



## Appeal Decision

Inquiry Held between 13-16 December 2021

Site visits made on 17 December 2021 and 12 January 2022

**by D Hartley BA (Hons) MTP MBA MRTPI**

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

**Decision date: 7 February 2022**

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**Appeal Ref: APP/A2280/W/21/3280915**

**Land at East Hill, Chatham, Kent**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by FT Attwood & Partners against the decision of The Medway Council.
  - The application Ref MC/19/0765, dated 8 March 2019, was refused by notice dated 18 March 2021.
  - The development proposed is described as '*an outline application (with all matters reserved except access) for the erection of up to 800 dwellings with primary school, supporting retail space of up to 150 square metres and local GP surgery, with associated road link between North Dane Way and Pear Tree Lane and other road infrastructure, open space and landscaping*'.
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### Decision

1. The appeal is allowed and outline planning permission is granted for an outline application (with all matters reserved except access) for the erection of up to 800 dwellings with a primary school, supporting retail space of up to 150 square metres and a community or nursery facility, with an associated road link between North Dane Way and Pear Tree Lane, and other road infrastructure, open space and landscaping on Land at East Hill, Chatham, Kent in accordance with application Ref MC/19/0765, dated 8 March 2019, subject to the conditions in the attached schedule.

### Preliminary and Procedural Matters

2. A Case Management Conference was held on 1 November 2021. The purpose of the conference was to provide a structure for the ongoing management of the case and the presentation of evidence. There was no discussion of the merits of the respective cases.
3. It was necessary for me to undertake two post-event site visits as on 17 December 2021 there was significant fog and so I was unable to properly appreciate the appeal site in its wider context. Site conditions were clear on the site visit that took place on 12 January 2022.
4. The planning application is submitted in outline with all detailed matters reserved apart from access. The original planning application proposed to erect up to 800 dwellings (25% of which would be affordable housing) on a site measuring about 49.47 hectares and comprising a mix of 2, 3, 4 and 5 bedroom houses and apartments, up to 4 shops (total 150 square metres of retail floorspace), a 300

square metre GP surgery for 2 GPs, an approximately 3 hectare area of land to accommodate a 2 FE primary school, a road link connecting North Dane Way and Pear Tree Lane each served by a roundabout and a second roundabout to North Dane Way.

5. It is envisaged that the height of the buildings would range from 2 to 4 storey in height as shown on a '*building heights*' parameter plan prepared by Lee Evans Partnership. These height parameters take into account six defined '*character areas*' for the site as outlined in a document referenced the '*Design Development Guide*' prepared by Hume Planning Consultancy. The proposed density would be approximately between 25-50 dwellings per hectare (dph) in the developable parts of the site and about 16.1 dph across the whole of site.
6. The planning application is accompanied by a number of plans, including a master plan for the site and parameter based plans relating to proposed building heights (drawing 08284a-A-L-(91)-012), public facilities (drawing 08284a-A-L-(91)-013) and play areas (drawing 08284a-A-L-(91)-014). Other than detailed access proposals, I have considered these plans on the basis of whether the site would, in principle, be capable of suitably accommodating the proposed development in planning terms. The indicative masterplan shows that about 16.3 hectares (33% of the total area) would include dwellings and that there would be over 19 hectares (38% of the total area) of open space and landscaping made up of 2.2 hectares of woodland, 6.95 hectares of new woodland planting, 10 hectares of new open space including 2 local equipped areas of play, 1 neighbourhood area of play and a trim trail. There would be cycle and pedestrian links through and across the site.
7. It is common ground between the main parties, as detailed in the completed main statement of common ground, that prior to consideration of the outline planning application at planning committee the proposed on-site GP surgery was deleted in lieu of a financial contribution to be provided as part of a completed planning obligation and used towards the NHS to expand the primary and community health services in Hempstead and Capstone. I am satisfied that the proposal considered at planning committee had in fact omitted the GP surgery in favour of this financial contribution and that the land shown for this purpose was to be substituted for a community facility or nursery.
8. The main parties agree that I should therefore determine the appeal based on an amended description of development which substitutes the words '*GP Surgery*' for '*Community Facility or Nursery Facility*'. I am satisfied that such a change to the description of development would not be prejudicial to any interested party or have any adverse consequences from an accompanying Environmental Statement (ES) point of view. I have therefore determined the appeal on such a basis.
9. The agreed main statement of common ground refers to the submission of a further masterplan, i.e. drawing No 08284a-A\_L-00-004 PL13. This shows the removal of 16 indicative residential units from land to the northern part of the site and adjacent to Carlton Crescent. As layout is not a matter being applied for as part of this outline planning application, I am happy to accept this plan for the purposes of determining this appeal. The Council is also in agreement.
10. In accepting this amended indicative master plan, I would point out that it does not necessitate the need to change the original description of development in so far that this refers to '*up to*' 800 dwellings. Nonetheless, and in the context of the Council confirming at the inquiry that in view of this change, and subject to the imposition of a condition, it did not intend to defend the third reason for refusal,

the main parties accepted that the outline planning application should be determined taking into account the principle of erecting buildings and providing landscaping and open spaces as shown in the indicative locations on the amended illustrative master plan and taking into account the amended parameter based plans. The main parties agreed that the original illustrative master plan had been superseded.

11. In addition to the above, the appellant submitted an amended red edged site location plan (drawing 08284a-A-L-(00)-002 PL2) along with the main statement of common ground. This makes a very minor change to the northern most edge and south-eastern edge boundaries of the site. There is common ground between the main parties that this has the effect of making the appeal site marginally smaller. At the inquiry, I confirmed that I would accept this amended plan for the purposes of determining the appeal. It therefore supersedes the original red edged site location plan. The change is minor and I am satisfied that in accepting this plan there would be no injustice caused to any interested party or any adverse or material consequences from the point of view of considering the accompanying ES.
12. The National Planning Policy Framework was revised in July 2021 (the Framework) and this post-dates the Council's refusal notice. I have taken the Framework into account, as a material planning consideration, as part of the determination of this appeal.
13. The development qualifies as an Environmental Impact Assessment (EIA) development. An Environmental Statement (ES) was submitted with the outline planning application to assess the likely significant effects on a number of topic areas scoped into the report. This includes technical information and assessment relating to potentially significant environmental effects relating to transport and access; air quality; noise and vibration; landscape and visual amenity; ecology and biodiversity; water quality; hydrology and flood risk; soils, geology and contaminated land, and archaeology and cultural heritage.
14. I have had due regard to all of the information contained within the ES. This includes the supplementary information received from the appellant on 15, 18 and 23 November 2021 as part of a Regulation 25 request from the Planning Inspectorate. The additional information provided clarification in respect that no demolition was required for the proposed development; it was anticipated to balance cut and fill earthworks and therefore movements of spoil to or from site would be minimal; a definition of impacts that are significant has been provided in a table relevant to each of the aspect chapters including before and after mitigation; the proportions of the site which are Grades 3a and 3b agricultural land has been shown; the number and routing of construction vehicles underpinning the transport and air quality assessments has been provided and there would be an annual build out rate of 120 residential units per annum.
15. I have considered all likely significant environmental effects as part of the determination of the appeal and the consideration of the ES. The ES is adequate and complete in terms of Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

### **Main Issues**

16. The main issues are (i) the effect of the development on the character and appearance of the area including the Area of Local Landscape Importance (ALLI), landscape character and the setting of the Kent Downs Area of Outstanding Natural

Beauty (AONB), Capstone Farm Country Park (CFCP) and public footpaths, and whether the proposal would be incongruous within a countryside setting, and (ii) if paragraph 11(d) of the Framework is engaged, whether any identified adverse impacts of the development would significantly and demonstrably outweigh any identified benefits when assessed against policies in the Framework taken as a whole.

## **Housing Land Supply/Delivery and The Planning Policy Position**

### *Housing land supply and delivery*

17. There is no dispute between the parties that the local planning authority (LPA) cannot demonstrate a five-year supply of deliverable housing sites in the area. In addition, it is clear that the Housing Delivery Test (HDT) has not been met. Indeed, the evidence is that the Council has delivered 67% of its target number of dwellings in the last three years based on the January 2022 HDT result. The latter result was issued after the inquiry and I afforded the main parties to comment on it. The Council commented that *'there continues to be common ground between the parties that housing supply and delivery matters should be afforded substantial weight in the planning balance'*.
18. Taking into account the Council's December 2021 Monitoring Report, it is claimed that there is a shortfall of 2,592 dwellings against a five year housing land requirement of 9,516 residential units. This equates to 3.64 years housing supply. Prior to the inquiry, the appellant raised some concern that unlike in 2020, when the annual housing requirement was 1662 dwellings, the figure now being used is 1586 dwellings. While the appellant did not want to engage in any detailed discussions at the inquiry about the precise extent of the housing land supply shortfall, they did nonetheless accept that the housing land supply position was 3.47 years when an annual requirement of 1586 dwellings was applied.
19. At the inquiry, the Council confirmed that the change in the annual requirement was because it was now applying the Standard Method to assess housing need in its December 2021 Monitoring Report. Whether the shortfall is 3.47 or 3.64 years, there is common ground between the main parties that either figure would represent a *'significant'* shortfall. I do not disagree with this agreed position and have determined this appeal on the basis that the most up to date housing land supply position is between 3.47 and 3.64 years. However, for the avoidance of doubt, and given my decision, I have considered the best case housing land supply position of 3.64 years as part of the overall assessment of the appeal proposal.
20. Given the housing land supply and HDT positions above, paragraph 11d of the Framework is engaged. In terms of this appeal, policies S1, S2, BNE1, BNE2, BNE25, BNE34, L9 and L10 of the Medway Local Plan 2003 (LP) are cited. These are the most important development plan policies for the purposes of determining this appeal.
21. Given that paragraph 11d of the Framework is engaged, it is necessary that I assess the proposal against the policies in the Framework taken as a whole. However, that does not mean that the aforementioned most important and out of date policies should be afforded no weight in decision making terms. Indeed, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that where the development plan contains relevant policies, applications for development should be determined in accordance with the development plan unless material considerations indicate otherwise.

*Medway Local Plan 2003 policies and the Emerging Medway Local Plan*

22. The appeal site lies outside the urban area boundary, within an area defined as countryside. It is a common position, in the agreed 'main' statement of common ground, that policy BNE25 (Development in the Countryside) of the LP is not consistent with the Framework. It seeks to resist development in the countryside except for specific uses or circumstances, none of which apply in respect of the appeal proposal. Furthermore, the policy's stated aim in paragraph 3.4.71 is to protect the countryside for its '*own sake*' which is not consistent with paragraph 174b of the Framework which requires decisions to recognise the '*intrinsic character and beauty of the countryside*'.
23. Therefore, while the proposal would conflict with policy BNE25 of the LP, in so far that the development would not reflect one of the permitted uses, this is in the context that the local planning authority cannot demonstrate a deliverable five year supply of housing sites and the HDT not being met. Chapter 5 of the Framework does not seek to impose the same level of restriction in terms of housing in rural areas and, in the context of paragraph 80, I am satisfied that this urban edge location would not result in the development of isolated homes in the countryside. For the collective reasons above, I afford the proposal's conflict with policy BNE25 of the LP very limited weight in decision making terms. This is a position shared by both main parties.
24. Policy S1 (Development Strategy) of LP seeks to prioritise re-investment in the urban fabric with a focus on the redevelopment and recycling of under-used and derelict land within the urban area, with an emphasis on the Medway riverside areas and Chatham, Gillingham, Strood, Rochester and Rainham town centres. The proposal would be in countryside and so would not align with the Council's strategy of prioritising investment in the urban fabric. There would therefore be conflict with policy S1 of the LP.
25. The Council contends that policy S1 of the LP is a strategic policy and hence criterion (i) is relevant to the proposal which states '*long term protection will be afforded to areas of international, national or other strategic importance for nature conservation and landscape importance*'. I do not agree that the appeal site has '*strategic*' importance. As detailed below, it is designated as an Area of 'Local' Landscape Importance and, furthermore, the LP specifically includes strategic policies in the form of policies BNE31 (Strategic Gap) and BNE33 (Special Landscape Areas). Nonetheless, policy S1 of the LP does state that '*the open heartland of Medway at Capstone and Darland will be given long term protection from significant development*'. It is common ground between the main parties that the proposal would constitute significant development in the open heartland of Medway at Capstone and Darland and hence that there would be conflict with the latter part of policy S1 of the LP.
26. The Framework is less restrictive than policy S1 of the LP in terms of the location of new housing development. Furthermore, the undisputed evidence is that the local planning authority cannot demonstrate a deliverable five-year supply of housing sites. In addition, the LP was prepared with an end date of 2006 and based on a housing requirement which is now out of date: the policy restricts housing delivery and supply when there is a significant shortfall. Consequently, I find that overall the policy has limited weight in decision making terms.
27. Policy S2 of the LP (Strategic Principles) focuses on maintaining and improving environmental quality and design standards and a sustainable approach to the



location and mix of new development. In this regard, the policy is consistent with the Framework and is afforded full weight. It is common ground, however, that the proposal would not conflict with policy S2 (ii) and (iii).

