The Planning Inspectorate

# Appeal Decision

Inquiry opened on 20 December 2016

Site visit made on 23 December 2016

**by Clive Hughes BA(Hons) MA DMS MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 17 February 2017**

**Appeal Ref: APP/V2255/W/16/3146393**
**Funton Brickworks, Raspberry Hill Lane/ Sheerness Road, Lower Halstow, Kent ME9 7EG**

- 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 Nightingale Homes (Upchurch) Ltd against the decision of Swale Borough Council.
- The application Ref 15/502681/OUT, dated 7 April 2015, was refused by notice dated 14 September 2015.
- The development proposed is residential development (about 55 dwellings) with associated access and parking, creation of footpath link to the Saxon Shore Way and formation of a reptile and invertebrate reserve.
- The inquiry sat for 4 days on 20-23 December 2016.

## Decision

1. The appeal is dismissed.

## Procedural matters

2. The application is made in outline form with all matters of detail reserved for subsequent approval.

3. The address of the site is described in various documents as being in either Raspberry Hill Lane or Sheerness Road. The former Funton Brickworks was consistently referred to as being in Sheerness Road although it appears that this road only runs west from the junction with Basser Hill whereas the site is to the east of the junction. For the avoidance of doubt I have used both road names in the heading for this Decision and Raspberry Hill Lane in the text.

4. There are differences in the submitted plans concerning the former European Brickwork Building. This building is excluded from the site. This is as shown on Drawing No 3265_DR_004 Rev A: Landscape parameter plan 02, which was submitted during the Inquiry (Document 13). This building, together with an access road from Raspberry Hill Lane, is the subject of a separate planning application for use as a community hub. References to that building being a future Outward Bound centre on some plans and in some documents need to be deleted as the Outward Bound Trust are not pursuing any interest.

5. A draft Unilateral Undertaking (UU) under s106 of the Act was submitted to, and discussed at, the Inquiry. A completed UU, taking account of the minor alterations that arose from that discussion, was submitted following the close of the Inquiry in accordance with an agreed timetable.

## Main issues

6. The main issues are:

- Whether the Council is able to demonstrate a 5-year supply of housing against a full objective assessment of housing need and the implications of this in terms of national and local policy;
- The effect of the proposals on the character of the countryside and on the appearance of the area;
- The effect of the proposals on highway safety in the vicinity of the site;
- Whether the proposals make adequate provision for community and other services and facilities including affordable housing; and
- Whether the proposals comprise sustainable development as defined in the Framework and whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

## Reasons

### *Background*

7. The site is roughly rectangular with one of its long sides, over 500m in length, fronting Raspberry Hill Lane and with a regular depth of between 120 and 140m. There is an indent on the road frontage where the site boundary goes around a pair of semi-detached houses (Nos 1 & 2 Funton Cottages) that lie outside the site, albeit surrounded by it on three sides. Also outside the site, and in this case completely surrounded by it, is the former European Brickwork Building which is the subject of a separate planning application. The ground level within the site rises from the road towards the south.

8. The appeal site has an area of about 6.5ha and was used as a brickworks until that business closed in 2008, since when it has been disused. The buildings are now falling into disrepair. Visually and functionally the site is in three parts with the central area containing a number of dilapidated buildings including a substantial kiln and three brick chimneys, as well as concrete hardstandings. The eastern part of the site was used as a brick earth field from where the raw materials were taken. It has no buildings but there are mounds of stockpiled materials and some vegetation. The western end was used for the open storage of bricks. Its surface is partly gravel and partly concrete with some self-sown vegetation and no buildings.

9. Around the site the land is in agricultural use. A little distance to the east is a byway that runs south from Raspberry Hill Lane. South of the site the byway is crossed by the Saxon Shore Way, part of a long distance footpath around the coast. This footpath (ZR42) runs east/ west at a higher level to the south of the site. There are clear views down onto the site from the path although these are, in part, filtered by a small copse. To the immediate south west the footpath runs very close to the site, separated only by a narrow strip of land that is, according to the appellant, also in the appellant's control.

10. The site is located in open countryside some 2.5km from Iwade (3.75km by road) and 1.8km from the centre of Lower Halstow. It is to the south of the estuary of the River Medway, close to Barksore Marshes and the tidal mudflats of Funton Creek. There is agricultural land around the site but generally the

surrounding area to the north is characterised by low lying marshes and the estuary. The site lies within an Area of High Landscape Value (AHLV) and adjacent to the North Kent Marshes Special Landscape Area. The eastern part lies within an identified Coastal Zone in the Local Plan.

