



Appeal Decision

Hearing (Virtual) held on 1-2 November 2022

Site visit made on 3 November 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2022

Appeal Ref: APP/E2205/W/22/3302116

Land North East of 74 North Street, Biddenden, Kent

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Gladman Developments Ltd against Ashford Borough Council.
 - The application Ref 21/01361/AS, is dated 19 July 2021.
 - The development proposed is 'up to 50 dwellings (including 40% affordable housing), community orchard and allotments, informal public open space, sustainable drainage system, vehicular access point and associated ancillary works'.
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Decision

1. The appeal is allowed and outline planning permission is granted for up to 50 dwellings (including 40% affordable housing), community orchard and allotments, informal public open space, sustainable drainage system, vehicular access point and associated ancillary works at Land North East of 74 North Street, Biddenden, Kent in accordance with the terms of the application Ref 21/01361/AS dated 19 July 2021 subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal relates to an application for outline planning permission. Approval is sought for the access to the site, but all other matters are reserved for future consideration, and I have considered the appeal on this basis, treating all details apart from those relating to the access to the site as illustrative.
3. The Council's appeal statement set out its position that planning permission should be refused, giving 5 putative reasons for refusal. In response to the fourth reason which concerned trees, the appellant submitted an amended Illustrative Masterplan (ref 7896-SK-01 Rev M), together with a corresponding updated Tree Retention Plan (ref 7896-T-02 Rev E) and a Supporting Information for Trees note. The Council has been able to consider this additional information, and the signed Statement of Common Ground ('SoCG') confirms that arboricultural impacts are no longer in dispute and the main parties are agreed that the fourth reason for refusal would be resolved. The main parties also agreed at the Hearing that no one would be prejudiced by the additional information. In this regard, I note that the Masterplan would not be significantly altered by the amendments, and is in any event submitted for illustrative purposes only, showing one way in which the site could potentially be developed. The nature of the application would not be materially changed, and details of any eventual development would remain a matter for future consideration as part of

the reserved matters. In these circumstances, I am also satisfied that no party would be prejudiced by my having regard to the further information and illustrative details submitted, and I have taken them into account.

4. Also during the appeal, the appellant submitted a Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990 ('the UU'). The SoCG confirms that this would resolve the Council's fifth putative reason for refusal which concerned provision for infrastructure and affordable housing. The obligations within the UU were discussed at the Hearing, and a completed UU was submitted shortly after the Hearing closed.
5. Following the close of the Hearing, a decision on an appeal at Front Road, Woodchurch¹ was issued and brought to my attention. As it included consideration of matters which are also material in the context of the current appeal, the main parties were invited to comment on its relevance. I have taken the comments received into account, and while I have also had regard to the decision, I have determined the appeal on the basis of the evidence that is before me, and the individual merits and circumstances of the development that is proposed.

Main Issues

6. The main issues are:
 - a) whether or not the development would be in a suitable location having regard to the scale of the development and the overall spatial strategy for the area;
 - b) the effect of the proposal on the landscape and character and appearance of the area;
 - c) the effect of the proposal on the setting and significance of heritage assets; and
 - d) the effect of the proposal on trees.

Reasons

Location of the Development

7. Policy SP2 of the Ashford Local Plan 2019 ('the ALP') sets out the strategic approach to housing delivery in the area. In line with the Vision, and strategic objectives identified at Policy SP1, it outlines that the majority of new housing development will be at Ashford and its periphery, as the most sustainable location within the Borough, with development in the rural areas of a scale consistent with the relevant settlement's accessibility, infrastructure provision, level of services available, suitability of sites and environmental sensitivity. It states that the housing target will be met through a combination of committed schemes, site allocations and suitable windfall proposals, noting that windfall housing development will be permitted where consistent with the spatial strategy and other policies of the ALP in order to ensure that sustainable development is delivered.
8. The appeal site is to the north of Biddenden, and comprises part of an irregularly-shaped field of improved grassland between North Street and the line of the dismantled Kent and East Sussex Railway. It is not allocated for development, and the proposal would comprise windfall development in the countryside. Policy HOU5 of the ALP is also therefore relevant.

¹ Appeal ref APP/E2205/W/21/3289039

9. The SoCG identifies that HOU5 is a permissive policy, designed to recognise that new housing outside settlement boundaries can make a positive contribution to meeting housing needs across the borough. It states that residential development adjoining or close to the existing built up confines of specified settlements, including Biddenden, will be acceptable providing that certain criteria are met. These include at (a) that 'the scale of development proposed is proportionate to the size of the settlement and the level, type and quality of day to day service provision currently available and commensurate with the ability of those services to absorb the level of development in combination with any planned allocations in this Local Plan and committed development in liaison with service providers'.
10. Policy HOU5 does not define 'proportionate', and I have not been directed to any relevant guidance on this point. Nor have I been directed to any restriction on the size of development that may legitimately be considered a windfall. The scheme for up to 50 dwellings would be larger than the indicative capacity of the majority of sites allocated by the ALP at rural settlements. However, the allocations include site 'S27' for an indicative capacity of 45 dwellings on land to the west of North Street, Biddenden. The development now proposed would not be significantly larger than this, and I consider that it would in itself be a proportionate windfall addition having regard to its size relative to Biddenden.
11. That said, I appreciate that the proposal would not be the only development to come forward at Biddenden since the adoption of the ALP. I saw at my visit that allocated site S27 has been developed as Fullers Way, with dwellings now occupied. The Council also refers to approval for 46 windfall dwellings on other sites, of which 27 remain extant. It was suggested to me that these developments together with the proposal would deliver almost triple the amount of growth allocated at Biddenden during the plan period, and an increase of around 30% in the number of dwellings in Biddenden since the ALP was adopted. Nevertheless, while the increase in the number of dwellings would be fairly large, it would not in my judgement be excessive, and in the absence of any clear guidance or policy or compelling evidence to indicate otherwise, I find it would not be unduly disproportionate in overall number or size terms relative to Biddenden.
12. Furthermore, while the allocations within the ALP may have been supported by a Sustainability Appraisal, they are not expressed as being a ceiling on the number of new homes at any particular settlement. Indeed, the ALP relies on some windfall development alongside allocations to meet housing targets. The fact that the proposal would result in a greater quantum of housing growth at Biddenden than was allocated within the ALP would not in itself result in any policy breach that I find would preclude the proposal, and does not alter my view that the scale of development would be proportionate relative to the village.
13. The Council asserts that the requirement within HOU5 for proportionate growth is intended to manage change at a rate and pace that is appropriate to the relevant settlement. However, while the ALP was adopted relatively recently, it covers the period 2011-2030, and therefore a significant part of the plan period has already elapsed. The Fullers Way development appeared to me to be largely if not fully occupied at the time of my visit. The appellant indicates that the appeal development could deliver dwellings within 5 years, but this would not be immediate as there would be a need to secure approval of reserved

matters amongst other things. As a consequence, there would be further opportunity for the Fullers Way development to already be assimilated within the village before development on the appeal site came forward. The effect of other extant windfalls on the village would also be likely to be moderated given their varied locations and that they would be likely to come forward over different timescales. I acknowledge that new developments can result in tension with existing communities, but given these factors, I see no reason that Biddenden, or its sense of community which I heard was strong, would be overwhelmed by the additional development on the appeal site.