28. Policies BNE1 (General Principles for Built Development) and BNE2 (Amenity Protection) of the LP are consistent with the design and amenity requirements of the Framework, particularly paragraph 130. Consequently, while these most important policies are out of date given the engagement of paragraph 11d of the Framework, they are nonetheless not inconsistent with the Framework. I afford these policies full weight, although policy BNE2 is not relevant to my main issues as the Council's third reason for refusal is no longer being contested.
29. Turning to policy BNE34 (Areas of Local Landscape Importance) of the LP, the evidence is that work on the ALLIs dates back to 1992. It is not a general restraint policy, but one that seeks to protect specific areas for their local landscape value. As such, it is consistent with the aims of Framework paragraph 174 which seeks to contribute to and enhance the natural and local environment, including valued landscapes.
30. As a local rather than a national or international designation, ALLIs are at the lower end of the designation hierarchy. Paragraph 174(a) of the Framework requires protection to be '*commensurate with their statutory status or identified quality in the development plan*'. In respect of the appeal site, it is important to recognise that the site is not within say a national park or an Area of Outstanding Natural Beauty. I acknowledge that the ALLIs constrain the supply of housing. However, this local designation is not inconsistent with paragraph 174(a) of the Framework in so far that it seeks to protect the landscape and habitat functions of the identified ALLIs. I return to this issue as part of my conclusion on the first main issue, but Policy BNE34 is consistent with paragraph 174 of the Framework and I afford it full weight.
31. Despite the above weight, I would add that when policy BNE34 was saved by the Secretary of State in 2007 it was on the basis that this would afford the local planning authority the opportunity to justify the retention of this local landscape designation through the local development framework process. This has not happened since 2007.
32. Policies L9 (Country Parks) and L10 (Public Rights of Way) of the LP respectively seek to '*maintain the existing country park*' at Capstone Valley and to protect the '*amenity*' and routes of public rights of way unless an acceptable alternative route with comparable or improved amenity can be provided. It is common ground that the proposal would not conflict with policy L9 of the LP in so far that the Capstone Country Park would be '*maintained*'. I share this view.
33. Policy L10 is consistent with paragraphs, 92, 93, 98 and 99 of the Framework. It is also consistent with paragraph 100 of the Framework which states that decisions should '*protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users*'. Policy L9 of the LP is consistent with the general recreational and nature conservation aims of paragraphs 92, 93, 98, 99, 102, 185 and 120(b) of the Framework.
34. Policy L10 refers to development that would prejudice amenity. In respect of this policy, I consider that '*amenity*' embraces a range of factors including those such as the surfacing or condition of footpaths, as well as the way that surrounding

areas and views are appreciated by users. I agree with the main parties, that policy L10 should attract full weight.

35. The main parties agree that the emerging policies, and the spatial strategy, of the Emerging 'Future Medway' Local Plan (2019-2037) (Emerging Local Plan) have not been the subject of Examination in Public (EiP) and are not sufficiently advanced to at least Regulation 19 consultation. To this extent, they carry no material weight for the purposes of the assessment of the development proposal, taking into account paragraph 48 of the Framework. At the inquiry, and for the avoidance of doubt, the Council confirmed that prematurity was not part of its case.
36. I acknowledge that in November 2019 the Council secured £170 million for infrastructure improvements through the Housing Infrastructure Fund (HIF) to enable the delivery of the Local Plan. However, the evidence is that use of this money is predicated on sites coming forward in the Emerging Local Plan which may or may not include land on the Hoo Peninsula.
37. As the Emerging Local Plan has not reached Regulation 19 consultation stage, I cannot afford the HIF (funding spend time restricted to March 2025) and the potential for other large housing sites to come forward at some point in the future any significant weight in decision making terms. There is no certainty relating to these matters.
38. It also of note that at a Full Council meeting of Medway Council on 7 October 2021, planned consultation on the Emerging Local Plan was postponed. At the inquiry, Mr Canavan indicated that a Regulation 19 Plan might be submitted in early 2022, although given what I heard about issues relating to some environmental matters, I have my doubts about whether this is a realistic timescale. Even if a Regulation 19 Plan were to be submitted early this year, it would take quite some time to reach adoption stage given the need for an EiP. Furthermore, and taking into account the need to secure planning permissions, the delivery of possible homes at the Hoo would, in any event, be a long time in the future.
39. In addition to the above, I would add that there is common ground between the main parties that there is an existing very significant shortfall in providing a demonstrable five-year supply of deliverable housing sites in the area. The proposal would deliver a significant number of dwellings, including affordable housing, within a short period of time and at a build out rate of about 120 residential units per annum. At the inquiry, Mr Canavan accepted the appellant's evidence that the local planning authority had persistently failed to deliver the requisite number of dwellings over the last ten years. While the Council may be trying to address this issue now, including granting more planning permissions in recent months, this does not alter the fact that the supply and delivery of homes in Medway has been and is poor.

### **Reasons**

*Landscape character, the ALLI and setting of the AONB, CFCP and public footpaths*

40. The main part of the site comprises two large arable fields which run along an elevated ridge of open land, divided by Shawstead Road which runs to the east from a roundabout on North Dane Way before turning south to run along the eastern boundary of the southern part of the site. The site also includes a smaller arable field to the northeast, adjacent to the small settlement of Hale at the junction of Capstone Road and Pear Tree Lane. Also, within the site boundary is an

area of woodland between the smaller, north eastern field and the main northern field, and Whites Wood, an area of Ancient Woodland adjacent to North Dane Way. In broad terms, the appeal site is predominantly arable, but remnant blocks of woodland and hedgerows run along roads and field boundaries.

41. The appeal site falls within the countryside and land specifically designated as '*The Capstone, Darland and Elm Court*' ALLI under policy BNE34 of the LP. The reasoned justification to policy BNE34 of the LP describes this area as a substantial tract of undeveloped land extending from the North Downs as a green wedge into the heart of the urban area. In addition, its function is described as a '*particularly attractive and important landscape feature defining urban areas and preventing coalescence of Lordswood/Princess Park and Hempstead*'. It also states that it contributes significantly to informal open space needs of the communities that adjoin it, brings the countryside into the town, provides a wider landscape setting for CFCP, and contributes to the setting of the Kent Downs AONB to the south and the M2 motorway.

*Effect on the ALLI, landscape character and the countryside*

42. Policy BNE34 states that development within an ALLI will only be permitted if (i) it does not materially harm the landscape character and function of the area; or (ii) the economic and social benefits are so important that they outweigh the local priority to conserve the area's landscape. I deal with the latter part of the policy in the other considerations section of this decision as detailed below.
43. In respect of the effect of the development on the landscape character and function of the ALLI, I have considered the appellant's landscape visual impact assessment submitted as part of the accompanying ES. I have also had regard to the location of public rights of way RC32 and RC9 which respectively bisect the northern and southern parts of the appeal site. In addition, I have had regard to the Medway Landscape Character Assessment 2011 (Character Assessment), as a material planning consideration, as it applies to the appeal site. The Character Assessment indicates that the site falls within the principal landscape area of '*Capstone and Horstead Valleys*' which in turn includes the East Hill landscape character area (No 25) to the northern part of the appeal site and Sharstead Farm landscape character area (No 27) to the southern of the appeal site.
44. The main characteristics of the '*Capstone*' part of the principal landscape area, where the development would be located, are described in the Character Assessment as providing a distinctive natural landscape setting for CFCP and the setting of the Kent Downs AONB situated to the south of the M2; the provision of a green wedge linking urban communities into the wider countryside and the North Downs; a semi-rural open space in close proximity to densely populated urban communities; preventing coalescence of Lordswood/Princess Park and Hempstead; providing a valuable wildlife corridor; retaining a distinctly rural character despite urban settlements on the eastern and western flanks, and blocks of distinctive deciduous woodland (predominantly Ancient Woodland) particularly on shallower slopes and plateau landform.
45. The East Hill landscape character area is described as having '*large rolling arable fields with strong woodland edges to the fields*'. The Character Assessment states that this area is close to a settlement and roads and has poor accessibility from densely populated areas to the west. It is described as a transitional rural fringe area and the condition of the land and its sensitivity are both described as '*moderate*'. It is stated that there are issues with the inappropriate siting of the



waste recycling plant to the south of this character area impacting on local character, the loss of traditional field boundaries and roadside hedgerows, and pressure for urban development extensions.

46. The Council contends that the sensitivity of this character area has changed since 2011, in so far that the waste recycling plant is now better screened by vegetation and the boundary with North Dane Way includes more mature and established planting. I acknowledge that there have been some changes since 2011, but I could see on my site visit that the recycling plant was still visible from public areas, including from parts of Shawstead Road. The recycling plant is particularly visible from parts of the appeal site given the relative change in land levels, although I acknowledge that it is not conspicuous from public rights of way RC32 and RC9. As a matter of fact and degree, I am not persuaded that the degree of change since 2011 is such that the sensitivity of the character area has moved from a rating of moderate.
47. The Sharstead Farm landscape character area is described as having a '*strong sense of enclosure and rural tranquillity and wooded ridges and with an ancient woodland both to the south and a largely intact hedgerow network, distinctive traditional farm settlement to the west and good footpath links*'. The condition of the landscape is described as '*good*' and its sensitivity as '*high*'.
48. As part of my site visit, I was able to appreciate the appeal site within its wider setting. My consideration of the site and the proposed development includes viewpoints, covering up to 10 km in distance, as outlined in the appellant's Landscape and Visual Impact Assessment prepared by Allen Pyke Associates. Owing to the existing mature boundary landscaping, location of White Wood Ancient Woodland and changes in topography, the appeal site is not conspicuous from views from North Dane Way to the west.
49. There is no dispute between the main parties in terms of the methodology used in terms of the preparation of the LVIA and I have no reason to disagree. There is common ground that initially the proposal would cause harm to landscape character. The point of dispute relates to the extent of harm once the landscaping has matured, i.e. after 15 years. The ES includes photomontages for existing, year 1 and year 15 site conditions taken from elevated ground at viewpoint 8 (Capstone Country Park looking towards the south part of the site) and elevated ground at viewpoint 15 (junction of Kingsway and Hunters Way West above Darland Banks in Gillingham). The main parties do not dispute that these are two significant visual receptor locations and I do not disagree.
50. I would add, however, that in respect of the appellant's photomontages, the dwellings do not include windows or other fenestration details and, in that respect, I have only considered them in terms of the location of the proposed development. My assessment in terms of the actual effect of the development on landscape character from these viewpoints has been drawn from my site visit observations. I have also taken into account the undisputed evidence from Mr Allen who commented that subject to the planting of semi-mature trees, a tree height of 10 to 12 metres in 15 years would be realistic.
51. Paragraph 174a of the Framework states that '*planning decisions should contribute to and enhance the natural and local environment by: a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan)*'. The site is designated as an Area of Local Landscape Importance (ALLI) in

the LP. It is valued landscape albeit one that is at the lower end of the valued landscape hierarchy.

52. On my site visit, I was able to appreciate the appeal site within its wider context. It can be seen from medium distance views on higher land including from the north and north east such as from elevated land at Darland Banks and Kingsway. Longer distance views of the site are also apparent from elevated areas including from Great Lines Heritage Park to the north west. However, the development would not be conspicuous or harmful in visual terms when viewed from the latter area given that it would be seen below the horizon and woodland beyond and would be seen in the context of existing built development on rising land at Luton and Wayfield.
53. The proposed and mainly two storey dwellings in the 'lower field' close to the Wagon at Hale Public House would be noticeable from some immediate and localised viewpoints. The proposed access/link road off the roundabout in this area would result in a limited loss of some vegetation. However, neither this loss nor the link road running through the site would cause significant harm to the character and appearance of the area. Indeed, the position of the link road has been carefully considered in so far that it would follow existing land contours and would be enclosed by new greenspace/planting. Furthermore, the boundaries of the site include existing mature vegetation and the indicative layout plan shows that dwellings would be set well back from main roads and with new planting proposed to bolster existing boundary landscaping. Additional planting, as shown on the indicative layout plan, would be particularly necessary along some parts of the boundary with Capstone Road where there are existing gaps.
54. The indicative layout plan shows a cul-de-sac of a relatively small number dwellings abutting the boundary with CFCP where there are some informal walking trails. I consider that it would be necessary to set proposed dwellings further away from this boundary and to introduce additional and high density planting. This would help to soften the effects of built development in this area, particularly as the boundary with CFCP is open in parts. This is a matter that could be suitably controlled at reserved matters stage.
55. As part of my site visit, and at the request of Ms Wilcox, I viewed the new housing development close to the Wagon at Hale public house at Banksview Drive. This development is not seen in the immediate context of the appeal site, although not unlike the appeal proposal it is set within an environment that includes several trees. I do not know the exact circumstances which led to these dwellings being erected. In any event, given where these dwellings are located, I do not consider that their existence has a material impact on how I assess the appeal development.
56. The south of the site is more contained given that it is positioned within a valley as distinct from a ridge type landscape. There are some views of the site from the western part of the CFCP on higher ground, including from the footpaths running alongside Upper Shawstead Farm Ruin, and there are clear views of large parts of the whole of the site from the two public footpaths on the site (i.e. RC9 and RC32), from parts of Shawstead Road, as well as from some 'informal' footpath routes that cross the site.
57. Other than the aforementioned medium distance views, the site as a whole is essentially appreciated from more localised viewpoints such as from CFCP, the two public footpaths that cross the site and from Shawstead Road. Nonetheless, there is no doubt that the appeal site has an undeveloped and rural character and, unlike

the surrounding settlements, is experienced as being much less busy and more tranquil.

