



Appeal Decision

Inquiry opened on 18 July 2023

Site visit made on 1 August 2023

By David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th August 2023

Appeal Ref: APP/V2255/W/23/3318448

London Road, Newington

- 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 Gladman Developments Ltd against the decision of Swale Borough Council.
 - The application Ref 22/500275/OUT, dated 17 January 2022, was refused by notice dated 13 February 2023.
 - The development proposed is up to 135 dwellings with the retention of existing farm buildings, public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point.
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Decision

1. The appeal is allowed and planning permission is granted for up to 135 dwellings with the retention of existing farm buildings, public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point at London Road, Newington in accordance with the terms of the application, Ref 22/500275/OUT, dated 17 January 2022, subject to the conditions set out in the attached schedule.

Preliminary matters

2. The Inquiry sat for five days from 18 to 21 July and on 1 August 2023. By agreement with the parties, I carried out an unaccompanied visit of the site and surrounding area on 1 August 2023.
3. The application was submitted in outline. The means of access is to be determined at this stage. Appearance, landscaping, layout and scale are reserved matters. The application documents include an illustrative layout, which I have taken into account, with due regard to its illustrative status. There is also a development framework plan. The suggested conditions, which are discussed below, include a condition requiring that the reserved matters be generally in accordance with the development framework plan. I have imposed a condition to that effect and have had regard to the development framework plan on that basis.
4. Discussions between the Council and the appellant continued in the period leading up to the Inquiry. The appellant submitted further information relating to air quality and there was agreement on a package of air quality mitigation measures. This resolved the Council's concerns in relation to air quality and the second reason for refusal was not pursued. However, Newington Parish Council (NPC) and others maintained their objections on air quality grounds and this matter was examined at the Inquiry.

5. There was agreement on the planning obligations which would be secured by a Section 106 Agreement (the Agreement). The final draft of the Agreement was published in advance of the Inquiry and was discussed at a round table session. Accordingly, the Council did not pursue the third reason for refusal. I allowed a short period following the close of the Inquiry for the document to be sealed.
6. The Agreement would include financial contributions relating to:
 - sports facilities;
 - primary healthcare;
 - refuse collection and waste handling;
 - community learning;
 - off-site highway works;
 - public rights of way;
 - libraries;
 - primary and secondary education;
 - social care;
 - travel plan monitoring;
 - a traffic regulation order;
 - youth services; and
 - mitigating impacts on a Special Protection Area/Ramsar site.
7. The Agreement provides for 40% of the proposed dwellings to be delivered as affordable housing, of which 75% would be affordable rent/social rent/shared ownership and 25% would be First Homes. In relation to air quality, the Agreement makes provision for an electric vehicle car club. Some elements of the air quality mitigation package would be secured by conditions, which are discussed below. The Agreement also contains obligations relating to public access to, and phasing of, open spaces within the proposed development.
8. The Council and Kent County Council provided statements setting out the justification for the various obligations, including references to relevant planning policies and the rationale for calculating the amounts of the financial contributions. There was no suggestion from any party that any of the obligations had not been properly justified. I am satisfied that the obligations would mitigate impacts of the proposed development in a fair and reasonable way. I consider that the obligations fall within the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and I have taken them into account accordingly.
9. The development plan includes Bearing Fruits 2031 – The Swale Borough Local Plan (adopted July 2017) (the LP). Although work commenced on a review of the LP, in October 2022 the Council stated that work on the Regulation 19 consultation has paused until the Levelling Up and Regeneration Bill had gained Royal Assent. The Council does not currently have a Local Development Scheme so there was no information before the Inquiry as to when that work

will resume. Very little weight can therefore be attached to the emerging local plan itself, although the evidence base for the LP review is a material consideration in this appeal.

10. In 2017 there were decisions on two appeals relating to the current appeal site (DL2017)¹. Appeal A was for a larger area, including a further orchard field to the west. Appeal B was for essentially the same site as the current appeal. Both appeals were dismissed. There was a subsequent legal challenge, first to the High Court and then to the Court of Appeal². Those challenges were also dismissed. In May 2023 there was an appeal decision relating to Land off Swanstree Avenue, Sittingbourne (*Swanstree Avenue*)³. The appeal was allowed and planning permission was granted. These decisions are discussed further below.

Main issues

11. The main issues are:

- whether the site is an appropriate location for housing, having regard to the spatial strategy of the development plan;
- the effect of the proposal on the character and appearance of the area; and
- the effect of the proposal on best and most versatile agricultural land.

Reasons

Whether the site is an appropriate location for housing

12. The appeal site is adjacent to Newington, a settlement within the A2 corridor which runs from the Medway towns (which lie to the west of Swale) to Sittingbourne and Faversham. The LP contains a settlement hierarchy, in which Sittingbourne is the “*main borough urban centre*” (tier 1) and Faversham and Sheerness are “*other borough centres*” (tier 2). Newington is designated as a “*local rural service centre*” (tier 4). Such settlements are characterised as possessing a range of services and facilities and as being accessible by reasonably frequent bus and/or train services. Policy ST 3 states that these settlements will provide the tertiary focus for growth in the Borough and the primary focus for the rural area.
13. The Council and the appellant agree that the appeal site is accessible to existing shops, services, and employment opportunities. It is within a short walking distance of Newington train station and there are bus services along the A2 corridor. On the basis that the site is adjacent to the existing settlement and is accessible by foot, bicycle, and public transport, the Council and the appellant agree that it is locationally sustainable for housing development.
14. NPC and others drew attention to some limitations of the public transport services and of local facilities, such as primary health care and the local primary school. However, I consider that the level of public transport accessibility and local services and facilities is consistent with the LP expectations for a local rural service centre. It is fair to point out that any

¹ APP/V2255/W/15/3067553 (CD13.01)

² ID13 and ID14

³ APP/V2255/W/22/3311224 (CD13.02)

- additional school capacity is likely to be at Sittingbourne. Whilst Newington Primary School is at capacity, school catchments areas change over time and some children from the appeal site could be accommodated there in the future.
15. In any event, the Agreement makes provision for proportionate contributions to primary and secondary educational facilities and there is no objection from the Council or the County Council in terms of access to schools. The Agreement also make provision for proportionate contributions to primary healthcare facilities.
 16. The Council and the appellant agree that the proposed scale of development would be consistent with the designation of Newington as a local rural service centre and that the proposal would accord with LP Policy CP 6, which seeks to ensure that development makes provision for infrastructure, including education and healthcare facilities. I share that view.
 17. The appeal site lies in the countryside, outside the built-up area boundary of Newington as defined in the LP. There is no dispute that the proposal is therefore in conflict with Policy ST 3, which states that development will not be permitted in the countryside, other than in circumstances that do not apply here. For the same reason, the proposal would conflict with Policy ST 1(4), which states that proposals should accord with the settlement strategy, and with Policy ST 5(4), which states that housing should be provided within urban and village confines or on allocated sites.
 18. The housing land supply position in Swale is relevant to the weight to be attached to these policy conflicts. The Council and the appellant agree that the Council cannot currently demonstrate the five-year housing land supply required by the National Planning Policy Framework (the Framework). The extent of the shortfall is disputed. However, there is no dispute that the approach to decision making set out in paragraph 11(d)(ii) of the Framework is engaged in this case. The policies that are most important for determining the application are therefore deemed to be out-of-date.
 19. LP Policy ST 2 sets out a development target of 776 dwellings per annum (dpa) over the period 2014 to 2031. However, the same policy included a commitment that the LP would be reviewed by April 2022. That has not happened, so the development target is out-of-date by virtue of the terms of the LP itself, regardless of the operation of the Framework. Moreover, the Council and the appellant agree that, because the LP is more than five years old, housing need should now be calculated by the standard method. This results in a figure of 1,087dpa. It follows that the built-up area boundaries were designed to meet a housing need which was considerably lower than the current level of need.
 20. NPC has drawn attention to a number of appeal decisions around Newington which were dismissed on the basis that the sites were outside the built-up area boundaries, notwithstanding that in some cases there was a housing supply shortfall at the time. Each of those decisions would have taken account of a range of site-specific factors and reached a balanced view. Moreover, my conclusions in relation to the built-up area boundary are not only related to the housing land supply position, but also to the factors set out in the previous paragraph which post-date the appeal decisions referred to by NPC.

