation of harm to designated assets to be carried out in accordance with paragraph 196 of the NPPF, to determine whether the ‘tilted balance’ under paragraph 11 d (ii) of the NPPF is engaged.

9.21 I set out the assignation of weight in the tables below:

**Table 4:**

Designated Heritage Asset	Category	Impact	Scale of Impact
Bloors Place	G II*	Less than substantial	Very low
Chapel House	G II	Less than substantial	Low
Pump Farmhouse	G II	Less than substantial	Low

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<sup>1</sup> R. (on the application of The Forge Field Society [2014] EWHC 1895 (Admin).

Lower Twydall	CA	Less than substantial	Very low
Lower Rainham	CA	Less than substantial	Low

9.22

NPPF para 193 requires the impact of a development on the significance of a heritage asset to be assessed and that great weight should be given to its conservation. In this case it is the setting not the assets themselves which are affected. In all cases the scale of impact is low or very low within the less than substantial rating. In terms of Bloor Place, which is the most important asset and greater weight needs to be given to its conservation, the impact is very low. Therefore, whilst the principal of conservation of the heritage asset must be given great weight, the very minimal harm individually and collectively to their setting and as a result of their conservation in my view should only attract moderate weight. Even if I am wrong and the harm should attract great weight, this must be balanced against the proposal's public benefits

Public Interest Benefit	Weight Assigned
The Proposed Development for up to 1,250 units will strongly contribute to addressing the shortfall and remedying historic under delivery	Great
Delivery of much needed affordable housing	Great
The creation of the new settlement will contribute to employment provision primarily through construction jobs. It should be remembered that this is scheme will be phased over circa 10 years and will therefore provide jobs over a considerable period of time for a range of trades and occupations, including opportunities for training and skills development. This amount of employment is not insignificant.	Great
The release of Bloors Farm and Pump Farm for other purposes will generate additional funds that will enable AC Goatham and Sons to continue to meaningfully invest in farms that produce a materially higher fruit yield.	Great
The development would significantly open up the access to the Site and improve both pedestrian and vehicular connectivity and movement through the Site and onto the surrounding transport network.	Moderate
The Proposed Development will generally bolster the level and diversity of habitat, with a buffer zone around the Appeal Site and landscaping between the individual development plots to create connected habitats, allowing for an improved network for animal movement through the Appeal Site.	Moderate
New housing creates new residents, who contribute to the local economy through local expenditure. The creation of a new village settlement of 1250 new homes will contribute a significant amount of revenue into the local economy, supporting shops and local businesses, thereby indirectly supporting the function of Medway's existing centres	Moderate

Residential development of this size provides other revenue streams which contribute to public finances. For local authorities there are two principal sources: Council Tax; and New Homes Bonus.	Moderate
Much improved pedestrian and cycle networks promoting sustainable travel and enhancing local connections through the site and surrounding area.	Moderate
There are clear economic benefits of improved transport infrastructure however, additionally it also meets the other two objectives underscoring sustainable development: social (from increased connectivity between communities), and environmental (from improved public transport reducing the collective carbon footprint of settlements).	Moderate
The existing orchard is a commercial farm which is heavily sprayed and in terms of ecology and biodiversity is not an important habitat. It is the hedgerows around the periphery of the site that are considered capable of being beneficial for the species identified. The proposals bolster the amount and diversity of habitat, with a buffer zone around the site and landscaping between the individual development plots to create a connected habitats	Moderate
Improved public transport links create jobs for those operating within the sector directly, and increase the accessibility of employment opportunities for local residents without alternative means of transport.	Moderate
Although not formal employment uses the school and the care homes together with the village facilities all provide a range of employment provision including skilled and non -skilled roles. The provision of 1250 new homes will also attract a range of informal roles such as tradesman, gardeners, cleaners etc. which holistically all contribute to the local economy.	Moderate
The core of the new development is the 'village heart' incorporating a village green and village centre with the commensurate level of facilities including retail to support the function of the settlement. Alongside the provision of recreational and open space and the school all will help create a vibrant community 'feel'.	Limited
In providing construction employment opportunities, housebuilding does not merely support jobs, but also provides the means by which young, lower skilled workers can undertake apprenticeships and training. This improves the employability of the local workforce, and has a positive effect on the local economy.	Limited
The addition of swales as part of the SuDs package provides further habitat improvements.	Limited

- 9.23 In weighing these effects, and mindful of the statutory duty under section 66, it is my view that the substantial public benefits that would arise if the Appeal Proposals are allowed attract great weight when taken as a whole. The general needs and affordable housing delivery record of the Council places it amongst the worst performing local authorities in the country; in the context of a national housing crisis that has long-prevailed, the resolution of which is one of this Government's policy priorities, requires the decision-maker to give primacy in terms of the weight to be assigned in the balancing exercise to housing delivery at this appeal. This along with the substantial other benefits which carry great and moderate weight strongly support the grant of planning permission.
- 9.24 In the context of paragraph 11(d), footnote 6 and paragraph 196 of the NPPF, I am content that the weight to be assigned to the public benefits that would arise from the Appeal Proposals outweigh the weight given to the less than substantial harm that would arise from changes to the setting of the designated heritage assets. Consequently, I find that there are no specific heritage policies within the NPPF that indicate that development of the Appeal Site should be restricted. I therefore find that the Appeal Proposals should be determined in accordance with the 'tilted-balance' assessment under paragraph 11(d)(ii) of the NPPF.
- 9.25 The Appeal Proposals are therefore in accordance with relevant policy protecting heritage assets including Local Plan Policy BNE12 and national policy chapter 16. As confirmed above, within planning policy, Local Plan Policy BNE18 'listed buildings' is not consistent with national policy and therefore should be considered out of date, the weight to be attached therefore in my opinion is limited.
- 9.26 Notwithstanding the above, even if the Appellant's assessment of harm was rejected and a more severe assessment of harm was considered i.e. less than substantial on additional heritage assets (which is clearly not the case), I am still of the opinion that the important and varied benefits are not significantly and demonstrably outweighed by possible impacts which would provide a clear reason for refusing the development.

### LANDSCAPE (REASON 3)

- 9.27 The Council refused the Appeal Proposals having regard to impacts on the landscape:
- 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 170.*
- 9.28 There is common ground between the parties at this appeal that the Appeal Site is located within an Area of Local Landscape Importance (ALLI) defined under Policy BNE34 of the adopted local plan. The policy was adopted in 2003.
- 9.29 The designation of these areas is based generically on their potential to *enhance local amenity, and environmental quality, providing an attractive setting to the urban area and surrounding villages*<sup>2</sup>. Some of the areas so identified are assigned particular importance by the abolished Thames Gateway Planning Framework (RPG9a) because of their characteristics

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<sup>2</sup> Medway Local Plan 2003 - paragraph 3.4.104

as green hillsides, or backdrops to the urban area. The Appeal site displays neither of these characteristics.