11. The parties agree that the site comprises previously developed land. It has the benefit of a Certificate of Lawful Use (CLU) for Class B2 (general industrial purposes) granted on 13 October 2010. There is no planning condition requiring the remediation of the site following the cessation of the brickworks. The planning application for the use of the former European Brickwork Building as a community hub was undetermined at the time of this Inquiry.

12. While the application is in outline form, indicative plans submitted with it show that all the buildings within the appeal site, save for the three brick chimneys, would be demolished. The central and western parts of the site would be developed by the erection of about 55 dwellings with indicative storey heights of 8.5 to 13.5m. The indicative design takes its cue from the brickworks; the houses would be finished with Funton brick. The eastern part of the site would be used to provide a reptile and invertebrate reserve with ponds, bunds, mounds and access for residents and visitors with information points, pathways and a viewpoint. Two vehicular accesses from Raspberry Hill Lane are proposed utilising the existing access points. One would serve the housing; the other would serve the community hub.

### *Planning policy*

13. The development plan includes the saved policies in the Swale Borough Local Plan, adopted 2008 (LP). The emerging plans include the Emerging Draft Local Plan: Bearing Fruits 2013 (Publication draft December 2014) (ELP) that was submitted for examination in April 2015. It has been the subject of an Examination in Public and the Inspector's Interim Findings were issued in early 2016. Main Modifications have been issued for consultation and further hearings are anticipated in early 2017 to consider these.

### *Whether the Council is able to demonstrate a 5-year supply of housing against a full objective assessment of housing need and the implications of this in terms of national and local policy*

14. It is common ground between the parties that the Council is unable to demonstrate a five-year housing land supply. The agreed position, as set out in the Statement of Common Ground (SoCG), is that the Council can demonstrate no more than 3.8 years supply. The Objectively Assessed Need (OAN) is now 776 dwellings per year; this is also agreed in the SoCG. This figure significantly exceeds any annual delivery figure that has been achieved since 2007/08.

15. Government policy, as set out in the National Planning Policy Framework (the Framework) says that relevant policies for the supply of housing should not be considered up-to-date if the Council cannot demonstrate a five-year supply of deliverable housing. There is no dispute between the parties that the term "relevant policies" means any policy relating specifically to the provision of new housing and/ or policies bearing upon the principle of a particular site being developed for housing. This includes policies for the general protection of the countryside.

16. In addition, the LP is now time-expired in that it was for a plan period for the period up to 31 March 2016. However, being time-expired does not mean that it cannot carry weight if the policies under consideration are consistent with the Framework. It is still the adopted development plan although it has to be borne in mind that its evidence base is quite old.

17. I have given weight to the fact that the Council is making significant progress towards improving the housing land supply in the Borough. This is as set out in the ELP. The identified supply, however, still has to undergo an Examination in Public, the outcome of which cannot be guaranteed. It is possible that some identified sites will not be progressed so there is no certainty that the Council will be able to demonstrate a five-year housing land supply in the near future.

18. The implications for local policy, therefore, are that the policies in the LP that are relevant for the supply of housing are not up-to-date and so cannot carry full weight. The ELP, which is making progress towards addressing the shortfall in housing land supply, carries only very moderate weight at this stage in the process. The second bullet point of the decision-taking limb of paragraph 14 of the Framework is therefore engaged.

***The fall back position***

19. While this was not raised as a main issue at the Inquiry, the appellants placed considerable reliance on the fact that the Class B2 use could resume at any time. That is undeniably true, given that there is a CLU in respect of such use that covers the whole site. The weight that can be given to this acknowledged fall back position must depend, to some degree, on the likelihood of that use resuming.

20. The site has been marketed since the brickworks closed in 2008. The Planning Statement that accompanied the planning application says that the marketing agents had received few enquiries for the site and that these included army training and paintball games. A separate enquiry to the owners was for the storage of salt for winter road use. All these uses would require further planning permission. The lack of enquiries concerning future Class B2 use rather implies that the site is not particularly attractive for that use.