21. Drawing all this together, I attach only limited weight to the conflict with Policies ST 1, ST 3 and ST 5, because those policies seek to confine housing development to within the built-up area boundaries defined in the LP which are out-of-date. The appeal site is adjacent to a local rural service centre and is reasonably accessible to shops, services and community facilities. Subject to consideration of the other main issues, which are discussed below, I conclude that this is an appropriate location for the scale of housing proposed, notwithstanding that it is outside the built-up area boundary of Newington.

The effect of the proposal on the character and appearance of the area

22. The appeal site extends to 8.83 hectares, situated to the west of Newington, adjacent to the built-up area. The greater part of the land comprises two large fields, the eastern field being in arable use and the western field forming part of a larger area of commercial orchards. In the northern part of the site there are two ranges of former farm buildings, which would be retained. These have been identified as non-designated heritage assets. They form part of the setting of the Grade II listed Pond Farmhouse, which fronts London Road adjacent to the northern boundary of the appeal site.

23. The site is bounded to the east by the back gardens of houses in Playstool Road. There are some residential properties between the site and London Road to the north. The site also has direct frontages to London Road which are enclosed with tall hedges. There is a ribbon of mainly residential development on the opposite side of London Road, where there is also a car showroom. To the west of the site, there is another parcel of commercial orchard bounded by tall hedges. Further to the west, there is some ribbon development fronting the southern side of London Road and an industrial estate, although the industrial estate is not readily visible from the vicinity of the appeal site. To the south, the site is bounded by Newington Recreation Ground, which includes allotments and a playground, and a community woodland.

Landscape character, value and sensitivity

24. At a broad landscape scale, the site falls within Natural England's North Kent Plain National Character Area (NCA), which is an extensive area lying between the Thames estuary and the Kent Downs. The key characteristics of the area, which are described more fully in the evidence, include "*an open, low and gently undulating landscape, characterised by high quality, fertile, loamy soils dominated by agricultural land uses*" and "*orchards and horticultural crops characterise central and eastern areas, and are often enclosed by poplar or alder shelterbelts and scattered small woodlands*".

25. At a regional level, the Landscape Assessment of Kent (2004) places the site in the Fruit Belt Landscape Character Area (LCA), which is described as "*a rural, agricultural landscape characterised by a complex landscape pattern of orchards, shelterbelts, fields of arable and pasture and horticultural crops, and divided by small blocks of woodland.*" The assessment notes that the A2 route corridor has a localised urbanising effect. Overall, the assessment found the LCA to be of poor condition and low sensitivity.

26. At a Borough level, the Swale Landscape Character and Biodiversity Appraisal (2011) places the site in LCA 28, Newington Fruit Belt. The key characteristics of LCA 28 include:

- undulating landscape of rich loam soils;
- strong landscape structure formed by the network of mature hedgerows and shelter belts that surround orchards; and
- views largely enclosed.

The condition of the LCA was assessed as moderate, with low sensitivity.

27. The Swale Local Landscape Designations Review and Recommendations was prepared on behalf of the Council in 2018 to assist the local planning process. The methodology involved a desk review, including consultations with stakeholders, followed by more detailed evaluation for those sites that were taken forward. LCA 28, which was not subject to any landscape designations, was not taken forward for more detailed evaluation. The following reason was given:

"This area as a whole does not meet the criteria for LLD in the desk review, forming a moderate quality rural landscape with some locally valued elements. Note that the minor valley extending from the AONB at Hartlip will be considered as part of the stage 3 field evaluation."

28. The Swale Landscape Sensitivity Assessment (2019) was prepared as part of the evidence base for the LP review. This study focussed on 46 landscape sensitivity assessment areas, which were located around the main developed areas within the Borough. The appeal site is within area NN3, to the south west of Newington. It is assessed as having a moderate landscape sensitivity to further change from residential development.

29. I saw that the appeal site comprises mainly agricultural and horticultural land, set at a relatively low level in a gently undulating landscape. The regular field shapes are marked by tall hedges, which are no doubt maintained as such to give shelter to the fruit crops. The orchard field is typical of modern commercial orchards, with long, regular lines of fruit trees. The character of the arable field is affected by the close proximity of the adjoining modern residential estate, whilst the orchard field has a more strongly rural character.

30. The orchard field is subject to road traffic noise from the A2 London Road. Traffic and housing to the north of London Road can be glimpsed through the boundary hedge which, although tall, is not particularly thick. These effects diminish as one moves away from London Road, such that the southern part of the site, adjacent to the recreation ground, has a quieter and more secluded character. Overall, I consider that the landscape of the appeal site is characteristic of LCA 28, the Newington Fruit Belt, as well as of the broader scale character areas described above.

31. In DL2017, the Inspector concluded that the site was a "valued landscape", as that term was used in the Framework at the time. Although the Framework has since been revised, the term valued landscape is still used in the current version. Now, as then, there is no definition in the Framework. However, the approach to identifying valued landscape has been the subject of good practice guidance issued by the Landscape Institute. It has also been discussed in appeal decisions and case law. The Landscape and Visual Appraisal (LVA) submitted with the application concluded that the site is not a valued landscape.

32. The site is not covered by any landscape designations. That is not, in itself, determinative but it is a material consideration. Moreover, in the context for this appeal, it is important to note that local landscape designations within Swale have recently been reviewed. Much of the landscape of Swale is designated in one way or another. Around 20% is in the Kent Downs Area of Outstanding Natural Beauty and other areas are designated as Areas of High Landscape Value, at either the Kent level or the Swale level. Only around 30% of the land has no landscape designation. LCA 28 Newington Fruit Belt was assessed in the 2018 review but was not taken forward for more detailed evaluation because it was not considered to meet the criteria for local landscape designation.
33. The Landscape Institute published updated guidance on assessing landscape value outside national designations in 2021⁴. Table 1 sets out a range of factors that can be considered when identifying landscape value. Having regard to those factors, I note that the site comprises, in the main, highly managed agricultural/horticultural land, the ecological importance of which has been assessed as being of no more than local importance. The Grade II listed Pond Farmhouse adjoins the site but no longer has any visual or functional link to the greater part of the site. The former farm buildings are non-designated heritage assets. Consequently, I do not consider that the site has a high level of historical or cultural interest.
34. The Swale Landscape Character and Biodiversity Appraisal (2011) assessed the condition of LCA 28 as moderate, which I consider would also apply to the site itself. With regard to distinctiveness, I note that orchards are a characteristic feature of LCA 28 and the broader scale LCAs referred to above. However, the site does not possess any rare or unusual features. A short section of public right of way (PRoW) passes through the north west corner of the site and there appears to be some informal use of the field margins close to the recreation ground for walking and dog walking. The recreational opportunities provided by the site are therefore relatively limited.
35. The site is visually attractive but it is also visually self-contained. Although parts of the site can be seen in views from the footpath which crosses Mill Hill, to the north, to my mind it does not contribute to any memorable views. Being a highly managed landscape, it has no sense of wildness or remoteness. Any sense of seclusion is limited to those parts of the site that are not close to London Road or the modern housing to the east.
36. Drawing all this together, I consider that the site is visually attractive and is of medium landscape value. I do not consider that it has features or attributes that raise it to the level of a valued landscape, in the terms of the Framework.
37. In reaching this conclusion, I am mindful that there is no evidence that the landscape itself has changed in any significant way since DL2017. However, other material considerations have changed. The Swale Local Landscape Designations Review and Recommendations was carried out in 2018. I consider that this review of how LCA 28 is valued compared with other landscapes in Swale is an important consideration that post-dates DL2017. The Swale Landscape Sensitivity Assessment (2019), which I discuss below, also post-dates DL2017.