9.30 ALLI are considered to be important as:

- i. Green lungs/buffers to maintain the individual identity of neighbourhoods/communities;
- ii. Green corridors for the community to reach the wider countryside;
- iii. Edge/fringe land requiring protection from urban sprawl; and
- iv. As habitats and wildlife corridors for wildlife from the wider countryside to reach the urban environment.

9.31 They also exhibit landscape characteristics that contribute to the justification for their designation, with differing characteristics applying to each sub-area under the policy. The Appeal site lies within the Gillingham Riverside ALLI. This sub-area is described as follows:

*Location and character: Rural landscape of orchards and arable fields with country lanes. Situated to the north of Rainham and Twydall, adjacent to the River Medway. Medway Towns Northern Relief Road forms the western boundary.*

9.32 *Function: Forms an important green buffer separating the built-up areas of Twydall and Rainham from areas of international importance for nature conservation and recreation along the Medway estuary. Enhances the setting of the Medway Towns Northern Ring Road on the western boundary and allows attractive views from the river and railway. Provides residents within an extensive urban area with access to an attractive, rural landscape. Provides an attractive setting to the Lower Rainham and Lower Twydall conservation areas. Contains a number of orchards, mature hedgerows and farm groups complementing and contributing to the Riverside Country Park. Forms a green backdrop when viewed from the Medway Estuary.*

9.33 The 2011 Medway Landscape Character Assessment places the Appeal Site within a wider area of farmland extending from Otterham Quay in the east to Yokosuka Way to the west, to the north of which are the Riverside Marshes (Area 5), and to the south the urban edge of Twydall and Rainham. The area within which the Appeal Site is situated is known as Lower Rainham Farmland (Area 21)<sup>3</sup> and is classified as Urban Fringe (Type T2), with urban/industrial influences (sub-type T2b). It is characterised as an area of flat, small to medium scale mixed farmland comprising orchards, arable and rough grazing. There are neglected pockets of land; the busy road (B2004 Lower Rainham Road) gives it a transitional urban fringe character, with a gradual trend towards suburbanisation in some local areas. It is characterised as being tranquil in many parts in spite of the road and railway to the south.

9.34 It is described as having poor accessibility to the urban area, both east to west and north to south and development to the north of Otterham Quay Lane (in the eastern section of Area 21) has diminished the coherence of the landscape area. Urban influences to the east beyond Rainham, comprising the Upchurch River Valley Golf Course, railway line, industrial estate, and landfill site with vents are described as being particularly detracting in terms of

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<sup>3</sup> Medway Landscape Character Assessment - 2011, pp.68-69

landscape character. The condition of the Area is described as *moderate*, with moderate sensitivity.

- 9.35 The general assessment acknowledges that there is considerable variation in the condition of the character area, with some pockets in serious decline, while others are well-managed and cared for. The area between Lower Rainham and Lower Twydall is generally considered to be in good condition with less urban influence. Areas to the east are in contrast in poorer condition and are subject to stronger urban fringe influences that detract from the rural character.
- 9.36 The Landscape Character Assessment provides a more recent and detailed evaluation of the merits of the ALLI than that which accompanies Policy BNE34; it should therefore inform any assessment of the merits of the Appeal Scheme.
- 9.37 I am familiar with recent appeal decisions (APP/A2280/W/16/3143600 and APP/A2280/W/15/3002877) that consider the degree of consistency of Policy BNE34 with paragraph 170 the NPPF and its classification as a ‘valued landscape’ in this context. I do not seek in my evidence to depart from the view of the Inspectors in these cases and therefore give consideration to the extent to which the Appeal Scheme would contribute to/compromise achieving the criteria outlined within the policy, insofar as these remain relevant to an assessment of the merits of the Appeal Proposals.
- 9.38 It is important to note that the Appeal Proposals are made in outline, with all matters other than access reserved for future consideration. Parameter plans forming part of the ES, and which are before this Inquiry, establish the maximum envelope for development of the Site, but the opportunity to respond to aspects of the ALLI designation through detailed design measures is retained. I do not seek to argue that there will be no change in the character of the landscape, and that some aspects of the designation will be affected adversely, but as with all planning judgements it is necessary to establish the extent to which harm arises and the potential for other benefits to be delivered as a consequence of the development that outweigh any such harm. In my view there are aspects of Policy BNE34 that are addressed positively by the Appeal Proposals when the particular condition of this ALLI, and the opportunities presented by the Appeal Scheme are considered.
- 9.39 The generic objectives of ALLI are set out above to which I now turn. With regard to functionality of Area 21 as a green buffer, the Appeal Scheme only occupies a small area of the Gillingham Riverside ALLI as a whole and is located near to existing built up development. As a consequence while there will inevitably be a loss of some open landscape and the buffer function will be compromised to a degree this would not negate its functionality and would concentrate development in the parts of Area 21 that are acknowledged in the Landscape Character Assessment to have less integrity and which are already subject to greater urban influence than the areas to the north and west. The configuration of the masterplan would help to maintain the individual identity of the neighbourhoods/communities in the western portion of the ALLI, as sought by BNE34.
- 9.40 A central function of ALLI is to act as green corridors that allow the community to reach the wider countryside. The Appeal Site comprises private commercial orchards that cannot be accessed by the public. The land is an intensively farmed area of monoculture that is commercially managed by a private business. It has no functionality as a ‘green corridor’ providing no access to a rural landscape for existing residents in the manner intended by the Policy.
- 9.41 There is no contention that the land within the Appeal Site is anything other than edge/fringe land that adjoins and is surrounded on three sides by urban development. Indeed, viewed in

its context it is clear that it falls within the wider Medway Towns conurbation, within an urban envelope, the adjoining characteristics of which are suburban. In this context use of the term 'sprawl' is considered inappropriate given that the land in question is largely contained by existing development forming the conurbation.

9.42 Finally, with regard to such areas providing suitable habitats and wildlife corridors for wildlife from the wider countryside to reach the urban environment, the same considerations apply as to those relating to green corridors for the community. The Appeal Site is an intensively farmed and managed commercial fruit-growing concern. While this does not entirely preclude wildlife from passing through/using the area to reach the urban environment it certainly compromises its attractiveness as a consequence of the management regime applied to the land.