21. This lack of attraction would appear to stem from its location some distance from the main road network and the poor quality of the road network in the immediate area. Due to their width and rural character, nearby roads are generally unsuitable for HGVs. Many of the roads between the site and the A2 are subject to weight restrictions and/ or, due to bridges under the railway that runs parallel to the A2, height restrictions.

22. A recent enquiry, an "initial intention" from KKB Remediation Ltd, who recently occupied a site in the area that has since received planning permission for housing development, was put forward. However, the use they undertook at that site does not appear to fall within Class B2 use as they were served an Enforcement Notice which was unsuccessfully appealed. The appellant was unable to provide any further information concerning this interest.

23. That letter suggests that there may potentially be some interest in the site. If planning permission for housing is not forthcoming it seems probable that the owners will increase their efforts to achieve some financial return from their investment. The Class B2 fall back position undoubtedly carries some weight in

the appellant's favour. However, that weight has to be limited due to the length of time since the site was first marketed and the lack of substantive interest during that time; the need for substantial investment and the possible need for further planning permission for replacement or specialist buildings; and the poor quality of the road network in the immediate area.

***The effect of the proposals on the character of the countryside and the appearance of the area***

24. The buildings on the appeal site are in poor condition and the land is becoming overgrown. The site, and in particular the buildings on it, are visible from public viewpoints in Raspberry Hill Lane, the Saxon Shore Way and in longer views across the water. The buildings are disused and the overall appearance of the site is one of neglect that detracts from the appearance of the immediate surroundings and the wider area. Nonetheless, the brickworks buildings and the brick chimneys are distinctive features that reflect the recent industry in the area and as such form part of its history. Unless the site is redeveloped or reused, the appearance of the land and buildings is likely to decline further.

25. The surrounding area is characterised by agricultural land, mostly in arable use, with orchards and small pockets of woodland. There are scattered farms with outbuildings and a few dwellings. To the north the open Barksore Marshes and Medway estuary dominate the landscape. Some nearby fields are used for horse grazing, with the substantial Callum Park Riding Centre accessed from Basser Hill. The villages of Lower Halstow and Iwade lie some distance to the west and east respectively. The roads are generally narrow country lanes with no footways or street lighting. They are sometimes bordered by hedgerows and trees, giving them a narrow, enclosed feel, although there are also occasional extensive views across the marshes.

26. The site is designated as an AHLV in the LP and this designation is carried forward in the ELP. There is no question, therefore, that it is a valued landscape for the purposes of paragraph 109 of the Framework. The first bullet point of this paragraph says that the planning system should protect and enhance valued landscapes. The 5$^{th}$ bullet point seeks the remediation and mitigation of despoiled, degraded and derelict land. This site comprises such land within a valued landscape. The 5$^{th}$ bullet point of paragraph 17 of the Framework, which identifies the core planning principles, says that planning should recognise the intrinsic character and beauty of the countryside.

27. LP Policy E6 seeks to protect the countryside. It does not prevent development; it sets out the various instances when development will be permitted. This is a closed list and the current proposal does not comply with any of the cited forms of development. Policy E7 relates to the Strategic Gap between the Medway Towns and Sittingbourne north of the M2 in which this site lies and it sets out the instances when planning permission for development will not be granted. Due to the authorised use of this site and the buildings already on it, I am not convinced that there is any conflict with this policy.

28. LP Policy E9 seeks to protect and, where possible, enhance the quality, character and amenity value of the landscape. In certain specified designated areas priority will be given to their protection. These areas include AHLVs where, while at the lowest level of land protected by this policy, the priority is the protection and enhancement of the integrity, character and local

distinctiveness of these assets. It does not prevent housing so this is not a policy for the supply of housing and it is in line with the Framework so it carries full weight. Emerging policies DM 22 and DM 24 seek to protect the coast and valued landscapes respectively, including AHLVs.

29. The appellant accepts that there will be some harm to the landscape character of the area. The Landscape and Visual Impact Assessment (LVIA) identifies 9 viewpoints and finds moderate adverse impacts for 2 viewpoints, both on the Saxon Shore Way, and minor adverse for 2 further viewpoints. It identifies that the impact would be minor and moderate beneficial in 2 viewpoints while the impact would be neutral in the remaining 3 viewpoints.