⁴ Landscape Institute - Technical Guidance Note 02/21

38. DL2017 refers to Box 5.1 of the Landscape Institute's Guidelines for Landscape and Visual Impact Appraisal, 3rd edition (2013) which set out a range of factors that can help in the identification of valued landscapes. In that context, the Inspector commented that:

"The fact that landscape of this type is not rare in the local area does not lessen its potential value, in my view. On the contrary, it derives value from the fact that it is representative of the typical local landscape character."

and

"In itself, this intrinsic attractiveness would not lift the appeal sites out of the category of ordinary countryside. The more important consideration is that, as I have shown, they constitute a very good example of the small-scale orchard and horticultural landscape that is a key characteristic of the area."

39. DL2017 placed importance on the Inspector's finding that the sites were representative of local landscape character. No doubt that reflects the fact that "Representativeness" was one of the factors listed in Box 5.1. The more recent guidance from the Landscape Institute, which I have discussed above, does not include representativeness as a factor in its own right, although it is referred to as one element of the consideration of distinctiveness. That is the approach I have taken in my assessment. I agree with DL2017 that the site is representative of LCA 28. However, I also note that The Swale Local Landscape Designations Review and Recommendations assessed LCA 28 as forming a moderate quality rural landscape with some locally valued elements. The minor valley extending from the AONB at Hartlip, which was taken forward as part of the stage 3 field evaluation, is not part of the appeal site.
40. Having viewed the area around the appeal site, I do not think that the site itself has a higher landscape quality than LCA 28 as a whole. It is therefore representative of an LCA which has been assessed as not meeting the criteria for local landscape designation.
41. A further change since DL2017 is the adoption of the LP. The conclusions of DL2017, in relation to landscape impact, refer to the policies of the previous local plan and to the Framework. They do not make any finding on Policy DM 24, which would have been an emerging policy at the time. The starting point now is the LP, which is discussed below.
42. As noted above, The Swale Landscape Sensitivity Assessment (2019) placed the appeal site within area NN3, which it is assessed as having a moderate landscape sensitivity to further change. I place significant weight on this assessment because it is relatively recent, it is more fine-grained than other assessments of sensitivity referred to above, and it deals specifically with sensitivity to future change from residential development. I see no reason to think that the appeal site would be more sensitive to such change than NN3 as a whole.
43. My overall assessment is that the site has medium landscape value with moderate sensitivity to change from residential development.

Landscape and visual effects

44. Although the application is in outline, the development framework plan and illustrative layout show how landscape considerations have been taken into account. Open space would be retained around the former farm buildings, preserving the settings of Pond Farmhouse and the farm buildings themselves. Development near the site access would create a gateway feature, incorporating improvements to the PRoW which crosses the site at this point. An open space is proposed in the centre of the scheme, linking to a retained tree group near the farm buildings and to the southern site boundary, adjacent to the recreation ground.
45. The frontage hedgerow would be removed to facilitate access works but a new hedge would be created behind the visibility splay. There would be some loss of hedgerow within the site, to accommodate the proposed roads and footpaths, but where existing hedges are proposed to be retained this would be adjoining public open space. This would provide scope for the existing boundary planting to be reinforced. At present, the back gardens of properties in Playstool Road present a hard edge to the built-up area. The proposal would include linear open spaces with new tree planting to the west and south, creating a softer edge. Street trees are proposed along the main routes. Although the detailed proposals would be subject to approval at reserved matters stage, a condition could ensure that the reserved matters would generally accord with the development framework.
46. As noted above, LCA 28 Newington Fruit Belt was assessed as being in moderate condition. The 2019 sensitivity assessment found that the area in which the site lies has moderate sensitivity to change. The site is low lying and is visually contained by topography, vegetation and the settlement of Newington. The proposal would bring about significant change through the replacement of agriculture and horticulture with housing and green infrastructure. The removal of the existing hedge along London Road and the widening of the road to form the proposed access would have an urbanising effect.
47. The appeal site can be appreciated in its landscape setting from the PRoW which crosses Mill Hill, to the north of London Road. It is partially screened by intervening trees. Development in the eastern part of the site would be seen together with existing modern residential development on higher ground in the southern part of Newington. Development in the western part of the site would have the effect of extending the built-up area of Newington westwards into an area with a rural character. However, the proposed houses would be sited on relatively low ground, such that they would not break the treed skyline.
48. Landscape effects would be localised due to the visually contained nature of the site. I note that the Council's landscape witness assessed greater landscape effects than those reported in the Landscape and Visual Appraisal. The differences arose due to the respective assessments of landscape value and landscape sensitivity. For the reasons given above, I consider that the Council's evidence overstated landscape value and the sensitivity of the landscape to change from residential development.
49. Overall, I consider that the proposal would have a moderate impact on the landscape character of the site and its surroundings, including on the setting of Newington, and a minor impact on LCA 28 Newington Fruit Belt. These effects

- would reduce over time as landscaping within the site matures. The proposal would not have a material impact on the relevant county or national LCAs.
50. The visual receptors most affected would be the occupiers of houses to the east and north of the site, users of London Road, users of the PRow and those who use the field margins on an informal basis. There would be a significant change to the appearance of London Road. As noted above, the removal of the existing tall hedge and the widening of London Road to create a right turning lane into the site would have an urbanising effect. This effect would be partially mitigated by the retention of the farm buildings and the open space in front of them, the creation of open space at the access and the planting of a new hedge behind the visibility splay. More generally, views of agricultural and horticultural crops would be replaced by views of housing within a setting of green infrastructure.
51. The houses currently backing on to the arable field would adjoin the gardens of the proposed properties, bringing about a high degree of change for those residents. Whilst the detailed relationship would be considered at the reserved matters stage, there is no reason to think that the result would be such as to create unacceptable living conditions.
52. Only a short section of PRow crosses the appeal site. This would be incorporated into the proposed residential area, albeit with open space on one side. Users would still be able to walk a longer section of the PRow through the orchard to the west. Moreover, the provision of a footway on the southern side of London Road, together with new crossing points, would be a significant benefit to PRow users in terms of highway safety. Users of the PRow at Mill Hill would be aware of additional housing in views to the south. However, this PRow affords panoramic views over an extensive rural area, together with views of parts of Newington. I consider that the proposal would have only a minor effect on the overall experience of PRow users.
53. Those who use the field margins informally for walking and dog walking would lose the sense of seclusion that can currently be gained along the southern site boundary. On the other hand, the proposed green infrastructure would create new pedestrian routes that are likely to be attractive to walkers and dog walkers.