14. Moreover, while the Council commented at the Hearing that the appellant had not provided an assessment of the capacity of local services, there is no substantive evidence before me to demonstrate that the level, type and quality of day to day service provision currently available in Biddenden, or further afield, would be inappropriate to support the proposed dwellings. Subject to the provisions within the UU, I also have no firm reason to find that services would be unable to absorb the proposed development, either alone or in combination with other allocations and committed development.
15. Plainly, Biddenden is not comparable to Ashford or indeed larger towns such as Tenterden in terms of its accessibility. However, it does have some services and facilities including a convenience store with post office, a primary school, a café, a restaurant, a public house, a take-away and a village hall.
16. I am satisfied that these services would be within generally reasonable walking distance of the development. There would also be works to widen the existing footway between the site and Townland Close as part of the proposal, although I note that it would not be possible to widen a section outside 54 North Street which is very narrow and which has two kerbs at different heights.
17. I acknowledge that navigating this part of the route from the site could be awkward for some pedestrians, particularly those with mobility difficulties, pushchairs or children. Be that as it may, it would affect only a short section of the route. The proposal also includes the installation of a pedestrian crossing to the north of this section which would allow pedestrians, including those who may find passing No 54 more difficult, to walk along the west side of the street instead without significant increase to the overall journey distance. I note comments that there would be insufficient space to turn a pushchair or wheelchair on reaching the western footway to the front of 21 North Street. In my experience though, it would not be impractical or unusual for turns to start before reaching the footway such that this would not be a significant hindrance. Based on my observations at my visit, there would also be reasonable visibility along North Street in both directions to either side of the crossing, and I experienced gaps in passing traffic that would reasonably allow time for crossing, albeit that I accept this was only a snapshot.
18. In addition, I saw an existing pedestrian crossing on North Street immediately to the north of Mansion House Close which would offer an alternative crossing point. The footway to the west of North Street is not proposed to be widened, but it is wider than the eastern footway for much of the route. This would provide an additional option for journeys between the site and village centre avoiding the narrow section of footway outside No 54, as well as the section past PK Produce where there is currently no visibly defined footway, and would disperse some of the likely pedestrian movements. While I have considered the

concerns raised by interested parties that journeys on foot would be unsafe, the highway authority are satisfied that there would be suitable access for the development, and I find no compelling grounds to conclude otherwise. I therefore find that there would be a suitable walking environment that would enable and help to encourage occupiers of the site to travel on foot to access services in Biddenden.

19. I appreciate that there would still be some occupiers for whom walking would not be a realistic option to reach services within the village. Occupiers would also need to travel to access other services and facilities including healthcare, secondary schools, employment and more significant shopping, and given the lack of cycle lanes and traffic conditions, cycling is unlikely to be an attractive option to all but the most confident cyclists.
20. However, there are bus services running through Biddenden, and the proposal includes the provision of additional bus stops towards the north of Biddenden which would be likely to encourage travel by bus, for both occupiers of the site and existing residents in this part of the village. I was informed that the 123 bus which currently stops in Biddenden is due to be cut from February 2023, but I have not been made aware of any likely alterations to route 12. This more frequent service runs 7 days a week to destinations including Tenterden, Headcorn and Maidstone. It does not provide direct services to Ashford, but it would be possible to reach Ashford by bus using multiple routes or changing to train services from Headcorn, albeit that I acknowledge this may be somewhat inconvenient discouraging such journeys.
21. Even so, while I accept that walking, cycling and journeys by bus may not meet all needs or be suitable options for all future occupiers, there would nevertheless be potential to access some local services by sustainable travel modes, helping to reduce dependency on private vehicles. Furthermore, paragraph 6.58 of the ALP recognises that some reliance on private vehicles is inevitable in rural locations, and the National Planning Policy Framework ('the Framework') also recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
22. In this context, I find that occupiers of the development would have suitable access to day to day services and public transport as sought by criterion (b) of Policy HOU5. My conclusions in this regard are consistent with those of the Council which has not argued that access to services for future occupiers of the site would be unacceptable.
23. Drawing these matters together, I find that even taken in combination with other allocations and committed developments, the scale of the proposal would be proportionate to the size of Biddenden and the level, type and quality of day to day service provision currently available, and commensurate with the ability of those services to absorb the level of growth. I therefore find no conflict with HOU5(a), and in this specific regard, I find that the development would be a suitable windfall, consistent with the accessibility, infrastructure provision and level of services at Biddenden.
24. Furthermore, other windfall proposals that may come forward at Biddenden or other settlements in future would be assessed according to their merits and individual circumstances and compliance or otherwise with other policy requirements. Accordingly, I am not persuaded that an equivalent uplift in growth relative to indicative allocations at all smaller rural settlements can

reasonably be assumed to follow were the appeal to be allowed. Given the scale of the proposal, the ALP's focusing of development in and around Ashford as the most sustainable location would not be significantly distorted by the proposal. Nor have I been provided with clear evidence demonstrating that development coming forward has already resulted in a meaningful departure from the overall balance of growth in the borough across the ALP period. The argument that the overall spatial strategy would be undermined is not therefore one that I find to be compelling in this case.

25. For these reasons, I am satisfied that even when taken together with other planned and committed development, the scale of the proposal would be proportionate to the accessibility and size of Biddenden and the available services. I consider other effects of the proposal in relation to environmental sensitivities as part of my other main issues below, but having regard to the particular circumstances of the proposal and the evidence before me, I find that it would not harmfully undermine the Council's plan-led strategy for growth. I therefore conclude that the development would be in a suitable location having regard to the scale of the development and the overall spatial strategy for the area. The proposal would accord with Policy HOU5(a), and in this regard, I find no conflict with Policies SP1 or SP2 of the ALP.

Landscape and Character and Appearance

26. The appeal site is not subject to any formal landscape designation, and the main parties agree that the site is not a 'valued landscape' within the terms of paragraph 174 of the Framework. Nevertheless, that does not mean that the site is without landscape value.
27. With reference to the Ashford Landscape Character Assessment 2009, the appeal site is part of Landscape Character Area ('LCA') 13: Biddenden and High Halden Farmlands. This is described as a coherent landscape, with a consistent pattern of elements which include a traditional pattern of broadleaf and hornbeam coppice woodlands and hedgerow enclosed fields, frequent oak trees within woodland or as mature trees within hedgerows, and frequent field ponds and narrow streams. The belt of trees marking the line of the dismantled Kent and East Sussex Railway is also noted as a feature of the landscape, and other key characteristics include the undulating landform and the historic settlements of Biddenden and High Halden situated around distinctive churches. Busy A roads with ribbon development are noted as providing an urbanising effect, and further detractors including unsightly gateways, field segregation and light commercial development along major roads have resulted in some change to the rural character of the landscape. Nevertheless, the woodland blocks, hedgerows and the undulating landform help to contain the extent of visual intrusion. Overall, the condition and sensitivity of the landscape are both described as moderate.
28. The appeal site is part of a large open field. The appellant indicates that it formerly comprised smaller fields with hedgerows which have since been lost. Even so, it is bound partly by hedgerows and the belt of trees marking the line of the dismantled Kent and East Sussex Railway which provide for a strong sense of enclosure, and it includes a number of field ponds and mature Oak trees. These are representative characteristics of the LCA, and are in many cases appreciable including from the public right of way (AT12) which crosses the southern part of the site. Based on my observations at my visit, the site is not of particular scenic quality. Even so, its representative landscape features together with the

openness of the site confer a generally rural quality which provides a pleasant landscape setting to this part of Biddenden, marking an abrupt transition from the village to the countryside and contributing to its distinctive character.