30. I visited all the viewpoints and would broadly agree with the findings in the LVIA, although I think that the harm has been underestimated in some instances. Concerning the benefits, there would undoubtedly be improvements to the view into the site when seen from Raspberry Hill Lane immediately outside the central part of the site. That view is already dominated by buildings and due to their poor condition and the overgrown appearance of the site the proposals would be beneficial. The appellant has chosen not to analyse the view into the site from immediately outside the western end where the open storage took place and where houses are now proposed on the indicative plans. There would be some moderate harm arising here.

31. I am particularly concerned about the impact of the proposed development on views from the Saxon Shore Way. Recreational walkers are likely to be particularly sensitive receptors and the site lies between the footpath and the main view, which is towards the estuary. The LVIA describes the recreated kiln building as being "slightly taller" than the existing kiln building. However, the increase in height is around 33% (and over 50% if the central gable feature is taken into account). The gable would be as tall as the adjoining brick chimney and this would mean that this new building would not only be very visually dominating but that it would also reduce the visual importance of the chimney. I consider that the effect of this would major adverse, even in the long term.

32. According to the LVIA the other dwellings would be 8.5m high (Type B) or 9.2m high (Types C & D). At the western end of the site, where the land is currently hard surfaced but open, the impact of the proposals on views from viewpoint 7 and from the footpath further to the west, would be particularly severe. The path runs down the slope such that it is almost level with the site where it is closest. The proposed houses, together with associated fencing and potential noise from vehicles and the use of gardens, would significantly alter the character of this part of the footpath.

33. The increased height and spread of built form within the site would be seriously harmful to the landscape character of the wider area. It is a valued landscape and the proposed residential enclave would detract from both the appearance of the site and its surroundings. Such a large, and visually prominent, residential development would also appear wholly out of keeping with the established rural character of the area. The impact would not be limited to the built form, however, as there would of necessity be lights (to the roads and within dwellings), signage and traffic associated with the scheme.

34. I conclude on this issue that the proposals would provide some landscape benefits insofar as the despoiled and derelict land would be brought back into beneficial use. The indicative plans show a sensitive design to the

development that in many ways would respect the most recent use of the central part of the site. However, due to its scale, and in particular the indicative height and spread of the buildings, the proposals would be unacceptably harmful to the character and the appearance of the area. This would be contrary to LP Policies E6 and E9 and to Policies ST 1(11), ST3 (6), ST 5(10) and DM 24 of the emerging LP. There would be harm to a valued landscape, identified as an AHLV in the adopted and emerging LPs, contrary to advice in paragraphs 17 and 109 of the Framework.

***The effect of the proposals on highway safety in the vicinity of the site***

35. Policy T1 of the Local Plan, which attracts substantial weight, says that development that generates volumes of traffic in excess of the capacity of the highway network or result in a decrease in safety on the highway network will not be permitted. It is now accepted that the capacity of the road network in the vicinity of the site is capable of accommodating the additional traffic generated by the proposed housing. The only outstanding issue, therefore, relates to whether the proposals would result in a decrease in highway safety.

36. Paragraph 32 of the Framework advises that development should only be prevented or refused on highway safety grounds where the residual cumulative impacts of the development are severe. The relevant part of the reason for refusal refers to severe harm to highway safety and amenity by way of increased vehicle and pedestrian traffic. It is not contested that the site is accessed via narrow country lanes that are subject only to the national speed limit. Nor is it contested that average speeds, including the 85%-ile speed, is well below the national speed limit.

37. The parties agreed that Woodruff Close, to the west of Upchurch, represented a reasonable comparator site as it comprises a small residential cul-de-sac in a countryside location accessed from a narrow lane without footways. It is, however, on a bus route with bus stops serving it and there is a public house within walking distance. The manned survey shows little in the way of pedestrian traffic and I am satisfied that it is a reasonable comparator.

38. Using data from that development, and applying the directional split for traffic generated by the appeal site favoured by the Council, the increase in traffic would mean that the surrounding roads remained well below capacity. The main issue concerns Basser Hill, which runs south from Raspberry Hill Lane/ Sheerness Road a short distance to the west of the site. This road can accommodate two-way traffic for much of its length, but there is one section, some 63m long, where cars are unable to pass one another. This section, however, has passing places at either end and is relatively straight with clear visibility from one end to the other. This allows drivers to ascertain whether the road is clear before proceeding.

