



Appeal Decision

Site visit made on 3 May 2022

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th May 2022

Appeal Ref: APP/H2265/W/21/3288065

Land South of Barming Station and East of Hermitage Lane, Aylesford

- 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 Croudace Homes against the decision of Tonbridge & Malling Borough Council.
 - The application Ref TM/20/02749/OAEA, dated 7 December 2020, was refused by notice dated 1 October 2021.
 - The development proposed is 330 dwellings (including 40% affordable homes), together with associated open space, play areas and landscaping (including details of access).
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Decision

1. The appeal is allowed and planning permission is granted for 330 dwellings (including 40% affordable homes), together with associated open space, play areas and landscaping (including details of access) at Land South of Barming Station and East of Hermitage Lane, Aylesford in accordance with the terms of the application, Ref TM/20/02749/OAEA, dated 7 December 2020, subject to the conditions contained in the attached Schedule.

Preliminary Matters

2. The application was submitted in outline with all matters reserved (appearance, landscaping, layout and scale) for subsequent consideration except access. I have considered the appeal on this basis.
3. The application is accompanied by an Environmental Statement (ES) prepared in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations), including technical appendices and a non-technical summary. It covers a range of relevant topics, informed by a Scoping Opinion from the Council. I am satisfied that the totality of the information provided is sufficient to meet the requirements of Schedule 4 of the EIA Regulations and this information has been taken into account in reaching a decision.
4. The Council refused planning permission for one reason concerning the character and appearance of the area and the loss of agricultural land. However, it subsequently reconsidered its position in light of this appeal and chose not to defend its reason for refusal or seek to present a case against the appeal being allowed. Consequently, it was not necessary to hold a public inquiry and this case has been dealt with through the written representations procedure. I have had regard to all written submissions made in relation to the original planning application and this appeal in reaching my decision.

Main Issues

5. The main issue is whether the appeal site is a suitable location for the proposed residential development having regard to planning policy.

Reasons

6. The development plan, so far as it is relevant to this appeal, comprises the Tonbridge and Malling Core Strategy (2007) (CS), the saved policies of the Tonbridge and Malling Borough Local Plan (1998) (LP), the Development Land Allocations DPD (2008) (DLA DPD) and the Managing Development and the Environment DPD (2010) (MDE DPD).
7. As the Council's strategic policies are more than five years old the parties agree that they are out of date and that the National Planning Policy Framework's (the Framework) standard method should establish the local housing need. Using this method, the parties agree that just a 3.02 year supply of housing currently exists against the five year requirement. The Housing Delivery Test also indicates a poor level of housing delivery in recent years.
8. The Council has recently withdrawn its emerging Local Plan and so there is currently little prospect of the identified housing shortfall being addressed through the plan making process in the near future. There is a clear and pressing need for housing in the area and so the weight attached to any conflict with dated development plan policies that seek to restrict housing development must be considered in this context.
9. Policy CP14 of the CS seeks to restrict development in the countryside in line with a set of strictly defined circumstances. The Council accepts that such an approach is not consistent with the Framework and so, whilst there is a conflict, I attach only limited weight to it, particularly given the local need for housing.
10. The appeal site is located within a strategic gap defined by Policy CP5 of the CS. The Council accepts that this policy should not attract weight, having its origins in the now largely revoked South East Regional Plan and due to lack of consistency with the Framework. For these reasons, and bearing in mind that the policy allows for development in special circumstances such as a shortfall in strategic housing provision, I again only attach limited weight to the resulting conflict with this policy.
11. Policy CP6 seeks to maintain the separate identity of settlements. In this case, the Council finds no conflict with the policy, and I am inclined to agree. Whilst the site is located in the land between Maidstone and Aylesford, the railway embankment provides a physical barrier between the two settlements and the indicative masterplan demonstrates that an area of open space could also be incorporated along this side of the development. As such, the proposed development would be seen in the context of the large residential scheme adjacent to the south east, Hermitage Park, appearing as a further extension of Maidstone separate from Aylseford.