9.43 Turning to the functional objectives under BNE34 that apply specifically to the Gillingham Riverside ALLI the LVIA<sup>4</sup> assessed the contribution made by the Appeal Site under each of the policy criteria set out above. There are six aspects to the policy that require assessment, the evaluation in respect of which I summarise below:

- I. Green Buffer separating Twydall/Rainham from Medway Estuary - Medium contribution
- II. Enhance setting of ring road/allows attractive views from river/railway - Low contribution
- III. Access for residents to attractive rural landscape - Low contribution
- IV. Attractive setting to Lower Rainham and Lower Twydall conservation areas - Medium contribution
- V. Contains orchards, hedgerows, farms that contribute to the Riverside Country Park - Medium contribution
- VI. Green backdrop from the Medway Estuary - Medium Contribution

9.44 The LVIA thoroughly considers the landscape effects and the evidence of Mr Hughes demonstrates that there would be residual moderate adverse landscape effects within the Lower Rainham and Lower Twydall Fruit Belt LLCA (incorporating Area 21 of the Lower Rainham Farmlands LCA), and moderate adverse landscape effects within the wider ALLI. Such an effect is not treated as significant for the purposes of assessing the weight to be assigned to any landscape effects. I therefore do not agree that there would be significant long-term adverse effects on the landscape. I do accept as contended by the Council in accordance Mr Hughes landscape evidence that there would be moderately adverse effects on the ALLI.

9.45 However, these would be localised and would affect only a small proportion of both the sub-area and the wider ALLI, the effects of which would not compromise the objectives of the designation as set out by Policy BNE34. Furthermore, the development offers the potential to respond positively to BNE34 policy objectives by improving public access to the countryside and improving permeability across a currently closed and intensively farmed environment.

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<sup>4</sup> Land off Pump Lane, Lower Rainham LVIA - September 2020 p.22



The masterplan process would also present opportunities to design the Green Infrastructure framework in a way that responds positively to policy objectives and opportunities identified within the Landscape Character Assessment.

9.46 In my view when the adverse and positive impacts of the Appeal Proposals are considered there would be no more long-term material harm to the landscape character and function of the area. The policy is not restrictive and the ALLI does not offer blanket protection against development. The Appeal Proposals are not therefore contrary to criterion (i) of policy BNE34. They have been sited, designed and landscaped to minimise harm to the areas landscape character and function.

9.47 However, even if some material (or even significant) harm was identified, in my view, the economic and social benefits are so important as to outweigh the local landscape conservation priority. The Appeal Proposals therefore meet the requirements of criterion (ii) of BNE34 and as such, are not contrary to Policy BNE34, as a whole.

## TRANSPORT

### Strategic Road Impact (Reason 4)

9.48 The Appellant has worked proactively with Highways England to provide them the certainty they require in illustrating the impact on the strategic road network.

9.49 Following these discussions, I understand that Highways England will be withdrawing their objection to the proposals and as such, the Council will also be withdrawing this reason for refusal.

9.50 Full detail of these discussions is contained with Mr Tuckers evidence.

9.51 As a result, the Appeal Proposals will have no material adverse impact on the strategic network and there is no basis for refusal of planning on this ground.

### Network Capacity (Reason 5)

9.52 Mr Tuckers evidence addresses this reason for refusal in detail and as such, I do not turn to repeat it here.

9.53 However, in summary:

9.54 As demonstrated by the supporting information provided with the application, it is considered that the cumulative impacts from the additional traffic generated can be accommodated without a severe impact on the overall network capacity.

9.55 The modelling outputs were drip fed to the Appellant through the application and appeal stages, and to date all the necessary and requested information hasn't been provided. As such, it has not been possible to properly scrutinise them, and the Inspector is being expected to reach conclusions on the basis of evidence that has not been tested.

9.56 Rather, as confirmed within Mr Tucker's evidence, the only credible and proper assessment of the impact of the proposal is in the Appellant's Transport Assessment (CD CH5.25) Addendum (Appendix 1 of CD8.1) and Technical Note 4 (CD12.7), as they provide a coherent and auditable assessment of traffic generation, distribution and detailed junction models of each of the junctions where impacts are forecast. In accordance with Paragraph 102 of the NPPF, the potential impacts on the highway and required mitigation have been identified. The overall pattern of movement is integral to the design of the scheme. There is no unacceptable impact on highways safety and the residual communitive impact on the road

network would not be server. The Appeal Proposals are fully in accordance with Paragraph 109 of the NPPF and Local Plan Policies T1 and T2 and this isn't a valid basis for the refusal of planning permission.

#### Highways Safety (Reason 6)

- 9.57 The Appellant has worked proactively with Medway Council and have provided them the clarity they required. As such, the Council have withdrawn this reason for refusal.
- 9.58 Full detail of these discussions and agreement are contained with Mr Tuckers evidence.
- 9.59 Third parties haven't raised any additional Highway safety issues.
- 9.60 As the Appeal Proposals create no highway safety harm, they are in accordance with the development plan policy and NPPF. This issue is not therefore a basis for the refusal of planning permission

#### Pump Lane Access (Reason 7)

- 9.61 While documents pertaining to the access from Pump Lane were included within the application documents (transport assessment appendix), following the refusal of planning permission the Appellant re-provided these to the Council. As a result, the Council consider safe and satisfactorily access can be achieved to the site. The Council are not therefore pursuing this reason for refusal. This is explained within the evidence of Mr Tucker.
- 9.62 Third parties have not raised any additional access issues.
- 9.63 The proposals provide safe and convenient access from the existing highways network in accordance with local and national policy. There is therefore no valid reason for refusing development on these grounds.

#### LOSS OF BMV AGRICULTURAL LAND (REASON 8)

- 9.64 Mr Pelham's evidence considers this matter in detail and as such, I don't seek to repeat that here. However, the following points are significant when considering the loss of the existing agricultural use.
- (i) need for development of agricultural land
- 9.65 Firstly, agricultural land is under development pressure throughout the UK and Medway, which has substantial areas of BMV land (see appendix 1 of Lambert Foster response report dated October 2019). This map illustrates that the vast majority of land around Rochester, Chatham, Gillingham and Rainham urban areas is highly likely to be BMV land. Additionally, Mr Pelham's evidence concludes, that there is considerably more Grade 1, 2 and 3a land available in Kent than is needed for production of the more specialist crops, such as apples and pears, that are suited to soils of this type.
- 9.66 Considering this, planning applications have been approved on similar quality agricultural land to that of Pump Farm and the Council by virtue of these decisions have emphasised the overall benefits that such schemes do bring forward. In related officer reports to committee, the benefits of schemes have been appraised and agreed by the Council in approving applications (a list of these is provided in appendix 6). Medway is evidently unable to meet its housing requirements as illustrated with my evidence and agreed by the Council within the general matters SoCG. As such, alternative locations for housing must be considered to assist in meeting the Council's housing requirements, which they have failed to meet year-

on-year, over a considerable period. It is therefore appropriate to look at agricultural land in sustainable locations, such as the appeal site.

9.67 Notwithstanding the above, and while still in the very early stages, the Council has given an early indication for what would amount to significant releases of BMV agricultural land on the Hoo Peninsula as part of its emerging Local Plan work. In addition, much of the area proposed has other constraints on development, which includes; need for significant infrastructure improvements, existing congestion (air quality), SSSI, Landscape and Heritage.

9.68 In terms of NPPF para 171 footnote 53 the need for significant development of agricultural land has been demonstrated. In such circumstances footnote 53 prefers the loss of poorer quality land but doesn't preclude the loss of higher quality land.

