

PLANNING APPEAL BY A.C. GOATHAM & SON

Outline planning permission for up to 1,250 residential units, a village green, a local centre including a 2FE primary school, a 60 bed extra care facility, a 80 bed care home, village centre, village green, and associated access

LAND OFF PUMP LANE, LOWER RAINHAM, KENT ME8 7TJ

Appeal Ref: APP/A2280/W/20/3259868

App. Ref. MC/19/1566 Inquiry opened: 15 February 2021

CLOSING SUBMISSIONS OF THE APPELLANT

Introduction

1. The appeal proposal ("the Development") is for up to 1,250 residential units, a local centre including a 2FE primary school, a 60 bed extra care facility, a 80 bed care home, village centre and village green, and associated access (vehicular, pedestrian, cycle). The appeal is made for outline planning permission with all matters reserved other than access. The appeal site ("Site") is sustainably located within accessible proximity to the centres of Rainham, Twydall and employment sites, and integrates very well with sustainable transport options.
2. The appeal proposal is in accordance with the development plan, considered as a whole, for the purposes of s.38(6) PCPA 2004 and is in accordance with national policy. Yet, as explained, the proposal is put squarely on the footing that it should properly be approved in application of the tilted balance, and alternatively, approved even absent the titled balance - and moreover, even as a 'departure' from the development plan (*if it were ever conceived to amount to a departure - which it is not*).
3. The evidence confirms that the Development will make a clear and highly important contribution to Medway Council's ("the Council") chronic housing shortage, to be viewed against the Council's own (under) acknowledgement of

a “significant” housing land supply shortfall – very considerably below 5 years. A very troubling shortfall in affordable housing provision further echoes the clear and ongoing strategic plan and development management failures of the Council to approve and deliver housing, district-wide. There remains no planned resolution to this delivery crisis, within sight. Not least, the Council’s (immediately unrealistic) timetable for adopting a new local plan is within just shy of two years from now. The Council is, in truth, pointing to ‘plan-led’ delivery under this new plan from 2025 or later. This is no plan whatsoever.

4. The appeal proposal also comes before the Inspector and Secretary of State at a unique time of the UK entering a massive economic slump. The clear, significant economic (and social) gains that will be delivered through the appeal proposal, at local, regional and indeed national level, are the more striking ahead of and during what will, economists confirm, prove a much protracted (if, presently masked) period of downturn and slow recovery.

Housing

5. The starting point remains the Council’s (understated) characterisation of a significant undersupply of housing land. The Council’s reported annualised requirement is 1,662 dpa. The Council’s track record on delivery is deeply concerning, as is the scale of shortfall and persistency of under-supply. Meeting the requirement figure has demonstrably posed an unmet challenge. Against this background, the scale of housing contribution from this appeal proposal holds tremendous importance in both economic and social terms, in answering the district-wide, regional and national need for housing – a pressing and urgent crisis.
6. In addition to open market housing, the affordable housing contribution presents another major social and economic benefit: any quantum of affordable housing is routinely accorded substantial weight in recovered appeal decision-taking, with a view to meeting a communities’ assessed need, and reducing the

backlog of households awaiting affordable housing in addition to newly forming households, as a central plank of national planning policy.

7. There is also real justification in scrutinising the Council's unfounded 'optimism' with the appellant's 'realism' regarding future housing delivery, given the Council's poor track record. The Council's notably broad reliance upon high level AMR 'evidence', as opposed to any forensic analysis of supply, still less any site-specific evidence showing any actual assessment, in support of its (bald) claim of 3.03 years supply.
8. The Development is brought forward against the background of an aged Local Plan where the "most important" policies are out of date, by virtue of (both, in this instance): (a) a lack of 5 year supply of deliverable housing sites within the local authority area; and (b) delivery (based on Housing Delivery Test) being less than 75% of the housing requirement over the previous 3 years (together, 'the Council's housing land position').
9. Former reason for refusal 1 was withdrawn following agreement with Natural England and securing, through the S106 agreement, mitigation to avoid adverse impacts on the integrity of the Medway Estuary Marshes SSSI, SPA Ramsar site¹. Concerns raised by 3rd Parties over Ecology, Biodiversity and Air Quality have been fully addressed². Further to the transportation related former reasons for refusal (below), upon the completion of a S106 agreement to secure necessary infrastructure, former reason for refusal nine, falls away.
10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the decision maker to determine development in accordance with the Development Plan, unless material considerations indicate otherwise³. The relevant Development Plan policies for this Development consist of "saved" policies from

¹ CD 11.1 - General SOCG Para5.1.1

² ID13 & ID25 & Mr Parr POE Appendix 5 (CD10.1).

³ CD 10.1 Mr Parr POE 6.3

the Medway Local Plan 2003⁴. This is a particularly aged Local Plan (2003) which fails to reflect the national policy approach to sustainability. Much is out of date by virtue of inconsistency with the NPPF (e.g. policy T1) even if it was not by virtue of the Council's housing land position. The local plan-making process is so way off, with emerging policy not in sight, that no weight may properly be attached.

11. So, it is beyond argument that the very significant extent of shortfall will continue to go unmet, both in market housing and affordable housing terms. The housing shortfall is so chronic and the Council's steps too late and insufficient, that the weight can at best, only be limited. The strategic vision for housing delivery set out in the Local Plan has failed.
12. Evidently, there has been a chronic and long-established failure of the Development Plan, reflected by Council decision-taking, to deliver housing for the district⁵. This provides a highly important background to the consideration of the Development, alongside all "most important" policies relevant to that determination being treated as out of date, by virtue of para 11 NPPF.
13. The Development is in accordance with the Development Plan (this is especially so, when it is understood that compliance includes broad compliance and does not require compliance with every single relevant policy). Material considerations including compliance with national policy weigh further in favour of approval.
14. Policies relevant to determination are set out in the General Statement of Common Ground⁶ and include the policies S6 (Planning Obligations), BNE12 (Conservation Areas), BNE18 (Setting of Listed Buildings), BNE25 (Development in the Countryside), BNE34 (Areas of Local Landscape

⁴ CD 10.1 Mr Parr POE 6.7

⁵ Housing table ID 32

⁶ CD 11.1 General SoCG Para 4.5 page 7

Importance), Policy BNE35 (International and National Nature Conservation Sites), BNE48 (Agricultural Land) and Policy T1 (Impact of Development).

15. It is seemingly agreed by the Council that the basket of policies cited in the remaining reasons for refusal are “*most important*” policies in the determination of the appeal, save for acknowledging the Council’s confirmation that policy BNE48 is not a “saved” policy and carries no weight.
16. This plainly holds local, regional and national importance: the lives of a huge number remain negatively affected by an inability to access housing suitable to meet their needs. The national policy emphasis for ramping up supply, improving affordability and widening housing choice, is purposeful. For Medway, the 20% buffer is to be applied due to the significant under delivery over the previous 3 year against the Housing Delivery Test: in HDT scoring terms, this Council falls within the top ten worst performing authorities within the country. It will be recalled also that the 5 year supply figure is only an absolute minimum figure to be achieved in the context of the Government’s ambition to significantly boost the supply of housing. Meeting it should be considered merely a gateway point for evaluating progress on housing provision.
17. The agreed housing supply range, being no higher than 3.03 years⁷ on the Council’s own case – but, in reality being far lower than this, and below 2 years, is coupled with the equally sobering rate of historic under delivering of housing, dating throughout the local plan period⁸. This is also replicated in the supply and delivery of affordable housing. This sustained and significant shortfall has remained despite preparation of action plans by the Council, echoing the decision-taking as well as policy failures. Despite the extremely limited uplift in provision in recent years, the historic delivery picture means new housing remains well below the annual requirement.

⁷ CD11.1 SOCG para 5.1.7

⁸ ID 32 Medway Housing table

18. The extent of the shortfall is material (even in a case, as here where the housing position is disastrous): *Shropshire v SSCLG* [2016] EWHC 2733 (Admin) at [28]-[30], refined in *Hallam Land v SSCLG and Eastleigh BC* [2017] EWHC 2865 (Admin) at [22]-[23]: no requirement to specifically determine the range. On any case, the Council's wholly aspirational ceiling still merits the conclusion of the uppermost substantial weight. It will be known also that there is absolutely no requirement on an applicant for permission even to show that there is *any* shortfall in the 5YHLS in order to secure permission, including for larger schemes. The known trend of permissions speaks to the national policy emphasis.
19. It should not go unnoticed however that the Council's contended best supply figure of 3.03 pays no account of historic shortfall (ID32). Whatever reliance is placed on the affordability ratio (integral to standard methodology, on a given case), the reality of the extent of unmet need remains. It is not swept away. The standard methodology is not intended to be so formulaic as to leave no room for discretion, where there is exceptionality. The situation in Medway provides ample exception. National policy is not intended to excuse persistent and chronic under-delivery. So, the fact that the numbers involved are so high, so persistent, and so far-reaching in effect, provides a pertinent lens through which the coming forward of up to 1,250 units should be considered.
20. The Appellant has submitted a detailed analysis of housing supply and delivery⁹, justifying a finding of 1.78 years. This figure represents a scenario where delivery is realistic, not pessimistic. No challenge has been made to the figures or methodology¹⁰, save, principally, for the inclusion of shortfall. It is unsurprising that the Council does not substantiate its invitation for 'updating'.

⁹ CD5.12 Housing Report

¹⁰ SOCG Para 5.1.7 CD11.1

Even benevolently seen, the supply and delivery in the intervening period has not changed, significantly.

21. So, the Council's position is both precarious, moving forwards, and disastrous in terms of its past delivery record. Very substantial weight (at the uppermost end of 'substantial') should be given to the contribution that the Development will make in market housing and affordable housing terms. The laboured contention¹¹ that the Council is making significant steps to boost housing supply, defies belief, and is a further symptom of a deeply failing planning function. The contended measures in this regard are indeed standard for any LPA, with no further toolkit being deployed to even rescue the HDT position. The list of consents at Canavan PoE paras 6.25 and 6.26 do not portray any enhanced drive to deliver on housing.
22. Affordable housing is addressed at paras 8.23 – 8.31 of Parr's POE (see also Chapters 10-14 of Rapley's Housing report), all unchallenged by the Council. It shows a shortfall of 5029 homes between 2012-2017 equating to 1006 per annum. There is nothing to suggest that this pattern of significant under supply has changed in subsequent years and the table in ID 45 confirms that the level of affordable delivery is low. That there is no Central Government imposed annualised target for delivering affordable housing, is no point in the Council's failure, but rather, conveys an intended latitude – but one against which the Council has increased its demonstrable housing failure.
23. The back-dated, annualised target figure of '204' units (set by the Council in 'Housing Strategies') bears no justification (or considered attempt at justification) and is plainly far too low. The 204 units figure is also less than 30% of the 744 annual need figure stated in Medway's Strategic Market Assessment 2015. Moreover, even when viewed as a guide, the Council has only met the 204 figure within 6 of the last 9 years. This therefore consolidates the Council's

¹¹ CD 10.6 Para 6.22 – 6.23

failure to take steps to address another chronic annual deficit: in affordable housing. This invites very substantial weight (or substantial at the uppermost end) in favour of the Development.

24. There is no live issue engaging the proposition in *Kings Lynn and West Norfolk v Secretary of State for Communities and Local Government* [2015] EWHC 2464 (paras 32-37): it is not advanced by the Appellant that national policy *requires* LPAs to meet their AH needs in full. But there is plainly every significance in the Council dosing so, and every significance in the Council not doing so, given its housing land position. Hence, the material consideration ARISING is no less significant for the absence of a requirement.
25. Against the historic under supply and delivery, the Council seemingly points to two ‘factors’¹²: that it is now ‘improving’, and the plan-led system (reliance on the future Local Plan). The extent of the Council housing record (in both duration and extent of shortfall, compounded) and minor and most recent only uptick – even accounting for some approvals since 2015 – offers no confidence of any *meaningful* and sustained improvement. And, an improvement against the Council’s own performance barometer, is scraping a positive. The future Local Plan is so distant, that even the Council invites that very little (i.e. no) weight be attached to emerging policy formulation, and, tellingly, none of any specificity is even put before the Inspector. Future housing delivery under a new local plan cannot logically be given any more weight.
26. So, pointing to the ‘plan-led’ system defies both logic and rows flatly against clear national policy emphasis for boosting housing delivery: the local plan (as well as Council decision-taking pursuant to it, on housing proposals) has so evidently failed lamentably.

¹² CD 10.6 Mr Canavan Para 6.57- 6.59

27. Given the Council's own position, the emerging plan can be addressed shortly. The process has been subject to continued slippage. The Reg 18 stage, alone, spanned January 2016-June 2018. The Council contends that Reg 19 Consultation will commence in Spring 2021, is again unrealistic: background evidence gathering remains ongoing.
28. The Council's exclamation of HIF funding, of which no detail (including of triggers or individual asset viability or asset deliverability, etc.) is before the Inspector, in merely *potentially* enabling supporting infrastructure for up to 12,000 homes, is a complete red herring in this appeal. The HIF award is ultimately part of a wider toolkit, inevitably activated only well after the new local plan process is completed, that will not be called upon until significantly post-plan adoption. HIF (even if anything of detail was actually known of the award) will not speed up that process at all. It also provides no justification for stalling on the imperative to boost housing supply, now. So, HIF changes nothing. If anything, HIF further signposts the Council's disastrous housing position.
29. The Council's Spring 2020 consultation ("Planning for Growth on the Hoo Peninsula") which does not even purport to assess capacity generally, or specific sites, echoes the fact. It can attract no weight. Nonetheless, the bald claim of this scale of strategic housing delivery lacks all depth. This 'vision' is also bound to face monumental opposition at Examination. The 12,000 homes figure stems from a high level assessment in the Strategic Land Availability Assessment 2019 only, which gives indicative figures only for Medway development. Similarly, January 2021's issue of "New Routes to Good Growth" HIF Project consultation, presents only a very high level, road and rail investment, and fails to anticipate any detailed, physical, policy, procedural and timing delivery issues.
30. Moreover, whilst a Strategic Environmental Management Scheme (SEMS), identified as "an innovative vision to capture aspirations for landscape biodiversity/access and long term management and engagement" has been

produced, this provides no detail as to how it would be possible to achieve substantial development without undermining the significant international, national and local environmental constraints of the Hoo and adjacent estuary.

31. So, the Council's consultation exercises over recent years give confidence that any significant level of development can be delivered on the Hoo Peninsula.
32. But the issue can be looked at as narrowly as the timing of delivery. The Council's timescale for the adoption of the Local Plan is plainly over-optimistic¹³. Circa Summer 2025 is a much more realistic date for adoption with the necessary applications to deliver housing to follow, and then build out. This process will not therefore deliver any housing for at least 5 years. This is far too long to wait against the backdrop of the current chronic housing situation. The Inspector in the Brompton Farm (June 2019) appeal rightly noted *then* that "...the housing situation needs immediate action, and it is evident timescales are progressively slipping with the Local Plan¹⁴..."
33. The need to avoid further slippage gains even greater importance in this time of (if presently masked) unprecedented economic downturn. More than ever development which will deliver substantial housing at an early stage with myriad, important, in/direct economic benefits.

Policy

34. There is largely agreement between the principal parties on the relevant development plan policies, and some agreement on the weight to be attached to them¹⁵.
35. Policy S1 (Strategic Development) directs development to urban areas and previously development land which is generally a sustainable approach. It does

¹³ Mr Canavan POE Para 6.54 CD10.6

¹⁴ Para 73 CD4.3

¹⁵ SOCG Table CD11.6

not prevent development in the countryside, as Canavan notes (paras 6.22 – 6.26: CD10.6). The Council has also granted permission on greenfield sites to boost housing supply. The Council's view that this should attract full weight as it seeks to protect green land and encourage green development, falls flat against its own recognition that some district BMV land must make way for future housing. Medway cannot begin to meet its housing need without development on greenfield sites. As Policy S1 evidently restricts housing delivery, it is to be treated as out of date, and in the circumstances, should carry very limited weight.

36. Neither policy BNE12 nor BNE14 (Conservation Areas) directs refusal, if harm to a designated heritage asset is identified. The development causes (much) less than substantial harm to the setting of the Conservation Areas, and this must be balanced against the public benefits of the Development (NPPF Para 196). It is submitted that the benefits very substantially outweigh the (limited) harm.
37. On BNE18 (Listed Buildings), it is agreed that the Development will cause less than substantial harm to the setting of listed buildings. In directing refusal if there is any harm, means it is contrary to the approach in NPPF Para 196 which requires a balance against public benefits. It is out of date and should carry limited weight. Again also, the (much) less than substantial harm is clearly outweighed by the benefits.
38. The proposition in City & Country Bramshill Limited v Secretary of State for Housing, Communities and Local Government [2021] EWCA Civ 320 (paras 87-89) is not engaged in this appeal, still less materially: neither principal party is arguing the elevation of development plan policy on heritage over the NPPF on heritage. The NPPF disposes of the heritage question. On the application of the NPPF, the parties' common ground on less than substantial harm is agreed. The Appellant claims very substantial benefits, to be assessed in the usual way. In this context, whether BNE18 is, or is not, out of date, changes nothing.

39. On BNE25 (Development in the countryside), a blank restriction on development in the countryside that restricts housing delivery is out of date and should carry no weight.
40. Other policies such as BNE34 which control development of “value landscapes” can carry no or little weight, at best: as identified with policy S1, the Council has permitted countryside development contrary to this policy on housing supply grounds. As with Policy S1, the Council cannot sustain an objection in principle to the development on the basis of protecting greenfield. The degree of impact on the locally designated landscape is in dispute. Whilst it is not a general restraint on housing delivery, it does restrict housing in locally valued landscape areas. The outcome of para 11 NPPF, in the circumstances of this appeal, mean that it should carry little weight. Inspectors (Land at Station Road and Bennetts Orchard) have accepted protection of the “valued local landscape” should be given weight, and have also accepted that the second criterion which invites the balancing of economic and social benefits, must be applied. That these Inspectors took different views on the weight to be given to the “landscape protection aims” of the policy, respectfully, the view observing the significance of the Council’s housing position should be preferred here. The Council’s own recognition of future, sizeable development on BMV land, viewed against the dire housing picture, lends further endorsement for this.
41. Further, any conflict with BNE34 (i) is outweighed by compliance with BNE34 (ii). This allows for the situation that “the economic and social benefits are so important that they outweigh the local priority to conserve the area’s landscape”. The benefits in this case clearly outweigh the “Local landscape priority”.
42. Policy BNE47 (Rural Lanes) was belatedly added by the Council. This is a local designation only, one which is highly equivocal in its application, and one which does not add any level or different protection to Policy BNE34, since the ALLI fully encompasses it. No assessment was undertaken of Pump Lanes characteristics when designating it as “important”. The Lane itself discloses has

a mix of built and open frontages and this character will not be altered by the Development¹⁶. Even if conflict with this policy arises (which it does not), and if it is concluded some harm does occur, it must be balanced against economic and social benefits.

43. Policy T1 (Impact on development) is not consistent with NPPF paras 108-111. It cannot be treated as “up to date” given the fact that the policy only addresses (in so far as relevant to the appeal) – at criteria (i) – traffic capacity generated by the development, and against this factor, T1(i) does not reflect the threshold or ‘high bar’ of (residual, cumulative) severity. Additionally, policy T1 does not even account on its face, for the consideration of residual or cumulative traffic impacts. It also does not import any obvious consideration of the wider traffic-related considerations arising under paragraph 108.
44. The comparatively far broader scope of NPPF paragraphs 108 – 111 is intended to encourage, to an appropriate level, the promotion of sustainable transport modes (NPPF para 108 a) and in this regard giving priority to pedestrian, cyclists and use of public transport (NPPF para 110 (a) and (c)). It also identifies the need to plan for the needs of the less mobile (para 110 (b)), servicing / emergency vehicles (para 110 (d)) and electric vehicles (para 110 (e)). Paragraph 111 advises on travel plans. Policy T1 does not incorporate or notably reflect any of these positive elements which allow for a residual cumulative assessment of traffic impacts.
45. In the appellant’s view the Development only conflicts with policies S1, heritage policies BNE12 – 14, and countryside policy BNE25 - but none of these carry significance in the overall planning balance, taking account of the outcome of NPPF para 11 for ‘out of date’ “most important policies” in this appeal.