Conclusions

54. LP Policy DM 24 seeks to protect the Borough's landscapes. Although it is deemed to be out-of-date, due to the housing land supply position, it is consistent with the Framework which recognises the intrinsic character and beauty of the countryside. It should therefore attract significant weight.
55. Part A of Policy DM 24 deals with designated landscapes. It is, therefore, not applicable in this case, whether or not the site is regarded as a valued landscape in the terms of the Framework. Part B of the policy, which deals with non-designated landscapes, states that such landscapes will be protected and enhanced and that planning permission will be granted subject to the minimisation and mitigation of adverse landscape impacts.
56. In this case I have found that there would be moderate landscape impacts on the site and its surroundings and a minor impact on LCA 28 Newington Fruit Belt. These effects would reduce over time. I conclude that the proposals would

minimise and mitigate landscape impacts, including through the provision of public open space in the centre of the site, at the gateway, around the former farm buildings and along the western and southern site boundaries. Hedgerows within the site, which are important to the landscape structure of the locality, would be retained as far as possible, and enhanced.

57. Full details of design, layout and landscaping would be reserved matters. However, I shall impose a condition requiring the reserved matters to be generally in accordance with the development framework, which would secure the broad disposition of open space and green infrastructure across the site as shown.
58. Part B(2) of Policy DM 24 requires a balancing exercise in circumstances where there would be significant adverse landscape impacts. However, as I have not identified significant adverse impacts, it does not apply in this case. I conclude that the proposal accords with Policy DM 24.
59. Policies ST 1, ST 3 and ST 5 are overarching policies which refer to landscape, and landscape setting, amongst other matters. To the extent that the proposal would have an adverse effect on the setting of Newington, there would be conflict with the landscape components of these policies. However, I attach limited weight to those conflicts because of the scheme's compliance with Policy DM 24. In my view Policy DM 24 is the most important policy dealing with landscape.
60. Subject to the approval of reserved matters, I see no reason why the detailed proposals should not be able to comply with Policy CP 4, which requires good design. I note that the policy refers to retaining trees, including fruit trees, "where possible". Even so, I consider that the proposal would accord with Policy CP 4 as a whole, as far as it can at this outline stage.
61. Policy DM 29 states that planning permission will be refused where there would be a loss of trees, including fruit trees, which make an important contribution to the landscape value of the site. The proposal would result in the loss of a large number of fruit trees, which are a characteristic feature of LCA 28. It would therefore conflict with this policy. However, I attach only limited weight to this conflict because the proposal would retain important tree groups, incorporate substantial green infrastructure and achieve a biodiversity net gain for hedgerows (a matter which is discussed further below).
62. Overall, there would be some harm to the character and appearance of the area. However, this would reduce over time and I consider that the proposals would minimise and mitigate landscape impacts, in accordance with Policy DM 24.

The effect of the proposal on best and most versatile agricultural land

63. The Framework states that, where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. Best and most versatile (BMV) agricultural land is defined as land in Grades 1, 2 and 3a of the Agricultural Land Classification. The majority of the appeal site comprises BMV land. Approximately 1.5 ha is Grade 1 and approximately 6.3 ha is Grade 2. The remaining area comprises the former farm buildings and the grassed area in front of them, which were not surveyed.

64. The DL2017 Inspector concluded that the loss of BMV land would represent a very small proportion of the extensive resources of such land in this part of Kent. Moreover, he commented that:

"...the appeal sites are typical of a belt of predominantly high-quality agricultural land stretching all the way from Gillingham to Faversham."

and

"...it would probably be difficult to find large developable sites of lower quality land not only around Newington but around Sittingbourne as well."

The Inspector concluded that the loss of BMV land would not be significant when assessed against national planning policy.

65. As noted above, DL2017 pre-dated the adoption of the LP. Policy DM 31 states that development on agricultural land will only be permitted when there is an overriding need that cannot be met on land within the built-up area boundaries. The Council and the appellant agree that there is an overriding need for housing in Swale. It is further agreed that the proposal would not result in the remainder of Pond Farm becoming not viable. I also agree.
66. The Council and the appellant disagree about the second criterion of Policy DM 31, which is whether there are alternative sites for housing on land of lower grade. This matter was explored in the recent Swanstree Avenue appeal decision, where the Inspector concluded that there are suitable alternative sites for housing, within the built-up area of Sittingbourne and at Rushenden South. The same sites were relied on by the Council at this Inquiry.
67. The appellant argued against both sites, on grounds of uncertainty, development constraints and timing. However, the LP does not set any specific tests for what might constitute an alternative site for the purposes of Policy DM 31. It is a matter for the decision maker to reach a view on. Both sites have a much greater capacity than the appeal site so, even if they were only delivered in part, they could still provide an alternative, or alternatives, to the appeal site. The Swanstree Avenue Inspector saw no reason to exclude urban land from his consideration of this matter and noted the conclusions of the Local Plan Review Site Selection (2020) in relation to the sites in question.
68. I see no reason to take a different view to the Swanstree Avenue Inspector on these matters. I find that the proposal would conflict with Policy DM 31. I attach moderate weight to this policy conflict.

Other matters

Highways and transport

69. The proposed access arrangements include works to facilitate pedestrian movement in the vicinity of the site. The works would include a new footway on the south side of London Road, footway widening on the north side, a pedestrian refuge to the west of the proposed access and a signal-controlled crossing to the east. These measures would improve pedestrian safety and encourage pedestrian trips from the site to facilities in Newington, including the station and primary school, all of which would be within walking distance. With regard to public transport, the highway works would include new bus stops close to the site access and the Agreement would secure the provision of bus

passes and railcards (for defined periods), to encourage new residents to take up sustainable transport options.

70. The application was supported by a transport assessment and travel plan. The identification of the junctions within the scope of the assessment, trip generation and assignment, traffic growth factors and traffic modelling were agreed with Kent County Council (KCC) and National Highways. This work was based on a cumulative assessment of future traffic levels, including a permitted scheme to extract brickearth from a site to the west of the appeal site. The assessment concluded that the site access with London Road would operate within capacity. The A249/M2 junction (the Stockbury Roundabout) is currently undergoing a major upgrade. When complete, it is agreed that the performance of the junction is very unlikely to be affected by the appeal scheme.
71. Operating conditions at the A2/A249 junction (Key Street Roundabout) would deteriorate in the future, with or without the appeal scheme. Without mitigation, the appeal scheme would add to congestion at this junction. KCC has identified an improvement scheme. National Highways has advised that the scheme is progressing towards delivery through a combination of the Housing Infrastructure Fund and development contributions. The Agreement would secure a proportionate contribution to these works from the appeal scheme. National Highways is satisfied that the strategic route network would therefore be safeguarded. KCC is satisfied that the improvement scheme will increase capacity and reduce current queuing and delays as well as improving facilities for pedestrians and cyclists.
72. I conclude that the proposal has identified opportunities to promote walking and public transport use. It would provide a safe and suitable access to the site and would not result in any significant impacts on the wider transport network. It would therefore accord with the Framework in these respects. It would also accord with Policy DM 6 which seeks to manage transport demand and impact.

Air quality

73. The application was supported by an air quality assessment. As noted above, discussion continued between the Council and the appellant in the period leading up to the Inquiry, with various iterations of the modelling. Those discussions included refining the list of developments included within the cumulative assessment and taking account of the composition of the vehicle fleet within Swale, rather than basing projections on the nationally published Emissions Factor Toolkit.
74. At the Inquiry, the appellant's air quality witness stated that the final iteration of the modelling⁵ was the most accurate and realistic of the projections provided. The assessment sets out projections of annual average concentrations of NO₂ at 21 receptor points, most of which were located in Air Quality Management Areas (AQMA) at Rainham, Newington and Keycol Hill. The appeal site is immediately to the west of the Newington AQMA, such that any traffic leaving the site in an easterly direction would pass through the AQMA. The Keycol Hill AQMA is on the approach to the Key Street Roundabout, where it is likely that air quality is currently affected by traffic congestion in the vicinity of the junction.