(ii) Quality of the appeal site

9.69 Notwithstanding the physical constraints of the site, in common with all other farming enterprises the profits from growing apples and pears has notably declined, as a consequence of static sales prices and increasing cost of production. This partnered with the additional costs of satellite operations are becoming increasingly hard to support.

9.70 Further to the location of the site, of the existing orchards, seven are less than 1 hectare in area and a further five are less than 2 hectares; the overall average is just over 2 hectares. The twelve orchards of less than 2 hectares are financially unviable in 2020 due to their disproportionately high costs. Costs of production increase as orchards reduce in size due to greater downtime for field operations (e.g. from additional requirement for turning at row ends) and harvesting (with additional movements for bins, pickers, supervisors and transport).

9.71 Additionally, with part of the existing orchard stock at Pump Farm being a variety that is surplus to consumer demand and the other part being at maturity, the Appeal Site will require replanting in the next 2-3 years which would cost some £1.5 million - an investment not seen as viable by the Appellant.

9.72 Further, AC Goatham and Son's own evidence indicates that Pump Farm has a history of hail events, which has damaged between 8 and 35% of 5 occasions in the last 9 seasons. The susceptibility to hail undermines the financial viability of Pump and Bloors farms, from both reductions in output (lost yield and reduced fruit quality) and additional costs (e.g. for harvesting and packing).

9.73 Further to the replanting, technological advances would also need to be implemented to assist in the viability of the site however, the size and configuration of the Appeal Site prevents this. In Mr Pelham's view, the combined area of Pump and Bloors farms of some 43 hectares is below the minimum 60 hectares that is required, to support the significant investment in three-row spraying and mechanical harvesting. As such, the limit on technological advances which are possible at the Appeal site, partnered with increase production costs (wages being the most significant) has meant the farm is increasingly becoming unviable.

9.74 In terms of use of the Appeal Site as orchards it should not be considered best and most versatile agricultural land. This is directly relevant when considering the economic and other benefits of the site as required by NPPF 170(b)

(iii) Alternative agricultural uses

9.75 In regards to alternative uses, the evidence from Mr Pelham confirms alternative farming enterprises are also not viable for similar reasons, such as size, configuration and hail.

Additionally, the existing farm buildings are not considered to be worthwhile farm buildings which could realistically offer a viable diversification project which would support greater consolidation and reinvestment in substantial commercial orchard planting.

- 9.76 Considering the Appellant is one of the nation's biggest fruit growers and with their vast understanding and economics of scale, it is considered a strong likelihood the other potential investors would also reach the same conclusions, unviable.
- 9.77 Mr Pelham concludes: *"the conspicuous smallness of the area of Pump and Bloors, their unattractive, irregular layout, the lack of buildings and other facilities (such as vermin-proof fencing) and, perhaps most importantly, their susceptibility to hail means that their capacity for profit is limited or non-existent. When the additional costs of being satellites of another operation are properly taken into account it is my opinion that Pump and Bloors farms generate little, if any, profit and, only then, in years when there is no incidence of hail."*
- 9.78 The NPPF at paragraph 170 outlines planning decisions should *"recognising... the wider benefits from natural capital and ecosystem services - including the economic and other benefits of the best and most versatile agricultural land..."*
- 9.79 Whilst the Appellant has previously invested heavily in the site and have reaped the economic benefits which come with the land, the site is increasingly becoming unviable. The site will require substantial investment over the next couple of years and due to the reasons outlined within Mr Pelham's evidence, there is no commercial value or reality in this.
- 9.80 The release of Bloors Farm and Pump Farm for other purposes will generate much-needed, additional funds that will enable the Appellant to continue to invest in more economical farms, producing a notably higher yield of fruit. Further, Mr Pelham confirms that DEFRA data indicate that the area of soil-grown horticultural crops in Kent is currently some 15,000 hectares. The best and most versatile land - Grades 1, 2 and 3a - available for the growing of these specialist crops in Kent is over 90,000 hectares. With such capacity it should be possible to locate new plantings of high-risk horticultural crops on sites with limited, if any, risk of hail.
- 9.81 As such, in accordance with Para 170 the economic benefits of maximising what would be an alternative area of BMV agricultural land elsewhere in Medway and/or the wider area of Kent, should be given very significant weight. The Appeal Proposals will not therefore be contrary to Local Plan Policy BNE48 (although not saved) and the NPPF at paragraph 170 and footnote 53.
- 9.82 Overall, as well as economic benefits and increased agricultural production the appeal proposal will provide ecological benefits. It will also create ecological networks and green infrastructure providing an enhancement of natural capital. It will therefore contribute to enhancing the national and local environment in accordance with NPPF para 170a and 171

#### **S106 OBLIGATIONS (REASON 9)**

- 9.83 A s106 agreement has been provided responding to the Councils concerns and addressing appropriately impacts of the appeal proposal such that they don't cause harm warranting the refusal of planning permission. The Council has therefore withdrawn this reason for refusal.
- 9.84 The proposal meets the requirements of Local Plan Policy S6 and NPPF paragraphs 54 - 57.

#### **OTHER DEVELOPMENT MANAGEMENT MATTERS**

9.85 Other development management matters which are relevant to the Appeal are discussed and summarised below. These were all addressed by the Council within their assessment of the Appeal Proposals, but no issues or concerns were raised:

#### Ecology

9.86 This matter is addressed in detail in the report produced by Mr Goodwin (see in particular chapter 6) contained in my appendix 5. It considers matters raised by KCC Ecology and third parties. I do not therefore repeat the content here.

9.87 Appropriate surveys were undertaken and submitted as part of the application, including within the Environmental Statement. Ecology on the site itself is very limited due to its intensely farmed nature (spraying etc). The boundary hedges and planting, which have some limited ecology, will be maintained and enhanced by the Appeal Proposals thus improving the overall ecological value.

9.88 The proposed landscaping, dog walking areas, swales and residential gardens will enhance the opportunities for ecology, both Flora and Fauna on the site. By incorporating suitable measures into the design and long-term management of green infrastructure within the site the Appeal Proposals will ensure there is no adverse effect to the habitats or protected / notable species. Instead, there will be overall enhancements and the proposed development would deliver important biodiversity net gain.

9.89 The proposal therefore meets the objectives of NPPF paragraph 170 and 171 and Local Plan policies BNE37, 38 and 39 to protect and enhance the natural environment.

#### Sewage

9.90 Sewage and water run off were consider as part of the application within the drainage strategy. Natural England asked for additional information regarding the proposed drainage, this was was provided and it was accepted. The water/drainage authority have also confirmed the Appeal Proposals are acceptable, subject to standard conditions. This is illustrated within Southern Water response dated 19/07/2020 (Appendix 7)

#### Flooding

9.91 As the Site is in Flood Zone 1 there is no need for any fluvial/tidal based flood mitigation measures. Ground water, sewer and infrastructure courses of flooding are also considered to be low risk. The overall SuDs approach for the site is to have a proposed network of swales and attenuation basins, which will also deal with the potential low/ medium risk flow routes.