58. Policy BNE34 does not prohibit development in the ALLIs unless '*material*' harm is caused to the landscape character and function of the area. I have carefully considered the LVIA evidence from the main parties and consider that initially there would be adverse harm caused to the landscape character of the area arising out of additional built and engineered development on the site. The main parties share this view. This harm would be particularly apparent when seen from short and medium range viewpoints.
59. Notwithstanding the above, a very high proportion of the proposed green spaces, structural landscaping and retained woodland is proposed as part of this development. I therefore find that once this landscaping reaches maturity, the development as a whole would assimilate into the prevailing landscape particularly when seen from medium distance and elevated viewpoints.
60. I acknowledge that there would be views of some of the proposed development to the south of the site (i.e. in the Shawstead Farm landscape character area) from elevated land in CFCP. However, these visual effects would be softened given the indicative location of the school playing fields and amenity greenspace. Furthermore, the dwellings to be positioned in the far south west corner of the site would be a maximum of two storeys in height and there would be woodland/greenspace on the eastern boundary and within the heart of this residential environment which, in time, would collectively diminish the level of landscape harm caused to this more sensitive part of the ALLI, to one that is more limited in magnitude.
61. The appellant contends that in itself landscaping/tree planting would be beneficial in landscape character terms. I acknowledge that large parts of the site are open arable fields and while relatively attractive are nonetheless devoid of particularly interesting or characterful features. While tree planting would not in itself be harmful on the appeal site, I am not however persuaded that this in itself would have a particularly beneficial landscape character impact. In fact, I am not persuaded by Mr Allen that the mere planting of trees would in themselves be substantial and beneficial and landscape and visual terms. This is of course a different consideration to the effect of planting from a mitigation point of view.
62. I do accept that there would be some benefits from the proposal in terms of the potential to improve field boundaries and roadside hedgerows and to deal with the poor footpath network and weak pedestrian accessibility from urban areas as outlined in the East Hill character area. However, and in the main, I find that the reality is that the proposed landscaping, as shown on the amended master plan, would be necessary in so far as mitigating the harm to the character and appearance of the countryside and to landscape character. In other words, the landscaping would lessen the harm caused after 15 years.
63. I note the Council's concern about four storey development on the appeal site as shown in the parameter building heights plan. At this height, and even accounting for tree planting of up to 12 metres in height after about 15 years, the roofs of some of the buildings would be apparent from elevated viewpoints such as at Kingsway and Darland Banks.
64. While four storey development on ridge top locations is not apparent in the immediate area, that in itself would not be unacceptable in this location given that

the development would be most conspicuous from surrounding and elevated land and, in this context, would be mainly seen by those looking down onto rooftops and set within a landscaped and wooded environment. Indeed, when seen from elevated land at Kingsway and Darland Banks, North Dane Way is not noticeable as it is set within a dip and, in this regard, the development would be seen in the context of a continuation of existing development, which is also on rising land, at Wayfield and part of Princess Park. To this extent, and from these areas, the visual change to the area would not be significantly adverse, particularly when proposed new tree planting matures.

65. I do not therefore find that in this case the inclusion of four storey development would cause significant harm to the landscape character of the area. In fact, the proposed tiered approach to the height of buildings (i.e. parameter building heights plan) would suitably respond to the topography of the appeal site and, subject to the careful consideration of reserved matters application, would have the potential to add visual interest and variation and avoid what could otherwise be too much homogeneity from a scale point of view.
66. In this case, the indicative landscaping would soften the overall effects of development on the site. In this case, I do not consider that it is necessary to hide away all the built development to achieve good design. Indeed, in panoramic views, I was just about able to appreciate the existing rooftops of properties at Lordswood and Hempstead when viewed from Kingsway and Darland Banks and, in this context, and in time, the proposed development would equally be capable of being assimilated into an environment where trees and vegetation soften the effects of built form.
67. Design, appearance and landscaping matters would of course be reserved for subsequent reserved matters applications. There is, however, nothing before me to suggest that it would not be possible to deliver a high quality, design led, ridge top and valley side, mixed use development proposal set within a significantly landscaped environment and including initial semi-mature planting. Indeed, I see merit in the appellant's '*green grid*' design concept and find that the development as a whole would, in time, be capable of being appreciated as being set within a pleasant wooded/landscaped ridge and valley, and including tree lined walkways and streets with landscaped and public realm areas suitably maintained through the establishment of a management company. In reaching this view, I am mindful of paragraph 4.26 of Guidelines for Visual Impact Assessment which states that '*well designed development can make a positive contribution to the landscape and need not always be hidden or screened*'.
68. There would, however, clearly be a relative change to the rural and open character of the site when experienced from more localised viewpoints, particularly from existing footpaths on the site. In this regard, some initial and significant adverse harm would be caused to landscape character and more generally to the character and appearance of the area. However, after 15 years I do not find that the harm would be at a level of '*material harm*' as outlined in policy BNE34 of the LP.
69. The proposal would amount to a significant development in terms of the quantum of residential units and overall amount of floorspace proposed. However, the development would occupy a relatively narrow tranche of the Capstone, Darland and Elm Court ALLI, and given the proposed landscaped buffers and continued existence of the CFCP, I do not find that the function of the ALLI, i.e. to prevent coalescence of Lordswood/Princess Park and Hempstead, would be breached.

70. Furthermore, the master plan shows significant amounts of open space and opportunities exist to improve community accessibility into the site and to the adjacent CFCP, particularly for walkers and cyclists alike, thereby contributing significantly to the open space needs of the communities that adjoin the site. A significant amount of the appeal site would be undeveloped and while the appearance of this part of the ALLI would change, the development would be capable of being set within a rural and bosky environment and, overall, the countryside would still be brought into the town. In this respect, I do not find that the function of this part of the ALLI, or the ALLI as a whole, would be breached.
71. I deal with the effect of the proposal on the setting of the CPCP and the Kent Downs AONB later in this decision. However, for the reasons outlined, I find that in respect of these matters, the proposal does not conflict with the functions of the ALLI.
72. At the inquiry, I heard concerns from residents about setting a precedent for further development in the ALLI and the loss of more recreational space in the countryside. It is the case that each planning application should be determined on its individual planning merits, but I am cognisant of the fact that the CFCP is in the ownership of the Council and to this extent the Council has some control in terms of what development might take place within it in the future. In other words, the likelihood of future development pressure in the CFCP is minimised due to land ownership and hence any future threat to settlement coalescence is also minimised. In reaching this view, I do nonetheless accept that the Council as landowner and the Council as local planning authority may have differing views.
73. Given the above, there would be no conflict with the function of the ALLI and to this extent policy BNE34 (i) of the LP. The development would improve pedestrian and bicycle access to the CFCP and this, coupled with the overall low density of development across the site as a whole, would ensure that there was still a rural landscape in close proximity to an urban area. Overall, and accepting some limited harm to landscape character, the proposal would, in broad terms, ensure that there was a soft and green development transition between the resultant extended urban area and the wider countryside.
74. I therefore find that subject to reserved matters details reflecting the design philosophy and location of development as shown on the submitted amended master plan, the proposal would cause some limited and localised harm to the landscape character of the area after 15 years, particularly when seen from parts of the CFCP and from public footpaths. To this extent, it could not be said that the proposal would fully 'protect' the landscape character of the ALLI, which is a valued landscape, and to that extent there would be some conflict with paragraph 174 of the Framework.
75. Notwithstanding the above, I do not consider that the scale of harm after 15 years would amount to 'material' landscape character and function harm with reference to policy BNE34 of the LP. Even if one were to disagree with my assessment of harm after 15 years, policy BNE34 of the LP states that development will be permitted if *'the economic and social benefits are so important that they outweigh the local priority to conserve the area's landscape'*.
76. The social and economic benefits listed below are matters to which I afford very substantial weight in the planning balance. In other words, even if I had concluded that the proposal would lead to material harm to the landscape character and function of the ALLI after 15 years, in this case I would still have found no conflict



with policy BNE34 of LP given that the proposal would accord with criterion (ii) of such a policy.

77. I consider that after 15 years the development would assimilate and blend into the countryside setting without it appearing as an incongruous or dominant form of development. Indeed, when seen from middle distance viewpoints (e.g. viewpoint 15 of the LVIA), the development would be capable of assimilating into the landscape behind and within woodland and tree belts as has been the case for Hempstead and Lordswood over time. From localised viewpoints, the development would be noticeable between existing and proposed trees and from the public footpaths, but not to an extent that there would be very significant adverse effects from a visual amenity point of view in the medium to long term. Subject to the indicative amounts of structural landscaping, open spaces and habitat creation, the proposal would not amount to 'overdevelopment' of the site as claimed by the Council. Overall, and in time, the development need not appear as incongruous or out of keeping in this countryside setting.
78. While it cannot be said that the proposal would not change the essentially open and undeveloped character of the site, once the landscaping has reached a more mature stage the overall effect would be limited localised harm to the intrinsic character and beauty of this part of the countryside. To this extent, there would be conflict with paragraph 174 (b) of the Framework.
79. In reaching the above view, I have taken into account the new road infrastructure and accesses which would result in the loss of some vegetation and tree cover and would, to some extent, open up the site in relative terms. However, I am satisfied that the loss of vegetation and trees would be capable of being more than adequately compensated taking into account the indicative landscaping proposed. In the main, the site would continue to be well screened from most public areas at lower land levels.

*ALLI, landscape character and countryside impact conclusion*

80. For the above reasons, I conclude that in time (i.e. after 15 years) the proposal would result in some limited adverse harm to landscape character and the intrinsic character and beauty of the countryside, particularly when appreciated from more localised viewpoints, including from public footpaths, and from elevated ground particularly to the east and north of the site. In this respect, there would some conflict with paragraph 174 (a) and (b) of the Framework.
81. However, I do not find that the proposal would conflict with Policy BNE34 of the LP given that the resultant harm to landscape character (i.e. after 15 years) would not be 'material'. Furthermore, I find that the function of the ALLI would be maintained whether that be considered as a whole or in respect of the part of the ALLI relating to the appeal proposal. In reaching this decision, I have taken into account other approved development within the wider ALLI, including that at Gibraltar Farm<sup>1</sup>. In addition, I find that in time the proposed development would assimilate into the countryside setting and hence would not appear incongruous.
82. In any event, in this case the social and economic benefits arising from the development would be substantially beneficial: this would ensure compliance with Policy BNE34 of the LP even if one were to disagree with my conclusion about the weight of harm caused to the landscape character and function of the ALLI.

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<sup>1</sup> APP/A2280/W/16/3143600

*Effect on Capstone Farm Country Park*

83. As part of my site visit, I was able to consider the effect of the proposal on the setting of the CFCP. I find that the setting of the CFCP need not be adversely affected given the indicative positioning of the school playing field, parkland and planting, thereby ensuring a sensitive and appropriate transitional setting between urban and rural fringe.
84. At the inquiry, Mr Etchells commented that the development would be very apparent to users of the CFCP in so far that noise and activity would be noticeable. While CFCP is predominantly rural, it is not without activity, buildings or car parks. Indeed, I was able to see a fishing lake, dry ski-slope, toboggan, educational centre, café, visitor centre and car parks as part of my site visit. CFCP is rural but with urban features and on my site visit I noticed that there was some noise and activity albeit at the lower end of the scale.
85. I acknowledge that proposed development to the north west of the appeal site would be close to the boundary with the CFCP, but the indicative plan shows a relatively small cul-de-sac of dwellings and, as outlined earlier, there is scope to improve landscaping screening on this boundary and to set dwellings further back into the site. Subject to the careful consideration of reserved matters details, I do not therefore envisage any significant adverse effects from the development on the quiet enjoyment of this part of the CFCP.
86. Taking all of the above matters into account, coupled with the topography of the CFCP and intervening landscaping, I do not consider that the proposed development would have any significant adverse effect on CFCP from the point of view of its relative tranquillity or its visual setting.

*Effect on the AONB*

87. Given the location of the site, the intervening existing and proposed development, land topography and indicative proposed landscaping, I am satisfied that the proposal would not cause harm to the Kent Downs Area of Outstanding Natural Beauty (AONB), which is about 2.7 km to the south beyond the M2 motorway, including its setting. Furthermore, the development would not be conspicuous when viewed from within the AONB. The proposal would not therefore conflict with paragraph 176 of the Framework which seeks to conserve the landscape and scenic beauty of the AONB.

*Effect on public footpaths on the site*

88. The existing public footpaths to the north and south of the site would be retained and incorporated into the wider development of the site. In that respect, there would be no conflict with policy L10 of the LP which states that '*development which would...result in the diversion or closure of existing rights of way will not be permitted, unless an alternative route with comparable or improved amenity can be provided*'. The Council's PROW service did not raise an objection to the proposal but wanted to see the footpaths retained and integrated into the wider site and that the two footpaths, i.e. RC9 and RC32, be re-surfaced. The appellant has agreed to carry out this re-surfacing work. Furthermore, a financial contribution of £51,000 forms part of the agreed planning obligation to make improvements to footpaths and bridleways outside the development boundary and within 1.5 km of the site.

89. Based on the submitted master plan, users of the southern existing public footpath would appreciate a more urban setting than exists now. However, the path would open out into an indicative less developed and green setting when moving to the east and so users would not appreciate the overall change in this area in a very negative way. Users of the northern footpath would, however, appreciate a much more urban landscape, including the proposed internal link road, although the provision of indicative open space areas in this area would help to soften and break up these more urbanised and adverse impacts.
90. I acknowledge that users of the footpaths would no longer appreciate the same level of open and rural views as they do now. To that extent, there would be a degree of harm from an amenity point of view. However, the indicative master plan shows that the footpaths could be incorporated into areas of greenspace and/or tree lined streets and while the way the site would be experienced would change, that need not necessarily be a wholly or significant adverse impact.
91. It is also of note that the proposal would directly address poor accessibility to the CFCP as identified in the East Hill Sub area of Character Assessment and, in this regard, the proposal would accord with paragraph 100 of the Framework. Indeed, the proposal would improve accessibility to and from the CFCP for residents surrounding the site and also for those that would live on the site. This would be an important matter to be considered at reserved matters stage but has the potential to represent a significant benefit.
92. Overall, I consider that in this case, the limited harm caused to the amenity of users of the footpath in terms of not experiencing the same level of open and undeveloped surrounding land would be off-set by amenity proposals to improve the surface and condition of the existing footpaths, thereby making them accessible to all users. In this regard, I do not find that overall there would be conflict with policy L10 of the LP.

