



## Appeal Decision

Hearing held on 11 and 12 January 2023

Site visit made on 10 January 2023

**by Paul Thompson DipTRP MAUD MRTPI**

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

**Decision date: 17 March 2023**

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**Appeal Ref: APP/V2255/W/22/3301685**

**Land off Otterham Quay Lane, Upchurch, Kent**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Gladman Developments Ltd against the decision of Swale Borough Council.
  - The application Ref 21/501839/OUT, dated 30 March 2021, was refused by notice dated 24 May 2022.
  - The development proposed is "Outline planning application for up to 74 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point. All matters reserved except for means of access."
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### Decision

1. The appeal is allowed and planning permission is granted for up to 74 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point at Land off Otterham Quay Lane, Upchurch, Kent in accordance with the terms of the application, Ref 21/501839/OUT, dated 30 March 2021, subject to the attached schedule of conditions.

### Procedural Matters

2. I have omitted superfluous information from the description of development set out above. The development proposed is therefore for 'up to 74 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point'.
3. I have amended the address in the banner heading to reflect that shown on the Decision Notice as this concisely identifies the location of the site.
4. The planning application was submitted in outline with all matters reserved, except for access. I have had regard to Drawing References: 9423-L-01 and P19081-001G in respect of the proposed access, but I have treated the other elements shown as indicative when considering the likely impact of the proposal on the matters set out in the main issues below.
5. The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') transpose the Habitats Directive and the Birds Directive into English law. The aim of the Directives is to conserve key habitats and species across the European Union by creating and maintaining a network of sites known as the Natura 2000 network. They require competent authorities before granting consent for a plan or project, to carry out an appropriate assessment (AA) in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in-combination with other plans or projects.

6. The Officer Report identifies that the Council has carried out its own assessment in this regard, but my determination of the appeal means I also must undertake the same statutory duty. I have therefore dealt with this matter as a main issue and engaged with the main parties and Natural England accordingly as part of the appeal proceedings.

### **Main Issues**

7. The appeal is supported by a Section 106 Agreement which seeks to address the Council's second reason for refusal on the Decision Notice, which I refer to in the third main issue.
8. The main issues are therefore:
  - whether the proposal would provide a suitable site for housing, having regard to the Council's Settlement Strategy; its effect on the intrinsic value, landscape setting, tranquillity, and beauty of the countryside and its role as part of an Important Local Countryside Gap; and its accessibility to services and facilities;
  - the effect of the proposal on the integrity of the features of national and European nature conservation sites at Medway Estuary and Marshes; and
  - the benefits of the scheme, including contributions toward infrastructure.

### **Reasons**

#### *Site and Surroundings*

9. The appeal site concerns a large parcel of land to the north of Lower Rainford Road and west of Otterham Quay Lane, within the Important Local Countryside Gap between Upchurch and the administrative boundary of Medway Council. The Swale Landscape Character and Biodiversity Appraisal 2011 (SLCBA) identifies the site in the Upchurch and Lower Halstow Fruit Belt, which it defines as a small-medium rural landscape with a strong sense of enclosure. This is a wider appraisal of landscape character than the appellants' Landscape and Visual Appraisal (LVA) which is more site specific, but the findings in both documents are similar in that the condition/value and sensitivity are moderate. Swale Landscape Sensitivity Assessment (October 2019) suggests the wider area has a lower landscape sensitivity given the absence of significant valued natural features, but highlights the importance of the gap.
10. The presence of a commercial orchard within the site is characteristic of the historic pattern and use of land within the Kent countryside and is part of the agricultural land, north of Lower Rainham Road, that disconnects the built edge of Rainham from other development and the Medway Estuary further north.
11. The site is separated from Otterham Creek by houses and industrial buildings at Gills Terrace. These are prominent features in the foreground of views north and west from the footways and Public Rights of Way (PROW) through and in proximity of the site that lead to the Estuary. Behind are further commercial and residential uses, most notably the Beckenham & Otterham Residential Park, which borders the eastern side of the Creek. There are also houses dispersed along the frontages of Otterham Quay Lane further north. These developments are within the Gap. Beyond the furthest western extent of the

orchard, in Medway's administrative area and there are houses fronting the north side of Lower Rainham Road.

12. The site makes a limited contribution to defining the built edges of development to the north and south, as the transition to its agricultural characteristics is rather abrupt, and it is Lower Rainham Road that physically contains Rainham. Similarly, while the site is at the edge of the Gap, it plays a limited role in preventing the settlements from merging as it is physically contained, west of Otterham Quay Lane. Rather, it is the space between the lane and Upchurch that performs the most significant role in ensuring the physical and visual preservation of the remoteness of Upchurch and the intrinsic value, landscape setting, beauty and tranquillity of the countryside.
13. Despite this, the site provides physical and visual separation and openness between the different distinct elements of built form at the western edge of this part of the Borough and, thereby, helps to define what is more urban and rural in character. This role is evident given the prominence of the site within its immediate surroundings from the aforementioned PROW and footways.
14. The visual qualities of the site, provided by the orchard therein, planting at its perimeter and its open and undeveloped nature, together with the separation it affords between existing built forms therefore make a positive contribution to the rural environment. While views across the site are localised due to the presence of existing development and planting, the site also contributes to the intrinsic value and beauty of the countryside.