9.92 Neither the EA nor local flood authority has any objections.

#### Air Quality

9.93 Air Quality was fully assessed as part of the application submission and concluded there was no unacceptable adverse impact. Once submitted, the EHO asked for clarification on various elements of the report. They didn't dispute the methodology or conclusions, but their final position was that due to the disagreement over the level of traffic generation, they couldn't form a final view.

9.94 To provide further clarity on this matter, an updated review of local monitoring data and updated modelling has been undertaken as part of the detailed note (Appendix 8). In short, the results of the update modelling confirm the overall findings of the original ES and emissions from traffic generated by the development is predicted to increase annual mean NO<sub>2</sub>, PM<sub>10</sub> and PM<sub>2.5</sub> concentrations at receptor locations by no more than 2% of the AQAL.

Given that concentrations of all three pollutants are predicted to remain below the objectives into 2025, the overall impact would be negligible.

- 9.95 Additionally, the Mr Goodwin has reviewed the revised modelling information and can confirm that, for the reasons outlined in Section 6 of the IHRA, it can be concluded that the development proposals are not likely to lead to an adverse effect on the integrity of the designated site, either considered alone or in combination with other plans and projects.
- 9.96 Overall, the site is located within a sustainable location with very good public transport links. Existing public transport is possible from both the north (Lower Rainham Road) and the south within Rainham itself. The train station is accessible by both pedestrians and cyclist from the appeal site. The transport evidence provided by Mr Tucker confirms the site can operate without adversely impacting on the highway network in regards to capacity. As such, Air Quality matters from queuing and congestion has been appropriately assessed and mitigated.
- 9.97 The Appeal Proposals therefore are in accordance with Local Policy BNE24 and the NPPF paragraph 103.

### Climate Change

- 9.98 Third parties have raised concerns about the loss of agricultural land for residential development and the impact this will have on climate change. This issue was generally addressed in the application submission and environmental statement. An additional technical note has however subsequently been prepared by Stantec addressing sustainability and climate change and is contained in my Appendix 9.
- 9.99 An updated Sustainability Appraisal is included within the note which demonstrates that the Appeal Proposals will have positive local effects in relation to the provision of sustainable housing (including substantial affordable housing), care facilities and good access to services and facilities, including an on-site local centre. In addition, the primary school will provide wider benefits with additional capacity to support meeting local requirements both for future and existing residents.
- 9.100 The development will also create safe and accessible environments, and will seek to improve public health and wellbeing of local residents. Measures are proposed to conserve and enhancing wildlife/biodiversity on site, including the creation of enhanced habitats. The Appeal Proposals will encourage the uptake of active and sustainable forms of travel, through the provision of high-quality pedestrian and cycle links. Notwithstanding these varied benefits, additional opportunities and recommendations to further enhance the Appeal Proposals as the development progresses through reserved matters have been identified
- 9.101 Further, the note concludes that the development will reduce the need to travel distances by private car through; the provision of onsite services and amenities, a network of high-quality pedestrian and cycle links and improved permeability through the site. In turn, the Appeal Proposals will encourage the use sustainable forms of travel, which will help to further reduce Green House Gas (GHG) emissions associated with transport use.
- 9.102 Additionally, green open spaces provide evaporative cooling at night, helping to reduce the heat island effect. The permeability of green spaces throughout the Appeal Proposals, as well as the selection of plot layout and building location, will help to facilitate air movement and enhance natural ventilation. The retention and creation of vegetation and tree planted areas will help provide shading and local cooling of the microclimate.
- 9.103 In regards to drainage / flooding matters, in accordance with the NPPF, a Flood Risk Assessment (FRA) and Drainage Strategy was prepared to support the OPA (Stantec, 2019).

The Site is located within Flood Risk Zone 1 (less than 1 in 1,000 annual probability of flooding). The FRA demonstrates that future occupants of the Appeal Proposals will be safe from flooding and that the proposals will not increase flood risk elsewhere. The Drainage Strategy adopts a 20% allowance for climate change to embed climate change resilience within the Appeal Proposals. The proposed surface water drainage strategy makes use of the network of interconnected swales and attenuation basins;

9.104 At reserved matters stage, further assessments will be undertaken, and strategies will be submitted, including a Construction Environmental Management Plan (CEMP), Operational Waste Strategy, Renewable Energy Assessment, Landscape and Ecological Management Plan (LEMP) and a Sustainability Statement. These assessments will further set out and confirm measures to reduce climate change impacts associated with the development.

9.105 In summary, the Appeal Site is sustainably located and as evidenced by the above and appeal documentation, all relevant considerations have been assessed and are considered to meet the relevant guidance and policy tests. The development will be constructed to modern sustainable building techniques and include sustainable green infrastructure and ecology benefits. The Appeal Proposals are therefore in accordance with paragraph 103 and chapter 14 of the NPPF

#### Station Carpark

9.106 At a meeting with the Council planning and highways officers, it was explained there were discussions between the Council and Network Rail at one time about enlarging the carpark. However, that this was not been taken forward. Mr Tucker provides further detail on this matter within his evidence. Neither Highways England nor the highway authority have raised this matter as a concern.

#### Archaeology

9.107 A desk based assessment was included as part of the planning application. Following discussion, the County Archaeologist and Council have agreed to a field evaluation prior to submission of reserved matters being controlled by a pre-commencement condition. The Appeal Proposal are therefore in accordance with Local Plan policy BNE21 and NPPF para 189.

## 10 THIRD PARTY REPRESENTATIONS

10.1 The third party representations received from local residents at the application stage are summarised at sections 2.3 - 2.27 of the officer's delegated report. Additional representations have been made at the appeal stage, but these don't raise any material planning issues beyond those already raised.

10.2 The issues raised are generally covered elsewhere within mine and others evidence. However, for ease of reference I briefly respond to them below