29. The layout, appearance, scale and landscaping of the development are reserved for future consideration. Nevertheless, the dwellings together with their accompanying gardens and parking, the new vehicular access to the site from North Street, features including the roads within the site, the proposed surfacing of AT12 and managed open spaces and lighting, as well as associated activity would all be urbanising. Although illustrative, the masterplan shows that key landscape features including the existing ponds and significant trees could be retained, and that new routes within the site would afford the public closer access to them. Be that as it may, the transformation from an agricultural field to what would essentially be a housing estate would fundamentally change the nature and overall character of the site around these features, altering how they would be perceived and isolating them somewhat from their landscape context. In effect, the proposal would create a new settlement edge to Biddenden that would spread this part of the village into the countryside, causing harm to the landscape character of the area and to the setting of Biddenden.
30. In addition, part of the hedgerow along the site frontage to North Street would be removed to facilitate the access and necessary visibility splays. The Biddenden Design Statement 2003 ('BDS') highlights hedgerows as important in helping to maintain the essentially rural aspects of the approach roads to the village, and while the appellant proposes some replacement planting, there would be a break in the hedgerow at the access. The proposal also includes additional street lighting, bus stops and widened footways to North Street which would alter this approach to or from Biddenden past the site. However, North Street is a fairly busy A-road, and the section from the village up to and past the site already includes existing footways, a number of accesses and street furniture and features such as signage and telegraph poles. The additional features and alterations to North Street would not therefore stand out, and I find that they would cause only very minor urbanisation and limited detriment to the character of the route.
31. Moreover, the Illustrative Masterplan indicates a relatively low density development, with significant areas of open space and an irregular layout incorporating varying road widths and courtyard arrangements that would draw on the rural character of Biddenden and its surroundings. The Council has not argued that the development would be inconsistent with local character and built form so as to conflict with Policy HOU5(f)(iv), and I have no firm reason to take a different view. Indeed, I can see no reason that it would not be possible to bring forward a sympathetic form of development in keeping with local typologies that would assimilate well with the existing settlement. Furthermore, the proposal would not be unduly large relative to the existing form of Biddenden, and in my judgement, the overall settlement pattern would not be harmfully distorted. The Council also agreed at the Hearing that there would be appropriately sized and designed landscape buffers to the open countryside as sought by ALP Policy HOU5(f)(iii). The landscape buffers and open space within the site would provide for a more gradual transition between the new edge to this part of the settlement and the surrounding countryside than currently exists, and the effect of built form would further be softened over time as new planting on the site matured. The effect of the development on the landscape character would also be localised.

32. Given these factors, I consider the Council's suggestion of a major adverse effect on landscape character to overstate the harm. In my assessment, the proposal would have a moderate adverse effect on the landscape character of the site and immediate context, and no more than a minor adverse effect on the wider LCA.
33. In terms of visual effects, the appellant's Landscape and Visual Appraisal ('LVA') identifies that views of the development would be likely to be restricted to a relatively limited visual envelope. There would be clear public views from right of way AT12 as it crosses the site, and while views here are already influenced somewhat by development on the settlement edge, the proposal would result in housing development to either side of the route. Accordingly, the impression would be of travelling through part of the village, rather than the sense of a transition from the village into its rural surroundings that currently occurs when heading east on AT12 as it crosses the site. This would be an unwelcome change that would detract from users' experience of this part of the route. However, only a short section of the right of way would be affected, with dense vegetation along the line of the dismantled railway providing for considerable screening of the development in views from AT12 beyond the site boundary to the east. The indicated set back of the buildings from the route and new planting that could provide screening would further help to provide both a physical and visual buffer to the development, reducing its visual impact. I have no reason to doubt that the route is well-used and valued locally, but I consider given these factors that the appellant's assessment of a moderate adverse visual effect on users of the right of way to be reasonable overall.
34. There would be some further public views of the development on the site from North Street, but these would be filtered and partly screened by vegetation, and while there would be a break in vegetation at the site access, views would be transient and fairly short-lived. In addition, the development would be seen together with existing buildings on North Street and at the edge of Biddenden so that I agree with the LVA that the visual effect would be no more than minor adverse. Other public views of the development would be more distant, and generally filtered by vegetation such that visual effects would be limited.
35. In addition to public views, the development would be visible from nearby dwellings, with properties adjoining the site to the south and west most closely affected. I note that some of these dwellings, including 62 and 62A North Street and Forgefield House, currently have particularly clear views onto the site given no or only limited intervening vegetation. The removal of hedgerow to the North Street frontage would also mean that some properties opposite which face the access would have direct views into the site. Having regard to the potential for landscaping and subject to an appropriate scale and layout of development as part of reserved matters, I agree with the LVA that the effect on these receptors would be moderate/major adverse, albeit that there would be some slight improvement in the longer term as new planting matured and softened the development. There would be some views from other dwellings, but these would be more distant, and often with screening provided by vegetation which would help to reduce visual effects.
36. Overall then, I find that the change from an open field to a housing development would inevitably erode the rural character and appearance of the site and the setting of Biddenden. The associated loss of hedgerow and highway works on North Street would also result in some, albeit very modest, urbanisation of this route. However, I am satisfied that development on the site could be

sympathetically designed and arranged to integrate well with Biddenden and provide a new village edge with a sensitive transition to the countryside. In addition, the harm would be localised, and the site is well contained such that visual effects would be limited in extent, experienced mainly by users of AT12 and the closest neighbouring dwellings. For these reasons, I find that it would not detract significantly from the character or appearance of the village or its attractiveness to visitors.

37. Nevertheless, the proposal would cause some moderate harm to the landscape and the character and appearance of the area. To that extent, I conclude that it would conflict with Policies SP1, ENV3a and ENV5 of the ALP insofar as they include requirements seeking broadly the conservation or enhancement of the natural environment including landscapes and landscape features which help to distinguish local character. It would also conflict with requirements within Policies SP6 and HOU5 broadly for development that sits sympathetically within the wider landscape and that responds positively to character, distinctiveness and sense of place and to the setting of the nearest settlement. The proposal would additionally be contrary to guidance in the Landscape Character Supplementary Planning Document 2011 which generally seeks development that makes a positive contribution to the landscape, and to the BDS which seeks the preservation of the gateways into Biddenden and the compactness of the village.

Heritage Assets

38. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be given to the desirability of preserving the setting of listed buildings. There is no similar statutory protection for the setting of conservation areas, but the Framework requires an assessment of the significance of any heritage assets affected by development, including any contribution to that significance made by their setting.
39. In this context, the glossary to the Framework outlines that significance concerns the value of a heritage asset because of its heritage interest. It further defines setting as the surroundings in which an asset is experienced, noting that its extent is not fixed, and that elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.

Listed Buildings

40. Listed buildings in the vicinity of the appeal site include The Laurels, 41 North Street and 66-68 North Street, all of which are Grade II listed.
41. The Laurels adjoins the appeal site to the south west. It is a two-storey dwelling with distinctive fishscale tiles, and an attic within a half-hipped tiled roof. I agree with the appellant's Archaeology and Built Heritage Assessment that its significance derives primarily from its historic fabric and its historic and architectural interest as a 17th Century building which sits on the outskirts of Biddenden. In terms of its setting, some further significance derives from the building's relationship with North Street and its associated gardens. There is no firm evidence before me to indicate a functional relationship between the building and the appeal site. Even so, the site offers an attractive rural setting, and illustrates the building's historic position at the edge of the village. I therefore find that the site makes a modest contribution to the significance of The Laurels as part of its setting. There are also some views of the rear of the

listed building from within the site, albeit filtered by vegetation, which allow an appreciation of the asset and which are likely to be reciprocated.