¹⁶ ID 20

46. In the Cliffe Woods Appeal (Nov 2018), the Secretary of State decided¹⁷ Policies S1, S2 and BNE25 ran counter to the objective to significantly boost the supply of houses and the weight to be attached to them should be reduced. This reflected the advice of the reporting Inspector (Paras 100 and 133).
47. So, the Development is in accordance with the Development Plan, especially when it is understood that the policies of any development plan ‘pull in different directions’ and that broad conformity (there being no need for full compliance) gives rise to accordance. [As below, these conflicts are strongly offset by housing delivery and the host of other, significant benefits of the Development.]

Appeal scheme delivery

48. Based on realistic, not over optimistic assumptions, housing could start to be delivered on site by Summer 2023. This would allow for some 250 houses (131dpa) to be delivered as part of the 5 year supply. Assuming the Council’s more cautious annual delivery figure (107 dpa: Canavan POE para 6.34 CD10.6) some 210 homes would be delivered. 35% of these units would be affordable. Canavan accepted (XX) these timescales were possible and even if they slipped significantly, would still deliver in excess of 100 houses. In any of these scenarios a substantial contribution would be made to the 5year supply.
49. The need to address archaeological conditions might affect the delivery of housing *if* important remains are found on further physical investigation. This will however, have more impact on the location/distribution of houses rather than timing of their delivery. The Appellant and interested “developer parties” are naturally keen to progress development as soon as planning permission is granted. There are also no substantive issues preventing prompt delivery of

¹⁷ CD4.9 Para 23

housing on site, which will be well in advance of delivery through the emerging Local Plan as advocated by the Council.

LANDSCAPE

Landscape Character and Visual Context

50. The Site is strongly influenced by the urban development and urban fringe context within which it is sited. Impacts on Pump Lane are limited to those confined impacts associated with the introduction of the new junctions, with the Development allowing for the replanting of hedgerows along Pump Lane and which does not affect the character of the central section of the Lane as it passes through the Site.
51. The Site is well contained by mature vegetation including woodland and tall hedgerows which significantly limit the available views and extent of visibility. There are limited, publicly available views into and across the Site, with some views from adjoining lanes, and Pump Lane that pass through the Site and the bridleway which runs across its eastern part¹⁸. Views from the shoreline, to the north, are screened by trees and vegetation along the Saxon Shore Way, with views from the shoreline limited to those from the promontories of Horrid Hill and Motney Hill.
52. Views across the Site from trains passing to the south are also largely screened and conspicuously filtered by trackside trees and vegetation. Outward views across the Site are glimpsed through breaks in vegetation and are fleeting, with some clear views on the winter months¹⁹.
53. The land across the majority of the Site is managed for commercial orchards, set within medium to large scale fields defined by tall coniferous hedges and

¹⁸ CD11.3, point 7 (page 4)

¹⁹ CD11.3, point 8 (page 4)

windbreaks. Commercial orchards, even if treated as being at all characteristic of the Kent fruit belt, are nonetheless far from a rare or unusual feature within the area and are unremarkable in their character. As RH explained, supported by his robust LVIA, the orchards are indeed a perfectly common feature within the wider Kent Fruit Belt.

54. The Site has little variety in land use, land cover or pattern. The surrounding area includes fields of varying sizes, including both pasture and arable land with areas of remnant traditional orchards and marshland and the Medway shoreline to the north, beyond Lower Rainham Road. The variety of land uses within the immediate area is recognised in the Medway Landscape Character Assessment (MLCA) of the Lower Rainham Farmlands LCA which identifies the area as comprising *“Flat, small to medium scale mixed farmland – orchards, arable, rough grazing”*²⁰.
55. The MLCA of the Lower Rainham Farmlands LCA identifies the general area between Lower Rainham and Lower Twydall as being in generally good condition, reflecting the management of the orchards and field boundaries. The commercial orchards, even if treated as a characteristic of the area, do not reflect the traditional historic pattern, character or varied agricultural land uses present in the landscape. The management of commercial orchards also underscores their lower biodiversity and wildlife value. This is reflected by the MLCA, in identifying the potential to restore traditional orchards and strengthen and enhance biodiversity opportunities²¹.
56. The Site is situated within the urban fringe, bounded by the urban edge at Twydall to the south and contained by linear development which extends along Lower Rainham Road between Berengrave Lane and to include Lower Rainham to the north and east. Houses on the edge of Lower Rainham extend south along

²⁰ CD3.4 Page 68, Characteristics, first bullet

²¹ CD3.4 Page 69, Issues, third bullet

Pump Lane on the edges of the Site, with Pump Farm, the residential development at Russett Farm and properties opposite Pump Farm towards the centre of the site.

57. Whilst the land use within the Site is predominantly agricultural and includes features and characteristics that are typically rural in nature, the larger context which encompasses the Site, viewed in relation to the urban area, development and also infrastructure (roads and railway), nonetheless strongly influences the context and perception of the landscape and Appeal Site within the urban fringe. This is recognised within the MLCA, in identifying the Lower Rainham Farmland LCA as having a “*transitional urban fringe character*” which is influenced by Lower Rainham Road²²
58. Lower Rainham Road and development along it extends the urban fringe influence and forms an appreciable barrier to the north of the Site, separating it from the Riverside Marshes and Shoreline, to the north. The urban fringe influence of Lower Rainham Road upon the local landscape is identified by the MLCA as a characteristic of the Riverside Marshes LCA²³, which is situated to the north of Lower Rainham Road beyond the Site and extends as far as the shoreline of the Medway Estuary.
59. Given these factors, it is clear that the Site forms part of a wider area that is influenced by the Development and is of urban fringe character, being contained by urban development and Lower Rainham Road to the north and situated adjacent to the edge of Twydall along the railway line to the south.
60. Assertions made in XX of RH that the LVIA, and/or his PoE, lack a full appreciation of the MLCA assessment of land within the Site being “essentially rural in character”, altogether fail to acknowledge that the MCLA identifies the urban fringe character and urban influence Lower Rainham Road as

²² CD3.4, Page 68 Character - second bullet

²³ CD3.4 Page 32, Characteristics, second bullet

characteristics of both the Lower Rainham Farmland LCA and Riverside Marshes LCA. Both the LVIA and RH PoE amply acknowledge the characteristics and features present within the Site, including the orchards, hedgerows and farmland and the contribution these make to the landscape. This is also recognised within the intrinsic assessment of effects and is also reflected well as part of mitigation measures incorporated as part of the Development.

61. The influence of the urban form and containment of the Site by development and vegetation is also clearly apparent in inland views from the promontories of Motney Hill and Horrid Hill. As agreed in the Landscape SoCG, in these views, the Site is set beyond vegetation and trees to the shoreline, as well as development and hedgerows along Lower Rainham Road. The urban edge at Twydall forms a developed backdrop on the rising land to the south, with the urban area of Rainham and Gillingham beyond.²⁴

62. Within the local landscape, there are commercial developments that influence the character and perception of the area as being within the urban fringe context. This is recognised in the MLC by the classification of the area as being situated within the 'Urban fringe with urban/industrial influences' landscape type, which is described as land which is: *"either significantly degraded by adjacent intrusive urban or industrial areas (sometimes characterised by an abrupt urban / rural transition) or contains features which significantly intrude upon or detract from its once rural character."*²⁵. As conveyed in JE's PoE and described during JE's EiC, he considered that, at the time of the assessment of the Kent Thames Gateway Landscape Assessment in 1995, Bloors Wharf was in industrial use and would have influenced the area²⁶. However, the description of the area contained in the MLCA also describes the present-day context within which the Site is situated, with an abrupt urban edge with Twydall to the south of the Site and the urban area on the rising land beyond strongly influencing the character of the area.

²⁴ CD 11.3, point 9 (page 4)

²⁵ CD3.4, page 121 (Appendix B)

²⁶ CD10.8 para 3.4.11 (p-age 16)

Other detractors within the local landscape include industrial/commercial uses at Motney Hill, the Mariners Farm boatyard and industrial units at Owens Way, on the edge of Gillingham. As recognised by the MLCA, these urban and industrial areas intrude on the local landscape and detract from the character of the area, including the Site. This context can be experienced in views towards the shoreline from Horrid Hill, Motney Hill and the estuary²⁷.

63. Whilst recognising the situation of the Site within the locally designated Gillingham Riverside ALLI, the LVIA assesses the Site and local landscape within the Lower Rainham and Lower Twydall Fruit Belt as being of a Medium Sensitivity to the Development.
64. As examined through a site-specific landscape character assessment within the LVIA, the landscape alongside the estuary north of lower Rainham Road is of a higher value than that of the Site, and of land within the Lower Rainham and Lower Twydall Fruit Belt - for a variety of reasons. It is therefore more sensitive. It is important to recognise that, as the LSoCG confirms, the Development would have no direct impact upon these areas north of lower Rainham Road, including the Country Park, protected biodiversity sites and public rights of way associated with the Proposed Development²⁸.
65. Land north of Lower Rainham Road is of a higher value and sensitivity due to the recreational and amenity associated with the Riverside Country Park, Saxon Shore Way, expansive attractive views across the estuary and wildlife/conservation importance associated with the areas of nature conservation. The Development would not directly impact upon these areas, as the LSoCG confirms.
66. The detailed character assessment within the LVIA sub-divides the Riverside Marshes LCA into two Local Landscape Character Areas (LLCAs), so allowing

²⁷ CD10.3 Volume 2 Figure7: Photoviewpoints 2 & 4 and CD10.8 Appendices: photographs 32, 34 & 35

²⁸ CD11.3 point 7 (page 7)

for the differentiation between areas along the shoreline and farmland in respect of character, value and experiential factors, including views across the estuary. As RH emphasised (PoE), the most significant difference between the MLCA and Tyler Grange's LVIA, relates to the "integral links" between the Riverside Marshes and Lower Rainham Farmland combining to form a "generous buffer" between the urban areas and estuary²⁹. Lower Rainham Road and associated development and vegetation provide physical and visual separation between the two areas, as agreed between the Council and Appellant³⁰. It is not at all clear why then land within both these areas should be provided as a buffer to protect the biodiversity or recreational resources along the shoreline. This is not explained or justified within the MLCA or under LP policy BNE34 in relation the ALLI functions as a green buffer. The Council's evidence also offers no justification.

67. As recognised by both RH and JE, the containment of the Site limits the area from which the Site and Development could be seen, and therefore also, the extent of both landscape and visual effects to the area within the visual envelope of the Development³¹. This represents an area that is tightly drawn around the Site with restricted visibility beyond the roads and lanes bounding the Site. Views from Motney Hill and Horrid Hill are identified from the north, where the land rises sufficiently for views to be obtained over the shoreline vegetation inland towards the Site. The landscape and visual effects of the Development are therefore localised in nature and extent.

Informing design principles

²⁹ CD10.8 para 3.12 (page 17)

³⁰ CD11.3 point 6 (page 4)

³¹ CD10.8 para 3.4.18 (page 18) and Landscape Appendices - Figure 4 'Visual Envelope and Photograph Viewpoints'

68. As detailed in the DAS, the Development has been informed by design principles³², including:
- a. Creation of a village character with village green in the centre of the Site adjacent to development on Pump Lane;
 - b. Incorporate historic orchard use within parts of structural landscaping;
 - c. Maintain existing landscape structure at the edges of the Site with significant areas of open space around the perimeter;
 - d. Retain existing bridleway and extend it across the western Site area; and
 - e. Enhance connectivity through creating a pedestrian link to Lower Twydall and countryside walk around the perimeter of the Site.
69. The landscape strategy for the Development, as set out in the DAS also includes the following principles, attributing a clear emphasis:
- a. Additional landscape screening and separation for existing residential properties in addition to existing high hedges and trees;
 - b. A structural landscape around the perimeter of the Development and loop road to allow Development to blend with the landscape; and
 - c. A significant areas of open space for recreation incorporating swales and ponds as part of the Sustainable Urban Drainage Strategy.
70. The above landscape principles are incorporated into the areas of Green and Blue Infrastructure as shown on the parameter plans³³ and illustrative masterplan³⁴. An illustrative Landscape Framework plan had been prepared by Tyler Grange as part of the appeal submission to fit with the revised parameters increasing the landscape and Green Infrastructure buffers to Lower Twydall and Lower

³² CD5.10 Section 5.0 Design Principles

³³ CD8.1 Appendix 5 Green and Blue Infrastructure Parameter Plan

³⁴ CD8.1 Appendix 5 Revised Site Masterplan

Rainham, respecting their setting and identity as well as visual amenity of residents and providing additional landscape buffers and recreation areas³⁵

71. The Landscape Framework sets out landscape principles which include creation of open space and green infrastructure containing community orchards, village green, recreation routes and landscape mitigation and structure planting. As the LSoCG confirms³⁶, these areas also provide improved connections for residents within the scheme and to the wider countryside including the Riverside Country Park, and Saxon Shore Way as well as to the wider urban area, in addition to Lower Rainham and Lower Twydall landscape buffers.
72. The Development will deliver substantial new areas of publicly accessible, attractive open space, including the village green (1.12 hectares) and areas of multifunctional green and blue infrastructure (15.69 hectares). Together, these areas combine to significantly cover a third of the Site area.
73. The strategic landscape buffer planting and linear green spaces within the Development, including trees and woodland, will break up the built form and provide a soft green backdrop to the Site, when viewed from the estuary. The effectiveness of the proposed mitigation in softening views from the north is a matter agreed in the LSoCG³⁷.
74. Character Areas (section 6 of the DAS³⁸) illustrate the substantial set-backs as well as the opportunities for effective mitigation in addition to the varied character and edge treatments, capable of delivery throughout the Development.

Height Parameters

³⁵ CD10.3 Volume 2, Figure 8

³⁶ CD11.3 point 6 (page 6)

³⁷ CD11.3, point 10 (page 4)

³⁸ CD5.10 Section 6, Design Development

75. The appeal submission had included height parameters for development of up to 12m across areas of residential development, with 10m at the school and local centre³⁹. The LVIA assessed the 12m height parameter across the residential areas as a “*worst-case scenario*” – in conjunction with EIA schemes⁴⁰. However, as had plainly been explained in the DAS, the intention had always been for individual feature and focal buildings only, to be of a height of up to 12m (3 storeys) in height. It was never the intention, true to the DAS, for anything approaching blanket development across the Site to be three storeys/up to 13m high. Indeed, the clear majority of development would be no higher than two storeys⁴¹.
76. The Appellant’s production of a revised heights parameter plan (ref. 11047/PL/011B), so reducing the areas of heights with parameters of up to 12m to areas within the southern part of the Site and those associated with the care home⁴² illustrates the same reality of the Development, evident from the DAS. The significance of likely landscape and visual effects, and related mitigation measures arising, remains unaffected. There would arise a minor reduction in effects associated with the reduction in height parameters, given the broad categories of effect in both JE’s evidence and the LVIA, ultimately, no change would arise in the category of overall effect⁴³. As confirmed by RH in conjunction with the Appellant’s note on building heights of 5th April 2021⁴⁴. Similarly, RH’s assessment remains robust.
77. The lowering of heights would reduce the impact of the Development on views from Pump Lane at the Site entrances, and as viewed from Motney Hill and Horrid Hill to the north. The mitigation planting would also be effective within a shorter time period. Retaining a parameter of up to 12m heights for properties

³⁹ CD8.1 Appendix 6 – Building Heights

⁴⁰ CD8.4 11.1a, paras 2.7 and 2.8, page 4

⁴¹ CD5.10 ; Section 6.5 Scale & Appearance, page 29

⁴² ID29

⁴³ ID30 Appendix B, paragraph 3, bullet(d)

⁴⁴ ID38

fronting the village green and in proximity to the village centre there will continue to be important opportunities to provide focal buildings in these central spaces. Despite however the localised reductions in effects resulting from the revised height parameters, these will not materially change the assessment of the residual landscape and visual effects of the Development.

78. There also remains scope to design the Development within the amended heights parameters to ensure that the scale and character of development is appropriate to the local context and that taller buildings of up to 12m height are incorporated into the scheme sensitively to act as positive features.

Community Orchards

79. Following questions regarding the deliverability of the community orchards, ID26: Community Orchard Implementation and Management was produced, detailing The Orchard Project, supportive of the community creation and management of new orchards. The 'Community Orchard Model' that is used and championed by the Orchard Project. This model reflects well the feasibility of enabling residents of the Development, and of the wider Rainham and Twydall area, to be actively involved in the creation and stewardship of new community orchards. A reported 95% tree survival rate across orchards established and managed by The Orchard Project, alongside communities, underscores the significance of this delivery. The focus is on community involvement and taking ownership of the orchards, whilst providing training and support for 5 years, aided by a co-created management plan. There is flexibility in the management of the community orchards by both volunteers and management companies that will ensure the long-term orchard survival.
80. Areas of meadow planting amongst the community orchard areas would further improve the biodiversity of the green spaces and also encourage cross pollinating insects. As the Application Landscape Strategy Plan⁴⁵ and Landscape

⁴⁵ CD5.10 Section 6 'Landscape Strategy' page 27 and Illustrative Landscape Masterplan, page 28

Framework Plan show, it is the intention to provide areas of meadow grassland throughout areas of open space across the Development.

LVIA Assessment of Effects

LVIA Methodology and Approach

81. The Tyler Grange LVIA forms an independent assessment that was prepared to assess the revised appeal scheme. As recognised by JE, the LVIA is a “*reasonably thorough and detailed assessment following a clearly stated methodology*”⁴⁶. The LVIA was prepared in accordance with the Guidelines for Landscape and Visual Impact Assessment⁴⁷ and was written by a Chartered Member of the Landscape Institute.
82. The photoview points contained in the LVIA and which were used to inform the assessment were agreed with JE⁴⁸. As reflected by the location of the viewpoints, this reinforces the containment of the Site and localised nature of the landscape and visual effects⁴⁹. As agreed by JE, impacts in views from north of the Estuary would be negligible. This is strongly reinforced by his own viewpoints⁵⁰ within the visual envelope of the proposals⁵¹. Clearly the focus is therefore on *localised* effects.

Landscape Effects

83. Within the local area, at the Local Landscape Character Area (LLCA) scale⁵² the Development would result in residual moderate adverse landscape effects after

⁴⁶ CD10.8 Para 6.7.1, page 53

⁴⁷ CD13.5

⁴⁸ CD8.4 11.1a, para 2.7, page 4 and Appendix 1 and CD11.5, para 13 and Table

⁴⁹ CD10.3 Volume 2, Figure 6

⁵⁰ CD10.8 Appendices Figure 2

⁵¹ .CD10.8 Appendices Figure 4

⁵² As represented by the Lower Rainham and Lower Twydall Fruit Belt LLCA illustrated on CD10.3, Volume 2, Figure 5

maturation of mitigation planting⁵³. This assessment reflects the loss of commercial orchards and replacement with residential development that will change the character of the landscape within the urban fringe context⁵⁴. Effects upon the wider LLCA beyond the Site will be limited due to the physical and visual containment of the site by mature planting and shelterbelts to site boundaries.