⁵ Wardell Armstrong - Swale Fleet Mix Sensitivity Analysis assessment (v2.0) – 24 May 2023

75. In the “*without development*” scenario for 2025, the projections for 20 of the 21 receptor points indicated concentration levels below, mostly well below, the limit value of 40µg/m³. At these locations, the effect of development would raise the concentration level by less than 0.5% of the limit value, resulting in a negligible impact. At ESR 13, which is within the Keycol Hill AQMA, the concentration is projected to be 43.40µg/m³ without development and 43.63µg/m³ with development. Although the increase is relatively small, it is regarded as a moderate impact because the baseline is above the limit value.
76. By 2028, the concentrations of NO₂ with and without development are predicted to be significantly lower, such that there would be a negligible impact at ESR 13 as well as at all other receptor points. All receptor points would be below the limit value, in most case by a significant amount. Based on these results, the assessment concludes that the proposal would not have a significant effect on human receptors. In my view that is a reasonable conclusion. The assessment takes 2019 as the base year for air quality. This is likely to be a robust approach because the evidence is that roadside pollution has not in fact returned to pre-pandemic levels. Consequently, the predicted increase at ESR 13 in 2025 may not happen and, if it did, it would be for a relatively short time.
77. The Council agrees with these results and did not pursue its air quality objection. NPC maintained its air quality objection, although it did not raise any technical objections to the final iteration of the modelling⁶. Good practice guidance requires mitigation of air quality impacts, including in situations such as this where there would not be significant or enduring breaches of limit values. However, it is important to note that the air quality projections described above do not assume any improvements as a result of the air quality mitigation package as a whole or the committed improvements to the Key Street Roundabout, which are likely to benefit air quality in the Keycol Hill AQMA.
78. The mitigation package includes the pedestrian facilities, bus stops, travel incentives, travel plan and the contribution to junction improvements at the Key Street Roundabout described in the previous section. In addition, the Agreement would secure the provision of an electric vehicle car club. I agree that these measures would be beneficial and would contribute to the mitigation of air quality impacts. It is fair to point out that the effects of the measures cannot be precisely modelled because they would depend on behavioural change. However, in this case it is not necessary to identify a specific or quantifiable improvement in order to reach the conclusion that the proposal would not lead to a significant adverse effect on human receptors.
79. In DL2017 air quality was one of the considerations that led to the appeals being dismissed. The Inspector concluded that it was:

“...more probable than not that both appeal proposals would have at least a moderately adverse impact on air quality in the Newington and Rainham AQMAs, and thus a significant effect on human health.”

Moreover, the Inspector found that there was no clear evidence to demonstrate the effectiveness of mitigation measures. The evidence before this Inquiry is quite different, in large part because roadside air quality has been improving as

⁶ ID7 – email from Dr Ashley Mills dated 18 July 2023

a result of the use of cleaner vehicles. Moreover, there is now a package of mitigation measures that is agreed between the Council and the appellant.

80. Whilst I have noted the outcome of the legal challenges to DL2017, those challenges were concerned with the lawfulness of the Inspector's reasoning on air quality. The reasoning in question was based on the evidence before that inquiry, which was quite different to the current situation for the reasons I have discussed.
81. I conclude that the proposal would not have an unacceptable impact on air quality. It would comply with Policy DM 6, which (amongst other matters) seeks to ensure that proposals do not worsen air quality to an unacceptable degree, taking into account the cumulative impact of development schemes likely to impact on AQMAs.

Habitats regulations

82. The coastline of North Kent encompasses three Special Protection Areas (SPA), 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. Such sites are important for bird species which are rare and/or vulnerable in a European context and also include sites that form a critically important network for birds on migration. The SPAs are also listed as Wetlands of International Importance under the Ramsar Convention (Ramsar Sites). Research has found that additional housing is likely to result in disturbance to protected bird species through additional recreational activity. Such disturbance can act against the conservation objectives of the European sites.
83. The appeal site, which would provide up to 135 additional dwellings, falls within the zone of influence for the SPA. Consequently, in the absence of avoidance and/or mitigation measures, it cannot be concluded that there would not be a significant adverse effect. Accordingly, as the competent authority under the Conservation of Habitats and Species Regulations, it is necessary for me to carry out an appropriate assessment.
84. The appeal proposal has the potential to cause disturbance to bird species that would be harmful to the conservation objectives for the European sites through additional recreational pressure. The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) sets out a strategy to resolve disturbance issues to wintering birds within the European sites. Elements of the strategy include rangers to provide visitor engagement, a North Kent Coast dog project to promote responsible dog ownership, codes of conduct with local groups and clubs, interpretation and signage and new or enhanced infrastructure.
85. These mitigation measures are being delivered through the Bird Wise project, which is a partnership of local authorities and conservation organisations. A tariff approach has been adopted, whereby each new dwelling is required to make a proportionate contribution to the cost of delivering the mitigation measures in perpetuity. In this case the Agreement makes provision for the appropriate payment to be made. I note that Natural England (NE) has worked with the relevant planning authorities in preparing the SAMMS measures. NE has been consulted on this appeal and has advised that the measures will be reliable and effective in preventing adverse effects on the integrity of the relevant European sites from the recreational impacts associated with this residential development.

86. Having regard to the fact that appropriate mitigation has been secured through the Agreement, I conclude that the proposal would not have a significant adverse effect on the SPAs or Ramsar site, either alone or in combination with other plans and projects.

Heritage assets

87. The Grade II listed Pond Farmhouse adjoins the northern boundary of the site and is the only designated heritage asset in the vicinity. The former farm buildings, which are within the appeal site, have been identified as non-designated heritage assets. I saw that they are in a poor condition and agree with the DL2017 Inspector that they have limited historical significance in their own right. However, they form part of the setting of the listed farmhouse.

88. Pond Farmhouse is described as an early 19th century farmhouse. The DL2017 Inspector noted that the symmetrical façade, which faces London Road, is typical of the late 18th and early 19th centuries and stands out from its neighbours due to its age, size and fine proportions. These features contribute to the historic and architectural interest of the listed building. DL2017 considered the contribution made by the setting to the significance of Pond Farmhouse. The fields of the appeal sites were not found to be a significant element in that setting. I agree with that conclusion because of the limited intervisibility between the fields and the listed building. I also agree that Pond Farmhouse, the former farm buildings and the open space in front of them form an ensemble which is important to the setting and significance of the listed building.

89. The proposal would include the retention of the former farm buildings and the open spaces around them. No specific proposals have been made for their re-use. Any new uses are likely to require planning permission or prior approval. Nevertheless, the suggested conditions include the approval of a management plan, which would ensure that the buildings are protected from damage during the construction phase and until such time as a permanent scheme of re-use has come forward.

90. On that basis, the proposal would not result in any harm to the setting of Pond Farmhouse. The setting of the listed building would be preserved. There would also be no harm to the non-designated farm buildings themselves. The proposal would accord with the policies of the Framework relating to designated heritage assets and the historic environment.

Ecology

91. An ecological appraisal was submitted with the application, which assesses the species and habitats present within the site and makes recommendations regarding mitigation measures. Prior to the Inquiry, there were further discussions between the appellant and KCC's biodiversity officer. Both the Council and KCC are now satisfied that the submitted surveys provide a good understanding of the ecology of the site and that the enhanced hedgerows would provide a continuous habitat for dormouse. It is also agreed that the scheme could achieve a biodiversity net gain (BNG) of 14% for habitats and 36% for hedgerows.