42. To the south of The Laurels is 66-68 North Street. The listing description identifies No 66-68 as dating to 1750, and including two storeys and attics and a half-hipped tiled roof with two hipped dormers. As with The Laurels, I find that the significance of the listed building derives primarily from its historic fabric, and its historic and architectural interest. Some further significance derives from its relationship with North Street and its associated gardens which provide the immediate setting to the building. The appellant considers that the appeal site does not contribute to the significance of No 66-68 as part of its wider setting, pointing to the gardens of neighbouring dwellings which provide for separation between them and the lack of a historic functional connection. Despite the intervening gardens though, my impression was still that No 66-68 sits on the periphery of the village. Based on my observations at my visit, there is also some intervisibility between it and the site, though glimpsed and fairly limited. As part of the rural setting around the village, I find in this context that the site does make some contribution to the significance of No 66-68, albeit that this is more limited than in the case of The Laurels having regard to the building's greater detachment from the site.
43. The change of the appeal site to a housing development would erode the longstanding rural setting to the rear of The Laurels and No 66-68, and The Laurels would no longer have a direct relationship with the surrounding countryside. The change would be appreciable from both the site and the listed buildings themselves and would detract from their setting, although the effect would be less pronounced in relation to No 66-68 given that there is some intervening development already.
44. In addition, the removal of hedgerow to create the access to the site would be likely to increase views between the appeal site and 41 North Street opposite. As with The Laurels and No 66-68, the evidence before me indicates that the significance of No 41 derives primarily from its historic fabric and its historic and architectural interest as an 18th Century dwelling including unpainted weatherboarding above a red brick base. More limited significance derives from its setting, both its immediate plot and to a lesser degree the generally rural character of its wider surroundings beyond the village, including the appeal site. The development on the site, as well as activity associated with it, would be apparent from No 41 and in views of it from its surroundings, and would diminish the building's rural setting.
45. However, while the proposal would result in a considerable change to the appeal site which forms part of the setting of The Laurels, No 66-68 and No 41, the setting makes only a small contribution to the significance of each of the listed buildings, and the site is in each case only part of that setting. No clear evidence has been presented indicating any direct functional relationships between the listed buildings and the site. Moreover, the proposal would not affect the form or fabric of the buildings from which they derive the majority of their significance. Nor would their associated gardens or their relationship with North Street which provide for the buildings' immediate settings be affected.
46. As a result, I find that the change to the setting of the listed buildings brought about by the development would have only a modest effect on their heritage interest. Their significance would not be fundamentally diminished, and I agree

with the main parties that the harm to the significance of each of The Laurels, No 41 and No 66-68 would be less than substantial in the terms of the Framework. The Framework does not require a further assessment of the degree of harm within the 'less than substantial' category, but the Planning Practice Guidance recognises that the extent of harm within a category may vary. Having regard to the above factors, the harm to the significance of each of the affected listed buildings would in my assessment be limited, and towards the lower end of the range, with only a marginal effect on the significance of No 66-68 given that the development would not form part of the immediate context of this building.

Biddenden Conservation Area

47. There is no published Conservation Area Appraisal for the Biddenden Conservation Area ('CA'), but I agree with the main parties' position in the SoCG that its significance derives from its historic layout, collection and interrelationship of historic buildings and spaces that it contains. I also consider that it derives some significance from its setting which includes agricultural land providing historic context for the village as a settlement within a predominantly rural landscape.
48. Intervening development and screening by vegetation significantly limit visibility between the CA and the site which does not adjoin its boundary. However, the contribution that the site currently makes to the rural setting of Biddenden CA is evident on approaching or leaving the village via North Street or on foot along right of way AT12, even if they are not directly seen together. The proposal would urbanise part of this rural setting, but the effect on the setting of the CA as a whole would be small and localised. The main parties agreed at the Hearing that the resulting harm to the significance of the CA would be less than substantial, and at the lowermost end of the spectrum, and I concur with this assessment.

Heritage Conclusions

49. There are other listed buildings present in the wider vicinity of the appeal site, and the Council's evidence identifies that the adjacent dismantled Kent and East Sussex Railway Line is a non-designated heritage asset. From the evidence before me, I agree with the main parties and find that the significance of these assets would not be adversely affected by the development.
50. However, there would be less than substantial harm to the significance of the Biddenden CA, and to the significance of The Laurels, 41 North Street and 66-68 North Street listed buildings. In each case, the harm would be less than substantial, and at the lower end of the less than substantial range, but would nevertheless be contrary to Policies SP1, SP6, HOU5 and ENV5 of the ALP insofar as they include requirements broadly seeking the conservation and enhancement of heritage assets and the contribution that they make to local character. However, Policy ENV13 and paragraph 202 of the Framework set out a requirement to weigh the harm against the public benefits of the proposal. I return to these matters in my planning balance below.
51. The Council's putative reason for refusal additionally referred to ALP Policy ENV14, but this applies to development within conservation areas, and the Council confirmed at the Hearing that it was not relevant to the proposal.

Trees

52. The boundaries of the appeal site include fairly extensive tree cover, and there are further groups of trees and individual specimens standing within the site. Many of these are protected by Tree Preservation Order. The appellant's Arboricultural Assessment additionally indicates that 4 individual trees would be regarded as 'veteran' trees which are identified by the Framework as an irreplaceable habitat, and that there are numerous aged and future veteran trees which are in relatively good condition for their age.
53. The vast majority of trees at the site would be retained and incorporated into the development. The Council had initially raised concerns that the proposal did not take sufficient account of the retained trees, including the veteran trees. However, the SoCG confirms that the revised Illustrative Masterplan and associated Tree Retention Plan and Supporting Information for Trees that were submitted during the course of the appeal demonstrate how development could be laid out without undue impact on trees. Accordingly, the Council did not maintain its objection in relation to the Arboricultural impacts of the proposal.
54. At the Hearing, the Council advised that there were still some areas of concern, but acknowledged that it would be able to fully assess the relationship of any development brought forward with trees at reserved matters stage. From the information before me, and noting that the proposal is for 'up to' 50 dwellings, I have no firm reason to find that it would not be possible to bring forward a reserved matters scheme that would respond appropriately to trees on the site. A number of planning conditions have also been suggested to secure additional measures that would further safeguard trees.
55. Subject to these conditions, I conclude that trees would not be unacceptably harmed by the proposal. In this regard, I find no conflict with requirements within Policies ENV3a, ENV5 or HOU5 of the ALP to broadly protect the natural environment and landscape features which help to distinguish the character of the local area, and for development that responds appropriately to trees and woodland. The proposal would also accord with the Framework insofar as it recognises the importance of trees and woodland as part of natural and local environments and seeks generally to avoid the loss or deterioration of irreplaceable habitats.

Planning Obligations

56. The appellant's UU includes obligations made to the Council and Kent County Council. The evidence before me includes a Compliance Statement prepared by the Council which sets out how each of the obligations within the UU would meet the tests within the Community Infrastructure Levy Regulations 2010 ('CIL Regulations') which are also reflected within the Framework. These tests require that obligations must be necessary to make the development acceptable in planning terms, be directly related to the development, and be fairly and reasonably related in scale and kind to the development.
57. At Schedule 2, the UU includes obligations providing for 40% on-site affordable housing, 20% of dwellings as accessible and adaptable dwellings meeting Building Regulations standard M4(2) and 5% of dwellings as self-build and custom build units. These are requirements identified within the development plan to meet identified needs in the area, and thus these obligations are

necessary. They would also be directly related to the development proposed and fairly and reasonably related in scale and kind to it.