84. Despite the scale of the Development, the containment of the Site within the area of the LLCA and local landscape by woodland, trees and built development limits the extent of the affects. The additional planting to the Site boundaries and within areas of green infrastructure throughout the proposal will bolster the containment provided by the existing trees and assimilate the Development into the landscape.
85. There would be no direct landscape effects on the land north of Lower Rainham Road. Minor adverse residual effects are identified by the LVIA for land within the Medway Marshes LLCA and the Medway Shoreline and Riverside Country Park LLCA. These relate to impacts on the green backdrop to the estuary and perceptual qualities as experienced from within the Country Park and views towards the Development from Motney Hill and Horrid Hill.
86. Upon completion, the Development will give rise to moderate / major adverse site-wide landscape effects. The landscape mitigation matures, areas of open space including the village green, community orchards, informal open space and strategic landscape planting will integrate the Development into the landscape and soften the built form, so providing additional screening of the Development at the interface with adjacent built up areas and a soft transition with the landscape to the north and northeast.

⁵³ As assessed within the LVIA (CD8.4 11.1a)

⁵⁴ CD8.3 11.1a Section 7 - Landscape Effects, Lower Rainham and Lower Twydall Fruit Belt LLCA, At Completion - Effects Incorporating Mitigation, first paragraph (page 60)

87. After 15 years, with the maturation of the landscape planting, the residual effects of the Development at the Site-wide scale will reduce to moderate adverse. The LVIA reaches this assessment on balance when considering that there would be a high magnitude of change associated with the loss of the commercial orchards across the Site and a medium magnitude of change (and localised moderate adverse effect) on the character of Pump Lane arising from the implementation of new access roads, junctions and residential development. Development is set beyond areas of open space and landscape buffer including community orchards.
88. The substantial areas of multifunctional green and blue infrastructure throughout the Development provide improved access through the Site and connectivity with the adjacent urban areas and countryside, as well as areas of open space containing community orchards, a village green, informal recreation spaces and recreation routes. These include a swathe of green space alongside Pump Lane, reflecting the character of the landscape and the setting of the lane, including views of orchards and across the estuary.
89. As explained in ID30, regarding heights parameters⁵⁵, the LVIA uses a broad criteria threshold. The assessment of moderate adverse effects at a site-wide scale is towards a higher end of this threshold than the moderate adverse effects upon the local area.
90. As set-out at Appendix 2 of the LVIA⁵⁶ the magnitude of change considers the scale of the Development, geographic extent and duration of effect. Whilst there would be a highly noticeable change at the Site-wide scale associated with the Development, the extent is localised to that of the Site, reducing the overall magnitude of change within the local landscape.

⁵⁵ ID30, Notes 1 and 2 Appendix A, para 3(d)

⁵⁶ CD8.4 11.1a Appendix 2 -Table 3 - Magnitude of Change: Landscape / Townscape receptors

91. When assessed against the LLCA as a whole, moderate adverse effects relate to the description contained within the LVIA⁵⁷: *“to include the introduction of elements that are distinct but may not be substantially uncharacteristic with the surrounding landscape.”*. The assessment recognises that the Development is not substantially uncharacteristic and has properly taken account of the abrupt adjacent urban edge at Twydall, linear development at Lower Rainham, Pump Lane and along Lower Rainham Road and the urban fringe influence across the Site.
92. Both the LVIA and JE’s assessment at the local area level identify residual moderate adverse landscape effects. As set out above, the extent of the area with the potential to be affected is tightly drawn around the Site⁵⁸. There is therefore only a relatively small difference between the geographic area that assessed for both the Site-wide and local area scales.
93. Considering this, there appears only a small difference between the assessments of RH and JE regarding the overall significance of the landscape effects arising from the Development at a localised and site-wide scale.
94. The Council’s invitation to contrast RH’s LVIA with the assessment of landscape and visual effects as part of the Lloyd Bore (application) LVIA, are meritless. First, it is not uncommon for a further LVIA to be undertaken, at appeal stage, and no reliance is placed by the Appellant on the Lloyd Bore LVIA. Second, there is no essential flaw in RH’s approach or disclosed by the LVIA, or as to mean that the Lloyd Bore LVIA bears any importance in the appeal. Third, as even explained in JE’s evidence,⁵⁹ the residual landscape effects at the local area scale have nonetheless been assessed as ‘moderate adverse’ at year 15, by three independent assessments:
 - a. Lloyd Bore LVIA (planning application);

⁵⁷ CD8.4 11.1a Appendix 2 – Table 5. Level of Significance of Effect

⁵⁸ As identified CD10.8 Appendices Figure 4 ‘Visual Envelope and Photograph Viewpoints’

⁵⁹ CD1.8 Appendices, Table 1 – Summary Comparison of Landscape Effects

- b. Tyler Grange LVIA (appeal scheme);
- c. JE (Council).

95. As recognised by the GLVIA, professional judgment is an important part of the LVIA process, and even with qualified and experienced professionals there can be differences in the judgments made⁶⁰.
96. Despite this, it is clear that the three different LVIA's prepared to assess the Development broadly agree the significance of effects on the local landscape. This is reflected in JE's comments on the Lloyd Bore LVIA assessment within the officer report that moderate adverse effects at a local level is a "*reasonable assessment of the likely landscape harm*"⁶¹.
97. The narrative and explanation behind the assessment is of key importance⁶². In accordance with guidance, the LVIA contains narrative setting out and explaining the assessment and the judgments made. JE considered Lloyd Bore LVIA to make a "*reasonable assessment of harm to landscape character*", with residual moderate adverse landscape effects after 15 years at the LCA scale (as referenced in application proposal in the Officer's Report). This relates to the Medway LCA (2011) Lower Rainham Farmland landscape character area.

Visual Effects

98. Given the limited extent of views towards the Site and Development, effects on publicly accessible views and visual amenity are largely limited to those obtained from adjacent roads, including Pump Lane as it passes through the Site, as well as middle distance (500m – 1km) views obtained from Motney Hill and Horrid Hill, to the north.

⁶⁰ CD3.15 paragraph 2.25 (page 21)

⁶¹ CD7.2 paragraph 3.54, page 15

⁶² CD3.15 paragraph 3.36

99. The Development will be screened by intervening vegetation low-lying views from along the shoreline, with shelterbelts, woodland and tall hedgerows limiting views into or across the Site from adjacent land beyond the lanes and properties at Lower Twydall and Twydall, with views across the area.
100. Views from Motney Hill and Horrid Hill are expansive and include views across the Estuary and wider shoreline. The situation of residential development on the Site, set within the well vegetated and treed backdrop, along with mature mitigation planting to the Site boundaries limit the extent and prominence of the Development and resulting magnitude of change.
101. The Development will be contained by existing and mitigation tree planting, providing a soft edge, retaining a green backdrop set beyond the woodland and shelterbelts, tying-in with the woodland and trees that bond the Site and are situated within adjacent areas. Development on the rising land to the south and along Lower Rainham Road will continue to frame views towards the Site, with the urban form of Twydall on the rising land, to the south.
102. The expansive views from these locations across the estuary will not be affected. Views and the visual amenity of people visiting Horrid Hill and on the Saxon Shore Way at Motney Hill will result in residual localised, minor adverse visual effects.
103. Users of local roads including Lower Rainham Road, Lower Twydall Lane and Lower Bloors Lane, will experience residual localised and minor adverse visual effects. The containment of the proposals within the strong network of boundary vegetation formed by existing trees and hedgerows will be strengthened by new planting which will, over time, mature to soften and screen views, including views at the Site entrance, off Lower Rainham Road. Views to the north from the road will remain unaltered, with replacement native hedgerows and trees to the landscape buffer and the setting-back of development beyond generous

landscape buffers providing a robust edge and transition from the road to the Development.

104. The areas of green infrastructure alongside Pump Lane will provide improved pedestrian access across the Site north-south within areas free from vehicular traffic and passing through attractive areas of public open space the connect with wider recreational routes within the scheme and surrounding countryside. There will no longer be a need for people to walk along the lane, which is narrow and has no footways to access the countryside beyond the urban areas. For those users of the lane, there will be localised minor / moderate adverse effects upon their visual amenity resulting from the realignment and new junction arrangements to the north and south of the lane and views of the Development. Retaining open space alongside Pump Lane including community orchards and the village green will maintain the character of the central section and minimise visual impacts.

Users of the Bridleway

105. Users of the bridleway will benefit from improved accessibility and connections with adjacent rights of way that are to be provided within the scheme, including a new footway from lower Twydall Lane. This will join with footpaths and routes that run through areas of green infrastructure and the bridleway, providing links with Berengrave Lane as the bridleway continues through the Bloors Lane Community Woodland and the new housing at the nursery site.
106. The bridleway will be set within a green corridor, with existing trees alongside the path retained and managed. Access from the bridleway to areas of open space along the route, including wider recreational walks around the scheme set within a variety of green spaces will allow for greater amenity uses, with opportunities for the proposals to retain glimpsed views towards the estuary from existing gateways and the provision of a park providing informal

recreational space, structural native landscape planting and play areas. The bridleway will open up into the village green and community orchards alongside Pump Lane, providing a destination and attractive environment for residents and the wider local community for recreation and amenity use.

Pump Lane Character and Hedgerow Removal

107. Despite never having been cited in support of a reason for refusal, the Council belatedly introduced policy BNE47 'Rural Lanes' in relation to Pump Lane. The policy does not identify or attribute any importance, or explain any landscape or amenity character of individual lanes, still less of Pump Lane. There is similarly no supporting study or base evidence, from which to discern any valued 'attribute' of Pump Lane, or assess such against the policy itself, or as to assist in understanding any attribute the Lane may be said to have in any appreciable context, including within the context of other lanes. It is even unclear whether the Lane in whole or in part (or parts) is said to disclose significance. The Council was seemingly unable to resolve these ambiguities when deciding to omit this policy from its reason for refusal. It clearly provides no or no material support for the reason for refusal.
108. Nonetheless, policy BNE47 aside, Pump Lane discloses a distinctly varied character as it passes through the Site, with properties south of Lower Rainham Road, north of Pump Farm and at Russett Farm and Pump Farm fronting the road and introducing a developed character. The hedgerows also include uncharacteristic conifers, with gaps and breaks reflecting their limited species and age structure. The Lane is also well used by local traffic and is further influenced by trains using the railway line towards the south of the Site area. This all very significantly reduces the landscape character and amenity of the Lane.
109. Indicative hedgerow removal and replanting associated with the Site accesses on Pump Lane and Lower Rainham Road, has been explained, demonstrating how replacement hedgerows may easily come forward, and as to compliment the

Landscape Framework and connect appropriately with retained roadside hedges.⁶³

110. The Development includes the replanting of removed lengths of hedgerow and provision of landscape buffers, incorporating new trees. It is also common ground that the replanting could be undertaken early during the construction phase to allow for establishment and maturation to reflect existing height during construction.⁶⁴ As must be widely acknowledged (including by JE) this replanting will offer valuable opportunities for improving the species, structure and management of the hedge.
111. As well as reinforcing character, there would be clear biodiversity and wildlife benefits associated with more diverse native hedgerows, benefits which are accentuated in light of the existing hedgerows.
112. As JE also confirms, in his PoE⁶⁵ and during XX, there would be no change to the character of Pump Lane, between the northern and southern access points, with changes to the character of the Lane being limited to those associated with the new junctions. Community orchards, betraying a traditional character and the proposed village green, would provide an attractive character alongside the road, preserving the setting to Russett Farm and Pump Farm, and views across the orchards towards the estuary.
113. Further alteration of the alignment of the proposed access on Lower Rainham Road has enabled the retention of the road alignment along the northern edge, retaining the footway, hedgerows and trees to the north of the road.⁶⁶ The revisions also allow for the replanting of hedgerow early during the construction phase and additional trees and landscape planting within the landscape buffer⁶⁷

⁶³ ID4

⁶⁴ ID11.3, point 12 (page 5)

⁶⁵ CD10.8, paragraph 6.4.1 (g), page 50 , stating that: *‘The central part of the lane would not change physically’*

⁶⁶ ID20, paras 2.1 – 2.6 and DTA drawing 2030-05-2F ‘Lower Rainham Road Proposed Right Turn Lane’

⁶⁷ ID20, Tyler Grange drawing 13374/P17a ‘Lower Rainham Road’

This planting will provide a robust landscaped edge along Lower Rainham Road.

114. The details of indicative hedgerow removal and replanting set within the Landscape Framework also does not alter the findings of the Tyler Grange LVIA in respect of the impacts on the character of Pump Lane; assessed as localised and moderate adverse. The assessment has taken account of the new junctions and associated breaks in the hedgerow and replanting, and access roads with views into the Site and residential development at these points as shown on the Landscape Framework Plan⁶⁸.

Gillingham Riverside ALLI

115. The ALLI is a non-statutory, local designation which provides protection at district level. The value attributed to these landscapes is therefore of local importance (only). In addition to protection of the landscape, ALLIs are also designated for functions that do not relate to the character or quality of the landscape. These functions include as buffers, separation between settlements, wildlife corridors and for recreation and access.

Application of Policy

116. The ALLI is plainly not a restrictive policy⁶⁹, still less has it been applied in this manner over recent years - a point which the Council well understands. Since 2015, there has been a clear and consistent trend of approving development for 589 dwellings within the Gillingham Riverside ALLI north of Twydall and Rainham. This includes development that will extend the urban area of Rainham north to Lower Rainham Road. Consented development on the former Berengrave Nursery is under construction on land adjacent to the railway line, east of the Community Woodland⁷⁰. This scheme includes extending

⁶⁸ ID10.3, page 62 'At Completion' 5th paragraph and page 63 'Residual Effects' Pump Lane

⁶⁹ CD10.3, paragraph 2.17 (page 13)

⁷⁰ Illustrated on CD10.3, Volume 2, Figure 3 'Planning Policy and Consented Development within the

development, to cover horticultural / greenfield land north of the former glasshouses⁷¹ incorporating the public right of way connecting Berengrave Lane with Lower Bloors Lane.

117. The ALLI does not attract increased significance by virtue of these approvals. It logically cannot. Similarly, ALLI functions, including buffer and settlement separation are in no way enhanced by these approvals. The opposite is true. Plainly, the significance of the buffer function, etc., is shown to be limited in terms of local importance. Moreover, it is not as if approving the Development could be treated as suddenly undermining this function, or materially so, where other approved development has not.

118. As explained by RH⁷², ALLIs cover large areas of land within Medway district, limiting land adjacent to the main settlements not covered by the ALLI designation, and which are situated in sustainable locations.

Functions of the Appeal Site as a Green Buffer in the ALLI

119. A detailed and carefully considered assessment of the contribution that the Local Landscape Areas make to the character and functions of the ALLI is provided in the Tyler Grange LVIA⁷³. This informs an assessment of the value of each of the areas and also consideration of the contribution the Site to the functions of the ALLI, and of the impacts the Development upon these. It was notably wrongly asserted during XX of RH that the LVIA somehow (unexplained) did not identify the functions of the ALLI, which are included in the MLCA description of the Lower Rainham Farmland LCA as benefits of the area.

ALLI.

⁷¹ ID3 Aerial photo sequence (2003 - 2020)

⁷² CD10.3, paras 2.31 - 2.33 (page 15)

⁷³ CD8.4 - 11.1a, Section 4

120. As agreed in the LSoCG the function of the ALLI as a green buffer does not relate to the quality of the landscape. It separates built up areas from the areas of importance for nature conservation and recreation that are situated along the Medway Estuary⁷⁴ - something not offended by the Development. There would remain (more than) adequate separation. Within this context, there is notably also no quantitative feature of this policy prescribing any extent of physical separation, as a depth or width sufficient to fulfil this function.⁷⁵
121. It is also common ground that the Development would have no direct impacts upon the land north of Lower Rainham Road, including the Country Park, protected biodiversity sites and public rights of way⁷⁶. The function of the Riverside Marshes LCA as a green buffer between Lower Rainham Road and the shore will not be affected.
122. Land north of Lower Rainham Road makes a high contribution to the function of the ALLI as a green buffer, situated on the edges of the Medway Estuary and Marshes SSSI, Ramsar Site and SPA. The Saxon Shore Way runs along the seawall and the Riverside Country Park occupies land north of the road.
123. Belts of trees and vegetation along the shoreline provide physical and visual separation from the marshes to the south and also provide a substantial part of the green backdrop in views from the estuary, which is identified as a function of the Gillingham Riverside ALLI.⁷⁷
124. Land within the Riverside Marshes LCA and Medway Marshes Farmland LLCA (as defined by the Tyler Grange LVIA)⁷⁸ separates the shoreline from Lower Rainham Road and serves as a green buffer with the shoreline.

⁷⁴ CD11.3, point 1 (page 6)

⁷⁵ CD10.3, para 2.23 (page 14)

⁷⁶ CD11.3, point 7 (page 7)

⁷⁷ CD10.3, para 6.7 (page 450 and CD10.3 Volume 2, Photo viewpoints 2 and 4.

⁷⁸ Illustrated on CD10.3 Volume 2 Figures 4 and 5.

125. The Medway LCA identifies the Riverside Marshes LCA⁷⁹ as having long views and an open character in views to the estuary, lending a stronger sense of enclosure to the interior and serving to protect the Natura 2000 / Ramsar site and provide a valuable recreational and biodiversity resource and green corridor.
126. As is common ground also⁸⁰, Lower Rainham Road and associated linear development, mature hedgerows and tress combine to provide physical and visual separation between the Site and Riverside Marshes and shoreline to the north.
127. The Development will be contained south of lower Rainham Road and will not extend beyond the built edge and linear development. Consented developments within the Gillingham Riverside ALLI on Station Road and Lower Rainham Road extend the northern edge of Rainham up to Lower Rainham Road, albeit whilst retaining the land north of the road as a green buffer to the shoreline and estuary⁸¹.
128. Whilst the Proposed Development will reduce the degree of separation with the edge of Twydall and inevitably impact upon the physical extent of the green buffer, it will offer enhancements to the functionality of the Site in terms of accessibility between the urban area of Twydall, wider rights of way network and Riverside Country Park. This benefit of the Development is agreed by the Council⁸². It also acknowledges that this would come through areas of green infrastructure incorporating community orchards, a village green and areas of public open space set within green corridors and landscape buffers.
129. The swathe of green space running through the heart of the proposal alongside Pump Lane will retain the function of the Site as part of an accessible and

⁷⁹ C D3.4, pages 32 – 33 (5 Riverside Marshes Landscape Character Area)

⁸⁰ CD11.3, para 2.2, point 6 (page 4)

⁸¹ Illustrated on CD10.3, Volume 2 Figure 3

⁸² CD11.3, Point 6 (page 6)

functional green buffer. As illustrated on the Landscape Framework Landscape buffers to the site boundaries, public open space, school playing fields and care home ground provide separation with Lower Rainham⁸³.

Other ALLI Functions

Providing residents within an extensive urban area access to an attractive, rural landscape

130. Dedicated public access across the Site is, at present, limited to along the bridleway, offering only limited recreational or visual amenity opportunity. Pump Lane has no footway and there are also no connections or destinations at the western end of the bridleway. As recognised by the Medway LCA, there is poor connectivity between the edge of Twydall and the shoreline and Riverside Country Park, to the north. Guidelines include for improving these footpath links⁸⁴.

131. The Development will provide much improved accessibility and recreation walks within areas of green infrastructure connecting Twydall with Lower Rainham Road and the Riverside Country Park, coinciding with improved connectivity and openness in overall recreational experience.