#### *Location of Development and Protection of the Countryside and Settlement Gap*

15. While the site is adjacent to housing developments at the northern edge of Rainford, this is not referred to in the Council's Settlement Strategy. It is therefore situated within the open countryside, some distance southwest of the built-up area boundary of Upchurch. Policy ST3 of Bearing Fruits 2031<sup>1</sup> (LP) explains that development is not permitted there, unless it is supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity, and beauty of the countryside. Similarly, LP Policy DM25 identifies the primary aim of the Gap is to retain the individual character and setting of the settlements. It states that planning permission will not be granted for development that would undermine one or more of the purposes of the gap, as outlined in supporting text to the policy at paragraph 7.7.34.
16. The appeal scheme is indicative, but would amount to a development of significant proportions and prominence in the countryside to the edge of Rainham, within the undeveloped and open site. The subsequent loss of openness and erosion of the site's undeveloped qualities would reduce the degree of separation between existing built development and the presence of housing would also have a discernible impact. The proposal would therefore permanently change the rural character of this edge of the Borough.
17. Land is indicatively set aside within the site for open space and biodiversity enhancements, which would be accessible in the same way that PROW are. However, it would take a significant amount of time for landscaping within the site to reflect the existing character of planting found nearby and around the

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<sup>1</sup> The Swale Borough Local Plan, Adopted July 2017.

site. There would also inevitably be a marked change in the way in which PROW and the land within the site are experienced by those using these routes.

18. Nevertheless, the visual effects of the proposal are likely to be similar to the impact of other developments that have extended north of Rainham, including within the Borough to either side of Otterham Quay Lane. Moreover, indicative open space would also be arranged in a similar way to that accommodated to the east of Quilters Yard. In views northwards from neighbouring roads, the built forms associated with the proposal are also likely to be seen against the backdrop of rising land to the north and east. In the opposite direction, they are also likely to have a similar appearance to existing built forms in the foreground, including at Gills Terrace and south of Lower Rainham Road.
19. The LVA and other supporting evidence provide thereafter strikes me as being well-reasoned and proportionate to the appeal scheme and, based on my findings above, it would accurately portray the effect of the proposal. The site is a point where development could be absorbed between that north and south of it without closing the Gap between the settlements, so it would not undermine the purposes of the Gap. Nevertheless, the proposal would result in some harm to the beauty of the countryside, albeit this would be limited due to the site's relationship with existing built form to its north and south.

### *Accessibility*

20. The location of the appeal site north of the centre of Rainham and its facilities and services mean that future residents of the site would be likely to gravitate there to access most of their day-to-day needs, including retail and employment or access thereto. The site would be situated in excess of the distances advocated by Manual for Streets for walkable neighbourhoods. However, I am mindful that the inclination to walk will not only be influenced by distance but the quality of the experience and, the routes that future residents would be likely to take to and from Rainham on foot or by bicycle would be through residential areas with speed limits of 30mph and served by streetlighting, dedicated footways and crossing points. They would not be inconvenient, unpleasant, or unrealistic routes for people wishing to walk or cycle after dark or during inclement weather, including people with young children. The site is also close to National Cycle Network Route 1 from Dover, which leads to Medway Docks, so the principle of its use by cyclists to travel further distances is also accepted as being appropriate.
21. The proposal would also include improvements to the crossing points around the perimeter of the site and a northbound bus stop would be provided opposite the southbound stop outside the Three Sisters Public House. While the existing bus provision is limited in terms of the extent of daily services, it would offer an alternative form of transport to access Rainham, including its railway station, which has sheltered cycle spaces and car parking spaces.
22. Although some journeys would be likely to be made by private vehicle, facilities to be able to walk, cycle and use bus travel, together with the Car Club Scheme proposed to mitigate any potential harm to air quality, would offer alternative sustainable modes of transport to reduce this dependency. The development would also be supported by a Travel Plan and a coordinator, which requires dissemination of updated sustainable travel information. I am also satisfied that the extent of vehicle movements associated with the

development would be unlikely to make such a noticeable impact that it would harm the tranquillity of the countryside in its own right.

23. With the above in mind, the proposal would be unlikely to lead to a harmful increase in the amount of unsustainable journeys made by private vehicles from the appeal site.

#### *Conclusions on the First Main Issue*

24. The location of the site would not offend LP Policy CP3 or the approach advocated through the National Planning Policy Framework (the Framework) in respect of transport solutions for rural housing. The proposal would also not undermine the purposes of the Important Local Countryside Gap. Nevertheless, I conclude that the proposal would not provide a suitable site for housing, having regard to the Council's Settlement Strategy and its effect on the intrinsic value, landscape setting and beauty of the countryside. Hence, the proposal would conflict with LP Policies ST1, ST3, DM14 and DM24, albeit the extent of harm would be limited for the reasons I have identified above.
25. I have not found against paragraphs 8 and 11 of the National Planning Policy Framework (the Framework), in relation to this main issue, as the Council referred to these in the context of whether the proposal would amount to sustainable development, which I address within the Planning Balance.

#### *National and European Nature Conservation Sites*

26. The northern edge of the site is located approximately 0.05km from the Medway Estuary and Marshes Special Protection Area (SPA), Ramsar site and Site of Special Scientific Interest (SSSI). While the SSSI is not a European designated site, it forms a contingent part of the SPA and Ramsar site, so is referred to for completeness.
27. The qualifying features of the SPA are non-breeding birds including: Common Redshank, Common Shelduck, Dark-Bellied Brent Goose, Dunlin, Grey Plover, Northern Pintail, Red Knot and Ringed Plover. Pied Avocet are also supported during breeding and non-breeding seasons, Little Tern during the breeding season, and waterbird and breeding bird assemblages.
28. The Ramsar site is designated as supporting several species of rare plants and animals, including nationally scarce flora: Annual Beard-Grass, Borrer's Saltmarsh-Grass, Curved Hard-Grass, Golden Samphire, Perennial Glasswort, Sea Barley, Sea Clover, Slender Hare's-Ear, Small Goose Foot; One-flowered Glasswort; at least twelve British Red Data Book listed wetland invertebrate species; and a significant number of non-wetland British Red Data Book species also occur. The site also qualifies due to its internationally important waterfowl assemblages and internationally important species captured under the SPA designations outlined above.
29. The European Site Objectives for the SPA are to ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive by maintaining or restoring the extent, distribution, structure and function of the habitats of the qualifying features; the supporting processes on which these rely; population of each of the qualifying features; and their distribution within the site.