58. Obligations that would secure the provision and future management and maintenance of open space and allotments on the site are set out in Schedules 2, 4 and 5 of the UU. Interested parties have suggested that there are existing unused allotments in Biddenden, but the allotments are included within the description of development proposed, and are an important element of the green infrastructure on site. Provision for allotments is also generally supported by the ALP, and is specifically required under Policy COM2. Having regard to the information before me including the CIL Compliance Statement, I find that the obligations relating to open space and allotments would be necessary to ensure that needs generated by the development would be met and to comply with requirements within the ALP, and that they would be directly and reasonably related to the development.
59. Schedules 2 and 3 of the UU further provide for financial contributions towards healthcare, indoor sports, outdoor sports, strategic parks, play areas, footpath improvements, community learning, libraries, youth services, social care and a monitoring fee, as well as an informal natural green space contribution in the event that on-site open space provision had not been approved by the Council before development commences. I have no reason to find that the formulae and charges on which these contributions are based are unsound. The CIL Compliance Statement and the evidence of Kent County Council and the NHS Primary Care Team offer further explanation and justification for the contributions sought, detailing why the contributions are necessary as a result of the development and how they would be spent. I have no firm reason to reach a different view, and am satisfied that they would in each case be necessary to make the development acceptable in planning terms, that they directly relate to the development, and fairly and reasonably relate in scale and kind to the development.
60. In light of the supporting information and evidence that is before me, I find that each of the obligations would meet the tests set out in the CIL Regulations and the Framework, and can be given weight. I have taken them into account.
61. During the Hearing, a request was made on behalf of John Mayne Church of England School seeking a financial contribution intended to be used towards a new school hall. I was advised that the school is in the process of joining an academy trust, but it remains under Kent County Council at the current time, and the County Council as the relevant education authority has not identified a requirement for additional education capacity that would be necessary as a result of the development. It is likely that the proposal would generate some additional pupils. However, while the school indicates that there have been increases in pupil numbers over the last 4 years and that there are only 4 available places in the infant classes for 2022/23, I have no substantive evidence to show forecast pupil numbers for future years. Nor is it clear whether the available places are or would be filled by pupils from within the school catchment. Accordingly, I find no compelling basis to depart from the County Council's position, and I am unable to conclude that the contribution sought by the school would be necessary or directly related to the development as would be required by the CIL Regulations. The absence of an obligation securing education contributions does not therefore weigh against the proposal. Because any obligation would need to meet all 3 tests and it could not

therefore alter the outcome, it is not necessary for me to also consider whether the requested contribution would be fairly and reasonably related to the development in reaching this view.

62. I have also considered requests by the Parish Council for provision by the development for possible works relating to accessibility, connectivity and active travel in Biddenden that it suggests could benefit all residents. However, I have found as part of the main issues that the proposal would provide for suitable access to meet the requirements of occupiers of the development, and there is no substantive evidence before me to show that additional works would be necessary as a consequence of this development or directly related to it. The requests would not therefore meet the tests set out in the CIL Regulations, and are not matters that weigh against the proposal.

Other Matters

63. The proposal would result in the loss of agricultural land classified as Grade 3 (good to moderate quality), but given the relatively small area that would be lost and consequent limited effect on overall available land, I agree with the Council that this would not weigh significantly against the proposal.
64. An area of land including the appeal site was considered for allocation in the ALP. The Sustainability Appraisal supporting the ALP set out that it was not considered suitable for allocation, but that was on the basis of a larger site area. I have in any event considered the appeal having regard to the specific circumstances of the development now proposed and the evidence before me.
65. The development would generate traffic, but the substantive evidence before me indicates sufficient capacity within the highway network to accommodate flows so that there would not be a significant increase in congestion, including when accounting for development in adjacent authority areas. The proposed access arrangements are also supported by road safety audit information, and necessary visibility splays can be achieved. Further information on the design of highway works including the proposed crossings and bus stops would be required by a planning condition enabling the detail to be considered by the Council with input from the highway authority, and these works would also be subject to separate approval by the highway authority. From the information before me, I consider that the detailed designs could deliver sufficient footway width to allow pedestrians to pass anyone waiting at the bus stops. Any obstruction to North Street from buses waiting at the stops would be temporary, and visibility towards the stops, and for anyone crossing to reach them, would be reasonable. I note that the pedestrian crossing proposed to the north of the site would not connect to an existing footway along the west side of North Street, but it would provide a link for the closest dwellings opposite to the new southbound bus stop, and there is an existing crossing further to the north which provides a connection close to the junction of Fullers Way.
66. Kent County Council as the highways authority considers that the access arrangements and pedestrian routes would be suitable, and has not objected to the proposal. I give significant weight to its position, and from the evidence before me find no firm reason to disagree with its views nor to conclude that there would be a requirement for additional highway works to those that have already been identified, such as a roundabout or traffic lights. Accordingly, I am satisfied that there would not be unacceptable impacts on highway or pedestrian safety, nor on the efficient operation of the highway network.

67. I note comments referring to existing pressure on local services and infrastructure. However, the UU includes provision towards local services that would be necessary to address needs generated by the development, and planning conditions would secure details of foul water infrastructure and telecommunications to serve the development. Southern Water has not objected to the proposal, and refers to a new infrastructure charge that would go towards providing any reinforcement to the network required to serve the development. It would also be able to plan and implement any necessary network upgrades alongside development given that there would be a requirement on the developer to provide information on anticipated build and occupation rates. There is also no detailed evidence that providers of other utility services would be unable to make provision to adequately supply the development without unacceptable impacts on existing supplies in the area.
68. The proposal is accompanied by a Flood Risk Assessment and updated drainage information which outlines proposals for how surface water would be managed within the site, taking account of allowances for climate change. The Lead Local Flood Authority is satisfied with the principles identified, and planning conditions would require further details of measures to manage surface water and secure their implementation. Subject to these conditions, I consider that the development would make adequate provision for drainage and would not unacceptably increase flood risk.
69. The proposal is also supported by an Ecological Appraisal. This includes details of protected species surveys undertaken, as well as measures to mitigate the effects of development and enhance biodiversity, and Kent County Council Ecological Advice Service has advised that sufficient ecological information has been provided. I have no compelling reason to find differently, and subject to planning conditions to require further details and implementation of mitigation and enhancement measures, I find that there would not be unacceptable harm to wildlife or biodiversity.
70. Occupiers of neighbouring dwellings would have views of the development, but subject to new buildings being appropriately scaled and located as part of the reserved matters, I am satisfied that suitable relationships could be achieved to ensure they would not experience unacceptable loss of light, outlook or privacy. In view of the nature of the proposal as a residential development and its scale and relationship with nearby properties, I also consider that it would be unlikely to result in noise or disturbance that would cause meaningful harm to neighbouring occupiers' living conditions. A planning condition could ensure sensitive design of lighting within the site, and having regard to the relationships with nearby properties and existing and potential new boundary treatment, I consider there would not be unacceptable light intrusion from the site or vehicles on it. Outside of the site, noise or light associated with the likely degree of additional traffic would also be unlikely to be noticeable against the existing background levels so as to detract from living conditions in the area. There would be potential for disturbance during the construction period, but any effects would be short-term, and could be mitigated by careful construction management with details secured by a planning condition.
71. The proposal includes affordable housing in accordance with the requirements of the ALP. Under the provisions within the UU, there would be a requirement for an affordable housing scheme to be submitted, including details of

arrangements to ensure that the affordable housing would be affordable for both first and subsequent occupiers.