39. I saw that vehicle speeds in this area are slow, with drivers generally taking a precautionary approach. It is, as described at the Inquiry, a naturally traffic calmed road, quite unlike the pro-active approach to traffic calming that I saw in nearby Iwade. Driving around the local roads I saw cyclists, hikers, a dog-walker and a single horse rider, although given the number of horses in surrounding fields I would anticipate that they are a common feature on this part of the road network.

40. There has been only one recorded accident along Basser Hill. The proposals would inevitably increase the amount of traffic on this road; a 30% increase seems a reasonable estimate based upon Woodruff Close data, the estimated directional split and existing traffic levels. There is no exact way of measuring the impact of the proposals on a road like Basser Hill and the impact must be a matter of professional judgement. In this case the judgements of the professionals were very different. My conclusion, based upon the limited extent of the single carriageway part of Basser Hill; the known low traffic speeds; the low accident rate; and the low volume of traffic is that it is unlikely that there would be a significant decrease in the level of safety on the highway network or that the impact would be severe. There would be no unacceptable conflict with LP Policy T1 or with the Framework.

41. The reason for refusal also refers to increased pedestrian traffic on the narrow country lanes. To the west of the Basser Hill junction, the Saxon Shore Way shares Sheerness Road with vehicles for some distance towards Lower Halstow. There are some facilities there including a shop, church, primary school, public house, bus stop and village hall that might attract walkers from the appeal site and some villagers might walk to the community hub within the appeal site.

42. However, the distance to Lower Halstow is about 1.8km and the first part of the route, using the Saxon Shore Way is very muddy in wet weather. The route along Sheerness Road has no footways, is not lit and the road would not allow two vehicles and a pedestrian to pass at one time. The road is slightly sunken at one point, the banks leaving no off-carriageway refuge for walkers. Due to these circumstances, and the known pedestrian generation at Woodruff Close, it seems unlikely that the development would generate significant levels of pedestrian traffic.

43. The appellant does not rely on the fall back position for support as it was argued that there is existing spare capacity. In any case, HGVs are unlikely to use Basser Hill due to weight and height restrictions between Basser Hill and the main road network. A resumption of the Class B2 use would be likely to generate some additional traffic on this road as it would be used by employees and visitors using cars and small vans to access the premises.

44. I conclude on this issue that the proposed development would not be likely to result in severe harm to highway safety and amenity by way of increased vehicle and pedestrian traffic. There would be no unacceptable conflict with the development plan or with the Framework.

***Whether the proposals make adequate provision for community and other services and facilities including affordable housing***

45. The UU, signed and dated 23 December 2016, makes provision for 30% of the dwellings to comprise affordable housing; for further landscaping outside the appeal site on land controlled by the appellant; for the provision of a Community Hub Funding and Management Plan to include the provision of that building; for a footpath link from the site to the Saxon Shore Way; for the submission of a Sustainability Enhancements Plan; for the submission of an Invertebrate Reserve Establishment and Management Plan; and a financial contribution towards the Strategic Access Management and Monitoring Strategy in respect of the Swale Special Protection Area.

46. The UU also makes provision of financial contributions to the Kent County Council in respect of primary education (Iwade Primary School); secondary education (Westlands Secondary School); libraries (mobile library at School Lane, Lower Halstow); and wheeled bins for the proposed houses and flats.

47. The Council raised no objections to the UU in principle as it meets various requirements and would ensure that some elements of the proposed development would be provided. The affordable housing is in accordance with LP paragraph 3.114 and LP Policy H3 which seek to ensure that at least 30% of proposed dwellings are affordable. While ELP Policy DM 8 would require the provision of 40% of the homes in this rural location to be affordable, that emerging policy has not been adopted and could be subject to revision. The quantum of provision would therefore be in accordance with adopted policy.

48. The UU cannot ensure that the community hub building is actually provided as this is dependent upon the Council granting planning permission for it. If permission is forthcoming, however, its provision and future management would be secured. This cannot carry much weight as there is no certainty that it can be provided and in any case its intended use is unclear. There is no obvious need for a meeting hall for the local community as there is a hall in Lower Halstow and it seems unlikely that 55 dwellings would generate the need for an additional facility. It certainly is not necessary to make the development acceptable in planning terms and so fails the tests in the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 204 of the Framework.

49. The reptile and invertebrate reserve would be a public benefit but cannot reasonably be described as being necessary to make the development acceptable in planning terms. This carries only limited weight. The footpath access to the Saxon Shore Way would be of benefit to future occupiers of the site but would have no public benefit beyond that. The financial contributions to the County Council are in accord with its requirements in respect of education, libraries and refuse collection.