30. The appellant's Shadow HRA indicates that the SSSI is designated for its intertidal habitat, with a complex of mudflats and saltmarsh and grazing marsh intersected by dykes and fleets. The supported plant community provides habitat for wintering wildfowl and waders. In particular, the Chetney Peninsula is one of the most important wildfowl breeding and wader roosting areas in Kent and supports breeding Black-Headed Gulls and Common Terns.
31. The impact of recreational activities inside the SPA and Ramsar, along with the loss of land functionally linked to them, air and water quality, and flood risk have been identified as the main negative contributors upon the sites.
32. The proposed development, comprising up to 74 dwellings, is located within the Zone of Influence (ZOI) for the SPA and Ramsar site. Along with further new housing expected to come forward in the area, it has potential to affect air and water quality and increase recreational pressure in their habitats. This would contribute to the disturbance of these habitats, including the key bird species, contrary to the relevant conservation objectives of the European Sites. In the absence of mitigation, the proposal therefore has the potential to result in likely significant effects on the SPA and Ramsar. An appropriate assessment is consequently required. Recreational pressures are also likely to have similar effects to the SSSI.
33. The appeal site is a working orchard, which does not reflect the habitat provided by the European Sites and the SSSI and the appellants' Preliminary Ecological Appraisal satisfactorily demonstrates the site does not form functionally linked land of supporting value for the identified species of these sites. Therefore, notwithstanding my other findings, no likely significant effects are predicted from the development as a result of loss of arable land within the site or the potential disturbance of adjacent land.
34. The Strategic Access Management Monitoring Strategy (SAMMS) for the North Kent Marshes sets out the strategy to mitigate the potential in-combination impacts of new housing development on European Sites. It includes a tariff, to be secured by a S106 agreement, that should be applied to new housing developments within the ZOI. The tariff was agreed based on housing projections from the participating authorities that would require mitigation up to 2031. The contributions made through the tariff are to fund mitigation works carried out by Bird Wise for, amongst other things, wardens, provide for increased signage and interpretation, new access infrastructure, parking, enhancement and enforcement and monitoring.
35. The indicative layout for the proposed development also includes an area of accessible public open space which would provide alternative natural greenspace close to incoming residents that would encourage recreational activity away from the SPA and Ramsar site, particularly for dog exercising. This would be secured through a condition of the outline planning permission. There are also other PROW nearby which would providing access to the wider countryside for recreation away from the designated sites.
36. The proposal would also be subject to controls over the design of the proposed drainage system and measures to reduce the impact of the construction of the development and air quality, as detailed in the proposed planning conditions and S106 agreement.

37. As the competent authority I have consulted Natural England (NE) as the appropriate nature conservation body. NE has confirmed that the relevant European Sites have been identified and have clarified the qualifying features within the sites. It is also satisfied that the avoidance and mitigation measures are appropriate to avoid an adverse effect. With the above in mind, I am also satisfied that there would be sufficient procedures in place to secure appropriate mitigation and ensure that it would be provided in a timely manner to accord with SAMMS.
38. Consequently, I am satisfied that the proposed development, either alone or in combination with other plans or projects, would not adversely affect the integrity of the European sites protected under the Habitats Regulations. As the designations of these sites align with the SSSI, I am also satisfied that, with the proposed mitigation measures, the development would not be likely to damage the features for which the SSSI has been designated. For these reasons, the proposal would accord with the habitats and species protection criteria set out in LP Policy DM28.

### *Benefits of the Scheme*

#### Housing and Open Space

39. There is common ground between the main parties that the Council cannot demonstrate a five-year supply of deliverable housing sites. However, there is clear disagreement as to the deliverability of a number of the housing sites included in the Council's supply and how this would affect the extent of supply. The appellants calculate it to be as low as 3.77 years, whereas the Council suggest it is 4.75 years. While the current housing land supply difficulties in the area could be temporary, the Government is seeking to significantly boost the supply of homes and the provision of up to 74 housing units that would result from the proposal would help to address any shortfall in supply in Swale. This would therefore constitute a social benefit of considerable weight.
40. The Section 106 Agreement (S106) includes provisions for 40 percent of the total number of properties in the proposed development to be affordable homes, which could equate to up to 30 homes. Although this meets the policy requirement in Swale, the appellants have demonstrated through tangible evidence, including its Affordable Housing Statement, that the need for affordable homes in Swale is considerable, there are inherent problems of affordability, and the full requirement set out in permissions is met on the majority of developments for which it secures permission. The commitment by the appellant to provide such affordable homes is therefore a social benefit of significant weight.
41. The northern part of the site is within Flood Zone 2, so the indicative layout for the site includes this as public open space. A clause in the S106 refers to the provision and management of the space, including an equipped children's play area and recreation space (Local Area of Equipped Play). It could also include a community orchard and allotments and the former are encouraged by landscape guidelines in the SLCBA due to their landscape, biodiversity and cultural benefits. This would therefore potentially amount to social and environmental benefits to the occupants of the proposed dwellings and existing local residents. However, as the nature and extent of these provisions are subject to further detail, I am only able to afford these benefits limited weight.