72. I have taken into account the representations made by interested parties including Biddenden Parish Council, but I am satisfied that none of the other matters raised would result in a level of harm that would justify dismissal of the appeal, either individually or collectively, and they do not alter my findings on the main issues.

Benefits of the Proposal

73. The Council is currently unable to demonstrate a five year supply of deliverable housing. Its last published supply position was the Five Year Housing Land Supply Update July 2021 ('5YHLSU') covering the period 2021 - 2026 which indicated a 4.54 year supply. However, in a March 2022 decision on an appeal in Tenterden², the supply was found to be about 3.5 years. The main parties agree that this finding is material to the determination of the current appeal.
74. The lower supply figure found in the Tenterden decision was in part a consequence of the effect on housing delivery timescales of advice provided by Natural England, initially in July 2020, identifying that designated habitats sites at the Stodmarsh Lakes are in unfavourable condition. To prevent further deterioration in their condition, the advice essentially resulted in a requirement for development including overnight accommodation located within the Stour catchment which feeds the Stodmarsh Lakes sites to demonstrate 'nutrient neutrality'. Areas affected by the advice include the urban area of Ashford and its surroundings which are the focus for the majority of growth anticipated by the ALP.
75. The evidence before me highlights that achieving nutrient neutrality through on-site mitigation is challenging for many housing proposals. The Council is therefore working with partners to bring forward a strategic Stodmarsh Mitigation Strategy which is expected to include a credits-based approach whereby development would make financial contributions towards off-site mitigation in the form of new wetlands. As part of the appeal, it outlined the progress that has been made in delivering the Mitigation Strategy, including in respect of the acquisition of land for wetlands, bringing forward a planning application for them, and production of a Supplementary Planning Document ('SPD') which will include details of the approach to financial contributions from development. It expects planning permission for the wetlands to be secured in summer 2023, and considers that works could start soon after so that summer 2023 would be the first of two growing seasons likely to be necessary to allow sufficient reed growth for the wetlands to be operational.
76. However, I heard that negotiations and discussions across many of the strands of the Mitigation Strategy are still ongoing, and there remains much detail that needs to be worked out. I appreciate that the Council is also pursuing other options for funding of wetlands, and that there may also be measures that could accelerate the implementation of the mitigation solution or availability of 'credits' to new development. In the absence of any firm details though, I cannot be sure that this will come to fruition.

² Appeal ref APP/E2205/W/21/3284479

77. Based on all that I have seen and heard, I consider the timetable presented by the Council to be optimistic, particularly in relation to being able to deliver the wetlands on-site. Even if progress is made as hoped, the 5YHLSU suggested that planning permissions for affected developments could be granted from Summer/Autumn 2022. The timescales now anticipated suggest a delay of nearly a year beyond this. Moreover, I share the appellant's concerns that granting planning permissions relying on strategic mitigation without 'Grampian' style conditions or obligations restricting occupation until the wetlands were operational may not offer sufficient certainty that effective mitigation would be in place ready to address the effects of development on the integrity of the Stodmarsh sites. It also seems to me that developers may have concerns about building out development on site until they had sufficient reassurance that the wetlands would be operational by the time dwellings were ready for sale. I further cannot be sure from the information presented that the level of financial contributions that would be sought from development would not affect the viability of sites or developers' decisions as to bringing them forward. These factors could affect actual delivery timescales, even once it was possible for planning permissions to be granted.
78. The Council advised at the Hearing that it considers the supply to be somewhere between 3.5 and 4.54 years. However, it has not presented substantive evidence of an alternative calculation based on the sites that it considers could deliver housing within a five year period so as to demonstrate a different supply position to that found in the Tenterden appeal decision. While I also note that the Government is reviewing guidance on matters including housing supply in recognition of the constraint imposed by nutrient pollution, there is a lack of firm detail to adopt any change in approach at the current time.
79. I do not doubt the Council's commitment to delivering a solution to the Stodmarsh constraint, and acknowledge the progress that has been made in bringing forward strategic mitigation. From the information that is before me though and for the reasons set out above, I consider that the supply is likely to remain some way below the 4.54 years suggested in the Council's 5YHLSU.
80. In any event, the shortfall in housing supply is material. Irrespective of the precise figure, the proposal for up to 50 dwellings on the site would make a relatively small, but nevertheless important contribution to reducing the deficit. The proposal would not in itself significantly alter the position, but having regard to the Framework which includes objectives to significantly boost the supply of housing, I consider this would attract very significant weight as a public benefit of the proposal, even if the supply was closer to 4.54 years.
81. In addition, the ALP acknowledges the inability of the housing market to fully meet the identified requirements for affordable housing. The provision of up to 20 affordable dwellings of a mixture of tenures would be an important public benefit of the proposal, and I give it significant weight.
82. There would be direct and indirect economic benefits of the development, both short-term during construction and longer-term on occupation. These would include employment opportunities in construction and the supply chain, and expenditure by residents which would help to support local services and facilities and contribute to the economy. These may not be unusual benefits, but that does not mean they are of no value. However, employment opportunities would be largely temporary, and there is no clear evidence before

me to identify a particular requirement for support to sustain existing facilities and services in the area. Given these factors, I give moderate weight to the economic benefits of the proposal.

83. The appellant refers to New Homes Bonus payment to the Council as an economic benefit, but I have not been provided with evidence that any benefit arising would be directly related to the development. Furthermore, increased Council tax receipts would reflect additional demand on services by the development. These are not therefore matters to which I afford weight in favour of the proposal.
84. The additional bus stops on North Street, and improvements to footpaths and right of way AT12 would offer improved safety and accessibility for future occupiers of the site, but would also be a benefit to the wider community who may also rely on these routes, and I give moderate weight to this benefit. I also give moderate weight to the biodiversity net gain that the development could support through measures including new planting.
85. Green infrastructure including formal and informal open space on the site could be of value to the existing community given that this would include areas that are currently inaccessible to the public. However, the provision would in part be required to make the development acceptable in planning terms, and I give limited weight to this benefit.
86. The development could support a biodiversity net gain including through new planting, but this would depend somewhat on the detail of reserved matters and enhancement measures which would be secured by condition. The extent of any gain is not therefore currently clear which limits the weight that I afford to this benefit.
87. Through the UU, the proposal would make financial contributions to a range of local services. These obligations are necessary to mitigate the effects of the development proposed, but insofar as they would allow for improvements to facilities which would be available to the existing community, there would be some benefit. This would be minor though, and I afford it only very limited weight.

Planning Balance

88. I am required to determine this appeal having regard to the development plan, and to make the determination in accordance with the development plan unless material considerations indicate otherwise.
89. In this case, the Council is unable to demonstrate a five year supply of deliverable housing. I appreciate that the Stodmarsh constraint on delivery was not known about at the time that the ALP was adopted, and so could not be addressed through the plan-led process. I also acknowledge that the effect of the constraint is likely to be temporary in duration. Even so, the assessed need for housing in the borough persists and is not being fully met, and in light of the current lack of a five year housing land supply, the Framework indicates that the policies which are most important for determining the application are deemed to be out-of-date. The presumption in favour of sustainable development test set out in paragraph 11(d) of the Framework is consequently engaged and provides that planning permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of

particular importance provide a clear reason for refusing the development, or (ii) 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.