- Transport - The existing highway network and the impact of the Appeal Proposals on it has been appropriately considered as part of the application. The Appellant underwent detail discussions with both highways' officers at the Council and also Highways England. The evidence submitted as part of this appeal confirm that the Appeal Proposals can be accommodated on the network without any server impact, subject to standard mitigation measures.
- Air Quality - This was appropriately assessed at the application stage and it was agreed between the Appellant and officers that standard planning conditions would satisfactorily deal with the remaining details. Please see also relevant section in chapter 9 of my evidence above.
- Climate Change - Please see also relevant section in chapter 9 of my evidence above.
- Healthcare - appropriate contributions to improving local healthcare would be payable through a s106 agreement. This would mitigate the scheme's impact on healthcare facilities.
- Biodiversity - This was addressed within the planning application and the report of Mr Goodwin (appendix 5). The development would not result in the loss of any important habitat. The orchard is regularly disturbed by machinery and subject to crop spraying. Some areas of habitat close to the Site are considered capable of being beneficial for the species identified by the ecological surveys. These are all to be retained and enhanced. Along with enhancements throughout the site, some residents acknowledged that the scheme would allow for reinvestment elsewhere which will support open space and biodiversity. Improvements to biodiversity will be controlled by planning condition.
- Landscape - Landscape has been a major consideration of the application and appeal. In short, the appeal evidence illustrates that the Appeal Proposals do not materially harm the landscape and, even if they were found to, in my view the significant environmental, social and economic benefits outweigh any perceived harm.
- Heritage - The impact of the Appeal Proposals on nearby heritage assets has been appropriately assessed within the application and appeal documents. Any harm is considered to be minimal and significantly offset by the important and varied number of benefits.
- Education - The application will include a 2 FE primary school within the scheme, which received support from residents. In regards to secondary education, which residents raised concerns with, the site will contribute to paying for improvements which will increase the capacity within the district.
- Flooding - As the Site is in Flood Zone 1 there is no need for any fluvial/tidal based flood mitigation measures. Ground water, sewer and infrastructure courses of



flooding are also considered to be low risk. The overall SuDs approach for the site is to have a proposed network of swales and attenuation basins, which will also deal with the potential low/ medium risk flow routes. This demonstrates that the Appeal Proposals are appropriate, and the proposed surface drainage strategy will result in no increase in flood risk elsewhere.

- Sewage - Sewage and water run off were consider as part of the application within the drainage strategy. Natural England asked for additional information regarding the proposed drainage, this was provided and they confirmed that the proposals are acceptable. The water/drainage authority have also confirmed they are happy subject to standard conditions. This is illustrated within Southern Water response dated 19/07/2020.
- Construction - The Appellant agrees with residents that the construction of the scheme will bring forward substantial benefits.
- Employment - The Appellant agrees with residents that the scheme will bring forward employment opportunities. The scheme goes further than just construction work outlined above, the school and the care homes together with the village facilities all provide a range of employment provision including skilled and non -skilled roles.

## 11 PLANNING BENEFITS OF THE APPEAL PROPOSAL

- 11.1 The Appeal Proposals are in accordance with the Development Plan when considered as a whole, meaning that permission should be granted without delay.
- 11.2 Even if there is considered to be some degree of conflict with the Development Plan having considered the weight to be given to the various most important policies, this must be weighed against the many and various benefits. The provision of housing (market and affordable) are amongst the very significant benefits.
- 11.3 The Council has been required to prepare a Housing Delivery Test Action Plan following publication of the Housing Delivery Test Results in February 2019 and February 2020. The most recent HDT result showed that Medway delivered only 46% of the required minimum level of housing generated using the Government's standard methodology for calculating local housing need, over the previous three-year period. This places Medway amongst the worst-performing local authorities in the country in respect of housing delivery. The shortfall in housing delivery is both chronic and very significant. In the context of a national housing crisis significant and what will prove an extended period of economic slowdown, effective and urgent action is required. The Council has taken measures to address the problem by approving planning applications for residential development outside of the urban settlement boundaries on green field sites but any efforts thus far have not proven effective in solving the persistent shortfall. At the time of this appeal the Council is most likely only able to demonstrate a housing supply of up to 2.51 years. Even the Council's claim of 3.27 years discloses a very significant shortfall.
- 11.4 The benefits are to be considered in the context of the presumption in favour of sustainable development set out in NPPF paragraph 11d (ii), and more generally.
- 11.5 The NPPF establishes three dimensions to sustainable development, namely economic, social and environmental and states at paragraph 8 that economic, social and environmental gains should be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives). The benefits clearly disclosed by the Appeal Proposals include the following:

### ECONOMIC

- a) The creation of the new settlement will contribute to employment provision primarily through construction jobs. It should be remembered that this is scheme will be phased over circa 10 years and will therefore provide jobs over a considerable period of time for a range of trades and occupations, including opportunities for training and skills development. The significance of employment gain is significant, especially given what will prove to be an extended period of economic slowdown;
- b) Although not formal employment uses the school and the care homes together with the village facilities all provide a range of employment provision including skilled and non -skilled roles. The provision of 1250 new homes will also attract a range of informal roles such as tradesman, gardeners, cleaners etc. which holistically all contribute to the local economy;
- c) The increase in population will greatly contribute to ensuring the future viability of community facilities such as healthcare centres, post offices, and schools. The Appeal Proposals would support the viability of the wider area by boosting the local economy, delivering a policy-complaint level of affordable housing, and by funding (through

planning obligations) improvements to local community facilities such as healthcare and education;

- d) New housing creates new residents, who contribute to the local economy through local expenditure. The creation of a new village settlement of 1250 new homes will contribute a significant amount of revenue for the local economy, supporting shops and local businesses, thereby indirectly supporting the function of Medway's existing centres;
- e) Residential development of this size provides other revenue streams which contribute to public finances. For local authorities there are two principal sources: Council Tax; and New Homes Bonus;
- f) The increase in local population will support existing and future local employment centres and opportunities;
- g) Improved public transport links create jobs for those operating within the sector directly and increase the accessibility of employment opportunities for local residents without alternative means of transport;
- h) There are clear economic benefits of improved transport infrastructure however, additionally it also meets the other two objectives underscoring sustainable development: social (from increased connectivity between communities), and environmental (from improved public transport reducing the collective carbon footprint of settlements);
- i) The release of Bloors Farm and Pump Farm for other purposes will generate additional funds that will enable AC Goatham and Sons to continue to meaningfully invest in farms that produce a materially higher fruit yield.

## SOCIAL

- a) The creation of a new village settlement with the provision of up to 1250 new homes will provide a very significant and much needed contribution to housing supply in Medway, including affordable housing. Historic under-delivery and the existing housing shortfall is chronic: Medway's 2019 HDT result was 46%. There is a clear local plan failure in delivery terms. The Appeal Proposals for up to 1,250 units will strongly contribute to addressing this shortfall and remedying historic under-delivery. This benefit attracts very high significance, even if (which is strongly doubted) significant development eventually comes forward at Hoo;
- b) A substantial provision of affordable housing will be provided as part of the development. In respect of 1250 units, this equates to 312 affordable units which when viewed against Medway's annual average of 181 affordable units per annum over the last five years. This achieves high significance;
- c) The core of the new development is the 'village heart' incorporating a village green and village centre with the commensurate level of facilities including retail to support the function of the settlement. Alongside the provision of recreational and open space and the school all will help create a vibrant community 'feel';
- d) The development would significantly open up the access to the Site and improve both pedestrian and vehicular connectivity and movement through the Site and onto the surrounding transport network;

- e) Much improved pedestrian and cycle networks promoting sustainable travel and enhancing local connections through the site and surrounding area;
- f) Improved public transport links will create jobs for those operating within the sector directly and increase the accessibility of employment opportunities for local residents.
- g) The provision of community facilities, landscaping and recreational areas will, in turn, each meaningfully contribute to the provision of a new settlement promoting sustainable development and social well-being;
- h) In providing construction employment opportunities, housebuilding does not merely support jobs, but also provides the means by which young, lower skilled workers can undertake apprenticeships and training. This improves the employability of the local workforce and has a positive effect on the local economy.