### Other Benefits Secured by the Legal Agreement

42. The S106 would include provisions for financial contributions toward the cost of providing primary and secondary educational facilities, which could serve the development, including toward the acquisition of land.
43. Contributions would also be secured toward additional resources, services and book stock for the local library service, including the mobile library serving Upchurch; the provision of refuse bins; the costs of additional capacity at the Household Waste Recycling Centre and Waste Transfer Station in Sittingbourne; and improvements to and additional facilities for formal sports provision within 5km of the site.
44. A contribution would be secured towards the cost of refurbishment, reconfiguration and/or extension of Primary Care Premises within the Sittingbourne Primary Care Network. Further contributions would also be included toward social and youth services toward the cost of specialist care accommodation and additional resources, respectively, within the Borough.
45. As outlined above, the S106 would also include provisions to secure Air Quality Mitigation Measures, including a contribution to implementing a Car Club Scheme to discourage use of private vehicles, and the SAMM Contribution required as a result of the Appropriate Assessment.
46. As these obligations can only mitigate against the proposal, I afford them limited weight as benefits associated with it.
47. I am satisfied that the provisions outlined in the S106, including those in the previous sub-section, are supported by LP Policies CP6, CP7 and DM28 and the Council's Developer Contributions SPD (2009). They also meet all the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations) and Framework paragraph 57. The obligations are directly related to the development because they would provide investment in infrastructure, including health services and schools, that would be impacted by additional development. The contributions are also reasonable in scale and kind, as they are informed by the latest evidence regarding what would be required to provide additional capacity to serve the proposal.

### Additional Benefits

48. There would be short-term benefits to the local and wider economy from the application of the New Homes Bonus and direct and indirect employment associated with construction and associated industries, particularly given the local demand for employment in the construction industry. Future occupants would be likely to support local shops, services, and facilities through expenditure. These would all constitute benefits in social and economic terms and given the magnitude of the proposed development, they would be afforded moderate weight.
49. Council Tax receipts in conjunction with the proposal would also only be likely to make a modest contribution within the Borough, which would amount to an economic benefit of limited weight.
50. I am mindful that biodiversity net gain is not yet a mandatory requirement of development, but the Framework is supportive of measurable attempts to secure such benefits. While the indicative scheme would provide, amongst

other things, additional tree planting, reinforcement of existing hedgerows and boundary features to improve the connectivity of habitat, the net gain is not yet known. It should be possible to achieve reasonable gains through the proposal but, in the absence of a worked-up scheme, I can only afford this environmental benefit limited weight.

51. Provision of a signalised crossing on Lower Rainham Road, footpaths along that road to the site entrance on Otterham Quay Lane, and upgrade of the existing northbound bus stop would amount to social benefits of moderate weight to existing local residents.
52. The evidence before me also indicates that it would be possible for a sustainable drainage system to provide a betterment in the quality of surface water runoff from the site. However, the final details of the system are subject to agreement so I afford this environmental benefit limited weight.
53. The dwellings within the site could be reached by various means including sustainable travel opportunities, such as walking and cycling. However, this would be a neutral benefit as it equates to an absence of harm.

### **Other Matters**

#### Best and Most Versatile Land

54. The area within the appeal site that would be developed falls into Grade 3a agricultural land. At the Hearing the Council accepted it had no evidence to contradict the appellants' Best and Most Versatile Land Note. In accordance with the requirements of Policy DM31, and having regard to the strategic growth options identified in the Council's Local Plan Review, this identified that only one of the preferred sites did not contain Best and Most Versatile Land (BMVL), on the Isle of Sheppey, and concentration of housing there would not amount to sustainable development. There are therefore no alternative sites available within the Borough on land of lower grade than 3a. Furthermore, there is no substantive evidence before me to demonstrate that loss of the land within the site would lead to the remainder of the agricultural holding becoming unviable, rather the proposal is likely to lead to investment in it. The loss of the land would also constitute a very small amount in the context of all of the BMVL in the Borough and would fall well below the threshold for consultations with Natural England regarding such matters.
55. I have also been referred to the suitability of brownfield sites instead of the appeal site, but I have not been referred to any so I am not able to draw any reasonable comparisons with the proposal, which would accord with the requirements of LP Policy DM31.

#### Highway Safety, Operational Performance and Congestion of the Road Network

56. The appeal scheme proposes several mitigation measures, including widening of Otterham Quay Lane, extension of the 30mph restricted area further north beyond the proposed access, and the creation of a footway from the access to associated crossing points to Lower Rainham Road. Despite concerns from third parties, with these measures the evidence before me demonstrates that the proposal, including any construction traffic, would be unlikely to result in highway safety or capacity issues to the surrounding road network and users.

57. There are also concerns raised by third parties and Medway Council regarding existing congestion at the A2/Mierscourt Road and A2/Otterham Quay Lane/Meresborough Road junctions further south of the site. The proposal is likely to result in an increase in traffic using the junctions, which would have a knock-on effect on other junctions nearby, particularly at peak times in the morning and afternoon.
58. The evidence relating to the magnitude of the vehicle trips likely to be associated with the proposal before me demonstrates that it would be unlikely to result in a severe cumulative impact on the road network relating to highway safety or its operational performance and levels of congestion. Furthermore, the extent of vehicle loading associated with the proposal is also not likely to warrant improvement of the junctions to enhance their performance and it is not the appellants' responsibility to address existing issues.
59. I note that the development proposed at Pump Lane<sup>2</sup> would have required mitigation of the A2/Mierscourt Road junction to address its impacts upon that part of the subnetwork, but this was for a development of significantly greater magnitude than that before me and, even with its traffic loading, mitigation from that scheme would have improved the subnetwork, not made it worse. In addition, while I accept the Inspector's conclusions in the Leckhampton appeal and the subsequent High Court Decision<sup>3</sup>, I have had regard to the specific circumstances affecting the road network in the vicinity of the appeal site and arrived at a different conclusion. I am also mindful that, like the Pump Lane scheme, there would have been significantly greater development of housing and other uses within a local centre, so it would not, of itself, be a scheme of comparable scale.