### **Other Considerations**

93. In the context that the local planning authority is unable to demonstrate a deliverable five-year supply of housing sites in the area, the Housing Delivery Test not being met by a significant degree, and the persistent under delivery of houses in the last ten years, I afford very substantial weight to the provision of what would be a very significant number of dwellings on the site. This would positively boost the supply of homes in the area and there is no evidence of any reason why the development could not be commenced on the site at an early stage. Indeed, and taking into account paragraph 77 of the Framework, the appellant has agreed to a condition which shortens the default timescale for the submission of reserved matters for the first phase of development on the site (i.e. 12 months from the date of this permission) and commencement of development (i.e. 6 months from the date of approval of the last of the reserved matters relating to the first phase to be approved).
94. I afford weight to the early delivery of homes on the site. This view is supported by the fact that expressions of interest have already been received from two developers to acquire the site subject to the grant of planning permission.
95. In addition to the above, the proposal would include a significant number of policy compliant affordable homes. The accompanying planning obligation has been agreed by the main parties and would ensure that 25% of the homes were affordable in accordance with Policy H3 of the LP. The provision of a very high

number of affordable homes would make a very positive and significant contribution to the delivery of such homes in the area. The delivery of much needed private market and affordable homes are social benefits to which I afford very significant positive weight in the overall planning balance.

96. There is no dispute between the main parties that the site is sustainably located. The amended indicative master plan for the site shows that there are opportunities to improve accessibility to and within the site for all users. The site is within convenient distance of frequent bus routes, which would be extended and improved into the site via a Section 106 agreement monetary contribution of £404,768. In this regard, I find that local facilities and employment opportunities would be suitably reached by public transport, by bicycle and on foot. While the site does fall within a countryside location, it nevertheless adjoins existing built up areas/settlements. It is reasonable to conclude that the proposal is capable of being a sustainably located urban extension. Furthermore, and in the context of paragraph 80 of the Framework, the proposal would not amount to the development of isolated homes in the countryside.
97. While layout is reserved for a subsequent reserved matters application, the amended indicative master plan, and indicative landscape strategy concept plan prepared by Allen Pyke Associates, show that it would be possible to include good pedestrian and bicycle routes through and across the site, thereby ensuring sustainable transport links into and out of the adjacent urban areas. This would make it convenient and accessible for future occupiers and visitors of the site to travel to and from surrounding facilities, including the CFCP, by other means than the private motor vehicle.
98. The proposal would lead to employment benefits at construction stage and given the quantum and type of development proposed on the site, there is scope for a material increase in spending in local shops and services. Indeed, I have no reason to disagree with estimated gross annual expenditure from new residents of in the region of £21 million of which 50% would be expected to be spent in the local area. These are very positive economic benefits arising from the appeal proposal.
99. The appellant has agreed to the imposition of a condition which would ensure 20% net biodiversity gain for each phase of development. This is a positive matter to weigh in the planning balance. The Council agreed at the inquiry that there were no local policies that prescribed a level of net bio-diversity gain to be achieved from developments and that even if the Environment Act 2021 requirement were to be applied now, i.e. 10% biodiversity gain, the proposal would exceed this and hence it was a benefit to weigh in the planning balance.
100. The provision of a school, open space, local shopping units and the provision of land for a community facility or nursery would, at least in part, be necessary to make the development acceptable in planning terms. However, at the inquiry Mr Canavan did not dispute the appellant's claim that some of these facilities would also meet the needs of the surrounding area. To that extent, some positive weight can be attributed to these proposed facilities as benefits.
101. The provision of improvements to footpath and cycleway connections, particularly to CFCP, would be of benefit to the wider community in promoting alternative modes of travel to the car for those residents wishing to travel between Hempstead and Lordswood. A new link road would improve bus connectivity and relieve some pressure on existing junctions in the area.

102. Collectively, the aforementioned benefits are substantial and I afford them very substantial weight as part of the assessment of the appeal proposal.

### **Third Party Representations and Other Matters**

#### *Living conditions – Carlton Crescent*

103. The land to the rear of properties on Carlton Crescent rises upwards. I was able to fully appreciate this as part of my site visit.
104. The appellant has amended the indicative master plan such that 16 of the indicative residential units have been removed and a wider area of boundary planting provided. Based on these indicative revisions, which show a much greater separation distance between existing and proposed properties, I am satisfied that it would be possible to erect some houses in the northwest part of the appeal site without any material harm being caused to the living conditions of the occupiers of Carlton Crescent in respect of daylight, sunlight and outlook. However, it would be necessary to have in place a significant landscaped buffer as shown on the amended indicative master plan. The main parties have agreed a condition prohibiting development close to Carlton Crescent as shown hatched blue on drawing No 08284a-A-L-(00)-005 PL14, dated 16 December 2021.
105. Taking into account the amended master plan, I conclude that in principle the proposal need not cause unacceptable harm to the living conditions of the occupiers of properties on Carlton Crescent in respect of daylight, sunlight and outlook. Therefore, I find that in principle the proposal would not conflict with the amenity requirements of policies S2, BNE1 and BNE2 of the LP and paragraph 130 (f) of the Framework.

#### *Loss of countryside – health and well being*

106. A number of other interested parties have raised concern about development on the site and the associated loss of health and community benefits associated with use of the countryside including horse riding, walking and guide dog training. I acknowledge that the proposal would result in the loss of some countryside land. However, the indicative master plan shows that a significant amount of open space and landscaping would be provided and retained on the site, some of which would provide links to and from the adjacent CFCP. In essence, members of the public would have increased access onto the site in the context that most of it is currently in private ownership.
107. Overall, and subject to the reserved matters details according with the design parameters as laid down as part of the outline planning application, the proposal need not have a harmful effect on the health or well-being of the local community from the point of view of access to open spaces, walking, horse riding or guide dog training. There would also continue to be convenient access to other areas of countryside which are less developed and where relative peace and tranquillity can still be experienced.

#### *Subsidence and flood risk*

108. Comments have been made about possible subsidence to properties on Carlton Crescent. There is no objective evidence before me of any existing subsidence issues in the area and I have not been provided with specific details to indicate that the proposed development would lead to any adverse impacts in this regard.



Furthermore, development close to Carlton Crescent would be prohibited in respect of condition No 06.

109. A very small part of the north-east corner of the site is within flood zones 2 and 3 as shown on the Environment Agency flood maps and hence a Flood Risk Assessment and sequential test has been submitted as part of the outline application prepared by Herrington Consulting Limited. This is included as part of the ES. Figure 3.2 of the aforementioned assessment indicates that in respect of the higher risk flood zone areas, they have a 'low' probability of flooding from surface water and that it has between a 1% (1 in 100) and 0.1% (1 in 1000) chance of happening each year.
110. In respect of the proposed master plan, all the proposed buildings would be located outside the predicted flood extents for the worst-case scenario and the evidence is that all would remain dry. Only part of the internal access road in this part of the site would have the potential to be affected by flooding, with flood depths predicated to be less than 300mm.
111. The flood risk and SUDS assessment includes measures to mitigate against flooding and it is proposed to make use of bioretention swales/SUDS on site to accommodate surface water run-off thereby according with the major development requirements as outlined in paragraph 169 of the Framework. Taking into account the proposed surface water management strategy, I am satisfied that the development would not increase the risk of flooding off-site and the evidence is that the proposal would reduce the rate of run-off from the development compared to the existing greenfield run-off rates.
112. Neither the Environment Agency nor the Lead Local Flood Authority raise an objection to the proposal from a flooding point of view. I have no reason disagree with their conclusions on this matter and find that subject to the imposition of conditions, the development would be appropriately flood resilient and, taken into account the indicative master plan, that the most vulnerable development would be located in areas of lowest flood risk.
113. I have considered the sequential and exception assessments provided in the Flood Risk and SUDS Assessment, as well as further details provided in the appellant's Updated Drainage and Flood Risk Assessment dated 30 November 2021. I have not been made aware of any sites that are available of comparable size to accommodate development of the scale proposed and, furthermore, only a very small part of the site is in flood zones 2 and 3. I would also add that there is common ground that the local planning authority is not able to demonstrate a deliverable five-year supply of housing sites. The master plan also indicates that all built form would be in flood zone 1.
114. Taking into account the information, data and recommendations in the Flood Risk and SUDS Assessment and Updated Drainage and Flood Risk Assessment, coupled with the amended master plan for the site, I also find that the exception test has been met. Indeed, the development would provide wider sustainability benefits for the community that outweigh the flood risk and it has been demonstrated that it would be possible to make the development safe for its lifetime taking account the vulnerability of its users, without increasing flood risk elsewhere. I therefore find no conflict with the flood risk requirements of chapter 14 of the Framework.

### *Privacy*

115. The occupier of No 8 Wey Close considers that the indicative development would result in a loss of privacy. Taking into account the likely separation distances involved, I am satisfied that in principle it would be possible to ensure that development does not have adverse privacy impacts on the occupiers of this dwelling. This is a matter that would need to be addressed in detail as part of a reserved matters application.

### *House prices*

116. Some have commented that development on the site would have the effect of devaluing houses in the surrounding areas. The courts have held that a reduction in property value is not a material planning consideration and, in any event, there is no objective evidence before me to support the contention that property values would fall. Other third parties have commented that the 25% affordable housing would still be too expensive. The proposal would provide affordable housing in accordance with the Council's requirements. I have no details before me to substantiate the claim that the affordable homes would be too expensive.

### *Pressure on local services*

117. A significant number of representations have been made, including from Tracey Crouch MP, to the effect that the proposal would put undue pressure on local services and infrastructure such as primary and secondary schools, GPs, hospital, dentists, social services, the police, the fire brigade and public transport. A primary school would be provided on the site and the evidence indicates that this would be needed because of the proposal. In addition, the appellant has completed a planning obligation which would include a contribution of £4,896,853.52 towards education provision of nursery, primary school and secondary school places.
118. A number of other interested parties have commented that there are not enough qualified GPs in the area. I do not have any specific evidence before me to substantiate this claim. The evidence before me indicates that the Health Authority were consulted at outline planning application stage. Rather than having a GP surgery on site, it is understood that the Health Authority favoured a financial contribution of £493,640 to be used towards the NHS expanding the primary and community health services in the area. In the context of such a financial contribution being provided as part of the submitted and completed planning obligation, it would not therefore be reasonable to withhold planning permission relating to a possible current shortage of GPs in the area.
119. Taking into account the completed planning obligation, and the imposition of planning conditions, I am satisfied that the proposal would not put undue pressure on any local services.

### *Retail space*

120. The proposal includes up to 150 square metres of retail space. As retail is a main town centre use, and the site does not fall within an existing centre, it is necessary that I apply a sequential test to this outline planning application.
121. I have considered the sequential test information provided by the appellant, including the document 'Proposed Retail Floorspace Provision' prepared by Hume Planning Consultancy. I have no reason to disagree with the finding that no suitable or available units are available within the identified existing local centres.

The local planning authority do not object to the proposal on the basis of the sequential test. I am satisfied that the sequential test has been passed and to this extent the proposal would not conflict with paragraph 87 of the Framework.

122. In addition to the above, I would add that as the proposal would provide a modest amount of convenient and local retail space for occupiers of the proposed buildings on the site, this in turn would discourage some from travelling further afield by the use of private cars. I reach the same view in respect of the proposal for a community or nursery facility on the site. Indeed, there would be a sustainable mix of different uses on the site.

*Loss of agricultural land*

123. The site includes agricultural land that is classified as 3a (good quality) and 3b (moderate quality) on Natural England's Agricultural Land Classification map. Grade (a) falls into the next and most versatile category, but its usefulness is below grade 1 (excellent) and grade 2 (very good).
124. Paragraph 174(b) of the Framework requires decisions to take into account *the economic and other benefits of the best and most versatile agricultural land*. The development would result in the loss of some best and most versatile agricultural land and this weighs against allowing the appeal. However, I agree with the consultation response from Rural Planning Limited where it is said that this loss would not be *'significant enough to be determining issue'*.
125. In the context of the shortfall in the supply and delivery of housing in Medway, coupled with the comment in the planning committee report that *'there is insufficient brownfield land within Medway to accommodate all, or even the majority of the Council's housing requirements over the coming years'*, I find that the identified social and economic benefits associated with the appeal proposal outweigh the loss of best and most versatile agricultural land.

*Development on a greenfield site*

126. In the context of the above, I acknowledge that the appeal site is primarily greenfield. Paragraph 85 of the Framework states that in rural areas *'the use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist'*. In this case, there is common ground that greenfield site releases for housing are needed to meet the development needs of Medway and that there is insufficient brownfield land to meet current requirements. Hence, there is justification for overriding the technical conflict with policy S1 of the LP which seeks to prioritise re-investment in the urban fabric and the redevelopment and recycling of under-used and derelict land within the urban area. Indeed, the evidence is that the Council has allowed development on other greenfield sites in recent years.
127. Furthermore, the proposed development would be close to existing built form amounting in an effect to an urban extension. In addition, the indicative master plan shows that a significant amount of undeveloped open space and landscaping would be associated with built and engineered development on the appeal site. Consequently, and in this case, building on a greenfield site would not justify withholding planning permission.