## ENVIRONMENTAL

- a) The existing orchard is a commercial farm which is heavily sprayed and in terms of ecology and biodiversity is not an important habitat. It is the hedgerows around the periphery of the site that are considered capable of being beneficial for the species identified. The proposals bolster the amount and diversity of habitat, with a buffer zone around the site and landscaping between the individual development plots to create a connected habitats to allow the movement of animals through the site.
- b) The Appeal Proposals includes areas of landscaping and open space which will assist in protecting and also enhancing the ecological value of the site.
- c) The addition of swales as part of the SuDs package provides further habitat improvements.
- d) The Appeal Proposals will generally bolster the level and diversity of habitat, with a buffer zone around the Appeal Site and landscaping between the individual development plots to create connected habitats, allowing for an improved network for animal movement through the Appeal Site.

## SUMMARY

- 11.6 The creation of a new village settlement with the provision of up to 1250 new homes provides a very significant contribution to much needed housing, including affordable housing in Medway. As explained in my evidence the affordable housing provision within Medway is poor and affordability ratios have largely been growing year on year. As a consequence of this, the number of people on the affordable housing waiting list has grown and without significant changes will continue to worsen. The proposals have the potential to provide over 300 affordable units which is significant when considering the past performance of Medway explained above. This should carry very substantial weight.
- 11.7 The building of the development would take circa 10 years will provides a significant amount of jobs during the construction phase, as but one important part of a package of integrated economic benefits. Once completed employment opportunities will arise in connection with the school, the care home and facilities located within the new village settlement. A residential scheme of this size can reasonably be expected to generate substantial residential expenditure together with the other revenue from council tax and financial contributions. Planning obligations will allow the Council / County to improve local social and physical

infrastructure including; nursery and schools, libraries, doctors, hospitals, open space and sport and public transport and roads.

- 11.8 The provision of community facilities, landscaping and recreational areas all importantly contribute to the provision of a new settlement. Where, as here, these are complimented by accessibility benefits, the social objectives of health and wellbeing are actively promoted.
- 11.9 In environmental terms, the habitat and biodiversity of the site is shown to be improved from the existing situation. This partnered with financial contributions for local improvements is a significant benefit. Additionally, the site is currently closed to the public and the development will greatly improve accessibility allowing people to move safer and easily. Access from Rainham to Lower Rainham Road is currently taken from Pump Lane and as part of the development a safer and more appealing route will be provided thus benefiting not only vehicle traffic but also cyclists and pedestrians.
- 11.10 In accordance with the presumption in favour of sustainable development and paragraph 11(d) of the NPPF the scheme has been carefully assessed within the context of all three stated objectives (economic, social and environmental) of the NPPF together with all relevant development plan policies, and other national policy and guidance which speak to the promotion of these sustainability objectives.
- 11.11 In this context, the development would evidently give rise to many and various significant benefits which together demonstrate sustainable development. These weigh very positively against any adverse impacts of the Appeal Proposals.

## 12 THE PLANNING BALANCE

- 12.1 The Appeal Proposals are in accordance with the Development Plan when considered as a whole, meaning that permission should be granted as there are no material considerations which indicate otherwise. For the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004, other material considerations including the NPPF, NPPG, other relevant policy and guidance and the very substantial benefits of the Appeal Proposals all support the grant of planning permission.
- 12.2 The presumption in favour of sustainable development is engaged. The sustainable credentials of the Appeal Proposals were outlined within the planning statement and include matters set out in section 11 of this Appeal Statement.
- 12.3 In the context of paragraph 11, various ‘most important’ policies of the Development Plan are ‘out of date’ for the purposes of determining whether planning permission is granted. Little weight, at best, should be given to these policies.
- 12.4 As regards NPPF paragraph 11(d)(i), it is also not the case that the application of policies in the NPPF that protect areas or assets of particular importance provide a clear reason for refusing planning permission. The presumption in favour of sustainable development is therefore not disengaged. Yet, even if paragraph 11(d)(ii) was no engaged, for the reasons given above, it would remain the case that planning permission should be given for the Appeal Proposals.
- 12.5 In application of NPPF paragraph 11(d)(ii), the substantial benefits of the Appeal Proposals are not significantly and demonstrably outweighed by any adverse effects of the Appeal Proposals in terms of landscape impacts, highways capacity, agricultural loss or heritage harm.
- 12.6 I turn to consider the weight to be attached to the alleged harm within the 4 reasons for refusal.

### LANDSCAPE

- 12.7 The evidence of Mr Hughes considers the appeal proposals would have residual moderate localised adverse effects on the landscape and the function of the site as part of the Green Buffer. These effects would not however compromise the objectives of the designation of the ALLI as set out by policy BNE34
- 12.8 The Proposals would also respond positively to the objectives of policy BNE34 by improving access to the countryside and permeability. The Green infrastructure framework included within the planning drawings would respond positively to the landscape character.
- 12.9 Policy BNE34 doesn’t provide a blanket protection against development and the pros and cons must therefore be assessed. In my view on balance, the proposals meet criterion (i) and are in accordance with Policy BNE34.
- 12.10 If it is concluded there is some harm, BNE34 (ii) requires this to be balanced against the economic and social benefits. In this regard the policy acknowledges it is only a ‘local’ not national landscape conservation designation and therefore, its protection must be appropriately assessed in the balancing exercise. Evidently a national landscape designation would carry greater protection than a local landscape.
- 12.11 Additionally, it must also be remembered that policy BNE34 has the effect of restricting housing development and any weight to be allocated to it is therefore reduced. In my view, and in the context of the very significant housing shortfall, the substantial housing provision

(including significant affordable housing) is, by itself, sufficiently important to outweigh the local landscape conservation priority. However, when the other economic and social benefits of the scheme are also considered the balance further weighs in favour of planning permission being granted.