92. The suggested conditions include submission of further bat surveys, an updated ecological survey and mitigation plan, a landscape and ecological management

plan and a biodiversity net gain plan. Subject to these conditions, I conclude that the proposal would accord with Policy DM 28, which seeks to conserve and enhance biodiversity, and with Policy CP 7 which seeks to provide for green infrastructure and achieve BNG. Given that Policy CP 7 only seeks an unspecified BNG where possible, the proposed level of BNG would represent an environmental benefit to which I attach moderate weight.

Housing land supply

93. Following discussion at the Inquiry session on housing land supply, the Council and the appellant submitted an updated statement of common ground⁷. Both parties agree that the Council cannot demonstrate the five-year supply of housing land required by the Framework. The Council considers that it can demonstrate a supply of 4.79 years whereas the appellant considers that the supply figure equates to 3.42 years. I have carried out the balancing exercise required by the Framework on the basis of the Council's figure. If I were to adopt the appellant's figure, it would make no difference to the outcome of the appeal. Consequently, it is not necessary for me to comment further on the differences between the parties on housing land supply.

Economic, social and environmental benefits

94. The proposal would deliver up to 135 dwellings, of which 40% would be affordable housing. This would accord with Policy DM 8. Moreover, having regard to the housing land supply position in Swale, the pressing need for affordable housing in Swale and the general imperative to boost the supply of housing set out in the Framework, I attach substantial weight to the delivery of housing, including affordable housing.
95. The proposal would bring economic benefits through spending and employment during construction and greater spending by new residents once the new dwellings are occupied. Mindful that some of these benefits would be temporary because they relate to the construction phase, I attach moderate weight to the economic benefits.
96. The proposed open space and green infrastructure would accord with Policy DM 17. The Agreement provides that the open spaces and recreational routes would be available to the wider public. Attractive walking routes would be created between London Road and the recreation ground and there would be safer pedestrian access from London Road to the existing PRow. I attach moderate weight to these benefits.
97. The appellant submitted that the electric vehicle car club and the provision of sustainable drainage should be counted as benefits. However, to my mind these items are required to mitigate impacts of the development on air quality and flood risk. There is no reason to think that the former farm buildings would be removed in the absence of the appeal scheme, so I regard the proposed management plan for those buildings as mitigation rather than as a wider benefit. Consequently, I have not counted these matters as benefits in my overall planning balance.

⁷ ID8

Interested parties

98. NPC, local Councillors and residents spoke against the appeal at the Inquiry and a number of interested parties made written objections to the planning application and in response to consultation on the appeal. The various planning issues raised in these representations have been discussed above.

Conditions

99. The Council and the appellant submitted a schedule of suggested planning conditions. I have considered the suggested conditions in the light of Planning Practice Guidance. The suggested conditions were largely agreed. The conditions that I have imposed reflect the final version of the schedule that was discussed at a round table session during the Inquiry. Some conditions require matters to be approved before development commences. This is necessary either to control impacts that would arise during construction or because the details to be approved could affect the design in a way that would need to be resolved at an early stage. The appellant agreed to the pre-commencement conditions. I have commented below where there were suggested conditions that I have not imposed.
100. Condition 4 requires development to be carried out in accordance with the approved plans in the interests of clarity and certainty. Condition 5 requires that the reserved matters be generally in accordance with the development framework plan and condition 6 limits the total number of dwellings to 135. These conditions are necessary to ensure that the scheme remains within the parameters that have been assessed. Condition 7 requires details of levels, in the interests of the character and appearance of the area. Condition 8 requires details of how Secured by Design is to be achieved, in the interests of community safety.
101. Condition 9 requires submission of a contextual study and information on building heights to inform the reserved matters submissions. This is necessary in the interests of maintaining local distinctiveness and protecting the character and appearance of the area. Conditions 10, 11, 12, 13 and 14 require submission of a lighting design plan, a further bat survey, an updated ecological survey, a landscape and ecological management plan and a biodiversity net gain plan. These conditions are necessary in the interests of protecting and enhancing biodiversity.
102. Condition 15 requires submission of an arboricultural method statement and condition 16 requires an updated landscape strategy, in the interests of protecting the character and appearance of the area. Condition 17 requires submission of a retention and management plan for the former farm buildings which are to be retained. This is necessary in the interests of protecting the setting of Pond Farmhouse, which is a Grade II listed building. Condition 18 requires the implementation of a programme of archaeological work, in the interests of protecting the archaeological potential of the site.
103. Conditions 19 and 20 limit the hours at which construction work, including piling, could take place in the interests of protecting the living conditions of nearby residents. Condition 21 requires approval of a piling method statement in the interests of protecting groundwater sources. Condition 22 requires submission of measures to assess and remediate any contamination in the interests of managing risks of pollution. Condition 23 requires submission of a

Construction Management Plan and Condition 24 requires submission of a Construction Method Statement. These conditions are needed in the interests of highway safety and protecting the living conditions of nearby residents.

104. Condition 25 requires submission of an Acoustic Design Statement in the interests of ensuring satisfactory living conditions for future occupiers. Conditions 26, 27, 28 and 29 require submission of details of surface water drainage, protection of foul sewers, disposal of foul drainage and protection of gas mains. They are needed to manage risks of flooding and pollution and in the interests of community safety. Condition 30 requires the provision of parking spaces for vehicles and cycles to ensure that adequate provision is made for the vehicles of future occupiers and in the interests of sustainable transport.
105. Condition 31 requires that suitable access be available to any dwelling at the time that it is first occupied in the interests of highway safety. Condition 32 requires the provision of high quality digital connections to all dwellings in the interests of economic development and social wellbeing. Condition 33 requires submission of a travel plan, to include measures to ensure that it is implemented. This is necessary in the interests of promoting sustainable transport. Condition 34 requires approval of a phasing plan. This is necessary to ensure that roads, infrastructure and open space are provided at appropriate stages of the development.
106. I have not imposed suggested conditions requiring details of highway works, submission of an energy strategy or removal of permitted development rights. Access is not a reserved matter and details of the proposed access are shown on the approved plans. This information is sufficient for planning purposes so the suggested condition is not necessary. There would be further controls on works within the public highway under other legislation. The suggested energy strategy would set out how the requirements of the Building Regulations would be met. I consider that this would be an unnecessary duplication of controls under the Building Regulations. The Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. I do not consider that a clear justification has been provided in this case.

Conclusion

107. I have concluded that the proposal would conflict with Policies ST 1, ST 3 and ST 5, which seek to confine housing development to within the built-up area boundaries, with Policy DM 29, which seeks to protect trees, and with Policy DM 31 which seeks to protect agricultural land.
108. On the other hand, it would accord with Policy DM 6, which seeks to manage traffic demand and impact (including in relation to air quality), with Policy DM 24, which seeks to protect landscape, with Policy CP 4, which promotes good design, with Policy CP 6, which seeks to ensure that the infrastructure required to serve development is provided and with Policies CP 7 and DM 28 which seek to avoid harm to SPAs and to secure BNG where possible. It would also accord with Policies DM 8 and DM 17 which relate to the provision of affordable housing and open space.