#### Air Quality

60. Concerns have been raised by third parties regarding the proposal's impact on air quality. The appellants' Air Quality Assessment (AQA) concludes, mitigation measures incorporated into the development would ensure there would not be harmful impacts to air quality and there is no substantive evidence before me to lead me to a different conclusion. Moreover, as outlined above, mitigation would include contribution toward the implementation of a Car Club Scheme, and on-site measures identified in the AQA during the construction and operational phases of development. The latter relate to the efficiency of gas fired boilers and provision of electric car charging points, which would need to be addressed through the Air Quality Mitigation Measures included in the S106 and by the Building Regulations respectively.

#### Ecology

61. There are some concerns from third parties that development of the site would result in loss of its ecological value. However, the evidence before me indicates that the cultivated orchard habitat would be of low intrinsic and conservation importance and any protected species utilising the site for foraging purposes would be able to continue to do so within areas of green infrastructure. Similarly, precautionary measures could be implemented for reptiles and lighting mitigation for bats and other nocturnal wildlife. The implications upon

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<sup>2</sup> Appeal Reference: APP/A2280/W/20/3259868

<sup>3</sup> Appeal Reference: APP/B1605/W/14/3001717; High Court Reference: Bovis Homes Ltd & Miller Homes Ltd v SSCLG (CO/3029/2016).

destroying or damaging nests of birds during the breeding season are a known implication of the Wildlife and Countryside Act 1981 and do not need repeating in a separate planning condition, particularly as they could be addressed through the proposed Landscape and Ecological Management Plan, alongside other improvements to the biodiversity of the site.

#### Drainage and Water Supply

62. Surface water could be attenuated on site so that it does not increase flows off site. Southern Water (SW) has indicated that the foul sewerage network is likely to require reinforcement to accommodate the proposal, but does not object to it, so works could be implemented to serve it. Furthermore, the developer could phase the foul water scheme for the proposal to address any implications on the network, this could be secured by planning condition.
63. Despite concerns advanced by third parties as to water pressure in the locality, there is no substantive evidence before me that would lead me to doubt SW's advice that water supply can be facilitated to service the proposal.
64. There are also likely to be technical solutions with regard to addressing any conflict with the public sewer crossing the site, which should be addressed through the Building Regulations and consultation with SW rather than through the planning process.

#### School and Health Care Infrastructure

65. Concerns have been raised that local infrastructure, including health services and schools, would be unable to cope with additional development, but the responses received from the relevant Education Authority and NHS illustrate these impacts on services could be mitigated by the proposal. I also note the availability of infrastructure is a national challenge. Resisting the development on the grounds of the capacity of local infrastructure would not therefore be justified in the face of acceptable mitigation. Furthermore, while I accept there could be an impact on schools within Medway Council's administrative area, at the Hearing, the main parties agreed that Kent County Council are the Education Authority for Swale, so it is not possible for funding to be directed to a neighbouring authority to address such impacts. Any such agreement would need to be dealt with through liaison between the two Councils.

#### Living Conditions

66. Whilst the construction process is likely to be disruptive it would be temporary and mitigated by a Construction Environmental Method Statement which could be the subject of a condition. Furthermore, as the layout and scale of the development are not yet known, the potential implications to the living conditions of nearby occupiers from any dwellings are matters for future consideration.

#### Medway Landscape Designation

67. The proposal would also not prejudice the ability of Medway Council to protect land west of the site that is allocated in its development plan within the Gillingham Riverside Area of Local Landscape Importance, in the knowledge that it has also already allowed some of this land to be developed for housing.

## Planning Balance

68. I outlined above that the evidence before me demonstrates the Council is likely to only be able to demonstrate somewhere between 3.77 and 4.75 years supply of deliverable housing sites. The policies which are most important for determining the appeal are therefore deemed to be out-of-date. In such circumstances, permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
69. The proposal would comply with LP policies in respect of the accessibility of the site, and its impact on the Important Local Countryside Gap between Rainham and Upchurch and national and European nature conservation sites. In terms of harm, the proposed development would not comply with LP policies in respect of its location having regard to the Council's Settlement Strategy and its effect on the intrinsic value, landscape setting and beauty of the countryside.
70. The approach in Policy ST3 to protect the countryside beyond built-up areas from development, in isolation of other considerations, would not be wholly aligned with the more flexible and balanced approach implicit in the objectives outlined in the Framework. However, it does not fundamentally undermine its continued relevance, as the aim differs only slightly from the Framework to recognise the intrinsic character and beauty of the countryside. There is therefore still a clear rationale for built up area boundaries in order to protect the countryside while focusing growth within designated settlements. In light of this I have regarded the underlying objectives of the policy, as being generally consistent with the Framework. Nevertheless, the Settlement fails to recognise there are areas of land within the Borough adjoining settlements in adjacent authorities that provide services and facilities for surroundings areas. I referred to this point in the first main issue and, for this reason, consider that the conflict of the proposal with this policy carries moderate weight.
71. Policies ST1, DM14 and DM24 are consistent with the Framework in respect of its aims to achieve well-design places and recognise the intrinsic character and beauty of the countryside. While the proposal would conflict with these policies, in the first main issue I identified that the harm to the intrinsic value, landscape setting and beauty of the countryside would be limited due to the characteristics of the site and its surroundings. Accordingly, I afford limited weight to the conflict of the proposal with these policies.
72. I have outlined that the appeal scheme includes considerable and significant benefits in respect of housing and affordable housing and a range of other benefits of moderate and limited weight, some of which lead to accordance with LP policies. Even if I were to conclude the shortfall in five-year housing land supply would only be to the extent argued by the Council, I do not find this to be particularly determinative in respect of this appeal. Moreover, the adverse impacts of granting permission would still not significantly and demonstrably outweigh the stated benefits, when assessed against the policies in the Framework taken as a whole. As a result, the proposal would benefit from the presumption in favour of sustainable development and, for reasons advanced above, it would amount to sustainable development.
73. This leads me to an overall conclusion that material considerations indicate the decision should be taken otherwise than in accordance with the development plan. This would therefore justify the grant of planning permission.