### *Air quality*

128. Concerns have been raised about the effect of the development on air quality in the area. An Air Quality Assessment is submitted as part of the ES and a subsequent technical note was produced following an initial objection from the Council's Environmental Protection Officer.
129. I have considered all this information which takes into account transport modelling (i.e. the Medway Strategic AIMSUM model) and cumulative development effects. The transport modelling is not opposed by highway consultees. The objective evidence before me indicates that subject to the imposition of an air quality mitigation condition, the worst case scenario is that the development would not exceed the air quality objectives at modelled interceptors. Consequently, I find no conflict with policy BNE24 of the LP or paragraph 186 of the Framework.

### *Noise and disturbance*

130. A Noise and Vibration Assessment is submitted as part of the ES. Subject to mitigation measures, including a glazing specification and use of appropriate ventilation, the development would be capable of being acceptable in terms of internal and external noise levels and would be sufficient to mitigate against construction noise.
131. None of the consultees, including the Council's Environmental Protection Officer, raise any objection to the proposal taking into account the submitted road traffic noise figures. While I note the concerns raised by some third parties about road traffic noise, the evidence is that no material harm would be caused to the occupiers of existing properties along the various road routes from a noise point of view.
132. Given the quantum of development proposed, there is potential for some localised disturbance for existing residents at construction stage. I am satisfied that any possible disturbance issues could be appropriately controlled in terms of the imposition of a construction management plan condition for each phase.
133. Subject to conditions, the proposal would not cause unacceptable harm to existing or future occupiers of properties from a noise and disturbance point of view. To this extent, the proposal would not conflict with the noise and amenity requirements of policies BNE2 and BNE3 of the LP and paragraphs 130(f), 174(e) and 185 of the Framework.

### *Heritage assets*

134. There are no listed buildings on the appeal site. The nearest listed buildings are Pheasant House, which is grade II and about 525 metres to the north, and Capstone Farmhouse, which is grade II listed and about 350 metres to the south and east.
135. The latter has mid-15<sup>th</sup> century origins and its significance derives from its architectural detailing and its rural setting. It is separated from the appeal site by mature trees and landscaping and its rural setting has changed over time through the creation of car parking and associated woodland planting at CFCP. The setting of Capstone Farmhouse does not extend to the appeal site. I am satisfied that the proposed development would preserve the setting of Capstone Farmhouse.

136. The significance of Pheasant House derives from its architectural importance and its setting is confined to the roadside and its immediate built-up surroundings. The appeal site would not be seen in the context of this listed building. The proposal would not have any effect on the setting of this listed building. Its setting would be fully preserved.
137. There is no dispute between the parties that the proposal would not have any adverse effect on the Fort Luton scheduled monument which is located approximately 1.2km to the west of the appeal site. I do not disagree with such a conclusion and am satisfied that the significance of its setting would be preserved.

*Habitats and bio-diversity*

138. The ES includes surveys and information relating to the effect of the development on ecology and nature conservation. The appellant submitted a Habitat Regulation Assessment Screening Matrix and Appropriate Assessment Statement on 1 December 2021. This relates to the effect of the development on three Special Protection Areas (SPA) on the coastline of North Kent: the Thames Estuary and Marshes SPA, the Medway Estuary and Marshes SPA, and the Swale SPA. They are classified in accordance with the European Birds Directive which requires Member States to classify sites that are important for bird species listed on Appendix 1 of the European Directive, which are rare and/or vulnerable in a European context, and also sites that form a critically important network for birds. All three sites are also listed as Wetlands of International Importance under the Ramsar Convention (Ramsar Sites). For clarity, and the purpose of this assessment, 'European Sites' refers to both the SPAs and Ramsar Sites.
139. Research conducted in 2011 (Bird Disturbance Study, North Kent 2010/11' Footprint Ecology) found that additional dwellings were likely to result in additional recreational activity, causing disturbance to protected bird species that over-winter or breed on the aforementioned sites. The studies found that 75% of recreational visitors to the North Kent coast originated from within 6km of the European Sites boundaries. The appeal site would include up to 800 dwellings within 6km of the European Sites boundaries. Taking into account the information that is before me, the proposal would both on its own and in combination with other projects, be likely to have significant adverse effects on the integrity of the European Sites arising from increased recreational pressure.
140. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) indicates the requirement for an Appropriate Assessment (AA). As the competent Authority, it falls to me to undertake an AA. The appellant has provided me with details of measures to mitigate the likely significant adverse effects and has referred me to the North Kent Strategic Access Management and Monitoring Strategy 2014 (SAMMS) which sets out a strategy to resolve disturbance issues to wintering birds on European Sites. Elements of the strategy are rangers to provide wardening and visitor engagement; a North Kent coast dog project to promote responsible dog ownership and encourage walking on leads in sensitive areas; codes of conduct development in partnership with local groups and clubs to raise awareness of recreational disturbance in a variety of activities both on and off the water; interpretation and signage; new and/or enhanced infrastructure and enforcement and monitoring.
141. In addition to the above, an air quality assessment was undertaken in April 2019 to support the planning application (MC/19/0765). Following this, a Technical Note was produced in September 2019 to provide a further scenario to account for



uncertainty in emission factors and future vehicle fleet composition. As part of the appeal, further information has been requested by Natural England regarding the assessment of air quality impacts on sensitive ecological habitats.

142. Given the above, a further Technical Note was prepared by Entran on 5 January 2022. This Technical Note provides an assessment of air quality impacts arising from road traffic associated with the operation of the proposed development on nearby sensitive ecological habitats (i.e. sites detailed in table 2 of the Entran Technical Note) and within 200m of road links affected by the proposed development. It includes specific reference to Natural England's advice document NEA001 'Natural England's approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations'. Both members of the public and Natural England have been consulted on this additional information and I have taken all comments received into account.
143. In respect of the above, the appellant's information and data demonstrate to my satisfaction that the impact of the exhaust emissions from the additional road traffic generated by the proposed development would have an insignificant impact on the airborne NO<sub>x</sub> concentrations and nitrogen deposition rates within the identified ecological habitat sites. For the two ancient woodlands (Grove Wood and the wood on North Dane Way), the impact on airborne NO<sub>x</sub> concentrations has been determined to be potentially significant within 10m of the roadside of Pear Tree Lane for Grove Wood and within 5m of the roadside of North Dane Way. However, as the sensitivity test is likely to be very much a worst-case assessment, and only results in small sections of the ancient woodlands potentially experiencing increases in airborne NO<sub>x</sub> concentrations and nitrogen depositions rates only slightly in excess of the threshold, I find that the impact on airborne NO<sub>x</sub> concentrations and nitrogen deposition rates as a result of the traffic generated by the proposed development would be insignificant.
144. It is of note that on 12 January 2022, Natural England commented in respect of the above that it had '*reviewed the revised technical note produced by the applicant. With regards to the Habitats Regulations assessment, we consider that, based on the information provided, there is unlikely to be a significant effect on the North Downs Woodlands SAC arising from this proposal*'. I do not disagree with this view.
145. By way of mitigation, the appellant has included the payment of £203,064 towards bird disturbance mitigation (i.e. a payment to the Bird Wise scheme) in the completed planning obligation derived from a charge of £253.83 per dwelling as detailed in the Medway Guide to Developer Contributions and Obligations 2021. I have no reason to doubt that Natural England has supported this tariff based approach in terms of other residential proposals in Medway. Indeed, Natural England have been consulted as part of this appeal and raise no objection to the proposal subject the financial contribution.
146. I am satisfied that the payment of £203,064 (or £253.83 per dwelling) provides a site-specific solution to ensure that the requirements of the Habitats Regulations are met with regard to the in-combination effects of increased recreational pressure on the European Sites arising from new residential development. I am satisfied that the mitigation payment is required to avoid an adverse effect on the integrity of the European Sites. In this regard, the proposal would not adversely affect the integrity of the habitats site and the proposed would therefore accord with policy BNE35 of the LP and paragraphs 181 and 182 of the

Framework. Natural England confirmed on 3 December 2021 that they share this view.

147. Much of the appeal site comprises arable fields which are of low ecological value. However, both within and surrounding the site there are habitats which are of higher value including the field margins and established ancient woodland, tree lines, scrub and native hedgerows and along site boundaries and between fields. Much of this would be retained based on the indicative master plan including the ancient woodland which would include 15 metres or more green and undeveloped buffers in accordance with Natural England's guidance. A construction environmental management plan would be prepared in advance of works taking place to protect areas of ancient woodland during the construction phases and a landscape and ecological mitigation and monitoring plan would be created incorporating a long-term management plan for these areas to ensure that the woodland is not degraded during the operational phase.
148. However, there would be some loss of native vegetation at the boundaries for new access links and there is some potential for damage at construction stage. Surveys of protected species have found that the site supports roosting, foraging and commuting bats, dormouse, reptiles, badgers and range of breeding birds and terrestrial invertebrates. The ES includes suitable mitigation measures to deal with these species. It also includes proposals for extensive areas of new scrub, shrub and tree planting, new chalk grassland areas, and retained chalk grassland areas (shown as figure 1 on the drawing titled 'Mitigation Overview Plan'). These are matters that can be controlled by condition.
149. As part of the ES, the appellant proposes a package of other mitigation, compensation and enhancement measures. In response to concerns raised by Kent Wildlife Trust and Kent County Council Ecological Advice Service about the effect of the proposal on skylark habitat, the proposal includes taking out 1.3 hectares of arable land adjacent to the site, but in the ownership of the appellant (shown as figure 1 on the drawing titled 'Mitigation Overview Plan'), to be returned and managed as chalk grassland and with 11 skylark plots created. A detailed mitigation strategy and long term management plan would be created for the restoration of this field. Priority chalk grassland would be created on this land in accordance with a construction environmental management plan to be agreed in advance of works taking place. There would be no public access onto this land to prevent degradation.
150. I find that the evidence is such that any adverse effects relating to ecology and nature conservation can be suitably addressed and mitigated by way of conditional or other control. In reaching this view, I have taken into account the consultation responses from relevant consultees including Kent County Council Ecological Advice Service. In addition, and subject to conditional control, the proposal would not lead to the unacceptable loss or deterioration of irreplaceable habitats including ancient woodland. Consequently, I do not therefore find that the proposal would conflict with the habitats and biodiversity requirements of chapter 15 of the Framework. Furthermore, I would add that the appellant has agreed to the imposition of a condition which would ensure 20% net biodiversity gain for each phase of development.

*Traffic generation, highway safety and accessibility*

151. A significant number of third parties raise concerns about the effect of the development both on its own, and in combination with consented development, on

the local highway network in terms of congestion, queuing, and the safe movement of traffic.

152. Taking into account the modelling and data information in the ES (i.e. the Transport Assessment which uses the Medway AIMUSUN modelling), which focusses in particular on peak traffic times, there is common ground between the main parties that during the construction phase there would be a neutral or slight adverse impact on pedestrians in relation to severance, fear, intimidation and delay and a moderate adverse impact on drivers and pedestrians in relation to accidents and safety on the road network. During the operational phase (i.e. the long term) the overall effect would be moderately adverse for pedestrians.
153. A number of third parties have raised concern about the operation of junction 3 of the M2 including the Lord Lees roundabout. However, the Transport Assessment, which was reviewed by National Highways (referred to in correspondence as Highways England), concluded that the development would have a minor, non-severe net impact on junction 3, in part due to the proposed infrastructure creating new opportunities for access to M2 junction 4, which was accepted to be less constrained. Furthermore, comments made by some other interested parties about the proposed link road being used as a 'rat run' are not well founded. This is because it is an intended function of the link road to attract through movements and this in turn would have some benefits in terms of traffic movement on the wider highway network.
154. Some third parties have raised concern about the cumulative effect of the proposed development on the highway network when considered alongside approved development at the nearby Gibraltar Farm for 450 residential units. However, the appellant has taken this and other consented developments into account at part of the Transport Assessment. Indeed, the Medway Strategic AIMSUN model uses a 2035 forecast model which includes all consented development and all anticipated growth emerging through the unadopted Emerging Local Plan.
155. By way of mitigation, a number of junction and road improvements are proposed in the surrounding local area as shown in drawings forming part of the ES. This also includes the introduction of limited passing places along narrower sections of Shawstead Road to suitably allow managed two-way movement. There is common ground between the main parties that both the link road across the site and the identified junction/road improvements would adequately mitigate against driver delay. I have no reason to disagree with this finding.
156. Subject to the imposition of conditions, including a condition requiring highway works to be completed before 25% of the development is occupied, neither the Highway Authority nor National Highways object to the proposal on the basis of traffic generation, queuing, or the safe operation of the wider highway network. I do not disagree with these views.
157. Despite what is evidently a strength of feeling from third parties about the above matters, I have not been provided with any substantive or objective evidence to refute the conclusions reached by the aforementioned statutory consultees. Indeed, I have no reason to disagree with the Highway Authority who comment that the proposed link road would provide relief to Capstone Road (N) and would be beneficial for reducing traffic congestion in the local vicinity. It is accepted by the appellant that during peak periods the network currently and in the future is forecast to experience congestion. However, this would not arise

because of the development proposal. Indeed, the evidence is that the development would deliver an overall net residual betterment through infrastructure delivery.