Other Matters

Character and appearance

12. The site is located in an established residential area with much development taking place nearby. As part of the application process, the Council employed a

specialist consultant to consider the information provided by the appellant and the likely landscape and visual effects. The Council's consultant assessed the initial effects of the development, at year 1, to be slightly greater than the appellant's assessment but accepted that the effects would be mitigated over time as landscaping matures. The site is also notably well contained by existing housing development, the raised railway embankment and various trees and hedgerows such that the visual impact of the development would be very localised.

13. There would inevitably be some landscape and visual harm arising from the development given the introduction of housing to a currently open site, but the submitted information demonstrates that a suitable high-quality scheme could be achieved and that new landscaping will assist over time in minimising any harmful effects of the development to an acceptable level. As such, I find no conflict with Policy CP24 of the CS or SQ1 of the MDE DPD, in so far as they seek high quality development that is appropriate to its context, albeit that some limited harm will result and should be taken into account in the overall planning balance.

Highways

14. The application is supported by a Transport Assessment and various addendums and technical notes arising out of discussions with the Council, the Local Highway Authority and National Highways, none of whom now object to the proposal. The assessment considers the impact of the development, as well as the potential cumulative effects in combination with other consented development in the local area.
15. Whilst there is clearly a concern from local residents surrounding the safety and capacity of the surrounding highway network, the various documents demonstrate that the scheme can be accommodated, subject to mitigation through suitable highway improvements. These can be secured as part of the development using conditions and obligations.
16. In addition, the scheme would employ a range of measures associated with a Travel Plan to encourage sustainable modes of transport and minimise car travel. The site is located in a highly accessible location close to a railway station, bus routes and various services and facilities would support objectives to encourage sustainable travel.
17. The Framework is clear that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Subject to the necessary mitigation, the development would not result in an unacceptable impact on highway safety or capacity, and I find no conflict with Policy SQ8 of the MDE DPD.

Agricultural land

18. CS Policy CP9 states that the best and most versatile land will not be proposed in the LDF unless there is an overriding need but does not include a similar restriction on individual planning applications. The site comprises land classified as grade 2 best and most versatile agricultural land, recognised for its economic and other benefits. This type of land is available in much of the local area and so the site represents a relatively small proportion that would

become unavailable for farming. It is nonetheless a loss that weighs against the proposal, particularly in the context of similarly graded land that has recently been lost to development in this area and should be weighed in the overall planning balance.

Other considerations

19. The application is supported by a range of other technical assessments and information covering topics including ecology, renewable technologies and climate change, minerals, contamination, noise, air quality, flooding, archaeology and land stability. All of these matters have been thoroughly assessed by the Council and no harm has been identified that could not be adequately mitigated. I have no reason to take a different view on any of these topics based on the evidence before me and have found no conflict with the development plan in respect of any of these matters.
20. Many local residents have written to object to the proposal and there is evidently a high level of opposition to the scheme. This is also set out in a letter from the local Member of Parliament. I have carefully considered the comments made but my decision must be reached in the light of the evidence before me, including the thorough and comprehensive technical assessments and information accompanying the application.

Planning Obligations

21. Many local people have raised concerns about the capacity of existing services and facilities to accommodate the residents of the appeal proposal. Indeed, mitigation would be necessary and relevant consultees and service providers have demonstrated where financial contributions or works would be necessary.
22. With this in mind, the appellant, in consultation with the Council, has submitted planning obligations secured under S106 of the Town and Country Planning Act 1990 to mitigate the impacts of the development. These are supported by a CIL Compliance Statement which explain the need for each obligation and how they can be justified having regard to Regulation 122 of the Community Infrastructure Levy Regulations 2010.
23. 40% of the proposed dwellings would be secured as affordable housing in line with the development plan. Local highway improvements would be undertaken or financial contributions would be made towards their funding, aimed at addressing safety and capacity, as well as measures to promote sustainable travel. A range of other financial contributions would also be made, including towards community learning, education provision, libraries, improvements to Barming Station, medical facilities, outdoor space and sports facilities, public transport, youth and social services and waste provision.
24. The parties are in agreement that these obligations are needed to mitigate the impacts of the development and I am satisfied that they would comply with the CIL Regulations. As such, I have taken them into account in reaching my decision.
25. The County Council has raised a concern that obligations are not included towards the land acquisition costs associated with a new secondary school, in addition to the Secondary Education Contribution that would contribute to the build costs of a new school or additional capacity. The new school is envisaged as part of a development at Broadwater Farm but no planning permission

currently exists for the school and there is no certainty that it will become available to serve this development.