109. Even so, given the conflict with policies relating to the development strategy of the LP, I conclude that the proposal is in conflict with the development plan as a whole.
110. It is therefore necessary to see if there are other considerations that indicate a decision other than in accordance with the development plan. In this case the approach to decision making set out in paragraph 11(d)(ii) of the Framework is engaged. There is no conflict with policies of the Framework that protect areas or assets of particular importance. It follows that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
111. I consider that the proposal would accord with the policies of the Framework relating to boosting the supply of housing, transport, the natural environment (including in relation to landscape, biodiversity, habitats and air quality), and the historic environment. The proposal would therefore accord with the policies of the Framework taken as a whole.
112. For the reasons given above, I attach moderate weight to the conflict with Policy DM 31 (agricultural land). However, I attach only limited weight to the conflicts with Policy DM 29 (trees) and Policies ST 1, ST 3 and ST 5 (built-up area boundaries).
113. On the other hand, I attach substantial weight to the delivery of housing, including affordable housing, moderate weight to the economic benefits and moderate weight to the provision of open space and enhanced recreational routes.
114. My overall assessment is that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits. This finding outweighs the conflict with the development plan. The appeal should therefore be allowed and planning permission granted.

David Prentis

Inspector

APPEARANCES

FOR THE APPELLANT:	
Guy Williams	King's Counsel, instructed by John Mackenzie of Gladman Developments Limited
Ben Pycroft DipTP MRTPI	Director, Emery Planning
Gary Holliday BA(Hons) M Phil FLI	Senior Director, FPCR
Malcolm Watson BSc MCIEH AMIOA	Technical Director, Wardell Armstrong
Simon Helme BEng (Hons) MSc MCIHT	Director, Ashley Helme Associates
John Mackenzie BSc DipTP MRTPI	Planning Director, Gladman Developments Limited
FOR THE LOCAL PLANNING AUTHORITY:	
Mark Westmoreland Smith	of Counsel, instructed by Cheryl Parks, Mid Kent Legal Services, Swale Borough Council
Stuart Watson BA MA MRTPI	Principal Planning Policy Officer, Swale Brough Council
Peter Radmall MA BPhil CMLI	Landscape Architect
William Allwood BA(Hons) PGDip MRTPI	Major Applications Team Leader, Swale Brough Council
INTERESTED PARTIES:	
Cllr Stephen Harvey	Newington Parish Council
Cllr Richard Palmer	Swale Borough Council
Cllr Christine Palmer	Swale Brough Council
Richard Harrington	Local resident
Joseph Doherty	Local resident
Robert Lee	Local resident
Carole Buttle	Local resident
Mr Buttle	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

ID1	Statement by the Centre for Health Services Studies
ID2	Proposed access arrangements - Drawing 1466/01 Rev C
ID3	Pond Farm ownership plan
ID4	List of appearances for the appellant
ID5	Opening submissions for the appellant
ID6	Opening submissions for the Council
ID7	Email from Dr Ashley Mills dated 18 July 2023
ID8	Updated Statement of Common Ground on housing land supply
ID9	Speaking notes for Cllr Harvey
ID10	Speaking notes for Cllr Richard Palmer
ID11	Speaking notes for Cllr Christine Palmer
ID12	Speaking notes for Carole Buttle
ID13	<i>Gladman Developments Limited v Secretary of State</i> [2017] EWHC 2768 (Admin)
ID14	<i>Gladman Developments Limited v Secretary of State</i> [2019] EWCA Civ 1543
ID15	Closing submissions for the Council
ID16	Closing submissions for the appellant
	<i>Submitted after the Inquiry:</i>
	Section 106 Agreement dated 3 August 2023

CONDITIONS

- 1) Details relating to the landscaping, layout, scale, and appearance of the proposed dwellings (hereinafter called the 'reserved matters') shall be submitted to and approved in writing by the Local Planning Authority before any development is commenced and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters referred to in Condition (1) must be made to the Local Planning Authority no later than the expiration of three years beginning with the date of the grant of outline planning permission.
- 3) The development to which this permission relates must commence within two years of the date of approval of the final reserved matter to be approved.
- 4) The development hereby approved shall be carried out in accordance with the following approved drawings:
 - 06363-FPCR-XX-XX-DR-L-0006 Rev 02 (site location plan)
 - 1466/01 Rev C (proposed access arrangements)
- 5) The details submitted pursuant to Condition 1 (the reserved matters) shall be in general accordance with the development framework plan (6363-L-04 Rev M).
- 6) The number of residential units to be constructed within the development hereby approved shall be limited to a maximum of 135 units.
- 7) The details submitted pursuant to condition (1) (the reserved matters) shall include plans and sections indicating finished floor levels of buildings, levels and gradients of roads and footways and levels of green infrastructure and drainage features, all shown in relation to existing site levels.
- 8) The details submitted pursuant to condition (1) (the reserved matters) shall include details demonstrating how the development meets the principles of Secure by Design.
- 9) The details submitted pursuant to condition (1) (the reserved matters) shall include:
 - a) A contextual study looking at the physical, social and economic context of the site. The detailed layout shall provide a reflection of urban forms, block patterns, development to space relationships, open space typologies, local landscape character, local habitat creation and patterns of vegetation, boundary treatments and architectural vernacular details that are characteristic of the locality.
 - b) Evidence that the maximum height and extent of proposed dwellings does not result in an extension of the visual envelope of the development as identified in Figure 6 of the Landscape and Visual Assessment Rev C (January 2022).

- 10) The details submitted pursuant to condition (1) (the reserved matters) shall include a lighting design plan for biodiversity. The plan shall show the type and locations of external lighting, demonstrating that areas to be lit will not disturb bat activity. All external lighting shall be installed in accordance with the specifications and locations set out in the plan and shall be permanently retained as such thereafter.
- 11) Prior to felling of trees or demolition of buildings in any phase within the phasing plan approved pursuant to Condition 34, a further bat survey shall be undertaken for that phase and submitted to and approved in writing by the Local Planning Authority. The survey shall identify any actions required to mitigate against harm to bats. Thereafter the development shall be undertaken in accordance with the approved survey.
- 12) The details submitted pursuant to condition (1) (the reserved matters) shall include an updated ecological survey and mitigation strategy. The mitigation strategy shall include details of:
 - a) plans and details showing the location of the retained, enhanced and created hedgerows and such information as necessary to demonstrate how the open spaces indicated in the development framework plan will be created;
 - b) how retained / enhanced hedgerows and associated features will be protected during the construction phase;
 - c) filling of any gaps in existing hedgerows to be retained;
 - d) protection of new planting during early growth stages; and
 - e) bird and bat boxes.

The development shall be carried out in accordance with the approved updated ecological survey and mitigation strategy and shall be permanently retained as such thereafter.

- 13) The details submitted pursuant to condition (1) (the reserved matters) shall include a Landscape and Ecological Management Plan (LEMP). The content of the LEMP shall include the following:
 - a) description and evaluation of features to be managed (including a planting schedule and faunal enhancements recommended in the Ecological Appraisal Rev A dated 15/06/2022 and Letter from FPCR dated 10 May 2023 ref: 6363/LM);
 - b) ecological trends and constraints on site that might influence management;
 - c) aims and objectives of management;
 - d) appropriate management options for achieving aims and objectives;

- e) details of the body or organisation responsible for implementation of the plan; and
- f) ongoing monitoring and remedial measures.

The development shall be implemented in accordance with the approved LEMP and shall be permanently retained as such thereafter.