158. I therefore find that the submitted access details are acceptable. Subject to the imposition of conditions, the proposal would not lead to severe residual cumulative impacts on the road network or cause unacceptable harm to highway safety. Therefore, there would be no conflict with paragraph 111 of the Framework. In reaching this finding, I have taken into account the appeal decision for land off Pump Lane, Rainham<sup>2</sup> where concern was raised by the Secretary of State about the severe residual cumulative impact on the local highway network. However, the subject appeal is not directly analogous with the Pump Lane appeal decision in so far that it is proposed to include significant new highways infrastructure in the form of a link road between Capstone Road and North Dane Way and hence to move traffic away from more congested parts of the highway network.
159. I acknowledge that the appeal site is not within the heart of an existing urban area. Nonetheless, it is adjacent to the urban area of Lordswood and its range of services and facilities. Chatham and Gillingham are relatively close to the appeal site and are significant centres for employment, retail and leisure facilities. In addition, the completed planning obligation (see below) would have the effect of making the development acceptable in planning terms from the point of view of public transport and cycleway accessibility both within and to/from the appeal site. Furthermore, the evidence indicates that the proposal would deliver benefits to the wider community in respect of improved east to west connectivity for pedestrians and cyclists to the CFCP and between Lordswood and Hempstead. I am therefore satisfied that the site would be capable of being developed in such a way that it would be accessible and sustainably located, thereby according with paragraph 105 of the Framework.

#### *Other appeal decisions*

160. The main parties have referred me to other appeal decisions in the ALLI including those relating to Gibraltar Farm, Pump Lane and Orchard Kennels. The site conditions and issues relating to these appeals are not directly analogous. I acknowledge comments made by Rehman Chishti MP about the number of planning applications being submitted for housing development on the site and in the wider area. However, there is nothing in law to prevent the submission of any number of planning applications for housing development in the area. Furthermore, it does not follow that each submitted planning application will inevitably be approved. Indeed, and as is the case in terms of this appeal, each planning application should be determined on its individual planning merits. The aforementioned appeal decisions have not set precedents and, in allowing this appeal, it does not follow that other development will have to be approved in the ALLIs, or indeed other parts of the wider countryside in Kent.

#### **Planning Balance and Conclusion**

161. This appeal has raised strong feelings on both sides, and I have taken careful note of the views expressed by the range of residents and others who appeared at the inquiry and those who have made their views known in writing. While the vast majority of third parties object to the proposal, it is of note that some support the development indicating that it would release pressure on the Hoo Peninsula; that

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<sup>2</sup> APP/A2880/W/20/3259868

development should be fairly distributed throughout the whole of the Borough and that support should be given to the provision of new infrastructure on or close to the site including enhanced GP/health facilities and an on-site school and retail floorspace.

162. The proposal would result in the erection of a significant number of dwellings in the countryside. To this extent, there would be direct conflict with policy S1 of the LP that articulates the most sustainable locations for development in defined urban areas. Furthermore, the proposal would directly conflict with policy S1 of the LP where it says that *'the open heartland of Medway at Capstone and Darland will be given long term protection from significant development'*. However, this policy is restricting housing delivery at a time when the local planning authority cannot demonstrate a deliverable five-year supply of housing sites in the area. Therefore, I afford the conflict with this policy limited weight in decision making terms.
163. There would be conflict with policy BNE25 of the LP, but this policy is intrinsically linked to settlement boundaries that in turn reflect now out of date housing requirements. Furthermore, it seeks to place an almost blanket restriction on most development in the countryside and to that extent is not consistent with the Framework. I afford the proposal's conflict with policy BNE25 of the LP limited weight.
164. It is common ground that the proposal does not conflict with policy S2 (ii) and (iii). In respect of policy S2 (i) of the LP, design standards would be capable of being addressed at reserved matters stage. Policy S2 (i) refers to maintaining and improving *'environmental quality'* which would include landscape considerations. At the inquiry, Mr Canavan agreed that the landscape *'environment'* in this case related to the ALLI. As I have found that the proposal would not conflict with policy BNE34 relating to the ALLI, I also find that the proposal would not therefore conflict with Policy S2 of the LP. In addition, I have found that the proposal would not conflict with policy L10 of the LP.
165. The development would deliver a very significant number benefits, as outlined above. This would be in the context that it is common ground that the site is in a sustainable location and hence policy S2 (ii) of the LP is met. Collectively, I afford the identified benefits very substantial weight in the planning balance.
166. Taking into account the amended indicative master plan, and subject to the imposition of an agreed planning condition, I am satisfied that in principle it would be possible to erect some dwellings on part of the land near to Carlton Crescent, with appropriate separation distances and landscape buffers in place, without unacceptable harm being caused to the living conditions of the occupiers of these properties. Even accounting for the topography of this part of the site, I am content that it would be acceptable to erect some two storey dwellings in this location without material harm being caused to the occupiers of properties on Carlton Crescent in terms of acceptable levels of daylight, sunlight and outlook. This is therefore a matter which is capable of being of neutral consequence in the overall planning balance. Clearly, final details would need to be approved at reserved matters stage.
167. I have found that in the short term, adverse harm would be caused by the development to the character and appearance of the area, including to landscape character. However, that harm would diminish over time such that after 15 years, and when the landscaping reached a more mature stage, the level of landscape and visual harm would be minor. Despite this minor harm, I am satisfied that it



would be possible, in principle, to ensure that the development did not appear incongruous within this countryside setting after 15 years.

168. I am satisfied that the setting of the AONB would be conserved and that based on the indicative amended master plan, and parameter-based plans, no significant harm would be caused to the setting of CFCP, or overall to the amenity of users of existing public footpaths on the site. Furthermore, I do not find that the proposal would lead to overdevelopment of the site as claimed by the Council, or that the density for the site would be inappropriate to its setting. In fact, a very high proportion of the site would be given over to open space, SUDS, woodland and landscaping.
169. In the context of paragraph 11d of the Framework, it is necessary for me to balance the aforementioned identified harm with the benefits in the other considerations part of this decision. Collectively, I afford such benefits very substantial weight in the planning balance. I conclude that the identified adverse impacts of the development, including the conflict with the development plan when considered as a whole, would not significantly and demonstrably outweigh the identified very substantial benefits when assessed against the policies in the Framework taken as a whole. Consequently, I find that in principle the proposal would result in the provision of sustainable form of development. Furthermore, access details are acceptable subject to the imposition of conditions and no unacceptable harm would be caused to matters of highway safety and the residual cumulative impacts on the road network would not be severe.
170. In reaching the above overall conclusion, I am cognisant that the local planning authority is working towards the preparation of a new Local Plan, and that this may or may not include large housing developments/allocations on the Hoo Peninsula in association with infrastructure improvements relating to an agreed HIF. However, it is common ground that the new Local Plan has not reached a stage where it can be afforded material weight as part of the determination of this appeal. In addition, and while the local planning authority may intend to allocate large amounts of land for housing development elsewhere, particularly on the Hoo Peninsula, given the status of the emerging Local Plan I cannot afford any such intention any significant weight in decision making terms. There is no certainty that such an intention would happen and hence this is not a matter that alters or outweighs my overall conclusion above.

### **Conditions and planning obligation**

#### *Planning obligation*

171. At my request, the Council submitted a R122 CIL Compliance Statement (CIL CS) on 30 November 2021. Both this, and additional clarification from the Council at the inquiry, provides acceptable justification in respect of the contributions and obligations within the completed s106 agreement that accompanies the outline planning application.
172. The completed section 106 agreement (i.e. that dated and signed 17 December 2021) includes the provision of 25% affordable housing (60% affordable rented and 40% affordable shared ownership); a contribution of £270,613.54 towards open space and formal sports provision within 1.5 km of the site; £522,928 towards the NHS to expand the primary and community health services in the Hempstead and Capstone areas; £51,000 towards public rights of way improvements within 2 km of the site; £4,986,402.10 towards education provision

of nursery, primary school and secondary school places either off site and/or on site; £234,424 towards heritage improvements at Upnor Castle, and £14,242.82 towards the enhancement of open space facilities at Great Lines Heritage Park.

173. In addition to the above, the completed s106 agreement also includes £64,760 towards youth services for the provision of a minibus for detached work for young people away from youth centres; £146,592 towards community facilities within 3k of the site; £203,064.00 towards the provision migrating bird disturbance mitigation measures off-site (see habitats and biodiversity section of this decision); land transfer of the school land at nil cost; £404,768 for the provision of a new bus service to serve the development and/or the expansion of existing bus services; £113,500 for cycleway connectivity improvements; £143,104 for waste and recycling; a £50 bus voucher for each household; off-site farmland bird habitat mitigation, and off-site mitigation providing land for chalk grassland.
174. I have considered all the contributions and obligations in the completed section 106 agreement against Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations) which states that they should be '*necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development*'. Taking into account the CIL CS, and further comments made by the main parties at the inquiry, I am satisfied that the contributions and obligations in the completed section 106 agreement do meet the tests for planning obligations as contained within Regulation 122(2) of the CIL Regulations.
175. For the avoidance of doubt, the Government's First Homes affordable housing scheme does not apply in respect of this appeal. It does not apply to applications where there has been significant pre-application engagement and which are determined before 28 March 2022. Substantive pre-application discussions and engagement between the main parties relating to the proposed quantity and tenure mix of affordable housing has already taken place and this forms the basis of the completed s106 agreement. The main parties share my view that First Homes affordable housing is not required.

#### *Conditions*

176. The conditions set out in the accompanying schedule are based on those suggested by the Council. The conditions were amended following discussion at the inquiry and have been agreed by both main parties. Where necessary I have amended the wording of the suggested conditions, in the interests of precision and clarity, and in order to comply with advice in the Planning Practice Guidance. The appellant has expressly agreed in writing to the imposition of the pre-commencement conditions. I am satisfied that there is clear justification for the pre-commencement conditions. All of the conditions meet the tests as outlined in paragraph 56 of the Framework. For the avoidance of doubt, I have provided reasons for the conditions after each condition in the schedule of conditions.

#### **Overall Conclusion**

177. For the reasons outlined above, I conclude, on balance, that the appeal should be allowed.

*D Hartley*

INSPECTOR

## **Schedule of Planning Conditions**

### **Reserved Matters (RM) and Plans**

#### Reserved Matters

1) Details of the appearance, landscaping, layout and scale for each phase of the site (hereinafter called 'the Reserved Matters') shall be submitted to and approved in writing by the local planning authority before any development on that phase begins. Development shall be carried out as approved.

Reason: To accord with the terms of the submitted application and in to ensure that these details are satisfactory

#### RM timing – first phase

2) Application(s) for approval of the reserved matters relating to the first phase of the development shall be made to the Local Planning Authority not later than 12 months from the date of this permission.

Reason: To comply with Section 92(2) of the Town and Country Planning Act 1990 and to ensure the early delivery of housing on the site.

#### RM timing – remaining phases

3) Application for approval of the reserved matters on all remaining phases of the development shall be made to the Local Planning Authority not later than 5 years from the date of this permission.

Reason: To comply with Section 92(2) of the Town and Country Planning Act 1990.

#### RM completion

4) The development hereby permitted shall begin no later than 6 months from the date of approval of the last of the reserved matters relating to the first phase to be approved. Development on any subsequent phase must commence within 6 months of approval of the last of the reserved matters relating to that phase.

Reason: To comply with Section 92 of the Town and Country Planning Act 1990 and to ensure the early delivery of housing on the site.

#### Approved Plans

5) The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing numbers: 08284a-A-L-(00)-002 PL2 dated 15 November 2021; 08284a-A-L-(91)-013 dated 9 November 2021 and Drawing Number: 08284a-A-L-(00)-005 PL14, dated 16 December 2021.

Reason: For the avoidance of doubt and in the interests of certainty.

#### Protection of amenity at Carlton Crescent

6) There shall be no development on the area hatched blue on the following plan:

Drawing Number: 08284a-A-L-(00)-005 PL14, dated 16 December 2021

Reason: To inform reserved matters and to protect the living conditions of the occupiers of dwellings in Carlton Crescent in accordance with Policy BNE2 of the Medway Local Plan 2003.

### **Pre-Reserved Matters**

#### Phasing Plan

7) Prior to the submission of the first application for reserved matters, a phasing plan for the development of the entire site shall be submitted to and approved in writing by the Local Planning Authority. The phasing plan shall demonstrate how the development of the entire site can be brought forward to secure development in a timely manner in accordance with following elements and quantum's:

- 800 houses/units maximum
- A Primary school and nursery within a 3ha site identified on Drawing Number 08284a-A-L-(00)-004 PL13
- A Multi Use Games Area/11v11 Sports pitch shown within the school land identified on Drawing Number 08284a-A-L-(00)-004 PL13
- Retail unit up to 150 sqm
- 19.53 hectares open space including identified areas for informal play and allotments
- 2 NEAPs and 1 LEAP in accordance with Fields in Trust guidance
- Woodland improvements and habitat creation
- Drainage infrastructure
- Public Rights of Way improvements
- Enhanced links to Capstone Country Park
- Road layout, pedestrian and cycle networks and footpaths

Reason: This condition is required to ensure that the key elements of each phase of the development is completed in an order which ensures that infrastructure needs, landscaping/open space and access are in place relevant to each phase before further development is undertaken, in the interests of good design.

#### Archaeology

8) Prior to the submission of any Reserved Matters application, an Archaeological Field Evaluation Report identifying any remains that may be present on the site and assessing their character, extent, date, condition and significance, together with recommendations in relation to any necessary safeguarding measures, shall be submitted to and approved in writing by the local planning authority. The archaeological field evaluation works shall have been carried out in accordance with a written specification and timetable which shall previously have been submitted to and approved in writing by the local planning authority.

Reason: To ensure appropriate assessment of the archaeological implications of any development proposals and the subsequent mitigation of adverse impacts

through preservation in situ or by record in accordance with Policy BNE21 of the Medway Local Plan 2003.

### **Pre-commencement/RM stage**

#### Archaeology

9)The details submitted pursuant to the Reserved Matters submissions for each phase, including siting and layout, shall demonstrate how the development has been informed by any safeguarding measures identified in the Archaeological Field Evaluation Report. The details to be submitted shall have regard to any areas identified as needing to be excluded from development and shall include details of foundation designs and any other proposals involving below ground excavation. Development shall be carried out in accordance with the approved plans.