Heritage Balance

90. I have found that the proposal would cause less than substantial harm to the significance of listed buildings at The Laurels, 41 North Street and 66-68 North Street. The Framework outlines that great weight should be given to the conservation of designated heritage assets, and the harm in each case attracts considerable importance and weight. In addition, there would be less than substantial harm to the significance of the Biddenden CA. While there is no statutory protection for the setting of Conservation Areas, I additionally give great weight to this harm in light of the advice within the Framework.
91. However, the scale of harm to the significance of each of the designated heritage assets would be limited, both individually and collectively. Even giving considerable importance and weight to each instance of harm, great weight to the conservation of the heritage assets and special regard to the desirability of preserving the setting of listed buildings, I find that the total harm would be clearly outweighed by the combined public benefits of the scheme.
92. Accordingly, policies within the Framework relating to designated heritage assets do not provide a clear reason for refusing permission in the terms of Framework paragraph 11(d)(i). This was also the Council's position at the Hearing. In addition, the proposal would not be in conflict with ALP Policy ENV13 which outlines that less than substantial harm to the significance of a designated heritage asset will be weighed against the proposal's public benefits.

Overall Balance

93. I have concluded that the proposal would not harmfully undermine the Council's plan-led strategy for growth, and that the development would be in a suitable location having regard to the scale of the development and the overall spatial strategy for the area. I have also found no unacceptable harm to trees.
94. However, I have found that there would be some moderate harm to the landscape and the character and appearance of the area resulting in conflict with Policies SP1, SP6, HOU5, ENV3a and ENV5 of the ALP. The relevant provisions of these policies are broadly consistent with the Framework, and I have no firm reason to reduce the weight that I afford to the ensuing conflict with them. In addition, the harm would conflict with requirements within the Framework for development that is sympathetic to local character, that adds to the overall quality of the area and that recognises the intrinsic character and beauty of the countryside.
95. I have also identified that the harm to the significance of heritage assets would conflict with Policies SP1, SP6, HOU5 and ENV5 of the ALP insofar as they include requirements broadly seeking the conservation and enhancement of heritage assets and their contribution to local character. These requirements are again broadly consistent with objectives within the Framework, and I afford the conflict with them full weight. However, I have found that the harm would be outweighed by the public benefits of the proposal, such that it would not be contrary to the overall approach of the Framework, or ALP Policy ENV13.

96. The Framework requires that the economic and other benefits of best and most versatile agricultural land are recognised, but I find that the very modest loss of agricultural land would be far outweighed by the significant benefits of the proposal.
97. Taking account of all of the above, I find that the proposal would conflict with the development plan when it is read as a whole. Nevertheless, the adverse impacts of the development would not in my judgement significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development set out in paragraph 11(d) of the Framework therefore applies, and I find that material considerations would outweigh the conflict with the development plan.

Conditions

98. I have considered suggested conditions in light of the discussion and amendments proposed at the Hearing, and against the tests at paragraph 56 of the Framework. Where necessary, I have made minor amendments for clarity, brevity or to ensure compliance with the relevant tests, including to omit unnecessary prescription of details that would be a matter for the Council to consider as part of the assessment of future submissions.
99. I have attached standard conditions relating to the submission of reserved matters and the time limits associated with this (1, 2, 3). I have also included conditions specifying the relevant plans (4) and the maximum number of dwellings (5) for the avoidance of doubt and in the interests of certainty.
100. A condition regarding archaeological investigation (6) is necessary to safeguard heritage assets of archaeological interest. A condition to require a Construction Environmental Management Plan (7) is necessary in the interests of highway safety and the living conditions of nearby occupiers, while conditions regarding the protection and future management of retained trees (8 and 9) are necessary to safeguard these trees and in the interests of the character and appearance of the area. Conditions to require further details of surface water drainage (10) and a verification report (11) are necessary to ensure that flood risk would not be increased. I have also imposed a condition relating to foul drainage (12) which is necessary to ensure that there would be adequate provision to serve the development. Southern Water had also suggested a condition concerning the timing of occupation relative to delivery of required sewerage network capacity, but I am not persuaded that this would be necessary in addition to condition 12 given provisions under other legislation and requirements that would apply to the connection of dwellings to the sewerage network and the timing of development.
101. Conditions regarding lighting design (13) and securing a Landscape and Ecological Management Plan (14) are necessary to safeguard biodiversity, and in the interests of dark skies, neighbouring living conditions and the character and appearance of the area. I have also attached a condition requiring telecommunications infrastructure (15) which is necessary to ensure connections and to comply with the development plan.
102. Conditions relating to the access and routes within the site (16, 17), and the access to the site (18, 19) are necessary in the interests of highway safety. Conditions to secure improvements to the right of way through the site (20),

provision of bus stops (21) and cycle storage (22) are necessary to support sustainable transport choices, while provision of vehicle parking (23) is necessary to ensure adequate provision and in the interests of highway safety. Finally, I have attached a condition to require implementation of noise attenuation measures (24) in the interests of the living conditions of future occupiers of the site.

103. A condition put forward at the Hearing to require development in general conformity with the principles of the Illustrative Masterplan is insufficiently precise as to what would be required, and I agree with the main parties that it would not be necessary. I have not therefore imposed it.

Conclusion

104. The proposal would conflict with the development plan when it is read as a whole, but there are material considerations which indicate that planning permission should in this case be granted other than in accordance with the development plan. I therefore conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) No development shall commence until details of the appearance, landscaping, layout, and scale (hereafter called 'the reserved matters') have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall commence not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved drawings: 7896-A-04 (Location Plan) and 1878-F01 Rev H (Proposed Site Access Arrangement).
- 5) The total number of dwellings on the site shall not exceed 50 dwellings.
- 6) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of:
 - (a) archaeological field evaluation works in accordance with a specification and written timetable which has first been submitted to and approved in writing by the Local Planning Authority; and
 - (b) any safeguarding measures identified in the evaluation as necessary 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 first been submitted to and approved in writing by the Local Planning Authority; and

- (c) a programme of archaeological post-excavation and publication work in accordance with a written specification and timetable which has first been submitted to and approved in writing by the Local Planning Authority.

The development shall be undertaken in accordance with the approved details.

- 7) No development including any preparation works prior to building operations shall take place on site until a Construction Environmental Management Plan ('CEMP') has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include, but not be limited to details of:
 - (a) areas on site for parking and turning for site personnel;
 - (b) areas on site for parking, loading and unloading of plant and materials, and provision of on-site turning for delivery and construction vehicles;
 - (c) areas for the storage of plant and materials;
 - (d) the form and location of any proposed temporary works compounds/welfare facilities;
 - (e) facilities to clean and wash the wheels, chassis and bodywork of vehicles free of mud and similar substances;
 - (f) a programme of works including details of the timing of deliveries and measures for traffic management/signage;
 - (g) any temporary fencing/hoardings to be provided;
 - (h) routing of construction and delivery vehicles to and from the site;
 - (i) hours of construction working;
 - (j) any temporary lighting; and
 - (k) measures to control the emission of dust and dirt during construction.

The approved CEMP shall be adhered to throughout the duration of the construction period.

- 8) No development shall take place and no equipment, machinery or materials shall be brought onto the site until a scheme for the protection of trees which are to be retained, undertaken in accordance with BS 5837:2012 (or its current equivalent) and including a tree protection plan(s) (TPP) and an arboricultural method statement (AMS), has been submitted to and approved in writing by the Local Planning Authority. The TPP and AMS shall address:
 - (a) the location and installation of services, utilities and drainage;
 - (b) the location and installation of boundary treatments within the root protection areas of retained trees;
 - (c) details of construction within the root protection areas of the retained trees including, where relevant, where installation of no-dig surfacing is proposed, no-dig specification, and levels and cross sections to show raised levels of surfacing;
 - (d) a specification for protective fencing to safeguard trees during the construction phases and details of the alignment of protective fencing showing any construction exclusion zones; and
 - (e) a schedule of tree surgery works required to retained trees, to include any construction facilitation pruning work and/or work required in the interests of safety.