Green Backdrop When Viewed from the Medway Estuary

132. As is also agreed in the LSoCG, the proposed tree belts and landscape buffer planting to site boundaries and within areas of green infrastructure will mature to break up and soften the proposal⁸⁵. This will reinforce and enhance the wooded backdrop formed by shelterbelts and Lower Bloors Community Woodland.

⁸³ CD11.3, Figure 8 Landscape Framework

⁸⁴ CD3.4 page 68 – Characteristics, 5th bullet and page 69 Guidelines, 2nd bullet

⁸⁵ CD11.3, point 10 (page 4)

HERITAGE

133. The Appellant's heritage expert has robustly assessed harm to heritage significance, including to the setting of heritage assets. At its highest, and with regard to few individual assets only, the harm is (clearly) less than substantial – *and* at the lowermost end of the spectrum (or lower end, with regard to other assets). Further, when cumulatively viewed, the harm is plainly unobjectionable in national policy terms. Viewed overall, when performing the internal heritage balance, the (modest) harm caused to heritage assets is very strongly outweighed by the benefits of the Development. This is not a marginal case.
134. As a starting point, it comes as no surprise that designated heritage assets are present within the vicinity of the Site, like in so many cases involving sizeable development. In this appeal however, the proximity of such assets does not engender any large contribution to the heritage significance of assets to the Site. Rather, it is the experience of these assets that is the focus of consideration.
135. Immediately notable is that no heritage assets have clear, designed views over the Site. There are (say) no areas where primary facades of listed buildings have unobstructed views over the Site, with what intervisibility there is (which is notably limited), being incidental, largely screened, and beyond greatly changed areas or to areas of changed character. There is also no indication that the surrounds of any of the assets had been laid out in order to facilitate views out, in the direction of the Site. But one clear example of this is Bloors Place, where views in the direction of the Site from the rear of the building, and its immediate vicinity, are purposefully enclosed at ground level by high garden walls, which are themselves of some age, and are listed.
136. Whilst significance is, of course, not limited to issues of intervisibility, notably, with regards to economic and social connections, not only have the ownership and functional connections that once might have been present between assets

and the Site, now plainly been severed, but also, where such a connection was ever present, the character of both the assets and Site has changed - *greatly*. Again, this is no marginal observation. Any such connection therefore has considerably reduced, if not been removed altogether. No appreciable historic illustrative relationship exists. Clear examples of this include the residential and commercial character of the now sub-divided Bloor Place complex; the wholly residential character of Lower Twydall (where no farms are now present); and the change in character of the Site to modern, commercial orchard.

137. It is with surprise that acknowledging the unarguable change, over time, of the economic and social aspects of assets, and the resultant change in their experience has featured as a key difference between the approach and evidence of GS and KW. Respectfully, GS's assessment should plainly be preferred. Strikingly but indicatively, KW did not include any consideration of the enclosure of the curtilage of Bloor Place in her evidence, or separately, the subdivision of the complex and the conversion of the outbuildings.
138. Another key difference has been the approach taken to the scale of less than substantial harm. GS carefully explained how she considered that the uppermost end of that scale is defined by substantial harm, being described in the *Nuon*⁸⁶ judgment to be: '*...harm that would 'have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced...'*' (indeed this is agreed common ground - para 3.17), with the less than substantial harm scale running from negligible harm up to just short of substantial harm. In contrast, KW's apparent approach has employed a separate scale for physical harm and harm through setting, as the basis for her responses to the discussion of point 1 of the Heritage Round Table (RT) - an approach which is clearly incorrect.

⁸⁶ *Bedford Borough Council v Secretary of State for Communities and Local Government, Nuon UK Limited* [2013] EWHC 2847

Asset by Asset approach

139. Another major difference in approach, and evidence, between GS and KW was the 'asset by asset' approach taken by GS - wrongly rejected by KW. In the first part of the RT, GS logically explained why hers was the correct approach. The NPPF (paras 189 and 194) is clear that harm to a heritage asset results from an impact on, or loss of, its significance. In order to understand the scale of any harm or loss, one first understand:

- All of the significance of the asset, derived from both fabric and setting;
- All of the setting of the asset;
- The relative contribution of the subject site to the significance of the asset;
- What harm, if any, will be caused by change to the subject site.

140. The above strongly reinforces the basic need for a true understanding of the significance of the asset, in order to fully understand how change may affect its significance. This is entirely in conformity with Historic England's Guidance on Statements of Significance.

141. This is precisely the staged approach that GS followed in her evidence. Contrastingly, and critically, KW (merely) explored how the site contributes (in her view) to the significance of each asset, but did not consider all of the significance and the setting of each asset. Yet this is essential to understanding any level of harm that may occur.

Contribution of setting to the heritage significance and/or ability to appreciate the significance of the following assets, and the effect of the development on that significance:

York Farmhouse (GII):

142. With regards to York Farmhouse, its significance is primarily derived from its fabric as an early 16th Century farmhouse, with later additions. It has experienced a large degree of change, being converted to three residences and in wholly domestic use, and with newly-built residences in close proximity in its former yard areas. This has physically separated the asset from the wider landscape, beyond multiple layers of domestic curtilage⁸⁷, and the cessation of the complex for farming uses has severed the functional association. Reference to historic documents⁸⁸ demonstrates that its landholding was dispersed historically – it never sat in the centre of a consolidated landholding that might be legible from its proximity to the asset.
143. As such, those elements of its setting that contribute to its heritage significance comprise the garden plots of the former farmhouse, the formerly associated outbuildings which are now converted, and views to the asset from Lower Tywdall Lane, from where it can be understood as part of the Lower Tywdall settlement.
144. The Site has only minimal intervisibility with the upper elements of the asset⁸⁹. The Site and the asset are not readily experienced together. There are no accessible routes between the two that are not circuitous. The Site does not contribute to the heritage significance of the asset, through setting.
145. The Development will be set back from the asset, beyond its gardens, further gardens, a strongly vegetated boundary and public open space. No harm to the heritage significance of York Farmhouse through changes in setting may sensibly be anticipated.
146. In the RT, KW suggested (somewhat remarkably) that York Farmhouse could be clearly seen from the footbridge over the railway to the south, and also that

⁸⁷ GS PoE, Plate 4, page 13

⁸⁸ Tithe survey – GS PoE, Plate 2, page 12

⁸⁹ GS PoE, Plates 5 and 6, pages 14 and 15

Pump Farmhouse was visible in this view. As seen during the site visit, these views are not possible due to intervening vegetation and the buildings of Russet Farm. KW also suggested that the view from the footbridge gave a sense of isolation – but the modern settlement at Rainham visible in close proximity in the other direction unarguably precludes this.

147. KW also asserted that when the farmhouse was part of a farm it would have had direct access to the fields, so suggesting this engendered a connection today – yet this simply demonstrates how the change in ownership and use and resulting changes to the curtilage has considerably altered how the asset relates to the wider area: any such routes present historically are now blocked by the layers of domestic curtilage plainly present in the vicinity of the farmhouse.

Pump Farmhouse (GII):

148. With regards to Pump Farmhouse, again, the significance of the asset is primarily derived from its physical form, with setting making a markedly lesser contribution.
149. Similarly, this asset and its setting have experienced an obvious and large degree of change: the asset is now used for solely domestic purposes, and a large and dense development of 24 residences has been constructed adjacent to it, to the north and west; an outbuilding has been rebuilt as a residence to its south, and a large modern outbuilding and the access route to it lie to the north and east⁹⁰. These changes have clearly resulted in the functional and, to a large degree, visual separation, of the asset from the wider landscape.
150. The areas of adjacent former landholding, which was of mixed character historically, are not readily visible from the asset. There is some intervisibility between the asset and the modern commercial orchard, from a side elevation⁹¹,

⁹⁰ GS PoE, Plate 13, p24

⁹¹ GS PoE, plate 17, p27

to an area that was not historically associated with the farmhouse⁹². The expanded garden of the farmhouse and the vegetation within it, prevents views to the wider landscape to the south from the primary south-facing façade.

151. The element of the setting of the asset that makes the greatest contribution to its significance is its garden plot, from where its architectural interest is likely to be best experienced and understood. This area has been expanded from the narrow plot originally only present to the south-east of the asset, to encompass land on all sides of the dwelling⁹³.
152. The modern orchard within the Site makes no more than a minor contribution to the heritage significance of the asset through setting; through historic illustrative interest (although this contribution is in any event minor, as the functional association has been severed); the modern houses conspicuously screen views to a significant proportion of the land that was historically associated, and further still, the land that is the most visible from the building to the east was mostly not historically associated with the asset in any event.
153. The Development will be visible in views east from the asset, from its side elevation, although it will be set back behind open space and orchard. The Development will in fact be sited much further from the asset than the existing Russet Farm development, which is 15m away at its closest point. The Development will neither harm the fabric of the asset, from where it derives most of its significance, nor the gardens of the asset, from where it is best appreciated. The Development will result in less than substantial harm at the low end of the spectrum for this asset.
154. KW was of the view (RT) that the farmhouse was of unusually 'polite' design – but, ultimately, it is not disputed that this treatment was given to the primary façade of the residence, rather than the elevation that has some intervisibility with

⁹² GS PoE, plate 10, p22

⁹³ GS PoE, plates 12 and 13, p23-4

the Site. The primary facade faced the road and was likely to have been visible from it when the dwelling was first constructed. Demonstrably, the focus of the architectural endeavours of the asset were focussed on the façade that does not have intervisibility with the Site.

155. KW asserted that the harm to this asset would be less than substantial and at the middle of that range. This is however untenable given that the asset and the elements of its setting from which most of its significance is derived will be unharmed by the Development.

Chapel House (GII):

156. The heritage significance of the Chapel House is again primarily derived from its fabric with setting making a lesser contribution. Again, change is strongly evident in the building itself and its setting; the functional association with the wider landscape has been severed, and the building is now two private residences. These residences face directly onto Pump Lane, from where the asset can be best appreciated, and up to where the settlement of Lower Rainham reaches. The asset has gardens or other curtilage on other sides.
157. Those elements of its setting that contribute to the significance of Chapel House include the curtilage plots and Pump Lane from where the architectural interest of the asset can be best appreciated, and the settlement of Lower Rainham. The immediately adjacent agricultural land with which it has partial intervisibility and which was part of the asset's historic landholding is considered to make a contribution to the asset, albeit the functional association between the asset and the wider landscape has ceased, and the character of the landscape has changed to modern commercial orchard.
158. The asset has filtered intervisibility with the site from the rear and sides of the structure, and albeit this makes a contribution to the heritage significance of the asset, this is minor only, since the functional association has been severed, the

intervisibility is filtered, and the building was clearly designed to face in the other direction onto Pump Lane.

159. Notably, the Development will be set back from the rear of the asset. The fabric of the structure, from where it gains most significance, will not be harmed, nor will the gardens that it lies within, or its relationship with Pump Lane. The change of character of the site from modern orchard to development beyond orchard, will result in less than substantial harm at the low end of the spectrum to this asset.
160. KW raised the potential impact of the road junction to the north on Chapel House, but this is an asset that is sited in close proximity to an existing road junction⁹⁴, which forms part of its existing setting.

497-501 Lower Rainham Road (GII)

The Old House (GII)

161. It is common ground between GS and KW that no harm will occur to the heritage significance of 497-501 Lower Rainham Road or to The Old House. The Inspector asked no questions in respect of these assets during the RT.

Bloors Place (GII*), outbuildings (GII) and garden walls (GII) Bloors Oasts (Non-Designated Heritage Asset)

162. The Bloors Place complex, the residence of which is Grade II* listed, was subdivided during the later 20th or 21st century, with the Wagon House, Cartlodge and Oast now forming separate residences, with a roofing company operating from the complex.

⁹⁴ GS proof plate 18, p32

163. The house has also been functionally severed from much of its former landholding, which was of a large and dispersed nature, historically encompassing several land uses and functions⁹⁵. The site encompasses part of the former landholding, albeit of much changed character of modern commercial orchard.
164. The house lies within its gardens, some of which are surrounded by high walls which gives the house and its immediate curtilage a secluded immediate setting, in clear contrast to high status residences that have designed views out over the wider landscape.
165. The Site has virtually no intervisibility with the house in the summer, and filtered intervisibility with its upper levels in the winter⁹⁶. The filtered views to the Site are beyond its gardens and orchard (the community orchard beyond the site) beyond that.
166. It is plain that the significance of the asset is primarily derived from its built form, with setting making a lesser contribution. Those elements of the setting of the asset that contribute to its significance include its immediate curtilage including the outbuildings and structures which give legibility to the phase of its history when the complex was used for mixed farming, as well as the gardens and settlement of Lower Rainham.
167. The Site, as part of the former landholding with which the asset has filtered intervisibility in Winter also makes a contribution to the heritage significance of Bloors Place through setting, but this is very minor given that views of the Site are heavily filtered and the functional connection has been severed, the Site is now modern commercial orchard, and the surrounds of the asset have been laid out to enclose, rather than facilitate, views.

⁹⁵ GS proof para 6.135, plate 28, page 47

⁹⁶ GS proof plates 29-32, panes 48-9

168. The development will be set back from Bloors Place, beyond its gardens enclosed by high walls, and the community orchard beyond, outside the site. It will cause less than substantial harm, and at the lowermost end of the spectrum, to Bloor place.
169. With regards to the Grade II Listed outbuildings at Bloors Place, these have no intervisibility with the Site, and have now been converted to separate residences. As such, they have neither a current functional nor a visual relationship with the Site, and change to character within the site will cause no harm to their heritage significance.
170. The Grade II listed walls at Bloors Place have filtered intervisibility with the Site. However, they were designed to seclude the gardens, and as such, were neither designed to be visible from the wider landscape nor offer outwards views. Their setting comprises Bloors Place and its gardens, and change within the Site will cause no harm to their heritage significance.
171. The oast house south of Bloors Place is considered to be a non-designated heritage asset by both parties. This has also been residentially converted and no longer has a functional association with the wider landscape. The elements of its setting that make the greatest contribution to its significance are its immediate curtilage from where its architectural interest can best be appreciated, and the other buildings of the former Bloors Place group, which have historic interest as they are illustrative of the origins of the oast as part of the wider complex. At most, the Site makes a modest contribution to the asset, as there are currently some filtered views to the asset across the site. However, whilst the Development has the potential to block some views to the asset, it also has the potential to open up new views to it from publicly accessible areas. Any harm to the heritage significance of the asset will be very minor, at most.

Lower Rainham Conservation Area:

172. With both the Conservation Areas, Lower Rainham and Lower Twydall, consideration of the historic development of the areas is critical to understanding the contribution that their setting makes to their significance, given that this has affected the relationship of the structures and spaces within the areas, with the wider landscape.
173. The historic development of the buildings and spaces in the Lower Rainham Conservation Area has been carefully considered. The functional relationship with the wider agricultural land has largely been severed. Of the few agricultural larger complexes that were present historically, Bloors Place has been subdivided by residential conversion and no longer has any functional association with the wider area. A couple of the other smaller complexes have had the once-present agricultural buildings demolished.
174. The settlement appears to have been sited to take advantage of a wider economic base for this locality, with the largest historic landholding of Bloors Place including a wharf, saltmarsh, woodland, meadow, orchard and arable in the mid-19th century.
175. The Conservation Area has a stronger visual link with the Medway and adjacent land, than land to the south-west, which it is largely screened from by strongly-vegetated boundaries and now has an ubiquitous modern commercial orchard character.
176. As above, the Development will have some intervisibility with Chapel House and Bloors Place which lie in the Conservation Area, but will be largely screened from historic buildings in the core which front onto Lower Rainham Road. The experience of the Conservation Area from Lower Rainham Road, from where both parties agreed (RT) that the historic character of the area was appreciated from, will be largely unchanged. The development has been designed to avoid coalescence. The change to some of the wider agricultural surrounds of the area is anticipated to result in less than substantial harm, and at the lowest end

of the spectrum, to the Lower Rainham Conservation Area. Its character and appearance will be preserved.

Lower Twydall Conservation Area

177. The historic development of the Lower Twydall Conservation Area has been considered, and it is evident that the large degree of change to the function of the buildings within it has affected the relationship of the Conservation Area with the wider landscape. Whilst many of the buildings of heritage significance once had agricultural origins, these have all since been residentially converted, with no remaining active farm complexes remaining, and the historic buildings are now separated from the wider landscape by domestic gardens, sometimes forming a double layer of curtilages⁹⁷.
178. The lack of functional connection has also resulted in the absence of any ready access between the site and the Conservation Area.
179. The Site has only glimpsed visibility with some elements of buildings within the Conservation Area and their plots, albeit the buildings are of changed character from their historic uses, with the site lying beyond garden plots of modern origin.
180. The residential development within the Site will be set back from the edge of the Conservation Area. Only less than substantial harm, and at the lowermost end of the spectrum, will be caused to this asset.

Historic landscape:

181. A convenient starting point is the Inspector's question over whether the historic landscape was recorded on the Kent Historic Environments Record. GS confirmed that there were no discrete entries relating to any historic landscape features within the site.

⁹⁷ GS PoE, plate 33, p58

182. The Site is, of course, covered by the Kent Historic Landscape Characterisation - but this covers the entirety of the county, dividing it into character polygons. There is no coherent basis then for suggesting that this characterisation within this study confers 'heritage asset' status to any particular area, still less to the area conceived by KW.

183. Without reference to the Kent Historic Landscape Characterisation Study, KW identified the 'historic landscape' within the Site as a heritage asset, asserting the following sequence⁹⁸:

- *Estuarine mudflats and saltmarsh crossed by Bloors Wharf Road; the name derives from the historic connection with the listed buildings at Bloors Place*
- *Lower Rainham, built on the first solid geology that could carry buildings and the coastal road to Chatham*
- *The undeveloped open farmland of the Site, with widely dispersed farmsteads and the hamlet of Lower Twydall*
- *The railway line and embankment, a Victorian intervention in the landscape that has provided a physical and psychological barrier to development*
- *Suburban residential development south of the railway.*

184. KW referenced in her PoE to the land within the Site as 'the last remaining piece of undeveloped open farmland in the sequence of historic landscape types'⁹⁹. A central flaw in this misconceived analysis is however that if the last element is removed ('suburban residential development south of the railway') - which is of no interest - the sequence of estuarine flats and saltmarsh, then settlement, farmland (with farmsteads) and railway is in fact, extremely common for north Kent. This can be readily seen through reference to modern aerial photographs. The backstop of 1960s suburban development does not engender any significance to the area and make it a heritage asset.

⁹⁸ KW PoE, paragraph 5.17, page 12

⁹⁹ KW PoE, paragraph 5.25, on page 13

185. Another significant flaw in this approach is the identifying of the landscape only within the Site, as a heritage asset. This is firmly contrary to how heritage assets should be defined. They should be defined along boundaries that relate to their intrinsic significance – and not to areas of proposed change. When challenged on this critical point by the Inspector, KW notably changed her case and proceeded to define the area that she considered the historic landscape to comprise an area broadly relating to the site, but, notably inconsistently with her own analysis, defined by features *beyond* its limits. KW then changed her case again, in response to further discussion, expanding the boundaries of the asserted the ‘asset’ further to include a slight larger area again.
186. Taking any of the three ‘asset’ areas proposed by KW (whether with regard to her original or later cases), their character has nonetheless significantly changed from a mixed farming and orchard base, to modern commercial orchard. The pattern of small-scale settlement within this landscape is unremarkable and entirely indistinguishable from very many locations, nationwide. There is absolutely nothing about the landscape within the Site that would justify its consideration as a heritage asset, and respectfully, nothing has been spoken to coherently by KW on this central point of the Council’s case.
187. The Inspector helpfully sought opinions on the difference between analysis of setting and landscape assessment. Setting focusses on the heritage significance of the asset, which is the key consideration in the policy tests of the NPPF, and how areas of landscape might contribute to this significance. It is informed by a detailed understanding of the significance of each asset. Historic Landscape Character Analysis is not a tool for assessing significance, but rather is a broad-brush characterisation process, which seeks to divide an entire area – here, the County of Kent – into character polygons on the basis of land use.
188. In order to inform the key policy tests, a detailed asset-by-asset assessment of setting should be undertaken, rather than a seeking to find heritage significance

in an arbitrarily-defined area between assets, and attempting to define this as an asset in and of itself.