Reason: To ensure appropriate assessment of the archaeological implications of any development proposals and the subsequent mitigation of adverse impacts through preservation in situ or by record in accordance with Policy BNE21 of the Medway Local Plan 2003.

#### Archaeology

10)No development shall take place, including any site clearance or remediation works, unless and until a written scheme of archaeological investigation has been submitted to and approved in writing by the local planning authority. The scheme shall provide details of the programme of archaeological works to be carried out within the site, as well as post excavation assessment (including analysis of the site investigation records and findings and production of a final report on the significance of the archaeological, historical and architectural interest represented) and appropriate publication. The archaeological site work shall thereafter be implemented in full in accordance with the approved scheme.

Reason: To ensure appropriate assessment of the archaeological implications of any development proposals and the subsequent mitigation of adverse impacts through preservation in situ or by record in accordance with Policy BNE21 of the Medway Local Plan 2003.

#### Levels

11)Details submitted pursuant to condition 1 in respect of matters of 'layout', 'landscape' and 'scale', for each phase and sub-phase, shall detail existing and proposed land levels across that phase or sub-phase and in relation to the land adjacent to that part of the development site.

Reason: To enable assessment of the proposal in accordance with Policies BNE1 and BNE2 of the Medway Local Plan 2003.

#### Landscape and Open Space Master Plan

12)No development shall take place above ground within any phase or sub-phase, until a landscape and open space masterplan for the entire application site, has been submitted to and approved in writing by the Local Planning Authority, which should address the following:

- i) the overall hard and soft landscape framework for the development;



- ii) the typical landscaping treatment for the highway network within the application site as a whole;
- iii) typical landscaping treatment for the housing areas within the application site as a whole and other use areas within the application site as a whole;
- iv) details of the public right of way improvements/surfacing, including the hard and soft landscaping treatment;
- v) typical landscaping treatments for any open space areas; and
- vi) the strategy for the provision of public open spaces, play spaces, amenity areas and allotments.

The approved landscape and open space masterplan shall be used to inform the reserved matters submission regarding landscaping.

Reason: To ensure a satisfactory external appearance and provision for landscaping in accordance with Policies BNE1 and BNE6 of the Medway Local Plan 2003.

#### Landscape RM

13) Applications made pursuant to condition 1 matter of 'Landscaping' for a phase or sub-phase shall include full details of both hard and soft landscape works, any artefacts to be located within the public space of that phase or sub-phase and a timetable for implementation. These details shall include existing and proposed finished ground levels; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; all paving and external hard surfacing; decking; minor artefacts and structures (play equipment, seating, refuse receptacles, planters, tree grilles, any other decorative feature(s)]. Soft landscape works shall include details of planting plans, written specifications (including cultivation and other operations associated with grass and plant establishment, aftercare and maintenance); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate.

Reason: To ensure a satisfactory external appearance and provision for landscaping in accordance with Policies BNE1 and BNE6 of the Medway Local Plan 2003.

#### Pedestrian and cycle routes

14) The details submitted pursuant to Condition 1 relating to layout shall include details of pedestrian and cycle routes within the development site, including improvements to Public Right of Ways RC9 and RC32. The approved details shall thereafter be implemented prior to first occupation of the development.

Reason: To avoid harm to the safety of pedestrians and to enable a safe and convenient means of pedestrian access to the development, and improvements to the amenity of existing footpaths, in accordance with Policies T3 and L10 of the Medway Local Plan.

#### Parking for RM

15) The details submitted pursuant to the Condition 1 matter of 'layout', for any phase or sub-phase, shall show land reserved for parking or garaging in accordance with the adopted Parking Standards. None of the relevant buildings shall be occupied until this area has been provided, surfaced and drained in accordance with the approved details.

Reason: Development without provision of adequate accommodation for the parking or garaging of vehicles would likely to lead to hazardous on-street parking and to accord with Policies T1 and T13 of the Medway Local Plan 2003.

#### EV charging

16) Details submitted pursuant to condition 1 matter of 'layout', for any phase or subphase, shall detail Electric Vehicle Charging Points (EVCP) at a ratio of one EVCP per private driveway and EVPSs at 10% of communal parking areas. Details shall include the location, charging type (power output and charging speed), associated infrastructure and timetable for installation.

Reason: In the interests of sustainability in accordance with paragraph 112(e) of National Planning Policy Framework 2021.

#### CEMP

17) No development shall commence on any phase (including works of site clearance, ground preparation and/or any remediation works, but excluding the erection of tree protection fencing and site hoardings) until a Construction Environmental Management Plan (CEMP) for that phase has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved CEMP. The CEMP shall include, but is not limited to, the following matters:

- i) the hours during which construction work, including works of site clearance, and deliveries to/from the site can take place;
- ii) site management arrangements, including on-site storage of materials, plant and machinery; temporary offices, contractors compounds and other facilities; on-site parking and turning provision for site operatives, visitors and construction vehicles; and provision for the loading/unloading of plant and materials within the site;
- iii) details of measures to prevent the deposit of mud and debris on the public highway by wheeled or tracked vehicles;
- iv) measures, including noise control devices, to mitigate the impact of noise at nearby residential premises;
- v) measures to minimise the emission of dust from the site during the construction period;
- vi) arrangements for any temporary site lighting, including security lighting, its location and hours of operation;
- vii) a construction waste management plan that identifies the main waste materials expected to be generated by the development during demolition and construction, including vegetation, together with measures for dealing with such materials so as to minimise waste and to maximise re-use and recycling;
- viii) pollution incident control measures;
- ix) a nominated developer/resident liaison representative with an address and contact telephone number to act as first point of contact for residents who have any problems or questions related to the ongoing development for the construction period; and,
- x) a Construction Surface Water Management Plan (CSWMP) detailing how storm and surface water is to be managed on site during the construction period (including works of site clearance, preparation and remediation

works). The CSWMP shall include method statements, scaled dimensioned plans and drawings detailing the surface water management proposals, including temporary drainage systems, measures for managing pollution/water quality and protecting controlled waters and watercourses, and measures for managing any associated on or offsite flood risk.

Reason: To protect the living conditions of the occupiers of neighbouring residential properties in accordance with Policy BNE2 of the Medway Local Plan 2003.

CEMP: Biodiversity

18) No works shall commence on each phase (including ground works and vegetation clearance) until a detailed Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The strategy shall include the following

- Review and where required update of existing survey data
- Overview of mitigation required
- Details of habitat creation works required and timings to establish
- Detailed methodology to implement mitigation
- Timings of works – where required the mitigation requirements must align with the habitat creation works.
- Identification of biodiversity protection zones; A map showing the areas where mitigation is required to be carried out.
- The times during construction when specialist ecologists need to be present on site to oversee works;
- Responsible persons and lines of communication;
- The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
- Use of protective fences, exclusion barriers and warning signs; and,
- Cordwood above 20cm in diameter from the site should be retained and placed within the site in locations and quantities to be agreed with the local planning authority prior to any tree felling take place.
- Interim management plan prior to management plan required as part of condition 24 commencing.

The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period in accordance with the approved details.

Reason: In the interests of biodiversity.

### Surface Water Drainage

19) The details submitted pursuant to condition 1 regarding layout and landscaping, for each phase or sub-phase, shall be accompanied by a scheme showing details of the disposal of surface water, based on sustainable drainage principles, including details of the design, implementation, maintenance and management of the surface water drainage scheme.

Those details shall include:

- i. a timetable for its implementation (including phased implementation where applicable).
- ii. appropriate operational, maintenance and access requirements for each sustainable drainage component are adequately considered.
- iii. Proposed arrangements for future adoption by any public body, statutory undertaker or management company.

Reason: To manage surface water during and post construction and for the lifetime of the development as outlined in paragraph 167 and 169 of the National Planning Policy Framework 2021.

### Contamination 1

20) Applications made pursuant to condition 1 for each phase or subphase shall be accompanied by an investigation and risk assessment, in addition to any assessment provided with the planning application, which must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, including risks to groundwater, whether or not it originates on the site. The scheme shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report shall be submitted to and approved by the Local Planning Authority prior to the commencement of development. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
  - human health
  - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes.
  - adjoining land,
  - groundwaters and surface waters,
  - ecological systems,
  - archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Reason: To ensure that the development is undertaken in a manner which acknowledges interests of amenity and safety in accordance with Policy BNE23 of the Medway Local Plan 2003.

#### Contamination 2

21) A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that the development is undertaken in a manner which acknowledges interests of amenity and safety in accordance with Policy BNE23 of the Medway Local Plan 2003.

#### Contamination 3

22) The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of any development (other than development required to enable the remediation process to be implemented). The Local Planning Authority must be given not less than two weeks written notification prior to the commencement of the remediation scheme works.

Following completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and submitted to and approved in writing by the Local Planning Authority prior to the bringing into use of the development.

Reason: To ensure that the development is undertaken in a manner which acknowledges interests of amenity and safety in accordance with Policy BNE23 of the Medway Local Plan 2003.

#### Foul drainage scheme

23) Prior to commencement of development on site a scheme to connect all plots to mains foul drainage must be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be implemented as approved.

Reason: To prevent unacceptable levels of water pollution within a Source Protection Zone in accordance with paragraph 174 of the National Planning Policy Framework 2021.

#### Site-wide Ecological Mitigation Strategy

24) No development will commence until a site-wide ecological mitigation strategy has been submitted to, and approved in writing by, the Local Planning Authority. The plan will set out principles for ecological mitigation to be adopted in each



phase of development and will consider (but will not be limited to) the following species and features:

- Chalk Grassland;
- Dormice;
- Designated Site;
- Skylarks
- Reptiles;
- Bats;
- Badgers;
- Farmland birds

The site-wide mitigation strategy shall be adhered to and implemented throughout the construction period.

Reason: To safeguard the ecological interests of the site before works commence that could cause harm and to ensure adequate maintenance for the protection of habitat and species to accord with Policies BNE2 and BNE37 of the Medway Local Plan 2003 and paragraph 180 of the National Planning Policy Framework 2021.

#### Ecological Mitigation Strategy

25) No development shall take place in any phase (including any ground works or site clearance) until details of the ecological mitigation strategy for that phase has been submitted to, and approved in writing, by the local planning authority. The details will be based upon the site-wide mitigation strategy and content will include:

- Updated Preliminary Ecological Appraisal;
- Recommended specific species surveys;
- Details of mitigation measures;
- Detailed design(s) and/or working method(s) necessary to achieve mitigation;
- Identification of 'biodiversity protection zones' and details of use of protective fences, exclusion barriers and warning signs;
- Timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
- The times during construction when specialist ecologists need to be present on site to oversee works;
- Responsible persons and lines of communication;
- The role and responsibilities on site of an ecological clerk of works or similarly competent person;
- Details of on-going management of the mitigation areas until the LEMMP commences.
- The approved ecological mitigation strategy for each phase will be adhered to and implemented throughout the construction period in accordance with the approved details.

Reason: To safeguard the ecological interests of the site before works commence that could cause harm and to ensure adequate maintenance for the protection of habitat and species to accord with Policies BNE2 and BNE37 of the Medway Local Plan 2003 and paragraph 180 of the Framework 2021.

### Biodiversity enhancement

26) Prior to the commencement of development in each phase, details of how that particular phase will enhance biodiversity (demonstrating a minimum of 20% net biodiversity gain) shall be submitted to and approved in writing by the local planning authority. These measures will thereafter be implemented and maintained in accordance with the approved details.

Reason: To secure biodiversity enhancements, in accordance with Policy BNE37 of the Medway Local Plan 2003 and paragraph 180 of the National Planning Policy Framework 2021, and as this is a benefit of the proposal that has been weighed in the planning balance.

### Arboricultural Method Statement (AMS) and Tree Protection Plan (TPP)

27) No development shall commence, including any works of site clearance and preparation, unless and until an Arboricultural Method Statement (AMS) and Tree Protection Plan (TPP), which shall include details of all trees and hedgerows to be retained and removed, any facilitation pruning required and the proposed measures of protection undertaken in accordance with BS 5837 (2012) 'Trees in Relation to Design, Demolition and Construction- Recommendations' (or any subsequent advice), has been submitted to and approved in writing by the local planning authority. The AMS shall include full details of all areas of hard surfacing within the root protection areas of the retained trees and hedges, which should be of permeable, no-dig construction, and full details of foundation design where the AMS identifies that specialist foundations are required. The approved barriers and/or ground protection measures shall be erected before any equipment, machinery or materials are brought onto the site and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the areas protected in accordance with this condition. The siting of barriers/ground protection shall not be altered, nor ground levels changed, nor excavations made within these areas without the prior written consent of the local planning authority. The measures set out in the AMS and TPP shall be adhered to in accordance with the approved details.

Reason: This condition is required and to be agreed pre-commencement to safeguard the arboricultural interests of the site before works commence that could cause irrevocable harm and to accordance with Policies BNE2 and BNE37 of the Medway Local Plan 2003

### Air Quality Emissions Mitigation Statement

28) No development shall take place until an Air Quality Emissions Mitigation Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall be prepared in accordance with the Medway Air Quality Planning Guidance, and shall specify the measures that will be implemented as part of the development to mitigate the air quality impacts identified in the approved Air Quality Assessment and approved Technical Note. The total monetary value of the mitigation to be provided shall be demonstrated to be equivalent to, or greater than, the total damage cost values calculated as part of the approved Air Quality Assessment. The development shall be implemented, and thereafter

maintained, entirely in accordance with the measures set out in the approved Mitigation Statement.