## Conditions

74. I have imposed standard conditions relating to the submission and timing of reserved matter applications and the commencement of development. It is necessary to require compliance with the submitted plans, but only in relation to the access as this is not a reserved matter. This includes off-site highway works, for safety reasons, detailed above. However, details of the highway layout and construction are required prior to commencement of development and thereafter implemented before occupation of the dwellings, to ensure they are laid out and constructed in a satisfactory manner for road users.
75. Conditions are necessary to ensure the details submitted for reserved matters include suitable noise mitigation measures for future occupiers informed by a noise assessment; meet the principles of secure by design, for crime reduction and safety purposes; provide parking and turning spaces and cycle storage for the proposed dwellings to ensure they are convenient and not of detriment to highway safety; a lighting design plan to ensure bat activity is not disturbed; in the interests of increasing biodiversity and the visual amenity of the area, a Landscape and Ecological Management Plan, details of how development would offset biodiversity loss or enhance it and an updated landscaping strategy are also necessary to inform reserved matters.
76. Conditions are also necessary to ensure that all works on site, including site clearance, follow the precautionary principles detailed in the appellants Preliminary Ecological Appraisal regarding reptiles; and an arboricultural method statement and tree protection plan are required to protect trees during development. Similarly, it is also necessary to secure details of hedgerows to be removed and any replacements prior to the commencement of development in the interests of the visual and ecological value of the site.
77. Pre-commencement conditions are also necessary to secure details of the proposed Local Equipped Area for Play and the phasing of the development, to ensure it is properly planned in the interests of the living conditions of existing and future residents; to ensure archaeological works are carried out in accordance with a written scheme of investigation to be agreed; and scheme of foul and surface water drainage are designed to ensure no pollution risk to receiving waters and does not lead to flood risk on or offsite. The surface water drainage would also require verification agreed by condition to ensure it is effective in meeting these requirements.
78. Conditions are also reasonable to secure details of a Construction Traffic Management Plan and to control construction working hours, including for piling, and a Construction and Environmental Method Statement and Code of Construction Practice in the interests of the living conditions of nearby residential occupiers and the ecology and biodiversity of the site and its surroundings. Details of the piling and how potential risks associated with contamination of the site and unsuspected contamination are also necessary to ensure there would be no unacceptable risk to groundwater and other water pollution. Details of digital infrastructure for residential properties and a full travel plan are also necessary in the interests of their living conditions and accessibility of the proposed development.
79. Several conditions are also reasonable to ensure that the dwellings are constructed to increase their energy efficiency and thermal performance and to minimise construction waste, alongside details of low emission boilers. These

would ensure carbon emissions and air quality are suitably factored into the construction and operational phases of development.

### **Conclusion**

80. The proposed development would be contrary to the development plan, when considered as a whole. However, the Framework is a material consideration and this indicates that the proposed development should be determined other than in accordance with the development plan. Accordingly, for the reasons given, I conclude that the appeal should be allowed.

*Paul Thompson*

INSPECTOR

### **APPEARANCES**

(Qualifications and professional memberships are included where provided)

#### FOR THE APPELLANT:

Mr Zack Simons	Barrister, Landmark Chambers
Mr Christien Lee (BSc (Hons), MCD, MRTPI)	Planning Director, Gladman Developments Ltd
Mr David Stoddart (BA (Hons), CMILT, MCIHT)	Associate Director, Prime Transport Planning Ltd
Mr Gary Holliday (BA (Hons), MPhil, FLI)	Director, FPCR Environment and Design Ltd
Mr Ben Pycroft (BA (Hons), Dip TP, MRTPI)	Director, Emery Planning

#### FOR THE LOCAL PLANNING AUTHORITY:

Mr William Allwood (MRTPI)	Chartered Town Planner
Mr Stuart Watson	Principal Planner

#### OTHER INTERESTED PARTIES:

Mr Gary Rosewell	Upchurch Parish Council
Paul Clarke	Strategic Head of Education for Planning and Access (Medway Council)
James Rand	Paul Basham Associates (on behalf of Medway Council regarding highway matters)

### **DOCUMENTS SUBMITTED FOLLOWING THE HEARING:**

1. Agreed conditions- Otterham Quay Lane (v2 following Hearing) Final.
2. 1254515 - DATED S106 S017342 Otterham Quay Lane.
3. Transfer deed showing that Wakeley Brothers Ltd transferred its interest in the appeal site to Ayshland Ltd, as referred to in the S106 (following request for clarification regarding owners listed in the Application Form).
4. Response from the appellants' Ecologist to the queries raised by Natural England in their email dated 6 January 2023, including attachments containing the qualifying features of European Sites.
5. Natural England response to (4) above.