26. Instead, it is expected that the financial contribution made towards expanding existing school capacity would facilitate the 65 secondary school places that are expected to be outstanding as a result of this scheme. There is no evidence before me that this would not adequately meet the need for secondary school provision arising from the development. On this basis, a contribution towards land acquisition costs is not justified. This would not accord with the requirements of CIL Regulation 122 and I have not taken the obligation, contained in a separate Unilateral Undertaking dated 3 May 2022, into account.

Planning Balance

27. There is a clear need for additional housing in this area which is currently unmet. The proposed development would make a significant contribution towards the need for market and affordable housing and this attracts significant weight in favour of the proposal. A range of other benefits would also arise, including a boost to the local economy connected with the construction of the development and in future expenditure by residents, a biodiversity net gain and the provision of open space that would be accessible by existing local people.
28. There would be a conflict with policies CP14 and CP5 of the CS but these policies are out of date and have the effect of restricting much needed housing development. In this case, I attach the conflict with them only limited weight and have found no conflict with the remainder of the development plan. There would be some harm to the character and appearance of the area and a loss of best and most versatile agricultural land which weighs against the proposal.
29. Nevertheless, it is clear overall that the adverse impacts arising would not significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole and planning permission should be granted. In this case, material considerations indicate a decision other than in accordance with the development plan.

Conditions

30. The parties have agreed proposed conditions to be attached to any planning permission granted. I have attached the conditions in a similar form to that suggested but with some alteration to improve their precision and otherwise ensure compliance with the relevant tests for conditions contained within the Framework. The conditions, and the reason for imposing them, are included in the attached Schedule.
31. I have not removed permitted development rights related to the parking areas to be provided, so far as they will exist, as inadequate evidence has been provided to demonstrate that there are exceptional reasons in this case for doing so.
32. I have not attached the suggested condition (13 within the Statement of Common Ground) that seeks to prevent the infiltration of surface water into the ground without consent as this would be wholly unachievable and therefore unreasonable. It seems to me that the subsequent conditions (15 - 17 within the Statement of Common Ground) would be capable of achieving its objectives to avoid water pollution.

Conclusion

33. In light of the above, the appeal is allowed.

Michael Boniface

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

Reason: In pursuance of Section 92(2) of the Town and Country Planning Act 1990.

- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.

Reason: In pursuance of Section 92(2) of the Town and Country Planning Act 1990.

- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.

Reason: In pursuance of Section 92(2) of the Town and Country Planning Act 1990.

- 4) Applications for the approval of reserved matters shall be in general conformity with the design principles contained within the Design and Access Statement, the Illustrative Masterplan (2951-C-1005-SK-H), Landscape Strategy Plan (CSA/3604/112-A) and Secondary Access Drawing (5407.003 Rev D).

Reason: To clarify the terms of the permission and ensure a suitable form of development.

- 5) Prior to or as part of the first submission pursuant to condition 1, a scheme detailing the phasing of the construction of the development including the means of access, layout of buildings, car parking and servicing arrangements, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.

Reason: In the interests of highway safety and to protect local living conditions.

- 6) No development shall commence in any phase until a Construction Environmental Management Plan detailing how the woodland, habitats and hedgerows within and surrounding the site will be protected during the construction phase. This shall also include details of appropriate fencing to restrict access into key ecological areas, information on any timing restrictions and measures to prevent damage to sensitive ecological habitats. The development shall be carried out in accordance with the approved Management Plan.

Reason: To safeguard protected species and protect the biodiversity of the local area.