50. Overall, the scheme would make adequate provision for community and other services and facilities including affordable housing. The overall package contained within the UU weighs in favour of the development.

***Whether the proposals comprise sustainable development as defined in the Framework and whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits***

51. The starting point has to be that the proposals are contrary to the provisions of the development plan insofar as it seeks to protect the countryside. The issue in this case is firstly whether the proposals comprise sustainable development as defined in the Framework; and, second, whether the adverse impacts would significantly and demonstrably outweigh the planning benefits. The Framework says that the policies within it as a whole constitute the Government's view of what sustainable development means in practice. Paragraph 7 identifies that there are three dimensions to sustainable development: economic, social and environmental. Paragraph 8 says that these roles must not be undertaken in isolation and that economic, social and environmental gains should be sought jointly and simultaneously through the planning system.

52. Concerning the economic role, the economic benefits of providing new housing are agreed, especially given the lack of a five-year housing land supply and the absence of constraints to delivery on this site. The proposals would fully meet the policy requirement to provide 30% affordable housing; up to 16 units would be a significant benefit due to the current levels of supply and need. While the size of the proposed units do not exactly tally with the sizes of units required in the area as identified in the Lower Halstow Housing Needs Survey (2013), this is an outline application with all matters reserved and suitably-sized units can be provided under the terms of the UU.

53. Other economic benefits would be likely to include short term employment opportunities during construction and future residents may use some of the shops, businesses and facilities in nearby villages. There is, however, a need to balance this with the relatively isolated location of the site and lack of public transport. There is no convenient walking route to Lower Halstow or Iwade as the road is narrow with no footways or street lighting. The likelihood is that most journeys will be by car and not necessarily to local facilities.

54. In terms of a social role, the separation of the site from local villages would mean that it would not help to create a strong and healthy community. The lack of accessible local facilities would not reflect or support the community's needs. There is no certainty that the community hub will be granted planning permission and its potential future use remains vague. While the built form might well be of a high quality, and the SoCG shows that this would reflect its industrial past, its contribution to any social role beyond the provision of housing is severely limited by its location.

55. Concerning its environmental role, the proposals would result in the reuse of previously used land in the countryside. There would be an ecological benefit in providing an invertebrate and reptile reserve on land that is currently overgrown and despoiled. The on-site sustainability enhancements and other factors such as the provision of charging points for electric cars are beneficial.

56. There would, however, be very great harm to a valued landscape that is identified as an AHLV in the development plan and the ELP. While it is acknowledged that the buildings on the site are, for the most part, in poor condition, the visual harm would be considerable. The indicative plans show a very significant increase in the height and spread of buildings on the site. This would be harmful to local views including close views from the Saxon Shore Way. The provision of a large residential enclave in the countryside, unrelated to any existing settlement, would also be harmful to the character of the area. Its presence, together with signage, lighting, fencing, noise and traffic would add to the environmental harm. In terms of the environmental role, the harm would significantly outweigh the benefits.

57. Paragraph 47 of the Framework seeks to boost significantly the supply of housing. This is, in part, qualified by paragraph 55 which says that housing in rural areas should be located where it will enhance or maintain the vitality of rural communities in order to promote sustainable development. This proposal would not enhance the vitality of any rural communities. I am not convinced that the latter part of paragraph 55, concerning isolated homes, is relevant as there would be about 55 new houses and so none of them could reasonably be individually described as being isolated.

58. The proposals are also contrary to the provisions of the development plan. While overall this carries reduced weight in accordance with advice in the Framework, the parts of the relevant policies that protect the countryside, and in particular LP Policy E9, carry full weight. While it is permissive towards development, and the AHLV is the lowest of the three tiers of protected landscapes, this proposal would be in direct conflict with Policy E9 as it would fail to safeguard or enhance the landscape. The local landscape contributes positively to the distinctiveness of the locality and the Borough.

59. I have had regard to the concession by the Council in cross examination that a reduced form of residential development on the built up part of the site might be acceptable. The Council, the highway authority and local residents have not had the opportunity to consider such a proposal and no scheme has been put forward. I acknowledge that this is a concession that some housing may be acceptable here despite its locational disadvantages and the environmental harm that would arise. This carries limited weight in the appellant's favour.