### **SCHEDULE OF CONDITIONS**

- 1) Details relating to the landscaping, layout, scale and appearance of the proposed dwellings shall be submitted to and approved by the local planning authority before any development is commenced.
- 2) Application for approval of reserved matters referred to in Condition (1) above must be made no later than the expiration of three years beginning with the date of the grant of outline planning permission.
- 3) The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 4) The details submitted pursuant to condition (1) (the reserved matters) shall include details demonstrating how the development meets the principles of 'secure by design'.
- 5) From the commencement of works (including site clearance), all precautionary mitigation measures for reptiles shall be carried out at all times in accordance with the details contained in section 5.59 of the Preliminary Ecological Appraisal FPCR (March 2021).
- 6) The details pursuant to condition (1) (the reserved matters) shall include a lighting design plan for biodiversity. The plan will show the type and locations of external lighting, demonstrating that areas to be lit will not disturb bat activity. All external lighting shall be installed in accordance with the specifications and locations set out in the plan and shall be maintained thereafter.
- 7) The details pursuant to condition (1) (the reserved matters) shall include a Landscape and Ecological Management Plan (LEMP). The content of the LEMP shall include the following.

- a) Description and evaluation of features to be managed (including a planting schedule);
- b) Ecological trends and constraints on site that might influence management;
- c) Aims and objectives of management;
- d) Appropriate management options for achieving aims and objectives;
- e) Prescriptions for management actions, together with a plan of management compartments;
- f) Preparation of a work schedule (including an annual work plan);
- g) Details of the body or organisation responsible for implementation of the plan;
- h) Ongoing monitoring and remedial measures.

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

- 8) The details submitted pursuant to condition (1) (the reserved matters) shall include details of how the development will offset biodiversity loss/enhance biodiversity. This shall include a native species-only landscape scheme, integrated bird bricks and details of the degree of Biodiversity Net Gain. The approved details shall be implemented and thereafter retained.
- 9) Prior to the commencement of the development hereby approved an arboriculture method statement and tree protection plan in accordance in accordance with the BS5837:2012 shall be submitted to and approved in writing by the local planning authority. The approved arboriculture method statement and tree protection plan shall be adhered to throughout the construction phase of the development.
- 10) The details submitted pursuant to condition (1) (the reserved matters) shall include an updated Landscape Strategy. The landscaping shall be comprised native species only. The strategy shall include a programme for implementation and shall be implemented in accordance with this strategy and maintained as such thereafter.
- 11) Prior to the commencement of any development including clearance works details of all hedgerows to be removed shall be submitted to and approved in writing by the local planning authority, including those adjacent to Lower Rainham Road and Otterham Quay Lane. Details of all replacement hedgerow planting shall be included within the details. The development shall be carried out in accord with the approved details.
- 12) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved by the local planning authority. The development shall be carried out in accord with the approved details.
- 13) No construction work (excluding impact pile driving dealt with by separate condition), in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: -

Monday to Friday 0730 - 1800 hours, Saturdays 0800 - 1300 hours unless in association with an emergency.

- 14) No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor on any other day except between the following times: - Monday to Friday 0900 - 1700 hours unless in association with an emergency.
- 15) 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 submitted to and approved in writing by the local planning authority.
- 16) No development approved by this outline planning permission shall commence until a strategy to deal with the potential risks associated with any contamination of the site has been submitted to, and approved in writing by, the local planning authority. This strategy will include the following components:
1. A preliminary risk assessment which has identified:
    - all previous uses;
    - potential contaminants associated with those uses;
    - a conceptual model of the site indicating sources, pathways and receptors; and
    - potentially unacceptable risks arising from contamination at the site.
  2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. The report shall include results of sampling and monitoring carried out in accord with the verification plan to demonstrate that the site remediation criteria have been met.

The scheme shall be implemented as approved.

- 17) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until a

remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the local planning authority. The remediation strategy shall be implemented as approved.

- 18) The details submitted pursuant to condition (1) (the reserved matters) shall include the final layout locations of properties on the site and their associated amenity areas together with a further noise assessment, identifying properties that require noise mitigation measures and full details of any proposed mitigation measures. Upon approval by the local planning authority the noise mitigation measures shall be implemented in full prior to occupation of the premises and retained thereafter.
- 19) Development shall not commence 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 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 in accordance with the rate agreed with Southern Water and the Lead Local Flood Authority without increase to flood risk on or off-site. The drainage scheme shall also demonstrate (with reference to published guidance):
- that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters; and
  - 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 approved drainage scheme shall be implemented in accordance with the approved details and retained thereafter. No infiltration of surface water drainage into the ground is permitted.

- 20) Prior to the commencement of the development hereby approved details of the proposed means of foul sewerage disposal shall be submitted to, and approved in writing by, the local planning authority in consultation with Southern Water. The development shall be carried out in accord with the approved details and maintain as such thereafter.
- 21) No building 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 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 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.

- 22) No dwelling hereby approved shall be occupied until the off-site highway works to widen Otterham Quay Lane between Lower Rainham Road and the site access, provide a signalised crossing on Lower Rainham Road, construct a 2m wide footway between the signalised crossing and the site access onto Otterham Quay Lane and upgrade of the existing northbound bus stop as indicated on drawing number P19081-001 Revision G has been constructed in a manner to be agreed in writing by the local planning authority. The works shall be carried out in accord with the approved details and maintained as such thereafter.
- 23) No development shall take place, including any works of demolition, until a Construction Traffic Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
1. the parking of vehicles of site operatives and visitors;
  2. loading and unloading of plant and materials;
  3. recording the condition of the immediate local highway prior to commencement, and measures to make good any damage attributed to construction traffic;
  4. routing and timing of construction traffic; and
  5. wheel washing facilities.
- The development shall be carried out in accord with the approved Construction Management Plan at all times.
- 24) The details submitted pursuant to condition (1) above shall provide details of:
- a) the provision of residential vehicle parking and turning space in accordance with the Swale Borough Council Parking Standards (May 2020); and
  - b) the provision for cycles to be securely sheltered and stored for each dwelling within the site.
- 25) The access details shown on the approved plans, P19081-001 G Proposed Access Strategy) shall be completed prior to the occupation of any buildings hereby approved, and the access shall thereafter be maintained.
- 26) Prior to the commencement of the development hereby approved details of the proposed estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture shall be submitted to and approved in writing by the local planning authority. For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients, materials and method of construction shall be included in the submitted information to the local planning authority. The development shall be carried out in accordance with the approved details.