Reason: To ensure a suitable living condition for future occupiers of the permitted dwellinghouses in accordance with Policy BNE24 of the Medway Local Plan 2003.

#### Noise – residential

29) No residential development shall commence within a phase or sub-phase, until a scheme of acoustic protection has been submitted and approved in writing by the Local Planning Authority. The scheme shall include details of acoustic protection sufficient to ensure internal noise levels (LAeq,T) no greater than 30dB in bedrooms and 35dB in living rooms with windows closed and a maximum noise level (LAm<sub>ax</sub>) of no more than 45dB(A) with windows closed. Where the internal noise levels will be exceeded with windows open, the scheme shall incorporate appropriate acoustically screened mechanical ventilation. The scheme shall include details of acoustic protection sufficient to ensure amenity/garden noise levels of not more than 55dB (LAeq,T). All works, which form part of the approved scheme, shall be completed before any part of the development is occupied and shall thereafter be maintained in accordance with the approved details.

Reason: To protect residential amenity from road traffic noise and surrounding activities in accordance with Policy BNE2 of the Medway Local Plan 2003.

#### Noise – school

30) Prior to commencement of the development on the school hereby permitted, a scheme of acoustic protection for occupiers of the building in relation to noise from transport sources shall be submitted to and approved in writing by the local planning authority. The scheme shall be designed in accordance with Building Bulletin 93 Acoustic Design of Schools: Performance Standards. All works which form part of the approved scheme shall be completed before any part of the building is brought into use and the development shall thereafter be maintained in accordance with the approved details.

Reason: To safeguard conditions of amenity from road traffic noise and surrounding activities in accordance with Policies BNE2, BNE24 and T1 of the Medway Local Plan 2003.

#### Crime Prevention

31) The details submitted pursuant to condition 1 relating to the reserved matters for layout shall incorporate measures to minimise the risk of crime according to the principles and physical security requirements of Crime Prevention through Environmental Design (CPTED). The approved measures shall be implemented and thereafter retained.

Reason: In the interests of Security, Crime Prevention and Community Safety and in accordance with Local Plan Policy BNE8 and section 17 of the Crime and Disorder Act 1998.

#### Site Waste Management Plan

32) The details submitted pursuant to condition 1 relating to reserved matters for layout shall include a Site Waste Management Plan (SWMP). The details shall include the siting and design for refuse storage and shall make provision for

recyclables as well as general waste. No building shall be occupied until the refuse storage arrangements for that building have been implemented in accordance with details approved. The refuse storage arrangements shall be retained thereafter.

Reason. In the interests of visual amenity and to ensure a satisfactory provision for refuse and recycling in accordance with Policy BNE2 of the Medway Local Plan 2003.

#### Sunlight/Daylight analysis

33)The details submitted pursuant to condition 1 relating to reserved matters for layout shall include a full sunlight and daylight analysis report for that phase or sub phase in accordance with the BRE Guide 'Site Layout Planning for Daylight and Sunlight' to demonstrate the proposed residential dwellings will achieve suitable sunlight and daylight levels in accordance with the BRE Guidance.

Reason: To ensure adequate levels of amenity for future residents in accordance with Policy BNE2 of the Medway Local Plan 2003.

#### Telecommunications

34)No development within any phase (with the exception of works of demolition and site clearance) shall take place until details of the installation of fixed telecommunication infrastructure and high speed broadband on that land have been submitted to and approved in writing by the local planning authority. No building in any phase shall be occupied or brought into use before the telecommunication infrastructure and broadband to serve that building have been installed in accordance with the approved details.

Reason: To ensure that such equipment is an integral part of the design of the development in accordance with Policies BNE1 and CF14 of the Medway Local Plan 2003.

#### Climate change/energy efficiency

35)The Reserved Matters details submitted pursuant to condition 1 with respect to each phase shall include details of measures to address climate change and energy efficiency. The measures shall include, but are not confined to, meeting the objectives of the Future Homes Standard (2019) and measures to utilise brown water. Development shall be carried out in accordance with the approved details. Prior to occupation of 90% of the dwellings in any phase, a verification report demonstrating how the measures have been secured shall be submitted to and approved in writing by the local planning authority. The approved measures shall thereafter be retained.

Reason: In the interests of sustainability and to positively address concerns regarding climate change in accordance with paragraph 154 the National Planning Policy Framework 2021.

### Access

36)No development above ground floor slab level of any part of the development hereby approved shall commence until final details of the following highway works have been submitted to and approved in writing by the Local Planning Authority:

- Drawing Nos 17-035-013 Rev A and 17-035-016 Rev B

The approved details shall thereafter be implemented in full prior to first occupation of the development.

Reason: To ensure the development provides conditions of highway safety, pedestrian safety and the free flow of traffic, in accordance with Policies T1, T2 and T3 of the Medway Local Plan

### Highways Improvements

37)No development above ground floor slab level of any part of the development hereby approved shall commence until the final details of the following highway works have been submitted to and approved in writing by the Local Planning Authority.

- In Drawing Nos. 17-035-020 Rev A, 17-035-021 Rev -, 17-035-022 Rev -, 17-035-030 Rev B & 031 Rev C,17-035-029 Rev 0.

The approved details shall thereafter be implemented in full prior to occupation of the 160<sup>th</sup> Residential unit.

Reason: To ensure the development provides conditions of highway safety, pedestrian safety and the free flow of traffic, in accordance with Policies T1, T2 and T3 of the Medway Local Plan

### **Pre-Occupation**

#### Play Areas

38)Prior to the first occupation of the development full details of any play equipment and safe surfacing to be provided within the Neighbourhood Equipped Area for Play, Locally Equipped Areas of Play and Multi-Use Games Area / 11V11 sports pitch and any means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. The play areas shall be installed in accordance with the approved scheme prior to the first occupation of the 300th residential unit and shall thereafter be maintained in accordance with the approved details.

Reason. To ensure the satisfactory provision of play equipment in accordance with Policy L4 of the Medway Local Plan 2003.

#### Travel Plan

39)Notwithstanding the travel plan submitted with the application, prior to the occupation of the proposed development, a revised Travel Plan encouraging sustainable forms of transport shall be submitted to and approved in writing by the



Local Planning Authority. The approved travel plan shall thereafter be fully implemented.

Reason: To encourage sustainable forms of transport in accordance with Policy T14 of the Medway Local Plan 2003.

Drainage verification report

40) Prior to occupation (or within an agreed implementation schedule) a signed verification report carried out by a qualified drainage engineer (or equivalent) must be submitted to and approved by the Local Planning Authority to confirm that the agreed surface water system has been constructed as per the agreed scheme and plans. The report shall include details and locations of critical drainage infrastructure (such as inlets, outlets and control structures) including as built drawings, and an operation and maintenance manual for the unadopted parts of the scheme as constructed.

Reason: This condition is sought in accordance with paragraph 167 and 169 of the NPPF to ensure that suitable surface water drainage scheme is designed and fully implemented so as to not increase flood risk on site or elsewhere.

Noise – retail unit

41) Prior to the occupation of any retail use hereby permitted, a scheme to minimise the transmission of noise from the use of the relevant premises shall be submitted and approved in writing by the Local Planning Authority. Noise from the premises should be controlled, such that the noise rating level (L<sub>Ar,Tr</sub>) emitted from the development shall be at least 10dB below the background noise level (L<sub>A90,T</sub>) at the nearest residential facade. All measurements shall be defined and derived in accordance with BS4142: 2014. All works which, form part of the approved scheme shall be completed before any part of the relevant development is occupied and shall thereafter be maintained in accordance with the approved details.

Reason: To protect residential amenity in accordance with Policy BNE2 of the Medway Local Plan 2003.

**Compliance**

Unexpected Contamination

42) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority and work should immediately stop on that part of the site to ensure that the contamination is not disturbed. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 20, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 21, which is subject to the approval in writing of the Local Planning Authority.

Following completion of the measures identified in the approved remediation scheme a verification report providing details of the data that will be collected in order to demonstrate that the works set out in condition 20 are complete and identifying any requirements for longer-term monitoring of pollutant linkages,

maintenance and arrangements for contingency action must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 21.

Reason: To ensure that the development is undertaken in a manner which acknowledges interests of amenity and safety in accordance with Policy BNE23 of the Medway Local Plan 2003.

No infiltration of surface water drainage

43)No infiltration of surface water drainage into the ground is permitted. The development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution caused by mobilised contaminants in line with paragraph 174 of the NPPF.

No piling without consent

44)Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated by a piling risk assessment that there is not unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reason: To prevent unacceptable levels of water pollution caused by mobilised contaminants in accordance with paragraph 174 of the NPPF.

Landscape and Ecology Mitigation Management Plan

45)Within three months of works commencing, at each phase a Landscape and Ecology Mitigation Management Plan (LEMMP) will be submitted, and approved by, the local planning authority. This will include (but not limited to) the following:

- The locations of and long-term management prescriptions for the skylark plots;
- Updated plans to include the chalkland mitigation area and associated long-term management prescriptions;
- Details of the measures to manage dormouse habitat and educate residence on this species;
- Management prescriptions for the retained reptile habitat;
- Management prescriptions for the ancient woodland buffers.

At each phase the LEMMP must be reviewed and updated so on completion there is only one management plan for the whole site. The approved LEMMP shall be adhered to and implemented throughout the construction period in accordance with the approved details.

Reason: To ensure protection of the ecological interests of the site in accordance with Policy BNE37 of the Medway Local Plan 2003 and paragraph 180 of the National Planning Policy Framework 2021.

#### Lighting Strategy

46) Within six months of works commencing on each phase, an external lighting plan will be submitted to the local planning authority, demonstrating that lighting in areas including (but not limited to) open parking courtyard areas, enclosed parking spaces, any individual covered parking area and areas of communal open space, will not adversely impact nocturnal wildlife. The details of the lighting shall include design, the exact position, light intensity and spillage. The agreed lighting strategy will be implemented and maintained thereafter

Reason: To ensure protection of residential amenities and ecological interests of the site in accordance with Policy BNE2 and BNE37 of the Medway Local Plan 2003 and paragraph 180 of the National Planning Policy Framework 2021.

#### Low NOx boilers

47) All gas fired boilers installed in the dwellings hereby approved shall meet a minimum standard of <40mgNO<sub>x</sub>/kWh.

Reason: To ensure air quality standards are not detrimentally impacted by the development in accordance with policy BNE24 of the Medway Local Plan 2003.

#### Retail unit - max 150sqm - no c/u under GPDO or use class order.

48) The approved retail unit shall not exceed 150sqm internal floor area and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order with or without modification) and the Town and Country Planning (Use Classes) Order 1987 the development hereby approved shall only be used in Use Class E(a) at any time.

Reason: To enable the Local Planning Authority to control the use and not harm the vitality and viability of local shopping centres in the area in accordance with Policy R13 of the Medway Local Plan 2003.

#### Retail opening hours

49) The Class E(a) (retail) use unit hereby permitted shall only operate between the hours of 06:30 to 22:00 hours Mondays to Saturdays inclusive and between the hours of 07:30 and 20:00 hours on Sundays and Public Holidays.

Reason: To ensure that the development does not prejudice the amenities of the occupiers of neighbouring property in accordance with Policy BNE2 of the Medway Local Plan 2003.

#### Retail deliveries

50) No commercial goods shall be loaded, unloaded, or otherwise handled and no vehicles shall arrive or depart, within the application site outside the hours 07:00 to 19:00 Monday to Friday, 08:00 to 18:00 Saturday or at any time on Sunday or Bank Holidays.

Reason: To protect residential amenity in accordance with Policy BNE2 of the Medway Local Plan 2003.

Community/Nursery opening hours

51)The community or nursery facility hereby permitted shall only operate between the hours of 06:30 to 22:00 hours Mondays to Saturdays inclusive and between the hours of 07:30 and 20:00 hours on Sundays and Public Holidays.

Reason: To ensure that the development does not prejudice the amenities of the occupiers of neighbouring property in accordance with Policy BNE2 of the Medway Local Plan 2003.

- End of Conditions -

## **APPEARANCES**

### For the Local Planning Authority:

James Neill, Barrister, instructed by Vicky Nutley, Solicitor of Medway Council.

He called:

Jon Etchells MA BPHil CMLI of Jon Etchells Consulting

Peter Canavan, BA Hons Geography, MTP, MRTPI - Associate Partner of Carter Jonas LLP

### For the Appellant:

Paul Brown QC instructed by Alister Hulme of Hulme Planning Consultancy.

He called:

David Allen, DipLA, CMLI - Allen Pyke Associates

Alister Hume BSc Geography, Postgraduate Diploma in Town Planning and chartered member of the RTPI - Hume Planning Consultancy

### Interested Persons:

Ms Michelle Guinness - resident

Ms Alison Gollay - resident

Mr Robert Gollay – resident

Ms A Wilcox - resident

Ms K Cronin – Medway Borough Council

Ms J Horne – Medway Borough Council

Mr J Towell – Solicitor for the appellant

### Documents Submitted at the Inquiry

ID 1 - Written statement from Tracey Crouch MP

ID 2 - Letter from Mr Shaun Gibson including petition of objection

ID3 - Appellant's opening statement

ID4 - Council's opening statement

ID5 - Updated parameter plans (proposed building heights, public facilities plan and play areas plan) to reflect agreed amendments to red edged site location plan and illustrative layout plan

ID6 - Email from Ms A Wilcox relating to site visit viewpoints

ID7 - Written letter of objection from Ms A Wilcox

ID8 - Council's closing submissions

ID9 - Appellant's closing submissions

ID10 - Entran 'Air Quality Impacts on Ecological Habitats', 5 January 2022