- 14) The details submitted pursuant to condition (1) (the reserved matters) shall include details of how the development will achieve a biodiversity net gain. This will include a native species-only landscape scheme, integrated bird bricks and details of the degree of biodiversity net gain. The development shall be implemented in accordance with the approved details and shall be permanently retained as such thereafter.
- 15) Prior to the commencement of the development hereby approved an arboriculture method statement and tree protection plan in accordance with BS5837:2012 shall be submitted to and approved in writing by the Local Planning Authority. The approved arboriculture method statement and tree protection plan shall be adhered to throughout the construction phase of the development.
- 16) The details submitted pursuant to condition (1) (the reserved matters) shall include an updated Landscape Strategy. The landscaping shall comprise native species only. The strategy shall include a programme for implementation. The development shall be implemented in accordance with the approved Landscape Strategy and shall be permanently retained as such thereafter.
- 17) Prior to the commencement of development hereby approved, a retention and management plan for the retained farm buildings identified in the Pegasus Ltd Archaeology and Built Heritage Statement (P20-0179 December 2021) shall be submitted to and approved in writing by the Local Planning Authority. The retention and management plan shall set out how the retained farm buildings will be protected during the constructional and operational phases of the development. The development shall be implemented in accordance with the approved retention and management plan and shall thereafter be retained as such until a scheme for the re-use of the buildings has been lawfully implemented.
- 18) No development shall take place prior to the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved in writing by the Local Planning Authority.
- 19) No construction work in connection with the development hereby approved (excluding impact pile driving dealt with by Condition 20) shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:

Monday to Friday 0730 - 1800 hours
Saturdays 0800 - 1300 hours

unless in association with an emergency.

- 20) No impact pile driving in connection with the construction of the development hereby approved shall take place on the site on any Saturday, Sunday, or Bank Holiday, nor on any other day except between the following times:

Monday to Friday 0900 - 1700 hours

- 21) No piling or any other foundation designs using penetrative methods shall be undertaken until a Piling Method Statement has been submitted to and approved in writing by the Local Planning Authority. The Piling Method Statement shall demonstrate that there would be no unacceptable risk to groundwater. The development shall be carried out in accordance with the approved Piling Method Statement.
- 22) No development hereby approved shall commence until a strategy to deal with any potential risks associated with contamination of the site has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved strategy. This strategy shall include the following components:
- a) A preliminary risk assessment which has identified:
 - all previous uses;
 - potential contaminants associated with those uses;
 - a conceptual model of the site indicating sources, pathways, and receptors; and
 - potentially unacceptable risks arising from contamination at the site.
 - b) A site investigation scheme, based on (a), to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - c) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (b). This shall give full details of the remediation measures required and how they are to be undertaken. The RMS shall also include a verification plan to detail the data that will be collected to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance, and arrangements for contingency action. Any changes to these components shall require the express consent of the Local Planning Authority. The scheme shall thereafter be implemented as approved.
 - d) A verification report shall be submitted upon completion of the works and shall include full verification details as set out in the verification plan. This shall include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site.

23) Prior to the commencement of the development hereby approved, a Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. The CMP shall include the following information:

- a) routing of construction and delivery vehicles to / from site;
- b) parking and turning areas for construction and delivery vehicles and site personnel;
- c) timing of deliveries;
- d) provision of wheel washing facilities; and
- e) temporary traffic management / signage.

The development shall be carried out in accordance with the approved CMP.

24) Prior to the commencement of the development hereby approved, a Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The document shall be produced in accordance with the Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites, the Control of Dust from Construction Sites (BRE DTi Feb 2003) and the Institute of Air Quality Management (IAQM) 'Guidance on the Assessment of Dust from Demolition and Construction'. The construction of the development shall then be carried out in accordance with the approved Construction Method Statement.

25) Prior to the commencement of the development hereby approved, an Acoustic Design Statement (ADS) shall be submitted to and approved in writing by the Local Planning Authority. The ADS shall include details of mitigation measures to protect gardens and dwellings within 40m of London Road from traffic noise. The ADS shall demonstrate how a maximum internal noise level of 35dB_(A) (Fast) with windows closed and a maximum noise level for outdoor amenity areas of 55dB_(A) shall be achieved. The development shall be carried out in accordance with the approved ADS and thereafter shall be permanently retained as such.

26) Development shall not begin in any phase within the phasing plan approved pursuant to Condition 34 until a sustainable surface water drainage scheme for that phase has been submitted to and approved in writing by the Local Planning Authority. The drainage scheme shall demonstrate that the surface water generated by that phase of development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of within the curtilage of the site without increase to flood risk on or off-site.

27) Prior to the commencement of the development hereby approved, a detailed strategy for identification and protection of foul sewers within the site shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall include:

- a) a clearance of 3 metres on either side of the 150mm gravity foul sewer to protect it from construction works and to allow for future access for maintenance;
- b) no soakaways, swales, ponds, watercourses or any other surface water retaining or conveying features shall be located within 5 metres of the public or adoptable apparatus;
- c) proposals for investigations of any sewer found during construction works to ascertain its ownership;
- d) information detailing how the developer intends to divert the asset or align the development, so as to prevent the potential for damage to sewer infrastructure; and
- e) how access to the sewer will be maintained for the maintenance and repair of the asset during and after the construction works.

The development shall be carried out in accordance with the approved strategy.

- 28) Prior to the commencement of the development hereby approved, details of the proposed means of foul sewage disposal shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and shall thereafter be permanently retained as such.
- 29) Prior to commencement of the development hereby approved, a detailed strategy for identification and protection of gas mains within the vicinity of the site shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall ensure that no mechanical excavations take place above or within 0.5m of the low pressure system, 0.5m of the medium pressure system and 3m of the intermediate pressure system.

The development shall be carried out in accordance with the approved strategy.

- 30) The details submitted pursuant to condition (1) above (the reserved matters) shall provide:
- a) residential vehicle parking and turning space in accordance with the Swale Borough Council Parking Standards (May 2020); and
 - b) one secure and sheltered bicycle store for each dwelling within the site.

The development shall be carried out in accordance with the approved details and permanently retained as such thereafter.

- 31) Before the first occupation of each dwelling hereby permitted the following works between that dwelling and the adopted highway shall be completed:

- a) footways and/or footpaths, with the exception of the wearing course; and
 - b) carriageways, with the exception of the wearing course but including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures.
- 32) The development hereby approved shall not commence until details of fixed telecommunication infrastructure and High-Speed Fibre Optic connections to all residential buildings have been submitted to and approved in writing by the Local Planning Authority. The infrastructure for any dwelling shall be installed in accordance with the approved details prior to the occupation of that dwelling and maintained thereafter.
- 33) Prior to the first occupation of the development hereby approved, a Full Travel Plan based on the principles set out in the Travel Plan (January 2022 Report Reference 1466/8/C) shall be submitted to and approved in writing by the Local Planning Authority. The Full Travel Plan shall include:
- a) measures for promoting sustainable modes of travel to residents of the development:
 - making available a National Railcard for each completed dwelling, providing one-third off rail fares in London and the south-east, for a five year period from occupation; and
 - making available a bus pass for each completed dwelling, covering bus service route numbers 326 / 327 between Chatham and Sittingbourne, for a twelve month period from occupation;
 - b) arrangements for monitoring and reviewing the Travel Plan's objectives;
 - c) appointment of a Travel Plan Co-Ordinator;
 - d) Travel Information Packs for the first occupiers of each completed dwelling; and
 - e) measures for disseminating updated sustainable travel information and Travel Plan updates to residents for the duration of the Travel Plan's lifetime.

The Full Travel Plan shall be implemented in accordance with the approved details and the development shall be carried out and operated in accordance with the agreed Travel Plan thereafter.

- 34) No development shall commence until a site-wide phasing plan has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the provisions of the approved phasing plan.

End of schedule of conditions