- 27) Before the first occupation of a dwelling / premises the following works between that dwelling / premises and the adopted highway shall be completed as follows:
1. Footways and/or footpaths shall be completed, with the exception of the wearing course;
  2. Carriageways completed, with the exception of the wearing course, including the provision of a turning facility beyond the dwelling together with related:
    - highway drainage, including off-site works,
    - junction visibility splays,
    - street lighting, street nameplates and highway structures if any.
- 28) The development hereby approved shall not be occupied until an application has been made for a Traffic Regulation Order to extend the 30mph speed restriction shown on drawing P19081-001 Revision G and the scheme implemented in accordance with any approval and confirmation of that Traffic Regulation Order application.
- 29) Before development commences details shall be submitted to and approved in writing by the local planning authority for the installation of fixed telecommunication infrastructure and High-Speed Fibre Optic (internal speed of up to 1000mb) connections to multi point destinations and all buildings including residential, commercial and community. The infrastructure installed in accordance with the approved details during the construction of the development shall be capable of connection to commercial broadband providers and maintained in accordance with approved details.
- 30) Prior to the construction of any dwelling in any phase details of the materials and measures to be used to increase energy efficiency and thermal performance and reduce carbon emissions and construction waste shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials and measures.
- 31) No gas boilers shall be fitted in the dwellings hereby permitted other than a low emission boiler of a minimum standard of <math>40\text{mgNO}\_x/\text{kWh}</math>. No dwellings shall be occupied until details of the boilers to be installed have been submitted to and approved in writing by the local planning authority, and the development shall be carried out in accordance with such details.
- 32) No development shall take place until a Construction and Environmental Method Statement and a Code of Construction Practice has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. This shall include details relating to:
1. The control of noise and vibration emissions from construction activities including groundwork and the formation of infrastructure, along with arrangements to monitor noise emissions from the development site during the construction phase;

2. The loading and unloading and storage of plant and materials on site;
3. The erection and maintenance of security hoarding including decorative displays, design and facilities for public viewing, where appropriate;
4. The control and suppression of dust and noise including arrangements to monitor dust emissions from the development site during the construction phase;
5. Measures for controlling pollution/sedimentation and responding to any spillages/incidents during the construction phase;
6. Measures to control mud deposition off-site from vehicles leaving the site;
7. The control of surface water drainage from parking and hard-standing areas including the design and construction of oil interceptors (including during the operational phase);
8. The use if any of impervious bases and impervious bund walls for the storage of oils, fuels or chemicals on-site;
9. The location and size of temporary parking and details of operatives and construction vehicle loading, off-loading and turning and personal, operatives and visitor parking; and
10. Phasing of the development.

The Code of Construction Practice shall include:

1. Hours of working and timing of deliveries;
2. An indicative programme for carrying out the works;
3. Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s);
4. Maximum noise levels expected 1 metre from the affected façade of any residential unit adjacent to the site(s);
5. Management of traffic visiting the site(s) including temporary parking or holding areas;
6. numbers, frequency, routing and type of vehicles visiting the site;
7. travel plan and guided access/egress and parking arrangements for site workers, visitors and deliveries;
8. Routing of construction and delivery vehicles to / from site;
9. Measures to manage the production of waste and to maximise the re-use of materials;
10. Measures to minimise the potential for pollution of groundwater and surface water;
11. Temporary traffic management / signage;
12. The location and design of site office(s) and storage compounds;
13. The location of temporary vehicle access points to the site(s) during the construction works;
14. Details of how the construction will proceed in accordance with the conditions sets out in the consultee response by Southern Gas Networks email dated 25th January 2017;
15. The arrangements for public consultation and liaison during the construction works.

The construction of the development shall then be carried out in accordance with the approved Code of Construction Practice and BS5228 Noise Vibration

and Control on Construction and Open Sites and the Control of dust from construction sites (BRE DTi Feb 2003).

33) Prior to the first occupation of the development, a Full Travel Plan based on the principles set out in the Travel Plan dated March 2021 shall be submitted to and agreed in writing by the local planning authority. The Full Travel Plan shall as a minimum include:

1. Measures for promoting sustainable modes of travel to residents of the development;
2. Arrangements for monitoring and reviewing the Travel Plan's objectives;
3. Appointment of a Travel Plan Co-Ordinator;
4. Travel Information Packs for the first occupiers of each completed dwelling;
5. Measures for disseminating updated sustainable travel information and Travel Plan updates to residents for the duration of the Travel Plan's lifetime.

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

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

35) Prior to the commencement of the development hereby approved details of the Local Equipped Area for Play (LEAP) shall be submitted to and approved in writing by the local planning authority. The details shall include a plan illustrating all equipment appropriate for children, siting, and landscaping including enclosure treatments. The approved LEAP will be implemented as approved prior to occupation of 50% of the dwellings on the development.

## **END OF SCHEDULE**