#### HIGHWAYS

- 12.12 The Appellant's evidence is that the appeal proposal can be accommodated without severe impact on the overall network capacity.
- 12.13 If the Council's position is preferred this would manifest itself in congestion and queuing on some local roads and junctions which accumulatively has a severe impact on users of the local network causing inconvenience and delays. This must however be seen within the context of Medway being a constrained urban area and the need for it to provide 28,300 homes between 2020 - 2037. Even with the Council's proposals for the Hoo Peninsula significant numbers of these homes will need to utilise the existing urban road networks and draw on its capacity. This like many built up areas is congested particularly in peak periods and queuing and congestion can occur. If housing development isn't allowed at the appeal site and more has to be provided elsewhere highways capacity issues are likely to be purely displaced than rather than prevented.
- 12.14 I would therefore conclude that any highways capacity harm should only be given limited weight when balanced against the overriding housing need, lack of other significant harm and general sustainability of the appeal site

#### HERITAGE

- 12.15 I am mindful, also of the provisions of paragraph 11d(i), footnote 6 in the context of this appeal, which require an evaluation of harm to designated assets to be carried out in accordance with paragraph 196 of the NPPF, to determine whether the 'tilted balance' under paragraph 11(d)(ii) of the NPPF is engaged.
- 12.16 NPPF para 193 requires the impact of a development on the significance of a heritage asset to be assessed and that great weight should be given to its conservation. In this case it is the setting not the assets themselves which are affected. In all cases the scale of impact is low or very low within the less than substantial rating. In terms of Bloor Place, which is the most important asset and greater weight needs to be given to its conservation, the impact is very low. Therefore, whilst the principle of conservation of the heritage asset must be given great weight, the very minimal harm individually and collectively to their setting and as a result of their conservation in my view should only attract moderate weight.
- 12.17 Even if I am wrong and the harm should attract great weight, this must be balanced against the public benefits of the Appeal Proposal. I am of the view that those benefits are very considerable and merit the grant of planning permission.
- 12.18 In my view the public benefits clearly outweigh the impacts of the proposals on heritage assets.

#### BMV

- 12.19 The Appellant's case is that the proposals don't result in the loss of best most versatile agricultural land. The site is not viable for the existing use or appropriate for alternative agricultural uses. Its release will allow for investment in more suitable agricultural land, helping to underpin the agricultural economy and provide landscape and ecological enhancements. There is, as a result, no harm to rural objectives or policies.

12.20 If the loss of agricultural use of the site is considered harmful this need to be considered in light of the alternative locations where the council propose to promote housing development, particularly the Hoo Peninsula. Much of this is agricultural land and is of similar grade to the appeal site. It is also subject to other physical constraints such as flooding and protected designations such as SSSI. In order to deliver the necessary housing substantial areas of high quality agricultural land will have to be utilised in the district. These wider considerations must therefore be borne in mind when deciding what weight should be attributed to any harmful impact of the appeal proposal on agricultural land. In this context in my view the weight should only be limited.

**SUMMARY**

12.21 The extensive benefits of the Appeal Proposals and the weight that should be attached to them are contained below.

Public Interest Benefit	Weight Assigned
The Proposed Development for up to 1,250 units will strongly contribute to addressing the shortfall and remedying historic under delivery	Great
Delivery of much needed affordable housing	Great
The creation of the new settlement will contribute to employment provision primarily through construction jobs. It should be remembered that this scheme will be phased over circa 10 years and will therefore provide jobs over a considerable period of time for a range of trades and occupations, including opportunities for training and skills development. This amount of employment is not insignificant.	Great
The release of Bloors Farm and Pump Farm for other purposes will generate additional funds that will enable AC Goatham and Sons to continue to meaningfully invest in farms that produce a materially higher fruit yield.	Great
The development would significantly open up the access to the Site and improve both pedestrian and vehicular connectivity and movement through the Site and onto the surrounding transport network.	Moderate
The Proposed Development will generally bolster the level and diversity of habitat, with a buffer zone around the Appeal Site and landscaping between the individual development plots to create connected habitats, allowing for an improved network for animal movement through the Appeal Site.	Moderate
New housing creates new residents, who contribute to the local economy through local expenditure. The creation of a new village settlement of 1250 new homes will contribute a significant amount of revenue into the local economy, supporting shops and local businesses, thereby indirectly supporting the function of Medway's existing centres	Moderate
Residential development of this size provides other revenue streams which contribute to public finances. For local authorities there are two principal sources: Council Tax; and New Homes Bonus.	Moderate



Much improved pedestrian and cycle networks promoting sustainable travel and enhancing local connections through the site and surrounding area.	Moderate
There are clear economic benefits of improved transport infrastructure however, additionally it also meets the other two objectives underscoring sustainable development: social (from increased connectivity between communities), and environmental (from improved public transport reducing the collective carbon footprint of settlements).	Moderate
The existing orchard is a commercial farm which is heavily sprayed and in terms of ecology and biodiversity is not an important habitat. It is the hedgerows around the periphery of the site that are considered capable of being beneficial for the species identified. The proposals bolster the amount and diversity of habitat, with a buffer zone around the site and landscaping between the individual development plots to create a connected habitats	Moderate
Improved public transport links create jobs for those operating within the sector directly and increase the accessibility of employment opportunities for local residents without alternative means of transport.	Moderate
Although not formal employment uses the school and the care homes together with the village facilities all provide a range of employment provision including skilled and non -skilled roles. The provision of 1250 new homes will also attract a range of informal roles such as tradesman, gardeners, cleaners etc. which holistically all contribute to the local economy.	Moderate
The core of the new development is the 'village heart' incorporating a village green and village centre with the commensurate level of facilities including retail to support the function of the settlement. Alongside the provision of recreational and open space and the school all will help create a vibrant community 'feel'.	Limited
In providing construction employment opportunities, housebuilding does not merely support jobs, but also provides the means by which young, lower skilled workers can undertake apprenticeships and training. This improves the employability of the local workforce and has a positive effect on the local economy.	Limited
The addition of swales as part of the SuDs package provides further habitat improvements.	Limited

12.22 In my view when the 4 adverse impacts of the appeal proposal alleged by the Council are fully and properly assessed they fall substantially short of the overriding benefits. The adverse impacts do not significantly and demonstrably outweigh the important and varied benefits when assessed against the policies in the NPPF as a whole. Permission for this sustainable development should therefore be granted in accordance with paragraph 11 NPPF.

### 13 CONCLUSIONS

- 13.1 The proposals would provide a sustainable residential community of up to 1250 homes (including significant affordable) with local centre, a village green, a two form entry Primary School, a 60 bed extra care facility and 80 bed care home. This would represent a high-quality extension to the built of area of Rainham benefiting both future and existing residents.
- 13.2 The appeal proposals have been very carefully designed and assessed to maximise the benefits of the scheme and limit any adverse impact on the environment, economy or social factors. In my opinion the information and evidence submitted on its behalf clearly demonstrates this has been achieved.
- 13.3 In my view the appeal proposals are in accordance with the Development Plan when read as a whole and planning permission should be granted.
- 13.4 Due to the very significant housing shortage the balance weighs heavily in favour of granting permission in accordance with the presumption in favour of sustainable development.
- 13.5 Any adverse effects of the proposals which have been identified are not significantly and demonstrably outweighed by the benefits when assessed against the policies in the NPPF considered as a whole.
- 13.6 Moreover, even if, contrary to the Appellant's case, it is considered that the Appeal Proposals are not in accordance with the Development Plan, this is nonetheless a clear case in which material considerations, taken together, indicate that planning permission should nonetheless be granted.
- 13.7 It is respectfully requested that the appeal be allowed and planning permission granted, subject to s.106 agreement.