189. Yet, even if the landscape were considered to be a heritage asset (but GS strongly considers this *not* to be the case), identifying the Site (or correlating areas close to it) as an asset simply inflates harm, not least because proposed development will inevitably result in a large degree of change within its own red line area.

Cumulative Harm

190. GS explained why an ‘asset by asset’ approach is correct. In order to assess relative loss of significance (if it does occur) the whole of the significance of each asset must be understood. This cannot be rigorously achieved by considering them together.
191. KW’s rejection of the ‘asset by asset’ approach is deeply unconvincing, yet this was maintained by her throughout the RT. This resulted in the flawed contention that a two-stage process must be employed for considering harm: of first identifying levels of harm relating to individual assets¹⁰⁰, then inflating it as a collective ‘cumulative assessment’¹⁰¹.
192. There is no support found in guidance for the exercise KW uniquely undertakes in her paragraphs 6.60-6.63 and 6.64-6.65, of inflating the level of harm found to each asset by considering it ‘cumulatively’. Unsurprisingly, there is absolutely no basis in guidance for addition of individual harms to create a greater level of harm to all assets. It defies a common sense approach.
193. GPA2 makes reference to cumulative harm being a consideration where development ‘*severs the last link to part of the history of the asset or between the asset*

¹⁰⁰ KW PoE, paras 6.1-6.55

¹⁰¹ KW PoE, paras 6.56-6.65

and its original setting'. Similarly, this does not advocate the addition of harms to different assets. The whole of this paragraph in GPA2 reads:

*“The cumulative impact of incremental **small-scale changes** may have as great an effect on the significance of a **heritage asset** as a larger scale change. Where the significance of a heritage asset has been compromised in the past by unsympathetic development to the asset itself or its setting, consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset in order to accord with NPPF policies. Negative change could include severing the last link to part of the history of an asset or between the asset and its original setting. Conversely, positive change could include the restoration of a building’s plan form or an original designed landscape.” [my emphasis]*

194. This is clear in contemplating situations where a number of small-scale changes may harm an asset (here referred to in the singular). The guidance does not suggest that cumulative harm would occur through a single development alone causing an increased level of harm to a particular asset because it may affect multiple assets (but rather does suggest that it might be appropriate to consider a single development in conjunction with previously constructed development in specific circumstances).

195. KW also made reference in her PoE to GPA3 (paragraph 6.59):

“The third stage of any analysis is to identify the effects a development may have on setting(s) and to evaluate the resultant degree of harm or benefit to the significance of the heritage asset(s). In some circumstances, this evaluation may need to extend to cumulative and complex impacts which may have as great an effect on heritage assets as large-scale development and which may not solely be visual.”

196. This refers to cumulative issues as separately defined earlier in GPA3, with the same phrasing as quoted from GPA2 above, and then makes reference to 'complex impacts', including non-visual considerations. Such impacts might occur where there has been a particular designed landscape (such as a park or garden or prehistoric ritual landscape), in respect of which processional routes through the landscape and designed associations may be a consideration.
197. Nonetheless, this guidance in no way advocates the aggregation of impacts to increase levels of assessed harm on individual assets.
198. A sense-check of this comes through scrutiny of KW's 'aggregation exercise', when inverted. In KW's PoE para 6.65, it is stated:

"Taking into account the impact on the significance of each and all the heritage assets, designated and non-designated, I conclude that the cumulative impact of the proposed development would cause less than substantial harm to heritage significance at the upper end of that range."

199. Given that it is agreed common ground (para 3.14) that substantial harm would have such a serious impact on the significance of the assets that its significance is either vitiated altogether or very much reduced, it must logically follow that less than substantial harm at the upper end of the range, is approaching this level of harm. Taking York Farmhouse as but one example, a suggestion – indeed one analogous to that advanced by the Council - that the Development would result in such a level of harm when the fabric of the building, its gardens and former outbuildings would all remain unaltered and open land would remain between the building and built form, respectfully, lacks all credibility.
200. For the above reasons, as supported in evidence, the Development gives rise to no objectionable heritage harm, and no conflict with the development plan, or with the NPPF. This has importance for the tilted balance under paragraph 11.

The presumption in favour of sustainable development remains. In this appeal, the application of heritage policy comes nowhere close to presenting a ‘clear reason’ – indeed, *any* reason – for refusing the Development, within the operation of paragraph 11 NPPF.

TRANSPORTATION

Transport Benefits

201. The Development demonstrates very clear transportation benefits, in overall terms. Transport planning policy – incorporating NPPF section 9 – underscores the importance of securing high quality, accessible development. Central to minimising the potential for vehicle trips to the Development is the accessibility of local services and optimal public transport provision. As amply explained in ST’s Transport Assessment (“TA”)¹⁰² and reinforced in the Highways Statement of Common Ground (“HSoCG”)¹⁰³, the Site clearly benefits from excellent locational advantages, being in close proximity to a built up area adjacent to the Site.
202. Indeed, it is agreed (CD11.4, para 4.11) that Medway and the settlement of Rainham benefit from *excellent* transport links including public transport, with bus, foot and cycle links within the settlement obviously connecting well to adjacent communities, with good road links also to the principal road network.
203. As part of the Development, the provision of a Travel Plan will also be financed and will include sustainable travel information packs for every household that forms part of the Development. This information pack will satisfactorily provide site specific information of sustainable travel options available to new residents, and will be secured prior to household occupation. The Framework Travel

¹⁰² CD CH5.25

¹⁰³ CD 11.4

Plan¹⁰⁴ (CDCH5.26 Ref 20230-04b Framework Travel Plan – 23rd September 2019) is agreed in principle, with final details (welcome packs, with up-to-date public transport information and Travel Plan co-ordinator role) to be agreed post-approval.

204. It will be noted that even the Council's own assessment of traffic impacts (which should be rejected), when taking account of the utility of the travel plan, does not discount the possibility of *less than* residual cumulative severe impacts: JR Addendum PoE.
205. The Site includes a local centre and primary school. It is agreed that these will all be located within a reasonable walking distance of the Site and of all new occupants.
206. The Development will also make an important financial contribution to the extension of an existing bus service, serving both the Site *and* existing residents.
207. The Site is equally very well located in terms of education accessibility. Moreover, retail, health and leisure accessibility has evidently been well considered. Accessibility by all modes is notably very good, with a convenient supermarket, shops, dentist surgery and a range of services and facilities being located nearby.
208. Overall, given the extremely positive locational benefits of the Site, it is strongly the case that the Development fully accords with relevant transport objectives under both development plan and national policy, and will make an important, positive contribution to sustainable development within the wider, Medway area. On this basis, and before turning to traffic impacts, the Development is shown to fully meet the requirements of the NPPF in terms of sustainable development. The Council further agree the Appellant's position that the Site is appropriate for residential development in the context of accessibility.

¹⁰⁴ CDCD5.26

Council liaison

209. By way of introduction to the Appellant's comprehensive, iterative, highways response on transportation impacts, is some scene-setting. Well in evidence, is that the Appellant has made every effort to proactively and openly engage with the Council on all highway matters - from inception, and especially with regard to MAM. This was both deliberate and entirely appropriate, yet regrettably was not reciprocated. The detail of discussions (and indeed, discussions attempted by the Appellant) is set out in ST's PoE, section 2.
210. Following the submission of a scoping report in November 2018, with the exception of a single 'draft response' from the Council received in August 2019 (which happened only to speak to traffic generation issues), no detailed feedback was provided by the Council on the transport evidence base already before it. Various meetings were subsequently held (initiated by the Appellant), through which the Appellant proactively scoped future common ground, leading ultimately to the submission of further technical notes¹⁰⁵ in October 2019. Regrettably, no positive response was then received from the Council on these documents despite these explicitly and directly responding to all queries then raised by the Council.
211. In December 2019, the Appellant received a (notably brief) Power Point¹⁰⁶ presentation of the outputs of Medway Aimsun Modelling (MAM), and then undertook, in agreement with the Council, further modelling based on MAM-derived traffic flows. These were accordingly reported in TN3. No response has ever been received on these.

¹⁰⁵ CD 9.2, 6.7 and 6.11

¹⁰⁶ CD 12.10

212. Significant concerns were raised at that juncture about the validity of the MAM generally, including both inputs and outputs, leading to formal requests for further information on the modelling (on 7th and 23rd July 2020). A response was not received to these points until 14th December 2020, following the PIM. That response was partial only and despite further requests (latterly the 28th February 2020 email from DTA to the Council), disclosure has never been made of the full detail of the MAM outputs, including how the MAM was optimising individual junctions, and no explanation of specific junction operation and causality of any queue has been forthcoming, so that the specific issues of impact (if any) may be properly understood from a MAM-perspective.
213. Aside from the MAM, the Appellant's letter of 23rd December 2020 requested confirmation from the Council that they agreed with the modelling parameters adopted in the DTA individual junction assessments. The first ever comments received on this came through JR's first PoE.

Significance of uncontentious transportation matters, including HE agreement

214. Regarding former reason for refusal 4 (HE), the position is detailed in ID10¹⁰⁷. HE has agreed that a scheme of mitigation at J4 of M2 sought to mitigate the impacts of the Development, involving a contribution towards improvements at the junction. Worthy of particular emphasis is that the agreement reached between Appellant and HE is entirely separate from any MAM modelling. As ST explained in EiC, HE did not seek MAM outputs and based their decision wholly on the technical work in conjunction with the TA¹⁰⁸ and Addendum¹⁰⁹. This is despite the junction in question (J4) being within the MAM area.

¹⁰⁷ ID10 - Position Reached with Highways England

¹⁰⁸ CDCD5.25

¹⁰⁹ CD8.3

215. It is clear therefore that HE has (justifiably) accepted, in full, the approach of DTA as being technically robust, and in the context of assessing a development of this scale. This is an instructive endorsement.
216. Regarding former reason for refusal 6 (highway safety), as ST confirmed in his PoE, further assessment work has been undertaken in respect of wider highway safety issues (see additional work reported in CD8.1). On this basis it is now agreed that the application is consistent with the requirements of the NPPF 109 and Policy T1 in highway safety terms.
217. Regarding former reason for refusal 7 (Site accesses), further detail was submitted on the access arrangements as part of the TA Addendum.
218. There are no outstanding issues raised by Medway in respect of highway safety in terms of the wider network or Site access points. No contrary evidence has been submitted (or examined) on this agreed position.

The “highway network” and “subnetworks” as the network for assessing traffic impacts

219. Policy T1 specifically relates to the need to assess the impact of a development on “*the highway network*”. As JT explained (EiC; XX) in the context of the administrative area-wide remit of policy T1, consideration should be given to the whole Medway council area. That there are configured subnetworks does not justify a discrete subnetwork approach to be taken to “*the highway network*”. Similarly, there is no basis in policy terms (or in explanatory text) to ‘carve up’ the network and overlook (that is, completely ignore) the sound operation of other configured, neighbouring and wider subnetworks.
220. Beyond a point of pure policy construction and application, the Council has failed to advance any clear rationale for having adopted a “network” examination so obviously constrained by a select, few subnetworks (2, 3 and 7).

Yet, the Council's approach exceeds even this – it incorporates a *reconfiguration* of subnetwork 7, alongside subnetworks 2 and 3.

221. From the beginning therefore, the Council's assessment of the network impacts has been skewed. Inevitably this has materially infected its overall judgment on residual cumulative severe impacts, under national policy, as well as capacity impacts under policy T1. The absent rationale for this approach was echoed by JR's confusion over how "*the highway network*" had been approached by the Council for policy T1 purposes. JR presented two irreconcilable versions during XX. The importance lies in JR's clear agreement (XX¹¹⁰) that the highway network should properly be interpreted as the wider area beyond subnetworks 2, 3 and 7. He confirmed also that his PoE was silent on the impacts upon other subnetworks, and silent also on the wider taking account of impacts on any other subnetworks. With regard to these subnetworks, there has been no consideration by the Council – despite JR's appreciation of the global network assessment. JR confirmed, in terms, that he had not conducted the test he considered correct with regard to policy T1.
222. The Council's resiling (re-exam) from JR's clear answers, is impeded by the further inconsistency with JR's EiC regarding junctions and links: JR then confirmed a need to consider the links and junctions of *all* subnetworks (which was not confined to subnetworks 2, 3 and 7), which may, in JR's view, have knock on impacts elsewhere, when considering residual impacts.
223. ST agreed JR's first position that residual cumulative impact should be considered across the whole modelled area – in policy T1¹¹¹ (and NPPF terms). For completeness however, separately, ST has also engaged with an assessment of subnetworks 2, 3 and 7 alone. His overall conclusions on residual cumulative severe impacts remain the same.

¹¹⁰ XX MR Rand @ 15.41 on 20/04/21.

¹¹¹ EIC Tucker @ c12.30 on 21/04/21

224. ST also confirmed¹¹² his correct appreciation of the complimenting acceptability test under NPF paragraph 108, and for residual cumulative severity under 109, properly recognising that there may arise unacceptable impacts and attendant traffic harms, but ultimately, this may prove less than severe: see further ST Rebuttal para 2.6, page 3.
225. Contrastingly, the Council's individual subnetworks 2, 3 and 7 appraisal is entirely artificial: it is immediately shown *not* to be the case (a point resounded by the fact that ST's assessment of subnetworks 3 and 7 impacts has not been challenged: ST XX) that residual cumulative impacts within these two subnetworks are severe. The importance of this recognition, is highlighted by the Council's (second) position that the relevant "*highway network*" should include – not exclude – these two subnetworks, viewed as a cumulative whole.
226. It is also clear, as ST explained, that there is no policy harm arising from the fact of congestion where this simply means that people will take a little longer to travel to their destination point. To define this as harm necessarily is unfounded. Separately, congestion of itself may indeed positively influence future travel choices, promoting a switch away from use of the private vehicle, which would have a positive impact and reflect sustainability.
227. Finally, whilst a transport harm may still arise, in principle, if traffic impacts (cumulatively viewed) were found to be below the residual cumulative severe threshold, this negative would ultimately not prove significant enough to support the refusal of the Development. This reflects the deliberate policy 'bar' of 'severity' presented by NPPF paragraph 109.

Acceptability of A's assessment approach

¹¹² Inspector to Tucker – C 1640 on 22/04/21

228. Fundamentally, the position adopted in this appeal by Medway in respect of traffic assessment of the Site is *inconsistent* with the *only other* residential development example that MAM has been used for in Medway. This is not a case then of a much tried and tested MAM model. This is also not a case of consistency of approach by the Council on MAM. Nor is this simply a concession to the fact that MAM is evidently not being taken up in the promotion of sites, such is the guidance-permissible choice.
229. In April, the Council determined the planning application for land at East Hill (ref. MC/19/0765¹¹³): see Jarvis PoE (para 4.3), but never subsequently developed (and not subsequently drawn to the Inquiry's attention). ID37 confirms that this application was not refused by the Council on highways grounds. Pages 32 - 33 of the officer's report confirms that the then applicant undertook an approach of considering MAM derived flows, providing a consideration of net changes in traffic flows from the model, and then providing individual junction models (Arcady and Linsig) of each junction. This approach is confirmed in the application TA (appended), at paras 6.3.1 - 6.3.4.
230. The Council's ID and oral response is notably off-point. Mr Jarvis tried to suggest (XX)¹¹⁴ that East Hill was distinguishable on the basis that there was no 'block-back' evident, and separately because wider, net transport betterment of the scheme had been shown (provision of link road, etc.). First, the Council has never advocated that the functionality factor of 'block-back' (or, for that matter, any other functionality factor) is determinative of the robustness of the approach to assessment. There is, also, no evidence whatsoever that block-back was not an issue in East Hill, still less on magnitude. Second, whether net transport betterment is achieved is wholly irrelevant to the robustness of assessment in principle. Strikingly, East Hill demonstrates that an approach to assessment (evidenced by the East Hill TA) which is fully aligned with that of the Appellant,

¹¹³ ID37

¹¹⁴ XX Jarvis 16.30 on 19/04/21

is robust – and moreover, has very recently been accepted to be robust by the Council. That no coherent explanation has been advanced by the Council for adopting a conceptually different approach to assessment in this appeal (and that no attempt was made by the Council to alert the Inspector to the East Hill determination) is striking. The inescapable fact is that the East Hill approval itself presents unequivocal confirmation of the acceptability of ST’s TA and overall assessment approach.

Distinctions in approach (e.g. baseline validation) + Table 1/Functionality matters: updating

231. Despite an over-emphasis of ST XX ¹¹⁵ being the validation of the base model, ST had been clear, since rebuttal stage, that the Appellant was content to accept – in order to narrow the scope of meaningful issues – and, subject to significant, differentials regarding journey time assumptions made within the vicinity of the Site, that the base model validates to meet Webtag guidance. Properly understood however, the acceptance (ST rebuttal) in no way undermines the Appellant’s assessment. For, base line validation aside, the Appellant’s outstanding critique of journey times is significant in terms of the robustness of MAM outputs. As ST identified, and the Council still fail to explain away, some outputs are plainly irrational. There is no basis explained to confine these outputs, which must mean that the robustness of MAM is considerably undermined.
232. Nonetheless, the evidence base before the inspector is any event now complete, and a conclusion aligned with the Appellant’s is properly founded, when using those elements of MAM which are arguably credible, in combination with the Appellant’s own assessment, which suffers no irrational outputs. Both XX Jarvis

¹¹⁵ XX Tucker 9.45 am 23/04/21

and EiC JT explored in detail this transition in the complete evidence base¹¹⁶. Findings may be summarised below:

Table 1 Comparison between MAM and Isolated Junction modelling

Modelling Functionality	Evidence in front of Inquiry
Spatial extent	Agreed whole of Medway in detail and external network
Diversions impact	Assessed in Macro in MAM ¹¹⁷ and through TN3 ¹¹⁸ - not disputed
Traffic routing based on congestion and travel times	Assessed in Macro in MAM ¹¹⁹ and through TN3 ¹²⁰ which was not disputed
Queueing back at junctions (impact of queuing on upstream junctions)	Assessed in MAM. Not accepted as an issue in TN3 or TN4: no significant queuing occurs
Flow metering (downstream effects of congested junctions)	Agreed assessed in MAM. Agreed assessed at Bowaters – Linsig Assessment and outputs in ST’s Second Rebuttal - not challenged in XX.
Individual vehicle lane changing behaviour	Lane
Individual vehicle acceleration / deceleration	Assessed in MAM, but agreed to be of less significance
Bus routes	Assessed in MAM but agreed to be of less significance. All bus stops on A2 have full laybys
Corridor journey time analysis	Assessed in MAM, but only reliable if junction capacity is reliable, which it clearly is not. ¹²¹
Strategic traffic operation outputs (i.e. V/C)	Assessed and outputs accepted. Shows all networks as within capacity ¹²²
Strategic Road Network impacts	Assessed not relevant. Only assessment merge / weave is relevant to HE network and impact based on Appellant’s approach, agreed.
Distributional analysis (select link analysis)	Assessed MAM and DTA approach both perform this and outputs broadly similar ¹²³
Observed Traffic Demand Matrices	✓
Observed Trip Distribution	Both assessments. Appellant’s approach based on individual journey purpose ¹²⁴
Local Journey Purpose Splits	Both assessments. Appellant’s approach based on individual journey purpose ¹²⁵
Traffic Signal co-ordination and optimisation	Both assessments. Appellant’s approach based on detail of linked junction within Bowaters and Linsig based optimisation as required by LTN 1/09. ¹²⁶

¹¹⁶ Reference Table 1 Page 18, Jarvis PoE1

¹¹⁷ See ID 34 Part 2 – Flows and VC Plots

¹¹⁸ CD6.11

¹¹⁹ See ID 34 Part 2 – Flows and VC Plots

¹²⁰ CD6.11

¹²¹ EiC Tucker

¹²² ST Second Rebuttal Para 3.10 – 3.12 (page 9 – 11)

¹²³ ST Second Rebuttal Para 3.8 (page 8)

¹²⁴ Transport Assessment (CD CH5.25 Section 5)

¹²⁵ Transport Assessment (CD CH5.25 Section 5)

¹²⁶ Tucker Second Rebuttal Para 3.23 page 12)

Merge/Weave assessment	eed not relevant. Only assessment merge / weave is relevant to HE network and impact based on Appellant's approach, agreed.
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Macro vs. Micro

233. The MAM outputs are provided at both the macro- and micro-level. There is broad agreement (see ST¹²⁷) that the macro outputs show very little impact on the wider network. This is supported by the fact that the change in flows on most links are modest and within the daily variation in flows.¹²⁸ This is confirmed by the Council's own evidence, summarised at ID43.