- 7) Prior to the commencement of development in any phase hereby approved, arrangements for the management of all construction works for that particular phase shall be submitted to and approved in writing by

the Local Planning Authority. The management arrangements to be submitted shall include (but not necessarily be limited to) the following:

- i) The days of the week and hours of the day that the construction works will be limited to;
- ii) Procedures for managing all traffic movements associated with the construction works;
- iii) Procedures for notifying local residents as to the ongoing timetabling of works, the nature of the works and their likely duration, with particular reference to any such works which may give rise to noise and disturbance; and
- iv) The specific arrangements for the parking of contractor's vehicles during construction and any external storage of materials or plant.

The development shall be undertaken in full compliance with the approved details.

Reason: To protect local living conditions.

- 8) None of the dwellings shall be occupied until the following works have been undertaken:

- i) Footway/cycleway along the eastern side of Hermitage Lane between Barming Station and Chapelfield Way and to include a link to the public right of way adjacent to Hermitage Quarry including a pedestrian crossing facility on Hermitage Lane as shown in principle on Drawing 5407.003 rev D;
- ii) Improvement scheme for the junction of the A20/Hermitage Lane as shown in principle on Drawing 004-SK-004 Rev A;
- iii) Primary access to be provided as shown in principle on drawing number 5407.005 Rev C; and
- iv) Secondary access to be a left in - left out only design as shown in principle on Drawing number 5407.003 Rev D but to include running lanes of 3.5m minimum width each side of the proposed central island.

Reason: To ensure the local highway network can adequately accommodate the traffic generated by the development.

- 9) The details submitted in pursuance of Condition 1 shall show land, reserved for parking. None of the buildings shall be occupied until this area has been provided, surfaced and drained in accordance with the approved details.

Reason: To ensure that suitable parking provision is made in the interests of highway safety.

- 10) None of the dwellings shall be occupied until details of a scheme to install electric vehicle charging points within the development has been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in strict accordance with those details prior to the occupation of the dwellings within the site that are to be equipped with such a charging point.

Reason: To support sustainable travel choices.

- 11) No dwellings shall be occupied until details of secure cycle storage provision for all of the proposed dwellings have been submitted to and

approved in writing by the Local Planning Authority. The approved cycle storage facilities shall be provided prior to the occupation of the dwellings they would serve and retained at all times thereafter.

Reason: To support sustainable travel choices.

- 12) Prior to or as part of the first submission pursuant to condition 1, a scheme detailing the layout of roads, footpaths, other means of access, communal car parking and the lighting and the drainage of those areas shall be submitted to and approved in writing by the Local Planning Authority. The development will be carried out in accordance with the details approved.

Reason: In the interests of highway safety and to ensure suitable access.

- 13) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated by a piling risk assessment that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reason: To avoid water pollution.

- 14) Development shall not commence in any phase until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The detailed drainage scheme shall be based on the Flood Risk Assessment and Outline Sustainable Drainage Strategy prepared by Stantec (October 2020) and shall demonstrate that the surface water generated by this 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 site without an increase to flood risk on or off-site. The drainage scheme shall also demonstrate (with reference to published guidance) that:
- i) silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters; and
 - ii) appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

Reason: To prevent flooding and ensure water quality.

- 15) No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The Report shall demonstrate the suitable modelled operation of the drainage system where the system constructed is different to that approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the

critical drainage assets drawing; and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

Reason: To prevent flooding and ensure water quality.

- 16) Prior to the commencement of the development in any phase details of the proposed means of foul and surface water sewerage disposal have been submitted to, and approved in writing by, the Local Planning Authority and the development will be undertaken in accordance with the approved details.

Reason: To ensure water quality.

- 17) Prior to the commencement of each phase of the development (or part thereof) the relevant approved remediation scheme shall be carried out as approved. The Local Planning Authority should be given a minimum of two weeks written notification of the commencement of the remediation scheme of works.

Reason: In the interests of public safety and human health.

- 18) Following completion of the approved remediation method statement for each phase of the development (or part thereof), and prior to the first occupation of the relevant phase a relevant verification report that scientifically and technically demonstrates the effectiveness and completion of the remediation scheme at above and below ground shall be submitted for the information of the Local Planning Authority.

The report shall be undertaken in accordance with DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination, CLR 11. Where it is identified that further remediation works are necessary, details and a timetable of those works shall be submitted to the Local Planning Authority for written approval and shall be fully implemented as approved. Thereafter, no works shall take place within any phase of the development (or part thereof) such as to prejudice the effectiveness of the approved scheme of remediation.