The development shall be carried out in accordance with the approved TPP and AMS, and any approved tree surgery works shall be carried out in accordance with British Standard BS 3998: 2010 - Tree Work (or its current equivalent) and implemented prior to completion of the construction phases.

- 9) No development shall take place and no equipment, machinery or materials shall be brought onto the site until a Veteran Tree Management Plan in respect of the future care and management of the four veteran trees identified in the Arboricultural Assessment by FPCR July 2021 has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and thereafter maintained in accordance with the approved details.
- 10) No development shall take place until a detailed surface water drainage scheme, timetable for its implementation, and details of subsequent management/maintenance have been submitted to and approved in writing by the Local Planning Authority. The detailed drainage scheme shall demonstrate:
- (a) that surface water generated by the 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 without increase to flood risk on or off-site;
 - (b) details of an outfall for surface water, including, where relevant, details of surveys of watercourses and culverts and/or of any works that may be necessary to deliver an outfall;
 - (c) how silt and pollutants resulting from the site use will be managed; and
 - (d) operational, maintenance and access requirements for each drainage feature or component of the scheme, including any proposed arrangements for future adoption by any public body or statutory undertaker.

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

- 11) No dwelling hereby permitted shall be occupied until a Verification Report pertaining to the surface water drainage scheme required by Condition 10 has been submitted to and approved in writing by the Local Planning Authority. The Report shall demonstrate that the drainage system constructed is consistent with that which was 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 the approved surface water drainage scheme; and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.
- 12) No development shall take place until details of a scheme for the provision of a foul drainage system including details of its siting, design and subsequent management/maintenance and connection to the wider network have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until works for the disposal of foul water from that dwelling have been fully implemented in accordance with the approved details, and the scheme shall thereafter be managed and maintained in accordance with the approved details.

- 13) No development shall take place until an external lighting scheme including details of lighting spill in lux levels has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall thereafter be installed, maintained and operated in accordance with the approved details.
- 14) No development shall take place until an outline 'Landscape and Ecological Management Plan' (LEMP) has been submitted to and approved in writing by the Local Planning Authority. The LEMP shall include:
- (a) a description and evaluation of the ecological features to be established and retained;
 - (b) ecological trends and constraints on site that might influence management;
 - (c) aims and objectives of habitat creation and management;
 - (d) prescriptions for management actions to achieve aims and objectives, together with a plan of management compartments;
 - (e) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - (f) details of the body or organisation responsible for implementation of the Plan;
 - (g) details of the legal and funding mechanism(s) by which the long-term implementation of the Plan will be secured by the developer with the management body(ies) responsible for its delivery; and
 - (h) ongoing monitoring and remedial measures.
- The development shall be carried out and thereafter maintained in accordance with the approved details.
- 15) No development shall take place until details of the installation of fixed telecommunication infrastructure and High-Speed Fibre Optic connections to multi-point destinations and all buildings, to include details of internal speeds, have been submitted to and approved in writing by the Local Planning Authority. The approved infrastructure shall be installed and thereafter retained in accordance with the approved details.
- 16) No development shall take place until details (including plans and sections indicating as appropriate the design, layout, levels, gradients, materials, and method of construction) of the proposed internal estate roads, footways, footpaths, junctions, accesses, visibility splays, vehicle overhang margins, verges, embankments, retaining walls, sewers, drains, service routes, surface water outfall, street lighting, and street nameplates and furniture; together with a programme for implementation and future maintenance have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and thereafter maintained in accordance with the approved details and timetable.
- 17) No dwelling hereby permitted shall be occupied until the following works between that dwelling and the adopted highway have been completed:
- (a) footways except for the wearing course; and
 - (b) carriageways, except for the wearing course but including a turning facility.

- The final wearing course shall be applied within 1 year of the occupation of the dwelling.
- 18) No works above slab level shall take place until detailed drawings for works as indicated on approved drawing ref 1878-F01 Rev H (Proposed Site Access Arrangement) have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the works identified have been completed in accordance with the approved details.
 - 19) The vehicular access between the site and North Street shall not be brought into use until visibility splays have been constructed, laid out and maintained in accordance with approved drawing ref 1878-F01 Rev H (Proposed Site Access Arrangement) and provided clear of any obstruction over 1.05m in height above carriageway level, and the visibility splays shall thereafter be maintained.
 - 20) No dwelling hereby permitted shall be occupied until details of improvements to Public Right of Way AT12 on-site including a timetable for implementation have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out and thereafter maintained in accordance with the approved details.
 - 21) No dwelling hereby permitted shall be occupied until details of the provision of new bus stops including a programme for delivery have been submitted to and approved in writing by the Local Planning Authority. The approved bus stops shall be provided in accordance with the approved details and delivery programme.
 - 22) No dwelling hereby permitted shall be occupied until covered and secure bicycle parking spaces serving that dwelling have been provided in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority. The approved bicycle storage shall be retained for those purposes thereafter.
 - 23) No dwelling hereby permitted shall be occupied until parking and turning areas serving that dwelling have been constructed, laid out, surfaced, drained and completed in accordance with specification details which have first been submitted to and approved in writing by the Local Planning Authority. The parking and turning areas shall be retained for those purposes thereafter.
 - 24) No dwelling hereby permitted shall be occupied until the noise attenuation measures recommended within the Noise Assessment Report by Wardell Armstrong June 2021 have been completed, and the measures shall thereafter be retained.

End of Schedule

APPEARANCES

FOR THE APPELLANT:

Christian Hawley	of Counsel
Stuart Carvel MTCP(Hons), MRTPI	Gladman Developments Limited
Richard Naylor MTCP(Hons), MRTPI	Gladman Developments Limited
Gail Stoten BA(Hons), MCIfA, FSA	Pegasus Group
Keith Nye BA(Hons), DipLA, MArch, CMLI	FPCR
Helen Kirk MICFor, ND Arb Arboriculture, MArborA	FPCR

FOR THE LOCAL PLANNING AUTHORITY:

David Lane BA(Hons), MA, MSc	Team Leader (Planning Applications), Ashford Borough Council
Claire Marchant BA(Hons), MRTPI	Team Leader (Plan Making and Infrastructure), Ashford Borough Council
Phillip Cook BSc(Hons)	Tree Officer, Ashford Borough Council
Daniel Carter MRTPI	Spatial Planning Manager, Ashford Borough Council
Carissa Humphreys LL.B Solicitor	Senior Solicitor (Planning and Development), Ashford Borough Council

INTERESTED PARTIES:

Councillor Neil Bell	Ashford Borough Councillor for Biddenden, and Governor, John Mayne Church of England School
Councillor Judith Wright	Vice Chair, Biddenden Parish Council
Graham Baldwin	Local resident
Clive Thomas	Governor, John Mayne Church of England School

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Suggested Tree Protection Condition, submitted by the Council.
- 2 Suggested Veteran Trees Condition, submitted by the appellant.
- 3 Amended agreed Schedule of Suggested Conditions including track changes, submitted by the appellant.
- 4 Copy of Submission from John Mayne Church of England School to Ashford Borough Council Planning Department, submitted by Neil Bell.

DOCUMENTS SUBMITTED FOLLOWING THE HEARING

- 1 Signed and executed Unilateral Undertaking planning obligation dated 3 November 2022, submitted by the appellant.
- 2 Copy of Appeal Decision Ref APP/E2205/W/21/3289039, submitted by the appellant.