234. Where there are changes in flows (Bowaters and routes to the east) and Lower Rainham Road, these impacts have been fully assessed and found acceptable.

235. At micro-level there is significant variation between the DTA and the MAM outputs, to the point that the latter has shown to be irrational. No assessment or cross check has seemingly been undertaken by the Council to support their findings and the inspector was (wrongly) invited simply to take the results at face value. There has been no auditable assessment of those outputs.

Calibration and Validation of DTA assessments

236. The position in terms of junction calibration ¹²⁹is agreed and was unchallenged in XX. There was further no challenge on the geometrical inputs to any of the junction models submitted.

237. The Appellant's validation of the LInsig modelling submitted in support of the scheme (Bowaters and A2 / Otterham Quay Lane in particular) was unchallenged.

¹²⁷ Tucker Second Rebuttal para 3.7 (Page 7) to Para 3.13 Page 10)

¹²⁸ XX Tucker c14.30 on 23/04/21

¹²⁹ Tucker First Rebuttal Para 7.2 and 7.3

238. ST explained that the validation of the two key roundabouts on which he was challenged (Will Adams Way) and Lower Rainham Road was appropriate and correct. He considered that the variation of queues need to be considered in absolute terms not proportional change ¹³⁰. Jarvis accepted this in XX.

Trip rates: the outline case for preferring Scenario 6A; TN3 and TN4

239. The Council have provided a significant number of difference scenarios on the run up to the appeal and a number of reviews assessments were demonstrably wrong (including the wrong access strategy being tested). Scenario 6A is to be preferred. This includes a 2029 assessment which is consistent with the National Policy Guidance¹³¹. It also includes the DTA derived trip rates. These were subject to examination by Medway and the final adopted rates (at TN3) adopted the trip rates which addressed all of the comments raised by Medway to ensure they were site- and location- specific.

240. By contrast, MAM adopts generic trip rates which includes a number of sites from TRICS which the Council specifically requested DTA remove from their assessment. The DTA trip rates are therefore clearly preferable and more appropriate. This was not challenged by the Council. On that basis the appropriate outputs for testing the development impact should be a combination of the macro outputs of MAM Sc6A, and TN3¹³² and TN4¹³³.

Robustness of individual junction assessment: (i) Arcady; Linsig; constraints of LoS criteria; (ii) why no Blocking-back concerns; (iii) Lane changing; (iv) TAG-compliance; RFC and Linsig values (0.85, etc.)

¹³⁰ Mr Jarvis Addendum Proof Para 7.12

¹³¹ CD.2

¹³² CD6.11

¹³³ CD12.6

241. Jarvis agreed that DTA models do not show significant issues at the junctions. The Council's principal concern about the DTA individual junction modelling approach was clearly related to blocking back. This was confirmed by Jarvis in XX where he confirmed it was one of important elements of MAM. However Jarvis also confirmed that in terms of overall capacity, the impacts are different in different locations ¹³⁴. In that regard it was suggested that East of Bowaters, the issue was link capacity, whereas at Will Adams Way and Lower Rainham Road it was primarily a junction capacity issue.
242. Jarvis agreed that one of the principal causes of queuing on the A2 towards Will Adams Roundabout starts with congestion at Bowaters Roundabout, causing blocking back. Jarvis agreed also that if a junction is shown to operating within capacity and without significant queuing there can be no blocking back effect. This is precisely what the Appellant's evidence shows¹³⁵.
243. Amidst the 'debate' on what LoS / RFC or equivalent value should be adopted in terms of considering harm, ultimately, JR agreed that the approach adopted by ST with regard to Linsig - which adopts 90% as a degree of saturation - was appropriate. Notably, the output of those assessments is not challenged.
244. It is also an agreed position that there is no guidance on roundabouts (arcady outputs): see Jarvis and JR XX.
245. JR confirmed that for comparison with his assessment, an RFC over 0.85 equated to an LOS of E and over 1 an LOS of F¹³⁶. The defines an LOS of F as being the threshold for severe.¹³⁷

¹³⁴ XX Jarvis @ 15.50 on 22/04/21.

¹³⁵ See Tables 1, 2 and 3 of Mr Tuckers Second Rebuttal

¹³⁶ XX Ran 10.50 on 21/04/21

¹³⁷ Rand first Proof Para 3.8 – 3.9 (Page 8)

246. All of the junction modelling that the applicant has put forward for the key junctions shows an LOS, by JR's assessment, of less than LOS F - and therefore applying his own definition, not severe.

Irrational junction outputs, unanswered: all subnetworks

247. The outputs of the MAM in terms of congestion are plainly illogical – they are irrational. It is a basic, fundamental requirement of the modelling process that the modeller gives adequately detailed consideration to the robustness of the outputs of the model - and not just inputs (i.e. Base Model Validation). Conspicuously, Medway have undertaken no critical review of the outputs or comparative assessment of their findings with empirically derived outputs from Arcady or Linsig. The results are significantly different.

248. In terms of Bowaters, the Linsig Modelling results at Table 3 of ST's Second Rebuttal went unchallenged. The geometric inputs and outputs of the Arcady modelling are also not challenged. In terms of the subnetwork detail, ST's evidence is confirmation of below.

249. On the Council's Closing (para 166(1)(c), the 2035 reference case had been adopted because that is what the Council had provided the Appellant with, and consistency was maintained with TN3 – meaning higher, more robust trip rates because they present an even later future year, incorporating the higher Medway trip rates. At para 166(2), the contended “sizeable” increase in flows west of Bowaters is certainly not ‘sizeable’ in the context of the road network: ST (xx): 100 v/h, over two lanes is *de minimis* and well within daily variations. On para 174(2) ST explained (XX) that Arcady outputs total vehicle queues on a link, and that it is not correct, in order to achieve any fair comparison, to add all queues, on all lanes. The Council's comparison here is factually wrong.

250. Subnetwork 2: being the largest subnetwork, principally comprising the A2 and A289, being the main urban strategic distributor roads (all dual carriageway).

These are obviously the most appropriate routes on which the Council should be focusing increased traffic movements.

251. The select link analysis from the MAM shows ¹³⁸the distribution of traffic from the Site. This confirms there will be (nearly) zero development generated traffic on the A2 West of Bowaters or on the Yokosuka Way, south of the Lower Rainham Road.
252. The Appellant's assessment also demonstrates, based on MAM derived figures¹³⁹, that there is not material change in traffic along those routes. This highlights another key irrationality of the MAM. ST explained in EiC ¹⁴⁰that the change in flows on the A2 east of Bowaters were less than 40 vehicles per lane, per hour – being well within the capacity of the link and well within the daily variation in flows. That could not create the significant and step change in traffic queuing that the MAM (irrationally) shows occurring along the A2 corridor between Bowaters and Will Adams Roundabouts.
253. Where there are increases in flow (at Bowaters and Lower Rainham Road) these junctions have been tested in an appropriate manner and demonstrated to be operating within capacity.
254. The Appellant's modelling output of the three main junction show them to be working within capacity. On that basis, with reference to JR's summary table of impacts¹⁴¹, the following corrected results apply: see Junction IDs 7, 9 and 12, as shown in ST's evidence ¹⁴²to be operating at the equivalent of LOS D or E (worst case) – i.e. suitably within capacity.
255. It was agreed in XX Jarvis and XX JR that the congestion at Junction IDs 8 and 10 were principally caused by blocking back issues from preceding junctions (12

¹³⁸ Tucker Second Rebuttal –Appendix REB2C

¹³⁹ Tucker Second Rebuttal –Appendix REB2C and Tables 4, 5 and 6 of First Proof of Evidence

¹⁴⁰ XX Tucker PM on 22/04/21

¹⁴¹ Rand Addendum Proof Table 1 page 4

¹⁴² Tables 1, 2 and 3 of Mr Tuckers Second Rebuttal

and 9, respectively). Given the modelling shows no significant queuing at these junctions, no blocking back can occur. It must therefore follow that these would also reduce to LOS D.

256. Clearly Journey times presented in MAM must also be wrong, given the fact the queues are significantly overstated and illogical. This would therefore significantly affect the overall journey time outputs presented by the Council. There would no longer be the severe impact it contends.
257. On that basis, and on JR's own appraisal methodology, the impact could not be residual cumulative severe on subnetwork 2. That is demonstrated, even before turning to ST's assessment of this subnetwork which confirms the same, unobjectionable impact.
258. Subnetwork 3: JR confirms that "*...the [revised] results show that the mitigation works reduce the impact of the development on travel times along this part of the A2 such that this is no longer in and of itself considered to constitute a severe impact*". This is agreed.
259. However the Council's conclusion of a significant overall impact only arises because the MAM shows a significant delay on Meresborough Road. ST explained in EiC that this was simply not credible. With reference to the vehicle flow plots¹⁴³ provided by the Council the model is showing vehicle flows on the site road of over 500 vehicles per hour. This road only serves 30 houses as cul-de-sac, so as a matter of fact, the value is significantly wrong. If corrected, Table 2/the capacity of the junction would be comparable with that provided to the Council in ST's 28th February email, and would be acceptable. This would, in turn, justify the significant readjustment of the overall journey time outputs presented by Council. There would, again, applying their own assessed - when properly adjusted - no longer be a residual cumulative severe impact. The suggestion of such an impact becomes untenable.

¹⁴³ CD34 Part 2 – Flows Tab Scenario 6a outputs

260. By postscript, the 27.4.21 Medway Note on this only serves to highlight a fundamental flaw in the MAM. It is suggested that the Moor Park Close is not modelled as a cul-de-sac and therefore higher traffic flows are shown on that link. But, as a matter of fact, the road is a cul-de-sac (not disputed) and therefore physically could not begin to generate the level of traffic suggested in the MAM. Otherwise put, point 2 (Note) suggests that traffic from other residential areas to the south are assumed to route through Moor Park Close. This cannot be correct in practice, and traffic should properly have been loaded at a completely different location on the “network”. [There is presumably a ‘typo’ in the 27.4.21 Note as it refers to link 145554 which does not exist in the Model Validation report.] This is assumed as 14554 (p153) which has an observed flow of 20, This is entirely consistent with the Appellant’s survey. However, given that this node is one raised specifically as one of concern it is essential that the inputs are correct, in order for weight to be given to the outputs. The fact that MAM loads such a significant level of traffic onto that point in the network where that traffic could not conceivably exist (again) highlights the fundamental error of approach, and means no weight can be given to findings within this location. This confirms the results in relation to Subnetwork 3 from MAM have no credibility.
261. Regarding Jarvis’ evidence, post final note (28.4.21), this does not clear up the identified anomaly, or its scale. The MAM outputs show 500 (not 300) v/h using Moor Park Close. Even if the Close comprised 200 houses, the represented level of traffic is simply not credible. As Jarvis confirmed, MAM assumes all of this traffic must route to the A2, via either Moor Park Close or Miersborough Road. This therefore means a fundamentally erroneous level of traffic has been loaded onto Meirsborough Road/Otterham Quay Lane junction. Jarvis’ final explanation only serves to confirm the Appellant’s criticisms of MAM and the unexplained, unarguable anomalies arising.

262. Subnetwork 7: Only one issue is raised by the Council regarding subnetwork 7 in JR's evidence¹⁴⁴. This assessment is out of date in that it does not take into account the additional mitigation proposed. Jarvis's Addendum Evidence¹⁴⁵ confirms, with additional mitigation¹⁴⁶, the queue on Lower Rainham Road is reduced. JR confirmed that this would reduce the impact on that arm to less than severe. This is agreed (and to add, it is very substantially less).

Journey Times: V/C & Wider impacts

263. At macro level, MAM outputs show several key data outputs which were not actively promoted in the Council's evidence, but for a key part of the evidence base. These are presented at CD ID34 (Part 2) in full and in partially summarised in ID43 / 44 and ST's evidence. In the detail these show traffic flow plots, VC plot (the ratio of flow to capacity both in terms of links and junctions) for the reference case and with development scenarios.

264. The MAM modelling shows that there are no significant changes in the overall number of links on the network (Medway-wide) that operate with a VC of over 1. This includes all three sub networks considered in detail. Jarvis confirmed in XX¹⁴⁷ that the VC plots were determined by COBA speed flow curves. By definition therefore a VC of less than 1 means that vehicle flows are within capacity, as a matter of fact.

265. The wider impact of the development cannot therefore be residual cumulative severe.

Other

¹⁴⁴ JR Addendum Proof Para 2.2 and 2.3.

¹⁴⁵ JR Addendum Para 4.5 page 32

¹⁴⁶ Drawing 20230-10B

¹⁴⁷ XX Jarvis AM 20/04/21

266. In XX ST confirmed his use of Aimsun software on two other sites, principally in Sheffield, confirming in that case, the situation was analogous to the process adopted in the appeal case, whereby the model was used alongside a standard TA approach (at the then request of Sheffield). In that case HE did not accept the findings of the Aimsun work, and their principal concern had been J34 of the M1, as concluded through a combination of Linsig work and Aimsun. No implications for ST's approach taken in this appeal, therefore arise.
267. In terms of baseline validation of MAM ST accepted the base line validation of MAM was comprehensive and in line with DfT requirements, save for key outputs in relation to journey time and that these were particularly important given the significant concerns about the outputs of the MAM in terms of journey times for the development testing scenarios on SN-2 and 2 in particular.
268. To add, in light of the lack of an audit of the model, it is clear that SN-3 is wrong and this, in turn, is illustrative of the need critically appraise all model outputs, which has not been done by the Council, and casts considerable doubt over the Council's assessment.
269. ST confirmed that in terms of the principle of identifying the impact of a specific development site that the model has been used for – the outputs have not enabled the identification of mitigation measures. ST further confirmed that he had not received full details of the MAM validation until he received Jarvis' rebuttal ¹⁴⁸ despite a request for all model validation reports from 8th December 2020. Indeed, it remains the case that full auditable outputs of that work have not been provided.
270. In relation to the DTA approach to modelling, ST explained model calibration¹⁴⁹ - and this was not challenged. On validation, ST explained that the queues were consistent with observations and consistent with the conclusion at 7.4 that It is

¹⁴⁸Jarvis Rebuttal Section 2

¹⁴⁹ ST First rebuttal Para 7.1-7.3 Page 11

most unlikely that there is systemic bias given that the majority of junctions are on dual carriageways where the ahead-traffic can use either approach lane. The risk is low.

271. With respect to model geometry, the Council has expressed no concerns and these elements were not challenged. In any event the point is moot because for the two junctions concerned (Will Adams and Lower Rainham Road), mitigation was proposed which changed the model structure in any event, to base line validation would not change the outputs of the assessment. Those outputs have also not been challenged.
272. ST accepted that the MAM validation had been accepted by HE, but confirmed that this was not relevant because the HE position in respect of the appeal scheme was based on the appellants TA approach and not reliant on the output of the MAM modelling.
273. ST agreed that individual junction modelling did not provide details of wider journey time but confirmed his view that as the junction models showed them to working within capacity the impact on JT would be limited.
274. Lane change behaviour is dealt with in MAM and can affect capacity of junction – this is agreed. However Linsig allocates movements to lanes and the approach in the LINSIG was not challenged.
275. ST explained that Arcady has an entry capacity for a given width, but there is a way to look at unequal lane usage.
276. In terms of the outputs, Will Adams way mitigation allows better balance of lanes at the approach for traffic through the junction. ST confirmed the intention of the mitigation is to re-address the balance and allows for the filter lane to be used. Therefore capacity is not worsened and has a significant benefit to the operation of the critical arms of the junction.

3rd Party matters

277. From a comprehensive review of the objections, none raise any specific issue not otherwise addressed, or concern regarding the technical detailed of the access arrangements. None raised issues of design or detail. In relation to the wider development, the concerns may be appropriately categorised as below.
278. Access arrangements and adequacy to serve development. Junction capacity testing has been undertaken in the submitted Transport Assessment¹⁵⁰ and in Technical Note 4¹⁵¹. A link capacity assessment is set out in ST's evidence¹⁵². This demonstrates the access strategy is wholly appropriate to serve the Site. The MAM modelling also confirms that there are no issues at the Site access junction¹⁵³.
279. It is agree common ground with the LHA that the access arrangements are suitable and will operate within capacity¹⁵⁴.
280. Public Transport is clearly and sufficiently addressed in the TA and summarised in Section 4.3 of ST's evidence. Appendix A of the HSoCG clearly shows the excellent connectivity of the Site to the local and wider area.
281. In summary, a high quality 10 minutes bus service (the Service 182) running to the south of the Site would fall within a reasonable walking distance of 80% of the houses within the Development.
282. Chatham Station is considered to be the most likely used by new residents of the Site as it provides frequent high speed travel to London as well as local services.

¹⁵⁰ CD CH5.25

¹⁵¹ CD12.6

¹⁵² First Proof Tables 4, 5 and 6, Second Rebuttal Para 3.10 and 3.11

¹⁵³ CD12.2 Table 17 and 18 (Pages 22 and 23 confirm this).

¹⁵⁴ Para 7.3 & 7.4 of CD12.4

It will be accessible from the Site by both the existing services 182 and 101) and the proposed extension to Service 1).

283. On the basis of the parking costs at Rainham station, public transport access to the stations would be more preferable than new residents driving and parking. There is therefore considered there will not be significant parking demand generated by the Site.
284. As set out in the TA foot/ cycle access to the proposed development would be achieved through a number of connection points, as indicated on the illustrative masterplan including: Via the proposed vehicle access from Lower Rainham Road; via a series of footpath links to the site including from Lower Rainham Road (north), Lower Bloors Lane (east), and Lower Twydall Lane¹⁵⁵) to the (west); via the proposed vehicle access from Beechings Way and on to Pump Lane (south).
285. These connections to the north, east, south and west will provide a good level of connectivity to the local area and nearby facilities.
286. Independent Road Safety Audit undertaken (Appendix G of Addendum (Page 297 of CD8.1 part 1)). All recommendations accepted.
287. It is common ground with LPA and LHA that access is acceptable¹⁵⁶.
288. Traffic Impact clearly is raised numerous times by local residents and the main answer to that is set out above because it is also the key (and only) issue being raised by the Council on highway matters.
289. Air quality related to traffic levels is also raised. An air quality assessment has been undertaken by Peter Brett Associates which has assessed the impact of the

¹⁵⁵ See ID12

¹⁵⁶ Para 7.4 of CD12.4

proposed development on air quality. This is set out in documents CH5.28 and CD6.4.