60. Overall I have found that the Council cannot demonstrate a five-year housing land supply; that there would be economic and social benefits arising from the reuse of previously developed land by the provision of market and affordable housing; that there would be environmental benefits arising from the remediation of degraded and derelict land; that there would be some benefits arising from the formation of an invertebrate and reptile reserve; and that there may be some benefits arising from the provision of a community hub building. These benefits, together with the other identified benefits, have to be seen alongside the fact that there would be no unacceptable harm to highway safety and that a Class B2 use could recommence at any time. The likelihood of a Class B2 use recommencing carries limited weight, however, for the reasons set out in paragraph 23 (above).

61. Against this the proposals would be contrary to the development plan and the ELP. There would be harm arising from the construction of a housing estate in the countryside that would be poorly related to existing settlements and facilities and which would have no direct access to public transport. There would be very great harm to both the character and the appearance of the area which is a valued and protected landscape. On balance, the proposals would not comprise a sustainable form of development. Taken together, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.

62. I conclude, therefore, that the other material considerations do not outweigh the provisions of the development plan and so the appeal is dismissed.

*Clive Hughes*

Inspector

## APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|---|---|
| Emmaline Lambert of Counsel | Instructed by Head of Legal for Mid Kent Legal Services |
| She called | |
| David Huskisson DipLA CMLI | Principal, Huskisson Brown Associates |
| Alun Millard MCIHT | Kent County Council, Highways & Transportation |
| Jonathan Buckwell BA(Hons) MA MRTPI PIEMA | Director, DHA Planning |

FOR THE APPELLANT:

| | |
|---|---|
| Richard Turney of Counsel & Admas Habteslasie of Counsel | Instructed by the appellant |
| He called | |
| Richard Harrison BSc CMILT MCIHT | Assistant Director, Odyssey Markides |
| Paul Whatley BS(Hons) DipLA CMLI | Assistant Director, Lloyd Bore Ltd |
| Iain Warner BSc(Hons) MRTPI | Assistant Director, Tetlow King Planning Ltd |

INTERESTED PERSONS:

| | |
|---|---|
| Allyson Beerstecher | Local resident |
| Elizabeth Mouland | Local resident |

DOCUMENTS SUBMITTED AT THE INQUIRY

1 Statement of Common Ground
2 Agreed list of suggested conditions
3 Appeal decision APP/W2275/C/08/2077889 – Land at Four Gun Field, Otterham Quay Lane, Upchurch (24 March 2009)
4 Enforcement Notice: Land at Four Gun Field, Otterham Quay Lane, Upchurch 19 May 2008
5 Appeal decision APP/V2255/W/15/3135521 – Norton Ash Garden Centre, London Road, Norton (4 May 2016)
6 Appeal decision APP/V2255/W/16/3153537 – Land at Church Farm, Sheppy Way, Bobbing (6 December 2016)
7 Appeal decision APP/D0840/W/16/3142537 – Horizon Poultry Farm, Tremar, Cornwall (15 November 2016)
8 Extract from Guidelines for Landscape and Visual Impact Assessment pp85/5
9 Lower Halstow Housing Needs Survey (October 2013)
10 Appellant's opening submissions
11 Opening statement on behalf of the Council
12 Draft Unilateral Undertaking
13 Drawing No 3265_DR_004 Rev A: Landscape parameter plan 02
14 Gladman Developments Ltd v Daventry DC v SoSCLG [2016] EWCA Civ 1146 23 November 2016

15 Email from Swale BC to Anna Bloomfield 21 August 2013
16 Existing site plan: The Old Brickworks, Naccolt, Ashford
17 Appeal decisions APP/V2255/A/10/2127237 & 2131566 – Conyer Brickworks, Conyer, Teynham 1 June 2011
18 Summary of evidence of Paul Whatley
19 Extract from Council's Strategic Housing Land Availability Assessment 2014/ 2015 – Appendix 2

DOCUMENTS SUBMITTED AFTER THE INQUIRY FINISHED SITTING

20 Agreed conditions
21 Unilateral Undertaking dated 23 December 2016
22 Closing submissions on behalf of the Council
23 Appellant's closing submissions

PLANS

A Drawing No 61_001_01: Site Location Plan
B Drawing No 61_004_09: Masterplan Design Proposal
C Drawing No 3265_DR_004 Rev A: Landscape Parameter Plan 02