Reason: In the interests of public safety and human health.

- 19) No development above slab level shall take place until a "bat sensitive lighting plan" for the site has been submitted to and approved in writing by the local planning authority. The lighting plan shall:

- i) Identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory;
- ii) Show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy and these shall be maintained thereafter in accordance with the approved plan.

Reason: To safeguard protected species and protect the biodiversity of the local area.

- 20) Notwithstanding the information submitted as part of the planning application, no development shall commence above ground level until

further details of reptile mitigation have been submitted to and approved by the Local Planning Authority and the development shall be undertaken in accordance with the approved details.

Reason: To safeguard protected species and protect the biodiversity of the local area.

- 21) No dwelling within any phase of the development shall be occupied until a Landscape and Ecology Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the LEMP.

Reason: To safeguard protected species and protect the biodiversity of the local area.

- 22) No dwellings shall be occupied until full details of the open space to be provided on site (including amenity space, children's play areas and natural green spaces) along with a timetable for provision and a scheme for future management of the spaces have been submitted to and approved in writing by the Local Planning Authority. The details shall include any fencing and equipment to be installed. The approved scheme shall be fully implemented in accordance with the timetable approved and shall be maintained and retained at all times thereafter.

Reason: To ensure the appropriate provision of open space in accordance with the requirements of policy OS3 of the MDE DPD.

- 23) None of the dwellings within any phase of the development shall be occupied until the necessary noise mitigation measures have been incorporated into those dwellings, their curtilages or the wider site in accordance with details that have first been submitted to and approved in writing by the Local planning Authority.

Reason: To ensure suitable living conditions.

- 24) No development on any new building shall commence until detailed topographical plans and cross-section drawings of the site showing the proposed changes to the ground levels within the site in relation to the existing levels of the site and adjoining land have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in strict accordance with the approved details.

Reason: To ensure an appropriate appearance for the development.

- 25) No development above the ground shall take place until a plan showing the proposed finished floor level of the new dwellings in relation to the ground levels and finished ground levels of the site in relation to the existing levels of the site and adjoining land have been submitted for the written approval of the Local Planning Authority. The works shall be carried out in strict accordance with the approved details.

Reason: To ensure an appropriate appearance for the development and suitable living conditions.

- 26) No development shall take place above ground on any of the dwellings hereby approved until details of all materials to be used externally have been approved in writing by the Local Planning Authority. In order to seek such approval, written details and photographs of the materials (preferably in digital format) shall be submitted to the Local Planning

Authority and samples of the materials shall be made available at the site for inspection. The development shall be carried out in accordance with the approved details.

Reason: To ensure an appropriate appearance for the development.

- 27) The details submitted in pursuance of condition 1 shall be accompanied by a scheme of landscaping and boundary treatment which shall include a tree survey specifying the position, height, spread and species of all trees on the site, provision for the retention and protection of existing trees and shrubs and a date for completion of any new planting and boundary treatments. The approved scheme shall be implemented by the approved date or such other date as may be agreed in writing by the Local Planning Authority. Any trees or plants which within 10 years of planting are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: To protect the character and appearance of the area.

- 28) No works shall commence above ground on any dwelling until a scheme that demonstrates how the dwellings will be designed to reduce energy demands and which shows where renewable technologies will be employed within the development have first been submitted to and approved in writing by the Local Planning Authority. The development will be carried out in accordance with the approved details.

Reason: To reduce the energy demands of the development in accordance with the Framework and the Council's Climate Change Strategy.

- 29) Prior to the commencement of development, the applicant, or their agents or successors in title, shall have secured the implementation of:
- i) archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved in writing by the Local Planning Authority; and
 - ii) following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded and that due regard is had to the preservation in situ of important archaeological remains.

- 30) Prior to occupation of any dwellings, the applicant, or their agents or successors in title, will secure the completion of a programme of archaeological post excavation interpretation and publication work in accordance with a written specification and timetable which has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that results of archaeological investigation are properly assessed and disseminated.

End of Conditions