290. This is not affected by discussions on trip rates because we adopted a robust approach to AADT (24 hour flows) which went into ST's model.
291. Regarding transportation therefore, the appeal proposal is supported by a Transport Assessment, underscored by a sound methodology, technical work, best available data, and sensitivity testing. It is robustly concluded that national policy and development plan transport policy is met. There are no objectionable highway safety or traffic impact issues. For example, the alleged queuing time/delays would not pass the threshold into severity for NPPF purposes.
292. There is also no outstanding objection from Highways England, subject to appropriate mitigation coming forwards in respect of M2 Junction 4, the principle of which is agreed, as are the mechanisms for securing this.

BMV

293. The development upon BMV land gives rise to no conflict with development plan policy, importantly for s.38(6) purposes. The BMV debate engages paragraph 170(b) of the NPPF (only).
294. The NPPF-centred discussion is also heavily contextualised by the Council's driven admission that significant residential development will, in the foreseeable future, need to come forward on BMV land (and not merely agricultural land) within the district in any event, such is the enormity of unmet housing need¹⁵⁷.

¹⁵⁷ XX Canavan; PoE Canavan

That admission also takes account of future Local Plan development. So, the principle – in complete alignment with the Development coming forwards, now – is something which the Council readily acknowledges – and, in fact, should properly be taken to welcome.

295. It is notable also that the Council has not argued (or evidenced) any intrinsic value – either in “*economic*” or “*other benefits*” (NPPF) terms of this BMV site – that is, over and above the mere fact that it is BMV land – in comparison with, or in contrast to, other BMV sites (whether within or outside of the district). The Site discloses no *comparative* value, in either terms (NPPF). Indeed, the Appellant’s case goes further: the Site holds very little or no “*economic*” value. This is clearly significant given the emphasis under the NPPF, which should not be applied as if blanket-assuming that all BMV land holds this, or equivalent value. That would be to wrongly extend para 170(b).
296. Further to the Council not arguing any discrete value, nor is it even suggested that other BMV sites within the district should (or would, under the eventual Local Plan) come forward for development, *ahead of* the Site. This is separately important in the context of the Council’s in principle admission of the acceptability of residential development of sizeable BMV land within the district.
297. The Council’s fundamental, albeit casual recognition is then that, even on its own case, no more than *moderate* weight could properly be given to the complete ‘loss’ of BMV land through the Development. Yet, even this recognition is incomplete for paying no objective regard (there having plainly been no assessment) for the extent of the Council’s extent of housing land shortfall and very distant plan-making exercise, across a district within which so much BMV land today exists, undeveloped.
298. This context alone justifies attributing *modest* weight to the ‘loss of BMV land’ in NPPF paragraph 170(b) terms – *even before* undertaking a fuller exploration of the Site’s specific characteristics, viewed in a commercial agricultural/analogous

context, which strongly bears out why its BMV status is much less significant with regard to its particular physicality, the ongoing (or another future) agricultural use and the productivity of the Site, the Development, and, of course, the Council's catastrophic housing supply position.

299. A (flawed) criticism is levied at the Appellant's evidential presentation of unviability – or, alternatively, of an inability for the Site to return a reasonable future level of sustainable profit ('no reasonable profit') – being the two separate thresholds advanced by the Appellant. The criticism is unfounded. First, no challenge is actually made to the *confidentiality* of the relevant viability (or no reasonable profit related) material, or to the fact that it has been considered by expert JP, on behalf of the Appellant. Commercial confidentiality is rightly ascribed. Second, no challenge is made to JP's professional expertise in his assessment, and financial reporting upon, that material.
300. The Council ignores the reality that an assessment by the Inspector of unviability (or 'no reasonable profit') could not properly be undertaken without *full, public* disclosure of all commercially confidential documentation. The Appellant well appreciates this, but cannot waive this confidentiality. Whilst therefore, procedurally, it is acknowledged that there is some (albeit limited – and very often, not full) allowance for a confidential appraisal by a local planning authority of viability material in determining an application, this has no application to decision-making by an Inspector, whether or not in a recovered appeal. As such, the confidentiality of relevant information not being in question, all commercially possible disclosure has come forward.
301. Ultimately, the Inspector and SoS are not hindered: JP has explained the comprehensive assessment and all central conclusions within a framework that can be readily understood on the evidence, without admitting confidential source documents. JP's checklist of the information reviewed, reinforces this.

302. Ultimately therefore, it is in no way undermining of the Appellant's case that the Council might not have resisted the unviability (or no reasonable profit) case, had it been able to receive other confidential information. Indeed, basic but fundamental errors conceded in the Council's assessment, including on basic industry pricing (below), casts particular doubt on the Council's professional ability in the viability (or no reasonable profit) assessment, had even there been confidential disclosure. There is, respectfully, clear disparity in industry and practical experience between the relevant witnesses.
303. Separately, it is no good point against the Appellant's unviability (or no reasonable profit) case - and it has never been a point made by the Council - that no marketing information has been made available in relation to the Site. There is no reason why this should have come forward. The NPPG on viability also has no direct application in this instance, and no evidential requirement (or adverse inference) can properly arise, as such.
304. Another bad point has been the Council's exclamation of surprise at a viability appraisal of a BMV site being run in tandem with demonstrating why the economic value of the Site is modest, at best. This betrays a misunderstanding of paragraph 170(b) which specifically enquires of the particular economic (or other benefit) value of the BMV land in question.
305. Furthermore, given the Site-specific assessment, it is far from being a necessary corollary of JP's analysis that all BMV sites are unviable or unable to return a reasonable profit. The evidence has been Site-specific.
306. Lastly is the suggestion that historic due diligence undertaken by the Appellant, and discrete investments undertaken, *historically*, in respect of the Site is somehow circumstantial evidence that the Site is *today*, viable. This is an 'apples and pairs' comparison. Further, the Council is in no position to gainsay the level of profitability at the date of the Appellant's acquisition, and the invited

speculation is regrettable. Further still, as JP explained many farm owners invest (often for short periods) in sites which would be independently loss-making.

307. The Council's remote, unevidenced, speculation - borne of a desk study review infected by basic errors of assessment including on pricing - that the Site could draw a "healthy profit", is baseless.
308. Turning to the viability assessment, JP has expertly framed the increasingly challenging economics of UK farming. The indisputable, long-term trend is that the profitability of UK farming continues in steady decline.¹⁵⁸ Declining profitability, albeit with some seasonal variation, applies to all agricultural and horticultural enterprises (including the farming of the Site), is ultimately the consequence of static, sale prices and increasing costs of production¹⁵⁹. The consequence of this financial "pincer" is that the profits of farming enterprises, are diminishing. The circumstances of the Site render it especially vulnerable. The farming response to these deteriorating economics has been the continued pursuit of improvements in productivity, most significantly, changes to production methods (to secure improved yields) and increases in scale of operations (to enlarge holdings).¹⁶⁰
309. JP explained that whilst nearly all farming costs increase over time, there are some categories where inflation is greater than others, most importantly for employment costs; other examples including machinery, crop protection products, seeds, plants and trees.¹⁶¹ Increasing employment costs, in particular for seasonal employees, are most relevant to those enterprises where labour represents a significant proportion of production costs - including horticultural crops such as apples, pears, strawberries, raspberries, vegetable and salad crops. Contextualising these increases, over the period 2000-2020, wage rates for

¹⁵⁸ ID 06

¹⁵⁹ Pelham PoE p.12, paras 4.1-4.3

¹⁶⁰ Pelham PoE p.13, paras 4.4

¹⁶¹ JP PoE p.13, para 4.14

seasonal workers have increased significantly, by some 200%¹⁶². During the period 2016-2020 the cost of seasonal employees (for crop husbandry and harvesting) has, for many growers, exceeded 40%. These disproportionate wage rate increases of the last five years, unmatched by improvements in sale prices, have radically reduced the profitability of apple and pear crops - and therefore, the financial viability of Pump and Bloors farms.¹⁶³

310. JP explained four, key, (again) Site-specific constraints of the Pump and Bloors farm enterprises which have significantly restricted (and will restrict) the capacity for profit-making, resulting from either reduced output (yield and/or price) or increased costs: (a) overall farm area and satellite operation (increased costs)¹⁶⁴; (b) the size and layout of the orchards (reduced price and increased costs)¹⁶⁵; (c) the clones of Gala and Braeburn (reduced price and increased costs)¹⁶⁶; and (d) orchard age (reduced yield and increased costs)¹⁶⁷.

Overall farm area and satellite operation

311. With regard to the overall farm area, the Pump and Bloors cropped farm area of c.43 hectares is no longer adequately sizeable to be run independently and support the dedicated costs of a manager/operator and key machines (e.g. a tractor and sprayer). It must be operated as a satellite of another farm site – a fact reasonably incapable of dispute, and in fact, undisputed by the Council. Satellite sites incur significant additional costs (transport of equipment, staff and produce, and for management, etc.). These additional costs have been shown to be proportionately higher for smaller areas of land than they are for larger areas (say 100 hectares or more), typically in the range £20–50 per tonne.¹⁶⁸

¹⁶² JP PoE p.13, para 4.9

¹⁶³ JP PoE p.15, para 4.17-4.18

¹⁶⁴ JP PoE p.8-9, paras 3.3-3.8

¹⁶⁵ JP PoE p.9, paras 3.9-3.13

¹⁶⁶ JP PoE p.19-20, paras 5.7-5.12

¹⁶⁷ JP PoE p.19, paras 5.4-5.6

¹⁶⁸ JP PoE p.8, para 3.6

312. Whilst some economies of scale may be gained as a consequence of satellite operation (e.g. store manager at central site), these savings are considerably less than the additional costs of operating a satellite unit.¹⁶⁹
313. These additional costs of satellite operations have been shown to be increasingly difficult to support in the face of radical recent reductions in the profit of horticultural crops, with a high requirement for labour (such as apples and pears). Under current and likely future economic conditions, expert opinion identifies a minimum orchard farm area of 60 hectares required to support the dedicated costs of a manager/operator, a three-row sprayer, (whose lower costs of operation will be crucial in maintaining future financial viability) and a scale suitable for future developments in the mechanisation of apple harvesting.¹⁷⁰

Size and layout

314. Site-specific constraints also exist, some being permanent and irremediable.
315. Pump and Bloors farms comprise nineteen orchards. Twelve of the orchards are less than 2 hectares and are financially unviable in 2020 due to their disproportionately high costs.¹⁷¹ Optimal orchard planting is with rows running north/south, given that this reduces shading and increases crop yield and quality (e.g. apple colour). Given that at Pump Farm, 13.75 hectares (or over 60% of the crop area) are planted south-east/north-west, their alignment reduces their potential for profit¹⁷².
316. At Pump Farm the intrusion of both buildings and rented land into the cropping area, much restricts the ability to increase orchard size, with the right alignment – as does the 1.5 metre drop at the northern end of Blocks 15 and 16.¹⁷³ Bloors

¹⁶⁹ EiC JP (22.2.21 / 1.23)

¹⁷⁰ JP PoE p.24-25, paras 6.21-6.24

¹⁷¹ Pelham PoE p.9, paras 3.10-3.11

¹⁷² Pelham PoE p.9, paras 3.11-3.12

¹⁷³ EiC Pelham (22.2.21 / 1.32)

Farm effectively comprises two cropping areas, separated by a public bridleway, which not only increases costs of production, but also much restricts crop yield and quality (due to shading) in the neighbouring orchards to the north.¹⁷⁴

Clones of Gala and Braeburn

317. 32.98 hectares, equivalent to 87% of the combined Gala and Braeburn area at Pump and Bloors farms, are planted to the Gala “Mondial” and Braeburn “Hilwell” clones, being sub-varieties of main varieties. Both the Mondial and Hilwell clones are becoming obsolete, due to their lower value and higher costs of production, as a result of poorer colouration than newer alternatives, and are now only capable of small profits, even with good yields.¹⁷⁵ All of the 32.98 hectares of Mondial Gala and Hilwell Braeburn at Pump and Bloors require replacement in the near future.

Orchard age

318. 6.36 hectares of the orchard area (some 15% of the total Pump and Bloors cropped area) are over fifteen years old and are becoming too old for commercial production. These orchards are financially unviable and require replacement in the very near future¹⁷⁶. The combined area of superseded Gala/Braeburn clones and old orchards represents the clear majority of the cropping area of Pump and Bloors.

319. In the assessment of future financial viability, the replacement of all of the Pump and Bloors orchards have been properly factored into account.

Potential future profits: apple production

¹⁷⁴ EiC Pelham (22.2.21 / 1.36)

¹⁷⁵ Pelham PoE p.20, paras 5.9-5.12

¹⁷⁶ Pelham PoE p.19, paras 5.4-5.6

320. The orchards at Pump and Bloors farms would require replanting in the near future as a consequence of their existing size, layout, clone or age.¹⁷⁷ The financial viability of new orchard plantings has therefore been considered. This has been undertaken through the preparation of a lifetime financial forecast for a new Gala apple orchard planted in 2024, on soils of equivalent quality to those at Pump and Bloors¹⁷⁸. Reasonable assumptions have been made in the preparation of the model, including that the Gala sale price remains unchanged throughout the orchard's sixteen-year life, but that costs of production increase at identified rates.¹⁷⁹
321. JP (orally) identified the information sources provided to him by the Appellant¹⁸⁰. This included information on the prices received from supermarket customers, which JP identified as being consistent with his experience of those supermarket prices being achieved by other growers. Those prices showed no increases over the period under review.
322. RLH (PoE and orally) had wrongly suggested that, based on available DEFRA statistics, apple prices have, in fact, increased in recent years.¹⁸¹ The DEFRA statistics are however for the total volume (in tonnes) and value (£ million) of UK dessert apple production for the period 2008-2019. Using these figures, a calculation of the average apple value had been made for the 2010 and 2019 years. The difference between the two calculated figures have been described (wrongly) as a "trend".¹⁸²
323. JP orally confirmed why the use of data for the calculation of changes to apple price was unfounded, due not least to the significant changes in the mix of varieties between the 2010 and 2019 years.¹⁸³

¹⁷⁷ EiC Pelham (22.2.21 / 2.13)

¹⁷⁸ Pelham PoE p.21-22, paras 6.1-6.8 & Appendix V

¹⁷⁹ Pelham PoE p.21, para 6.3

¹⁸⁰ EiC Pelham (22.2.21 / 0.33)

¹⁸¹ Lloyd-Hughes PoE p.13, para 66 and Appendix RLH 07

¹⁸² EiC Lloyd-Hughes (18.2.21 / 1.09)

¹⁸³ EiC Pelham (22.2.21 / 2.28)

324. RLH’s 23.4.21 Note to Inquiry confirms that his previous reliance upon DEFRA’s figures to ascertain the wholesale value of home-grown *Gala* apples for years ending October 2019-20 (see e.g. RLH PoE para 67) was misconceived. This, in turn, reinforces JP’s confirmation that sale prices have substantially remained static and appreciation of the relevance of DEFRA apple wholesale prices to the economics of UK apple production, confirms that only a minor part of the UK apple crop is sold. So, the only information before the Inspector regarding pricing is the metadata (RLH07), addressed by JP (JP Rebuttal; paras 23-27).
325. JP also subsequently observed that in order to properly establish an actual “trend” the expectation must be that all of the data for the ten-year period 2010-2019 would be included and that simply identifying a difference between the opening and closing years (mindful of the seasonal variations that can occur with apple crops) of itself does not come close to establishing a trend.¹⁸⁴
326. The application of RLH’s method of calculation¹⁸⁵ to the intervening years 2011-2018, identifies the average dessert apple prices, by year, as follows:

**DEFRA DESSERT APPLE TONNAGE / VALUE
CALCULATED AVERAGE APPLE PRICE
2011-2018**

Year	2011	2012	2013	2014	2015	2016	2017	2018
£ Million	68	70	73	75	77	98	89	126
Tonnes'000	128	116	131	148	160	171	165	207
Average £/Tonne	533	604	554	507	480	570	543	607

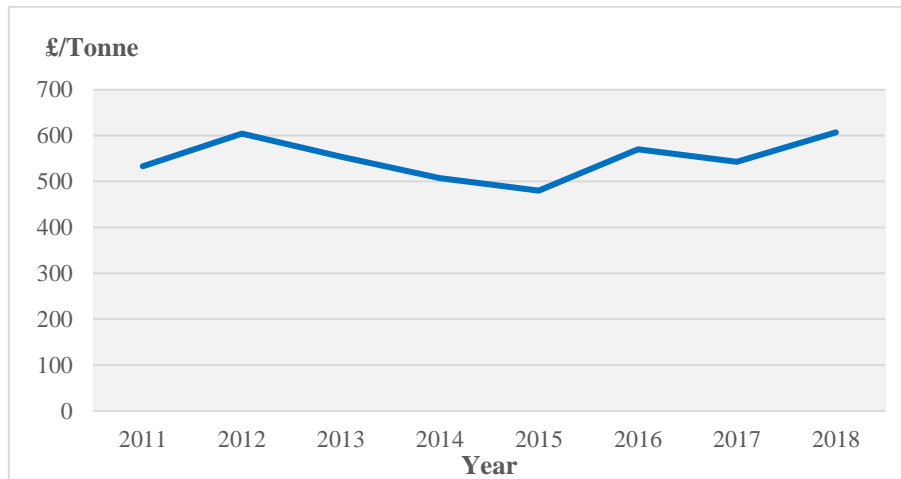
327. These derivative calculations of JP’s evidence show no consistent upward trend in apple price during this period and, indeed, in four out of the eight years (2013, 2014, 2015 and 2017), the calculated average price decreased. The presentation of

¹⁸⁴ XX Pelham (22.2.21 / 7.00)

¹⁸⁵ Lloyd-Hughes PoE p.13, para 66

the above figures in a graph (below) clearly shows that there has been no underlying upward trend in sale price over this period.

DEFRA DESSERT APPLE TONNAGE / VALUE
CALCULATED AVERAGE APPLE PRICE
2011-2018



328. The calculations of average price, based on the only relevant evidence before the Inquiry, confirm a central assumption in the preparation of JP's 2024 Gala crop model (see 3.3, above), being that apple prices remain largely static, albeit with some seasonal variations.

329. In summary, the Gala crop model forecasts a turnover over a sixteen-year life of £694,141. Profit is forecast at £16,575 per hectare, equivalent to 2.39% of turnover.¹⁸⁶

330. JP identified that the "reasonable profit" within the industry - one that takes into account the significant investment and production risks of apple production, required for a grower to consider an orchard investment - would be in the range 5-8% of turnover.¹⁸⁷ The forecast profit of the Gala model, at 2.39% of turnover, is below the range of "reasonable profit".

¹⁸⁶ JP PoE p.22 Table 8 and Appendix V

¹⁸⁷ EiC JP (22.2.21 / 1.17)

331. Even if therefore there were no incidents of hail during the sixteen-year lifetime of a Gala orchard planted in 2024, the forecast profit falls below the minimum level required to make this a commercial investment. The forecast confirms that such an investment would be financially unviable.

Hail

332. In the nine years since the acquisition of Pump Farm by the Appellant (2012-2020), there have been incidents of hail in five separate years ¹⁸⁸.

333. Hail damage reduces profit and undermines the financial viability of apple and pear crops from both reductions in output (lost yield and reduced fruit quality) and additional costs (mainly harvesting and packing). Hail also undermines the financial viability of not only apple and pear crops, but also of other horticultural crops, including tree and bush fruit, vegetables and salads. It was confirmed that if the damage to apple crops is over 10%, it is likely that the entire crop will be loss-making ¹⁸⁹.

334. The average incidence of crop damage from hail at Pump Farm for the nine-year period 2012-2020, has been 10.4% per year. In the period since its acquisition in 2016 Bloors Farm has experienced the same incidence of hail as Pump Farm.

335. In order to understand the consequences of hail for the potential financial viability of a new Gala planting, a re-working of the 2024 planted Gala lifetime crop model (see 3.1), incorporating the average annual hail damage of 10.4% suffered by the Appellant at Pump Farm in the period 2012-2020, was prepared.¹⁹⁰

¹⁸⁸ JP PoE p.10 Table 1

¹⁸⁹ JP PoE p.11, para 3.21 and EiC Pelham (22.2.21 / 1.47)

¹⁹⁰ JP PoE p. 22-23, paras 6.9-6.13 and Appendix VI

336. In summary, the revised Gala crop model – “with hail” – forecasts a turnover over a sixteen-year life of £629,031. A loss of £31,320 per hectare is forecast.¹⁹¹
337. Where the future incidence of hail mirrors the average of that experienced by the Appellant at Pump Farm in the nine years 2012-2020, a future Gala planting will generate a significant loss and is shown to be financially unviable. The same conclusion can be drawn in respect of other dessert apple varieties, including Braeburn.¹⁹²

Future enterprises

338. A full assessment of the future economic viability of Pump and Bloors has appraised not only the likely profitability of the existing apple and pear enterprise, but also of all alternative farming and other uses to which the land may hypothetically be put.¹⁹³ No alternative farming or other use is shown to be viable or attractive with a view to the land use achieving a reasonable level of profit, even if use of the land was not practicably impeded in the first instance.
339. The financial assessment of these other enterprises has also taken account of the initial capital cost of removing the existing orchards of between £40-100,000.¹⁹⁴
340. The Agricultural Land Classification identifies that the soils at Pump and Bloors, of Grade 1, 2 and Grade 3a BMV designations, are suitable for growing a wide range of crops - including horticultural crops whose production may be limited or impossible on soils of lesser quality. The main categories of horticultural crops include tree fruit (mainly apples, pears, plums, cherries), soft fruit (e.g. strawberries and raspberries), hops, vegetables and salads.

¹⁹¹ JP PoE p.23 Table 9 and Appendix VI

¹⁹² JP PoE p.23, para 6.13

¹⁹³ Pelham PoE p.27-34

¹⁹⁴ Pelham PoE p.34, paras 7.52-7.53

341. The requirement for BMV land for horticultural crops has reduced significantly in the last 30 years, as a result of improvements in yields and changes to production methods (e.g. the widespread use of artificial growing media for soft fruit production).¹⁹⁵
342. The most recent DEFRA data (2016) confirms that there are some 15,000 hectares of soil-grown horticultural crops produced in Kent, whilst an indicative calculation suggests that there are some 93,000 hectares of BMV land available for the growing of these specialist crops in the county.¹⁹⁶ These figures confirm that only 16% of BMV land in Kent was being used for horticultural crops in 2016.
343. The evidence suggests that there is considerably more BMV land available in Kent than is needed for production of the specialist horticultural crops, such as apples and pears, whose production is particularly suited to soils of this type.¹⁹⁷
344. The following paragraphs summarise the potential viability of the main alternatives to apples and pears, under the following headings:
- Fruit.
 - Vegetable and salad crops.
 - Cereals and potatoes.
 - Hops.
 - Livestock.
 - Non-food crops.
345. Fruit: This category includes other tree fruit (cherries and plums) and soft fruit. Cherries and plums, like apples and pears, face continuing cost inflation over an extended period with limited, if any, any prospect of sale price increases (with cherries showing recent sale price deflation as a result of significant expansion

¹⁹⁵ Pelham PoE p.27, paras 7.4

¹⁹⁶ Pelham PoE p.27, paras 7.5-7.6

¹⁹⁷ JP PoE p.27, para 7.7

of the UK crop area). Neither crop is financially viable at Pump and Bloors farms.¹⁹⁸

346. The two main soft fruit crops, strawberries and raspberries, are now grown almost exclusively under crop covers (polytunnels). Whilst the combined area of Pump and Bloors farms is theoretically large enough to support an independent soft fruit production unit, it is most unlikely that a soft fruit producer would seek to establish a new operation at this site, for a range of reasons.¹⁹⁹
347. First, there would there be the significant cost of submitting a planning application for both polytunnels and worker accommodation. Second, there is a considerable capital cost, both for the initial investment (estimate £6 million) and for working capital (a further £4 million).²⁰⁰ Finally there continues to be considerable uncertainty over seasonal labour availability, with the very real probability that it is not possible to secure adequate staff to operate a new operation.
348. Vegetable and salad crops: Whilst the current apple crops are protected from vermin by individual tree guards, specialist netting would be required to protect the growing of vegetable and salad crops, at an estimated capital cost of £30-45,000.²⁰¹
349. The capital expense of protecting against vermin and the lack of modern building facilities, together with the risk of hail, make the growing of vegetable and salad crops at Pump and Bloors farms either distinctly unprofitable (and significantly below the 5% - 8% threshold confirmed by JP), or financially unviable.²⁰²

¹⁹⁸ JP PoE p.28, paras 7.10-7.11

¹⁹⁹ JP PoE p.28, para 7.13

²⁰⁰ EiC JP (22.2.21 / 7.17)

²⁰¹ JP PoE p.29, para 7.18 (corrected)

²⁰² JP PoE p.29, para 7.30

350. Cereals and potatoes: The smallness of the unit (< 50 hectares), divided into a number of small fields of irregular shape, will mean high costs of production for both potato and cereal crops, exacerbated by the additional costs arising from a lack of on-site storage and drying facilities.²⁰³
351. Whilst current evidence indicates that the growing of wheat would raise (negligible) profit without subsidy, nonetheless, this would only be possible every other year. A break crop grown in the second year is likely to generate a loss that at least offsets, and probably exceeds, the wheat profit from the previous year.²⁰⁴
352. As a consequence, the financial viability (and reasonable profitability) of cereal crops such as wheat and barley, together with the other crops that are grown with them in rotation (such as oilseed rape and beans) is highly dependent on the Basic Payment subsidy, which is to be phased out by 2028. This renders the future financial viability of these crops unlikely, and certainly improbable.²⁰⁵
353. For husbandry reasons potato cropping can only be undertaken one year in five; it is most unlikely that a grower would wish to take on Pump and Bloors farms for an annual area of potatoes of less than 10 hectares.²⁰⁶
354. Hops: Reducing profitability has seen a considerable decline in the area of hops grown in the south-east. This crop has currently has either limited, or no, capacity for profit. There are no indications that this will change. The growing of hops is not financially viable at Pump and Bloors²⁰⁷.
355. Livestock: The combined area of Pump and Bloors farms is too small to support an independent grassland-using enterprise. The farms also lack appropriate

²⁰³ JP PoE p.30, para 7.25

²⁰⁴ Pelham PoE p.30-31, paras 7.29-7.30 and Table 11

²⁰⁵ Pelham PoE p.31, para 7.31

²⁰⁶ Pelham PoE p.30, para 7.26

²⁰⁷ Pelham PoE p.31, para 7.33

buildings, fencing or drinking installations²⁰⁸. The issues of smell and the availability of land for the disposal of waste make the farms wholly unsuitable for either pig or poultry enterprises.²⁰⁹

356. Non-food crops: Pump and Bloors are unsuitable for crops grown for either biomass or pharmaceutical use for a range of reasons, including low profitability, the high cost of fencing for vermin control, the absence of specialist harvesting contractors and production risk.²¹⁰

357. The ongoing agricultural enterprise at the Site has been shown to be unviable. Yet, even were this conclusion to be rejected, then nonetheless, it has been shown that a (incentivizing) reasonable level of profit is unachievable, with regard to all conceivable oncoming uses of the Site. This conclusion reduces further still the weight capable of being given to the 'loss' of this specific BMV land. No more than modest weight, at best, should be given to the development of the Site.

BENEFITS

358. The benefits of the Development, viewed together, are highly significant and wide ranging²¹¹. They include demonstrable economic, social and environmental benefits reflecting the 3 dimensions of sustainable development. All represent obvious "material considerations", balancing further in favour of the Development.

359. The derived housing gain, in both market housing and affordable terms, leads the most significant benefits - and should attract the uppermost, substantial weight. The relevant context here is stark given that the local and national housing markets are nothing less than broken, and the Council's delivery, over

²⁰⁸ Pelham PoE p.31-32, paras 7.35-7.36

²⁰⁹ Pelham PoE p.31, paras 7.35-7.37

²¹⁰ Pelham PoE p.32-34, paras 7.38-7.51

²¹¹ Parr PoE chapter 11 and para 12.21 CD10.1

a very substantial period, has been disastrous. A proposal seeking to substantially improve Medway's position, and at this time, serves an obvious, purpose that cuts across all NPPF dimensions, each attracting significant weight. Substantial weight should be given to *both* (i.e. each) market housing and affordable housing contributions. The Council's argued deliverability of sites within its supply does not improve the position. The Council's claim of "substantial steps" being taken, over the short term - whilst including sites within the ALLI (considered not objectionable) bear upon the 19/20 year only. Separately, the Council's ambition to meet a plan period figure (source?) under one or more future plan scenarios, is an incredibly long way off.

360. The employment and training opportunities both during construction and on-going should also attract considerable weight. Derivative benefits include the release of funds from residential development on the Site for reinvestment in other agricultural business.
361. There is additionally the prospect for significant environmental and ecological betterment - and significantly exceeding a future net biodiversity gain requirement (introducing new, native species of provenance and maximising ecological opportunities for species and overall value, including as part of new hedgerow planting, etc. - as Goodwin explained), the important provision of open space, a site accessible to both new residents and those already living in the location, much improved connectivity, improved habitat diversity and enhancement through both management of the existing boundary hedgerow and new planting, and improvements to pedestrian routes, cycleways and public transport enhancement.
362. The new school, recreational facilities and retail/business units in the heart of the scheme are facilities which will be of clear community benefit to both existing local residents and to new residents.

363. Other benefits to be weighed within the economic basket include indirect expenditure from new residents, and other revenue streams, such as council tax and New Home Bonus. The Development will bring direct construction-related employment, in turn, meaning a construction impact in the supply chain. There will be growth in the labour force, with the likely potential of workers choosing to relocate to work closer to where they will be able to live (adding that local employment will also be gained on the Site itself). Additionally, there will be an increase in derivative household spend, and a boost to the Council's own income through Council Tax revenue. The local economy, enhanced by localised benefits, will clearly be boosted significantly. There is no good reason not to view these benefits as anything other than significant.
364. The appeal proposal will provide substantial amounts of connected publicly accessible green space including a village green, community orchards and areas containing recreation routes and green infrastructure for informal recreation with landscape, amenity, as well as wildlife benefits, etc. These green corridors throughout the scheme will provide improved connectivity between neighbourhoods and greater access to the wider countryside. Infrastructure delivery should attract significant weight.
365. Then there is the stark economic and social context (and surely, to come) against which the Government's acknowledgment that development such as this should act as a primary answer to the national housing crisis²¹², must be viewed. This failing, satellite site can be 'unlocked' through considerable private sector investment, within an obviously sustainable location, twined with the reality of delivery by a committed developer, within an area suffering from disastrous housing delivery. If this Site, within this area, does not merit coming forward for residential development, then the Government's programme for annual housing delivery nationwide is surely massively unachievable.

²¹² See Budget Statement

PLANNING BALANCE

366. The Development is 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: section 38(6). As it happens, other material considerations including the very substantial benefits of the Development much support the grant of permission.
367. The presumption in favour of sustainable development is engaged. The tilted balance tilts in favour of approval. In the context of Para 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.
368. It is worth recalling, in the light of the tilted balance, precisely the purpose it is intended to serve: see *Suffolk Coastal v Hopkins; Richborough Estates v Cheshire East* [2017] UKSC 37, per Lord Gill (in the context of para 14 NPPF 2018): in cases where there is no 5YHLS, there are sound reasons for reducing the weight of housing *and also non-housing* policies. In that case, were considered environmental and amenity policies and designations, and the concern was expressed that: *“the rigid enforcement of such policies may prevent a planning authority from meeting its requirement to provide a five-years supply”* (para 79 of the Judgment). He went on to say *“If a planning authority that was in default of the requirement of a five-year supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework would be frustrated.”* (at [83]). The same essential principle applies to the operation of the tilted balance under NPPF 2019 in the context of development plan policies, today
369. 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” (indeed, any reason) for refusal. The only remaining relevant policies relate to heritage assets which are subject to less than substantial harm.

This does not provide a clear reason for refusing planning permission and must also be balanced against the benefits: NPPF Para 196. The presumption in favour of sustainable development is therefore not disengaged.

370. In application of NPPF paragraph 11(d)(ii) therefore, the substantial benefits of the Development are not significantly and demonstrably outweighed by any adverse effects of the Development in terms of landscape impacts, traffic effects, BMV loss and/or heritage harm.

371. Even if paragraph 11(d)(ii) was not engaged, for the reasons given above, it would remain the case that planning permission should be given for the Development.

Landscape

372. RH concludes that the Development would have residual moderate localised adverse effects on the landscape and the function of the site as part of the Green Buffer. Whilst the Council argues the effects to be greater, nonetheless it accepts they would be relatively tightly drawn around the Site, with no long distance views. These effects would not compromise the objectives of the designation of the ALLI: policy BNE34. The Development 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 PL005 Rev B would respond positively to the landscape character. Any conflict with BNE 34 (i) must inevitably be judged in the light of the fact that it considerably limits housing delivery, and should carry substantially less weight as a treated “out of date” policy.

373. BNE34 presents 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. In this regard the Appellant’s case is that the

Development is in accordance with NPPF Para 170(a) when the impact on the landscape is assessed in a way commensurate with its local status as defined in the Development Plan. 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. Moreover, when other significant economic, social and environmental benefits of the scheme are also considered the balance further weighs in favour of approval.

Transportation

374. Given the “out of date” characterisation, the material differences in policy, and the relative focus of the parties’ on NPPF paragraph 109, there is no justification for giving policy T1 substantial weight. If there is conflict with policy T1, it should be given modest weight only. There is additionally the point that if the policy is a “most important” policy in the determination of this appeal, it is one of the foremost development plan policies that should impede an approval in the light of the Council’s housing position. No reasons have been advanced in evidence as to why Policy T1 should be given substantial weight in determining this appeal.
375. There are also no wider issues arising in connection with the harm the Council argues derives from the capacity issue. In this appeal, the impact of issues such as increased queuing and attendant delay should very much be considered in terms of the broader balance of highway issues that is allowed for under the NPPF, but disallowed under Policy T1(i). Ultimately, it should be assessed whether such increased queuing or delay in fact gives rise to any identifiable harm, and moreover harm to such a degree that it is severe, when viewed residually and cumulatively - and in relation to the appropriate network.

376. As assessed by ST, there is no basis for finding that there will be conflict with policy T1. However, even were such a conflict to arise, it should be given only modest weight.
377. In assessing whether the development would give rise to a (residual, cumulative) severe impact, the matters under NPPF paragraph 108 (a)-(c) have relevance. The Development encourages sustainable travel and have safe and suitable access and therefore meet the requirements of 108 (a) and (b). Paragraph 108 (c) anticipates the impact of a proposal in terms of congestion and capacity, when mitigated. This resonates also with paragraph 109. The NPPF is purposely not constraining of how mitigation is to be taken account of, such that appropriate mitigation could be located adjacent to the development site or located within the wider network. It is considered that the transport mitigation proposed, both directly in relation to the Development site, and in respect of the wider local network, will ensure no 'severe' residual cumulative impacts on the road network. It is considered that the level of any such harm arising would be (significantly) below the threshold contemplated by paragraph 109 of the NPPF. Even if the Council's approach to configuring the relevant network' were to be adopted. This judgment is strongly reinforced by an appropriate, wider consideration of traffic impacts, as advocated by the NPPF - which are shown not to arise in this appeal.
378. Accordingly, it is considered that there is no basis for refusing permission on transportation grounds. The development is therefore in accordance with NPPF paragraphs 108 and 109.
379. The Council's position must also 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 the Development is

refused and more has to be provided elsewhere highways capacity issues are likely to be purely displaced rather than prevented. 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

380. As regards NPPF paragraph 11(d)(i), it is not the case that the application of policies in the NPPF that protect areas or assets of particular importance provide any clear reason for refusal. In the context of the Development, paragraph NPPF 11d(i), fn6, requires the para 193 evaluation. The identified heritage assets are subject to (far) less than substantial harm. This is even before the balancing of the benefits, required by NPPF para 196. The tilted balance is therefore not disengaged.

381. 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 range. Whilst the principle of conservation of the heritage asset must be given great weight, the very minimal harm individually and collectively to their setting should attract considerably less weight. Yet even if this is wrong, again, this must be balanced against the public benefits of the Development, clearly outweighing the impacts of the Development on heritage assets.

BMV

382. Release of the Site release will also allow for investment in more appropriate 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. The proposed housing will not contrary to NPPF Para 170(b) or Footnote 53.

383. Also, whilst Footnote 53 notes that release of poor grade land is preferred it does not prevent the release of higher grade land. The loss of the appeal site from agricultural use is not therefore objectionable in principle.

384. If the 'loss' of the Site is considered harmful at all, this needs 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 Development on agricultural land. This is acknowledged by Canavan²¹³. This residual harm is offset by the benefits of the development and does not individually or with other factors warrant refusal.

THIRD PARTY OBJECTIONS

385. Very detailed consideration has been given to all objections all third parties. The careful formulation of the appeal proposal demonstrates that none of the concerns ventilated by third parties, unsupported by the Council, are well founded.

CONCLUSION

386. When the impacts of the Development are fully and properly assessed, they fall substantially short of the overriding benefits. The adverse impacts do not come close to significantly and demonstrably outweighing the (very important and

²¹³ POE Para 7.9 CD10.6

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 (out of which, it will be recalled, the tilted balance is a material consideration for s.38(6) purposes).

387. Moreover, even were it the case that paragraph 11(d)(ii) was not engaged, and the 'normal' planning balance applied, planning permission should still be given. This is a development plan-compliant scheme, and so, planning permission should therefore be granted without delay for the appeal proposal.
388. Separately also, this is indeed a case in which the Development could and should be approved even if it were characterised as a departure from the development plan (which it is not) on the basis that 'material considerations' including the benefits, 'indicate otherwise'.
389. Substantial new areas of multifunction green and blue infrastructure are also embedded into the appeal proposal, incorporating new recreation routes and connectivity throughout the appeal site, and externally between the existing built environment and wider countryside. A village green and community orchards will form an integral part of a centre at the heart of the proposal, linking with new and existing publicly accessible green spaces, to compound benefits for new and existing local residents. Housing Supply.
390. Moreover, any conflict found with deemed or in substance out of date (or any other engaged) development plan policy would naturally not present any endpoint in analysing the development plan for the purposes of considering 'accordance' for the purposes of s.38(6), or with regard to identifying and assessing the impressive wealth of material considerations arising in favour of the appeal proposal. The many, conspicuous and very/significant benefits presented by the appeal proposal heavily underscores this.

391. The clear strength of the benefits demonstrated by the appeal proposal mean that even were it to be concluded that it conflicts with given policies, planning permission could and should properly be granted – indeed, whether applying the titled balance or not, in determining the appeal under s.38(6).
392. The Inspector is respectfully invited to recommend to the Secretary of State that planning permission be granted.

JUAN LOPEZ

39 Essex Chambers

28 April 2021